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CUMULATIVE CONTENTS AND DIGEST APPEAR AT THE END OF THIS PUBLICATION

INDUSTRIAL APPEAL COURT—

JURISDICTION: WESTERN AUSTRALIAN INDUSTRIAL APPEAL COURT.

CORAM: KENNEDY J (Presiding Judge).

HEARD: 1 FEBRUARY 1999.

DELIVERED: 25 FEBRUARY 1999.

FILE NO/S: APPEALS IAC 10 to 48 of 1998.

BETWEEN: WESTERN AUSTRALIAN MINT AND OTHERS
Appellants

AND

THE AUSTRALIAN LIQUOR HOSPITALITY and MISCELLANEOUS WORKERS UNION, MISCELLANEOUS WORKERS DIVISION, WESTERN AUSTRALIAN BRANCH
Respondent.

Catchwords—

Industrial relations (WA)—Application for stay of orders of Commission in Court Session—Strong case—Expedited hearing—Stay granted.

Representation—

Counsel—

Appellants : Mr S R Edwards
Respondent : Mr S M Jackson as Agent

Solicitors—

Appellants : Minter Ellison
Respondent : Nil

Case(s) referred to in judgment(s)—

Re Australian Nursing Federation; ex parte State of Victoria (1993) 112 ALR 177

Burswood Resort (Management) Ltd v The Australian Liquor Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch (1996) 76 WAIG 1655

Case(s) also cited—

Bridge Pump Co Pty Ltd v Fazio, unreported; SCt of WA (Scott J); Library No 980374; 1 July 1998

State School Teachers' Union of Western Australia v Lindberg (1997) 77 WAIG 1647

Water Industry Salaried Officers' Union v Professional Officers' Association (1987) 22 IR 178

West Australian Locomotive Engine Drivers' Firemen's and Cleaners' Union of Workers v Hathaway (1995) 75 WAIG 1785

West Australian Locomotive Engine Drivers' Firemen's and Cleaners' Union of Workers v Schmid (1995) 76 WAIG 6

Re Western Australian Industrial Relations Commission; ex parte Confederation of Western Australian Industry (Inc) (1992) 6 WAR 555

Library Number : 990090

KENNEDY J—

The appellants seek to have stayed, pending the outcome of their appeals, the orders of the Commission in Court Session, dated 17 December 1998, to the extent to which they purport to vary the awards specified in them from the first pay period on or after 17 July 1998 to the first pay period on or after 17 December 1998.

A member of this Court is given wide and undefined powers under s87(3) of the *Industrial Relations Act 1979 (WA)* to make orders as to any interlocutory proceeding taken before the hearing of an appeal, and the respondent raised no issue with respect to my jurisdiction to grant a partial stay of the orders. The power which the appellants seek to have me exercise is one which the Commission itself may exercise on an appeal to the Full Bench under s49(11) of the Act. There can be no doubt that an order for a stay should only be made in exceptional circumstances, and that the power should be used sparingly, and with caution—see *Re Australian Nursing Federation; ex parte State of Victoria* (1993) 112 ALR 177 and *Burswood Resort (Management) Ltd v The Australian Liquor Hospitality and Miscellaneous Workers Union, Miscellaneious Workers Division, Western Australian Branch* (1996) 76 WAIG 1655, at 1656.

On 29 April 1998, the Australian Industrial Relations Commission handed down its judgment in the Safety Net Review-Wage Decision by which it determined a safety net adjustment and an increase in the Adult Minimum Wage. The adjustment was intended only to be available for the benefit of employees who were dependent on the award system for increases in wages and, accordingly, it was not to be generally available when award rates had been increased other than for safety net adjustments available since 1 November 1991. The implementation of the determination was made subject to a number of conditions, including "[t]he commencement of award variation to give effect to this decision will be no earlier than the date on which the award is varied, with phasing-in of increases permissible when circumstances justify it".

Pursuant to s51 of the Act, the Commission in Court Session, of its own motion, considered the National Wage Decision, and on 12 June 1998 it ordered that the following clause be inserted into each award and each industrial agreement of the Commission (save for those excluded by s51(2a)) with effect on and from 12 June 1998—

> "1A—Statement of Principles—June, 1998
>
> It is a condition of this award/industrial agreement that any variation to its terms on or from the 12th day of June 1998 including the $14, $12 and $10 per week arbitrated safety net adjustments, the increase in the adult minimum wage to $373.40 per week and previous arbitrated safety net adjustments, shall not be made except in compliance with the Statement of Principles—June 1998 set down by the Commission ...."

No General Order was made by the State Commission, the wage increases being subject to award by award application for decision by the Commission constituted in each instance. Within a short time after the decision, the respondent applied to vary approximately 80 awards in order to provide for the safety net adjustment. All the applications were listed for hearing by the Commission constituted by the Chief Commissioner on either 17 or 20 July 1998. The respondent produced to the Commission schedules of variations to each award prior to the relevant dates of hearing, but they were not then agreed or otherwise determined. The Chief Commissioner, however, determined to vary the awards with effect from the first pay period on or after the respective dates of hearing, and the parties were informed of his decision at the conclusion of each of the July hearings. They were requested to confer expeditiously on schedules of variations for the purpose of finalising the necessary orders. Orders reflecting the Commission's decision were issued in more than 40 awards shortly thereafter. Late in August or early September 1998, the respondent was advised by the second appellant in the present appeals, Chamber of Commerce and Industry of Western Australia Inc, that, under the statement of principles, the operative date for any safety net wage increase could only be the date on which the order for variation of each award issued by the Commission was deposited in the Registry. It was claimed that any operative date earlier than such a date would be a breach of subpara (a) of s8 of the Arbitrated Safety Net Adjustments under the Statement of Principles issued in June 1998 and therefore unlawful.

On 9 October 1998, the parties appeared once more before the Chief Commissioner, who referred the matter to the Commission in Court Session without himself having first made a determination. Following a hearing on 18 November 1998, the Commission in Court Session delivered its reasons on 3 December 1998, in which it held that the effect of subpara (a) of s8 of the Arbitrated Safety Net Adjustments under the Statement of Principles was that the Commission, pursuant to its duty under the current wage fixing system, would not make any operative date for any arbitrated safety net adjustments to apply to awards earlier than the date of the decision to vary those awards. That, it said, was the "variation" referred to. Thereafter, orders were made varying the awards in question in accordance with schedules to the orders, with effect from the beginning of the first pay period commencing on or after either 17 July or 20 July 1998. The present appeals are brought against what is claimed to be the retrospectivity of these orders.

It is apparent that what was contemplated in the Principles was a variation of each award, with the commencement of each award variation to give effect to the National Wage Decision not being earlier than "the date on which the award is varied".

The argument put forward for the appellants is that all that had occurred on 17 and 20 July 1998 was the making of decisions that the individual awards should be varied, but that they were not in fact varied until the details had been agreed and orders made. The short but important point is when, in terms of the Statement of Principles, the various awards were "varied".

Section 40 of the Act provides that the Commission may, by order at any time, vary an award. By subs(4) of that section, s39 applies, with such modifications as are necessary, to and in relation to an order made under s40. By s39, an award comes into operation on the day on which it is delivered, or on such later date as the Commission determines and declares when delivering the award. There is power to give retrospective effect to an award, and also, it sufficiently appears, to a variation of an award, but to do so in this case would be inconsistent with the Principles.

Without having had the benefit of the final argument by the parties which is yet to come, and therefore without having formulated a final opinion, it does appear to me that the argument on behalf of the appellants is one of considerable substance. It is, indeed, a strong case. In the absence of a stay, the employers are nevertheless required to make the allegedly retrospective payments ordered by the Commission in Court Session. Although there is a certain vagueness in the appellants' claims as to inconvenience, there can be little doubt that, if the appeals succeed in the end, having been put to the expense of making the payments, it can be anticipated that there will be difficulties in the appellants recovering them, particularly if the employees have ceased their employment with the employers concerned. In the absence of agreement, there is no right to deduct the payments from future wages, which would in any event be likely to create some hardship in these employees, who are at the bottom end of the wages scale. I would not attach a great deal of weight to the claim that industrial relations will be damaged in a situation where the employers are seeking not to comply with an order made by the Commission in Court Session in favour of the employees. The major factors which have led me to conclude that the orders should be stayed are the apparent strength of the case and the fact that the court was able to offer an early hearing date, with the prospect of an early decision being handed down. It is the last mentioned factor which persuaded me that the condition sought to be imposed by the respondent on any stay, that the payment of the moneys otherwise due under the orders of the Commission be made into interest bearing bank accounts, should not be imposed, any interest being likely in the circumstances to be very small.

Some subsidiary matters were also raised, which may be put on one side for the present, although they may well be the subject of further argument at the final hearing. The first matter concerned the standing of the second appellant in each appeal, Chamber of Commerce and Industry of Western Australia Inc, and, in particular, as to whether it was merely heard by the Commission in Court Session as an *amicus curiae* or whether it was heard as an intervener, the latter being the basis upon which it had sought leave to appear and as to which no issue had been raised in the Commission. The second matter concerned the right of the second appellant to represent various parties. In view of the fact that Mr Edwards appeared as counsel for all the named appellants, it is not necessary for the present purposes to resolve these matters.

I would extend the stay until 5.00 pm on 2 March 1999, on the basis that the Industrial Appeal Court may then extend the stay further, until the delivery of judgment.

WESTERN AUSTRALIAN
INDUSTRIAL APPEAL COURT.

Industrial Relations Act 1979.

Appeal Nos. IAC 10—48 of 1998

IN THE MATTER OF an appeal against the decision of The Commission in Court Session of the Western Australian Industrial Relations Commission in Matters Numbered 1023, 1026, 1028, 1034 – 1036, 1042, 1046, 1051, 1052, 1055, 1057, 1060, 1063, 1065 – 1070, 1074, 1079, 1082, 1083, 1085 – 1089, 1091 – 1097, 1100 – 1102 of 1998.

BETWEEN

Western Australian Mint and Others
Appellants

and

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

BEFORE—

JUSTICE KENNEDY.

25 February 1999.

Interim Order.

HAVING heard Mr S E Edwards (of Counsel) for the Appellants, and Ms S Jackson for the Respondent, THE COURT HEREBY ORDERS THAT—

The stay of Orders granted in IAC Appeal Nos. 10 – 48 of 1998 dated 1 February 1999 is extended until 5.00 pm on 2 March 1999

(Sgd.) JOHN SPURLING,
[L.S.] Clerk of the Court.

FULL BENCH—
Appeals against decision of Commission—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Rosemist Holdings Pty Ltd
(Applicant).

and

Fouad Antoun Khoury
(Respondent).

No 2096 of 1998.

BEFORE THE FULL BENCH

HIS HONOUR THE PRESIDENT P J SHARKEY.
SENIOR COMMISSIONER G L FIELDING.
COMMISSIONER P E SCOTT.

11 February 1999.

Reasons for Decision.

INTRODUCTION

THE PRESIDENT: These are two applications which relate to an appeal by the abovenamed applicant against the decision of the Commission given on 7 October 1998 in matter No 405 of 1998. The decision was perfected when it was deposited in the office of the Registrar on 7 October 1998.

The Notice of Appeal herein was filed on 24 November 1998, and subsequently served. The Appeal Book was filed on 8 December 1998.

An appeal is required to be filed by virtue of s.49(3) of the Industrial Relations Act 1979 (as amended) (hereinafter called "the Act") within 21 days of the date of the decision to be appealed against. This appeal was filed 27 days out of time.

The applications to extend time within which to file the Notice of Appeal and to extend time in which to make the application to extend time were filed on 24 November 1998.

At first instance, Counsel represented the applicant (the respondent upon the appeal and to this application), and a Director of the applicant company, Mr Naji Matta Jabbour, represented the applicant company as the respondent at first instance.

GROUNDS OF THE APPLICATION

The grounds supporting the application were as follows—

1. That Mr Jabbour, who represented the applicant, is a lay person, untrained and unskilled in the law who did not have legal advice in relation to the proceedings at first instance except as to the drafting of the Answer and counter proposal filed to the application. He was legally untrained and inexperienced and was unaware of the relevant time limits.
2. After receiving advice, which he sought on or about 13 November 1998, when he was advised that the applicant had 21 days from the date of the decision within which to institute an appeal, Mr Jabbour acted quickly because he sought advice from the Registry and then, on 16 November 1998, instructed his solicitor to assume conduct of matters. The solicitor then dealt with the matter as quickly as he could, making the appropriate investigations and conducting research, which resulted in the drawing and engrossing of the Notices of Appeal and the Notices of Application, the subject of these proceedings. (These facts were asserted from the bar table.)
3. The respondent will not suffer any prejudice if the application is successful.
4. The applicant will suffer prejudice if the application is dismissed, because it will absolutely and irrevocably lose the opportunity and right to appeal, thereby incurring a substantial financial burden by virtue of the order made at first instance.

PRINCIPLES

The principles which apply to the deciding of applications to extend time are well settled, in this jurisdiction and in other jurisdictions, and appear most authoritatively, for the purposes of this jurisdiction, in Ryan v Hazelby and Lester trading as Carnarvon Waste Disposals 73 WAIG 1752 at 1752-53 (IAC) per Kennedy J, with whom Roland and Nicholson JJ agreed, and in Tip Top Bakeries v TWU 74 WAIG 1189 (IAC) per Nicholson J, with whom Franklyn and Rowland JJ agreed.

The principles, which are mainly derivable from Gallo v Dawson [1990] 64 ALJR 458 at 459 (HC) per McHugh J, are as follows—

1. The grant of an extension of time is not automatic.
2. The object of a rule or power to extend time is to ensure that legislative provisions or rules which fix times for doing acts do not become incidents of injustice.
3. The discretion to extend time is given for the sole purposes of enabling the Commission to do justice between the parties.
4. This means that the discretion can only be exercised in favour of an applicant upon proof that strict compliance with the rules will work an injustice upon the applicant.
5. In order to determine whether the rules 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 consequence for the parties of the grant or refusal of the application for extension of time.
6. When the application is for an extension of time in which to file an appeal, it is always necessary to consider the prospects of the applicant succeeding in the appeal.
7. It is also necessary to bear in mind in such application that, upon the expiry of the time for appealing, the respondent has "a vested right to retain the judgment", unless the application is granted.
8. It follows that, before the applicant can succeed upon such an application, there must be material upon which the Commission can be satisfied that to refuse the application would constitute an injustice.
9. The initial step in determining whether there would otherwise be an injustice to the appellant may often be to decide whether the prospect of the appellant succeeding in the substantive appeal if an extension of time were to be granted is a real one.

In Esther Investments Pty Ltd v Markalinga Pty Ltd (1989) 2 WAR 196, the Full Court of the Supreme Court held that there were usually four major factors to be considered in exercising the court's discretion to extend time, these being—

(a) The length of the delay.

(b) The reason for the delay.

(c) Whether there was an arguable case.

(d) The extent of any prejudice which might be suffered by the respondent.

ISSUES AND CONCLUSIONS

It was submitted, on behalf of the applicant, that the appeal had reasonable prospects of success—

(a) The first reason advanced was Clause 10 of a deed executed on 11 February 1998 by the respondent and Mr Jabbour (hereinafter called "the deed"). The deed was executed by way of settlement of an action in the Supreme Court of this State. I should add that the respondent was, with Mr Jabbour, a director of and shareholder in the applicant.

Clause 10 reads as follows—

> "This settlement shall be in full and final settlement of all matters, whatsoever and howsoever arising of the Action, and will, subject to the terms of this Deed, operate to release the parties from all demands, debts, liabilities or claims whatsoever or howsoever in any way arising out of or connected with or incidental to the commercial relationship which existed between them or any of them and the Action or otherwise."

The submission, on behalf of the applicant, was that any claim for unfair dismissal by the respondent hereto was extinguished and/or was the subject of a release by the deed. In particular, it was the submission that the words "commercial relationship" in Clause 10 (supra) included the employment relationship between the abovenamed applicant and respondent. We were referred by Mr Chitty to authority as to the meaning of that phrase.

However, the deed concerned relates to matters having solely to do with the applicant company and the relationship of the respondent and Mr Jabbour with it and each other as shareholders and directors of the applicant. That is borne out by the reference in Clause 10 to "the commercial relationship which existed between them or any of them". There is no mention of the employment relationship which existed between the applicant and respondent and, indeed, existed after the date of the deed, as Mr Schapper submitted.

In any event, as the words I have quoted clearly and plainly say, read in the context of the deed as a whole, "the commercial relationship" means the relationship of the three parties to the deed as company, shareholders, directors, and debtors and creditors.

In my opinion, it could not be correctly held that the respondent's claim was extinguished or barred by the terms of the deed. For the same reasons, it could not be correctly found that Clause 10 lawfully terminated the relationship of employer and employee. No proper or correct interpretation to that effect can be derived from the deed or otherwise.

It, of course, follows that the finding as to the period of employment of the respondent could be held to be not in error, on the submissions made upon these applications.

(b) It was also submitted that, in the alternative, there was a reasonable prospect for the success of the appeal because the Commission had not awarded an amount of compensation assessed by deducting from the amount of wages lost the amount received by the respondent by way of unemployment benefits.

In my opinion, as I have already expressed it in Swan Yacht Club (Inc) v Bramwell 78 WAIG 579 at 584-585 (FB), such an argument has no foundation, particularly since it was not in issue, at least in submissions in this matter, that the respondent would be required to refund to the Commonwealth, received from any amount of compensation awarded, the amount of such benefits.

In any event, as I have observed in Swan Yacht Club (Inc) v Bramwell (op cit), such benefits are collateral benefits and should not be taken into account in assessing compensation (see the same approach taken by Ashley J in Haley v Public Transport Corporation of Victoria (unreported) (Supreme Court of Victoria) (LBC Ref No 51522)).

For those reasons alone, there was no duty in the Commission to ask any questions as to the quantum of such benefits, such questions being entirely irrelevant.

(c) Further, no submissions were made which would persuade me that there was a reasonable prospect of success for the appeal, based on the proposition that the dismissal was voluntary or not unfair, as is alleged in the grounds of appeal.

Accordingly, I am not persuaded that there was any real prospect of success.

The applications to extend time failed, in my opinion, for those reasons.

In any event, I am not persuaded that the applicant had valid reason for the 27 day delay in filing a notice of appeal and could have avoided the delay by ascertaining what the time limit was for an appeal from the solicitors who were already and contemporaneously acting for the applicant in a District Court action involving the respondent, the applicant and Mr Jabbour (Khoury v Jabbour and Rosemist Holdings Pty Ltd CIV 840 of 1998).

Accordingly, there was fault in the part of the applicant contributing to the delay, and the delay involved in the particular circumstances of this case was inordinate.

The question of prejudice is resolvable in favour of the respondent to these applications because the respondent would be prejudiced by being required to defend the order in his favour on an appeal with no or no serious or real prospects of success (see Ryan v Hazelby and Lester trading as Carnarvon Waste Disposals (op cit) at pages 1752-1753 (and the cases cited therein)).

There is no or no sufficient material upon which the Commission can exercise its discretion in the applicant's favour.

I have considered all of the submissions and all of the relevant material. For those reasons, I agreed to dismiss the applications herein.

SENIOR COMMISSIONER G L FIELDING: I have had the advantage of reading the draft reasons for decision prepared by the President and by Commissioner Scott. I agree that the applications should be dismissed.

The nature of the Commission's jurisdiction is such that an application involving the exercise of the jurisdiction, particularly that in respect of relief for unfair dismissal, should be brought to an end promptly. The legislation governing the jurisdiction of the Commission in matters of this kind imposes a short and strict time limit for instituting applications with respect to relief for unfair dismissal. Although the time limit for instituting appeals is not so strict, the delay in seeking to institute the appeal, in this instance, is such that the Applicant is seeking an extension which more than doubles the time limit prescribed by the Act. In the context of the jurisdiction of the Commission, the delay is inordinate.

Apart from the length of delay, the reasons for the delay are hardly very satisfactory. If, as seems to be the case, ignorance of the procedural requirements to instigate an appeal was the reason for the delay, of itself that is not good reason for the Commission to extend the time. In this case that is all the more so because, as counsel for the Respondent observed, the Applicant's director had the means to ascertain the procedural requirements in time. He was engaged in litigation in the District Court with the Respondent to these proceedings regarding a related matter at the time the decision of the Commission, about which he now complains, was handed down. The fact that he did not make enquiries as to the Applicant's rights of

appeal until well after the decision was handed down is, in the circumstances, not a good reason for extending the time to appeal. The decision of the Commission in *Minerals Consolidated Limited and Others v. Association Of Draughting, Supervisory and Technical Employees Western Australian Branch (1983) 63 WAIG 1879* on which the Applicant places much reliance, is of little assistance. That was not a case of a person seeking to challenge a decision already made by the Commission, but seeking an extension of time within which to lodge objection in proceedings which were then only part heard.

In any event, I consider that the prospects of the Applicant succeeding on any of its grounds of appeal to be remote. In particular, I agree with the President and with Commissioner Scott that the grounds based on the Deed of Release have no merit. In the circumstances, there is little point in extending the time to enable the appeal to be heard. Indeed to be so waived in these circumstances unduly prejudice the Respondent.

COMMISSIONER P E SCOTT: The reasons for decision of His Honour the President set out the background and grounds for the application to extend time. The principles to be applied are set out in *Gallo v Dawson (1990) 64 ALJR 458 at 459 (McHugh J)* and in *Ryan v Hazelby and Leicester trading as Carnarvon Waste Disposals (1993) 73 WAIG 1752 at 1752-3*. The *Industrial Appeal Court in Tip Top Bakeries v TWU (74 WAIG 1189)* referred to the decision of the Full Court of the Supreme Court in *Esther Investments Pty Ltd v Markalinga Pty Ltd (1989) 2 WAR 196* which set out the major factors to be applied to such matters. They are—

1. The length of delay.
2. The reason for the delay.
3. Whether there was an arguable case.
4. The extent to which the Respondent may be prejudiced by the application being granted.

The appeal was filed 27 days out of time. Considering that the time allowed for the filing of appeals is 21 days, this is a significant delay.

There are said to be two reasons for delay, the first being the Applicant's ignorance of any time limits. It appears though, that the Applicant made no enquiries as to filing an appeal until well after the time it was required to pay to the Respondent the amount ordered by the Commission at first instance.

The second reason for delay involves the Applicant's solicitor preparing and filing the appeal and this application, following the Applicant becoming aware of the time limit for such appeals. This delay is said to have involved the solicitor in the normal activities associated with the preparation for filing such documents and this took approximately 10 days. Part of the reason for this period of time being taken was that the solicitor was moving office.

Although the period of time taken by the solicitor in preparing and filing the documents was not extensive, those matters are normally comprehended in the 21 day period allowed for the filing of appeals. The Applicant's failure to take any action or make any enquiries for a period well beyond the time for filing appeals is the root cause of the delay. I am not satisfied that the reasons advanced by the Applicant for the delay constitute good reasons.

As to whether there is an arguable case, I agree with His Honour the President that the Deed between the parties related to matters which did not include the Respondent being an employee of the Applicant and that it did not extinguish or bar the Respondent's claim before the Commission. Accordingly, I am not satisfied that there is an arguable case that the Commission erred in its interpretation of the term "commercial relationship" in that deed. Further, it appears that the Applicant concedes that the Deed did not terminate the relationship of employer and employee in that it says that the period of employment which could be the subject of a claim was between 12 February 1998 and 23 February 1998, ie. for a period after the Deed brought about the end of the "commercial relationship". Accordingly, grounds 1 to 4 of the appeal do not present an arguable case.

As to the complaint that the Commission failed to ask certain questions which would have assisted the Applicant in the conduct of its case, the Commission has no obligation to direct particular questions to witnesses, and is required to do no more than provide the parties with a reasonable opportunity to put their respective cases. *(Bread Manufacturers (Perth and Suburbs) Industrial Union of Employers v West Australian Bakers, Pastrycooks and Confectioners Union (1990) (70 WAIG 3565 at 3566)).*

As to the question of the inclusion of unemployment benefits as a consideration in the calculation of compensation, I refer to my reasons for decision in *Swan Yacht Club (Inc) v Bramwell (78 WAIG 579 at 585)* which was, in essence, that the issue of Social Security payments and their place in the consideration of compensation was a matter for the exercise of discretion. There is no authority which would bind the Commission in its consideration of that matter.

I agree with His Honour that the issue of prejudice would be in the Respondent's favour.

Accordingly, the applications to extend time ought be dismissed.

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

Order accordingly

APPEARANCES: Mr G Chitty (of Counsel), by leave, on behalf of the applicant

Mr D H Schapper (of Counsel), by leave, on behalf of the respondent

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WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Rosemist Holdings Pty Ltd
(Applicant)

and

Fouad Antoun Khoury
(Respondent).

No 2096 of 1998.

BEFORE THE FULL BENCH

HIS HONOUR THE PRESIDENT P J SHARKEY.
SENIOR COMMISSIONER G L FIELDING.
COMMISSIONER P E SCOTT.

25 January 1999.

Order.

THIS matter having come on for hearing of an application for an extension of time within which to make an application to extend time and an application to extend time to lodge appeal No 2096 of 1998 before the Full Bench on the 25th day of January 1999, and having heard Mr G Chitty (of Counsel), by leave, on behalf of the applicant and Mr D K Schapper (of Counsel), by leave, on behalf of the respondent, it is this day, the 25th day of January 1999, ordered and declared as follows—

THAT the applications herein to extend time to file appeal No 2096 of 1998 out of time and for an extension of time within which to make an application to extend time be and are hereby dismissed.

By the Full Bench

(Sgd.) P.J. SHARKEY,
[L.S.] President.

COMMISSION IN COURT SESSION— Matters dealt with—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

The Honourable Minister for Education

(No. CR 49 of 1997)

Education Department of Western Australia (Education Assistants—ALHMWU)

Enterprise Bargaining Agreement.

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

and

The Honourable Minister for Education.

No. 1532 of 1990.

Teachers' Aides' Award, 1979, No. R4 of 1979.

COMMISSION IN COURT SESSION
CHIEF COMMISSIONER W.S. COLEMAN
COMMISSIONER J.F. GREGOR
COMMISSIONER A.R. BEECH.

9 September 1998.

Reasons for Decision.

COMMISSION IN COURT SESSION: On 15th April 1998 the Commission in Court Session issued a decision on applications CR49 of 1997 and 1532 of 1990 to establish a skill related classification structure and to undertake a minimum rates adjustement (MRA) for Education Assistants employed by the Education Department of Western Australia (EDWA). Further proceedings were conducted in May and June 1998 and these reasons for decision now dispose of the matters.

The course agreed to by the parties under their Enterprise Bargaining Agreement (77 WAIG 529) for establishing a classification structure and for finalising the MRA was not completed. It appears that because of Government Wages Policy understandings and agreements reached with the Union in 1997 were subsequently repudiated by officers of EDWA. Since the Commission's decision was handed down in April 1998 substantial agreement has been reached on job descriptions. However there is no agreement on wage rates. This has meant that there has been no discussion on the implementation of a new classification structure for Education Assistants that encompasses the MRA.

The requirements imposed on the parties by the Commission to address the compilation of duty statements, assess competency standards and develop a classification structure has resulted in the following documents being submitted—

- Role Statements and indicative duties for Education Assistants Level 1-3

  (Common Document 1)
- ALHMWU Proposal—Education Assistant Classification Structure.

  (Applicant Union's letter dated 8th May, Attachment B)
- Total Annual Cost of ALHMWU Claim.

  (Applicant Union's letter dated 8th May, Attachment C)
- Draft Order—Teachers Aides Award 1979 No. 4 of 1979.

  (Minister's Exhibit BB)
- Education Assistants Level 1-4 Aboriginal Islander Education Workers Ethnic Education Workers. "Draft Only".

  (Minister's Exhibit DD.)

The "Role Statements and Indicative Duties for Education Assistants Levels 1-3" (Common Document1) reflect the agreed application of competency standards developed by the Community Services Health and Education Industry Training Council (Refer to Exhibits 7&8). EDWA acknowledges that under the common document, the parties have agreed on the establishment of a generic job description for Level 1 Teacher Aides and Home Economics Assistants which will allow the employees to undertake a greater range of tasks.

> "This provides the employer with a more flexible and diverse workforce. Some of the duties include, but are not limited to—
>
> - Requiring Home Economics Assistants to undertake minor administrative support; or
> - Assist teachers in the delivery of planned education outcomes."
>
> (EDWA Response to Direction of 8 May 1998)

EDWA also advises that the position taken in the "Tutt Report" (Proposed Classification Structure and Job Description for Education Assistants – Exhibit 9) has, with minor modifications, been "fundamentally adopted" to take into account the generic job descriptors.

While the parties have not been able to agree upon wage rates appropriate to various classifications of Education Assistants, each accepts that a three level structure accommodates the role and duties of Education Assistants as they progress from inexperience (working under direct supervision) to a level of competency requiring only general supervision then to performing duties requiring only limited supervision. However within this general framework of the three level structure there are differences in the specification of duties, the format of the document and whether or not all or only some of the information should be included in the award.

The Commission considers that an identification of core competencies accepted by the parties assists in resolving these differences and in determining the classification structure within the context of work value considerations. The summary of competency standards set down by the Community Services, Health and Education Intensive Training Centre provides in respect of Education Assistants—

"Core competencies for all Teacher Assistants Units 1-5

1. ASSIST TEACHER(S) IN IMPLEMENTING PLANNED EDUCATION PROGRAMS
   - 1.1 Assist the teachers in the delivery of the daily program
   - 1.2 Prepare and maintain equipment and supplies
   - 1.3 Work with individual students or small groups
   - 1.4 Assist the teacher in the assessment of students
   - 1.5 Supervise students under extenuating circumstances
   - 1.6 Contribute to the provision of a consistent and stable learning environment
   - 1.7 Assist with the organisation and coordination of functions, excursions, assemblies, sporting events, art, drama and book clubs, etc
2. ASSIST STUDENTS IN THEIR PHYSICAL, INTELLECTUAL, SOCIAL AND EMOTIONAL DEVELOPMENT
   - 2.1 Assist students' physical, emotional, social and intellectual development
   - 2.2 Assist the processes of communication
   - 2.3 Encourage self-esteem and confidence of students
   - 2.4 Assist with the integration of all students into the classroom and community
   - 2.5 Encourage and support appropriate behaviours for individual students
3. CONTRIBUTE TO THE ORGANISATION AND MANAGEMENT OF THE CLASSROOM(S) OR CENTRE
   - 3.1 Practise effective administrative processes
   - 3.2 Assist with the processing and maintenance of records
   - 3.3 Monitor supplies for the classroom
   - 3.4 Assist students to operate computers for classroom activities

4. CONTRIBUTE TO THE MAINTENANCE OF THE EDUCATIONAL ENVIRONMENT
   - 4.1 Assist with the maintenance of a clean, hygienic, safe and interesting environment
   - 4.2 Assist the teacher to respond to accidents, illness, emergencies or threats
   - 4.3 Assist the teacher to ensure the safety of transport and travel arrangements
5. FOSTER PROFESSIONAL RELATIONS
   - 5.1 Participate effectively and contribute to the work team
   - 5.2 Exercise responsibility for own work area
   - 5.3 Liaise effectively with staff, Principal and parents
   - 5.4 Adhere to the policies, guidelines and procedures of the school/centre
   - 5.5 Seek to further professional development."

Specialist Competencies in education of Student(s) with a Disability(ies) and/or with special needs in the social, emotional and psychological areas

6. SUPPORT STUDENT(S) WITH A DISABILITY(IES) TO ACCESS THE EDUCATION PROGRAM MOST EFFECTIVELY
   - 6.1 Attend to student's physical care under the direction and supervision of the teacher
   - 6.2 Assist the teacher in the implementation of health care and emergency procedures
   - 6.3 Assist the teacher to attend to student's nutritional requirements
   - 6.4 Under the direction of the teacher, use specialised equipment provided to benefit students' learning
   - 6.5 Assist with the student's therapy programs, under the direction of the therapist or teacher
   - 6.6 Under the direction and supervision of the teacher, support students' individual education programs
7. ASSIST THE TEACHER TO MANAGE THE BEHAVIOUR OF THE REFERRED STUDENT
   - 7.1 Observe the student's social skills and behaviour, as directed by the teacher
   - 7.2 Provide information and advice on students' skills and behaviour when requested
   - 7.3 Assist in the implementation of behaviour management plans
   - 7.4 Assist with training of referred students in self-management of emotions
   - 7.5 Assist with the physical restraint of referred students
   - 7.6 Assist with camps and excursions for students with disabilities or special needs
   - 7.7 Attend to student's physical care under the direction and supervision of the teacher

Specialist Competencies in education of Students referred to a SPER Centre

8. ASSIST THE TEACHER TO MANAGE THE BEHAVIOUR OF THE REFERRED STUDENT

Socio-Psycho-Educational Resource (SPER) Centres, as part of the school psychology service, provide a specialist support to government primary schools for the management of K-7 students exhibiting moderate to severe social, emotional and behavioural problems, which are inhibiting their progress or that of other students. Teacher assistants work with the Centre psychologists and teachers, and with mainstream teachers, under the supervision of the Officer in Charge.

- 8.1 Advise the classroom teacher on implementing the behaviour management plan
- 8.2 Design social training plans in collaboration with SPER Centre staff, school, parents and others
- 8.3 Contribute to professional development of staff
- 8.4 Liaise, as directed, with other agencies and schools
- 8.5 Support the referred student, as directed
- 8.6 Liaise with parents or guardians on schools issues and management programs, as directed"

(Competency Standards Teacher Assistants" Community Services, Health and Education Industry Training Council. Exhibit 7.)

The following Role Statements and job descriptors are determined by the Commission as the basis upon which other issues relevant to the determination of a classification structure (and MRA) are made.

EDUCATION ASSISTANT—LEVEL 1

Role Statement

Employees at this level work under direct supervision performing routine tasks which require a basic competency. Such competencies will be used within established routines, methods and procedures that are predictable. Employees may develop some autonomy relating to their level of competence, experience and knowledge.

Duties Include

- *Assists teacher in the delivery of planned educational programs including the operation of computers.*
- *Provides minor administrative support e.g. photocopying, collating, stapling and distribution of lesson materials.*
- *Assists with the preparation and maintenance of the learning environment by:*
  - *Undertaking cleaning activities;*
  - *Maintaining equipment, materials and resources for use in classes, displays and demonstrations;*
  - *Assisting the teacher with clean and safe storage of items after classes and activities.*
- *Under teacher direction, implements individual student or small group programs or demonstrations.*
- *Assists the teacher with the care and supervision of students in out-of-class activities and on school excursions.*
- *Assists the teacher with the general care and well being of students, including attending to sick students or students in needs of minor first aid.*
- *Collects monies under the supervision of the teacher where appropriate.*
- *Assists the teacher in the preparation and distribution of food for students.*
- *Assists with arrival and departure of children travelling on buses.*
- *Assists children undressing, bathing, dressing, toileting etc including cleaning up after accidents.*
- *Assists with the management of resources by:*
  - *Maintaining and updating inventory list;*
  - *Monitoring stock levels and requirements.*

Education Assistants working with children requiring disability support to—

- *Assist with the arrival and departure of children including vehicular access and egress.*
- *Assist students with food preparation, eating and where necessary feeding of students.*
- *Assist the teacher by moving students, and when required, by changing student from one piece of equipment to another.*
- *Carry out toileting and, where necessary, cleaning of soiled clothing and areas.*
- *Undertake bathing or showering of students.*

Education Assistants employed as Aboriginal Indigenous Education Workers and Ethnic Assistants may be required to—

- *Assist the teacher to identify and represent educational needs of students.*
- *Interpret and translates when there is a communication difficulty between the teacher, student or parent.*

- *Consult with parents on issues affecting the education of the student.*
- *Provide a point of contact within the school for the local Aboriginal or Ethnic community.*
- *Provide information to parents on the education system and relevant school policies.*

EDUCATION ASSISTANT—LEVEL 2

Role Statement

Employees at this level work under general supervision and guidance performing tasks which require limited discretion and judgement in achieving clearly defined outcomes determined by the teacher. Employees will be able to apply techniques, skills and knowledge of relevant principles and practices acquired through previous experience, on the job learning or relevant qualification.

Duties Include

- *Any of the duties outlined in Level One however, these shall be performed at the higher competency level denoted by this classification.*
- *Assists teacher in classroom and other activities under general guidance.*
- *Collects resources and administrative documents.*
- *Manages the resource or store room.*
- *Ensure safe and hygienic storage and handling of foodstuffs and food preparation utensils.*

Education Assistants working with children requiring disability support to—

- *Specialised duties as outlined in Level One.*
- *Interprets for the teacher or therapist when there is communication difficulty between them and a student.*
- *Under the direction, assists in the implementation of occupational and physiotherapy programs.*
- *When required, provides feed back on education and therapy programs and participates in the evaluation process relating to the achievement of goals in special education.*

Education Assistants employed as Aboriginal Indigenous Education Workers and Ethnic Assistants may be required to—

- *Specialised duties as outlined in Level One.*
- *Provide advice on the cultural needs of students.*
- *Conduct interview or home liaison visits to discuss the academic progress and social development of students.*
- *Provide orientation to staff in relation to the Aboriginal or Ethnic community.*
- *Identifies opportunities and provides advice on program content relating to Aboriginal or Ethnic culture.*
- *In consultation with teacher, provides instruction on Aboriginal or Ethnic culture to students.*
- *Counsels students on matters affecting their education.*
- *Facilitates community contribution to the formulation of school policies with regard to Aboriginal or Ethnic culture.*
- *Liaises with Agencies to further the educational welfare of Aboriginal and minority group students.*

EDUCATION ASSISTANT—LEVEL 3

Employees at this level work under limited supervision and may be expected to participate within a team situation offering advice and expertise relating to their relevant area. Education outcomes are determined by the teacher, or other professional, with the employee performing tasks which require discretion in problem solving, decision making and choosing methods and processes to achieve outcomes.

Employees will be able to apply techniques, skills and knowledge of relevant principles and practices acquired through previous experience, on the job learning or relevant qualification.

Indicative duties for advanced skill employees may include—

- *Provides support and advice to schools and teachers on the management program under supervision of the Psychologist in Charge or relevant professional.*
- *Design and implement behaviour management plans in consultation with teachers, parents and the Psychologist in Charge or relevant professional.*
- *Maintains records regarding implementation of behaviour management plans.*
- *Works with individual and small groups of students under the direction of the Psychologist in Charge or relevant professional.*
- *Assists with training students in self-management.*
- *Assists the teacher to implement behaviour management plans.*
- *Consults with parents independently or teacher, though under supervision of Psychologist in Charge or relevant professional.*
- *Provides appropriate physical restraint and removal where appropriate.*
- *Participates in residential programs as required.*

The issues which emerge from the adoption of the above role statements and job descriptors in the determination of a classification structure include the following—

(a) Whether or not a Level 3 classification should be available to main stream Education Assistants as part of the career structure.

(b) The potential for further disputation over the availability of the Level 3 classification for main stream Education Assistants over claims that they already perform at that level in discharging their duties according to the requirements of the school. The classification structure proposed by EDWA limits main stream Education Assistants to career development to Level 2. It is implied there are no requirements beyond this level by EDWA.

(c) Under EDWA's proposal, career development for main stream Education Assistants is through promotion to SPER, Ethnic Education Assistant positions or Disability Support appointments. The attainment of qualifications provides the possibility of further recognition.

(d) The Enterprise Bargaining Agreement provides that the new classification structures be included in the award(s). The applicant Union submits that the role statements and job descriptions should form part of the award provision in giving effect to the terms of the Enterprise Bargaining Agreement. EDWA argues that any award provisions should be limited to role statements for Education Assistants.

(e) The new structure accommodates the integration of Home Economics Assistants into the Education Assistants classification.

EDWA proposes the option of "either reducing their hours and transferring across to the education assistant's role or, for those that do not wish to transfer, they could stay where they are and through natural attrition, when home economics positions become vacant, they would be replaced with the teacher aide role with lesser hours, or we could bring them across as teacher aides and have them on salary maintenance." (Transcript p 449).

The applicant Union disagrees with the transitional options as they affect the hours of work.

Needless to say, no discussions have taken place between the parties on the implication of a generic classification.

(f) EDWA has put forward draft role statements and job descriptions for Aboriginal Islander Education Workers and Ethnic Education Workers. While it is recognised that the position of the Aboriginal Islander Education Worker is under separate consideration by the Department (and that there will be discussion with the Union), the position of the Ethnic Education Assistant has not, up until now, been the subject of

separate consideration or detailed submission. It was understood that Ethnic Education Assistants came within the generic group whose competencies and duties were being considered with "main stream" Education Assistants. The status of the proposal for a four level structure which is still in draft form gives rise to uncertainty.

As we understand the Union's position these groups should continue to be regarded within the general framework of Education Assistants. If subsequently a revised structure is proposed, that can be assessed having regard to the outcome of the present matters.

Notwithstanding the issues identified so far, the circumstances under which the determination of the classification structure is to be made have changed significantly since arbitration commenced. No longer is there opposition to the Education Assistants being treated generically. The applicant Union's skill descriptors which fundamentally reflect competency standards and duties identified in the Tutt Report for the various levels of Education Assistants are accepted as the basis upon which Role Statements and Job descriptors (and JDF's) have been developed.

However despite this consensus, irreconcilable differences remain between the proposals from each party for the wage rates to apply under the respective classification structures. The applicant Union's structure reflects an increase in work value of Education Assistants. This subsumes the Minimum Rates Adjustment (MRA) and puts in place a career structure, which if successful would align Education Assistants with School Assistants under the Government Officers Salaries, Allowance and Conditions Award, 1989.

EDWA's proposal is that the MRA and the classification structure reflects a negative outcome for the worth of Education Assistants when compared with their existing pay rates. This outcome is accommodated under supplementary payments pursuant to the MRA Principle so that income levels are maintained.

The basis of the applicant Union's claim, the changes in work value are said to arise from—

- an increase in responsibility in teaching/supervising small groups of students without direct supervision of a teacher.
- an increase in participation in all aspects of the education program.
- the introduction (and experience) of new technology, particularly computerisation.
- an increase in professionalism, accredited training and professional development.

Against this is EDWA's assessment that—

- at all times Education Assistants work under the supervision of teachers and while they may provide comment and advice for consideration on outcomes, the teaching programs remain the teacher's responsibility.
- as teaching methods change with the use of more technology ie. computers, the Education Assistant's time and skills are being used more efficiently. There is not an inherent change in their role, responsibility or expertise.
- consultation with teachers on teaching programs and participation in "in service" training has not resulted in a change in the level of work value of Education Assistants.

To take EDWA's position further, it follows that not only has the worth of teachers increased, and this is reflected in their benchmark rate, but that it must be concluded that under the proposed MRA the work value of Education Assistants has diminished. This must be due either to changes in duties or responsibilities which diminish their role or as a reflection of Education Assistants' general worth in the environment in which they function.

Additionally, according to EDWA the current enterprise bargaining agreement settles all past productivity claims since 1991. EDWA submits that in the absence of any new initiatives since then, there can be no work value changes which have not already been taken into account in the 10% (plus $200) payment under the EBA.

Unless there are duties and responsibilities identified in the EBA which have been part of the role and responsibilities of Education Assistants since 1991 but which are no longer required to be undertaken by them when the EBA terminates, then this makes a nonsense out of EDWA's argument to have a classification structure which discounts the work value of Education Assistants under its proposed MRA. Either the 10% (plus $200) payment under the EBA accommodates a recognition of changes in the role and responsibilities of Education Assistants or it is particular to some arrangements limited to the operation of the EBA. There is no evidence that the latter is the case.

The Department's MRA proposal was devised in 1995. The exercise was overtaken by the enterprise bargaining process. As noted a number of times already, the outcome of that in 1996 carries with it the commitment to undertake a comprehensive review of duty statements to ensure that they reflect current and future requirements of the positions and competencies based on standards developed by the Community Services, Health and Education Industry Training Council. It is not unreasonable to assume that the classification structure which was to come out of that comprehensive exercise would accommodate past productivity initiatives and those which were recognised under the E.B.A. Indeed on 17th September 1996 the Minister for Education was advised—

"The restructuring issue was the major factor in persuading the Union to accept the offer.

There was already a commitment to the agreement to undertake a restructure but we have now reached an understanding on process and timeframes.

The restructure of the classifications will provide an opportunity for some staff to achieve additional increases. Where this occurs it will be based on work value and undertaking additional duties as required by the department. This will take about 6 months to finalise. Not all Staff will benefit from this process.

The figure being quoted by the Union of additional increases for all staff of between 2% and 8% are not acceptable as correct. Any additional increases will depend on translation into the new structure and will offset by staffing to formula. Until that occurs it is not appropriate to suggest particular percentage outcomes."

(Appendix 4—Statement of Evidence of Executive Director (Human Resources) EDWA).

Notwithstanding the above assessment conveyed to the Minister for Education and the revised Duty Statements and competency standards, EDWA's M.R.A. proposal maintains its 1995 proposal and to the implementation of a classification which is cost neutral. That principle was not mentioned in the September 1996 advice to the Minister nor does it appear to have been the basis upon which the terms of the enterprise bargaining agreement were negotiated.

It appears to us that EDWA's position on the MRA is predicated on a policy which ignores the basis upon which duty statements, role statements and competencies have now been accepted.

The MRA secures within the award system the work value of classifications relative to each other and to other vocations. Once established the award provides the safety net above which enterprise bargaining can develop. However, under Government Wages Policy—

"Awards are increasingly less relevant than agreements in determining actual wage rates and employment conditions. Agencies should develop stand alone agreements that do not rely on or refer to awards".

(Government Labour Relations Policy Statements: Role of Awards)

EDWA's position would see the award rate for Education Assistants reduced albeit that supplementary payments would maintain wage levels over time. The prospect of an enterprise bargain to achieve an outcome in line with other staff with whom Education Assistants work in schools would be attractive. Indeed, this was the course attempted by EDWA in July 1997 when it sought to promote an enterprise bargaining agreement as the "best opportunity [to achieve] for agreement on a properly constructed career structure which recognises the work value of Teachers Aides relative to teachers and [to] secure

wage increases for the ensuing two years …" (Exhibit 15—Letter from Director, Employee Relations, 11 July, 1997).

This approach is at odds with the applicant Union's attempt to secure an outcome under the initiatives set out in the 1996 Enterprise Bargaining Agreement. Prima facie the recognition already given to past productivity achievements should be built into the award under the MRA or work value assessment.

It is clear to us that the work value of Education Assistants has not reduced with the effluxion of time through any changes in duties which have resulted in having responsibilities taken from them. Quite the contrary, evidence provided by the applicant Union and the Respondent's own witnesses identify an increase in the level of responsibility placed on Education Assistants by parents and teachers. This translates into requirements for professional development and in service training. It is not just more of the same. The Education Assistants' contribute to the teaching program with feedback on individual students. Their contribution to making the learning environment more stimulating go further than just giving themselves job satisfaction. It is an important function; without enthusiasm and motivation an Education Assistant could have a negative influence in the classroom. This participation and contribution to the student's outcome is a vital part of the Education Assistant's role. Clearly, the involvement is dependent on the initiative of the teacher and that person's ability maximises all of the resources at his or her disposal. Failure to effectively use an Education Assistant's skills reflects on the teacher. To some it may seem that the role of the Education Assistant has not changed much. Maybe those teachers have been effectively exploiting the potential of Education Assistants for some time. However, for others, and this includes many teachers we visited at schools under the program of inspections, things have changed dramatically. Gone are the days when the "Teacher's Aide" would sit outside the classroom and fulfil fetch and carry tasks. Teachers attest to the role their Education Assistants undertake in effectively running tutorial groups at their direction. At the extreme there are situations where Education Assistants take control of the classroom when the teacher has to deal with a crisis. While the instances of this may be exceptional nevertheless the professional development of experienced Education Assistants equips them to handle such situations. Many teachers identified the role of the Education Assistant as a partnership with them.

In the environment catering for children with special needs where disability support is necessary, the Education Assistants' role is closely linked to that of the teacher. Behaviour management and attending to the physical and emotional needs of these children makes the team approach a fundamental facet of the work. It detracts from a proper assessment of the role of the Education Assistant to focus on the teacher's duty of care. The responsibility that devolves on the teacher has never been disputed. However, the position of the Education Assistant at law in circumstances when they are working remote from the teacher in ablution facilities or when the student is away from the school on a community placement under the care of the Education Assistant has not been recognised. The change in student needs with an increased incidence of more profound intellectual disabilities at Special Education Schools has placed an increased burden on Education Assistants in tending to the physical and emotional comfort of the students some of who are young adults. However, we consider that the commitment to an educational program has not diminished. If that were the case teachers would likewise have experienced a change which would reduce the requirement for them to exercise their professional skills and involve themselves more in duties directly associated with the physical needs of toileting, washing and feeding. In our view, both vocations, teachers and Education Assistants, work in an environment which places demands on their professional skills and physical and emotional commitment. Without their dedication and that of the rest of the team the community would be a lot poorer. An educational outcome for each student whether it focuses on developing intellectual and or social aspects of behaviour remains the goal. The degree of disability makes this task more difficult; it does not discount the worth of the Education Assistant (or teacher) because of time devoted to attending to the student's physical and emotional needs.

In the high school environment the Commission was informed of how changes to curriculum have impacted on the work of Education Assistants including those engaged in home economics class rooms. Special events and commercial ventures extend the planning and technical skills of Education Assistants (Home Economics). The range of courses now available to students requires the Education Assistants to become involved in more effective management programs. For Education Assistants engaged with students requiring education support there is a need to fully understand the objectives of the teacher's work program whether that involves a computer exercise or working on a language skill program. The one-to-one relationship between the education assistant teacher and student demands knowledge and teaching skill which extends beyond interpreting especially where the student has a physical disability. The range of tertiary subjects being taken by the student and the ability to identify particular problems in each area demands that the Education Assistant's professional development meets student and teacher needs.

The Commission was able to visit a number of schools and speak with principals, teachers and Education Assistants. We were given information on how various initiatives such as the Priority School Program, Cluster Classroom arrangements and the Multi-Age Grouping Programs impact on the learning environment. In all cases the importance of the Education Assistant as part of the team was emphasised. Each new program does not increase the work value of the Education Assistant. However, their ability to respond to the demands of a changing learning environment reflects on the professionalism and skill that is expected of them. Importantly, the Education Assistant is required to participate in teamwork planning, to assist with an assessment of a student's needs and to provide observations and comments for specialist and visiting teachers. The need to work with teachers in encouraging self esteem and confidence of students is a role that was repeated to us whether the Education Assistant was working in a school serving socio-economically disadvantaged families, providing for the special education needs of individual students or teaching children of various ethnic backgrounds. This involvement in the full scope of the education process is not a role that was determined should happen from the "beginning of the first pay period" or after a certain date; it has evolved over time and can be contrasted with the duties of the Teacher Aide whose functions were limited to such matters as setting up teaching equipment and attending to minor administrative duties in the classroom. In our view there has been a qualitative change in the role of the Education Assistant that has come about as a result of the demands placed on schools and teachers. It is unrealistic to think that teachers could meet the pressures that society often imposes on them in the classroom without assistance from time to time. It is demeaning to characterise the role and commitment of the Education Assistant as a 9.00am to 3.00pm job that they leave behind when they walk out the door. People, and it appears to be mainly women, just do not work that way. Of course, there will be exceptions, just as there are with teachers. While the hours of duty may be limited to school room attendance, it is clear to us that these employees are highly dedicated and motivated. The work value of Education Assistants must be kept in a perspective that relates to the environment in which they function along with those of other employees directly and indirectly supporting the learning process.

Before concluding the review of the role of Education Assistant, are comment specifically on engaged in Socio-Psycho-Educational Resource Centres (SPER) requires comment. The Commission has already noted that Education Assistants in SPER centres are qualitatively different from those occupying positions in pre-primary, primary and secondary schools and that they should be the subject of separate consideration. From the respective structures proposed by the parties it appears to be common ground that the Education Assistants (SPER) will occupy classifications at the top of the wage scale.

Nothing was put to us to indicate that a reduction in the level of responsibility for these officers arises from changes in duties. In fact the Commission was informed that the SPERs integration with the School Psychology Service has broadened the scope of services delivered by these Education Assistants. From information tendered the expertise and resources made available to schools through SPER include—

"(a) providing consultation to principals and members of the student services team,

(b) providing direct support for teachers of referred children in the classroom/playground,

(c) providing counselling and training in relevant management procedures to teachers and parents of referred children,

(d) providing crisis management and intensive intervention at a withdrawal facility such as Challis where efficient and appropriate,

(e) providing social training programs through camps and special activities at the Centre on Fridays".

(Duties of Teacher Aides Challis SPER Centre—Background

(Notes provide to Commission and parties on inspection)

The Commission is satisfied that along with the general increase in work value experienced by Education Assistants, those engaged in SPER Centres and providing services under Out-Reach and Withdrawal programs have also experienced a significant change in work value. This is reflected in the additional professional development and training necessary to effectively service the needs identified by teachers for their students.

In assessing the functions, responsibilities and worth of Education Assistants, we think that it is instructive to consider some of the changes that have occurred in the education system under various initiatives over a number of years. For instance, the "Better Schools in Western Australia – A Programme for Improvement" sets down the steps for 'self determining schools' between 1988 and 1992. This was based on the belief "that good schools make a good system".

"Accordingly, the efficiency and effectiveness of the system can be improved only if schools have sufficient control over the quality of education they provide. It is only at the level of the school—

- that the professionalism of teachers can be exercised;
- that meaningful decisions about the educational needs of each student can be made; and
- that programmes can be devised that reflect the wishes and circumstances of local schools communities"

(Better Schools in Western Australia—a Programme for Improvement, page 5)

The program goes on to identify the school development plan—

"One way in which schools should exercise greater self determination and greater responsibility is by preparing a school development plan each year. This would involve documentation of the schools—

- educational goals and priorities, consistent with Government policies and community concerns;
- educational programmes to achieve these goals;
- proposed use of facilities and resources (both financial and staffing);
- evaluation strategies to measures desired educational goals and standards; and
- controls and reporting systems established to unable monitoring and auditing of resource usage.

The school development plan would aid curriculum planning and financial and resource management, as well as constitute a focus for co-operative decision-making by school, staff, community members and central administrators. It is also proposed as a means whereby schools are accountable to the Ministry of Education for performance against centrally established standards and goals."

(Op cit, page 11)

The "Better Schools in Western Australia – a Programme for Improvement" was the genesis for establishing a framework for the employment and career advancement of Government Officers employed in the Department's primary and secondary school and in district offices in an administrative, clerical or general capacity. The amendment to the Ministerial Officers Salaries Allowances and Conditions Award proceeded "in essence by consent" (71 WAIG 3183).

Documentation supporting the application for the career structure for these School Assistants identified strategies to address problems of—

- work load
- role ambiguity
- lack of recognition of work value changes
- the absence of career paths
- lack of access to training to develop new skills require to cope with the demands of devolution
- lack of job security for school assistants

(Application P44 of 1990—Exhibit Book II August 1991)

Within the same environment of the devolved system, a benchmark salary of $38,000 and an advanced skills teacher's classification structure was established (January 1992 Government School Teacher Tribunal matter Nos. T3 and T7 of 1991 and No. TA 1 of 1986 (72 WAIG 924)).

While the program for change has moved on from the model for devolution, the focus has remained on the classroom. School Development Planning and accountability within a framework of improvement have continued to recognise—

- the school as a key decision making within education;
- the participation of a wider group in school decision making;
- the broader role for staff in schools; and
- an acknowledgment that staff accept responsibility and accountability for their decisions.

Consistent with this development is the requirement set out in the Education Assistants Enterprise Bargaining Agreement 1996 for performance management. Initiative 7 provides that—

"(1) The parties agree to a performance management process which will involve all employees and which will confirm expectations between employees and their supervisors about professional responsibilities. Performance Management Agreement will be linked to worksite outcomes and the Department's Strategic Plan. The Performance Management Agreement will be in accordance with the provisions of the Department's Performance Management Policy. The details of the performance management process will be developed with the union.

(2) The objective of the Performance Management Agreement is to—

- enhance the professional development of employees;
- assist all employees to understand the role, accountabilities and performance standards that are expected of them;
- provide all employees with feedback and constructive support to improve performance and enhance an atmosphere of mutual trust, loyalty and support, and
- provide employees with appropriate training and development to assist in the achievement of corporate business objectives.

The parties agree that any training which is required to be taken by the employees under the Performance Management Agreement will be fully funded and resourced by the Department."

(77 WAIG 529 at 533)

To assert, as EDWA does, that changes that teachers and school assistants have experienced and which have been recognised in their revised classification structures and wage rates has not only not affected Education Assistants but have resulted in a diminution of their worth cannot be accepted. Rather these changes and the wage rates that reflect the level of responsibility that devolves on teachers and school assistants justify the decision to determine rates for Education Assistants within frameworks which were established on the basis of the evolution of the process which stemmed from making schools more responsible and accountable for the education of their students. Competency standards for Education Assistants, role statements and duties and evidence presented to the Commission confirm this course.

The following tables set out current wage rates, the initial claim, the subsequent amended claim and proposed career structure for Education Assistants submitted by the applicant Union. The Key Minimum Classification (KMC) rate is the Education Assistant Level 2 (4th year). This has an alignment

of 76 per cent of the teacher's benchmark salary and on what has been determined by the Commission is identified by the following role statement—

> "Employees at this level work under general supervision and guidance performing tasks which require limited discretion and judgement in achieving clearly defined outcomes determined by the teacher. Employees will be able to apply techniques, skills and knowledge of relevant principles and practices acquired through previous experience, on the job learning or relevant qualification."

TEACHERS AIDES * (CURRENT AWARD RATE WITHOUT A.S.N.A)

Step	Hourly rate without ASNA)	Annualised (Hrly x32.5x52.166)
1	9.35	15 852
2	9.54	16 174
3	9.74	16 513
4	9.98	16 920
5	10.24	17 412
6	10.64	18 039
7	10.95	18 158
8	10.71	18 565
9	11.02	18 683
10	11.33	19 209
11	11.63	19 718
12	11.82	20 040
13	11.96	20 277

*From TAB 4 Departments letter 8th May 1998.

TEACHER'S AIDES* CURRENT AWARD RATE WITH A.S.N.A. ($24pw) (See 77 WAIG 529)

9.98	11.01
10.17	11.22
10.37	11.44
10.61	11.70
10.90	12.02
11.27	12.43
11.58	12.77
11.34	12.51
11.65	12.85
11.96	13.19
12.26	13.52
12.45	13.73
12.59	13.89

From TAB 3 Departments letter 8th May 1998

HOURLY * RATE FROM EBA

UNION CLAIM 6.8.97

Entry	11.55	12.39
L1 1Y	11.90	12.75
2Y	12.25	13.12
3Y	12.61	13.49
4Y	12.96	13.86
L2 1Y	13.33	14.29
2Y	13.73	14.58
3Y	14.01	15.02
4Y	14.43	15.46
L3 1Y	14.93	15.92
2Y	15.31	16.34
3Y	15.71	16.79
4Y	16.14	17.26
L4 1Y	16.58	17.77
2Y	17.20	18.44
3Y	17.67	18.94
4Y	18.17	19.48

UNION REVISED WAGE RATES BASED ON 3 LEVEL CLASSIFICATION STRUCTURE. (Extrapolated From Document Attachment B 8.5.98 (32.5hour/Wk))

L1 1Y	11.90	
2Y	12.25	
3Y	12.61	
4Y	12.96	
L2 1Y	13.33	
2Y	13.73	
3Y	14.01	
4Y	14.43	@L2 4th y=KMC
L3 1Y	14.93	
2Y	15.31	
3Y	15.71	
4Y	16.14	
L4 **	16.58	

(**L4 = Salary maintenance for CHILD CARE WORKERS.)

(@76% of Teachers Benchmark rate of Salary.)

ALHMWU PROPOSAL EDUCATION ASSISTANT CLASSFICIATION STRUCTURE (Unions written submission 8th May 1998 ATTACHMENT B)

	EDUCATION ASSISTANT	EDUCATION ASSISTANT (SPEC.ED)	EDUCATION ASSISTANT (AIEW)	EDUCATION ASSISTANT (SPERC)
Level 1	Start Moves to L2 by personal progression, qualification or competency	Start Moves to L2 by personal progression or competency	Start Moves to L2 by personal progression or competency	
Level 2	Finish	→	→	
Level 3		Moves to L3 by personal progression or possession of qualification • Personal progression • Finish unless possession of accredited qualification.	Moves to L3 by personal progression or progression of qualification • Personal progression • Finish unless possession of accredited qualification.	Start → → • finish unless possession of accredited qualification
Level 4				

(This proposals is to be applied in conjunction with submissions subsequently presented to the Commission).

(a) The Union does not pursue its claim for Level 4 other than to provide a sutory maintenance rate for Child Care Workers. And, it appears to accommodate the acquisition of accredited qualifications. Progression to this level would also be dependent upon progression to the top of level 3 and at least 12 months continuous service at that level.

(b) Under the proposal represented by this table it is clear that Education Assistants (other than those appointed to Disability Support) (ie. Special Education), AIEWs and Education Assistants (SPER) do not progress beyond the Maximum of L2.
The Applicant Union's position is ambiguous when the submission presented to the Commission on the availability of L3 for "main stream" Education Assistants is considered (Refer to Transcript 29th May 1998 pages 434 to 436).

The applicant's proposed classification structure incorporates the outcomes of the MRA. While the KMC identifies an alignment with the teacher's benchmark salary rate, the wage rates are drawn from the Ministerial Officers Salaries Allowances and Conditions Award that apply to school assistants.

The details of EDWA's proposal are set out in the following tables. These compare the existing wage structure with rates proposed under the MRA with an outcome based on a KMC of 58.9% of the teachers' benchmark rate at Level 4. The outcome is cost neutral.

TEACHERS AIDES * (CURRENT AWARD RATE WITHOUT A.S.N.A)

Step	Hourly rate without ASNA)	Annualised (Hrly x32.5x52.166)
1	9.35	15 852
2	9.54	16 174
3	9.74	16 513
4	9.98	16 920
5	10.24	17 412
6	10.64	18 039
7	10.95	18 158
8	10.71	18 565
9	11.02	18 683
10	11.33	19 209
11	11.63	19 718
12	11.82	20 040
13	11.96	20 277

*From TAB 4 Departments letter
8th May 1998.

TEACHER'S AIDES* CURRENT AWARD RATE WITH A.S.N.A. ($24pw)

(See 77 WAIG 529)

9.98	11.01
10.17	11.22
10.37	11.44
10.61	11.70
10.90	12.02
11.27	12.43
11.58	12.7
11.34	12.51
11.65	12.85
11.96	13.19
12.26	13.52
12.45	13.73
12.59	13.89

From TAB 3 Departments letter
8th May 1998

HOURLY * RATE FROM EBA

EDWA's M.R.A. CLASSIFICATION PROPOSAL 8TH May 1998

Proposed MRA Levels	Proposed MRA Hourly Rates	Supple-Mentary Payment	Total Ø Rate $	% of KMC	% of Teachers Bench Mark
1	9.06	0.92	9.98	78	45.9
2	9.34	0.83	10.17	80.5	47.4
3	9.61	0.76	10.37	83	48.9
4	9.88	0.73	10.61	85.5	50.4
5	10.15	0.75	10.90	88	51.8
6	10.41	0.86	11.27	90.5	53.3
	10.41	0.86	11.27	90.5	53.3
7	10.69	0.89	11.58	93	54.8
	10.69	0.89	11.58	93	54.8
8	10.96	1.00	11.96	95.5	56.2
9	*11.13	*1.13	*12.26	98	57.7
	*11.13	*1.13	*12.26	98	57.7
10	11.44	1.15	12.59	100	58.9**

* These rates have been adjusted to those subsequently tendered in Exhibit Minister BB.

Ø Note the proposed total rate (ie. MRA Supplementary payment) is the same as the Current Award Rate (including the $24 A.S.N.A.)

** Teachers' Benchmark Rate $38,950

EDWA's PROPOSED CAREER STRUCTURED TENDERED AS EXHIBIT MINISTER BB ON 29TH MAY 1998.

1	1	9.98	9.98	9.98	9.98					
	2	10.17								
	3	10.37								
2	1	10.61*	10.61	10.61	10.61					
	2	10.90	10.90	10.90	10.90					
	3	11.27	11.27	11.27	11.27					
	3	11.27	11.27	11.27	11.27					
3	1		11.58*	11.58*	11.58*	11.58				
	1		11.58*	11.58*	11.58*	11.58				
	2		11.96	11.96	11.96	11.96				
	3		12.26	12.26	12.26	12.26				
	3		12.26	12.26	12.26	12.26				
4	1				12.59*	12.59*				

* Progression to this point is based on possession of an approved qualification and in some circumstances, recognised experience.

(a) All Teachers Aides and Aboriginal and Islander Education Workers unless specified enter at Level 1 (entry level)

(b) SPER Aides commence at Level 3 year 1 unless they have recognised experience.

(c) On completion of the first year the following categories of workers progress straight to salary level 2 and can continue on annual progression, subject to successful completion of performance management review.
- Aboriginal Islander Education Worker
- Teacher Aides in Education Support facilities including Special Units, Centres, Schools, Intensive Language Centres and Hospital Schools;

(d) Aboriginal and Islander Education Workers and SPER Aides can progress to Step 10 subject to completion of approved qualification and successful completion of performance management. On attainment of approved qualifications determined by the employer, all categories will advance to the next pay point with the exception of those completing the level 1 (entry level).

(e) Employees who were previously employed as Child Care Workers under the Children's Services (Education Department) Award and Home Economic Assistants under Cleaners and Caretakers (Government) Award an now work as Teacher Aides under this Award will continue to have their salary maintained until the hourly rates applicable to the classification in this award is greater than the rate prescribed in the Children's Services (Education Department) Award or the Cleaners and Caretakers (Government) Award.

(Ministers Exhibit BB)

In the decision in this matter issued on 15 April 1998 the Commission noted the wide disparity in costing extrapolated from the applicant's claim. Submissions presented subsequent to that date went some way in clarifying the matter. However, because of protracted arguments about the extent to which existing staff would progress under a proposed structure, the issue of discounting or double discounting of wage rates of Education Assistants working 32.5 hours per week and being paid over a 52 week year for 48.5 weeks of service, and whether school officers working comparable hours were being treated differently, the Commission appointed Mr R.R. Hazell, a retired senior Treasury Department Officer, to examine and report on the following—

"1. To establish the cost of the Union's proposal for an award increase based on the most recent submissions;
2. To establish the cost (if any) of the Department's proposal from documentation submitted under the Minister's Exhibit BB; and
3. To advise on the basis for comparing award rates of pay for Education Assistants, School Officers and Teachers so that relativities can be assessed (refer to Minister's Exhibit CC and Applicant's Exhibit 24)".

The report was entered on the record and forwarded to the parties for comment. Comments were received in response have been noted. Mr Hazell states—

"One the basis of my examination of the relevant factors, incorporating updated information supplied by the Department of Education (EDWA), the Union's proposal is estimated to result in an overall increase of $3.041 million or 5.3 per cent in year one, when compared with the annual projection of EDWA's current pay arrangements. Those findings are based on a full time equivalent (FTEs) staffing complement of about 2680."

(Paragraph 1.2—Findings)

On the medium to long term financial implications the report identifies the impact of progression for Special Education Assistants and Aboriginal Workers to the top of the range. However, as the Union points out the Level 4 classification point in the initial claim is no longer pursued and the rate at that level is restricted to a salary maintenance classification for qualified child care givers who continue to be employed in EDWA. These officers are not the subject of consideration in this determination. EDWA believes that the estimated recurrent cost of $1.5M as Education Assistants progress from Level 1 to the maximum of Level 2 is low as there is a "very small attrition rate" amongst Education Assistants.

Mr Hazell confirmed the cost neutrality of EDWA's proposal and that the methodology in discounting annual rates applied to Education Assistants and School Officers is consistent. The report also confirms that rates claimed by the Union have been aligned with those set out in Schedule B in the Education Department of WA, Civil Service Association Enterprise Agreement 1997 and are taken from the Education Department Ministerial Officers Salaries Allowances and Conditions Award rates (EDMOSAC).

The Commission appreciates the work done by Mr Hazell particularly as a strict time limit was imposed on him.

The following table is an extract from the comparison of wage rates submitted by EDWA as Exhibit CC. The rates shown do not include safety net adjustments.

ANNUAL WAGES RATES COMPARISON (RATES PAID PRIOR TO THE SAFETY NET ADJUSTMENTS)

	TEACHER AIDES (73 WAIG 191)		**TEACHERS**	**PUBLIC SERVICE (EDMOSAC) (72 WAIG 191)**	**CLEANERS (73 WIAG 1542)**
	38hrs/wk	**32.5/hr**	**Level 1 (Unqualified Teacher)**	**37.5hrs/wk (32.5/hr)**	**38 hrs/wk**
Step 1	19 866	15 852	21 317	**Level 1**	**Level 1**
Step 2	20 269	16 174	22 446	1st yr – 20 331 (16 434)	Yr 1 – 19 245
Step 3	20 694	16 513	23 764	2nd yr – 20 983 (16 961)	**Level 2**
Step 4	21 204	16 920	**Qualified Teachers**	3rd yr – 21 634 (17 487)	Yr 1 – 19 453
Step 5	21 757	17 412	24 807 – 3 yr trained	4th yr - 22 281 (18 010)	Yr 2 – 19 625
Step 6	22 606	18 039	26 439 – 4 yr trained	5th yr - 22 932 (18 537)	Yr 3 – 19 791
Step 7	23 665	18 158	28 020 – 5 yr trained	6th yr – 23 583 (19 063)	**Level 3**
Step 8	22 755	19 565	30 085	7th yr - 24 332 (19 668)	Yr 1 – 19 812
Step 9	23 414	18 683	31 460	8th yr – 24 850 (20 087)	Yr 2 - 20 020
Step 10	24 072	19 209	33 700	9th yr – 25 616 (20 706)	Yr 3 – 20 238
Step 11	24 710	19 718	**Level 2**	**Level 2**	**Level 4**
Step 12	25 113	20 040	34 748	1st yr – 26 533 (21 448)	Yr 1 – 20 355
Step 13	25 411	20 277	36 204	2nd yr – 27 236 (22 016)	Yr 2 – 20 543
			38 950	3rd yr – 27 975 (22 613)	Yr 3 – 20 762
				4th yr - 28 756 (23 244)	**Level 5**
				5th yr – 29 573 (23 905)	Yr 1 – 20 981
				Level 3	Yr 2 – 21 179
				1st yr – 30 696	Yr 3 – 21 383
				2nd yr – 31 571	**Level 6**
				3rd yr – 32 473	Yr 1 – 22 604
				4th yr – 33 399	Yr 2 - 22 880
				Level 4	Yr 3 – 23 104
				1st yr 34 669	
				2nd yr 35 664	
				3rd yr 36 688	

Teachers' Aides are 65 hours/fortnight
Full time fortnightly rate ie $11.55 x 26.0833 x 65 = $19 582
School Officers are 65 hours/fortnight
Assistants
Library Officers are PSA and EDMOSAC Level 1
Laboratory Assistants are PSA/EDMOSAC Level 1
Registrars at Primary Schools are EDMOSAC Level 2
Registrars at District High Schools are EDMOSAC Level 3
Registrars at Senior High Schools are EDMOSAC Level 4

Annualised Rate Formula Hourly Rates x 26.0833 x

Level 3 Cleaners = Cleaners in Charge & Home Ec.

The alignment of Education Assistants' rates with those of School Officers under the EDMOSAC scale as claimed by the applicant Union can be justified on the basis of evidence submitted to the Commission. This includes an assessment of changes in work value experienced by Education Assistants and past productivity improvements which have been acknowledged by EDWA and which were taken into account in the current enterprise bargaining agreement. The work requirements, responsibility and accountability now reflected in the role and duty statements agreed to by the parties are a permanent feature of the Education Assistants' appointment. So too is the requirement to meet performance management outcomes. The program for improving education which commenced with the process of devolution now imposes on staff an accountability in the implementation of the Department's Strategic Plan. This is linked to outcomes in the classroom and school. It is not something from which Education Assistants can withdraw.

While the KMC rate at Level 2, 4th year has a relativity of 76% of the teachers' benchmark rate it is not inconsistent with the environment in which wage rates have been determined in schools to align the new classification structure with those set down for School Officers under the EDMOSAC Award. Concerns that at some levels wage rates for Education Assistants will penetrate salary scales for unqualified and qualified teachers must be viewed in light of current recruiting policies with respect to unqualified teachers and the experience, responsibility and performance of Education Assistants at the end of the career scale available to them. That concern has not inhibited the employment nor career structure available to Laboratory Assistants in schools nor the appointment of Library Officers and Registrars at primary schools. We reject the notion that administrative, clerical and general functions merit a premium on pay above those directly engaged in education and that somehow rates of pay for Library Officers, Laboratory Assistants and School Officers generally can be isolated from those with whom the work in achieving worksite outcomes under the Department's Strategic Plan.

Rates of pay determined in accordance with the EDMOSAC structure accommodate the provision of a single non professional wage structure along-side the professional salary stream for Teachers in schools. The wage rates under this structure also accommodate Specialist Education Assistant appointments ie AIEW's, Ethnic and SPER Education Assistants. Given the focus on the school as a key decision making unit within education and the accountability of staff under a performance management outcome, the identification of support staff at the school level within one non-professional wage scale will assist in overcoming the fragmentation of enterprise bargaining which has been so evident from these proceedings.

It is noted that under the terms of the Education Department of Western Australia (Education Assistants—ALHMWU) Enterprise Bargaining Agreement 1996 that—

> "The Department will publish the staffing formula provisions for positions covered by this agreement. Schools will employ staff in accordance with the formula allocation." (Initiative 2—School Staffing Profiles para 2(2))

The provision is to be read in conjunction with Initiative 3. That addresses issues associated with temporary employment, a relocation/transfer system for Education Assistants and arrangements to manage compliance with the staffing formula (77 WAIG 529 at 532).

In determining that the three level salary structure to apply to Education Assistants should align wage rates for these employees with those of School Officers in terms claimed by the applicant Union, the Commission notes—

- The Union submitted that effect should be given to the outcome of the claim under an order pursuant to section 44 of the Act. The terms of the Enterprise Bargaining Agreement which provides for the new classification structure specifies that "the structure will be included in the award" (Initiative 10.2 2.2). However, clause 13 of the EBA commits the parties to establishing one award. It appears that has not yet happened.

  One course available to the parties is a composite order which establishes the new wage rates to sit above those prescribed in the Enterprise Agreement pending finalisation of the commitment under Clause 13 of the EBA.

  Alternatively, the various awards could be amended prior to the consolidation of awards being undertaken.

  This matter needs to be addressed by the parties.
- Clause 4 of Initiative 10 of the EBA requires phasing-in of the new classification structure.
- While the structure determined under this application accommodates career opportunities for AIEW's and Ethnic Education Assistants, the possibility of further developments at the Department's initiative may necessitate another review of the classification structure. This could impact on the classification of SPER Officers whose duties and responsibilities have been recognised by the Commission to be qualitatively different from main stream Education Assistants.
- Role statements and job descriptors have been determined by the Commission. It may be inappropriate for the full text of these documents to be included in the award(s). However, it strikes the Commission that it would be prudent to have role statements for each classification formally identified in the working document.
- With Home Economic Assistants being integrated into the Education Assistants' structure there is an urgent need for the parties to address transitional work arrangements.

  In giving effect to the alignment of the new classification structure for Education Assistants with salary points under the EDMOSAC award, the Commission determines that "main stream" Education Assistants are limited to progressing to the maximum salary point under Level 2. Access to Level 3 is available to Education Assistants (Special Education), Ethnic Education Assistants, Aboriginal and Islander Education Workers and SPER Education Assistants.

  The recognition given to the worth of Education Assistants under changes in work value and commitments under past productivity initiatives, means that features of employment that tie these employees to a process of performance management and realising the objectives of the Department's Strategic Plan will be a continuing feature of their role in the school. The commitment to realising objectives and principles identified in the 1996 EBA does not terminate with the expiry or cancellation of that agreement. Their partnership with teachers means that within the scope of their duties and responsibilities they will continue to be accountable for outcomes.

It is expected that the parties will confer on the form of the order by which effect can be given to the determination of the matter referred to the Commission.

The Commission will contact the parties after five working days from the date of the decision.

Appearances: Ms S. Jackson and with her Ms D. MacTiernan on behalf of the Applicant Union.

Ms J. Smith (of counsel) and with her Mr G. Edwards and later Mr A. Hastie on behalf of the Hon. Minister of Education

Mr G. Bull on behalf of the Chamber of Commerce and Industry of Western Australia

Ms V. Zupanovich on behalf of the Hon. Minister for Labour Relations

Mr P. Andrews on behalf of the Catholic Education Centre.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

The Honourable Minister for Education

(No. CR 49 of 1997)

Education Department of Western Australia (Education Assistants—ALHMWU)

Enterprise Bargaining Agreement.

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

and

The Honourable Minister for Education.

No. 1532 of 1990.

Teachers' Aides' Award, 1979, No. R4 of 1979.

COMMISSION IN COURT SESSION
CHIEF COMMISSIONER W.S. COLEMAN
COMMISSIONER J.F. GREGOR
COMMISSIONER A.R. BEECH.

15 April 1998.

Reasons for Decision.

COMMISSION IN COURT SESSION: In December 1996 the Commission registered the Education Department of Western Australia (Education Assistants—ALHMWU) Enterprise Bargaining Agreement, 1996 (77 WAIG 529). Under Clause 14.—Reform Initiatives, the Agreement records Initiative 10—Classification Structure. That provides—

"1. The parties agree to the establishment of a new skill related classification structure for Education Assistants. The new classification structure will be developed by a Joint Committee. The parties agree that relief will be provided to allow representatives to attend the meetings of the Joint Committee and any working parties established by the Committee.

2. The Terms of Reference of the Committee will be—

2.1 The new structure will be based on skill/competency and required duties of employees.

2.2 The structure will be included in the award.

2.3 There will be at least three levels in the new structure (not including increments) eg: Entry level, Autonomous Education Assistant and Advanced Skill Education Assistants.

2.4 The structure will address all matters relating to work value and finalise the MRA application No 1532 of 1990, consistent with the terms of this Agreement and the Wage Fixing Principles.

2.5 Whilst the parties accept that there will be no uniform quantum of wage adjustments on the introduction of the new classification structure there will be at least one advanced skill level included in the agreement.

2.6 The Committee will take into account the competency and skills based report considered and endorsed by the Skills Standards Accreditation Board for Education Assistants and the report prepared on the skills and competencies for Aboriginal Education Workers.

2.7 The Committee will review and finalise JDFs for all employees covered by the terms of the EBA. This will reflect the competencies and skills of all classifications.

3. The parties agree that the Joint Committee will report on the Terms of Reference within a three month time frame. Either party may request the assistance of an agreed independent facilitator to progress this review should it be necessary. Any matters not resolved at the conclusion of a six month period will be referred for conciliation and if necessary, arbitration.

4. Payment of any wage increases arising from the introduction of the new classification structure will be phased in during the term of the Enterprise Agreement."

Matters now before the Commission in Court Session arise out of the provisions in subclause 3 of Initiative 10. For the purposes of these proceedings the Applicant Union's claim is formulated in the following terms—

"The Union seeks to establish a skill related classification structure for all Education Assistants employed by the Education Department of Western Australia. The classification structure claimed will provide—

- A career path based on skills acquisition; and
- Proper recognition of the work value (i.e. skill, responsibility and knowledge) of the work performed; and
- (Will) Create appropriate relativities between different categories of employees within the award and at an enterprise level,"

The categories of employees coming within the generic description of Education Assistants are—

- Aboriginal Education Workers
- Aides—Education Support (including secondary)
- Aides Primary
- Child Care Workers
- Aides English as a Second Language
- Home Economics Assistants

Apart from the Enterprise Agreement, the Education Assistants' terms and conditions of employment are regulated for the various groups under—

- Cleaners and Caretakers (Government) Award, No. 32 of 1975
- Teachers Aides Award No. 4 of 1979
- Child Care Workers (Education Department) Award No. 20 of 1984
- Miscellaneous Government Conditions and Allowances Award No. A4 of 1992
- Western Australian Government/Australian Liquor, Hospitality and Miscellaneous Workers Union (ALHMWU) Redeployment, Retraining and Redundancy (Interim) Award, 1994

The Applicant Union submits that the Commission should give effect to a new skill related classification structure under an Order made pursuant to Section 44 of the Industrial Relations Act. The revised classification structure is said to subsume the Minimum Rates Adjustment as identified under Initiative 10 (subclause 2.3).

The basis of the claim is set out in the explanatory notes submitted by the Applicant Union. These state—

"1. INTRODUCTION

1.1 The Applicant Union (the "Union") seek the issuance of an Order pursuant to Section 44 of the Industrial Relations Act, 1979 as amended (the "Act") to implement a new skills based classification structure with appropriate rates for all Education Assistants employed by the Education Department of W.A. Prima facie the claim seeks wage adjustments for the employees beyond what is contemplated by the current Statement of Principles (the "Principles", State Wage Decision—August, 1996, 76 WAIG 3368).

1.2 The Union says that this is a special case claim as envisaged by the principles and that there are good reasons consistent with Act and the principles to grant the claim.

1.3 The classification structure and rates set out in the Union's proposed order (the "proposed

structure") are as largely agreed between the parties at 4 April 1997. That agreement arose out of negotiations established for that purpose as part of the Enterprise Agreement concluded between the parties in 1996.

1.4 The Union claim that the proposed structure is consistent with the objectives of the principles, the Union seeks to establish an award classification structure which provides—

(a) career progression based on skill acquisition; and

(b) proper recognition of the value (i.e. skill, responsibility and knowledge) of the work performed by education Assistants; and

(c) appropriate relativities within the award and at the enterprise level.

1.5 The claim for wage increases are based on the value of the work performed having regard for direct comparisons of like work and indirect comparison with similar work.

1.6 The Union says that the granting of the claim will resolve the industrial dispute between the parties.

2. THE PROPOSED STRUCTURE

2.1 **The Rates**

The rates claimed are those agreed on 4 April, 1997 between the parties (and are inclusive of enterprise bargaining increases).

2.2 **External Relativities**

The rates claimed are those currently applying to School Assistants employed pursuant to the Government Officers Salaries Allowances and Conditions Award PSA (the "GOSAC award"), inclusive of enterprise bargaining increases.

2.3 **Internal Relativities**

The key classification in the new structure is Education Assistants Level Two, Year 1. The hourly rate (on 32.5 hours) is $13.33.

The internal relativities are—

Entry Level	86.6%
Level One (Yr 1)	89.3%
Level Two (Yr 1)	100%
Level Three (Yr 1)	112%
Level Four (Yr 1)	124.4%

2.4 **Definition and Skill Description**

The definitions and skill descriptions contained in the (proposed) order were substantially agreed between the parties during the development of the new classification structure.

The definitions and skill descriptors reflect new duty statements agreed between the parties which incorporate work value changes.

2.5 **Work Value Changes**

The three major areas of work value changes affecting Education Assistants are—

1. Increased responsibility in teaching/supervising small groups of students without direct supervision of teacher.
2. Increased participation in all aspects of the education program.
3. Introduction (and expansion) of new technology, particularly computerisation.
4. Increased professionalism, accredited training and professional development.

The Union claim that the work of Education Assistants has not previously been assessed by the Commission.

Further, comparisons with other workers (both direct and indirect) demonstrate that the work of Education Assistants is undervalued.

The Commission should assess the worth of work done now, and in so doing have regard for work value changes which pre-date the Structural Efficiency Principle."

The Chamber of Commerce and Industry of Western Australia

The Chamber of Commerce and Industry of Western Australia's (the "Chamber") interest focussed on how, in progressing this application, the integrity of the Wage Fixing Principles could be maintained. Whether or not this is a Special Case, the particular requirements of the Changes in Work Value Principle and the determination of key minimum classifications within the Minimum Rates Adjustment process have to be met. As a Special Case these requirements are not displaced.

The Chamber noted that although the Enterprise Agreement which regulated the terms and conditions of employment of Education Assistants includes a "no further claims" commitment, the provision for the determination of the new classification structure is an exclusion which enables this matter to proceed. The Chamber also noted that—

- the Enterprise Agreement settles all past productivity claims since 1991 (Refer to Clause 7(3)).
- in the absence of anything else the application could not be considered as a Special Case until the Agreement expires.
- with the inclusion of past productivity outcomes in the 10% wage increase under the Enterprise Agreement, the Commission will have to identify the particular initiatives included in that payment which are not otherwise attributable to past productivity initiatives.
- beside identifying a significant net addition to work requirements that translate into changes to work value, the Applicant Union will need to justify any change in wage relativities not only within the internal award classifications to which that structure is related. This will prevent "wage leap-frogging".
- the process of establishing a new classification structure is complicated by the necessity to complete the Minimum Rates Adjustment and thereby identify an increase appropriate to this Principle for these low paid employees if they fall within this class. The new classification structure cannot ignore the Minimum Rates Adjustment as key minimum classifications must be established to benchmark internal and external relativities.
- as a Special Case there are tests to be met which are additional to those under the Work Value and Minimum Rates Adjustment Principles.
- the difficulty in determining a claim of this nature has been identified in similar matters in other jurisdictions (AIRC "Nurses Case" Print N7214 December 1996 and IRCSA Public Sector Awards Matter I 148 of 1995 August, 1995). However, it is acknowledged in those instances the parties had failed to negotiate an enterprise agreement. In the "Nurses Case" the Applicant Union has sought to progress a wage claim not relying on a single factor but by reference to various circumstances including structural efficiency, the nature and character of the industry, the history of award negotiations and "work value matters". The argument was progressed under the rubric of a Special Case. That application failed.
- the Chamber reiterates that the various elements of the Principles necessary to identify changes in work value and the key minimum classification points in a proposed new structure cannot be displaced by calling the matter a Special Case.

The Chamber made it clear that the views expressed were particular to the operation of the Wage Fixing Principles as they relate to the claim. Issues of merit were not considered. On the issue of the availability of the Applicant Union to argue the applicability of past productivity increases that pre-date November 1991, the Chamber noted that the Work Value Changes Principle (76 WAIG 911 at 924) provides

that initiatives from September 1989 may be considered, but matters prior to that attract Special Case consideration. When referred to the Respondent's counter-claim, which would establish a new classification structure with rates of pay lower than those which presently apply under the Enterprise Agreement, the Chamber, again without making assessment of the merits of the response, pointed out that a revised structure with reduced rates is not anathema to the Minimum Rates Adjustment Principle. Supplementary payments would maintain existing wage levels.

The Hon. Minister for Labour Relations

The Hon. Minister for Labour Relations endorses observations on the Wage Fixing Principles submitted by the Chamber and adds the following comments—

- there are child care workers covered the Children's Services Government Award that have already been considered under a Minimum Rates Adjustment. The employees included in this claim includes other child care workers. Under the Union's claim, these employees are being treated differently.
- if successful, this claim would result in increases of between 20% and 30% for 2600 employees at a cost of $10M.
- the claim has serious implications of the operation Government Salaries and Allowances and Conditions Award. It seeks to import that award to another area of public sector employment. Employees covered by the GOSAC Award come within the exclusive jurisdiction of the Public Service Arbitrator. Classifications within that Award are determined by reference to established bench marks. While the classifications claimed in this matter are drawn from the GOSAC Award, progression from one level to another cuts across the GOSAC Award. Therefore, the claim has flow-on implications for a significant area of public sector employment.
- changes in work practices alone are insufficient to justify changes in work value. The claim assumes changes across an entire workforce. How is change to be measured? What is the datum point? What previous changes have already been accommodated in the existing classification structure? All positions need to be assessed. There can be "no double-counting". The Commission must guard against contrived classifications. If the GOSAC classification levels are appropriate so too must the "Guidelines for Assessment and Determination of Classifications". There is no evidence that this has been adopted.

The Catholic Education Office

The Catholic Education Office intervened to express its concern about any flow-on potential to the private school sector. It did not have any particular position on the merit or otherwise of the claim before the Commission.

The Applicant Union

The Applicant Union submits that it is appropriate to consider this matter as a Special Case—

- prima facie the increases being sought are outside those available under the Arbitrated Safety Net Adjustment Principle.
- a fair assessment of the value of the work of Education Assistants must take into account the changes that have happened to that work since the various wage structures for each group were determined.
- it appears that the Respondent's proposal seeks to introduce a classification which will reduce wages below the safety net.
- the Commission has a discretion in the resolution of the dispute between the parties. The resolution of this matter under the Special Case Principle is consistent with the Commission's duty in the public interest.

Background and History

The broader issues of public interest are identified under Section 6 and Section 26 of the Industrial Relations Act. In promoting goodwill in industry and indeed enterprise bargaining the Commission must provide relief when there is a breakdown in the relationship. This, the Union submits, is the role of the Special Case which is consistent with the requirements of the Act.

In addressing the issue of work value it is, in the Applicant Union's opinion, relevant to have regard to those employees with whom education assistants work i.e. teachers and school assistants. Both of these groups have been able to secure work value increases and new classification structures (for school assistants) within the operation of the Wage Fixing Principles. Indeed, significant progress had been made in the development of the skills based structure of education assistants under Structural Efficiency commitments. The reduction in the number of Awards to cover education assistants and placement of these employees within a fair and equitable classification relationship is consistent with initiatives promoted under the present Enterprise Agreement.

It is the uniqueness of that Agreement and in particular Initiative 10 that gives rise to this claim. The parties accommodated the possibility of not being able to resolve the issue of a new classification structure. Consistent with this provision by the parties, it is a recognition that the Special Case Principle is an appropriate avenue through which the dispute can be resolved. From the Union's viewpoint, the Enterprise Agreement reflects the parties' acceptance of the generic classification of Education Assistant. These employees work in the school environment. The classification structure determined for school assistants is a relevant consideration when compiling the new classification structure for Education Assistants. School Assistants were "bench marked" under the GOSAC Award. Reference to that structure is therefore relevant.

The Applicant Union submits that Education Assistants are low paid employees. The majority are women and their value in the workplace has not been recognised. This application will redress this inequity.

It is submitted that there is limited likelihood of flow-on given that Education Assistants are low paid employees and that by putting them on the same rates as School Assistants nothing could flow to that group of employees. Indeed, with properly established relativities within schools between Teachers, School Assistants and Education Assistants there can be no wage/salary "leap frogging". As far as the Catholic Education Office is concerned, the Applicant Union argues that the determination of this issue is to be covered by an Order to which the Catholic Education Office is not a party. Furthermore, the Applicant Union "does not seek a final configuration of the rates to be included in a new award ... that's an issue that will need to be further dealt with by the Commission in Court Session" (Transcript p 64).

The history of award wage rates of the various groups and structural efficiency initiatives were reviewed by the Applicant Union (Transcript pp 65-84a and Exhibit 6). This was undertaken to show that—

- the employment of Teachers' Aides and assistants arises out of employment in Kindergartens. The wage rate of assistants was set at 85% in 1974.
- the wage rates of Home Economic Assistants continues to be covered under the Cleaners and Caretakers (Government) Award. The rate was originally determined by reference to the Female Cleaners rates for employment in Domestic Services Centres.
- in 1979 Teachers' Aides' rates were adjusted with reference to the wage of Aides in New South Wales albeit that the rate in Western Australia was determined by reference to payment for 48 weeks paid over a 52 week period.
- Aboriginal Education Workers' rates were incorporated into the Teachers' Aides' Award in 1984.
- the Memorandum of Agreement entered into pursuant to the award restructuring commitment in 1989 required the parties to pursue award amalgamation when a skills profile and audit are finalised. The final structure was subject to the Applicant Union's right to have aspects of work value considered and dealt with.

- in 1990 the Applicant Union agreed with the Department's proposal to phase-out the Child Care Workers (Education Department) Award and by natural attrition replace qualified Child Care Workers with Teachers' Aides. Broadbanding of Teachers' Aides classification was commenced.

  Time lines were established for amalgamation of Awards. The Union's work value claim for Teachers' Aides was noted. The position taken by the Union was that Teachers' Aides should be no lower than school assistants. The Department disagreed. However, both parties agreed to examine the claim following the finalisation of the school assistants' salary level then under review.
- the Union's objective of realising common conditions for public sector wages and salaries employees was progressed with the issuing of the Miscellaneous Government Conditions and Allowances Award in February, 1993.
- awards relevant to this claim were determined as Minimum Rates awards in 1994 and subsequently were adjusted for the arbitrated safety net increase pursuant to the December 1994 State Wage Decision.
- the School Assistants were covered by an Enterprise Agreement between the Department and the Civil Service Association registered in May, 1996.
- the Teachers' Enterprise Agreement was registered in 1996.
- in 1991 School Assistants participated in the creation of a new framework for the employment and career advancement of Government Officers as part of the review of employees engaged in primary and secondary schools and in district offices in an administrative, clerical or general capacity. The new salary classification structure recognised work value and provided career paths for individual employees (71 WAIG 3183).
- in December 1990 Independent School Teachers were awarded salary increases to reflect work value rates (71 WAIG 334).

The Union's claim

In summary, the Applicant Union sought to demonstrate that the Wage Fixing Principles have not inhibited the Education Department nor the Commission in re-assessing work value, identifying changes in work value and establishing career paths for other employees directly involved in education (ie teachers) and those providing support (i.e. school assistants). Furthermore, that the wage rates of groups coming within this claim do not have wage rates established by reference to some relativity within the education service within which they are employed. Finally, it is inferred that the existing wage rates for classifications coming within the generic title of Education Assistants reflect the depressed rates paid to women. These have not been reviewed so that equitable base can be determined.

Ms Devereaux, Children's Services Organiser for the Applicant Union presented evidence on her negotiations with the Education Department for the establishment of the Education Assistants enterprise bargaining agreement and new classification structure. Ms Devereaux has 25 years experience in the children's services industry. She is a Pre-School Teacher and lecturer in Teacher Assistant and Child Care Courses at Edith Cowan University. Her witness statement (Exhibit 5) details the chronology of events that culminated in the agreement to pursue Initiative 10 under the Enterprise Agreement and the subsequent undertakings conveyed to the Union by Officers of the Education Department that a classification structure tied into salary points in the "EDMOSAC" Award was agreed to in April, 1997.

From the Union's point of view reflected through evidence presented by Ms Devereaux, it is important to appreciate that—

- the Education Department had terminated negotiations on the Minimum Rates Adjustment for the Teachers' Aides' Award in 1995.
- a new career classification structure was an integral part of negotiations on the Enterprise Agreement for Education Assistants but that discussions were inhibited in 1993-1994 when negotiations broke down with the Union on an agreement for cleaners and gardeners.
- in June, 1995 the Director General advised the Applicant Union that—

  "The Department is yet to finalise its proposals with respect to the early childhood teaching area. As you would no doubt appreciate the Department proposals for this group will closely resemble those of the general teaching service, with appropriate modifications as necessary."

  (Exhibit 5—Attachment 6)
- pursuant to the Director General's assurance the Applicant Union submitted proposals based on arrangements being negotiated with the Department by the State School Teachers Union (for Teachers) and the Civil Service Association (for School Assistants).
- in May, 1996 consistent with the resolution of the Teachers' dispute and the outcome of their enterprise bargaining negotiations with the Department, the Applicant Union sought a wage increase of 15% under the terms of an enterprise agreement for Education Assistants.
- in September 1996 agreement was reached. The wage outcome was less than the 15% being claimed by the Applicant Union in negotiations but importantly from its point of view included terms to ensure the transfer of Education Assistants to a new career structure to be developed.

  The Department confirmed—

  "1. EDWA agree in principle that the range of rates for each level of the new classification structure will be drawn from the Government Officers Salaries Allowances and Conditions Award (GOSAC) inclusive of the 1st, 2nd and 3rd Arbitrated Safety Net Adjustments as follows (etc. as proposed by the Union).

  2. The parties agree that the range of rates are accepted (including the increments) but the transfer of existing classifications in the new levels will be based on skill/competence, work value and duties required by EDWA for each job.

  ....

  5. The parties agree to ensure that there is no double counting of increases arising from the Enterprise Bargaining Agreement and adoption of the proposed new structure"

  (Exhibit 5—Attachment 10)

(The alignment of the new career classification structure with the "GOSAC" Award was agreed to be—

Level One	GOSAC Level 1	Years 3-4
Level Two	GOSAC Level 1	Years 5-9
Level Three	GOSAC Level 2	Years 1-5
Level Four	GOSAC Level 3	Years 1-4

Level Four is the second Advanced Skill level which was not agreed to by EDWA)

- in November, 1996 consistent with the terms of Initiative 10 in the Enterprise Bargaining Agreement the Department undertook the development of the new career structure by 31 March 1997 (Exhibit 5—Attachment 11).
- a "Proposed Classification Structure and Job Description Forms for Education Assistants" dated 10 March 1997 was prepared by an independent consultant, Sharn Tutt (Exhibit 9).
- from the Union's understanding the duty statements (with some minor amendments) were finalised and agreed to in April, 1997. Discussions then centred on salary rates for each level under the proposed structure—

  "... the only remaining point needing agreement was whether people moved into the structure on a

point-to-point transfer or simply to the nearest, highest salary point"

(Ms Devereaux's Statement, Exhibit 5—paragraph 92.1)

- on 26 March 1997 the Department tendered a transitional work sheet for realigning classification points of Education Assistants under the new career structure determined by the independent consultant (Exhibit 5—Attachment 12 and Exhibit 14).
- at this time (April, 1997) Ms Devereaux understood that the only remaining task for the Education Department was to cost the process of implementing the new classification structure so that discussions could take place on transferring Education Assistants to it. (Transcript p 107).
- however, staffing changes took place within the industrial relations unit in the Education Department and the only information received by the Union reflected concern from the Department about the level of increase that some "integration" assistants (i.e. Education Assistants working with children with special educational needs on a one-to-one basis) would receive as a result of their inclusion as Special Education Assistants under the new structure. This had been calculated as a 21% increase.

  The Union cited other examples to the Department of wage adjustments in the order of 2% and 3% for Education Assistants. Child Care Workers would not receive any increase but would stay on their existing rate under "salary maintenance".
- nothing in the letter from the Education Department dated 27 March 1997 contradicted the Union's understanding that implementation of the classification structure was imminent. Indeed, the discussion with Departmental officers on 26 March was consistent with the final paragraph—

  "As soon as we have an agreed classification structure I will be pleased to meet with you to develop a programme for implementation of the new structure."

  (Exhibit 15—Letter from Director Employee Relations, 27 March 1997)
- on 15 May 1997 the Department advised the Union that—

  ".... The Education Assistants Classification Structure has been the subject of on-going discussions between Departmental Officers and Officials of your Union. I understand that only the item regarding job descriptions for Special Education Assistants is outstanding. I look forward to a speedy resolution of this remaining issue."

  When this matter is concluded a procedure for transition to the new structure will need to be agreed.

  The concluding of this issue is considered a high priority, however, a guarantee cannot be given concerning an operative date ....."

  (Exhibit 15—Letter from Director Employee Relations, 15 May, 1997)
- however, from that point the Department's position changed, as noted by the Commission following conference proceedings on 24 June 1997—

  "The Department's perception of what the wages outcomes of the classification structure are to be has changed over the past three weeks. It is now different from the understanding between the parties which was reached at the time the Enterprise Bargaining Agreement was agreed and upon which negotiations have proceeded since then."

  (Exhibit 15 Western Australian Industrial Relations Commission letter dated 25 June 1997)
- again on 25th June, 1997 the Education Department advised the Union that the commitment to the development of a career structure for "Teachers' Aides" remained and although most of the work in developing the new structure has been completed for several weeks, the issue of salary rates to apply to the structure remained unresolved. The advice to the Union went on to state—

  "...In order to resolve the issue concerning salaries for the structure the Department is prepared to develop salary rates by establishing appropriate minimum rates for the structure which would be reflected in the Teachers' Aides' Award. This would allow the salaries for Teachers' Aides to be established by reference to a benchmark rate. Much of this work was done as a result of the decision Chief Commissioner Coleman of the Western Australian Industrial Relations Commission in his Childcare Workers' MRA Decision. This approach provides the best opportunity for establishing proper rates of pay in the context of a skill based career structure and for recognising the value of the work of Teachers' Aides relative to teachers.

  Should your members be prepared to discuss such a proposal an outline could be provided by 3 July 1997. This would enable the structure to be finalised during the impending term break.

  The Department is also prepared to commence negotiations for a new enterprise agreement for Teachers' Aides which could apply from 1 January 1998. Salary increases negotiated under such an agreement could apply from this date and from other dates during the term of the agreement...."

  (Exhibit 15—Letter from Director Employee Relations, 25 June 1997)
- the Union's response to the Department's letter of 25 June 1997 reflected the members' extreme criticism of the Department "for reneging on the original career structure..."(Exhibit 15—Letter from Union Secretary to Minister for Education, 27 June 1997)
- following further proceedings in the Commission the Department on 11 July 1997, advised the Union—

  "I also confirm that the Department remains committed to resolving the current impasse concerning pay rates for the career structure for Teachers' Aides through the setting of appropriate minimum rates which recognise their work value relative to teachers.

  As outlined at last night's conference the Department is prepared to address salary issues separately by way of an Enterprise Bargaining Agreement. We would envisage such an agreement operating from 1 January 1998 for a two year term. Such an agreement could be negotiated quickly provided it was consistent with Government Wages Policy.

  I believe this process provides the best opportunity for agreement on a properly constructed career structure which recognises the work value of Teachers' Aides relative to teachers and secure wage increases for the ensuing two years through the bargaining process...."

  (Exhibit 15—Letter from Director Employee Relations, 11 July 1997)
- again on 14 July the Department's position was conveyed to the Union—

  "..The Department remains committed to implementing a career structure with pay rates which properly recognise the worth of Teachers' Aides relative to teachers and remains prepared to discuss the terms of a further enterprise agreement. However, further action which disrupted Special Education Schools and Centres is considered unacceptable and would require the Department to take action to ensure that educational services to these children were maintained.

  Unless you are in a position put a proposal which conforms with the Commission's Statement of Principles and Government Wages Policy, the Commission hearing of MRA Application No. 1532 of 1990 provides the only remaining viable means for resolving this issue.

  (Exhibit 15—Letter from Director Employee Relations, 14 July 1997)

During these proceedings the Eduction Department presented an offer to the Union seeking endorsement for the development of a new career structure for Aboriginal and Islander Education Workers (AIEW's) (refer to Exhibit F).

The "AIEW Career Structure Plan" notes—

> "The working and employment conditions for AIEW's are fraught with problems related to confusion about their role, under-recognition of their range of skills which includes teaching skills that schools expect and demand of them, low salaries, poor access to permanent employment and related entitlements, and limited training/further education opportunities.
>
> The Department of Employment, Education, Training and Youth Affairs (DEETYA) has released the Ara Kuwaritkajutu: Towards A New Way Stage 3 report which is the third of three reports investigating the working conditions of AIEWs. This report suggests that all education providers consider and implement the recommendations of all three reports which discusses many aspects of the industrial conditions, training opportunities, career structure and needs of AIEWs...."
>
> (Exhibit F)

Ms Devereaux expressed the view that the above observation concerning the plight of AIEW's (referred to previously as Aboriginal Education Workers (AEW's)) was relevant to all Education Assistants. The role of an AEW encompassed the work of teachers assistants and extends into community liaison work. This is recognised to some extent in the existing classification structure and has been further accommodated in the new classification structure with career development through to Level 4. While the Department's proposal for AIEW's includes provision for a "community based Aboriginal teacher" that has not been the subject of any consultation with the Union. However, Ms Devereaux notes that a classification similar to this has been included in the Independent Schools Teacher Assistants Enterprise Agreement.

Witness statements and oral evidence was presented through the Union from—

- Cynthia Stabler: Teachers Assistant, Malibu Education Support School, Safety Bay.
- Patricia Smith: Teachers Assistant/School Assistant, Highgate Primary School, Highgate.
- Mureen Richardson: Teachers Assistant (Pre-Primary), Osborne Park Primary School, Osborne Parks
- Patricia Gray: Home Economic Assistant, Armadale Senior High School, Armadale.
- Graham Green: Management and Training Consultant in Education, Health and Human Services (17 years as Teacher and School Administrator).
- Hugh Thompson: Graduate Careers Director, Edith Cowan University.

Without in any way discounting the value of the evidence presented, the following summary picks up some of the matters addressed by these witnesses.

- For those involved as Teachers' Aides whether in the pre-primary area, and Education Support School or a primary school with special programmes for English as a Second Language, the positions demand dedication, motivation and initiative.
- The physical demands of providing care to children in an Education Support School have increased significantly with the change in students' physical and intellectual disabilities.
- Just as parents and community expectations have placed greater demands on teachers, so too have the Teachers' Aides been affected.
- Experienced Teachers' Aides work with minimal supervision; they provide feed-back to teachers on the effectiveness of programmes and the progress of individual students. They assist in taking some of the administrative burden associated with class activities, for example, excursions, from teachers.
- Teachers' Aides attest to the incidence of more challenging (and rewarding) roles in the classroom under the direction of teachers. They invariably undertake "in-service" training and are usually included in the professional development programmes established for school staff.
- While acknowledging and accepting that teachers carry the "duty of care" they point out their responsibilities associated with the supervision of students placed in their care often in situations remote from the control of the teacher, for example, during toileting etc. in Education Support Centres, in reading groups in primary schools and in play time supervision in the pre-primary environment.
- The tenuous nature of appointments was cited. Staffing formula dictates whether annual appointments will be renewed and the time which will be allocated to teaching aides.

NOTE: The hours upon which wages are calculated are as follows—

"**Education Assistant Hours**

Teachers Assistant Full time hours 32.5

Pre-Primary Assistant Full time hours 29.25

Those Education Assistants who are Teacher Assistants and Bus Assistants may work a maximum of 38 hours without attracting overtime.

Pre-Primary Assistants—Maximum hours 29.25

Some (employed prior to 1995) work a further 0.1 in Primary School to take hours to 32.5. Most Pre-Primary Assistants work 29.25 hours. Their working hours are allocated according to Pre-Primary children numbers.

Child Care Workers (Education Department) Award. Maximum Hours 32.5

Their hours are allocated as above.

Primary Teachers Assistants. Maximum hours 32.5

Very few work full time, mostly part time, many have hours made up of hours from general funding supplemented by hours funded by special projects PSP (Priority School Projects) or PEAC. The total Teacher Assistant hours are allocated to the District office which then allocates to schools according to numbers of children in years 1 and 2.

Special Education Assistants. Maximum hours 32.5—Schools and Centres

Most full time teachers assistants work in Special Education. Schools and Centres often have a core of full time Assistants with part time Assistants employed in accordance with children's needs.

Units

Mix of full time and part time Teacher Assistants. Assistants assist into the Unit, then support children in mainstream classes for part of the day.

One to One

With integrated children with special needs. Hours relate directly to amount of support provided for the child; may be as little as 0.1 per week (3.25 hours).

Aboriginal Indigenous Education Workers, Maximum hours are 32.5 hours

May AIEW's are employed part time. Allotment to schools are currently based on submissions by the Principal of individual schools. Working Party (Joint Enterprise Bargaining Agreement) recommended adoption of a formula based on student needs and numbers.

Rural Integration Program Assistants. Maximum hours 29.25 (as per Pre Primary)

Hours are dependant on numbers of 5 year olds in the school each year.

Sper Assistants—maximum hours 32.5

All Teachers Assistants are employed full time. The allocation is based on one Teacher Assistant to eight children.

Home Economic Assistants—maximum hours 38 hours

Hours vary greatly between schools. The formula was changed some years ago to 17 hours per full time

Home Economics Teacher. Some schools have a pro-rata allotment for part time teachers, others do not.

Many schools are said to be overstaffed according to this formula, as the previous formula additionally took into account cooking class hours.

The Joint Enterprise Bargaining Agreement working party recommended a return to a formula which recognised the need for additional hours for cooking classes and Vocational Educational classes.

The Enterprise Bargaining Agreement addressed the issue of hours in the following initiatives. Initiative 4—Reduction in Fraction and Minimum Hours, Initiatives 2.—School Staffing Profiles and Initiative 3.—School Formula Requirements and Variation of Employment."

Exhibit 16

- In Home Economics changes in curriculum have placed additional demands on Assistants in preparation, new equipment, budget control and ordering. These changes make the positions more challenging.
- The Competency Standards for Teachers Assistants and Home Economic Assistants developed by the respective Steering Committees have been endorsed by relevant accrediting bodies in Western Australia.

  Competency standards do not identify the duties that have been done; they define the competency, that is, the skills, knowledge and attitudes that people in the workplace ordinarily demonstrate. It is not a matter of taking duty statements and extrapolating a competency standard from that.

  The competencies established through the IETC reflect the demands of the education system. Those demands have changed particularly with the integration of handicapped students.

  The ASF levels ascribed to the Competency Standards seem appropriate to the Project Officer charged with responsibility to complete the standards.

  However, Education Assistants at SPER Centres operate at a higher level and are atypical. They have specialised skills and are called upon to give advice to teachers.
- As far as formal qualifications are concerned the Teachers Assistant Certificate is tied in with the IETC Competency standards and the needs of all sectors of education in which Teachers Assistants are employed. The courses is reviewed and developed in consultation with stakeholders.

The Respondent's submissions

Although Initiative 10 under the Enterprise Agreement provides for the resolution of a new classification structure through arbitration, that, according to the Respondent is not a straight forward matter. The course proposed by the Applicant Union for an Order pursuant to Section 44 of the Act raises technical and legal difficulties. The Respondent submits that Section 44 (6)(ba) does not provide an avenue through which the matter may progress. It is submitted that this is an application for an "award classification" and must be considered under Section 40 of the Act. Indeed, there are two matters before the Commission. The Minimum Rates Adjustment (Application No. 1532 of 1990) and the claim for a new classification structure (Matter No. CR 49 of 1997). Whichever way these matters are dealt with the Respondent submits that the Commission must consider—

"(a) on a proper construction of the (Wage Fixing) Principles whether the Union's applications should be dealt with a Special Case or a Work Value Case.

(b) Whether a Work Value or a Special Case can be made out."

To add to the complexity it is argued that other than Section 44(6)(ba) orders, a final order made pursuant to Section 44 is unable to prevail over awards or an industrial agreement. The Respondent submits—

"This interpretation is implicit in Section 37(4) which provides that any provision of an award remains in force until cancelled, suspended or replaced. In relation to Industrial Agreements Section 43(1) requires that such agreements may only be varied by a subsequent agreement. Consequently, an Industrial Agreement cannot be varied in part by an Order of the Commission."

Notwithstanding that the Union's proposal for an Order under Section 44 of the Act cannot, in the Respondent's view, be acceded to and that the Minimum Rates Adjustment, which the Respondent sees as being necessary for the disposition of this matter being given effect to by award amendment, it is argued that the terms of paragraph 2.4 of Initiative 10 of the Enterprise Agreement are ultra vires to the Act "in so far as the implementation of a structure requires award amendments" (Written submissions received 13 Oct. 1997). In other words because the Minimum Rates Adjustment is included in the new classification structure Section 37(4) of the Act operates to prevent the award being varied. Presumably, this had not occurred to the Respondent, nor to the Union or the Department of Productivity and Labour Relations when the Enterprise Agreement was negotiated, approved and registered. What this submission means for the status of the Enterprise Agreement is uncertain. Records show that the dispute between the parties was resolved and the Enterprise Bargaining Agreement finalised would be addressed in the terms set down by the parties in their Industrial Agreement. Furthermore, to ensure against the possibility that matters presently before the Commission may be considered to fall within the terms of Section 2—Enterprise Bargaining, Paragraph 2—Consent Award or Award Variation to Give Effect to an Enterprise Agreement under the Statement of Principles—August, 1996 (76 WAIG 3368 at 3369), it is submitted that commitments under Initiatives 8 and 10 of the Enterprise Agreement do not amount to matters now before the Commission being considered as consent applications or consent award variations. The Respondent states that—

"In any event, the negotiations and purported agreement do not satisfy the requirements of Principle 2 Section 2 Enterprise Bargaining. The Union in this case is unable to meet the onus required under that principle. In particular, that provision requires the consent of the parties. Leaving that issue aside, a consideration of the nature of the enterprise, the range of matters covered by the order and the likelihood of flow-on and internal and external relativities make it clear that the Union's application should not be granted. Further, even if the onus could be met, the Commission could not be satisfied that—

(a) Teachers' Aides (education assistants) are a discrete or separate part of the enterprise. To the contrary the draft order would disturb Structural Efficiency Principle (SEP) considerations and Enterprise Bargaining in other parts of the enterprise;

(b) The proposed variation is not consistent with the continued implementation at enterprise level of SEP considerations;

(c) The proposed wage rates are not based on the actual implementation of efficiency measures designed to effect real gains in productivity."

(Answer, Counter proposal and Contentions submitted on 22 September, 1997)

In the development of these submissions the Respondent asserts the following—

- Under the Enterprise Agreement (Initiative 8) the parties are committed to reviewing Teachers' Aides, Home Economic Assistants and Child Care Workers statements of duties and to develop job descriptions which reflect the current and future requirements of the positions. The skill descriptions submitted by the Union in its order do not reflect the requirements of the positions.
- The Union's claim for Home Economic Assistants (38 hours) will result in them being paid more than 3 year trained teachers. Further, at Level 3, (32.5 hours) the Teachers' aide will be paid more than the 3 year trained teacher. The Level 4 Teachers' aide (38 hours) will be paid more than the Level 3 Registrar of a School.
- The existing relativities should not be disturbed.

As far as the Respondent is concerned, the Union cannot rely on the Heads of Agreement to secure wage increases under a proposed new classification structure.

- The purported agreement reflected in correspondence dated 16 September 1996 (Refer to Attachments 1 and 2 to witness statement—Executive Director (Human Resources) EDWA) has not received Cabinet approval and could not be endorsed until the skill/competence, work value and duties required by the Education Department of Western Australia were justified.
- The Department's officers were directed to negotiate the new structure within the parameters of cost suitability. No costings had been undertaken on the structure being discussed with the Union in March 1997. There was no authority for commitments to be given to wage/salary structures without costings and cabinet approval. As embarrassing as it is to the Department, the officer(s) concerned were acting without authority.
- At no material time did the Department formally advise the Union that the structure and Job Description Forms in the Tutt Report ("Proposed classification Structure and Job Description Forms for Education Assistants" March 1997) had been accepted in its entirety.
- Initiatives 8 and 10 make it clear that undertakings are required on the performance of additional duties as required by the Department. This has not occurred; the Department does not require additional duties to be carried out. Until such time as new duties are required to be performed there is no basis upon which a new classification structure can be established.

In the Respondent's view, the claim for a new classification structure is a "Work Value Case" not a Special Case. It cannot be both. As the Respondent sees it, the Union's claim relies on measurement of work value from 1979 in the case of Teachers' Aides, from when the classification of Home Economic Assistant was first created and from 1982 in the case of Child Care Workers. The initiative imposed by the Structural Efficiency Principle under the September 1989 State Wage Decision cannot, in the Respondent's view, be displaced by calling the application a Special Case. Furthermore, there have been increases under the Structural Efficiency Principle (including the "Second Tier" Wage Adjustment) which, if not taken into account will amount to "double counting".

The Respondent observes that—

- The Enterprise Agreement settles all past productivity claims since 1991. In the absence of any new initiatives since 1991 there can be no work value changes which have not already been taken into account in the 10% (plus $200) payment under the Enterprise Bargaining Agreement.
- It is insufficient to cite job requirements as having become more complex in the past five years or an increase in the number of Teachers' Aides to satisfy the work value requirement. There must be a "significant net addition to work".

  In October 1989 in proceedings under the Teachers' Aides' Award 1979 the Union acknowledged that changes in work value had been addressed in salaries determined under a broadbanded range. (69 WAIG 1363 Matter No. R4 of 1979 transcript p 29).
- Failure to identify any changes to the work requirements of Teachers' Aides which have occurred as a result of the implementation of the Enterprise Agreement leads to the conclusion that the 10% enterprise bargaining increase is essentially for past work. In any event no proper means of measurement of quantum has been put forward.

With respect to particular claims raised in the course of proceedings, the Respondent submits that matters must be kept in a proper perspective.

- Supervision and increased participation—

  At all times Teachers' Aides work under the supervision of a teacher. This is accepted by Teachers' Aides. Since the establishment of the positions, Teachers' Aides who are less experienced have required closer supervision than those with more experience in the role. Current levels of supervision are reflected in existing duty statements. Teachers' Aides are not required to work autonomously and are supervised by teachers.

  Teachers' Aides may provide guidance or advice. They have no responsibility or accountability for the supervision of other staff or volunteers.

  The "duty of care" only reflects the common law position. In the pre-primary environment, the teacher's responsibility cannot be delegated to Teachers' Aides.

  "Teachers' Aides have all care but no responsibility, they walk out at the end of the day and that is it. Teachers on the other hand have no fixed hours of duty and they have the responsibility for the education programme and they are accountable for the education of each child they teach."

  (Written Submissions received 13 October, 1997)
- Introduction (and expansion) of new technology, particularly computerisation—

  The introduction of computers into schools is part of the normal evolutionary process of work. It applies to the workforce as a whole. Those providing direct or indirect service to students should strive for the best possible service. Computers are a facet of this. The move from manual to automated or computerised systems is not indicative of an increase in work value. It is simply a more efficient manner of service delivery.
- Increased professionalism, accredited training and professional development—

  Training provided through "in-service" courses do not justify a wage increase. If Teachers' Aides were required to do new tasks without training then perhaps it would be different.

  Qualifications are not required by the Department, therefore cannot be subject to work value.

  Teachers' Aides are not a generic group.

  "They are not multi-skilled in that for example an (home) Economic aide cannot be transferred to a special education school, although there is some capacity for some Aboriginal Education Workers to transfer. That means the Commission must assess work value in each category of Aides separately. The value of SPER work is very different work to Special Education which has over time become a carer's role (rather) then assisting in the delivery of teaching programmes. Just because the Respondent concedes that Aboriginal Educational Worker should be treated differently because of their special role and input into the teaching process, their work value cannot be translated into any other category of Teachers' Aides. In relation to pre-primary and early childhood Aides the duties of Teachers aides is similar to that of private child care givers. They form 60% of the total number of employees covered by these applications. (Exhibit 13)

  (Written Submissions received 13 October 1997)
- Whether skill related career paths address discrimination—

  The Union claims the proposed order establishes a career path. That is not the case. The only career path is through studies to become a teacher. The job of a Teachers'' aide is not broad based nor multi-skilled because it is not open to Teachers' Aides to transfer from one position to another.

  The Respondent's counter claim establishes skill related progression and address discrimination. It does not seek to change the level of skill as the duties of Teachers' Aides have not changed. It recognises that Teachers' Aides become more valuable employees as a result of job training and experience.

- Relativities and Flow-on—

  In the Respondent's view, the Union has been unable to establish an appropriate relativity between EDMOSAC classifications and those of Teachers' Aides.

  The application of Public Service Award rates will destroy relativities between aides and teachers thus leading to an inevitable flow-on to Ministerial Officers and teachers. All positions in the EDMOSAC Award above Level 1 are promotional positions and must be filled on merit. The Union's proposal will see Western Australian Teachers' Aides move from Level 1 to 2 and 3 without merit selection.

  The proper starting point is that teachers' pay rates are the appropriate bench mark. In setting a proper Key Minimum Classification for Teachers' Aides there should be recognition of the fact that their skills, responsibilities, training and work value and conditions are less than qualified child care givers (The 67.1% relativity with the Teacher in the Child Care Industry reflects a higher work value for those qualified employees).

- Public Interest and Flow-on—

  A consequence of the Union's claim will be reduced employment opportunities for Teachers' Aides. This was foreshadowed by the Director—General in advice to the Minister. (Appendix 4 to Executive Director's (HR) witness Statement). The options in the light of the success of the claim are—

  * a reduction in the number of Teachers' Aides (300 FTE).
  * increase in class sizes to reduce teacher numbers (as a result of a flow-on in salary increases to teachers).
  * closure of some schools
  * reduction in the funding provided to schools under school grants.

    There are likely to be similar implications for Catholic and Independent Schools.

  Extensive written and oral evidence was presented by the Respondent in support of opposition to the Union's claim for a new classification structure and for the proposed Minimum Rates Adjustment. The following witnesses presented on behalf of the Respondent.

  * Stephen Home: Executive Director (Human Resources) Education Department (took up position in January 1997).
  * Kenneth Wyatt: Acting Director, Aboriginal Education. Education Department.
  * Eve Lucas: Principal, Hampton Park Primary School, Morley. (Previously Manager of the Disabilities and Learning Difficulties Branch Education Department).
  * Mary Lamprecht: Registrar. Level 2 Koongamia Primary School.
  * Enid Wiseman: Senior Personnel Officer, Primary Staffing Branch, Education Department.
  * Annette Rogers: Registrar, Level 4 Lesmurdie Senior High School.
  * Tony Henry: Principal Industrial Officer, Level 6 Education Department.
  * Janette Ballantine: Registrar Level 3, Lakeland, Senior High School.
  * Lyn Christie: Consultant for Programs for Four and Five Year Old Children. Early Childhood Directorate, Education Department.
  * Sharn Tutt: Consultant, Sector Vision Consulting. Providing classification services to Public Sector clients.
  * Andrew Hastie:Project Industrial Officer, Facilities and Services Reform Programme.

Again, without in any way intending to discount the value of evidence presented, the following summarises some of the points raised on behalf of the Respondent—

- The process for approval of industrial agreements, including a new classification Structure, involves the endorsement of the Executive Director (Human Resources) and Executive of the Department, approval from the Director General, submission to DOPLR and finally approval by the Cabinet Sub Committee for Labour Relations.
- The "Proposed Classification Structure and Job Description Forms for Education Assistants' prepared by S. Tutt has not been endorsed by the Department. The Department does not accept the statement in the Tutt report that approval had been given for three salary levels for Teachers' Aides to be aligned to the EDMOSAC Award.
- The wage alignment under the Heads of Agreement (dated 16th September 1996) was never approved by the Department or the Cabinet Sub Committee on Labour Relations.
- Cost neutrality was imposed on the outcome of negotiations for a new classification structure. That was the limitation imposed on Departmental officers. Any indications or undertakings contrary to that were without authority. The Department entered into the Teachers' Aides Enterprise Agreement in the knowledge that Initiative 10 would have to be funded from its own resources. Even then Cabinet Sub Committee approval was required.
- Officers comprising the Department's reference group for the development of the new classification structure went "off on a bit of a frolic". The exercise was conducted without the knowledge and authority of the "most senior people in the organisation".
- The Department accepts that—

  "The working and employment conditions of AIEW are fraught with problems related to confusion about their role, under recognition of their range of skills which includes teaching skills that schools expect and demand of them, low salaries, poor access to permanent employment and related entitlements and limited training/ further education opportunities."

  (Exhibit F)

The Department does not agree that as part of the existing Teachers' Assistants structure, the same applies to other categories of employees in the group.

- There are core duties and responsibilities the AIEW's undertake that are consistent with Teachers' Aides generally (and some which may even be particular to Ethnic Aides) but the particular cultural reference required of AIEW's distinguishes them from other Teachers' Aides.
- In the course of developing career paths generally it is necessary to establish competency standards, accredited training and curriculum.
- At present there is tension between the career path that exists for AEW's (as Teachers' Aides) and initiatives being developed to access Aboriginal Teacher training.
- Registrars Level 3 in District High Schools are employed on the basis of 40 week year and 6½ hours per day. The level of remuneration under the GOSAC award recognises the devolution of responsibility to schools for accounting and administrative functions. Further devolution is planned ie: salaries and human resources management. Computerisation and staff responsibilities are a feature of the positions.
- Registrars Level 2 in Primary Schools carry the responsibilities inherent in devolution. Reclassification will be sought with additional functions.
- A feature of work undertaken by Teachers' Aides in Education Support Centres in recent times is that they do "more of the same".

  While changing community expectations affect teachers and Teachers' Aides, there has been no

change in the level of accountability for Teachers' Aides. They have not been affected by changes to the syllabus and curriculum. Being consulted as part of the "team" does not reflect a change in their status. It is an efficient way for discussing and planning teaching requirements.

- While the extent to which a Teachers' aide is involved in the early childhood setting depends significantly on the relationship with the teacher, often it is not a requirement of the Department. It is something that gives the teacher's aide satisfaction. There has not been a significant change in the teacher's role over the last 10 or 15 years. Teachers are required to do the best for individual children based on individual needs. That has always been the case. Similarly the teacher aide's role has not changed over that period.
- In the Department's assessment, "indicative duties" identified by Union in the proposed Order (and which are taken from the "Tutt Report" Exhibit 9) are expected to be discharged by Teachers' Aides on entry. (Refer to Exhibit E). The Department's assessment was conducted by officers with experience in working with Teachers' Aides. No weight can be attributed to the Department's assessment which led to discussions on an alignment of wage rates with the classification structure devised in the "Tutt Report" and which was used in discussions with the Union on 26 March 1997. (Exhibit 14).
- Ms Tutt did not have any role in setting a salary alignment following her recommendation of a "Proposed Classification Structure and Job Description Forms for Education Assistants" (Exhibit 9).

  The review undertaken by Ms Tutt involved—

  * a review of competency standards;
  * an identification of "inequities" within the structure; and
  * taking a "generic approach" to Teachers' Aides to overcome variables attributable to the conditions under which the work is performed and the level of teacher involvement.

  The proposed structure did not necessarily reflect different skills at each level but accommodated the degree of teacher supervision and the Teacher Aide's input into the educational programme.

  Within the time constraints imposed on her, Ms Tutt considered that the duty statements provided by her reflect the duties and responsibilities of Teachers' Aides. Further improvements could be made.

  The job description forms or duty statements were compiled after—

  * reviewing existing role statements;
  * consulting with relevant parties to see what was required and what duties were being undertaken by Teachers' Aides;
  * researching competencies;
  * looking at interstate comparisons; and
  * undertaking a work value analysis of duties and responsibilities.
- The only costings done by the Department prior to arbitration were those based not on the Union's proposed classification structure but upon the Heads of Agreement alignment of wages with levels under the GOSAC Award (or its equivalent).

  In September 1996 the Director General advised the Minister that "...figures being quoted by the Union of additional increases (ie: in addition to the Enterprise Bargaining Agreement) are not accepted as correct. Any additional increases will depend on translation to the new structure and will be offset by staffing to formula. Until that occurs it is not appropriate to suggest particular percentage outcomes" (memo dated 17th September 1996, Executive Director (Human Resources) Witness Statement Appendix 4).

  In June 1997 the Principal Industrial Officer advised the Executive Director (Human Resources) that the "relative wage increase for Teachers Assistants in the "in principle" agreement would create a minimum 25% wage increase. The potential recurrent cost is in the order of $12.5M per annum". (Memo dated 3rd June 1997, Executive Director (HR) Witness Statement Appendix 8).

  In Exhibit I submitted to the Commission and prepared in the course of proceedings the Department identifies current wage costs for Teachers' Aides as $49.3M per annum. Applying the Heads of Agreement levels under the GOSAC Award the Department estimates that the wages bill would grow to $61.9M.

  Subsequent information received from the Respondent claims that wage rates under the Union's proposed Order will result in an increase of 20.58% above the wage bill under the Enterprise Agreement. (Refer to Attachment 3 to the Respondent's advice to the Commission and to the Union dated 29 December 1997).
- The Minimum Rates Adjustment proposal put forward by the Department was compiled in May 1995 and was the subject of negotiations prior to the conclusions of the Enterprise Agreement registered in November 1996.

  The proposal seeks to establish a link for the top of the Teacher Aide classification at 58.9% of the teacher's salary (ie. Top award rate for a qualified teacher in the Teachers' (Public Sector Primary and Secondary Education) Award). The rationale for this alignment is that the approach adopted by the Commission in establishing the rate for a Qualified Child Care Giver at 67.1% of the Teacher's rate in the Independent Schools Award.

  In the Department's view there are two significant matters which justify minimum rates to be paid to Teachers' Aides being less than that paid to qualified Child Care Givers. First, Teachers' Aides do not require qualifications and second they do not carry the same duty of care.

  The differential of approximately 2% between the levels under the proposed Minimum Rates Scale represents service not work value differences.

  Existing duty statements adequately reflect the Department's requirements of these employees.

In the course of hearing this matter five hundred pages of transcript were taken. Seventeen witnesses statements were presented. Over forty exhibits were included ranging from comprehensive analysis of competency standards and classification structures to memoranda and calculations.

Inspections were undertaken at the following schools—

- Highgate Primary School
- Gladys Newton Special Education School
- Belmont Senior High School
- Tranby Primary School
- Challis Early Childhood Education (ECE) Centre
- Challis Socio-psycho—Education Resource (SPER) Centre
- Gwynne Park Primary School and Education Support Centre
- Dinki Di Child Care Centre, Innaloo

Conclusion—

The hearing commenced on 30 July, 1997 and concluded on 13 October, 1997. To facilitate the availability of witnesses due to leave arrangements and representatives as well as to accommodate the availability of members of the Commission, hearing times were set at the expense of continuity in the development of submissions. Final documentation on closing submissions was not received until 9 January 1998.

There has been an abundance of evidence concerning the expectations of Teachers' Aides and indeed their attempts for many years to secure what they see as appropriate recognition under a revised classification structure. This has been matched by the evidence of the Department to vindicate the position that has been undertaken through the Minimum Rates Adjustment exercise which reduces the minimum rates of Teachers' Aides but maintains their wage level under supplementary

payments. In the course of this the Department has endeavoured to extricate itself from what has been acknowledged to have been the embarrassment of it having agreed to a new classification structure and entered into a Heads of Agreement that held out the promise of wage increases which is now claimed to have been done without authority and without the knowledge of senior officers, none of whom appeared in these proceedings. To add insult to injury, after being informed in June, 1995 that the Department's proposals with respect to "early childhood educators" would closely resemble those of the general teaching service with appropriate modification as necessary and after entering into an Enterprise Agreement which secured commitments to develop Job Descriptions which reflect the current and future requirements of the positions as well as the mechanism for achieving the new classification the Department then said that there were technical and legal complexities which cannot be overcome. Indeed, the Department considers that existing job descriptions adequately represent the duties required of them. There are no future requirements. The work Teachers' Aides are doing is just "more of the same" and the title Education Assistants coined for the purpose of recognition under the Enterprise Agreement should be displaced in favour of retraining the more traditional title of Teachers Aide. Presumably, this move properly reflects the relationship the Department expects. We can well understand the indignation and frustration this has caused. However, indignation and frustration are not a substitute for merit and it is that which must be established.

It is insufficient to merely cite the availability of arbitration either under the terms of paragraph 3 of Initiative 10 or under the provisions of the Act. The Enterprise Agreement now regulates the relationship between the parties. Its registration was not fettered or subject to the Wage Fixing Principles. The Act now recognises the rights of parties to enter into binding relationships without interference from the Commission save but for the limited role of giving clear expression to the intent of the parties in the instrument which regulates their relationship. Undertakings or procedures entered into carry a heavy responsibility. The terms of the Enterprise Agreement cannot be put aside nor the Principles deferred to without regard to the undertakings, understandings and procedures agreed upon between the parties themselves. In this respect the Minimum Rates Adjustment and the new classification structure have been inextricably linked. When the parties have addressed the requirements set down herein and thereby established the conditions upon which the Commission can proceed to arbitrate during the operation of their Enterprise Agreement the matters will be concluded. It is one thing to say that there has been a failure to reach an agreement which makes arbitration necessary. It is another to have failed to properly even address undertakings required under the terms of the Enterprise Agreement and hand the mess to the Commission.

If the conditions precedent to arbitration which are provided for under the Enterprise Agreement have been fulfilled, that is, the relevant obligations under Initiatives 8 and 10 and any other Initiatives have been discharged then the question arises as to whether or not the Wage Fixing Principles have any relevance at all. As a general proposition, if the parties enter into an Enterprise Agreement which itself is not subject to the Principles and make provision for arbitration under terms acceptable to them, why should matters which they have recognised may be arbitrated be caught by Principles that otherwise have no application? In the circumstances of matters presently before the Commission this is answered by reference to Initiative 10. The requirement to progress the Minimum Rates Adjustment along with the new structure conditions adherence to the Wage Fixing Principles. Here it is sufficient to address the Minimum Rates Adjustment Principle without reference to the "mystical" incantations involved in deciding whether a Special Case displaces the Change in Work Value Principle or whether it imposes another layer of tests that need to be addressed.

In light of this approach it is incumbent on the Commission to establish the following—

(a) Whether the parties have reviewed the current Teachers' Aides (including Aboriginal Education Workers), Home Economic Assistants and Child Care Workers Statements of Duties and developed Job Descriptions which reflect the current and future requirements of the positions. (Refer to Initiatives 8—Job Description (1)).

(b) Ascertain whether the Job Descriptions also reflect the Competency Standards which have been developed in Government and Non-Government schools in Western Australia by the Community Services, Health and Education Industry Training Council. (Refer to Initiatives 8—Job Description (2)).

(c) To the extent that is necessary ascertain whether the Working Party established by the parties has completed its review of any changes to the duties arising from award consolidation and the performance of a wider range of tasks which may have arisen through the parties' commitment to allowing employees to be deployed in a way that will best address the needs of the work site. (Refer to Initiative 8—Job Description (3)).

(d) Ascertain the how far the Joint Committee established by the parties has progressed in developing the new classification structure. In so doing, determine the extent to which the new structure has been based on skill/competency of the duties required of employees. See that the new structure has at least three levels. (Refer to Initiative 10—Classification Structure—(1) and (2)).

(e) Establish to what extent account has been taken of the competency and skills based report considered and endorsed by the Skills Standards Accreditation Board for Education Assistants and the report prepared on the skills and competencies for Aboriginal Education Workers (Refer to Initiative 10—Classification Structure (2.5)).

(f) Ascertain whether Job Description Forms have been reviewed and finalised for all employees covered by the terms of the Enterprise Bargaining Agreement. This will reflect the competencies and skills of all classifications (Refer to Initiative 10—Classification Structure—(2.7)).

In assessing these matters it is not a case of the Commission seeking to enforce the Enterprise Agreement. It is a matter of fulfilling the requirements upon which arbitration in terms of that Agreement can proceed.

With respect to the foregoing, the Commission notes the following—

- "The Proposed Classification Structure and Job Description Forms for Education Assistants" compiled by Sharn Tutt March 1997 (Exhibit 9).
- the advice to the Union dated 4 June, 1997 from the Executive Director (Human Resources) that—

  "The Department accepts the broad parameters of the proposed classification structure and Job Descriptions as outlined in the document prepared by Sharn Tutt dated 10 March , 1997.

  There are a number of factors related to the implementation of this classification structure that require further discussion to ensure the transition is fair, equitable and manageable."

  (Refer to Executive Director's (Human Resources) Witness Statement, Appendix 9)
- the generic title of Education Assistant has been used by the Union in place of the traditional nomenclature of Teacher Aide. The Department seeks to retain the latter. We favour the former. It is more in keeping with contemporary identification and overcomes connotations of subservience and the image of prosthesis.
- the question arises as to whether or not Education Assistants can be dealt with as a homogenous group. Putting aside Home Economics Assistants, there is a range of callings following within the scope of the title.

  Already the positions of Aboriginal and Island Education Workers are the subject of separate consideration.

We concur with observations that Education Assistants (SPER) are qualitatively different from Education Assistants that occupy positions in pre-primary, primary and secondary schools. This group also should be a separate consideration.

It appears to be common ground that the new classification structure should overcome the identification of Education Assistants on a site specific basis. The terms of Initiative 10 (2.3) support that approach. It will be necessary for the Commission to satisfy itself that the new classification structure accommodates the objectives of identifying the duties of a generic Education Assistant and placement of those with Advanced Skills. The Education Assistants (SPER) would come within the latter category.

- initiatives to change the role of AIEW's in order to access training and to recognise teaching duties that appear to be undertaken at present adds another dimension to the task of establishing them within a new classification structure. This development has not been accommodated in either the separate proposals for a Minimum Rates Adjustment or the proposed new structure. It has not been considered by the Joint Working party established pursuant to the Enterprise Agreement. Consistent with the terms under which arbitration may proceed this matter will first have to be considered by the parties constituted as they must be for the purpose of the Enterprise Agreement. It may well be that given that initiatives have progressed further in Western Australia than elsewhere under the national strategy for AIEW's then the classification structure may not have to accommodate this development at this time. If that is so we will have to be told that that is the case.
- it is critical to the establishment of a new classification structure and consistent with the Minimum Rates Adjustment required under Initiative 10, that the Commission be appraised of all relevant wage/salary and classification relativities. This has not been done by the Working Party constituted as it must be under the terms of the Enterprise Agreement. So far all that has been presented is, on the one hand, a reliance on the terms of a Heads of Agreement without regard to ramifications for relativities in the school environment. That approach seeks to import an extended scale for progression through various levels into a merit selection structure. On the other hand there is a scale developed under the Minimum Rates Adjustment exercise attempted in 1995 and which is justified on the basis that Education Assistants do not require qualifications and do not in the Department's view carry the same duty of care as a qualified Child Care Giver. Neither approach is satisfactory. Comparisons based on external relativities are nearly impossible. There has been a failure of the parties to effectively identify the proper basis upon which wage rates can be calculated given that Education Assistants' 52 week payment is calculated on a 32.5 hour week applicable to the academic year only. All this work should have been done by the Joint Committee.

It is clear to us that regard must be given to the internal relativities within the school environment this includes school assistants, technical staff, Registrars and teachers. The most appropriate relativity would appear to be that with the Teacher. This should not be established via the qualified Child Care Giver. That alignment already attempted by the Department fails to take into account the conditions under which work is performed. The Commission is not bound by the Heads of Agreement entered into by the parties in September 1996 albeit that the Department contends that was unauthorised.

Given the statutory requirements of Section 26 of the Act costings are an important aspect of the new classification structure. It has taken several months after the completion of the hearing for a credible assessment of the Union's proposal to be done. This should have been done by the parties in the context of their Joint Committee pursuant to Initiative 10.

In addressing the claim and counter-claim the Commission needs to establish the relevance, if any, of the Wage Fixing Principles and the course that needs to be chartered for the passage of these two matters within one or more of those Principles if it is necessary. As far as the Minimum Rates Adjustment is concerned that is clear. As Initiative 10 stipulates that must be undertaken in a manner consistent with the Principles. That has to be the Minimum Rates Adjustment under Section 3 Role of Arbitration and the Award System (paragraph 3—Previous State Wage Increases). However, that is only part of it. Consistency in finalising the Minimum Rates Adjustment must also be achieved within the terms of the Agreement. That requires the Minimum Rates Adjustment to be finalised within the context of a structure that "addresses all matters relating to work value". Under the terms of the Enterprise Agreement that structure will have at least three levels, for example, entry level, autonomous education assistant and advanced skill education assistant (Refer to Initiative 10, sub-paragraph 2.3).

As presently minded, on receipt of documentation that discharges the responsibilities of the parties to progress matters sufficiently under Initiatives 8 and 10, the Commission will establish Key Minimum Classification points consistent with the levels necessary to comply with Initiative 10.

The parties should also address an implementation programme.

If the Joint Committee Working Party fails to reach consensus, the respective positions are to be submitted. The Commission will require the members of the Committee to be available to present explanations of the outcomes they have proposed. Full details of costings, completed Job Description Forms, the assessment of competency standards etc will be required. It is noted that pursuant to the terms of the Enterprise Agreement the outcome will be given effect by Award amendment. The issues involved in establishing a new career structure and completing the Minimum Rates Adjustment are too important and the implication for the individuals involved too serious not to do this exercise properly. A Direction to facilitate the disposition of this matter will issue. The parties will be required to address these issues according to a strict timetable imposed by the Commission. The Commission in Court Session will hand down its Reasons for Decision on 8 June 1998.

Appearances: Ms S. Jackson and with her Ms D. MacTiernan appeared for the Applicant Union.

Ms J. Smith (of Counsel) and with her Mr G. Edwards appeared for the Minister of Education.

Mr G. Bull appeared on behalf of the Chamber of Commerce and Industry of Western Australia

Ms V. Zupanovich appeared on behalf of the Minister for Labour Relations

Mr P. Andrews appeared on behalf of the Catholic Education Centre.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

The Honourable Minister for Education

(No. CR 49 of 1997)

Education Department of Western Australia (Education Assistants—ALHMWU)

Enterprise Bargaining Agreement.

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

and

The Honourable Minister for Education.

No. 1532 of 1990.

Teachers' Aides' Award, 1979, No. R4 of 1979.

COMMISSION IN COURT SESSION
CHIEF COMMISSIONER W.S. COLEMAN
COMMISSIONER J.F. GREGOR
COMMISSIONER A.R. BEECH.

15 April 1998.

Direction.

HAVING heard Ms S. Jackson and with her Ms D. MacTiernan appearing for the Applicant Union, Ms J. Smith (of Counsel) and with her Mr G. Edwards appearing for the Hon. Minister of Education, Mr G. Bull appearing on behalf of the Chamber of Commerce and Industry of Western Australia, Ms V. Zupanovich appearing on behalf of the Hon. Minister for Labour Relations, and Mr P. Andrews appeared on behalf of the Catholic Education Centre;

THE Commission in Court Session notes the requirements that the parties have imposed upon themselves pursuant to the Education Department of Western Australia (Education Assistants—ALHMWU) Enterprise Bargaining Agreement, 1996 (the "Enterprise Bargaining Agreement") and in particular the dictates of Initiative 8—Job Description and Initiative 10—Classification Structure pursuant to Clause 14.—Reform Initiative.

AND HAVING so far identified matters which it considers encumbent upon it to establish before a determination of applications before it can be concluded;

NOW THEREFORE, the Commission in Court Session directs that —

(1) to facilitate the proper disposition of these matters consistent with the terms of the Enterprise Bargaining Agreement and in particular the requirements imposed on the Working Party/Joint Committee referred to in Initiative 8 and Initiative 10 respectively, the parties are to lodge in the Commission the documentation pursuant to the completion of those requirements by 4.00pm, on Friday, 8 May, 1998;

(2) and whereas, if the Working Party/Joint Committee fails to reach consensus, documentation identified as the respective positions of the parties separately, but in form and detail as if it were completed by the Working Party/Joint Committee but for their failure to reach agreement, is to be lodged in the Commission by 4.00pm, on Friday, 8 May, 1998.

(3) And whereas, in support of all documentation lodged under paragraph (1) or (2) above the parties are to provide tables of proposed relativities and classification structures using the same base including a common method of calculating wage rates to enable proper comparisons to be made. These proposals are to be supported by detailed costings to each proposal including the implementation of the transfer from one scale to another proposed structure.

(4) And whereas the Commission in Court Session may seek further details or explanation from Officers involved on the Working Party/Joint Committee or the parties may wish to make submissions in support of the documentation lodged in the Commission, then such proceedings as necessary will be set down so that the Commission in Court Session will hand down its decision on 8 June, 1998.

By the Commission in Court Session,

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

PRESIDENT—
Matters dealt with—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Director General of the Ministry for Culture and the Arts (Applicant)

and

The Civil Service Association of Western Australia Incorporated and Others (Respondents).

No 96 of 1999.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

17 February 1999.

Reasons for Decision.

THE PRESIDENT: This is an application by the abovenamed applicant pursuant to s.49(11) of the Industrial Relations Act 1979 (as amended) (hereinafter referred to as "the Act") for the operation of the whole of a decision by a single Commissioner, said to have been made on 8 December 1998 in matter No PSA CR85 of 1998, to be stayed, pending the hearing and determination of the Full Bench of an appeal lodged by the applicant, as appellant, in the Commission on 29 December 1998.

The Reasons for Decision were delivered on 2 December 1998. The Commission's order was deposited in the office of the Registrar on 4 January 1999. The application for a stay was lodged on or about 25 January 1999.

I am satisfied that the applicant, as a party to the proceedings at first instance, has sufficient interest to enable him to properly make the application.

The question is whether this application has been "made at any time after an appeal has been instituted under..." s.49 of the Act. S.49(2) provides—

> "Subject to this section, an appeal lies to the Full Bench in the manner prescribed from any decision of the Commission."

A "decision" of the Commission is defined in s.7 of the Act to include an "award, order or finding". The decision at first instance was not a "finding", as defined, but that does not matter for the purposes of these reasons.

S.34(1) of the Act requires that the decision of the Commission shall be in the form of an award, order or declaration and shall in every case be signed and delivered by the Commissioner who heard the matter. There is no dispute that that occurred in this case and that the decision was, as required, signed by the Commissioner constituting the Commission.

As required by s.36 of the Act, the decision of the Commission was deposited in the office of the Registrar, having been sealed with the seal of the Commission on 4 January 1999.

The question is what constitutes a decision, for the purposes of s.49(2) of the Act.

I have considered all of the relevant authorities, namely McCorry v Como Investments Pty Ltd 69 WAIG 1000

(IAC),CMEWU v UFTU 70 WAIG 3913 (IAC), Registrar v MEWU and Others 74 WAIG 1487 (IAC) and Fisher Catering Services Pty Ltd v ALHMWU 77 WAIG 611 (IAC).

The view of all of the judges, whose reasons for decision go to make up the ratio decidendi and do not constitute obiter dicta in the abovementioned cases, is that a decision, for the purposes of s.49(2) of the Act, is not a decision unless it complies with s.34 of the Act.

The decision at first instance was a decision in the form of an order. It was an order which was signed by the Commissioner making the decision. It was required to be sealed and it was. It was also required to be delivered (see s.36 of the Act). However, delivery, on the authorities, is not completed until a decision is deposited in the office of the Registrar.

In other words, a decision for the purposes of s.49(2) of the Act is an award, order or declaration signed, sealed and delivered, as prescribed by s.34 and s.36 of the Act (see also s.35). It is perfected only when delivery is complete by depositing the order in the office of the Registrar. Upon the latter event happening, the decision of the Commission has been pronounced. It is the date when that occurs that is the commencement date for the effluxion of time within which an appeal may be brought, for the purposes of s.90 of the Act (see McCorry v Como Investments Pty Ltd (op cit) at pages 1001-1002 per Brinsden J, Registrar v MEWU and Others (op cit) at pages 1488-1489 per Kennedy J and at pages 1489-1490 per Rowland J in particular). It is that date which denotes when the award, order or declaration is a decision for the purposes of s.49(2) of the Act.

The signing and sealing of an order could not amount to a delivery under s.34 and s.36 of the Act and on the abovementioned authorities. Accordingly, at the time when the Notice of Appeal was filed, there was no decision to appeal against in terms of s.49(2) of the Act, because delivery had not been completed under s.36 (see McCorry v Como Investments Pty Ltd (op cit)). That is because the decision had not been deposited in the office of the Registrar, and had not, therefore, been delivered.

Accordingly, the application for a stay was not made after an appeal was instituted, because the appeal was a nullity, there being no decision in existence against which an appeal could be instituted. Accordingly, no appeal was or could be instituted.

The application, for those reasons, is incompetent, and I will dismiss it.

I should make some observations about the merits of the application, although it is now unnecessary to do so, for the determination of this application. However, some comments may assist the parties.

The respondents are all organisations of employees, and the applicant is an employer of members of those organisations.

The decision which was said to have been appealed against was an order by the Commission—

> "THAT on registration of the enterprise agreement between the parties as expressed at 30 November 1998, the operative date for the purposes of calculating the first pay increases due employees shall be deemed to be the date of the commencement of the first pay period on or after the 4th day of November 1998."

The application for a stay alleged that there were two pay periods between 4 November 1998 and 10 November 1998. Further, the application was based on evidence that the Ministry would be put to significant administrative inconvenience if it were required to calculate, process and pay salary arrears adjustments required by the order, and that there would be significant difficulties in attempting to recover those amounts from employees, many of whom were employed on a casual basis, if the appeal were successful.

The amounts have not, of course, been paid. There was evidence that there are 1,012 employees employed within various statutory authorities and agencies which are said to constitute the Ministry itself, of whom 250 are employed on a casual basis. However, it would seem from Ms Hillary Bell's evidence that only 650 employees, including 250 casual employees, in all are involved.

I accept that some extra work would be involved in calculating and making the back payments to these employees. However, the maximum time spent would be two days, and involve two officers, on the evidence. Further, I accept the evidence that extra work is involved in negotiating and effecting the repayment of "overpaid" amounts. Sometimes negotiations can take up to two months to be completed. There is, too, some difficulty involved in locating some casual employees, although how many would be the cause of that difficulty was not in evidence. Further, this exercise had not yet commenced.

As against that, I am satisfied, as a matter of fact, that the employees have been deprived of the fruits of the Commission's order since 4 December 1998, which is now over two months ago.

Also, there is the question of the seriousness of any issue to be tried. Mr Harris of Counsel for the respondent conceded that there was such an issue, and I accept that there is.

There was some argument as to the principles to be applied with Mr Harris submitting that the test in WALEDFCU v Hathaway 75 WAIG 1785 (IAC) per Murray J was what was applicable.

Mr Lundberg of Counsel, who appeared for the applicant, however urged upon the Commission the application of those principles laid down in Gawooleng Dawang Inc v Lupton and Others 72 WAIG 1310 (President) and a number of cases, more recently, S & M Bennett Pty Ltd trading as Rockingham Sheetmetal Works v Scott 77 WAIG 2869 at 2870. Those principles are that—

(a) A decision at first instance should only be stayed if the applicant establishes that the decision should be stayed.

(b) There is a principle that the successful party is entitled to the fruits of his/her/its order, award or declaration.

(c) For the applicant to succeed, it must be established—

  (i) That there is a serious issued to be tried;

  (ii) That the balance of convenience favours the applicant; and

  (iii) That, if the same exist, other factors consistent with the application of s.26(1)(a), s.26(1)(c) and, perhaps, s.26(1)(d) of the Act require that the application be granted.

I respectfully do not apply the test prescribed by Murray J of "exceptional circumstances", because I apprehend that s.26 of the Act, which I am bound to apply, requires some difference in the sort of test to be applied and because Re Moore; Ex parte Pillar [1991] 65 ALJR 683 (HC) (Pillar's case) is authority for the proposition that there should be no more uncertainty than necessary concerning the positions of the parties, pending the determination of appeals from industrial tribunals.

In Powerflex Services Pty Ltd v Data Access Corporation (1996) 137 ALR 498, the Full Court of the Federal Court (Burchett, Heerey and Whitlam JJ) took a not dissimilar approach to the approach which this Commission takes when considering the discretion of the Federal Court of Australia to grant a stay or not.

Whilst I regard His Honour Murray J's reasons as strongly persuasive, I do not regard them as binding, even if they were expressed as applying to the Commission's jurisdiction, which they are not.

I am not persuaded in this case that the balance of convenience falls on the side of the applicant. I say that because, on the one hand, the respondents' members have been deprived for two months of the fruits of the order obtained by the respondents, but, on the other hand, the respondents would suffer the inconvenience of calculating, paying and recovering the monies which would take two months at most, on the evidence. This is so, as I understand the evidence, even if there were untraceable casual employees who might, in numbers be as few as one or as many as 250. There is simply no concrete evidence on this point.

Presumably, too, however, casual employees, if they wished to remain as casual employees, or indeed as employees, would leave their present addresses with the applicant, otherwise they could not be contacted when required to work.

Accordingly, I am satisfied, for those reasons, that, whilst there is a serious issue to be tried, that the balance of convenience does not lie with the applicant.

Further, I have considered the interests of the parties and the respondents' members and am of the opinion that, having regard to s.26(1)(a) and 1(c) of the Act, the equity, good conscience and the substantial merits of the case lie with the respondents and their members. The fruits of the proceedings at first instance should remain with the respondents and their members.

Even on the application of the exceptional circumstances test, no exceptional circumstances have been established, for the reasons which I have expressed above, which would warrant my making the orders sought, even if the application were competent, which it is not.

I have considered all of the submissions, all of the evidence and all of the authorities. Insofar as it may be necessary, I dismiss the application for those reasons.

Order accordingly

APPEARANCES: Mr M Lundberg (of Counsel), by leave, on behalf of the applicant

Mr P Harris (of Counsel), by leave, on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Director General of the Ministry for Culture and the Arts
(Applicant)

and

The Civil Service Association of Western Australia Incorporated and Others
(Respondents).

No 96 of 1999.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

17 February 1999.

Order.

THIS matter having come on for hearing before me on the 9th day of February 1999, and having heard Mr M Lundberg (of Counsel), by leave, on behalf of the applicant and Mr P Harris (of Counsel), by leave, on behalf of the respondent, and having reserved my decision on the matter, and reasons for decision being delivered on the 17th day of February 1999 wherein I found that the application should be dismissed and gave reasons therefore, it is this day, the 17th day of February 1999, ordered that application No 96 of 1999 be and is hereby dismissed.

(Sgd.) P.J. SHARKEY,
[L.S.] President.

AWARDS/AGREEMENTS— Application for—

ABORIGINAL AFFAIRS DEPARTMENT ENTERPRISE BARGAINING AGREEMENT 1998. No. PSA AG 1 of 1999.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Civil Service Association of Western Australia Incorporated

and

Chief Executive Officer Aboriginal Affairs Department.

No. PSA AG 1 of 1999.

Aboriginal Affairs Department Enterprise Bargaining Agreement 1998.

12 February 1999.

Order.

HAVING heard Mr R Carlton on behalf of The Civil Service Association of Western Australia Incorporated, and Mrs N Boult on behalf of the Chief Executive Officer Aboriginal Affairs Department now therefore, I the undersigned, pursuant to the powers conferred under the Industrial Relations Act, 1979 do hereby order—

1. THAT the agreement to be known as the "Aboriginal Affairs Department Enterprise Bargaining Agreement 1998" reflected in the schedule to this order shall be and is registered with effect on the 21st day of January 1999.
2. THAT the Aboriginal Affairs Department Enterprise Bargaining Agreement 1998 shall replace the Aboriginal Affairs Department Enterprise Bargaining Agreement 1996 with effect on the 21st day of January 1999.

(Sgd.) S.A. CAWLEY,
[L.S.] Commissioner,
Public Service Arbitrator.

Schedule.

1.—TITLE

This Agreement shall be known as the "Aboriginal Affairs Department Enterprise Bargaining Agreement 1998" and replaces the "Aboriginal Affairs Department Enterprise Bargaining Agreement 1996."

2.—ARRANGEMENT

3.—PURPOSE OF AGREEMENT

This Agreement will contribute to achieving, measuring and distributing ongoing, beneficial productivity improvement to the parties.

The Agreement will also provide a framework for gaining the benefits available from the new strategic direction of the organisation and recent restructure, which involves significant expansion of the regional offices. These changes will require the re-engineering of business processes and change management, which will be facilitated by the Agreement.

4.—SCOPE

The Agreement shall apply to all officers in the Aboriginal Affairs Department employed pursuant to the Public Sector Management Act 1994. As at date of registration approximately 125 employees could be covered by this Agreement.

5.—PARTIES TO AGREEMENT

This Agreement shall be binding according to its terms upon—

(1) The Civil Service Association of Western Australia (Inc);

and

(2) Aboriginal Affairs Department.

6.—DEFINITIONS

In this Agreement the following expressions shall have the following meanings—

(1) "Agreement" means Aboriginal Affairs Department Enterprise Bargaining Agreement 1998.

(2) "Casual Employee" means an Employee who is employed on the basis that—

(a) the employment is casual; and

(b) there is no entitlement to paid leave, and who is informed of those conditions of employment before he or she is engaged.

(3) "CSA" means the Civil Service Association of Western Australia (Inc).

(4) "Department" or "AAD" means the Aboriginal Affairs Department.

(5) "Employer" means the Employer of Aboriginal Affairs Department, or the person acting as the Employer or person having the delegated authority of the Employer.

(6) "Employee" means someone employed under the Public Sector Management Act 1994.

(7) "Minister" means the Minister for Aboriginal Affairs.

(8) "Parties" means the Employer and CSA when referred to jointly in these terms and conditions.

(9) "Part time Employee" means an Employee in regular and continuing employment for less than 37.5 hours per week a minimum of 15 hours per week and a maximum of 32 hours per week.

7.—PRODUCTIVITY INCREASE PAYMENTS

The Agreement allows for a salary increase of up to 8.2% for all staff. A 1.2% increase will be paid from the date of registration of the Agreement, reflecting the considerable productivity improvement associated with the staffing restructure to accommodate the expansion of the number of regional offices. An increase of up to 3.5% will be payable from the first pay period on or after twelve months from the date of registration of the Agreement, subject to meeting various targets as outlined in the Performance Measurement System at Schedule C of this Agreement. A further increase of up to 3.5% will be payable from the first pay period on or after twenty four months from the date of registration of the Agreement, subject to meeting various targets as outlined in the Performance Measurement System at Schedule C of this Agreement.

8.—DURATION AND RENEWAL OF AGREEMENT

(1) This Agreement shall operate from the date of registration in the Western Australian Industrial Relations Commission and shall remain in operation for a period of 30 months, provided discussion between the parties shall commence not later than six (6) months before the expiry date of this Agreement. This Agreement will continue in force after the expiry date until such time as it is replaced by another Agreement or either party notifies in writing that they do no want his Agreement to continue.

(2) This Agreement shall not be cancelled or varied during it's term, unless by agreement of the parties.

9.—RELATIONSHIP TO THE PARENT AWARD

(1) This Agreement shall be read and interpreted wholly in conjunction with the Public Service Award 1992.

(2) Where there is an inconsistency between this Agreement and the Award, this Agreement shall prevail to the extent of any inconsistency. The award shall apply where the Agreement is silent.

10.—OBJECTIVE AND VALUES

(1) The objective of the parties to this Agreement is to attain the mission of AAD "to achieve improved social, cultural and economic outcomes for Aboriginal people".

(2) To support this end the parties agree to apply the organisation's values and principles—

(a) We are committed to working towards a society which respects and values land, Aboriginal culture and heritage, recognises the diversity of Aboriginal people, and provides reconciliation, justice and equity for all.

(b) We are committed to the empowerment of aboriginal individuals, families and communities to choose how to live their own lives.

(c) We provide the best possible service to our customers by being responsive and focussing on efficient, practical, equitable and achievable outcomes.

(d) We treat each other and those with whom we deal openly, fairly, honestly and with respect.

(e) We are committed to the highest ethical standards with open, accountable and consistent decision-making.

(f) We are a learning organisation that can adapt quickly to changing priorities and circumstances and can learn from what we and others do.

11.—ORGANISATIONAL LEARNING AND CONTINUOUS IMPROVEMENT

(1) The Department has adopted the concept of a "learning organisation" which is based on the need for organisations to "work smarter" in order to keep pace with change and to survive in the future.

(2) As the Department becomes more knowledge-based it is important that it formally captures learning that occurs at the individual, team and organisational level.

(3) Within a learning organisation, training is integral to actual work, resulting as a by-product rather than something done in isolation.

(4) All organisations can learn and the Department will have its own style and way of learning. What is essential in adopting this approach, is that all staff have opportunities to have ownership and reflect on their learning experiences provided by or on behalf of the Department.

(5) Characteristics of a learning organisation include (but are not limited to)—

(a) encouraging staff to find better ways to solve problems;

(b) encouraging staff to implement solutions and reflect on experiences;

(c) sharing and learning with and from others;

(d) using experienced staff to conduct training;

(e) providing a workplace that encourages, rewards and develops individual and team learning;

(f) a view that surprises, mistakes and failures are learning opportunities;

(g) a desire for continuous improvement; and

(h) opportunities for open communication.

(6) Organisational learning encourages managers and employees to search for a better way, identify and implement solutions, reflect on experiences, review outcomes, make adjustments and share information and ideas with others.

(7) An important element of organisational learning and continuous improvement is training. All new employees will be required to undertake induction training.

(8) To ensure that continuous improvement is integrated as an integral part of the learning approach, careful monitoring and review will be carried out through the Performance Management System (see the next section on Measuring Productivity) and through formal evaluation processes.

(9) The Department has also developed a new Employee Performance Plan that can be clearly linked with organisational outputs. This is process for planning, monitoring, reviewing, rewarding and developing employee performance through systematically linking the needs of individuals and the objectives of the organisation. All employees and managers will be required to participate in the Employee Performance Planning and Review process.

(10) This framework provides an opportunity for employees and their supervisors to engage in positive, productive and constructive discussion on job roles, workload priorities, performance expectations and development needs.

12.—MEASURING PRODUCTIVITY

(1) The parties intend to pursue future productivity through the implementation and ongoing refinement of the Performance Measurement System. Schedule C of this Agreement provides more detail on this specific approach to measuring productivity.

(2) The measures and targets contained in the Performance Measurement System will be reviewed annually and if required, new targets and measures will be inserted into the Performance Measurement System to reflect the relevant key budget outputs as presented to Treasury.

(3) The introduction of the Performance Measurement System represents a fundamental shift in the way the performance of the Department will be measured in order to determine salary increases payable through workplace and enterprise bargaining agreements. Instead of just paying for implementing strategies, the System measures the impact of the Department's strategies on the outcome and the outputs (or output groups) of the organisation.

(4) The outcome and the outputs are similar to those contained in the Department's Budget Statements and in this way the System links with the financial performance of the organisation.

(5) Measures reflecting quantity, quality, timeliness and cost have been developed for each key output. In this way the measures comprehensively cover the main areas of the Department.

(6) In addition, the Performance Measurement System measures both external and internal performance. The external measures are of primary interest to stakeholders external to the Department such as the Minister, Aboriginal communities, forums and other Government agencies. Internal measures assist managers to assess the performance of the internal processes of the organisation.

(7) Individual performance is closely linked with the performance of the organisation as a whole. Therefore, all employees and managers are committed to the Performance Planning and Review process. This is a process for planning, monitoring, reviewing, rewarding and developing employee performance through systematically linking the needs of individuals and the objectives of the organisation.

13.—CUSTOMER SERVICE

The parties agree to develop and apply a set of customer service standards. These standards will include but not be limited to—

(1) access arrangements that ensure services are available at times which best suit customers;

(2) arrangements to ensure continuous contact of staff at all times;

(3) setting and reviewing time-lines for responding to written enquiries;

(4) setting and reviewing standards for handling verbal (face to face or by phone contact);

(5) making sure customers are treated with courtesy and consideration and by friendly and interested staff; and

(6) making sure staff are sensitive to, and skilled to, serve people of different cultural backgrounds.

14.—SALARY

The Employee will be paid from the Salary Scale of Schedule A or B according to the classification of the position and the choice of either a 37.5 or 40 hour week.

15.—SALARY PACKAGING

(1) An employee may, by agreement with the employer, enter into a salary packaging arrangement in accordance with the "Aboriginal Affairs Department, Western Australia—Flexible Remuneration Packaging Policy" amended as required, currently in place at the Aboriginal Affairs Department or any similar packaging arrangements offered by the employer.

(2) Salary packaging is an arrangement whereby the entitlements under this Agreement, contributing toward the Total Employment Cost (as defined) of an employee, can be reduced by and substituted with another, or other benefits.

(3) For the purposes of this clause, Total Employment Cost is defined as the cost of salary and other benefits aggregated to a total figure or TEC, less the cost of Compulsory Employer Superannuation Guarantee contributions.

(4) The TEC for the purposes of salary packaging, is calculated by adding—

(a) the base salary;

(b) other cash allowances, eg annual leave loading,

(c) non cash benefits, eg superannuation, motor vehicles etc;

(d) any Fringe Benefit Tax liabilities currently paid; and

(e) any variable components, eg performance based incentives (where they exist).

(5) Where an employee enters into a salary packaging arrangement they will be required to enter into a separate written agreement with the employer that sets out the terms and conditions of the arrangement.

(6) The salary packaging arrangement must be cost neutral in relation to the total cost to the employer.

(7) The salary packaging arrangement must comply with relevant taxation laws and the employer will not be liable for additional tax, penalties or other costs payable or which may become payable by the employee.

(8) In the event of any increase or additional payments of tax or penalties associated with the employment of the employee or the provision of employer benefits under the salary packaging agreement, such tax. penalties and any other costs shall be borne by the employee.

(9) In the event of significant increases in Fringe Benefit Tax liability or administrative costs relating to arrangements under this clause, the employee may vary or cancel a salary packaging arrangement.

(10) The cancellation of salary packaging will not cancel or otherwise affect the operation of this Agreement.

(11) An employer shall not unreasonably withhold agreement to salary packaging on request from an employee.

(12) The Dispute Settlement Procedures contained in this Agreement shall be used to resolve any dispute arising from the operations of this clause. Where such a dispute is not resolved, the matter may be referred by either party to the Western Australian Industrial Relations Commission.

16.—REPAYMENT OF OVERPAYMENTS

(1) Any legally recoverable salary overpayments will be repaid to the Employer within a reasonable period of time as agreed between the Employer and the Employee.

(2) If agreement cannot be reached with regard to a repayment schedule, the Employer may deduct the amount of overpayment over the same length of time that the

overpayments occurred, or up to three months, whichever period is the lesser.

(3) The employer may not deduct or require an Employee to repay an amount exceeding 20% of the Employee's nett pay in any one period.

(4) Where it is agreed that an overpayment is through no fault of the Employee or due to mitigating circumstances, the Chief Executive Officer or delegate may allow an extended period for the payment or overpayments.

17.—CONDITIONS OF EMPLOYMENT

(1) Annual Increments

The Department will apply the conditions contained in Clause 12.—Annual Increments of the Public Service Award 1992 with changes as follows—

(a) An Employee who is on the maximum step of their salary range or due an annual increment will participate in a performance review. This will occur during the period 1 August to 31 August of each calendar year.

(b) The relevant manager or Supervisor shall, between the period 1 August to 31 August of each calendar year arrange for a review, for the purposes of providing feedback and assessing the Employee's performance. Where agreed outcomes have been achieved to a satisfactory standard, the Employer shall approve an increase in salary effective from 1 October and paid from the first pay period in October.

(c) Employees who are eligible for a Higher Duties Allowance according to Sub Clause 16.9 of this Agreement are also subject to a performance review between 1 August and 31 August each year. Where an employee has been undertaking higher duties for a continuous period of at least six months, continues to be on higher duties and agreed outcomes have been achieved to a satisfactory standard, the Employer shall approve an increase in salary effective from 1 October and paid from the first pay period in October.

(d) An Employee who commences with the Department between 1 April and 30 September each year shall not be entitled to receive payment of an increment until October of the following year.

(e) An Employee who has a period of unpaid leave greater than six months in the twelve months preceding the increment date of 1 October will not be entitled to the incremental increase.

(f) The Employer may accelerate progress through a salary range where an employee's contribution towards agreed outcomes is outstanding. However, employees whose performance is assessed as unsatisfactory may be regressed down the increment scale.

(2) Annual Leave

The Department will apply the conditions contained in Clause 19.—Annual Leave of the Public Service Award 1992 which relates to annual leave with changes to—

(a) Pay Out of Leave

If the Employee applies to receive payments rather than taking periods of accrued annual leave such application may be approved, subject to the following—

(i) 10 days accrued leave must be taken in a calendar year for any application to be approved; and

(ii) payment in lieu of leave will not exceed the equivalent of 4 weeks leave in any one calendar year.

(b) Travel Concession

(i) Employees who have served for a year north of 26o south latitude shall receive a travel concession to a maximum of the equivalent of the cost of a return economy airfare to Perth for themselves and dependants. The concession can be used to travel to any destination.

(ii) The entitlement is for one travel concession each year to be taken in conjunction with annual leave. The full cost of the concession must also be reimbursed if the trip is cancelled.

(iii) This entitlement is not accumulative or transferable. Travel concessions not utilised within twelve months of becoming due will lapse. However, within twelve months of the entitlement to a travel concession becoming due an employee may apply to have the concession paid out in cash. The payment will be at the 21 Day Advance Purchase rate for a return airfare to Perth applicable at the time the payment is made and will not exceed payment for two adults and two children. The payment of the concession in cash is subject to the approval of the employer who will take into account factors such as the financial position of the Department.

(iv) Part time officers are entitled to travel concessions on a pro rata basis according to the usual number of hours worked per week and travelling time on a pro rata basis according to the number of hours worked.

(v) All other entitlements and conditions in respect of the Travel Concession are as outlined in the Department's Human Resource Policy on Travel Concessions which is available on Intranet.

(c) Leave Loading

(i) Leave loading will be paid in a lump sum payment in the first pay period in December each calendar year in accordance with Schedule A or B. Part time employees will receive a pro rata amount based on the number of hours worked in proportion to full-time hours.

(ii) A loading equivalent to 17.5% of annual salary is payable, to employees, on annual leave accrued during that calendar year.

(iii) Maximum payment shall not exceed the "Average Weekly Total Earnings of all Males in Western Australia', as published by the Australian Bureau of Statistics, for the September quarter of the year immediately preceding that in which the leave commences.

(iv) At the time of loading payment, if an employee has been undertaking higher duties for a continuous period of at least six months and continues to be on higher duties, the lump sum will be paid at the rate corresponding to the classification level at which the employee is acting at the time of payment for the full 12 months entitlement.

(v) Employees who resign prior to December 31 of any calendar year shall not be entitled to a pro rata payment for leave loading.

(3) Part Time Employment

The Department will apply the conditions in Clause 9.—Part Time Employment of the Public Service Award 1992 which relates to part time employment except for subclause (1)(a) and (b) where the following will apply—

Permanent part time employment is defined as regular and continuing employment for less than 37.5 hours per week.

(4) Bereavement Leave

(a) An Employee shall be entitled to be paid bereavement leave for up to two days per calendar year on the death of the Employee's spouse, child, stepchild, parent, brother, sister, grandparent, parent in law, step parent or any other of the Employee's identified significant extended family.

(b) Clause 26.—Short Leave of the Public Service Award is replaced by this clause and is no longer applicable.

(5) Cultural/Ceremonial Leave

(a) An Employee who is required to absent themselves from work for cultural/ceremonial purposes shall be entitled to take a total of five (5) days annual leave together with a maximum of five (5) days unpaid leave in any calendar year.

(b) Cultural/ceremonial leave will include leave to meet the Employee's customs, traditional law and to participate in ceremonial activities.

(c) Cultural/ceremonial leave shall be available, but not limited to, Aboriginal and Torres Strait Islanders.

(6) Sick Leave

The Department will apply the conditions in Clause 22.—Sick Leave of the Public Service Award 1992 which relates to sick leave, except for subclause (1)(a) where the following will apply—

(a) The Employer shall credit each Employee with the following sick leave credits, which shall be cumulative—

Year 1
- on the day of the initial appointment
  employees on 40 hr wk: 48 hrs
  employees on 37.5 hr wk: 45 hrs
- on the completion of 6 months continuous service
  employees on 40 hr wk: 52 hrs
  employees on 37.5 hr wk: 48.75 hrs

Year 2
- on the completion of 12 months continuous service
  employees on 40 hr wk: 100 hrs
  employees on 37.5 hr wk: 93.75 hrs
- on the completion of each further period of 12 months continuous service
  employees on 40 hr wk: 100 hrs
  employees on 37.5 hr wk: 93.75 hrs

(b) Employees transferring to the Department from another Western Australian Government department or public authority and who transfer existing sick leave credits will retain their original anniversary date for crediting sick leave. Employees transferring from another State or Commonwealth Government department or public authority may transfer existing sick leave credits although their anniversary date for crediting sick leave will become the date of commencement with the Department.

(7) Carer's Leave

Allow an Employee to utilise up to 5 days of their accumulated sick leave entitlement per year to care for a sick member of their family. In such cases, an application for sick leave exceeding two consecutive working days shall be supported by the certificate of a registered medical practitioner or, if appropriate, a registered dentist.

(8) Parental Leave

In addition to the provisions of Clause 23.—Maternity Leave of the Public Service Award 1992 which deals with maternity leave, an Employee is entitled to unpaid parental leave in accordance with the following—

(a) a maximum of 52 consecutive weeks parental leave is available to all employees who will give birth to a child or whose spouse is due to give birth, or in respect of the adoption of a child;

(b) Employees are to provide a minimum of 10 weeks written notice of their intention to take parental leave, where possible;

(c) applications for parental leave, other than for adoption are to be supported by a medical certificate indicating the expected date of birth of the child; and

(d) a fixed term contract staff member will not be granted parental leave for any period beyond their period of engagement.

(9) Long Service Leave

The Department will apply the conditions contained in Clause 21 of the Public Service Award 1992 with changes to—

(a) Each employee who has completed seven years continuous service shall be entitled to—

13 weeks of long service leave on full pay.

(b) An employee may apply to take this entitlement as—

(i) 26 weeks long service leave on half pay; or

(ii) 6.5 weeks of long service leave on double pay,

subject to the approval of the Employer.

(c) An employee shall take periods of long service leave in multiples of five (5) days, subject to minimum of ten (10) days for each application.

(d) An employee may receive payment for accrued long service leave entitlements instead of taking the leave. However, payment is subject to the approval of the employer who will take into consideration factors such as the capacity of the Department to pay. The amount of payment will be the dollar value of the leave had it been taken at the time the payment is received. The salary rates to be applied are as per Schedule A—Schedule of Salaries—37.5 Hour Week and Schedule B—Schedule of Salaries—40 Hour Week of this Agreement.

(10) Higher Duties Allowance

The Department will apply the conditions contained in Clause 14.—Higher Duties Allowance of the Public Service Award 1992 which relates to higher duties allowance, however, the following will override the provisions contained in that clause—

(a) higher duties allowance will only be paid where an Employee is required to perform the duties of a higher office for a continuous period of 10 days or more;

(b) on registration of this agreement an Employee who acts in a position for the first time will not be entitled to the incremental range of salaries, however, on promotion recognition will be given to acting at the higher level; and

(c) Employees who act in a position on second or subsequent occasions for a continuous period of at least six months are eligible for increments to be paid from the first pay period in October subject to a performance review as per Sub Clause 16.1—Annual Increments of this Agreement.

(11) Hours of Duty

The Department will apply the conditions contained in Clause 16.—Hours of the Public Service Award 1992 which relates to hours with changes to—

(a) Public Contact

The Department will be open to the public between the hours of 8.00am and 5.00pm, Monday to Friday. The Employer reserves the right to negotiate the amendment of the operational hours for specific employees to suit business requirements and customer needs.

(b) Prescribed Hours of Duty

(i) Employees will have a choice in the prescribed hours of duty. An Employee may select to work either a 37.5 or 40 hour week in accordance with the amended Flexi Time periods.

(ii) At the commencement of this Agreement, and for a thirty day period after that date, employees may elect to work either a 37.5 or a 40 hour week.

(iii) After the completion of the thirty day period, employees may not vary their hours of duty (other than through the Flexi Time arrangements operating in this Agreement) unless by agreement.

(c) Flexi Time Periods

(i) Subject to the agreement of the Manager, an Employee may select their own starting and finishing time, between the hours of 6:00am to 10:00pm, 7 days a week. A minimum half an hour meal break must apply. A maximum of 12 hours may be worked in any day unless otherwise approved by the Chief Executive Officer.

(ii) All employees will be required to record their hours worked in accordance with departmental policy.

(iii) All employees have access to flexi leave subject to operational requirements. Those employees who wish to work under the flexi leave arrangements will be required to record their hours worked, including Level 6 and above.

(d) Credit Hours

(i) Credit hours in excess of the required 160 or 150 hours to a maximum of 16 hours (40 hour week) or 15 hours (37.5 hour week) are permitted at the end of each settlement period. Such credit hours shall be carried forward to the next settlement period;

(ii) Credit hours in excess of the above at the end of a settlement period shall be lost and credit hours at any point within the settlement period shall not exceed 20 hours.

(12) Overtime

The Department will apply the conditions contained in Clause 18.—Overtime Allowance of the Public Service Award 1992 which relates to overtime with the following changes—

(a) only employees classified between Levels 1 to 5 shall be entitled to overtime;

(b) by agreement, where an employee is directed to work outside of the prescribed hours of duty (40 hours or 37.5 hours) as specified in "Hours of Duty" a standard overtime rate of 1.5 times will apply; and

(c) where the employee agrees time off in lieu of overtime can be taken instead of payment at the overtime rate of 1.5 ie 1.5 hours of time off for each hour of overtime.

(13) Public Holidays

The provisions of Clause 20—Public Holidays of the Public Service Award 1992 will apply with the exception of Clause 20(1)(b) which relates to the Public Service holidays at New Year and Easter. The Public Service holidays and any days substituted for them, will not be allowed as holidays for the employee under the Agreement.

(14) Travel and Relieving Allowance

The provisions of Clause 42.—Travelling Allowance of the Public Service Award 1992 which relates to travel and relieving allowance have been changed to—

(a) An Employee will be reimbursed for actual expenses incurred while carrying out official business. Actual expenses which will be reimbursed are: cost of using their own motor vehicle for use on official business, staying overnight at a destination other than their normal residence and relieving or being transferred to a regional office (or visa versa) at the direction of the Department. In these situations actual costs incurred will be reimbursed on the production of receipts.

(b) Employees will also be paid $5 for each full day away to meet incidental expenses. Receipts will not be required. No part-day costs will be met. For the purposes of this clause, a full day is defined as 24 hours for employees away from their headquarters. Claims in excess of this amount will not be paid without production of receipts.

(c) The actual cost of meals will be reimbursed on the production of receipts. However, reimbursement will not exceed the rates contained in Schedule I of the Public Service Award, 1992, as amended.

(d) The reimbursement of costs will not be paid if the costs incurred are unreasonable and not related to official duties. Unreasonable costs could include costs which are excessively high in comparison with alternative prices available.

(e) Subject to the approval of the Director or Assistant Director, an Employee will be entitled to an advance of up to 80% on total estimated travel costs.

(f) As soon as practicable after returning from a business trip, an Employee must produce receipts of expenditure and provide a detailed written report for his/her manager on the outcomes of the meetings, seminars, conferences etc attended.

(15) Removal Allowance

The Department will apply the conditions contained in Clause 39.—Removal Allowance of the Public Service Award 1992 which relates to removal allowance with the following changes—

(a) Where an Employee is required to move his/her household items and/or family outside of the metropolitan area or its surrounds, to take up employment with the Department or as a result of transfer within the Department, all reasonable expenses as provided for in this clause, after considering three quotes, will be paid by the Department. However, where such an Employee resigns from the Department within 12 months after commencing in the position which required the relocation, the Employee is liable to repay a portion determined by completed months of service, i.e. number of months not worked divided by twelve months x total cost of removal.

(b) All reasonable expenses includes, but at the employer's discretion is not limited to—

(i) the actual reasonable cost of conveyance of the Officer and dependants;

(ii) the actual cost, including insurance, of the conveyance of up to 35 cubic metres of household furniture and appliances;

(iii) an allowance of $501 for depreciation;

(iv) transportation and kennelling of domestic pet/s up to a maximum of $134; and

(v) the actual reasonable freight cost of conveying the employee's motor vehicle.

(16) Camping Allowance

The following clause will replace clause 30 of the Award—

Where an Employee is required to stay overnight in a camp Employees will be reimbursed for actual, reasonable expenses plus an additional $25 per night.

18.—TELECOMMUTING

(1) Upon approval from the Employer, employees may work a portion of their prescribed hours of duty from home. The following factors are to be assessed in considering any such requests—

(a) impact for other staff;

(b) impact for the client(s);

(c) proposed arrangements to monitor work; and

(d) proposed availability and contact arrangements.

(2) Where the Employer is satisfied that telecommuting will not have an unfavourable effect, the request may be approved subject to the employee—

(a) providing and demonstrating an appropriate work environment (home office);

(b) providing their own personal computer compatible with a standard Departmental configuration;

(c) using their own telephone system for official calls at personal expense (excluding STD charges for work related calls);

(d) maintaining and insuring home office equipment; and

(e) commuting to the office when needed during own time and at personal expense.

(3) The Employer will be responsible for—

(a) undertaking a site assessment;

(b) worker's compensation cover for the area defined as home office;

(c) installation and upgrade of approved computer software;

(d) providing a modem; and

(e) installation of additional telephone line for network connection and payment of rental fees.

19.—OPTION OF 48 WEEK'S PAY OVER 52 WEEKS

By agreement, an employee may opt to receive 48 weeks of pay spread over the full 52 weeks of the year, whereby the Employee will take eight (8) weeks leave per year instead of 4 weeks.

The additional four (4) weeks will not be able to be accrued. In the event that the Employee is unable to take such leave, his/her salary will be adjusted at the completion of the 12 month period to take account of the fact that time worked during the year was not included in the salary.

In deciding on whether to approve the 48 weeks pay over 52 weeks arrangement for a particular Employee, the Employer will take into account factors such as the operational requirements of the Department and the accrued leave entitlements of the Employee.

20.—DISPUTE RESOLUTION PROCEDURE

In the event of any questions, disputes or difficulties arising out of the operation of 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 five (5) working days following the discussion in accordance with subclause 1 of this clause, the matter shall be referred by the Union representative to the Chief Executive Officer or his/her nominee for resolution.

(3) If the matter is not resolved within five (5) working days of the Union representative's notification of the dispute to Aboriginal Affairs Department it may be referred by either party to the Western Australian Industrial Relations Commission. Provided that it is required that persons involved in the question, dispute or difficulty shall confer among themselves and make reasonable attempts to resolve questions, disputes or difficulties before taking those matters to the Industrial Relations Commission.

21.—CONSULTATIVE MECHANISM

(1) The Department and the CSA agree to consult on matters that have a significant impact on organisational arrangements.

(2) Significant effects includes but is not limited to redundancy, significant changes in the composition, operation or size of the Employer's workforce.

(3) The Department and the CSA Delegates shall agree to establish the Staff Delegates Committee which will meet on a regular basis to discuss organisational matters.

22.—NO FURTHER CLAIMS

The parties to this Agreement undertake that for the duration of the Agreement there shall be no further salary increases sought or granted except for those provided under the terms of the Agreement.

23.—RE-OPEN NEGOTIATIONS

The parties undertake to re-open negotiations at least six (6) months prior to the expiry of the period of this Agreement with a view to negotiating and settling any replacement Agreement.

SCHEDULE A—SCHEDULE OF SALARIES—37.5 HOUR WEEK—ANNUAL SCALES

LEVEL	BASE SALARY	COLUMN 1 ANNUAL WITH 1.2% From date of signing	COLUMN 2 ANNUAL WITH 3.5% From 12 mths after regis (a)	COLUMN 3 ANNUAL WITH 3.5% From 24 mths after regis (a)	COLUMN 4 1999 LUMP SUM PAYMENT LL-Dec	COLUMN 5 2000 LUMP SUM PAYMENT LL-Dec	COLUMN 6 2001 LUMP SUM PAYMENT LL-Dec
	$	$	$	$	$	$	$
U/17yrs	11,994	12,138	12,563	13,002	162.87	168.57	174.47
17 yrs	14,017	14,185	14,682	15,196	190.34	197.01	203.90
18 yrs	16,351	16,547	17,126	17,726	222.04	229.81	237.85
19 yrs	18,926	19,153	19,823	20,517	257.01	266.00	275.31
20 yrs	21,254	21,509	22,262	23,041	288.62	298.72	309.18
1.1	23,348	23,628	24,455	25,311	317.06	328.15	339.64
1.2	24,067	24,356	25,208	26,091	326.82	338.26	350.10
1.3	24,785	25,082	25,960	26,869	336.57	348.35	360.54
1.4	25,499	25,805	26,708	27,643	346.27	358.38	370.93
1.5	26,217	26,532	27,460	28,421	356.02	368.48	381.37
1.6	26,935	27,258	28,212	29,200	365.77	378.57	391.82
1.7	27,761	28,094	29,077	30,095	376.98	390.18	403.83
1.8	28,333	28,673	29,677	30,715	384.75	398.22	412.15
1.9	29,178	29,528	30,562	31,631	396.22	410.09	424.45
LEVEL 2							
2.1	30,189	30,551	31,621	32,727	409.95	424.30	439.15
2.2	30,965	31,337	32,433	33,569	420.49	435.21	450.44
2.3	31,780	32,161	33,287	34,452	431.56	446.66	462.30
2.4	32,642	33,034	34,190	35,387	443.26	458.78	474.84
2.5	33,543	33,946	35,134	36,363	455.50	471.44	487.94
LEVEL 3							
3.1	34,782	35,199	36,431	37,706	472.32	488.86	505.97
3.2	35,747	36,176	37,442	38,753	485.43	502.42	520.00
3.3	36,742	37,183	38,484	39,831	498.94	516.40	534.48
3.4	37,763	38,216	39,554	40,938	512.80	530.75	549.33
LEVEL 4							
4.1	39,164	39,634	41,021	42,457	531.83	550.44	569.71
4.2	40,262	40,745	42,171	43,647	546.74	565.88	585.68
4.3	41,392	41,889	43,355	44,872	562.08	581.76	602.12
LEVEL 5							
5.1	43,567	44,090	45,633	47,230	591.62	612.33	633.76
5.2	45,037	45,577	47,173	48,824	611.58	632.99	655.14
5.3	46,565	47,124	48,773	50,480	632.33	654.46	677.37
5.4	48,151	48,729	50,434	52,200	653.87	676.75	700.44

SCHEDULE A—SCHEDULE OF SALARIES—37.5 HOUR WEEK—ANNUAL SCALES—*continued*

LEVEL	BASE SALARY	COLUMN 1 ANNUAL WITH 1.2% From date of signing	COLUMN 2 ANNUAL WITH 3.5% From 12 mths after regis (a)	COLUMN 3 ANNUAL WITH 3.5% From 24 mths after regis (a)	COLUMN 4 1999 LUMP SUM PAYMENT LL-Dec	COLUMN 5 2000 LUMP SUM PAYMENT LL-Dec	COLUMN 6 2001 LUMP SUM PAYMENT LL-Dec
	$	$	$	$	$	$	$
LEVEL 6							
6.1	50,700	51,308	53,104	54,963	688.48	712.58	737.52
6.2	52,433	53,062	54,919	56,842	712.02	736.94	746.40
6.3	54,227	54,878	56,798	58,786	736.38	746.40	746.40
6.4	56,142	56,816	58,804	60,862	746.40	746.40	746.40
LEVEL 7							
7.1	59,078	59,787	61,879	64,045	746.40	746.40	746.40
7.2	61,110	61,843	64,008	66,248	746.40	746.40	746.40
7.3	63,321	64,081	66,324	68,645	746.40	746.40	746.40
LEVEL 8							
8.1	66,914	67,717	70,087	72,540	746.40	746.40	746.40
8.2	69,487	70,321	72,782	75,329	746.40	746.40	746.40
8.3	72,679	73,551	76,125	78,790	746.40	746.40	746.40
LEVEL 9							
9.1	76,664	77,584	80,299	83,110	746.40	746.40	746.40
9.2	79,357	80,309	83,120	86,029	746.40	746.40	746.40
9.3	82,428	83,417	86,337	89,359	746.40	746.40	746.40
CLASS 1	87,072	88,117	91,201	94,393	746.40	746.40	746.40
CLASS 2	91,716	92,817	96,065	99,427	746.40	746.40	746.40
CLASS 3	96,358	97,514	100,927	104,460	746.40	746.40	746.40
CLASS 4	101,003	102,215	105,793	109,495	746.40	746.40	746.40

(a) Up to 3.5% will be paid from the first pay period on or after the specified dates, subject to meeting various targets as outlined in the Performance Measurement System at Schedule C—Performance Measurement System of this Agreement.

SCHEDULE B—SCHEDULE OF SALARIES—40 HOUR WEEK—ANNUAL SCALES

LEVEL	BASE SALARY	COLUMN 1 ANNUAL WITH 1.2% From date of signing	COLUMN 2 ANNUAL WITH 3.5% From 12 mths after regis (a)	COLUMN 3 ANNUAL WITH 3.5% From 24 mths after regis (a)	COLUMN 4 1999 LUMP SUM PAYMENT LL-Dec	COLUMN 5 2000 LUMP SUM PAYMENT LL-Dec	COLUMN 6 2001 LUMP SUM PAYMENT LL-Dec
	$	$	$	$	$	$	$
U/17yrs	12,543	12,694	13,138	13,598	170.33	176.29	182.46
17 yrs	14,658	14,834	15,353	15,890	199.05	206.02	213.23
18 yrs	17,098	17,303	17,909	18,536	232.18	240.31	248.72
19 yrs	19,792	20,030	20,731	21,456	268.77	278.17	287.91
20 yrs	22,226	22,493	23,280	24,095	301.82	312.38	323.32
1.1	24,415	24,708	25,573	26,468	331.54	343.15	355.16
1.2	25,167	25,469	26,360	27,283	341.76	353.72	366.10
1.3	25,918	26,229	27,147	28,097	351.95	364.27	377.02
1.4	26,665	26,985	27,929	28,907	362.10	374.77	387.89
1.5	27,415	27,744	28,715	29,720	372.28	385.31	398.80
1.6	28,166	28,504	29,502	30,534	382.48	395.87	409.72
1.7	29,030	29,378	30,407	31,471	394.21	408.01	422.29
1.8	29,628	29,984	31,033	32,119	402.33	416.42	430.99
1.9	30,512	30,878	31,959	33,077	414.34	428.84	443.85
LEVEL 2							
2.1	31,569	31,948	33,066	34,223	428.69	443.70	459.23
2.2	32,380	32,769	33,915	35,103	439.71	455.10	471.02
2.3	33,233	33,632	34,809	36,027	451.29	467.08	483.43
2.4	34,134	34,544	35,753	37,004	463.52	479.75	496.54
2.5	35,076	35,497	36,739	38,025	476.32	492.99	510.24
LEVEL 3							
3.1	36,372	36,808	38,097	39,430	493.92	511.20	529.09
3.2	37,381	37,830	39,154	40,524	507.62	525.38	543.77
3.3	38,422	38,883	40,244	41,653	521.75	540.01	558.92
3.4	39,490	39,964	41,363	42,810	536.26	555.03	574.45
LEVEL 4							
4.1	40,955	41,446	42,897	44,398	556.15	575.62	595.76
4.2	42,103	42,608	44,100	45,643	571.74	591.75	612.46
4.3	43,284	43,803	45,337	46,923	587.78	608.35	629.64
LEVEL 5							
5.1	45,559	46,106	47,719	49,390	618.67	640.32	662.74
5.2	47,096	47,661	49,329	51,056	639.54	661.93	685.09
5.3	48,694	49,278	51,003	52,788	661.24	684.39	708.34
5.4	50,352	50,956	52,740	54,586	683.76	707.69	732.46

SCHEDULE B—SCHEDULE OF SALARIES—40 HOUR WEEK—ANNUAL SCALES—*continued*

LEVEL	BASE SALARY	COLUMN 1 ANNUAL WITH 1.2% From date of signing	COLUMN 2 ANNUAL WITH 3.5% From 12 mths after regis (a)	COLUMN 3 ANNUAL WITH 3.5% From 24 mths after regis (a)	COLUMN 4 1999 LUMP SUM PAYMENT LL-Dec	COLUMN 5 2000 LUMP SUM PAYMENT LL-Dec	COLUMN 6 2001 LUMP SUM PAYMENT LL-Dec
	$	$	$	$	$	$	$
LEVEL 6							
6.1	53,018	53,654	55,532	57,476	719.96	745.16	746.40
6.2	54,830	55,488	57,430	59,440	744.57	746.40	746.40
6.3	56,705	57,385	59,394	61,473	746.40	746.40	746.40
6.4	58,708	59,412	61,492	63,644	746.40	746.40	746.40
LEVEL 7							
7.1	61,779	62,520	64,709	66,973	746.40	746.40	746.40
7.2	63,904	64,671	66,934	69,277	746.40	746.40	746.40
7.3	66,215	67,010	69,355	71,782	746.40	746.40	746.40
LEVEL 8							
8.1	69,973	70,813	73,291	75,856	746.40	746.40	746.40
8.2	72,664	73,536	76,110	78,774	746.40	746.40	746.40
8.3	76,001	76,913	79,605	82,391	746.40	746.40	746.40
LEVEL 9							
9.1	80,169	81,131	83,971	86,910	746.40	746.40	746.40
9.2	82,985	83,981	86,920	89,962	746.40	746.40	746.40
9.3	86,196	87,230	90,283	93,443	746.40	746.40	746.40
CLASS 1	91,053	92,146	95,371	98,709	746.40	746.40	746.40
CLASS 2	95,909	97,060	100,457	103,973	746.40	746.40	746.40
CLASS 3	100,763	101,972	105,541	109,235	746.40	746.40	746.40
CLASS 4	105,620	106,887	110,629	114,500	746.40	746.40	746.40

(a) Up to 3.5% will be paid from the first pay period on or after the specified dates, subject to meeting various targets as outlined in the Performance Measurement System at Schedule C of this Agreement.

SCHEDULE A(I)—SCHEDULE OF SALARIES—37.5 HOUR WEEK—SPECIFIED CALLINGS—ANNUAL SCALES

LEVEL	BASE SALARY	COLUMN 1 ANNUAL WITH 1.2% From date of signing	COLUMN 2 ANNUAL WITH 3.5% From 12 mths after regis (a)	COLUMN 3 ANNUAL WITH 3.5% From 24 mths after regis (a)	COLUMN 4 1999 LUMP SUM PAYMENT LL-Dec	COLUMN 5 2000 LUMP SUM PAYMENT LL-Dec	COLUMN 6 2001 LUMP SUM PAYMENT LL-Dec
	$	$	$	$	$	$	$
LEVEL 2/4							
1st	30,189	30,551	31,621	32,727	409.95	424.30	439.15
2nd	31,780	32,161	33,287	34,452	431.56	446.66	462.30
3rd	33,543	33,946	35,134	36,363	455.50	471.44	487.94
4th	35,747	36,176	37,442	38,753	485.43	502.42	520.00
5th	39,164	39,634	41,021	42,457	531.83	550.44	569.71
6th	41,392	41,889	43,355	44,872	562.08	581.76	602.12
LEVEL 5							
5.1	43,567	44,090	45,633	47,230	591.62	612.33	633.76
5.2	45,037	45,577	47,173	48,824	611.58	632.99	655.14
5.3	46,565	47,124	48,773	50,480	632.33	654.46	677.37
5.4	48,151	48,729	50,434	52,200	653.87	676.75	700.44
LEVEL 6							
6.1	50,700	51,308	53,104	54,963	688.48	712.58	737.52
6.2	52,433	53,062	54,919	56,842	712.02	736.94	746.40
6.3	54,227	54,878	56,798	58,786	736.38	746.40	746.40
6.4	56,142	56,816	58,804	60,862	746.40	746.40	746.40
LEVEL 7							
7.1	59,078	59,787	61,879	64,045	746.40	746.40	746.40
7.2	61,110	61,843	64,008	66,248	746.40	746.40	746.40
7.3	63,321	64,081	66,324	68,645	746.40	746.40	746.40
LEVEL 8							
8.1	66,914	67,717	70,087	72,540	746.40	746.40	746.40
8.2	69,487	70,321	72,782	75,329	746.40	746.40	746.40
8.3	72,679	73,551	76,125	78,790	746.40	746.40	746.40
LEVEL 9							
9.1	76,664	77,584	80,299	83,110	746.40	746.40	746.40
9.2	79,357	80,309	83,120	86,029	746.40	746.40	746.40
9.3	82,428	83,417	86,337	89,359	746.40	746.40	746.40
CLASS 1	87,072	88,117	91,201	94,393	746.40	746.40	746.40
CLASS 2	91,716	92,817	96,065	99,427	746.40	746.40	746.40

SCHEDULE A(I)—SCHEDULE OF SALARIES—37.5 HOUR WEEK—SPECIFIED CALLINGS—ANNUAL SCALES—*continued*

LEVEL	BASE SALARY	COLUMN 1 ANNUAL WITH 1.2% From date of signing	COLUMN 2 ANNUAL WITH 3.5% From 12 mths after regis (a)	COLUMN 3 ANNUAL WITH 3.5% From 24 mths after regis (a)	COLUMN 4 1999 LUMP SUM PAYMENT LL-Dec	COLUMN 5 2000 LUMP SUM PAYMENT LL-Dec	COLUMN 6 2001 LUMP SUM PAYMENT LL-Dec
	$	$	$	$	$	$	$
CLASS 3	96,358	97,514	100,927	104,460	746.40	746.40	746.40
CLASS 4	101,003	102,215	105,793	109,495	746.40	746.40	746.40

(a) Up to 3.5% will be paid from the first pay period on or after the specified dates, subject to meeting various targets as outlined in the Performance Measurement System at Schedule C of this Agreement.

SCHEDULE B(I)—SCHEDULE OF SALARIES—40 HOUR WEEK—SPECIFIED CALLINGS—ANNUAL SCALES

LEVEL	BASE SALARY	COLUMN 1 ANNUAL WITH 1.2% From date of signing	COLUMN 2 ANNUAL WITH 3.5% From 12 mths after regis (a)	COLUMN 3 ANNUAL WITH 3.5% From 24 mths after regis (a)	COLUMN 4 1999 LUMP SUM PAYMENT LL-Dec	COLUMN 5 2000 LUMP SUM PAYMENT LL-Dec	COLUMN 6 2001 LUMP SUM PAYMENT LL-Dec
	$	$	$	$	$	$	$
LEVEL 2/4							
1st	31,569	31,948	33,066	34,223	428.69	443.70	459.23
2nd	33,233	33,632	34,809	36,027	451.29	467.08	483.43
3rd	35,076	35,497	36,739	38,025	476.32	492.99	510.24
4th	37,381	37,830	39,154	40,524	507.62	525.38	543.77
5th	40,955	41,446	42,897	44,398	556.15	575.62	595.76
6th	43,284	43,803	45,337	46,923	587.78	608.35	629.64
LEVEL 5							
5.1	45,559	46,106	47,719	49,390	618.67	640.32	662.74
5.2	47,096	47,661	49,329	51,056	639.54	661.93	685.09
5.3	48,694	49,278	51,003	52,788	661.24	684.39	708.34
5.4	50,352	50,956	52,740	54,586	683.76	707.69	732.46
LEVEL 6							
6.1	53,018	53,654	55,532	57,476	719.96	745.16	746.40
6.2	54,830	55,488	57,430	59,440	744.57	746.40	746.40
6.3	56,705	57,385	59,394	61,473	746.40	746.40	746.40
6.4	58,708	59,412	61,492	63,644	746.40	746.40	746.40
LEVEL 7							
7.1	61,779	62,520	64,709	66,973	746.40	746.40	746.40
7.2	63,904	64,671	66,934	69,277	746.40	746.40	746.40
7.3	66,215	67,010	69,355	71,782	746.40	746.40	746.40
LEVEL 8							
8.1	69,973	70,813	73,291	75,856	746.40	746.40	746.40
8.2	72,664	73,536	76,110	78,774	746.40	746.40	746.40
8.3	76,001	76,913	79,605	82,391	746.40	746.40	746.40
LEVEL 9							
9.1	80,169	81,131	83,971	86,910	746.40	746.40	746.40
9.2	82,985	83,981	86,920	89,962	746.40	746.40	746.40
9.3	86,196	87,230	90,283	93,443	746.40	746.40	746.40
CLASS 1	91,053	92,146	95,371	98,709	746.40	746.40	746.40
CLASS 2	95,909	97,060	100,457	103,973	746.40	746.40	746.40
CLASS 3	100,763	101,972	105,541	109,235	746.40	746.40	746.40
CLASS 4	105,620	106,887	110,629	114,500	746.40	746.40	746.40

(a) Up to 3.5% will be paid from the first pay period on or after the specified dates, subject to meeting various targets as outlined in the Performance Measurement System at Schedule C of this Agreement.

SCHEDULE OF SALARIES—37.5 HOUR WEEK—FORTNIGHTLY SCALES

LEVEL	COLUMN 1 ANNUAL BASE SALARY	COLUMN 2 FORTNIGHT BASE SALARY	COLUMN 3 ANNUAL WITH 1.2% From date of regis (a)	COLUMN 4 FORTNIGHT WITH 1.2% From date of regis (a)	COLUMN 5 1999 LUMP SUM PAYMENT LL-Dec	COLUMN 6 TOTAL ANNUAL
	$	$	$	$	$	$
U/17yrs	11,994	459.83	12,138	465.35	162.87	12,301
17 yrs	14,017	537.39	14,185	543.84	190.34	14,376
18 yrs	16,351	626.88	16,547	634.40	222.04	16,769
19 yrs	18,926	725.60	19,153	734.30	257.01	19,410
20 yrs	21,254	814.85	21,509	824.63	288.62	21,798
1.1	23,348	895.13	23,628	905.87	317.06	23,945

SCHEDULE OF SALARIES—37.5 HOUR WEEK—FORTNIGHTLY SCALES—*continued*

LEVEL	COLUMN 1 ANNUAL BASE SALARY	COLUMN 2 FORTNIGHT BASE SALARY	COLUMN 3 ANNUAL WITH 1.2% From date of regis (a)	COLUMN 4 FORTNIGHT WITH 1.2% From date of regis (a)	COLUMN 5 1999 LUMP SUM PAYMENT LL-Dec	COLUMN 6 TOTAL ANNUAL
	$	$	$	$	$	$
1.2	24,067	922.70	24,356	933.77	326.82	24,683
1.3	24,785	950.22	25,082	961.63	336.57	25,419
1.4	25,499	977.60	25,805	989.33	346.27	26,151
1.5	26,217	1,005.12	26,532	1,017.19	356.02	26,888
1.6	26,935	1,032.65	27,258	1,045.04	365.77	27,624
1.7	27,761	1,064.32	28,094	1,077.09	376.98	28,471
1.8	28,333	1,086.25	28,673	1,099.28	384.75	29,058
1.9	29,178	1,118.65	29,528	1,132.07	396.22	29,924
LEVEL 2						
2.1	30,189	1,157.41	30,551	1,171.29	409.95	30,961
2.2	30,965	1,187.16	31,337	1,201.40	420.49	31,757
2.3	31,780	1,218.40	32,161	1,233.02	431.56	32,593
2.4	32,642	1,251.45	33,034	1,266.47	443.26	33,477
2.5	33,543	1,285.99	33,946	1,301.43	455.50	34,401
LEVEL 3						
3.1	34,782	1,333.50	35,199	1,349.50	472.32	35,672
3.2	35,747	1,370.49	36,176	1,386.94	485.43	36,661
3.3	36,742	1,408.64	37,183	1,425.54	498.94	37,682
3.4	37,763	1,447.78	38,216	1,465.16	512.80	38,729
LEVEL 4						
4.1	39,164	1,501.50	39,634	1,519.51	531.83	40,166
4.2	40,262	1,543.59	40,745	1,562.11	546.74	41,292
4.3	41,392	1,586.91	41,889	1,605.96	562.08	42,451
LEVEL 5						
5.1	43,567	1,670.30	44,090	1,690.34	591.62	44,681
5.2	45,037	1,726.66	45,577	1,747.38	611.58	46,189
5.3	46,565	1,785.24	47,124	1,806.66	632.33	47,756
5.4	48,151	1,846.04	48,729	1,868.20	653.87	49,383
LEVEL 6						
6.1	50,700	1,943.77	51,308	1,967.10	688.48	51,997
6.2	52,433	2,010.21	53,062	2,034.33	712.02	53,774
6.3	54,227	2,078.99	54,878	2,103.94	736.38	55,614
6.4	56,142	2,152.41	56,816	2,178.24	746.40	57,562
LEVEL 7						
7.1	59,078	2,264.97	59,787	2,292.15	746.40	60,533
7.2	61,110	2,342.88	61,843	2,370.99	746.40	62,590
7.3	63,321	2,427.64	64,081	2,456.77	746.40	64,827
LEVEL 8						
8.1	66,914	2,565.39	67,717	2,596.18	746.40	68,463
8.2	69,487	2,664.04	70,321	2,696.01	746.40	71,067
8.3	72,679	2,786.42	73,551	2,819.85	746.40	74,298
LEVEL 9						
9.1	76,664	2,939.19	77,584	2,974.47	746.40	78,330
9.2	79,357	3,042.44	80,309	3,078.95	746.40	81,056
9.3	82,428	3,160.18	83,417	3,198.10	746.40	84,164
CLASS 1	87,072	3,338.22	88,117	3,378.28	746.40	88,863
CLASS 2	91,716	3,516.27	92,817	3,558.46	746.40	93,563
CLASS 3	96,358	3,694.24	97,514	3,738.57	746.40	98,261
CLASS 4	101,003	3,872.32	102,215	3,918.79	746.40	102,961

(a) Up to 3.5% will be paid from the first pay period on or after the specified dates, subject to meeting various targets as outlined in the Performance Measurement System at Schedule C of this Agreement.

SCHEDULE OF SALARIES—40 HOUR WEEK—FORTNIGHTLY SCALES

LEVEL	COLUMN 1 ANNUAL BASE SALARY	COLUMN 2 FORTNIGHT BASE SALARY	COLUMN 3 ANNUAL WITH 1.2% From date of regis (a)	COLUMN 4 FORTNIGHT WITH 1.2% From date of regis (a)	COLUMN 5 1999 LUMP SUM PAYMENT LL-Dec	COLUMN 6 TOTAL ANNUAL
	$	$	$	$	$	$
U/17yrs	12,543	480.88	12,694	486.65	170.33	12,864
17 yrs	14,658	561.97	14,834	568.71	199.05	15,033
18 yrs	17,098	655.51	17,303	663.38	232.18	17,535
19 yrs	19,792	758.80	20,030	767.90	268.77	20,298
20 yrs	22,226	852.12	22,493	862.34	301.82	22,795

SCHEDULE OF SALARIES—40 HOUR WEEK—FORTNIGHTLY SCALES—*continued*

LEVEL	COLUMN 1 ANNUAL BASE SALARY	COLUMN 2 FORTNIGHT BASE SALARY	COLUMN 3 ANNUAL WITH 1.2% From date of regis (a)	COLUMN 4 FORTNIGHT WITH 1.2% From date of regis (a)	COLUMN 5 1999 LUMP SUM PAYMENT LL-Dec	COLUMN 6 TOTAL ANNUAL
	$	$	$	$	$	$
1.1	24,415	936.04	24,708	947.27	331.54	25,040
1.2	25,167	964.87	25,469	976.45	341.76	25,811
1.3	25,918	993.66	26,229	1,005.59	351.95	26,581
1.4	26,665	1,022.30	26,985	1,034.57	362.10	27,347
1.5	27,415	1,051.05	27,744	1,063.67	372.28	28,116
1.6	28,166	1,079.85	28,504	1,092.80	382.48	28,886
1.7	29,030	1,112.97	29,378	1,126.33	394.21	29,773
1.8	29,628	1,135.90	29,984	1,149.53	402.33	30,386
1.9	30,512	1,169.79	30,878	1,183.83	414.34	31,292
LEVEL 2						
2.1	31,569	1,210.31	31,948	1,224.84	428.69	32,377
2.2	32,380	1,241.41	32,769	1,256.30	439.71	33,208
2.3	33,233	1,274.11	33,632	1,289.40	451.29	34,083
2.4	34,134	1,308.65	34,544	1,324.36	463.52	35,007
2.5	35,076	1,344.77	35,497	1,360.90	476.32	35,973
LEVEL 3						
3.1	36,372	1,394.45	36,808	1,411.19	493.92	37,302
3.2	37,381	1,433.14	37,830	1,450.34	507.62	38,337
3.3	38,422	1,473.05	38,883	1,490.72	521.75	39,405
3.4	39,490	1,513.99	39,964	1,532.16	536.26	40,500
LEVEL 4						
4.1	40,955	1,570.16	41,446	1,589.00	556.15	42,003
4.2	42,103	1,614.17	42,608	1,633.54	571.74	43,180
4.3	43,284	1,659.45	43,803	1,679.36	587.78	44,391
LEVEL 5						
5.1	45,559	1,746.67	46,106	1,767.63	618.67	46,724
5.2	47,096	1,805.60	47,661	1,827.26	639.54	48,301
5.3	48,694	1,866.86	49,278	1,889.26	661.24	49,940
5.4	50,352	1,930.43	50,956	1,953.59	683.76	51,640
LEVEL 6						
6.1	53,018	2,032.64	53,654	2,057.03	719.96	54,374
6.2	54,830	2,102.11	55,488	2,127.33	744.57	56,233
6.3	56,705	2,173.99	57,385	2,200.08	746.40	58,132
6.4	58,708	2,250.79	59,412	2,277.80	746.40	60,159
LEVEL 7						
7.1	61,779	2,368.52	62,520	2,396.95	746.40	63,267
7.2	63,904	2,449.99	64,671	2,479.39	746.40	65,417
7.3	66,215	2,538.59	67,010	2,569.06	746.40	67,756
LEVEL 8						
8.1	69,973	2,682.67	70,813	2,714.86	746.40	71,559
8.2	72,664	2,785.84	73,536	2,819.27	746.40	74,282
8.3	76,001	2,913.78	76,913	2,948.74	746.40	77,659
LEVEL 9						
9.1	80,169	3,073.57	81,131	3,110.45	746.40	81,877
9.2	82,985	3,181.53	83,981	3,219.71	746.40	84,727
9.3	86,196	3,304.64	87,230	3,344.29	746.40	87,977
CLASS 1	91,053	3,490.85	92,146	3,532.74	746.40	92,892
CLASS 2	95,909	3,677.02	97,060	3,721.15	746.40	97,806
CLASS 3	100,763	3,863.12	101,972	3,909.48	746.40	102,719
CLASS 4	105,620	4,049.33	106,887	4,097.92	746.40	107,634

(a) Up to 3.5% will be paid from the first pay period on or after the specified dates, subject to meeting various targets as outlined in the Performance Measurement System at Schedule C of this Agreement.

SCHEDULE OF SALARIES—37.5 HOUR WEEK—SPECIFIED CALLINGS—FORTNIGHTLY SCALES

LEVEL	COLUMN 1 ANNUAL BASE SALARY	COLUMN 2 FORTNIGHT BASE SALARY	COLUMN 3 ANNUAL WITH 1.2% From date of regis (a)	COLUMN 4 FORTNIGHT WITH 1.2% From date of regis (a)	COLUMN 5 1999 LUMP SUM PAYMENT LL-Dec	COLUMN 6 TOTAL ANNUAL
	$	$	$	$	$	$
LEVEL 2/4						
1st	30,189	1,157.41	30,551	1,171.29	409.95	30,961
2nd	31,780	1,218.40	32,161	1,233.02	431.56	32,593
3rd	33,543	1,285.99	33,946	1,301.43	455.50	34,401

SCHEDULE OF SALARIES—37.5 HOUR WEEK—SPECIFIED CALLINGS—FORTNIGHTLY SCALES—*continued*

LEVEL	COLUMN 1 ANNUAL BASE SALARY	COLUMN 2 FORTNIGHT BASE SALARY	COLUMN 3 ANNUAL WITH 1.2% From date of regis (a)	COLUMN 4 FORTNIGHT WITH 1.2% From date of regis (a)	COLUMN 5 1999 LUMP SUM PAYMENT LL-Dec	COLUMN 6 TOTAL ANNUAL
	$	$	$	$	$	$
4th	35,747	1,370.49	36,176	1,386.94	485.43	36,661
5th	39,164	1,501.50	39,634	1,519.51	531.83	40,166
6th	41,392	1,586.91	41,889	1,605.96	562.08	42,451
LEVEL 5						
5.1	43,567	1,670.30	44,090	1,690.34	591.62	44,681
5.2	45,037	1,726.66	45,577	1,747.38	611.58	46,189
5.3	46,565	1,785.24	47,124	1,806.66	632.33	47,756
5.4	48,151	1,846.04	48,729	1,868.20	653.87	49,383
LEVEL 6						
6.1	50,700	1,943.77	51,308	1,967.10	688.48	51,997
6.2	52,433	2,010.21	53,062	2,034.33	712.02	53,774
6.3	54,227	2,078.99	54,878	2,103.94	736.38	55,614
6.4	56,142	2,152.41	56,816	2,178.24	746.40	57,562
LEVEL 7						
7.1	59,078	2,264.97	59,787	2,292.15	746.40	60,533
7.2	61,110	2,342.88	61,843	2,370.99	746.40	62,590
7.3	63,321	2,427.64	64,081	2,456.77	746.40	64,827
LEVEL 8						
8.1	66,914	2,565.39	67,717	2,596.18	746.40	68,463
8.2	69,487	2,664.04	70,321	2,696.01	746.40	71,067
8.3	72,679	2,786.42	73,551	2,819.85	746.40	74,298
LEVEL 9						
9.1	76,664	2,939.19	77,584	2,974.47	746.40	78,330
9.2	79,357	3,042.44	80,309	3,078.95	746.40	81,056
9.3	82,428	3,160.18	83,417	3,198.10	746.40	84,164
CLASS 1	87,072	3,338.22	88,117	3,378.28	746.40	88,863
CLASS 2	91,716	3,516.27	92,817	3,558.46	746.40	93,563
CLASS 3	96,358	3,694.24	97,514	3,738.57	746.40	98,261
CLASS 4	101,003	3,872.32	102,215	3,918.79	746.40	102,961

(a) Up to 3.5% will be paid from the first pay period on or after the specified dates, subject to meeting various targets as outlined in the Performance Measurement System at Schedule C of this Agreement.

SCHEDULE OF SALARIES—40 HOUR WEEK—SPECIFIED CALLINGS—FORTNIGHTLY SCALES

LEVEL	COLUMN 1 ANNUAL BASE SALARY	COLUMN 2 FORTNIGHT BASE SALARY	COLUMN 3 ANNUAL WITH 1.2% From date of regis (a)	COLUMN 4 FORTNIGHT WITH 1.2% From date of regis (a)	COLUMN 5 1999 LUMP SUM PAYMENT LL-Dec	COLUMN 6 TOTAL ANNUAL
	$	$	$	$	$	$
LEVEL 2/4						
1st	31,569	1,210.31	31,948	1,224.84	428.69	32,377
2nd	33,233	1,274.11	33,632	1,289.40	451.29	34,083
3rd	35,076	1,344.77	35,497	1,360.90	476.32	35,973
4th	37,381	1,433.14	37,830	1,450.34	507.62	38,337
5th	40,955	1,570.16	41,446	1,589.00	556.15	42,003
6th	43,284	1,659.45	43,803	1,679.36	587.78	44,391
LEVEL 5						
5.1	45,559	1,746.67	46,106	1,767.63	618.67	46,724
5.2	47,096	1,805.60	47,661	1,827.26	639.54	48,301
5.3	48,694	1,866.86	49,278	1,889.26	661.24	49,940
5.4	50,352	1,930.43	50,956	1,953.59	683.76	51,640
LEVEL 6						
6.1	53,018	2,032.64	53,654	2,057.03	719.96	54,374
6.2	54,830	2,102.11	55,488	2,127.33	744.57	56,233
6.3	56,705	2,173.99	57,385	2,200.08	746.40	58,132
6.4	58,708	2,250.79	59,412	2,277.80	746.40	60,159
LEVEL 7						
7.1	61,779	2,368.52	62,520	2,396.95	746.40	63,267
7.2	63,904	2,449.99	64,671	2,479.39	746.40	65,417
7.3	66,215	2,538.59	67,010	2,569.06	746.40	67,756
LEVEL 8						
8.1	69,973	2,682.67	70,813	2,714.86	746.40	71,559
8.2	72,664	2,785.84	73,536	2,819.27	746.40	74,282
8.3	76,001	2,913.78	76,913	2,948.74	746.40	77,659

SCHEDULE OF SALARIES—40 HOUR WEEK—SPECIFIED CALLINGS—FORTNIGHTLY SCALES—*continued*

LEVEL	COLUMN 1 ANNUAL BASE SALARY	COLUMN 2 FORTNIGHT BASE SALARY	COLUMN 3 ANNUAL WITH 1.2% From date of regis (a)	COLUMN 4 FORTNIGHT WITH 1.2% From date of regis (a)	COLUMN 5 1999 LUMP SUM PAYMENT LL-Dec	COLUMN 6 TOTAL ANNUAL
	$	$	$	$	$	$
LEVEL 9						
9.1	80,169	3,073.57	81,131	3,110.45	746.40	81,877
9.2	82,985	3,181.53	83,981	3,219.71	746.40	84,727
9.3	86,196	3,304.64	87,230	3,344.29	746.40	87,977
CLASS 1	91,053	3,490.85	92,146	3,532.74	746.40	92,892
CLASS 2	95,909	3,677.02	97,060	3,721.15	746.40	97,806
CLASS 3	100,763	3,863.12	101,972	3,909.48	746.40	102,719
CLASS 4	105,620	4,049.33	106,887	4,097.92	746.40	107,634

(a) Up to 3.5% will be paid from the first pay period on or after the specified dates, subject to meeting various targets as outlined in the Performance Measurement System at Schedule C of this Agreement.

SCHEDULE C—PERFORMANCE MEASUREMENT SYSTEM

ABORIGINAL AFFAIRS DEPARTMENT PERFORMANCE MEASUREMENT SYSTEM OVERVIEW

(1) Introduction to the Performance Measurement System

The Performance Measurement System is based largely on the current Output Based Management structure of the Department outlined in the 1998-99 Budget Statements and measures both external and internal performance. Following the development of a new strategic work plan for the agency further refinement of the Key Budget Outputs will be required in 1998-99 to ensure consistency with the Department's strategic goals. Any modification of the Key Budget Outputs and performance indicators and therefore time-line and target performance measures have to be agreed with Treasury and the Auditor General.

The Performance Measurement System is to be used in the new workplace agreement and any new enterprise bargaining agreement. This will ensure that all employees are working towards the achievement of the same organisational goals. Individual staff performance agreements will also be linked to the achievement of clear deliverables linked to both the key budget outputs and the strategic work plan.

(2) Performance Measurement System Framework

The Performance Measurement System measures the performance of the agency. It is made up of two parts. The first part measures agency productivity in accordance with outputs (or output groups) identified in the Budget Statements.

The second element of the system measures internal performance based on a range of indicators to test improvements in internal organisational efficiency. In this way the system links with the administrative efficiency of the organisation.

The System can also provide the basis for any evaluation of organisational programs, projects and processes. It includes a number of measures not currently reflected in the Budget Statements. These are intended to broaden the scope of performance measurement for the organisation.

The Performance Measurement System links performance at all levels of the organisation. The System can incorporate organisational (strategic), operational, (branch, section, team) and individual performance. Attachment A illustrates how the System is built around the key outputs and therefore the Department's mission, goals and outcome and how all levels of the organisation contribute to the achievement of Department's key outputs. The Budget Statements identify a single outcome for the Department to which all of the key outputs relate.

While not shown is this documentation, strategies are in place to ensure the achievement of each of the key outputs. Key strategies for the Department are contained in the Department's Project Plan which links the strategies with the key outputs and outcome for the Department.

(3) Operational and Individual Performance

The System has been also designed to measure team and individual based performance. While there is no intention at this stage to introduce performance based pay at the individual or team level, the System enables individuals and teams to see how their roles contribute to the rest of the organisation. The performance measures for teams and individuals can be linked with the outputs for the organisation.

While the focus at the team and individual levels tends to be more on strategies and lower level outputs, performance at these levels can be clearly linked with organisational outputs.

(4) Organisational Performance

Attachment B shows the key outputs and performance measures applicable at the organisational level. It is at this level that the Performance Measurement System will operate and form the basis for measuring whole of agency productivity. Measures reflecting quantity, quality, timeliness and cost have been developed for each key output consistent with the basis by which funds are appropriated to AAD. In this way the measures comprehensively cover all areas of the Department.

As noted above, the Performance Measurement System measures both external and internal performance. The external measures are of primary interest to stakeholders external to the Department such as the Minister, Aboriginal communities, forums and other Government agencies. Internal measures assist managers to assess the performance and efficiency of the internal processes of the organisation.

Organisations do not remain the same over time and are subject to change. The Performance Measurement System has been designed to adapt to any change in outcome, key budget outputs or performance indicators.

(5) Performance Measurement Matrix

The performance measures are combined into a matrix to provide the basis for the calculation of an overall "productivity order" for the agency. The Performance Measurement Matrix is shown at Attachment D.

The matrix allows for 'weighting' of particular performance measures to accurately reflect the relative importance of particular outputs in the achievement of the Department's overall goals.

As explained earlier, it is appropriate to allow for revisions to the Matrix to be made during its operation in view of the developments which are still occurring in the Department (including the development of a longer term five year Business Plan). and in the event of unforseen circumstances arising, resulting in any of the measures or targets no longer being appropriate or relevant. Any revisions to the Matrix would need to be approved by Government and employees.

(6) Productivity Index

It is intended that the Matrix generate salary increases of up to 3.5% per year over the life of the agreement. Achievement of a Productivity Index of 3 at the end of a twelve month measurement period would produce a 3.5% salary increase. A Productivity Index of 0 would not attract a salary increase, while an Index between 0 and 3 would result in a pro rata increase.

Qualitative improvements as well as some dollar savings are expected to result from the implementation of the workplace and enterprise bargaining agreements.

A glossary and explanatory notes to accompany the Performance Measurement Matrix are at Attachments C and E respectively and provide further explanation of how the Matrix operates.

ATTACHMENT A

ABORIGINAL AFFAIRS DEPARTMENT PERFORMANCE MEASUREMENT SYSTEM
FRAMEWORK

AREA OF PERFORMANCE BEING MEASURED	LEVEL OF PERFORMANCE REPORTING					
	ORGANISATIONAL (Strategic)		OPERATIONAL (Branch, Section, Team)		INDIVIDUAL	
	Strategies	Performance Measures	Strategies	Performance Measures	Strategies	Performance Measures
A. Measures of External Performance						
Output 1 Output 2 Output 3 Output 4						
B. Measures of Internal Performance						

ATTACHMENT B

ABORIGINAL AFFAIRS DEPARTMENT PERFORMANCE MEASUREMENT SYSTEM
ORGANISATIONAL PERFORMANCE MEASURES

PERFORMANCE MEASURE (a)	BASELINE	1998/99 TARGET	COMMENTS	PROGRAM RESPONSIBILITY
Outcome: Better social, cultural and economic outcomes for Aboriginal communities				
A. MEASURES OF EXTERNAL PERFORMANCE				
Output 1: Provision of information and advice to support community planning and local service agreements				
Community Planning and Local Service Agreements				
Quantity				
No. of communities assisted with community planning and / or service agreements	13	19	The proposed target for 1998/99 reflects the Departments' aim to provide greater planning focus at the community level. In 1997/98 13 communities were assisted in the following areas: regional planning, town planning, community planning, local service provision agreements & local government models for Aboriginal communities.	Director, Operations
Quality				
Percent of targeted service providers responding positively to needs identified in community planning	50%	70%	This is intended to measure the effectiveness of the Aboriginal Affairs Co-ordinating Committee in achieving key elements of AAD's Strategic Work Plan. Will be assessed by sample questionnaire / survey.	Director, Operations
Percent of Aboriginal communities assisted who report satisfactory service delivery by AAD	50%	70%	Will be assessed by sample questionnaire / survey.	Director, Operations
Timeliness				
Extent to which time-lines have been met.	70%	90%	Records to be maintained by regional offices.	Director, Operations
Cost				
Average cost per community assisted with community planning and / or service agreements	$203,000	$135,000	1997/98 cost was $203,000. The reduction reflects allocating existing resources over a greater number of communities.	Director, Operations

Output 2: Management support and service delivery to Aboriginal communities

Essential Services

Quantity				
Communities assisted with essential services	48	50	Reflects the total no of communities included in contracts with regional service providers. New contract management arrangements will enable expansion to additional communities.	Assistant Director, Demonstration Projects
Quality				
Percent of days/year that essential services were fully operational	80%	100%	Department has put in place new contract arrangements to ensure more effective and efficient service delivery for contracted services. The definition "fully operational" is where there has been a loss of power for 12 hours or more and / or a loss of water and sewerage services for 24 hours or more from notification. Interruptions to supply resulting from natural occurrences such as flooding or storm damage; operator error or other circumstances beyond the control of the AAD shall not be defined as not fully operational.	Assistant Director, Demonstration Projects

Timeliness				
Scheduled maintenance undertaken on time	90%	100%	The new arrangements will ensure more effective scheduled and planned maintenance leading to longer term reduction in breakdowns. Service providers are required to schedule an agreed course of action in response to a breakdown within 2 hours of notification. The response time depends upon the relative urgency of the breakdown; the nature of the problem and the remoteness of the location. In emergency situations a 24 hour response time is expected barring natural events which may restrict access.	Assistant Director, Demonstration Projects
Breakdown service response time met to ensure full operation is maintained	90%	100%		

Cost				
Average cost of service contract per community	$158,200	$144,300	Baseline data based on previous arrangements with Western Power and Water Corporation for last 3 years. Planned maintenance is a fixed cost. Unplanned maintenance or breakdowns costs are paid on a set rate basis. New contractual arrangements may lead to a short term increase in unplanned or catch up maintenance. Improved maintenance practices and community support processes are expected to lead to a reduction in breakdown cost over time.	Assistant Director, Demonstration Projects
Percentage of costs attributed to breakdown related to poor maintenance	35%	40%		

Community Management (Town Reserves & Demonstration Projects)

Quantity				
Communities assisted with community management support (grants & management assistance)	20	25	20 communities assisted in 1997/98.	Director, Operations
Quality				
Percent of targeted communities assisted with community management processes	50%	100%	1998/99 based on response to survey / questionnaire.	Director, Operations
Percent of targeted communities satisfied with the AAD management support and service delivery	50%	70%	1998/99 based on response to survey / questionnaire.	Director, Operations
Cost				
Cost per community for providing community management support	$365,900	$329,600		Director, Operations

Community Patrols

Quantity				
Communities assisted with community patrols	15	16	15 communities assisted in 1997/98. Dependant upon available funding.	Director, Operations
Quality				
Percent of communities with funded community patrols who receive formative management or operational assistance	30%	100%		Director, Operations
Cost				
Average cost per patrol	$49,200	$38,900		Director, Operations

Community Wardens

Quantity				
Number of communities with by-laws assisted with operational warden schemes.	4	9	4 funded communities required support and assistance in 1997/98.	Director, Operations
Quality				
Percent of communities with funded warden schemes who receive formative management or operational assistance	40%	100%		Director, Operations
Cost				
AAD cost per warden scheme	$146,900	$116,100		Director, Operations

Output 3: Information and advice on program development and resource allocation

Information and advice to agencies

Quantity				
Agencies provided with information and advice	19	20	19 agencies provided with information and advice in 1997/98. Includes non State Government agencies providing and / or developing programs for Aboriginal people.	Director, Policy, Planning & Programs
Quality				
Percent of agencies responding positively to information and/or advice	70%	80%	Information and advice will be based on strategic initiatives undertaken during the year.	Director, Policy, Planning & Programs
Timeliness				
Extent to which time-lines have been met in providing information and advice	75%	85%		Director, Policy, Planning & Programs
Cost				
Cost per agency in providing information and advice	$88,200	$85,700		Director, Policy, Planning & Programs

Output 4: Policy advice to Government and Aboriginal forums

Forums

Quantity				
Aboriginal forums supported	19	20	Forums supported include: COE, AJC, ACMC, RAJC	Director, Policy, Planning & Programs
Quality				
Satisfaction of forums with quality of support and policy advice provided	70%	80%	1998/99 based on responses to survey / questionnaire.	Director, Policy, Planning & Programs
Timeliness				
Satisfaction of forums with timeliness of support and policy advice provided	70%	80%	1998/99 based on responses to survey / questionnaire.	Director, Policy, Planning & Programs
Cost				
Average cost of each Aboriginal forum supported	$111, 000	$103,000		Director, Policy, Planning & Programs

Government

Quality				
Satisfaction of Minister with quality of policy advice provided	80%	100%	1998/99 based on responses to survey / questionnaire.	Director, Policy, Planning & Programs
Extent to which the Minister responds positively to the policy advice provided	70%	85%	1998/99 based on responses to survey / questionnaire. Policy advice to be based on strategic initiatives undertaken during the year.	Director, Policy, Planning & Programs
Timeliness				
Satisfaction of Minister responds positively to the policy advice provided	80%	100%	1998/99 based on responses to survey / questionnaire.	Director, Policy, Planning & Programs

B. MEASURES OF INTERNAL PERFORMANCE

Quantity				
Average number of days sick leave taken	61.42 hrs	50 hrs	61.42 hrs per employee for 1997/98.	Manager, Human Resources
Quality				
Number of adverse comments made by the Auditor General	3	0	Baseline data from 1996/97. Audit of financial statements.	Manager, Finance & Administration
No. of qualifications given by the Auditor General for AAD	2	0	Baseline data from 1996/97. Audit of financial statements.	Manager, Finance & Administration

Timeliness				
Percent of Ministerials completed by set date	58%	75%	58% in 1997/98 (in accordance with ministerial correspondence policy).	Manager, Office of the Chief Executive Officer
Average number of days an overdue Ministerial is late	7	0	7 days in 1997/98.	Manager, Office of the Chief Executive Officer
Turnaround time to respond to FOI requests	60 days for all requests	45 days for non personal 30 days for personal	60 days in 1997/98.	Manager, Office of the Chief Executive Officer
Percent of staff performance reviews conducted between 1 August to 31 August	30%	100%	30% Period previously 1 Sept to 15 September 1998. Significant improvement required / envisaged.	Manager, Human Resources
Percent of staff performance planning prepared between 1 August to 31 August		100%		Manager, Human Resources
Percent of new staff completed induction and orientation program	30%		30% Period previously 1 Sept to 15 September 1998. Significant improvement required / envisaged.	Manager, Human Resources
Percent of new staff completed targeted performance development training	70%	100%	50% for 1997/98. Significant improvement envisaged.	Manager, Human Resources
	10%	70%	10% for 1997/98. Significant improvement envisaged.	
Cost				
No of administrative staff as a percentage of total staff	23%	18%	This includes HR, Finance & Information Management support staff (excludes sites & Family History) 24.5 / 106 FTE 1997/98 versus 22 / 122 FTE 1998/99.	Manager, Human Resources

(a) Performance measures in normal print are those currently included in the 1998/99 Budget Statements. Those in italics are proposed additional or replacement measures.

(b) The average costs represents current budget allocation including overhead costs. As noted in the Cost Allocation Worksheet, (refer Justification Paper Submission attachment A.3) the Department has noted increased outputs for Output 2 programs for Essential Services (48 to 50) and Patrols (15 to 16). These planned increases in productivity will result in reduced average costs for these outputs as shown.

(c) Data on pro-rata allocation of indirect costs based on 1997/98 and 1998/99 Budget allocations respectively.

(d) As at 1 July 1998 the Department will operate with a new staffing structure; consequently reallocation of indirect costs will need to be recalibrated & hence the average cost measures will require recalculation.

ATTACHMENT C

PERFORMANCE MEASUREMENT MATRIX

GLOSSARY OF TERMS

1. "Baseline" means an ordinary level of performance. If the overall level of performance is, on average, at the baseline level or lower, then no salary increase is payable.

2. "Target" means the level of performance that is to be achieved to receive all of the 3.5% salary increase available for the year. The levels of performance set at the Target are considered to reflect an improvement in performance, taking into account all relevant factors.

3. "Productivity Measure" measures a particular aspect of the Department's performance for the year. Measures of external and internal performance are used.

4. "Result" means the level of performance achieved for that productivity measure during the year. For example, 16 communities with planning and or service agreements or 90% of targeted service providers respond positively to needs identified in community planning.

5. "Weight" reflects the impact a particular productivity measure will have in calculating the overall performance of the Department. A higher weight means that the particular productivity measure has a relatively greater impact on overall

performance. By way of example, a higher weight may be given to a productivity measure because it involves a large amount of expenditure or relates to an issue currently of strategic importance. One reason why a lower weight may be given to a measure is if employees have less control over the level of performance achieved in that area.

6. "Rating" means the score assigned to the Result (or level of performance) for the productivity measure for the year. For each measure alternative levels of performance are given ratings from -2 to 5. For example, if the Target number of communities with planning and service agreements is 19, and the Result for the year is 19, then the Rating will be 3. Ratings will be proportionate where the Result falls between two Ratings. The use of ratings allows a number of different measures to be combined to measure overall performance of the Department.

7. "Weighted Rating" is the Result multiplied by the Weight. This figure reflects both the level of performance in that area and the relative impact assigned to the productivity measure.

8. "Weighting Total" is the sum of all of the weights.

9. "Weighted Ratings Total" is the sum of all of the Weighted Ratings.

10. "Productivity Index" is calculated by dividing the Weighted Ratings Total by the Weighting Total. Alternative figures for the Index can be interpreted as follows—

- If the Productivity Index is 0 or less, this means that the overall level of performance of the Department over the year is ordinary or worse. Therefore, in this case no salary increase is payable.
- If the Index is 3 or more, the Department has at least achieved its Target level of performance. The full 3.5% salary increase would then be payable.
- If the Index is between 0 and 3 then a pro rata salary increase will be paid. For example, if the Index is 2, then the salary increase will be 2.3%. If the Index is 1.5, then the salary increase will be 1.75%.

ATTACHMENT D

PERFORMANCE MEASUREMENT MATRIX

Productivity Measure (a)	Ratings								Result	Weight	Rating	Weighted Rating
	-2	-1	0 Baseline	1	2	3 Target	4	5				
Outcome: **Better social, cultural and economic outcomes for Aboriginal communities**												
A. MEASURES OF EXTERNAL PERFORMANCE												
Output 1. Provision of information and advice to support community planning and local service agreements												
Community Planning and Local Service Agreements												
Quantity No. of communities with community planning and / or service agreements	11	12	13	15	17	19	21	23		4		
Quality Percent of targeted service providers responding positively to needs identified in community planning	30	40	50	55	65	70	85	100		2		
Percent of Aboriginal communities assisted who report satisfactory service delivery by AAD	35	40	50	55	65	70	85	100		1		
Timeliness Extent to which AAD time-lines have been met	50	60	70	80	85	90	95	100		2		
Cost Average cost per communities assisted with community planning and / or service agreements	235	220	203	180	160	135	120	105		1		
									sub weighting total		sub weighted ratings total	
									sub productivity index total			

Output 2: Management support and service delivery to Aboriginal communities

Essential Services

Quantity Communities assisted with essential services	44	46	48	-	49	50	58	60		2		
Quality Percent of days/year that essential services were fully operational	74	77	80	85	90	100	93	96		2		
Timeliness Scheduled maintenance undertaken on time	80	85	90	94	97	100	-	-		2		
Breakdown service response time met to ensure full operation is maintained	80	85	90	94	97	100	-	-		2		
Cost *Average cost of essential service contract per community $000*	169	163	158	154	149	144	139	133		0		
Percentage of costs attributed to breakdown related to poor maintenance	45	40	35	-	-	40	30	25		2		
									sub weighting total		sub weighted ratings total	
									sub productivity index total			

Community Management (Town Reserves & Demonstration Projects)

Quantity Communities assisted with community management support (grants & management assistance)	17	18	20	22	23	25	27	29		2		
Quality Percent of targeted communities assisted with community management processes	20	30	50	70	90	100	-	-		3		
Percent of targeted communities satisfied with the AAD management support and service delivery	38	44	50	57	64	70	76	82		3		
Cost *Cost per community for providing management support $000*	395	380	365	350	335	329	315	300		0		
									sub weighting total		sub weighted ratings total	
									sub productivity index total			

Community Patrols

Quantity Communities assisted with community patrols	13	14	15	-	-	16	17	18		2		
Quality *Percent of communities with funded warden schemes who receive formative management or operational assistance*	-	*15*	*30*	*60*	*80*	*100*	-	-		*4*		
Cost *Average cost per patrol $000*	*55*	*52*	*49*	*46*	*43*	*39*	*36*	*33*		*4*		
									sub weighting total		Weighted Ratings Total	
									total sub productivity index			

Community Wardens

Quantity *Number of communities with by-laws assisted with operational warden schemes*	0	2	4	6	7	9	10	11		2		
Quality *Percent of communities with funded warden schemes who receive formative management or operational assistance*	0	20	40	60	80	100	-	-		4		

Cost *Average cost per warden scheme*	165	155	147	137	127	116	105	95		4		
									sub weighting total		sub weighted ratings total	
									sub productivity index total			

Output 3: Information and advice on program development and resource allocation

Information and advice to agencies

Quantity Agencies provided with information and advice	17	18	19	-	-	20	21	22		3		
Quality *Percent of agencies responding positively to information and / or advice*	64	67	70	73	76	80	83	86		3		
Timeliness Extent to which time-lines have been met in providing information and advice	69	72	75	78	81	85	88	91		3		
Cost *Cost per agency in providing information and advice $000*	90	89	88	87	86	85	84	83		1		
									sub weighting total		sub weighted ratings total	
									sub productivity index total			

Output 4: Policy advice to Government and Aboriginal forums

Forums

Quantity Aboriginal forums supported	17	18	19	-	-	20	21	22		2.5		
Quality Satisfaction of forums with quality of support and policy advice provided	64	67	70	73	76	80	83	86		2.5		
Timeliness Satisfaction of forums with timeliness of support and policy advice provided	64	67	70	73	76	80	83	86		2.5		
Cost Average cost of each Aboriginal forum supported	115	113	111	109	106	103	100	97		2.5		
									sub weighting total		sub weighted ratings total	
									sub productivity index total			

Government

Quality Satisfaction of Minister with quality of policy advice provided	70	75	80	85	90	100	-	-		4		
Extent to which the Minister responds positively to the policy advice provided	60	65	70	75	80	85	90	95		3		
Timeliness Satisfaction of Minister responds positively with timeliness of policy advice provided	70	75	80	85	90	100	-	-		3		
									sub weighting total		sub weighted ratings total	
									sub productivity index total			

B. MEASURES OF INTERNAL PERFORMANCE

Quantity *Average number of days sick leave taken*	68	64	62	58	54	50	48	46		2		
Quality *Number of adverse comments made by the Auditor General*	5	4	3	2	1	0	-	-		3		
No. of qualifications given by the Auditor General	4	3	2	-	1	0	-	-		3		
Timeliness *Percent of Ministerials completed by set date*	50	55	58	64	70	75	80	85		1		
Average number of days an overdue Ministerial is late	11	9	7	5	3	0	-	-		1		
Turnaround time to respond to FOI requests *non personal*												
personal	70 80	65 70	60 60	55 50	50 40	45 30	40 20	35 10		0.5 0.5		
Percent of performance reviews conducted between 1 August to 31 August	0	10	30	50	70	100	-	-		1		
Percentage of staff performance planning prepared between 1 August to 31 August	0	10	30	50	70	100	-	-		1		
Percentage of new staff completed Induction and Orientation	50	60	70	80	90	100	-	-		2		
Percent of staff completed targeted performance development training	-	-	10	50	60	70	-	-		2		
Cost *No of administration staff as a percentage of total staff*	26	25	23	21	19	18	16	15		3		
									sub weighting total		sub weighted ratings total	
									sub productivity index total			

(a) Performance measures in normal print are those currently included in the 1998/99 Budget Statements. Those in italics are proposed additional or replacement measures.
(b) Productivity Index = Weighted Ratings Total divided by Weighting Total
(c) Weighting scale =

External Measures	Output 1	= 10%
	Output 2	= 40%
	Output 3	= 10%
	Output 4	= 20%
Internal Measures		= 20%
Total		=100%

Weighting Total		sub weighted ratings total	
Productivity Index (b)			

ATTACHMENT E

PERFORMANCE MEASUREMENT MATRIX

EXPLANATORY NOTES

Objective

The Performance Measurement System has been designed as a basis for the payment of pay increases available under the Department's new workplace agreement and any new enterprise bargaining agreement. The size of the increases payable through the Matrix will be dependent upon the achievement of the targets.

General Comments

Some general comments regarding the Matrix are as follows—

The Matrix will assess the contribution of employees to the key outputs of the Department for each 12 month period;

The Matrix focuses on the Department as a whole, and not the individual or team level;

The performance measures contain targets that are both challenging and realistic within the established timeframes;

Achievement of the targets will provide benefits to customers, employees, the Department and the community; and

Subject to Government approval, the Matrix may be revised by the Department while in operation in the event of unforseen circumstances arising resulting in any of the measures or targets no longer being appropriate or relevant. Changes to the Department's strategic plan may also necessitate some amendments to the Matrix.

Performance Measures

The performance measures are linked with key outputs for the Department. The measures represent the priority areas across the organisation and are largely based on the performance measures for the Department's key outputs contained in the Budget Statements.

Performance Matrix

The performance measures are combined into a Matrix shown as Attachment D. A glossary is at Attachment C.

The "Baseline" (with a rating of 0) is considered to reflect ordinary performance and should not attract a salary increase. The "Target" level of 3 reflects an improvement in performance achievable over the measurement period. A rating of 5 is considered to be exceptional performance.

Ratings may be proportionate. For example, if the "percent of targeted service providers responding positively to needs identified in community planning" (the second performance measure for Output 1) is 60, then the rating would be 1.5.

The measurement period is 12 months. If the performance index for the measurement period is 3 or more then the full 3.5% salary increase will be paid. If the performance index is 0 or less then none of the salary increase available through the Matrix will be paid. A performance index between 0 and 3 will provide a pro rata salary increase. For example, if the performance index is 2, then the salary increase will be 2.3%. If the performance index is less than 0 then there will not be a salary reduction.

The weights have been determined on the basis of factors such as expenditure on the relevant area, strategic importance of the area to the Government or Department and degree of control employees have over the achievement of the target.

ADA/CSA ENTERPRISE AGREEMENT 1998.

No. PSAAG 7 of 1999.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Western Australian Alcohol and Drug Authority

and

The Civil Service Association of Western Australia Incorporated.

No. PSAAG 7 of 1999.

ADA/CSA Enterprise Agreement 1998.

23 February 1999.

Order.

HAVING heard Mr R P De Blank for the Applicant and Mr E P Rea as agent 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 made between the parties as lodged in the Commission on the 11th day of February, 1999 entitled ADA/CSA Enterprise Agreement 1998 in the terms of the following Schedule be registered as an industrial agreement in replacement of the ADA/CSA Enterprise Agreement 1996 (PSAAG 3 of 1996) which is hereby cancelled.

(Sgd.) G.L. FIELDING,
[L.S.] Senior Commissioner.

Schedule.

1.—TITLE

This Agreement shall be known as the *ADA/CSA Enterprise Agreement 1998* and replaces *ADA/CSA Enterprise Agreement 1996*.

2.—ARRANGEMENT

3.—SCOPE OF THE AGREEMENT

This Enterprise Agreement shall apply to all Western Australian Alcohol and Drug Authority employees including Senior Executive Service employees working in the Western Australian Alcohol and Drug Authority who are members or eligible to be members of the Union.

4.—PARTIES TO THE AGREEMENT

The parties to this Agreement are—

- "Employer"

  Western Australian Alcohol and Drug Authority
- "Union"

  Civil Service Association of Western Australia Incorporated.

The number of employees covered by this Agreement as at the date of registration is 84.

5.—DEFINITIONS

"Agreement": the ADA/CSA Enterprise Agreement 1998.

"Authority": the Western Australian Alcohol and Drug Authority.

"Award": the Government Officers, Salaries, Allowances and Conditions Award 1989.

"Employee": for the purpose of this Agreement, a person referred to in Clause 3—Scope of the Agreement.

"Employer": the Western Australian Alcohol and Drug Authority.

"Government": the State Government of Western Australia.

"Minister": the Minister or Ministers of the Crown responsible for the administration of the Authority.

"Union": the Civil Service Association of Western Australia Incorporated.

"WAIRC": the Western Australian Industrial Relations Commission.

6.—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 the date on which this Agreement is registered in the WAIRC and shall remain in operation for a period of twenty four months from registration.

(2) The parties will review this Agreement six months prior to the expiration of this Agreement to commence negotiation of 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 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.

(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 in writing to the other party and to the WAIRC or this Agreement is replaced by another agreement.

7.—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 to suffer a reduction in ordinary time earnings.

8.—RELATIONSHIP TO PARENT AWARDS AND AGREEMENTS

This Agreement shall be read in conjunction with the Government Officers, Salaries, Allowances and Conditions Award 1989 which applies to the parties bound to this Agreement. In the case of any inconsistencies, this Agreement shall have precedence to the extent of the inconsistencies. Where the Agreement is silent the Award prevails.

9.—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.

10.—AVAILABILITY OF AGREEMENT

Every employee will be entitled to a copy of this Agreement. In addition, a copy of this Agreement will be kept in easily accessible places within the Authority and the location of the copies will be communicated to all employees.

11.—OBJECTIVES AND PRINCIPLES

The aim of this Agreement is to recognise the productivity improvements that have occurred through the restructuring of the Authority and to build on these achievements to enable further productivity improvement, to better meet the needs of customers and to ensure that the Authority's outcomes are achieved. In this regard, the Agreement will assist in the achievement of the milestones listed in Clause 12—Productivity Improvement.

In particular, the parties are committed to achieve the Authority's mission which is—

"To be recognised for and provide clinical leadership and expertise in treatment, education and research to reduce drug-related harm in the community."

This Agreement will also provide employees with further options in balancing their work and family life.

To secure the best health outcomes for the community the Authority is committed to being a learning organisation, delivering continuous improvement in service delivery, working in strategic partnerships and ensuring value for money. The parties are committed to adopting the following principles—

- evidence-based practice;
- customer focus;
- working in partnership;
- value for money;
- continuity of care;
- innovation in service delivery; and
- empowering the health workforce.

12.—PRODUCTIVITY IMPROVEMENT

The parties are also committed to further improvement of the efficiency and effectiveness of the Authority. This is to occur through adoption of the principles outlined in Clause 11—Objectives and Principles of this Agreement. In particular, the parties agree to implement the following milestones—

- develop an improved client management system;
- undertake an evaluation of the Community Based Methadone Program;
- participate in the National Methadone Funding Trial;
- develop training programs and resource materials to support general practitioner skills in alcohol and other drug treatment;
- the Authority to become a registered training organisation;
- a contract through CAMS being implemented for a panel of suppliers for education and training; and
- develop an operational policy for education and training.

13.—PRODUCTIVITY MEASUREMENT

(1) The parties agree that the measurement and monitoring of productivity improvements is important because it provides critical feedback on the performance of the Western Australian Alcohol and Drug Authority to management, employees and other relevant stakeholders.

(2) It is agreed that 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 the parties will decide if a productivity measurement model is required

as part of an overall aim of assessing the extent to which the objectives of the Authority are achieved and of improving productivity in the Authority. If agreed by the parties, then a model will be jointly developed between management, employees and union.

(4) The productivity measurement model will assess organisational productivity at the conclusion of the 1998/99 financial year and each subsequent financial year if appropriate. The productivity measurement model will measure the overall improvement in labour productivity at the Authority, rather than improvements at a divisional level only.

(5) The methodology for measurement and/or calculations for assessment of productivity must be agreed by the parties and be available for examination by the union at any time during the life of the Agreement.

(6) Agreed productivity measures should contain targets that are both realistic and achievable within agreed time frames.

(7) The parties agree that relevant productivity measures assist in the attainment of the corporate goals of the Authority in the interests of clients, employees, the Authority and the Government on behalf of the community.

(8) Any proposed changes to the productivity measurement model will be as agreed between the parties.

14.—SHIFT WORK

(1) In this Clause the following expressions shall have the following meaning—

"Day shift" shall mean a shift commencing after 5.45am and before 12.00 noon.

"Afternoon shift" shall mean a shift commencing at or after 12.00 noon and before 6.00pm.

"Night shift" shall mean a shift commencing at or after 6.00pm and before 5.46am.

"Public holiday" shall mean a holiday provided in Clause 20—Public Holidays of the Award.

(2) (a) An employee required to work an afternoon or night shift of seven hours 36 minutes shall, in addition to the ordinary rate of salary, be paid an allowance for each afternoon or night shift worked in accordance with Schedule K of the Award.

(b) Work performed during ordinary rostered hours on Saturdays or Sundays shall be paid for at the rate of time and one half and on public holidays at double time and one half. These rates shall be paid in lieu of the allowance prescribed in paragraph (a) of the this subclause.

Provided that in lieu of the foregoing provisions of this paragraph and subject to agreement between employer and employee, work performed during ordinary rostered hours on a public holiday shall be paid at the rate of time and one-half and the employee may, in addition, be allowed a day's leave with pay to be added to annual leave or to be taken at some other mutually convenient time within a period of one year.

(c) An employee rostered off duty on a public holiday shall be paid at ordinary rates for such day or, subject to agreement between the employer and the employee, be allowed a day's leave with pay in lieu of the holiday to be added to the employee's next annual leave entitlement or to be taken at a mutually convenient time within a period of one year.

(d) An employee engaged on shift work who is rostered to work regularly on Sundays and/or public holidays shall be allowed one week's leave in addition to the employee's normal entitlement to annual leave of absence for recreation.

(e) Additional leave provided by paragraphs (b) and (c) of this subclause shall not be subject to the normal annual leave loading prescribed by subclause (14) of Clause 19.—Annual Leave of the Award.

(f) Work performed by an employee in excess of the ordinary hours for the employee's shift or on a rostered day off shall be paid for in accordance with Clause 18.—Overtime of the Award.

(g) (i) When an employee begins or ceases a shift between the hours of 11.00pm and 7.00am and no public transport is available, reimbursement at the appropriate rate of hire prescribed by subclause (4) of Clause 36—Motor Vehicle Allowances of the Award, shall be made if the employee's private motor vehicle or motor cycle is used for the journey between the employee's residence and headquarters, and the return journey.

Provided, however, that any employee who, on or after the 30th October, 1987, elects to be permanently retained on a fixed or non-rotating shift that begins or ceases between the hours of 11.00pm and 7.00am shall not be eligible to claim this reimbursement.

(ii) The provisions of this subclause shall only apply to employees living and working within a radius of 50 km of the Perth City Railway Station.

(3) (a) An employee engaged on shift work shall work a 76 hour fortnight, exclusive of meal intervals, on the basis of not more than ten shifts of seven hours 36 minutes duration. Provided that where agreement is reached between the employer and the employee the length and/or number of shifts worked per fortnight may be altered.

Provided also that, when the agreed length of a shift is extended past seven hours 36 minutes, overtime shall be payable only for time worked in excess of the rostered shift.

Provided also that whenever an agreed alteration to the number of hours per shift has occurred then the allowance per shift shall be varied on a pro rata basis to reflect any variation to other than seven hours and 36 minutes.

(b) Meal breaks shall be for a period of at least 30 minutes, but not greater than one hour for each meal.

(c) Employees may be rostered to work on any of the seven days of the week provided that no employee shall be rostered for more than six consecutive days.

Provided that where agreement is reached between employer and employee, shift workers may be exempted from this provision.

(d) The roster period shall commence at the beginning of a pay period and continue for 28 consecutive days. Rosters shall be available to employees at least five clear working days prior to the commencement of the roster.

(e) A roster may only be altered on account of contingencies which the employer could not have been reasonably expected to foresee. When a roster is altered, the employee concerned shall be notified of the changed shift 24 hours before the changed shift commences.

Provided that where such notice is not given, the employee shall be paid overtime in accordance with Clause 18—Overtime of the Award for the duration of the changed shift. This provision shall not apply to an employee who was absent from duty on the employee's last rostered shift.

(f) An employee shall not be rostered for duty until at least ten (10) hours have elapsed from the time the employee's previous rostered shift ended. Provided that where agreement is reached between employer and employee the ten (10) hour break may be reduced to accommodate special shift arrangements, except that under no circumstances shall such an arrangement provide for a break of less than eight (8) hours.

(g) An employee shall not be retained permanently on one shift unless the employee so elects in writing.

(h) An employee shall be allowed to exchange shifts or days off with another employees provided the approval of the employer has been obtained and provided further that any excess hours worked shall not involve the payment of overtime.

The following salary increases are payable on the basis of implementation and continued co-operation in respect of those improvements in productivity and/or work practice changes outlined in Clause 12—Productivity Improvements.

(2) The following increases will be payable during the life of this Agreement—

(a) an increase of 3.5% from the beginning of the first pay period on or after the date of registration of the Agreement, and

(b) a further increase of 3.5% from the beginning of the first pay period on or after twelve months from the date of registration.

16.—PARENTAL LEAVE

(1) Definition

(a) "Employee" includes full-time, part-time, permanent and fixed-term contract employees; and

(b) "Replacement Employee" is an employee specifically engaged to replace an employee proceeding on parental leave.

(2) Eligibility for Parental Leave

(a) An employee who is the primary care giver is entitled to a period of up to 52 weeks unpaid parental leave in respect of the birth or placement by adoption of a child to the employee or the employee's spouse/partner. Before the expected birth or placement, the employee must have completed at least 12 months' continuous service. Parental leave cannot be taken after 12 months of the birth or adoption of the child.

(b) Where the employee applying for leave is the partner of a pregnant spouse, one week's unpaid leave may be taken at the birth of the child concurrently with parental leave taken by the pregnant employee.

(c) Subject to paragraph (b) of this subclause, where both partners are employed by the Authority 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 unpaid 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 two days unpaid leave for the employee to attend interviews or examinations required for the adoption procedure. Employees working or residing outside the Perth metropolitan area are entitled to an additional day's leave. The employee may take any accrued paid leave entitlement in lieu of this leave.

(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 Executive Director'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.

(4) 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 parental leave stating the period of leave to be taken.

(b) An employee seeking to adopt a child shall not be in breach of paragraph (a) of subclause (4) 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 elect to reduce or extend the period stated in the original application subject to the employer's approval and provided four weeks written notice is provided.

(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 for such period as is certified necessary by a registered medical practitioner.

(6) 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.

(7) 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 subclause (5) 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) Subject to the employer's approval, 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 Award.

(e) An employee who has returned on a part-time basis may revert to full-time employment at the same classification level within two years of the recommencement of work.

(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 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 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.

17.—FAMILY CARERS LEAVE

(1) An employee may use a total of 38 hours of his/her personal accrued sick leave each year to supervise the convalescence of a family member, provided the employee retains at least ten days of sick leave for personal use each calendar year.

(2) In this clause 'family member' means the employee's spouse, de facto spouse, child, step-child, parent, step-parent, sibling or another person who lives with the employee as a member of the employee's family.

(3) 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.

(4) 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.

(5) Family Carers Leave may be taken on an hourly basis.

18.—BEREAVEMENT LEAVE

(1) On the death of—

(a) the spouse or de facto spouse of an employee;

(b) the child or step-child of an employee;

(c) the parent or step-parent of an employee;

(d) the brother or sister, or step-brother or step-sister of an employee;

(e) the grandparent of an employee; or

(f) any other person who immediately before that person's death, lived with the employee as a member of the employee's family.

the employee is entitled to paid bereavement leave of up to 2 days.

(2) The 2 days need not be consecutive.

(3) Bereavement leave is not to be taken during a period of any other kind of leave.

(4) An employee who claims to be entitled to paid leave under this Clause is to provide to the employer, if so requested by the employer, evidence that would satisfy a reasonable person as to—

(a) the death that is the subject of the leave sought; and

(b) the relationship of the employee to the deceased person.

19.—ANNUAL LEAVE LOADING

(1) Annual leave loading is not payable for annual leave accrued while this Agreement is in operation. The loading has been incorporated into the salaries as per Schedule A—Schedule of Salaries of this Agreement.

(2) For new employees, any accrued leave loading entitlements will be calculated based on the employee's substantive level. This amount will then be paid in a lump sum at a time agreed to between the employer and employee.

20.—WORKFORCE DEVELOPMENT AND CAREER MOBILITY

The parties agree to develop policies, practices and procedures to ensure compliance with Public Sector Standards in Human Resource Management. In line with the objectives and principles of this Agreement the parties agree that recruitment, development and retention of a highly skilled and stable workforce is essential to ongoing development of an efficient, productive and flexible organisation which is responsive to change. Keys to this aim are the provision of training, an equitable appointment system and career path opportunities for all employees. The parties commit to developing agreed policies, practices and procedures to meet these principles.

21.—PART-TIME EMPLOYMENT

(1) Definitions

Permanent part-time employment is defined as regular and continuing employment up to designated full-time hours.

(2) Part-Time Agreement

(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 conversion of a full-time employee to part-time employment can only be implemented with the written consent or by written request of that employee. No employee may be converted to part-time employment without his/her prior agreement. Employer approval is required where an employee wishes to change from full-time to part-time employment.

(3) Hours of Duty

(a) The parameters for the working of permanent part-time employment shall be the "ordinary hours" of the Authority as defined in Clause 16 subclause(1) of the Award.

(b) The employer shall specify in writing before a part-time employee commences duty, the prescribed weekly and daily hours of duty for the employee including starting and finishing times each day ("ordinary hours").

(c) The employer shall give an employee two (2) weeks notice of any proposed variation to that employee's starting and finishing times and/or particular days worked, provided that the employer shall not vary the employee's total weekly hours of duty without the employee's prior written consent, or by mutual agreement between employer and employee.

(d) 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 by mutual written agreement between employer and employee.

If agreement is reached to vary an employee's ordinary working hours pursuant to this subclause—

(i) Time worked to 7 hours and 36 minutes on any day is not to be regarded as overtime but an extension of the contract hours for that day and should be paid at the normal rate of pay; and

(ii) Overtime shall not be payable unless the total time worked on any day exceeds 8 hours.

(e) Additional days worked, up to a total of five days per week, will also be regarded as an extension of the contract and will be paid at the normal rate.

(4) Salary and Annual Increments

(a) An employee who is employed on a part-time basis shall be paid a proportion of the appropriate full-time salary dependent upon time worked. The salary shall be calculated in the following manner—

$$\frac{\text{Hours worked per fortnight x full-time fortnightly salary}}{76}$$

(b) A part-time employee shall be entitled to annual increments in accordance with the Award (Clause 12—Annual Increments) and subject to meeting the usual performance criteria.

(5) Leave

(a) A part-time employee shall be entitled to the same leave and conditions prescribed in this Agreement for full-time employees on a proportional basis.

(b) Payment to an employee proceeding on accrued annual leave and long service leave shall be calculated on a pro rata basis having regard for any variations to the employee's ordinary working hours during the accrual period.

(c) Sick leave and any other paid leave shall be paid at the current salary, but only for those hours or days that would normally have been worked had the employee not been on such leave.

(6) Holidays

A part-time employee shall be allowed the prescribed public holidays without deduction of pay in respect of each holiday which is observed on a day ordinarily worked by the part-time employee.

(7) Right of Reversion

(a) Where a full-time employee is permitted, at his or her initiative, to work part-time for a period no greater than 12 months in the position he or she occupied on a full-time basis before becoming part-time, 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 is permitted at his or her initiative to work part-time for a period greater than 12 months in the position he or she occupied on a

full-time basis before becoming part-time, may apply to revert to full-time hours in that position but only as soon as is deemed practicable by the employer.

(c) A part-time employee who was previously a full-time employee within the Authority, who occupies a part-time office which was the initiative of management and who desires to revert to full-time employment will be 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 his or her desire to revert to full-time employment

(d) Nothing in paragraph (c) of this subclause shall prevent the employer, with the written consent of the employee, transferring that employee to a full-time position at a level less than the employee's substantive level.

Prior to effecting the transfer of an employee under paragraph (c) of this subclause the employer shall—

(i) notify the employee of the specific position to which the employer proposes to transfer the employee; and

(ii) obtain the written consent of the employee to his or transfer to that position.

22.—CEREMONIAL/CULTURAL LEAVE

(1) Employees are entitled to up to ten days leave per year for tribal/ceremonial/cultural purposes.

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

(3) Ceremonial/cultural leave may be taken as whole or part days. Each day, or part thereof, shall be deducted from annual leave and/or long service leave entitlements.

(4) The employer may request reasonable evidence of the legitimate need for the employee to be allowed time off. Prior notice must be given of the intention to take the leave, the reasons for taking the leave and the estimated length of absence.

(5) Time off without pay may be granted by agreement between employer and employee.

23.—DEFERRED SALARY SCHEME

(1) By written agreement between employer and employee, an employee may be paid 80% of his/her normal salary under this Agreement, and any other relevant agreement upon the expiry of this Agreement, over a five year period. The fifth year would then be taken as leave with pay at 80% of the normal salary and would be treated as continuous service. The leave may not be accrued unless the employer agrees to accrual.

(2) In deciding whether to support a particular request for this arrangement, the employer will take into account factors such as the operational requirements of the Authority. To satisfy operational requirements, the number of employees allowed to work under this arrangement may be restricted at any one time and/or the timing of the arrangements may need to be staggered.

(3) An employee may withdraw from this arrangement in writing. He/she would then receive a lump sum equal to the accrued credit, paid at a time agreed between employer and employee.

(4) Any paid leave taken during the first four years of the arrangement shall be paid at 80% of the employee's normal salary.

(5) It is the responsibility of the employee to investigate the impact of the arrangement on his/her superannuation and taxation.

24.—HOURS OF DUTY

(1) The employee's normal hours of work will be an average of 38 hours per week. Employees classified at Level 6 and above will work the number of hours required by the employer to meet the needs of the customers and the operational requirements of the employer.

(2) All allowances and leave entitlements available under the Award are to be based on a 38 hour week.

25.—WORKFORCE FLEXIBILITY

The employer may require an employee to carry out such duties as are within the limits of the employee's skill, competence and training and may require an employee to be based at any Authority workplace. It is the employer's responsibility to provide a safe and healthy work environment. The employer shall provide any training which may be necessary to enable the employee to carry out his/her duties.

26.—HIGHER DUTIES ALLOWANCE

A Higher Duties Allowance will be payable after ten consecutive days of acting, in which case the Allowance will be payable only for the higher duties performed after the ten day period. Periods of acting for ten consecutive days or less will be recorded in personal records.

27.—SHORT LEAVE

Short leave will not be available to employees covered by this Agreement.

28.—SALARY PACKAGING

(1) An employee may enter into a salary packaging arrangement with his/her employer.

(2) Salary packaging is an arrangement whereby the entitlements under this Agreement, contributing toward the Total Employment Cost (as defined) of an employee, can be reduced by and substituted with another, or other benefits.

(3) For the purpose of this clause, Total Employment Cost (TEC) is defined as the cost of salary and other benefits aggregated to a total figure or TEC, less the cost of Compulsory Employer Superannuation Guarantee contributions.

The TEC for the purposes of salary packaging, is calculated by adding—

(a) The base salary;

(b) Other cash allowances eg annual leave loading,

(c) Non cash benefits eg superannuation, motor vehicles, etc;

(d) Any Fringe Benefit Tax liabilities currently paid; and

(e) Any variable components, eg performance based incentives (where they exist).

(4) Where an employee enters into a salary packaging arrangement he/she will be required to enter into a separate written agreement with the employer that sets out the terms and conditions of the arrangement.

(5) The salary packaging arrangement must be cost neutral in relation to the total cost to the employer.

(6) The salary packaging arrangement must comply with relevant taxation laws and the employer will not be liable for additional tax, penalties or other costs payable or which may become payable by the employee.

(7) In the event of any increase or additional payments of tax or penalties associated with the employment of the employee or the provision of employer benefits under the salary packaging agreement, such tax, penalties and any other costs shall be borne by the employee.

(8) In the event of significant increases in Fringe Benefit Tax liability or administrative costs relating to arrangements under this clause, the employee may vary or cancel a salary packaging arrangement.

(9) The cancellation of salary packaging will not cancel or otherwise affect the operation of this Agreement.

(10) An employer shall not unreasonably withhold agreement to salary packaging on request from an employee.

(11) The Dispute Settlement Procedure contained in this Agreement shall be used to resolve any dispute arising from the operations of this clause. Where such a dispute is not resolved, the matter may be referred by either party to the Western Australian Industrial Relations Commission.

29.—DISPUTE SETTLEMENT PROCEDURE

In the event of any questions, disputes or difficulties arising as to the interpretation and implementation of this Agreement the following procedures shall apply—

(1) The Union representative and/or the employee/s concerned shall discuss the matter 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 following the discussion in accordance with subclause (1) hereof the matter shall be referred by the union representative to the Western Australian Alcohol and Drug Authority Executive Director or his/her nominee for resolution.

(3) If the matter is not resolved within 5 working days of the Union representative's notification of the dispute to the employer it may be referred to by either party to the Western Australian Industrial Relations Commission. However, it is required that persons involved in the question, dispute or difficulty shall confer among themselves and make reasonable attempts to resolve the issues before taking those matters to the WAIRC.

30.—SIGNATURES OF PARTIES TO THE AGREEMENT

Signatories

Signed for and on behalf of the
CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA INCORPORATED by:
D Robinson
signed
Date 8/2/99

Signed for and on behalf of the
WESTERN AUSTRALIAN ALCOHOL AND DRUG AUTHORITY by:
C Calogero
signed
Date 10/2/99

SCHEDULE A

SALARY SCHEDULE.

Level	Base Salary	From Date of Registration (a) [3.5%]	12 Months After the Date of Registration (a) [3.5%]
	$	$	$
U/17yrs	11874	12290	12720
17 yrs	13876	14362	14864
18 yrs	16186	16753	17339
19 yrs	18736	19392	20070
20 yrs	21039	21775	22538
1.1	23112	23921	24758
1.2	23824	24658	25521
1.3	24535	25394	26283
1.4	25242	26125	27040
1.5	25952	26860	27800
1.6	26664	27597	28563
1.7	27481	28443	29438
1.8	28047	29029	30045
1.9	28884	29895	30941
LEVEL 2			
2.1	29884	30930	32012
2.2	30653	31726	32836
2.3	31459	32560	33700
2.4	32313	33444	34614
2.5	33204	34366	35569
LEVEL 3			
3.1	34431	35636	36883
3.2	35386	36625	37906
3.3	36371	37644	38962
3.4	37383	38691	40046
LEVEL 4			
4.1	38769	40126	41530
4.2	39856	41251	42695
4.3	40974	42408	43892
LEVEL 5			
5.1	43128	44637	46200
5.2	44583	46143	47758

SCHEDULE A—*continued*

SALARY SCHEDULE.

Level	Base Salary	From Date of Registration (a) [3.5%]	12 Months After the Date of Registration (a) [3.5%]
	$	$	$
5.3	46096	47709	49379
5.4	47664	49332	51059
LEVEL 6			
6.1	50188	51945	53763
6.2	51904	53721	55601
6.3	53680	55559	57503
6.4	55576	57521	59534
LEVEL 7			
7.1	58482	60529	62647
7.2	60494	62611	64803
7.3	62682	64876	67147
LEVEL 8			
8.1	66239	68557	70957
8.2	68787	71195	73686
8.3	71945	74463	77069
LEVEL 9			
9.1	75891	78547	81296
9.2	78556	81305	84151
9.3	81596	84452	87408
CLASS 1	86194	89211	92333
CLASS 2	90791	93969	97258
CLASS 3	95387	98726	102181
CLASS 4	99984	103483	107105

(a) Payments to be effective from the beginning of the first pay period on or after the relevant date.

SCHEDULE B

SALARY SCHEDULE.

SPECIFIED CALLINGS

Level	Base Salary	From Date of Registration (a) [3.5%]	12 Months After the Date of Registration (a) [3.5%]
	$	$	$
LEVEL 2/4			
1st year	29884	30930	32012
2nd year	31459	32560	33700
3rd year	33204	34366	35569
4th year	35386	36625	37906
5th year	38769	40126	41530
6th year	40974	42408	43892
LEVEL 5			
5.1	43128	44637	46200
5.2	44583	46143	47758
5.3	46096	47709	49379
5.4	47664	49332	51059
LEVEL 6			
6.1	50188	51945	53763
6.2	51904	53721	55601
6.3	53680	55559	57503
6.4	55576	57521	59534
LEVEL 7			
7.1	58482	60529	62647
7.2	60494	62611	64803
7.3	62682	64876	67147
LEVEL 8			
8.1	66239	68557	70957
8.2	68787	71195	73686
8.3	71945	74463	77069

SCHEDULE B—*continued*

SALARY SCHEDULE.

SPECIFIED CALLINGS

Level	Base Salary	From Date of Registration (a) [3.5%]	12 Months After the Date of Registration (a) [3.5%]
	$	$	$
LEVEL 9			
9.1	75891	78547	81296
9.2	78556	81305	84151
9.3	81596	84452	87408
CLASS 1	86194	89211	92333
CLASS 2	90791	93969	97258
CLASS 3	95387	98726	102181
CLASS 4	99984	103483	107105

(a) Payments to be effective from the beginning of the first pay period on or after the relevant date.

AUSTRALIAN RED CROSS BLOOD SERVICE, WESTERN AUSTRALIA, AMA MEDICAL PRACTITIONERS INDUSTRIAL AGREEMENT 1998. No. AG 286 of 1998.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Western Australian Branch of the Australian Medical Association Incorporated

and

Australian Red Cross Blood Service, Western Australia.

No. AG 286 of 1998.

Australian Red Cross Blood Service, Western Australia, AMA Medical Practitioners Industrial Agreement 1998.

11 February 1999.

Order.

HAVING heard Mr P. L. Jennings as agent for Applicant and Mr M. J. West 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 as lodged in the Commission on the 24th day of December, 1998 entitled Australian Red Cross Blood Service, Western Australia, AMA Medical Practitioners Industrial Agreement 1998 in the terms of the following Schedule be registered as an industrial agreement.

(Sgd.) G.L. FIELDING,
[L.S.] Senior Commissioner.

Schedule.

AUSTRALIAN RED CROSS BLOOD SERVICE, WESTERN AUSTRALIA AMA MEDICAL PRACTITIONERS INDUSTRIAL AGREEMENT 1998

PART 1—PRELIMINARIES

1.—TITLE

This Agreement shall be known as the Australian Red Cross Blood Service, Western Australia, AMA Medical Practitioners Industrial Agreement 1998.

2.—PARTIES AND SCOPE

1. The parties to this Agreement are the Western Australian Branch of the Australian Medical Association Incorporated (the Association) and the Australian Red Cross Blood Service, Western Australia (ARCBS-WA).

2. This Agreement shall extend to and bind all medical practitioners employed by the ARCBS-WA.

3. The estimated number of medical practitioners bound by this Agreement upon registration is 6.

3.—PURPOSE OF AGREEMENT

1. The purpose of this Agreement is to enable the parties to develop and implement on a cooperative basis working arrangements that increase flexibility in the organisation and further improve productivity and efficiency at the enterprise through enhanced access to services by employees and the ARCBS, ensuring an attractive and competitive work environment

2. The parties are at all times committed to the achievement of the vision and mission in accordance with the ARCBS values.

3. The parties to this Agreement are committed to ensuring that the organisation and staff are best placed to meet present and future operational demands in a safe, healthy and equitable work environment in which employees are treated fairly, consistently and with respect, and are encouraged and supported in achieving their full potential.

4.—NO FURTHER CLAIMS

The parties undertake that for the period of this Agreement they will not other than as provided in this agreement pursue any extra claims with respect to salaries and conditions to apply within the period of this Agreement to employees who are bound by it.

5.—TERM, EXPIRY AND RENEGOTIATION OF AGREEMENT

1. This Agreement shall have effect from the first pay period commencing on or after the date of registration and shall expire on 31 December 1999, or 31 December 2000, subject to agreement being made for this extension prior to 31 December 1999.

2. Negotiations for a new agreement will commence at least six months prior to the expiry date of this Agreement.

3. If a new agreement is not registered prior to the expiry of this agreement, this Agreement shall continue in force until a new Agreement is made.

6.—AGREEMENT FLEXIBILITY

In recognition of the need for maximum flexibility within this Agreement, where the ARCBS-WA, the Association and a valid majority of employee(s) concerned who vote agree, mutually acceptable alternative terms and conditions may be implemented in substitution of those specified in this Agreement.

Valid majority refers to the majority of eligible people who cast a valid vote.

7.—TRANSITION / RETENTION OF RIGHTS

Any pre-existing entitlements including leave balances are not affected by this Agreement.

8.—DEFINITIONS

"**ARCBS**" means the Australian Red Cross Blood Service.

"**Association**" means the Western Australian Branch of the Australian Medical Association Incorporated.

"**Board of Reference**" means a panel consisting of a person nominated by the employer, a person nominated by the employee's representative and an independent Chairperson appointed by the Western Australian Industrial Relations Commission.

"**Employer**" means the Australian Red Cross Blood Service, Western Australia.

"**Medical Practitioner**" means a medical practitioner as defined under the Medical Act 1894 as amended from time to time.

"**Senior Medical Practitioner**" means a registered medical practitioner who does not have a specialist qualification but—

- practices without clinical supervision exclusively in a NSQAC recognised specialist area or such other area recognised by the ARCBS as being a specialist area and/or;
- has significant administrative duties (50% as a guide) and/or;
- clinically supervises other medical practitioners and/or;
- provides professional direction on a state-wide basis.

"**Specialist**" means a registered medical practitioner who holds the appropriate higher qualification of a University or College in a specialty approved by the Employer. This shall mean a specialist qualification endorsed by the National Specialist Qualifications Advisory Committee (NSQAC), or such other specialist qualification recognised by the Commissioner of Health for the purposes of remunerating a medical practitioner as a specialist. (This shall normally only apply in exceptional circumstances and to satisfy areas of unmet need.) To be remunerated as a specialist such medical practitioners shall be practicing in the specialty for which they are qualified.

"**Vocationally Registered GP**" means a medical practitioner who has been granted Vocationally Registered status under the Health Insurance Act, or equivalent recognised by the employer.

9.—CONTRACT OF SERVICE AND HOURS

1. The contract of service shall be between the medical practitioner and the employer on either a full time or a sessional basis and may be terminated by not less than 3 months' notice on either side given in writing on any day or by the payment or forfeiture as the case may be of 3 months' salary. A lesser period of notice may be given by agreement between the medical practitioner and the employer.

Provided that the employer must not terminate the employment unless there is a valid reason, or valid reasons, connected with the medical practitioner's capacity or conduct or based on the operational requirements of the employer.

2. Notwithstanding the provisions of subclause (1) a medical practitioner shall be appointed subject to a probationary period of six months. In the case of a full time medical practitioner the employer may extend the period of probation for a further period of up to six months. During the period of probation either party may terminate the employment contract by giving 4 weeks notice (or payment in lieu of notice if the ARCBS initiates the termination) or such lesser period as is agreed between the medical practitioner and the employer. A medical practitioner who satisfactorily completes the probationary period shall be a permanent employee.

Notwithstanding the above, in exceptional circumstances an employer may by agreement with the medical practitioner appoint him/her on a fixed term contract.

3. A medical practitioner shall subject to clinical independence be appointed to work in accordance with his/her duty statement and ARCBS-WA policies/procedures as varied from time to time. A full time medical practitioner's ordinary hours of duty shall be thirty eight hours per week (35 if employed on a sessional basis) to be worked between the standard hours of the employer.

4. Notwithstanding any other term of the Agreement, the Employer shall at all times indemnify the Employee against all action, suits, claims, demands, compensation, damages (including consequential loss) costs, fees and expenses which may be brought, made or claimed at any time or times by any person or body because of any Act or omission by the Employee arising directly or indirectly out of or in relation to his or her employment

5. The ARCBS-WA may at any time, without prior notice, dismiss a medical practitioner for gross misconduct.

10.—SESSIONAL MEDICAL PRACTITIONERS

1. Medical practitioners employed on a sessional basis shall be employed for less than ten sessions on a regular basis as specified in their contract of employment.

2. Where a medical practitioner has demonstrated the incurrence of private practice costs outside the ARCBS, a further loading shall be paid at the rate of 14% of the part time payment, exclusive of superannuation contributions specified by the *Superannuation Guarantee (Administration) Act* 1992, for each session allocated up to and including 5 sessions. The medical practitioner must demonstrate the incurrence of private practice costs annually.

Provided that where a sessional medical practitioner by agreement with the Employer works in excess of 5 sessions per week, the private practice loading on the 6th session shall be reduced to 10% and for the 7th session shall be 5%.

No private practice loading is payable for sessions worked in excess of 7 per week.

3 a. A session is a notional period of approximately three and a half hours spent by the medical practitioner in providing services to the employer between the standard hours of the employer. A session can be a continuous working period or be made up of any combinations of part periods. Provided that the spread of hours may be varied by agreement between the employer and the medical practitioner.

A medical practitioner may elect, with the consent of their employer, to work "make up time" under which the medical practitioner takes time off during their ordinary hours and works those hours at another time.

A medical practitioner may, subject to the written agreement with the employer, perform some of their duties outside of their place of employment.

Where a medical practitioner is required to work outside of normal hours, the call back rates prescribed under Clause 12B—On Call/Call Back shall apply.

b. Where a medical practitioner is rostered on call for a specified period outside the agreed hours, payment shall be made in accordance with Clause 12B—On Call/Call Back

4. Sessional services shall count as qualifying service for annual leave and sick leave on the following basis—

a. **Annual Leave**

Normal entitlement as prescribed by Clause 16. A medical practitioner's salary during the period of such leave shall be calculated in accordance with the number of sessions per week for which the medical practitioner is employed, or where this varies from week to week, the average number of sessions worked per week in the previous 12 months.

b. **Sick Leave**

Normal credits prescribed by Clause 18 shall accrue to a medical practitioner. Payment made for sick leave shall be at the medical practitioners salary rate applicable at the time of taking leave.

5. A sessional medical practitioner shall be given the benefit of public holidays without variation to the medical practitioner's rate of payment provided the public holidays occur on a day on which the medical practitioners normally works.

6. Sessional medical practitioners shall accrue long service leave according to the number of sessions per week for which the medical practitioner is employed. The rate of accrual shall be as prescribed by Clause 20. Payment made for long service leave granted to a medical practitioner shall be subject to the following—

a. If a medical practitioner was consistently employed for a regular number of sessions during the whole of qualifying service, the medical practitioner shall continue to be paid the salary determined on that basis during the long service leave.

b. If a medical practitioner has been employed for a varying number of sessions during qualifying service, the payment for long service leave granted shall be calculated at the salary rate applicable to the medical practitioner at the time of taking the long service leave with the number of sessions for which payment is to be made being calculated by averaging the number of sessions for which the medical practitioner is employed over the qualifying period.

Example—

Payment for long service leave granted for 10 years' service consisting of 4 years working 4 sessions a week and 6 years working 2 sessions a week shall be calculated as follows—

(i) 4/10 of leave paid at the rate applicable for 4 sessions; and

(ii) 6/10 of leave paid at the rate applicable for 2 sessions.

This provision also applies in respect of that portion of service of a full time medical practitioner who has been employed on a sessional basis for part of the period of qualifying service.

11.—SALARIES AND SALARY RANGES

1. Full time medical practitioners shall be paid pursuant to Schedule A of this Agreement based on ten sessions per week.

2. Sessional medical practitioners shall be paid in for the number of sessions for which they are employed at the sessional rate prescribed pursuant to Schedule B of this Agreement.

3. Provided that the salary/payment levels apply as follows—

		Levels
a.	Medical Practitioner	13—17 inclusive
b.	Senior Medical Practitioner	17—20 inclusive
c.	Specialist	15—23 inclusive

and provided that all medical practitioners are placed within the relevant range according to years of experience.

4. Subject to satisfactory performance, a medical practitioner shall proceed from the point of entry in the salary range to the maximum of the salary range by annual increments according to the increments of such salary range.

12.—ON CALL AND CALL BACK

1. A medical practitioner placed on call shall be paid an allowance of $7.81 with effect from 1/1/98, $8.08 with effect from 1/1/99 and $8.37 with effect from 1/1/2000 for each hour on call. Provided that the allowance shall not be paid with respect to any period for which payment is made in accordance with subclause (3) when the medical practitioner is recalled to work. This allowance shall be adjusted in accordance with general percentage increases applying to the salary rates under this Agreement.

2. The following provisions shall apply to a medical practitioner recalled to work—

a. The medical practitioner shall be paid a minimum of two hours as follows—

(i) all hours worked on any day outside midnight and 6am shall be paid at the rate of time and a half of the hourly rate derived by dividing the relevant rate prescribed in Schedule A by 3.5 to get an hourly rate.

(ii) all hours worked on any day between midnight and 6am shall be paid at the rate of double time of the hourly rate derived by dividing the relevant rate prescribed in Schedule A by 3.5 to get an hourly rate.

b. The medical practitioner shall not be obliged to work for two hours if the work for which the medical practitioner was recalled is completed in less time, provided that if the medical practitioner is called out within two hours of starting work on a previous recall the medical practitioner shall not be entitled to any further payment for the time worked within that period of two hours.

c. If the call back exceeds two hours, the employee shall be paid at the rate prescribed in 12.2(a)(i) for the first additional hour and thereafter at the rate prescribed in 12.2(a)(ii).

d. Payment for the call back shall commence from—

(i) In the case of a medical practitioner who is on call, the time the medical practitioner starts work;

(ii) In the case of a medical practitioner who is not on call, the time the medical practitioner embarks on the journey to attend the call. Provided that where a medical practitioner is recalled within 2 hours prior to commencing normal duty, any time spent in travelling shall not be included in actual duty performed for the purpose of determining payment under this paragraph.

3. A medical practitioner who is required to use his/her motor vehicle when recalled to work shall be reimbursed all expenses incurred in accordance with the provisions of Clause 26 of this agreement.

4. Where the Employer determines that there is a need for a medical practitioner to be on call or to provide a consultative service and the means of contact is to be by telephone, the Employer shall where the telephone is not already installed bear the cost of such installation. Where as a usual feature of the work a medical practitioner is required to be on call or to provide a consultative service, the Employer shall pay the full amount of the telephone rental.

5. The provisions of this clause may be varied by agreement between the Association and the Authority.

13.—SUPERANNUATION

1. The employer will make superannuation contributions it is required to make by virtue of the Superannuation Guarantee Charge Act and the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth ("the SGA Act").

2. For the purposes of this clause "complying fund or scheme" means—

a. A fund or scheme that is a complying fund or scheme within the meaning of the SGC Act; and

b. Under the governing rules of which, contributions may be made by or in respect of the employee.

3. From the date of registration—

a. The employer shall make the superannuation contributions referred to in sub-clause (1) to a complying superannuation fund or scheme;

b. Medical practitioners shall be entitled to nominate the complying superannuation fund or scheme to which contributions may be made by or in respect of the medical practitioner.

c. The employer shall notify medical practitioners of their entitlement to nominate a complying superannuation fund or scheme as soon as practicable;

d. A nomination or notification of the type referred to in paragraphs (b) and (c) of this subclause shall, subject to the requirements of regulations made pursuant to the Industrial Relations Legislation Amendment and Repeal Act 1995, be given in writing to the employer or the medical practitioner to whom such is directed;

e. The employer and the medical practitioner shall be bound by the nomination of the medical practitioner unless the employee and the employer agree to change the complying superannuation fund or scheme to which contributions are to be made;

f. The employer shall not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by a medical practitioner provided that on and from 30 June 1998, and until an employee thereafter nominates a complying superannuation fund or scheme, the Red Cross Blood Service shall make the required contributions to the Australian Red Cross Blood Society (WA) Divisional Superannuation fund, being a complying fund.

14.—PRIVATE PRACTICE

Services provided by a medical practitioner outside of the ARCBS are the private affair of the medical practitioner. Such services shall include services the practitioner renders to eligible patients as part of the medical practitioner maintaining professional standards to meet the requirements for maintaining vocational registration etc and to patients in State Government hospitals. Income obtained by the practitioner outside of duties with the ARCBS is the private income of the medical practitioner.

Provided that the exercise of private practice by a medical practitioner shall not in any way conflict with the medical practitioner's duties with the employer.

15.—PROFESSIONAL DEVELOPMENT AND STUDY LEAVE

Medical practitioners shall have access to Professional Development and Study Leave to maintain registration, satisfy maintenance of professional standards set down by the relevant professional bodies and facilitate improvement in skills and efficiency.

16.—CONFIDENTIALITY

A medical practitioner shall not be bound, without the consent of the donor, to divulge any information which the medical practitioner has learned in attending a donor, other than in accordance with the AMA's Code of Ethics.

17.—ANNUAL LEAVE

1. A period of 20 days leave, or any part thereof, with payment at the employees ordinary pay shall be allowed annually to an employee.

2. Annual leave loading has been annualised into the base salary. All entitlements to annual leave including pro rata leave will be paid upon termination.

3. Any time in respect of which an employee is absent from work, except time for which he or she is entitled to claim paid sick leave, annual leave, long service leave, compassionate leave, family leave and the first four weeks of absence relating to workers compensation shall not count for the purpose of determining his/her right to annual leave.

4. Employees are required to give at least two weeks' prior notice of their intent to take leave.

5. The employer shall, as far as practicable, arrange to grant annual leave to suit the convenience of the employee. It is accepted by all parties that due to operational requirements, this cannot always be achieved.

6. Where there is agreement between the ARCBS and the employee, leave for sessional medical practitioners may be compacted.

18.—PUBLIC HOLIDAYS

1. 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.

2. Where Christmas day or New Years day falls on a Saturday or Sunday, such holidays shall be observed on the following Monday and where Boxing day falls on a Sunday or Monday, the holiday shall be taken on the following Tuesday. In such cases, the substituted day shall be deemed to be a holiday without deduction of pay in lieu of the day for which it is substituted.

3. On any public holiday named in this clause or day observed in lieu thereof the employee (who does not work on that public holiday) shall be paid at the ordinary rate of pay (exclusive of penalties) the employee would normally receive for hours usually worked on that day. Where the employee is rostered to work on a public holiday the employee shall be paid at the rate of double time and a half of the rate prescribed by this agreement or time and a half of the prescribed rate and a day in lieu.

4. When one or more public holidays fall during a period of annual leave the holiday or holidays shall be observed on the next succeeding work day or days as the case may be after completion of that annual leave.

5. An employee who is required to be on call in accordance with the provisions of Clause 13—On Call and Call Back of this agreement on a day observed as a public holiday during what would normally have been the employee's ordinary hours shall be allowed to observe that holiday on a day mutually acceptable to the employer and the employee.

19.—SICK LEAVE

1. An employee who is unable to attend work on the grounds of personal ill health or injury shall be entitled to payment at the rate of one day for each calender month, which accumulates from year to year.

2. The employee shall notify the employer as soon as possible of the employee's intention to access sick leave and how many days they are likely to be absent.

3. If an employee is absent due to ill health or injury for a period longer than the entitlement, payment may be adjusted when entitlement has become due, provided that payment will be made for a maximum of three days at the time that such sick leave is taken. However if the employee leaves the organisation before these three days are accrued, ARCBS will deduct this money from the termination payment.

4. A medical certificate shall be supplied for absences of greater than two days.

5. An employee who suffers personal ill health or injury whilst on annual leave may be paid sick leave in lieu of annual leave.

6. Where there is agreement between the ARCBS and the employee, leave for part time staff may be compacted.

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.

20.—LONG SERVICE LEAVE

1. ARCBS-WA employees shall be entitled to 13 weeks Long Service Leave after ten years continuous service, and each ten years of continuous service thereafter.

2. Pro rata shall be payable on resignation/termination after 7 completed years of continuous service.

3. Long service leave entitlements will be adjusted to reflect the new conditions, on a pro rata basis.

4. All other conditions remain in accordance with the Long Service Leave provisions published in volume 65 of the Western Australian Industrial Gazette at pages 1-4 inclusive.

5. In accordance with subsection (3) above, adjusted long service leave entitlements will reflect the following. The formula used = 10/15 x actual years + days of continuous service

Actual Years of Service	Years of service for the Purpose of calculating long service leave.
15	10
14	$9^{1}/_{3}$
13	$8^{2}/_{3}$
12	8
11	$7^{1}/_{3}$
10	7
9	6
8	$5^{1}/_{3}$
7	$4^{2}/_{3}$
6	4
5	$3^{1}/_{3}$
4	$2^{2}/_{3}$
3	2
2	$1^{1}/_{3}$
1	$^{2}/_{3}$

21.—FAMILY LEAVE

1. This clause operates in conjunction with the sick leave clause in this agreement.

2. **Use of Sick Leave**

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, any sick leave entitlement for absences to provide care and support for such persons when they are ill.

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**

Notwithstanding the provisions of this clause, an employee may elect, with the consent of the employer, to access their annual leave entitlement for this purpose.

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.

22.—COMPASSIONATE 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 be entitled to compassionate leave of up to two days for each occasion required. In addition, such leave may be approved upon request in relation to the death of a category of person not listed in this clause.

2. Employees may access annual leave and accrued long service leave for the purpose of compassionate leave in addition to the entitlement under subclause (1) above.

3. Proof of such death shall be provided 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.

23.—PARENTAL LEAVE

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

1. **Definitions**

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

2. **Basic entitlement**

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

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

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

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

3. **Maternity leave**

a. An employee will provide to the employer at least ten weeks in advance of the expected date of confinement of parental leave—

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

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

(iii) 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.

b. Subject to subclause 2(a) and unless agreed otherwise between employer and employee, an employee may commence parental leave at any time within six weeks immediately prior to the expected date of the birth.

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

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

e. Where leave is granted under subclause 3(d), during the period of leave an employee may return to work at any time, as agreed between the employer and the employee provided that time does not exceed four weeks form the recommencement date desired by the employee.

4. **Paternity leave**

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

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

b. Written notification of the date on which he proposes to start and finish the period of paternity leave; and

c. A statutory declaration stating—

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

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

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

5. **Adoption leave**

a. The employee will notify the employer at least ten weeks in advance of the date of commencement of adoption leave and the period of leave to be taken.

An employee may commence adoption leave prior to providing such notice where through circumstances beyond the control of the employee, the adoption of a child takes place earlier.

b. Before commencing adoption leave, an employee will provide the employer with 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 to be taken by the employee's spouse; and

(iii) that for the period of adoption leave the employee will not engage in any conduct inconsistent with their contract of employment.

c. An employer may require an employee to provide confirmation from the appropriate government authority of the placement.

d. Where the placement of child for adoption with an employee does not proceed or continue, the employee will notify the employer immediately and the employer will nominate a time not exceeding four weeks for the employee's return to work.

6. **Variation of period of parental leave**

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

7. **Parental leave and other entitlements**

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

8. **Transfer to a safe job**

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

b. If the transfer to a safe job is not practicable, the employee may elect, or the employer may require the employee, to commence parental leave.

9. **Returning to work after a period of parental leave**

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

b. An employee will be entitled to the position which they held immediately before proceeding on parental leave. In the case of an employee transferred to a safe job pursuant to subclause 8, the employee will be entitled to return to the position they held immediately before such transfer.

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

10. **Replacement employees**

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

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

24.—SPECIAL LEAVE

Special leave with or without pay may be granted at the discretion of the employer.

25.—HIGHER DUTIES

1. A Higher Duties Allowance will be available to an employee who is required to act in a position of a higher classification for a period of five or more consecutive days.

2. Where an employee is required to act in a position of a higher classification on a regular basis for periods of less than five consecutive days, a claim for higher duties will be considered by the Program Manager or Director.

3. Where the employee performs all of the duties of a position which is classified at a higher level, the higher rate shall be paid whilst so engaged.

4. Where an employee performs some, but not all of the duties in that higher classification, a rate of pay less than that prescribed in that higher classification can be paid on agreement between the employee and the organisation.

5. An employee who is aggrieved by a decision of their Program Manager or Director in regard to higher duties, may follow the grievance procedure outlined in this agreement.

26.—TRAVEL ALLOWANCE

1. Where an employee is required during his/her normal working hours by the ARCBS to work outside his/her usual place of employment the employer shall pay the employee any reasonable travelling expenses incurred except where an allowance is paid in accordance with subclause (2) of this clause.

2. Where an employee is required and authorised to use his/her own motor vehicle in the course of his/her duties he/she shall be paid an allowance not less than that provided in subclause (3) set out hereunder. Notwithstanding anything contained in this subclause the employer and the employee may make any other arrangements as to car allowance not less favourable to the employee.

3. Motor car allowance is as follows.

Engine size	Cents per kilometre
Up to 1600cc	47.0 cents
Over 1600cc	53.1 cents

27.—CLAIMS FOR PAYMENT OF ENTITLEMENTS

Employees shall submit claims for payment of overtime, call backs or other entitlements for which they have not been formally rostered in the pay period within which the entitlement arose or in the following period.

28.—RECOVERY OF OVERPAYMENTS

1. Where an employee is paid for work not subsequently performed or is otherwise overpaid, the employer will, after consultation with the employee, make adjustments to the employee's subsequent fortnightly salary payments.

2. A one-off overpayment will be recovered in the pay period immediately following the pay period in which it was made, or in the period immediately following the pay period in which it was discovered that overpayment had occurred.

3. Cumulative overpayments will be recovered at a rate agreed between the employer and the employee, provided that the rate is not less than the rate at which it was overpaid or $50.00 per week, whichever is the lesser amount per pay period.

29.—SALARY PACKAGING

1. The employees covered by this award will have access to salary packaging arrangements.

2. As to whether or not an employee accesses those arrangements will be solely at the choice of the employee.

3. The agreed maximum portion of the non salary component of the salary package and the conditions of packaging are set out in the attached schedule.

4. This arrangement is available subject to the ARCBS incurring no additional costs and maintaining its current rate of Fringe Benefit Tax exemption.

The conditions associated with salary packaging within ARCBS-WA can be seen at Schedule B.

30.—ORGANISATIONAL CHANGE

The organisation commits to complying with its Guidelines Management of Organisation Change attached as Schedule C.

31.—REDUNDANCY

1. **Discussions before terminations**

a.(i) Where the ARCBS has made a definite decision in accordance with organisational guidelines, that it no longer wishes the job the employee (who is not a casual 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 appropriate union.

(ii) The discussion shall take place as soon as is practicable after the ARCBS has made a definite decision which will invoke the provisions of paragraph (i) hereof and shall cover among other things, any reasons for the proposed terminations, measures to avoid or minimise the terminations and measures to minimise any adverse affect of any terminations on the employees concerned.

2. **Notice**

In the event of redundancy the ARCBS will give the employee the following notice or payment in lieu thereof.

Employee Period of Continuous Service	Period of Notice
Not more than 1 year	At least 1 week
More than 1 but not more than 3 years	At least 2 weeks
More than 3 but not more than 5 years	At least 3 weeks
More than 5 years	At least 4 weeks

The amount of notice will increase by 1 week if the employee is over 45 years of age and has completed at least 2 years of continuous service.

3. **Severance pay**

(i) In addition to the period of notice prescribed in subclause (b) for ordinary termination, an employee whose employment is terminated for reasons set out in paragraph (a)(i) hereof shall be entitled to the amount of severance pay in respect of a continuous period of service, in accordance with subclause (c)(ii).

(ii) Two weeks ordinary pay for each completed year of service, provided that the severance pay shall not exceed 30 weeks. Where a voluntary redundancy is accepted within two weeks of being offered, an additional payment in accordance with the following schedule (above and beyond the severance pay and payment in lieu of notice entitlement) will be payable.

2 weeks pay if less than 1 year of service

4 weeks pay if greater than 1 year but less than 2 years service

6 weeks pay if greater than 2 years but less than 3 years service

8 weeks pay if over 3 years of service.

"Week's Pay" means the ordinary weekly rate of wage for the employee concerned.

"Year of Service" refers to completed years and is pro rata.

Provided that in the calculation of continuous service under this subclause, any period of leave without pay (including maternity leave, unpaid sick leave etc) that exceeds two weeks shall not be counted in calculating continuous service.

4. **Alternative employment**

The severance pay prescribed may be varied if the ARCBS obtains mutually acceptable alternative employment for the employee. The ARCBS will select an outsourcing agency to assist the employee in obtaining alternative employment.

5. **Financial Advice**

ARCBS will arrange for the employee to receive financial advice with an organisation nominated by the employee and agreed by ARCBS.

6. **Time off during notice period**

During the period of notice of termination for reasons set out in paragraph (a)(i) hereof the employee shall for the purpose of seeking other employment be entitled to be absent from work for a reasonable period of time without deduction of pay.

7. **Dispute settling procedures**

Any dispute under these provisions shall be dealt with in accordance with the dispute settlement clause of this agreement.

32.—INTENT TO CREATE NATIONAL AGREEMENT

The parties acknowledge the intent of ARCBS to work with other relevant unions to create a national agreement covering core conditions of employment.

33.—DISPUTE SETTLING PROCEDURES

1. Subject to Clause 4—No Further Claims and the provisions of the Industrial Relations Act, 1979 any questions, disputes or difficulties arising under this Agreement shall be settled in accordance with the following procedures.

2. Where the question, dispute or difficulty is raised by an employee, or a group of employees, the following steps shall be observed—

a. The employee(s) concerned shall discuss the matter with the Senior Medical Practitioner. If the matter cannot be resolved at this level the Senior Medical Practitioner shall, within three working days, refer the matter to the Medical Director and the employee(s) shall be advised accordingly.

b. The Medical Director shall, if able, answer the matter raised within one week of it being referred and, if the Medical Director is not able, refer the matter to the Executive for its attention, and the employee(s) shall be advised accordingly.

c. If the matter has been referred in accordance with paragraph (b) above the employee(s) or the appropriate AMA medical practitioner representative shall notify the Association, so that it may discuss the matter with the employer.

3. The employer shall, as soon as practicable after considering the matter before it, advise the employee(s) or, where necessary, the Association of its decision. Provided that such advice shall be given within one month of the matter being referred to the employer.

4. Where the parties agree that a matter is non-industrial, it may by agreement be referred to other appropriate bodies, (eg relevant Royal Colleges) for advice and/or assistance.

5. Nothing in this procedure shall prevent the parties agreeing to shorten or extend the periods prescribed.

6. Subject to Clause 4—No Further Claims should a question, dispute or difficulty remain in dispute after the above processes have been exhausted, the matter may —

a. be referred by either party to the Western Australian Industrial Relations Commission (WAIRC), (provided that it is required that persons involved in the question, dispute or difficulty shall confer among themselves and make reasonable attempts to resolve questions, disputes or difficulties before taking these matters to the Commission), or

b. where the parties agree, to another independent arbitrator chosen by the parties. In such a case

(i) either party may be represented in the arbitration by an agent or legal practitioner and shall bear the costs of that representation;

(ii) the employer will meet the costs of the arbitration. Provided that where the arbitrator determines a claim is frivolous or vexatious the arbitrator may assign the costs of the arbitration (but not the costs of representation) against the claimant or apportion them in any

manner between the parties. The parties undertake to accept the arbitrated decision as final and binding.

7. Industry wide issues will be dealt with by discussions between the appropriate Association official(s) and employer representative(s). Should a matter remain in dispute after discussions have been exhausted it may be dealt with in accordance with subclause 33.6.

8. While the above procedures are being followed no party shall take action, of any kind, which may frustrate a settlement in accordance with the above procedures. The status quo (ie the condition applying prior to the issue arising) will remain until the issue is resolved in accordance with the above procedures.

9. Where the employer seeks to discipline an employee, or terminate an employee the ARCBS guidelines for the management of unsatisfactory performance shall be followed.

SCHEDULE A
BASE RATES PER SESSION

CLASSIFICATION	LEVEL	1 Jan 1998	1 Jan 1999	1 Jan 2000
MEDICAL PRACTITIONER (YEAR 1)	13	188.32	194.91	201.73
MEDICAL PRACTITIONER (YEAR 2)	14	196.86	203.75	210.88
MEDICAL PRACTITIONER (YEAR 3) SPECIALIST (YEAR 1)	15	205.35	212.54	219.98
MEDICAL PRACTITIONER (YEAR 4) SPECIALIST (YEAR 2)	16	213.87	221.36	229.1
MEDICAL PRACTITIONER (YEAR 5) SENIOR MEDICAL PRACTITIONER (YEAR 1) SPECIALIST (YEAR 3)	17	224.67	232.53	240.67
SENIOR MEDICAL PRACTITIONER (YEAR 2) SPECIALIST (YEAR 4)	18	230.5	238.57	246.92
SENIOR MEDICAL PRACTITIONER (YEAR 3) SPECIALIST (YEAR 5)	19	232.89	241.04	249.48
SENIOR MEDICAL PRACTITIONER (YEAR 4) SPECIALIST (YEAR 6)	20	236.36	244.63	253.19
DIRECTOR OF MEDICAL SERVICES (YEAR 1) SPECIALIST (YEAR 7)	21	244.12	252.66	261.51
DIRECTOR OF MEDICAL SERVICES (YEAR 2) SPECIALIST (YEAR 8 TO 13)	22	248.97	257.68	266.7
DIRECTOR OF MEDICAL SERVICES (YEAR 3) SPECIALIST (YEAR 14)	23	259.46	268.54	277.94

SCHEDULE B – SALARY PACKAGING

1. Salary packaging under this award/agreement allows employees to receive up to 30% of their gross base salary in a form other than take home pay. Employees will be offered the opportunity to choose from a list of benefits that will be paid for by the employer instead of receiving gross salary. Gross salary is reduced by the amount of the benefits paid by the employer. The net gross pay is then subject to PAYE tax.

2. All existing entitlements (ie workers compensation, superannuation, leave loading, penalties, overtime) will be based on pre-package salary.

3. All employees covered under this agreement/award have access to salary packaging arrangements subject to the following provisions—

a. Entry into salary packaging arrangements is a voluntary decision to be made by individual employees.

b. All salary packaging arrangements will be in accordance with the items available, and funds through packaging, will be used only as stated by the employee and approved by the employer.

c. Employees will be required to pay any administrative costs for the packaging to an Administrative Agent appointed by the employer (as required). If the salary packaging manager notifies the organisation of the intention to increase fees, the organisation will inform and consult with the staff who are at the time salary packaging, to decide whether or not to investigate the costs and benefits of contracting with another provider.

d. All employees can decide to terminate their salary packaging arrangement by the giving of at least two weeks written notice.

e. The Administrative Agent will provide employees with a salary packaging manual.

f. Employees entering into a salary packaging arrangement understand and accept that,

(i) In the event that Fringe Benefit tax (FBT) becomes payable on the benefit items which are selected, the salary packaging arrangement shall lapse and a new arrangement may be put in place whereby the total cost of salary packaging to the employer does not increase. If the employee elects to continue with packaging, the cost of the payment of the FBT will be passed back to the individual, or benefit items can be converted back to salary to be taxed at the relevant PAYE tax rate.

(ii) Upon resignation or termination, the ARCBS shall, by deduction from final payment or upon demand, be reimbursed for any amounts of over expenditure.

(iii) All unexpended amounts will be paid back to the employee in the case of resignation or termination from the arrangement, and will be subject to normal income tax.

(iv) Prior to the final pay period of the package year, an annual reconciliation will take place. Any amount of benefit items unused may be converted and added to salary payment on which PAYE will be deducted, or directed as a lump sum payment to a predetermined (i.e existing) packaged item.

(v) The employee is responsible for advising the administration bureau of any change to their benefits packaged, employment status or salary payments that would affect their salary packaging arrangement.

(vi) The cost of any financial advice sought shall be borne by the employee.

g. It is a term of this Agreement that Clause 33. – Dispute Settling Procedure shall have no application in relation to withdrawal of salary packaging as provided for in clause 3(d) of this Schedule.

h. Benefits available to be packaged include—

Vehicle and associated expenses,

Personal and Family Education,

Childcare,

Superannuation,

Health Benefits,

Membership of an Association.

Rent

Mortgage

The above "menu of options" may expand subject to ARCBS Board approval.

SCHEDULE C—GUIDELINES
MANAGEMENT OF ORGANISATIONAL CHANGE

Change is an ongoing process which will have a different emphasis and effect across Australia. These guidelines provide consistency in the way significant organisational change in the ARCBS will be addressed.

1. **Objectives**

1.1 To achieve efficient and effective organisational change towards continuous improvement within the ARCBS, through consultation, participation and communication in planning, development and implementation of changes.

1.2 To provide all employees affected by proposed change with the opportunity to review proposals and to be involved in the development of implementation plans.

1.3 To ensure consultation involves those directly affected by proposed changes and the reasons for the proposals are effectively communicated.

1.4 To ensure the management of change operates in accordance with the ARCBS Values and the outcomes are consistent with the Values.

1.5 To integrate learning from change management processes into organisational systems to ensure on-going organisational growth.

2. **Scope**

2.1 This process applies throughout the ARCBS with regard to organisational change which is likely to impact on the organisation or on staff, where operational arrangements or requirements involve the restructuring of the way work is done;

or,

where two or more positions will be affected.

2.2 Consultation Committee(s) will set criteria in accordance with these guidelines for the type of changes to which this process applies.

3. **Process**

3.1 A statement should be circulated by the initiator of the change explaining the reasons for the proposal, background, likely impact (eg work areas/teams affected, direct and indirect position impacts) and include an outline of the process, including consultation, communication and timelines.

3.2 Each State and Territory will establish a Consultation Committee(s) to consider change proposals arising from State and National initiatives.

3.3 The Consultation Committee(s) at all times will be guided by the Vision, Mission, Values and Strategic Plan.

3.4 The main role of the Consultation Committee(s) in relation to organisational change is to

(i) facilitate consultation and communication

(ii) to consider and make recommendations to Executive on issues arising out of proposed changes to—

- working patterns, conditions and arrangements
- resources and staffing levels
- other issues of significant impact

4. **Consultation Committee(s)**

4.1 A Consultation Committee may be a committee already established for the purpose of consulting with stakeholders for a range of activities or a committee specifically established for an identified activity.

4.2 The Consultation Committee(s) will include staff and union representatives where appropriate with at least one member representing Executive.

4.3 The individual or group responsible for initiating the change in consultation with the Human Resources Manager will develop a process for selecting or electing representatives to participate on the Committee(s).

4.4 The Consultation Committee(s) will develop Terms of Reference for the change process which will include—

- Review of the proposal.
- An optimum timeframe for implementation.
- Optimum benefits to be identified, communicated and understood.
- Cost analysis.
- Opportunities for those affected by the change to maximise opportunities provided by the change.
- Reporting of recommendations to senior management.

4.5 Meetings will—

- elect a facilitator or chairperson
- be held regularly as determined by the Committee(s)
- have as an objective reaching decision by consensus

5. Review

At the conclusion of the "Change Process" the Consultation Committee will—

- Review and forward to Executive the key learnings gained in respect to the management of the change process and recommendations for improvement.
- Review the changes six months after implementation to evaluate the real effectiveness and benefits of the change.

PART 2—PARTIES TO THE AGREEMENT

The following are parties to the Agreement—

The Western Australian Branch of the Australian Medical Association, 14 Stirling Highway, NEDLANDS WA 6009

The Australian Red Cross Blood Service, Western Australia, 290 Wellington Street, PERTH WA 6000

SIGNING OF AGREEMENT, COMMON SEAL

Signed by: (indecipherable)

(HUMAN RESOURCE COORDINATOR)

of AUSTRALIAN RED CROSS BLOOD SERVICE, WESTERN AUSTRALIA

290 WELLINGTON STREET, PERTH WA 6000

Date: (18/12/98)

The Common Seal of the Western Australian Branch of the Australian Medical Association was hereunto affixed in the presence of—

(Vincent Caruso) Name

Signature

in the presence of—

(Peter Jennings) Name

Signature

AUSTRALIAN RED CROSS BLOOD SERVICE—WESTERN AUSTRALIA (ASU) ENTERPRISE AGREEMENT 1998.
No. AG 268 of 1998.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Australian Municipal, Administrative, Clerical and Services Union of Employees, WA Clerical and Administrative Branch

and

Australian Red Cross Blood Service—Western Australia.

No. AG 268 of 1998.

Australian Red Cross Blood Service—Western Australia (ASU) Enterprise Agreement 1998.

9 February 1999.

Reasons for Decision.

SENIOR COMMISSIONER: This is an application to register as an industrial agreement under section 41 of the Industrial Relations Act 1979 an enterprise bargaining agreement entitled "Australian Red Cross Blood Service—Western Australia (ASU) Enterprise Agreement 1998". The Agreement purports to regulate the terms and conditions of the clerical and administrative staff employed by Australian Red Cross Blood Service—Western Australia. There are approximately 65 employees covered by the Agreement. It is to remain in force until 31 December 1999, with provision to extend the Agreement 31 December 2000.

The application has given rise to a number of issues of significance in this jurisdiction.

In the form in which it was presented for registration, the Agreement contained the following provision—

"30.—No Non-Union Agreements.

The ARCBS-WA will not offer Australian Workplace Agreements, Workplace Agreements or any form of non-Union agreement as provided for in industrial legislation during the operation of this Agreement."

Subsequently, the parties have proposed that in lieu of that provision, the following provision be inserted—

"30.—Other Agreements.

It is the intention and understanding of the parties that the ARCBS-WA will not offer Australian Workplace Agreements or Workplace Agreements as provided for in industrial legislation during the operation of this Agreement."

That change was, in part, brought about by questions as to the validity of the initial provision. The Minister for Labour

Relations submits that the Commission should, before registering the Agreement, exercise the power under section 41(3) of the Act to direct the parties to delete the clause whether in its original or amended form. On the Minister's behalf, it is argued that the clause is not a provision in respect of an industrial matter; that it could give rise to the commission of an offence under the Workplace Agreements Act 1993; that in the event of a dispute arising under the clause the dispute settling procedure in the Agreement would be ineffective by reason of section 26A(a) of the Industrial Relations Act, 1979; and that the clause invalidly purports to override the Commonwealth Workplace Relations Act 1996.

The Minister initially sought leave, pursuant to section 30 of the Industrial Relations Act 1979 to intervene in the public interest to argue that the Agreement should be amended by deleting the provision in question. In my opinion such leave is unnecessary. Under section 29A of the Act a Notice of Application to register an industrial agreement, together with the agreement itself, is required to be served on the Trades and Labour Council of Western Australia, the Chamber of Commerce and Industry of Western Australia (Inc), The Australian Mines and Metals Association (Incorporated) and on the Minister. That requirement has been complied with on this occasion. By reason of section 29B(b) of the Act, not only are the parties to the Agreement parties to the proceedings, as one might expect, but "the other persons, bodies, organizations or associations upon whom or which a copy of the claim or application is served are also parties". Thus, the Minister is by force of the Act, a party to the proceedings. Hence it is not necessary for the Minister to seek leave to intervene on this occasion.

Provisions of the kind now in question are not entirely unique in industrial agreements registered by the Commission. There are however, very few instances of industrial agreements with provisions of this kind. The Australian Red Cross Blood Service Western Australia Enterprise Agreement 1998 (No. AG 267 of 1998, cl.29), to which the Hospital Salaried Officers Association of Western Australia (Union of Workers) is a party, contains an identical provision to that originally in the Agreement now in question. The St. John of God Health Care Subiaco Maintenance Agreement 1998 (No. AG 228 of 1998, cl.43); The St. John of God Hospital Murdoch (HSOA) Caregivers Agreement 1997 (No. AG 377 of 1997, cl.6); and The St. John of God Hospital Subiaco (HSOA) Caregivers Agreement 1997 (No. AG 381 of 1997, cl.6) contain somewhat similar provisions but without reference to Federal workplace agreements. A similar clause is contained in the Air Drill Enterprise Agreement 1998 (No. AG 22 of 1998, cl.14). Of course the lack of precedent or, indeed, the existence of precedent carries little weight in matters of this nature.

The jurisdiction of the Commission to register industrial agreements of the kind now in question is governed by section 41, and in particular subsection 41(2), of the Industrial Relations Act 1979. That subsection provides—

> "Subject to subsection (3) and section 41A, where the parties to an agreement referred to in subsection (1) apply to the Commission for registration of the agreement as an industrial agreement the Commission shall register the agreement as an industrial agreement."

The effect of section 41 is that the Commission has a very limited discretion as to whether to register a single enterprise agreement presented to it for registration. Subsection 41(2) plainly stipulates that the Commission "shall register" industrial agreements presented to it, subject only to the constraints imposed by sections 41(3) and 41A of the Act. Subsection 41(3) empowers the Commission to require parties 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". Section 41A prohibits the Commission from registering an agreement as an industrial agreement under section 41, if the agreement applies to more than a single enterprise and is contrary to the Act or any General Order made under the Act establishing the State Wage Fixing Principles. Further, section 41A prohibits registration unless the agreement includes an estimate of the number of employees who will be bound by the agreement upon registration. Apart from those constraints, the Commission appears to have no discretion in the matter and is obliged to register such agreements. Specifically, the Commission is not entitled to refuse to register the agreement because it contains provisions that the Commission or others consider to be unwise or otherwise inappropriate.

Not only is this interpretation consistent with the plain and ordinary meaning of language used in the Act, it is consistent with an interpretation which promotes the purpose or object of the legislation. When, in 1993, the existing provisions of sections 41 and 41A were enacted, the Parliament was informed that the purpose or object of the provisions was to "allow parties to come to an agreement without the intervention of the Commission" (see:*Western Australian Parliamentary Debates, Legislative Assembly (1993) Vol.4 p.1457;8 July,1993*). Moreover, such an interpretation is consistent with the objects of the Act as expressed in section 6 of the Act. Amongst those objects is the objective to encourage and provide a means for the parties to resolve their industrial disputes by agreement. Furthermore, the previous provisions of section 41 and in particular subsection 41(2), have been held to require the Commission to register an industrial agreement if the agreement was not contrary to the particular matters referred to in that subsection *(see: Australian Bank Employees Union and Others v. Federated Clerks' Union of Australia Industrial Union of Workers, WA Branch (1990) 70 WAIG 2086 at 2087).* Those previous provisions were not materially different, so far as is relevant, from the current provisions of section 41.

Interestingly, neither section 41 nor any other provision of the Act purports to limit the capacity in the Commission to register an agreement on the grounds that the Agreement contains provisions in breach of the Minimum Conditions of Employment Act 1993. Nor does the Minimum Conditions of Employment Act 1993 impose any such restriction. Of course, a provision of that kind in a registered industrial agreement would not, by virtue of section 5(2) of the Minimum Conditions of Employment Act 1993, have any force or effect.

It is not the case, as the agent for the Minister argues, that if an agreement contains a provision dealing with a matter which does not fall within the definition of an "industrial matter" that the agreement cannot be registered containing that provision. To qualify for registration the agreement must, as subsection 41(1) provides, be an agreement "with respect to any industrial matter" or an agreement "for the prevention or resolution under [the] Act of disputes, disagreements on questions relating thereto". As the Industrial Appeal Court held in *Australian Bank Employees Union v. Federated Clerks' Union of Australia Industrial Union of Workers, WA Branch (supra, at 2090)* an agreement may still be an agreement "with respect to" an industrial matter even though "there be one thing within the agreement that is not an industrial matter". The Agreement now under review when considered at a whole is so obviously an agreement with respect to an industrial matter that this issue does not bear further discussion. It primarily deals with the conditions of employment for employees of the Australian Red Cross Blood Service. The provisions regarding workplace agreements are only incidental to the main object of the Agreement. In the circumstances, I do not find it necessary to determine whether, as the agent for the Minister argues, the provision in question is or is not an "industrial matter".

Furthermore, I do not accept that the provisions of subsection 41(3) empower the Commission to direct the parties to an agreement to delete or amend a provision in the agreement simply because that provision deals with a matter other than an industrial matter or because it might be contrary to law. In my view, the subsection is directed solely towards is ensuring that the document presented for registration truly records what the parties intended it to record. Subsection 41(3) merely empowers the Commission to require the parties to effect a variation "for the purpose of giving clear expression to the true intention of the parties." In this context it ought not be overlooked that industrial agreements are often prepared by persons unskilled in drafting and frequently contain drafting errors. If the intention of the parties is clearly expressed in the agreement, whether or not contrary to other statutory provisions, it is difficult to see how this power can be utilised. The purpose of the power is simply to ensure that the intention of the parties is clearly expressed in the written agreement. Its purpose is not to require to parties to change their intention but to require them to express their intention clearly. If their intention is already clearly expressed, there is nothing for them to clarify.

The agent for the Minister argues that the parties cannot be taken to intend "truly" to break the law. As I understand the argument, such an intention is in reality not an intention at all. However, as a matter of fact, it might not always be the case that the parties are so law abiding. They may well intend, albeit misguidedly, to enter into an arrangement which by force of law is unenforceable or even illegal. What the parties intend in any particular case is a matter of fact. The existence or otherwise of fact cannot be altered by statute. In any event, for reasons which I set out below, I do not regard the provisions now in question to be in breach of the law.

The Workplace Agreements Act 1993 provides an "alternative system" of regulating employment relationships to the exclusion of the system of awards made or industrial agreements registered under the Industrial Relations Act 1979 *(see:Western Australian Parliamentary Debates, Legislative Assembly:(1993) Vol 4. p.1451 and see too: p.1455; 8 July 1993)*. It does not require that an employer offer workplace agreements to an employee or potential employee, nor give an employee or potential employee a right to be employed on such a basis. It merely provides employers with an option which they may or may not choose to exercise. Thus, if an employer freely agrees with a union, or for that matter anyone else, to refrain from exercising that option for a given period, I cannot see how it can be said that it is acting contrary to the provisions of the Industrial Relations Act 1979 or, indeed, with any other relevant Act. Indeed, to hold otherwise might be said to undermine the scheme of optional alternatives provided by the coexistence of the Industrial Relations Act 1979 and the Workplace Agreements Act 1993.

The agent for the Minister argues that the provisions of clause 30 of the Agreement have the potential to cause the Red Cross Blood Service or its officials to commit an offence by breaching the provisions of section 68 of the Workplace Agreements Act 1993. That section makes it an offence "by threats or intimidation persuade or attempt to persuade another person to enter into, or not enter into" a workplace agreement. On behalf of the Minister it is argued that such an offence would be committed if the Union or anyone else sought "by threats of prosecution or enforcement" to persuade the Red Cross Blood Service not to enter into a workplace agreement.

It is conceivable that such a threat could be made, but not if the Red Cross Blood Service abides by its part of the Agreement. Of itself the Agreement does not contain such a threat nor can it be said to be intimidatory. There is no suggestion that the Red Cross Blood Service did not willingly enter into the particular provision of the Agreement now in question. Indeed, the agent for the Red Cross Blood Service made it abundantly clear that the Service knew what it was doing when it entered into the Agreement with the Union, and did so quite freely and deliberately. As I understand it the Service considers the provisions of clause 30 of the Agreement as being an important and vital part of the Agreement.

In my view, the Commission can only take the Agreement at face value. The Commission is entitled, if not obliged, to assume that the parties to an industrial agreement will for the life of the agreement, abide by its terms. It is by no means necessary or otherwise inevitable that one or other of the parties by adhering to their agreement will act in a manner which is unlawful. If indeed such conduct did occur, it would give rise to a separate and distinct matter to be dealt with when it arises. In this respect, I respectfully endorse the following remarks of Munro J made in a somewhat similar, but not identical, context regarding the registration of an agreement under the Commonwealth Workplace Relations Act 1996—

> "The possibility that a false inference may be drawn from the wording of an agreement, or that some prohibited conduct might occur independently of the operation of a clause, is not sufficient reason to attribute objectionable features to the plain words of a clause. Nor should the plain words be treated as mere contrivance simply because of a suspicion that springs to the mind of a reader. To revert to the idiom, it is not enough that it might look like a duck, or that you detect much quacking from the hides or from the bystanders. It must be a duck. I shall respond to any further inquiries from duck-watchers accordingly." (*Clough Engineering Pty Ltd v. The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch (1998) 44 AILR 3-909*)

Like considerations apply with respect to the argument advanced on behalf of the Minister, that the clause has potential to require one or other of the parties to the Agreement or the Commission to act in conflict with the provisions of section 26A of the Act. Subsection (a) of this section prohibits the Commission from receiving in evidence or informing itself "of any workplace agreement or any provision of a workplace agreement." Of particular concern to the Minister in this regard is the operation of clause 31—Dispute Settlement Procedure of the Agreement which includes as part of the dispute settling process, conciliation, and ultimately arbitration, before the Commission. It is difficult to envisage a dispute arising under clause 30 of the Agreement giving rise to the invocation of the provisions of section 26A which did not involve enforcement of the provisions of clause 30 of the Agreement. In that event, the Commission would not have jurisdiction. In any event, if by reason of section 26A the parties to a dispute before the Commission were not able to make mention of the existence of any workplace agreement, the parties and the Commission would have to react accordingly. There have already been a number of disputes before the Commission where the same issue has arisen and the Commission has had to do the best it can in the circumstances.

Apart from section 26A the only other provisions of the Industrial Relations Act 1979 which the Agreement might conceivably be said to offend are the provisions of Part VIA dealing with freedom of association. Essentially, the provisions of that Part outlaw discriminatory conduct in connection with employment by reason of the membership or non-membership by an employee, or potential employee, of a registered union. In particular, the provisions of section 96B prohibit an industrial agreement from requiring a person to become, or remain, a member of a union, to cease to be a member of a union, not to become a member of a union, or from conferring a right to preferential entitlement or preference in any aspect of employment by reason of membership or non-membership of a union. The provisions of section 96C likewise prohibit a person being treated less favourably or more favourably in an employment relationship according to union membership or lack of membership.

In my view, there is nothing in the provisions of those sections, or in any other provision of Part VIA of the Act, which expressly prohibits employers from agreeing with a registered union not to offer employment to its existing or potential employees on the basis of a workplace agreement under the Workplace Agreements Act 1993 or, indeed, under the Commonwealth Workplace Relations Act 1996. In fairness, the agent for the Minister did not suggest anything to the contrary.

The provisions of clause 30 of the Agreement, do not require the Red Cross Blood Service to insist that an employee or potential employee be a member of the Australian Municipal, Administrative, Clerical and Services Union, or from treating those who are not members of the Union less favourably than those who are members. It is not a prerequisite of receiving the over award benefits provided by the Agreement that an employee be a member of the Union. The Agreement, by its terms, expressly applies to all employees, whether they are members of the Union or not. In any event, by reason of subsection 41(4) of the Act, all employees are bound by the Agreement whether members of the Union or not.

It was not suggested that the provisions of clause 30 of the Agreement are contrary to the Act on the grounds that only members of the Union had input into settling the terms of the Agreement. The provisions of Part VIA of the Act do not outlaw that practice. On the contrary, the Act, at least by inference, allows for such an eventuality. Otherwise the whole of the Agreement would be defective and except in those cases where all the employees were members of a union there could never be a valid industrial agreement. Ultimately the Agreement is not one between the employees who are members of the Union, but between the Union itself and the employer. In this context, the Union and its members are separate and distinct. The employees are for the purposes of negotiating the agreement agents of the Union. So long as those who are not members of the Union are given the benefits of the Agreement in the same way as those who are members of the Union, there can be no valid objections on those grounds.

Similar considerations apply with respect to the prohibition from offering Australian Workplace Agreements during the life of the agreement. In this Agreement that attempt might be questioned on constitutional grounds but as presently advised I do not understand the provisions of the Workplace Relations Act 1996 as prohibiting such a provision in either a State or Federal agreement. Again, the Workplace Relations Act 1996 does not impose an obligation on an employer to offer its employees a workplace agreement nor to agree to employ an employee under any such agreement. In any event, for the purposes of this application, the only basis on which the Commission is empowered to refuse registration is that the Agreement offends the provisions of the State legislation.

For the reasons indicated, I am satisfied that the Agreement does not offend any of the provisions of the Industrial Relations Act, 1979. Furthermore, I am satisfied that in other respects the Agreement complies with the Act. On the basis of the material before me I am not satisfied that there is otherwise any valid reason why the Agreement should not be registered in the form in which it now stands.

The amended provisions of clause 30 of the Agreement in question clearly express the true intention of the parties. The extent to which the provisions of the clause are enforceable might be open to some doubt because they are simply expressed in terms of an "intention". The original clause had more to commend it in this respect. However, having regard to the nature of the provisions and the wishes of the parties I do not consider it either necessary or desirable that the provisions be further clarified. In its favour is the fact that the heading of the amended clause removes the somewhat misleading title of "No Non-Union Agreements" previously ascribed to the clause. At least for the purposes of the Workplace Agreements Act 1993, a union may be a party to a workplace agreement. Hence the previous title of the clause was not entirely accurate.

Accordingly, I am prepared to order that the Agreement be registered in its amended form.

Appearances: Mr R.J. Dhue as agent for the Applicant

Mr M.J. West as agent for the Respondent

Mr S.C. Barklamb as agent for the Minister for Labour Relations.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Australian Municipal, Administrative, Clerical and Services Union of Employees, W.A. Clerical and Administrative Branch

and

Australian Red Cross Blood Service—Western Australia.

No. AG 268 of 1998.

Australian Red Cross Blood Service—Western Australia (ASU) Enterprise Agreement 1998.

9 February 1999.

Order.

HAVING heard Mr R.J. Dhue as agent for the Applicant, Mr I. Oakley as agent on behalf of the Respondent, and Mr S.C. Barklamb on behalf of the Minister for Labour Relations, with the consent of the Applicant and the Respondent, 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 11th day of December, 1998 entitled Australian Red Cross Blood Service—Western Australia (ASU) Enterprise Agreement 1998 and as subsequently amended by direction of the Commission in the terms of the following Schedule be registered as an industrial agreement.

(Sgd.) G.L. FIELDING,
[L.S.] Senior Commissioner.

Schedule.

1.—TITLE

1. This Agreement shall be known as Australia Red Cross Blood Service—Western Australia (ASU) Enterprise Agreement 1998.

2.—ARRANGEMENT

3.—SCOPE AND PARTIES BOUND BY THE AGREEMENT

1. This is an agreement between the Australia Red Cross Blood Service—Western Australia (ARCBS-WA) and the Australian Municipal, Administrative, Clerical and Services Union, West Australian Clerical and Administrative Branch (ASU) in relation to all employees within the organisation who are eligible to be members of the above mentioned Union.

2. This Agreement shall apply to approximately 65 employees.

4.—DATE AND TERM

1. This Agreement shall operate from the date of registration and remain in force until 31 December 1999, or 31 December 2000, subject to agreement being made by the parties for this to occur prior to 31 December 1999.

2. The parties undertake to commence negotiations to renew the terms of the Agreement at least three months prior to the expiration of the Agreement.

3. The agreement will however continue to operate until it is terminated by mutual agreement or replaced by a new agreement.

5.—RELATIONSHIP TO PARENT AWARD

1. This Agreement shall be read and interpreted in conjunction with the Clerks (Commercial, Social, and Professional Services) Award No. 14 of 1972 provided that where there is an inconsistency between this Agreement and the Award, this Agreement shall take precedence to the extent of any inconsistency.

2. This Agreement cancels and replaces the *Australian Red Cross Blood Transfusion Service, Western Australia Enterprise Agreement 1996.*

6.—PURPOSE OF AGREEMENT

1. The purpose of this Agreement is to enable the parties to develop and implement on a cooperative basis 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. The benefits from these improvements will be shared by employees and the ARCBS-WA-WA, ensuring an attractive and competitive work environment.

2. The parties are at all times committed to the achievement of the vision and mission of the organisation in accordance with the ARCBS-WA values.

3. To ensure consistency of core entitlements in ARCBS-WA.

4. The parties to this Agreement are committed to ensuring that the organisation and employees are best placed to meet present and future operational demands in a safe, healthy and equitable work environment in which employees are treated fairly, consistently and with respect, and are encouraged and supported in achieving their full potential.

7.—PUBLIC HOLIDAYS

1. This clause replaces Clause 10—Holidays of the Award.

2. 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, Sovereign's Birthday, Christmas Day and Boxing Day.

3. Where Christmas day or New Years day falls on a Saturday or Sunday, such holidays shall be observed on the following Monday and where Boxing day falls on a Sunday or Monday, the holiday shall be taken on the following Tuesday. In such cases, the substituted day shall be deemed to be a holiday without deduction of pay in lieu of the day for which it is substituted.

4. On any public holiday named in this clause or day observed in lieu thereof the employee, who observes the public holiday, shall be paid at the ordinary rate of pay, exclusive of penalties) the employee would normally receive for hours usually worked on that day.

5. An employee, except a member of the Staff Executive team, who is required to work ordinary hours on a public holiday shall be paid a rate of double time and one half. Alternatively, an employee, except a member of the Staff Executive team, who works on a public holiday and is permitted to observe a holiday on another day which is convenient to the employer and the employee shall be paid at a rate of time and one half.

6. The leave provisions of this clause shall not apply to casual employees.

8.—STUDY LEAVE AND TRAINING

1. Consistent with the ARCBS-WA being a learning organisation, employees are encouraged to further their education, in areas that will assist them and the ARCBS-WA.

2. An employee who attends employer initiated training will be paid as though they had worked a typical roster that day.

3. The organisation, where possible, will allow for paid study leave where the study is of benefit to the individual and the organisation. This may include Trade Union training. Prior application must be made to the relevant supervisor.

4. Applications for paid study leave will be dealt with on a case by case basis by the relevant supervisor.

5. If an employee feels that an application to access paid study leave has been denied unfairly, the dispute settlement procedure outlined in this Agreement may be followed.

9.—SICK LEAVE

1. This clause replaces Clause 13 – Sick Leave of the Award.

2. An employee who is unable to attend work on the grounds of personal ill health or injury shall be entitled to payment at the rate of one day for each calender month, which accumulates from year to year.

3. To be entitled to payment in accordance with this clause the employee shall as soon as reasonably practicable advise the ARCBS-WA of his/her inability to attend for work and how many days they are likely to be absent on sick leave.

A medical certificate shall be supplied for absences of greater than two consecutive days.

4. If an employee is absent due to ill health or injury for a period longer than the entitlement, payment may be adjusted when entitlement has become due, provided that payment will be made for a maximum of three days at the time that such sick leave is taken. However if the employee leaves the organisation before these three days are accrued, ARCBS-WA will deduct this money from the termination payment.

5. An employee who commences work and is taken ill will be paid for all rostered hours including penalties on that day.

6. An employee who suffers personal ill health or injury whilst on annual leave shall be paid sick leave in lieu of annual leave where a medical certificate is supplied.

7. Where there is agreement between the ARCBS-WA and the employee, leave for part time employees may be compacted.

8. The provisions of this clause with respect to payment do not apply to employees who are entitled to payment under the Workers' Compensation and Rehabilitation Act 1981.

9. The provisions of this clause do not apply to casual employees.

10.—ANNUAL LEAVE

1. This clause operates in conjunction with Clause 12—Annual Leave of the Award.

2. A period of 20 days leave with payment at the employee's ordinary pay shall be allowed annually to an employee.

3. An amount equal to 17.5 per cent of the total amount shall be paid at the time the employee proceeds on leave, regardless of whether the leave taken is accrued or pro rata leave.

4. All entitlements to annual leave including pro rata leave will be paid upon termination. Leave loading will be paid on termination subject to the completion of 12 months continuous service.

5. Any time in respect of which an employee is absent from work, except time for which he or she is entitled to claim paid sick leave, annual leave, long service leave, compassionate leave, family leave and the first 12 weeks of absence relating to workers compensation shall not count for the purpose of determining his/her right to annual leave.

6. Employees, where possible, are required to give at least two weeks' prior notice of their intention to take leave.

7. The employer shall, as far as practicable, arrange to grant annual leave to suit the convenience of the employee. It is accepted by all parties that due to operational requirements, this cannot always be achieved.

8. Where there is agreement between the ARCBS-WA and the employee, leave for part time employees may be compacted.

9. The provisions of this clause shall not apply to casual employees.

11.—PARENTAL LEAVE

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

(1) Definitions

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

(2) Basic entitlement

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

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

(i) for maternity leave and paternity leave, an unbroken period of one week at the time of the birth of the child

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

(3) Maternity leave

(a) An employee will provide to the employer at least ten weeks in advance of the expected date of confinement of parental leave—

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

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

(iii) 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.

(b) Subject to subclause (2)(a) and unless agreed otherwise between employer and employee, an employee may commence parental leave at any time within six weeks immediately prior to the expected date of the birth.

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

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

(e) Where leave is granted under subclause (3)(d), during the period of leave an employee may return to work at any time, as agreed between the employer and the employee provided that time does not exceed four weeks from the recommencement date desired by the employee.

(4) Paternity leave

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

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

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

(c) a statutory declaration stating—

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

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

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

(5) Adoption leave

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

(b) Before commencing adoption leave, an employee will provide the employer with 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 to be taken by the employee's spouse; and

(iii) that for the period of adoption leave the employee will not engage in any conduct inconsistent with their contract of employment.

(c) An employer may require an employee to provide confirmation from the appropriate government authority of the placement.

(d) Where the placement of child for adoption with an employee does not proceed or continue, the employee will notify the employer immediately and the employer will nominate a time not exceeding four weeks for the employee's return to work.

(6) Variation of period of parental leave

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

(7) Parental leave and other entitlements

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

(8) Transfer to a safe job

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

(b) If the transfer to a safe job is not practicable, the employee may elect, or the employer may require the employee, to commence parental leave.

(9) Returning to work after a period of parental leave.

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

(b) An employee will be entitled to the position which they held immediately before proceeding on parental leave. In the case of an employee transferred to a safe job pursuant to subclause (8), the employee will be entitled to return to the position they held immediately before such transfer.

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

(10) Replacement employees

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

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

12.—COMPASSIONATE LEAVE

1. This clause replaces Clause 31—Compassionate Leave of the Award.

2. 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 be entitled to compassionate leave of up to two days for each occasion required. In addition, such leave may be approved upon request in relation to the death of a category of person not listed in this clause.

3. Employees may access annual leave and accrued long service leave for the purpose of compassionate leave in addition to the entitlement under subclause (2) above.

4. Proof of such death shall be provided by the employee to the satisfaction of the employer if he/she so requests.

5. Provided that this clause shall not have operation while the period of entitlement to leave under it coincides with any other period of leave.

13.—FAMILY LEAVE

1. This clause operates in conjunction with Clause 9—Sick Leave of this Agreement.

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, any sick leave entitlement for absences to provide care and support for such persons when they are ill.

3. Unpaid Leave for Family Purpose

(a) 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 access their annual leave entitlement for this purpose.

5. Make-up Time

(a) 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.

14.—LEAVE WITHOUT PAY

1. Leave without pay may be granted by the employer.

15.—LONG SERVICE LEAVE

1. ARCBS-WA employees shall be entitled to 13 weeks Long Service Leave after ten years continuous service, and each ten years of continuous service thereafter.

2. Pro rata long service leave shall be payable on resignation/termination after completed years of continuous service.

3. Long service leave entitlements will be adjusted to reflect the new conditions, on a pro rata basis.

4. All other conditions remain in accordance with the Long Service Leave provisions published in Volume 65 of the Western Australian Industrial Gazette at pages 1-4 inclusive.

5. In accordance with subclause (3) above, adjusted long service leave entitlements will reflect the following. The formula used = 10/15 x actual years + days of continuous service—

Actual Years of Service	Years of service for the purpose of calculating long service leave.
15	10
14	9 1/3
13	8 2/3
12	8
11	7 1/3
10	7
9	6
8	5 1/3
7	4 2/3
6	4
5	3 1/3
4	2 2/3
3	2
2	1 1/3
1	2/3

16.—ACCRUED LEAVE

1. In order to ensure that employees enjoy the benefits of taking annual leave, and the organisation reduces leave liability to an acceptable level, all employees who accrue annual leave are encouraged to take the leave within 6 months of it falling due.

2. The organisation acknowledges that some individuals accumulate leave for special purposes.

17.—HOURS

1. The ordinary working hours for employees, exclusive of meal breaks, shall not exceed thirty eight in any week.

2. Ordinary hours shall be worked on Monday to Friday inclusive between the hours of 7.00am to 7.00pm.

18.—ON CALL

1. This clause shall not apply to members of the Staff Executive team.

2. An employee is on call when he or she is directed by the ARCBS-WA to remain at such a place as will enable the employer to readily contact him/her during the hours when he or she is not otherwise on duty. In so determining the place at which the worker shall remain, the ARCBS-WA may require that place to be within a specified radius from a static centre.

3. An employee shall be paid an hourly allowance at a rate agreed to by the employer and the employee.

4. Where an employee is required to use their home telephone for on call purposes, the ARCBS-WA shall, if the telephone is not already installed, pay for the installation.

5. Where an employee is required to use his/her home phone, the ARCBS-WA shall pay the employee 1/52 of the annual rental paid by the employee for every seven days the employee is required to be on call, provided that where as a usual feature of the work, the employee is regularly required to be on call the ARCBS-WA shall pay the full amount of the telephone rental.

6. An employee who is called out to work when on call shall be paid at time and one half for the first two hours and double time thereafter, provided that an employee who is on call on a day of a public holiday and is required to return to work shall be paid a rate of double time and one half. Such time may be taken as time off during ordinary hours by agreement between the employee and the employer.

7. An employee who is on call and is required to return to work shall be paid a minimum of two hours provided that if an employee is called out within two hours of starting work on a previous call, he or she shall not be entitled to any further payment for the time worked within that period of two hours.

8. If an employee is required to return to work, all transport costs to and from the workplace shall be paid by the organisation. Where the employee uses their own vehicle, the allowance prescribed in Clause 24—Motor Vehicle Allowance of this Agreement shall apply.

19.—MEAL ALLOWANCE

1. A meal allowance of $7.50 will be paid when two or more overtime hours are worked on any day.

20.—REFRESHMENT/MEAL BREAKS

1. Refreshment breaks, unlike meal breaks are paid breaks.

2. The entitlement to refreshment and meal breaks are as follows—

Length of shift	Length of break
0- 4.00 hours	0 break
4.01-5.00 hours	1 x ten minute break
5.01-6.00 hours	1 x ½ hour break
6.01-7.00 hours	1 x ½ hour break, 1 x ten minute break
7.01-10.00hours	1 x ½-1 hour break, 2 x ten minute break,
>10.01 hours	1 x 1 hour break, 2 x ten minute break

3. The duration of breaks, where a range is indicated above, shall be at the discretion of the employer.

4. Where there is agreement between the employee and the ARCBS-WA, breaks indicated above may be consolidated. Breaks of one hour may be taken as two ½ hour breaks where there is prior agreement between the employee and the ARCBS-WA. On day shifts, meals breaks, where possible shall be taken between 11am and 3pm.

5. The employer shall determine when the breaks are to be taken where agreement cannot be reached.

21.—MOBILE LOCATIONS

1. Mobile Caravan locations will, where possible, be located within a reasonable distance of suitable food, beverage and ablution facilities.

22.—HIGHER DUTIES

1. A higher duties allowance will be available to an employee who is required to act in a position of a higher classification for a period of five or more consecutive days.

2. Where an employee is required to act in a position of a higher classification on a regular basis for periods of less than five consecutive days, a claim for higher duties will be considered by the relevant Program Manager.

3. Where the employee performs all of the duties of a position which is classified at a higher level, the higher rate shall be paid whilst so engaged.

4. Where an employee performs some, but not all of the duties in that higher classification, a rate of pay less than that prescribed in that higher classification can be paid on agreement between the employee and the organisation.

5. An employee who is aggrieved by a decision of their Program Manager in regard to higher duties, may follow the procedure outlined in Clause 32—Dispute Settlement Procedure of this Agreement.

23.—TURNOVER OF EMPLOYEES

1. The parties to this Agreement are committed to working together to create, implement and evaluate strategies designed to reduce employees turnover.

24.—MOTOR VEHICLE ALLOWANCE

1. Where an employee is required during his/her normal working hours by the ARCBS-WA to work outside his/her usual place of employment the employer shall pay the employee any reasonable travelling expenses incurred except where an allowance is paid in accordance with subclause (2) of this clause.

2. Where an employee is required and authorised to use his/her own motor vehicle in the course of his/her duties he/she shall be paid an allowance not less than that provided in subclause (4) set out hereunder. Notwithstanding anything contained in this subclause the employer and the employee may make any other arrangements as to car allowance not less favourable to the employee.

3. When the mobile location is at Mandurah, Pinjarra, Armadale, Mundaring, Kwinana, Quinns Rock, Pearce or Garden Island, the organisation will provide transport from 290 Wellington Street Perth. On such occasions only, the shift will be deemed to commence from the departure time of the transport, and will conclude when the transport arrives back to 290 Wellington Street Perth. An employee who decides to use their own vehicle will not be entitled to travel allowance and their travel time will not form part of their shift.

4. Motor car allowance is as follows—

Engine size	Cents per kilometre
Up to 1600cc	47.0 cents
Over 1600cc	53.1 cents

25.—REDUNDANCY

(a) Discussions before terminations

(i) Where the ARCBS-WA has made a definite decision in accordance with organisational guidelines, that it no longer wishes the job the employee, other than a casual 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.

(ii) The discussion shall take place as soon as is practicable after the ARCBS-WA has made a definite decision which will invoke the provisions of subclause (a)(i) hereof and shall cover among other things, any reasons for the proposed terminations, measures to avoid or minimise the terminations and measures to minimise any adverse affect of any terminations on the employees concerned.

(b) Notice

In the event of redundancy the ARCBS-WA will give the employee the following notice or payment in lieu thereof—

Employee Period of Continuous Service	Period of Notice
Not more than 1 year	At least 1 week
More than 1 but not more than 3 years	At least 2 weeks
More than 3 but not more than 5 years	At least 3 weeks
More than 5 years	At least 4 weeks

The amount of notice will increase by 1 week if the employee is over 45 years of age and has completed at least 2 years of continuous service.

(c) Severance pay

(i) In addition to the period of notice prescribed in subclause (b) for ordinary termination, an employee whose employment is terminated for reasons set out in paragraph (a)(i) hereof shall be entitled to the amount of severance pay in respect of a continuous period of service, in accordance with subclause (c)(ii).

(ii) Two weeks ordinary pay for each completed year of service, provided that the severance pay shall not exceed 30 weeks. Where a voluntary redundancy is accepted within two weeks of being offered, an additional payment in accordance with the following schedule, above and beyond the severance pay and payment in lieu of notice entitlement, will be payable—

2 weeks pay if less than 1 year of service

4 weeks pay if greater than 1 year but less than 2 years service

6 weeks pay if greater than 2 years but less than 3 years service

8 weeks pay if over 3 years of service.

"Week's Pay" means the ordinary weekly rate of wage for the employee concerned.

"Year of Service" refers to completed years and is pro rata.

Provided that in the calculation of continuous service under this subclause, any period of leave without pay, including maternity leave, unpaid sick leave etc, that exceeds two weeks shall not be counted in calculating continuous service.

(d) Alternative employment

The severance pay prescribed may be varied if the ARCBS-WA obtains mutually acceptable alternative employment for the employee. The ARCBS-WA will select an outsourcing agency to assist the employee in obtaining alternative employment.

(e) Financial Advice

ARCBS-WA will arrange for the employee to receive financial advice with an organisation nominated by the employee and agreed by ARCBS-WA.

(e) Time off during notice period

During the period of notice of termination for reasons set out in subclause (a)(i) hereof the employee shall for the purpose of seeking other employment be entitled to be absent from work for a reasonable period of time without deduction of pay.

(f) Dispute settling procedures

Any dispute under these provisions shall be dealt with in accordance with Clause 32—Dispute Settlement Procedure of this Agreement.

26.—CLASSIFICATION REVIEW

1. This clause shall not apply to members of the Staff Executive team.

2. An employee may request a review of the classification of the position they occupy within the organisation, where he/she believes the knowledge, skill and abilities required to perform the duties, and/or the responsibilities associated with the position have significantly changed.

3. The employee may also make such an application on the basis that the position was in its present form, incorrectly classified.

4. The process for the classification review is detailed in Schedule 2—Classification Review of this Agreement.

5. If the employee and/or Union disagrees with the result of the review, the procedure outlined in Clause 32 – Dispute Settlement Procedure of this Agreement shall be followed.

6. The effective date for any change to the classification level shall be the date upon which the letter of request is submitted to the Human Resource department.

7. Application may need to be made to the Western Australian Industrial Relations Commission to vary this Agreement accordingly.

27.—SALARY

1. This clause does not apply to members of the Staff Executive team.

2. Schedule 3—Minimum Salaries prescribes the minimum salaries to employees covered by this Agreement.

3. A 2% increase shall be effective from 1 January 1998, and paid in May 1998, in recognition of the increased workload and significant challenges that have been a feature of employment since the establishment of ARCBS-WA.

4. A further 3% increase shall be paid effective from 1 January, 1998.

5. A further 2% increase shall be paid effective from 1 January 1999.

6. The possibility of a further increase to extend this Agreement to 31 December 2000 will be subject to negotiations between the parties.

7. If State Wage Case decisions result in Award rates of pay exceeding the rates of pay prescribed herein, the higher rate shall prevail.

28.—SALARY PACKAGING

1. The employees covered by this Agreement will have access to salary packaging arrangements.

2. As to whether or not an employee accesses those arrangements will be solely at the choice of the employee.

3. The agreed maximum portion of the non salary component of the salary package and the conditions of packaging as contained in Schedule 1—Salary Packaging of this Agreement.

4. This arrangement is available subject to the ARCBS-WA incurring no additional costs and maintaining its current rate of Fringe Benefit Tax exemption.

5. The conditions associated with salary packaging within ARCBS-WA are contained in Schedule 1—Salary Packaging of this Agreement.

29.—INTENT TO CREATE NEW AGREEMENT

1. The parties acknowledge the intent of ARCBS-WA to work with the relevant Unions to create a national agreement covering core conditions of employment.

30.—OTHER AGREEMENTS

1. It is the intention and understanding of the parties that the ARCBS-WA will not offer Australian Workplace Agreements or Workplace Agreements as provided for in industrial legislation during the operation of this Agreement.

31.—DISPUTE SETTLEMENT PROCEDURE

1. Subject to the provisions of the Industrial Relations Act, 1979 any dispute, question or difficulty that arises shall be dealt with as follows—

(a) 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 appropriate Union workplace representative.

(b) 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.

(c) 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.

(d) 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.

32.—SIGNATURES TO AGREEMENT

Signed for and on behalf of the Australian Municipal, Administrative, Clerical and Services Union, West Australian Clerical and Administrative Branch

(indecipherable) **Common Seal**

……

3/12/98

Date……..….

Signed for and on behalf of the Australian Red Cross Blood Service—Western Australia

(indecipherable)

…….

08 12 98

Date……..……..

SCHEDULE 1—SALARY PACKAGING

1. Salary packaging under this agreement allows employees to receive up to 30% of their gross base salary in a form other than take home pay. Employees will be offered the opportunity to choose from a list of benefits that will be paid for by the employer instead of receiving gross salary. Gross salary is reduced by the amount of the benefits paid by the employer. The net gross pay is then subject to PAYE tax.

2. All existing entitlements (i.e. workers compensation, superannuation, leave loading, penalties, overtime) will be based on pre-package salary.

3. All employees covered under this agreement/award have access to salary packaging arrangements subject to the following provisions—

a) Entry into salary packaging arrangements is a voluntary decision to be made by individual employees.

b) All salary packaging arrangements will be in accordance with the items available, and funds through packaging, will be used only as stated by the employee and approved by the employer.

c) Employees will be required to pay any administrative costs for the packaging to an Administrative Agent appointed by the employer (as required). If the salary packaging manager notifies the organisation of the intention to increase fees, the organisation will inform and consult with the staff who are at the time salary packaging, to decide whether or not to investigate the costs and benefits of contracting with another provider.

d) All employees can decide to terminate their salary packaging arrangement by the giving of at least two weeks written notice.

e) The Administrative Agent will provide employees with a salary packaging manual.

f) Employees entering into a salary packaging arrangement understand and accept that,

(i) In the event that Fringe Benefit tax (FBT) becomes payable on the benefit items which are selected, the salary packaging arrangement shall lapse and a new arrangement may be put in place whereby the total cost of salary packaging to the employer does not increase. If the employee elects to continue with packaging, the cost of the payment of the FBT will be passed back to the individual, or benefit items can be converted back to salary to be taxed at the relevant PAYE tax rate.

(ii) Upon resignation or termination, the ARCBS-WA shall, by deduction from final payment or upon demand, be reimbursed for any amounts of over expenditure.

(iii) All unexpended amounts will be paid back to the employee in the case of resignation or termination from the arrangement, and will be subject to normal income tax.

(iv) Prior to the final pay period of the package year, an annual reconciliation will take place. Any amount of benefit items unused may be converted and added to salary payment on which PAYE will be deducted, or directed as a lump sum payment to a predetermined (i.e. existing) packaged item.

(v) The employee is responsible for advising the administration bureau of any change to their benefits packaged, employment status or salary payments that would affect their salary packaging arrangement.

(vi) The cost of any financial advice sought shall be borne by the employee.

g) It is a term of this Agreement that Clause—32 Dispute Settlement Procedure shall have no application in relation to withdrawal of salary packaging as provided for in clause 3(d) of this Schedule.

h) Benefits available to be packaged include—

Vehicle and associated expenses,
Personal and Family Education,
Childcare,
Superannuation,
Health Benefits,
Membership of an Association.
Rent
Mortgage

The above "menu of options" may expand subject to ARCBS-WA Board approval.

SCHEDULE 2—CLASSIFICATION REVIEW

All employees may be required to perform duties which fall within the limits of their skill, competence or training, provided that such duties are not designed to promote deskilling.

The salary classification of a particular position will be established having regard to the work value of the position, award classification provisions and appropriate relativities.

A classification review will take place where a significant increase in work value is demonstrated or where the employee is of the opinion that the position has been incorrectly classified.

Work value for the purpose of classification reviews is defined as follows.

Changes in work value may arise from changes in the nature of work, skill and responsibility required or conditions under which the work is performed. Changes in work by themselves may not lead to a change in wage rates. The strict test for an alteration in wage rates is that the change in the nature of work should constitute such a significant net addition to the work requirements as to warrant the creation of a new classification or upgrading to a higher classification.

In addition to meeting this test a party making a work value application will need to justify any change to wage relativities that might result not only within the relevant internal award classifications structure but also against external classifications to which that structure is related. There must be no likelihood of wage "leapfrogging" arising out of changes in relative position.

To apply for a classification review the employee shall submit to their Program Manager;

- A copy of the current role description,
- An updated role description,
- The classification level or title they deem to be appropriate for the position,

In completing the request for review, the employee should ensure that—

- The increase in knowledge, skill and ability requirements to perform the duties associated with the position are highlighted,
- Role descriptions used as a comparison should be attached to the submission, and referred to in the justification (similarities and differences),
- All information supporting the request is attached.

Employees are encouraged to gain assistance from their Program Manager or Human Resource Department in preparing the submission. The Program Manager is to forward the document to the Human Resource department who will forward a recommendation (made by a team of management, union and staff representatives) to the Director.

SCHEDULE 3—MINIMUM SALARIES

		Weekly Salary 2% 1/1/98	Weekly Salary 3% 1/1/98	Weekly Salary 2% 1/1/99
Level 1	**Level 1**			
	1.1	430.57	443.48	452.35
	1.2	434.17	447.20	456.15
	1.3	437.78	450.91	459.93
	1.4	441.38	454.62	463.71
Level 2	**Level 2**			
Archival Clerk Clerical Officer Donor Records Clerical Officer Laboratory	2.1	450.39	463.90	473.18
	2.2	455.20	468.86	478.23
	2.3	460.01	473.81	483.29
	2.4	464.82	478.77	488.34
Level 3	**Level 3**			
Donor Records Liaison Officer	3.1	470.21	484.32	494.00
Donor Liaison Officer Public Relations Telemarketer Receptionist Telephonist Clerical Officer Apherisis Storeperson Donor Receptionist Archival Clerk Appointments Clerk	3.2	477.11	491.42	501.25
	3.3	484.01	498.53	508.50
	3.4	490.93	505.66	515.77
Level 4	**Level 4**			
Patient Services Assistant	4.1	503.45	518.55	528.93
Public Relations Assistant Correspondence Archival Clerk Clerical Officer Mobiles Clerical Officer Regional	4.2	513.11	528.51	539.08
	4.3	522.77	538.46	549.23
	4.4	532.43	548.41	559.38
Level 5	**Level 5**			
Administrative Clerical Officer Clerical Officer Document Control Accounts Pay/Rec Coordinator Training Officer Donor Records Clerical Officer Stores Document Control Officer Archival Assistant Senior Clerical Officer Blood Bank	5.1	536.75	552.85	563.91
	5.2	551.18	567.72	579.07
	5.3	565.62	582.59	594.24
	5.4	580.05	597.45	609.40
Level 6	**Level 6**			
Public Relations Officer	6.1	596.61	614.51	626.80
Personal Assistant Director Donor Services Secretary Personal Assistant Laboratory Manager Human Resource Assistant Donor Records Coordinator	6.2	614.56	632.99	645.65
	6.3	632.50	651.48	664.50
	6.4	650.44	669.96	683.36
Level 7	**Level 7**			
Payroll Coordinator	7.1	669.08	689.15	702.93
Administrative Officer Corporate Support Mobiles Organiser Administrative Officer Support Services Stores Officer	7.2	686.88	707.49	721.64
	7.3	704.69	725.83	740.35
	7.4	722.50	744.18	759.06

SCHEDULE 3—MINIMUM SALARIES—*continued*

		Weekly Salary 2% 1/1/98	Weekly Salary 3% 1/1/98	Weekly Salary 2% 1/1/99
Level 8	**Level 8**			
Quality Officer	8.1	731.91	753.87	768.95
Safety Coordinator	8.2	750.51	773.02	788.48
	8.3	769.10	792.18	808.02
	8.4	787.70	811.33	827.55
Level 9	**Level 9**			
Records Coordinator	9.1	800.77	824.79	841.29
Public Relations Coordinator	9.2	822.66	847.34	864.29
	9.3	844.55	869.89	887.29
	9.4	866.46	892.46	910.31

BERRI LTD (BALCATTA PLANT) ENTERPRISE AGREEMENT 1999.

No. AG 19 of 1999.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Berri Ltd.

No. AG 19 of 1999.

26 February 1999

Order.

REGISTRATION OF AN INDUSTRIAL AGREEMENT
No. AG 19 of 1999.

HAVING heard Ms D. MacTiernan on behalf of the first named party and Mr J. Uphill on behalf of the second named party; and

WHEREAS an agreement has been presented to the Commission for registration as an Industrial Agreement; and

WHEREAS the Commission is satisfied that the aforementioned agreement complies with the Industrial Relations Act, 1979;

NOW THEREFORE the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the agreement titled the Berri Ltd (Balcatta Plant) Enterprise Agreement 1999, filed in the Commission on 9 February 1999, signed by me for identification, be and is hereby registered as an Industrial Agreement.

(Sgd.) C.B. PARKS,
[L.S.] Commissioner.

Schedule.

1. —TITLE

This Agreement shall be known as the 'Berri Ltd (Balcatta Plant) Enterprise Agreement 1999'.

2. —ARRANGEMENT

3.—APPLICATION

This Agreement shall apply to approximately 65 employees of Berri Ltd ("the employer") at 7 Ledgar Road, Balcatta, Western Australia engaged in classifications contained in Clause 13. – Classification.

4.—PARTIES BOUND

The parties to this Agreement are—

4.1 Berri Ltd, 7 Ledgar Road, Balcatta, Western Australia, 6021.

4.2 The Australian Liquor, Hospitality and Miscellaneous Workers' Union, Miscellaneous Workers Division, WA Branch, 61 Thomas Street, Subiaco, Western Australia, 6008 and employees who are members of, or are eligible to be members of, this union and are covered by the classifications contained in the agreement.

5.—DATE AND PERIOD OF OPERATION

This Agreement shall operate from the beginning of the first pay period commencing on or after1st February 1999 and shall remain in force until 1st August 2000.

The parties to the agreement agree to commence negotiations on the next Enterprise Agreement by 1st February 2000.

6.—RELATIONSHIP TO PARENT AWARD

This Agreement shall be read in conjunction with the *Aerated Water and Cordial Manufacturing Industry Award, 1975* provided that where there is inconsistency this Agreement shall prevail.

7.—AIMS AND OBJECTIVES

The aim of this Agreement is to improve the competitiveness of the Company's Western Australian operations by improving customer service and satisfaction, product quality, productivity, OHS and reducing costs. The parties to this Agreement are committed to working together so that the productivity and efficiency of the production, maintenance and associated warehouse and laboratory operations are substantially improved.

This aim will be reached through establishing and maintaining a continuous improvement culture in the Western Australian operations of Berri Limited. This culture will be achieved through the introduction and maintenance of a number of measures involving employees covered by this Agreement.

The parties are committed to the implementation of the following measures during the life of the Agreement which include:

- Key Performance Indicators
- Quality Systems Implementation
- Team Based Organisation
- Competency Based Classification Structures
- Competency Based Training
- OHS Programme

The parties agree that the aim of this Agreement will be achieved through continued focus on the following principles—

7.1 Understanding and conforming to the requirements of our internal and external customers and deliver defect free services and products at all times;

7.2 Flexible work practices by all to achieve more efficient use of time, materials and equipment;

7.3 Flexible work hours as the parties agree that the Company has to be responsive to the needs of its external suppliers and customers;

7.4 The establishment of a viable, productive and enduring organisation offering secure employment and worthwhile careers for employees.

7.5 Upgrading the skills of all employees to enable a devolution of responsibilities and greater involvement of personnel in the day-to-day organisation, based on the development of a team based organisation structure.

7.6 Structured training and education so as to provide a continuum of learning, thus providing the basis for constant adaptation and improvement;

7.7 Constantly seeking improvements in safety, quality and the work environment so that continuous improvement becomes an integral part of the Company's culture;

7.8 The establishment of clearly defined Key Performance Indicators, for the Balcatta operation site and team level, which are to be used as a tool to assist in the tracking, monitoring, analysing and focussing of performance in key result areas;

8.—KEY PERFORMANCE INDICATORS

8.1 To improve the competitiveness of the Balcatta operation the parties agree to identify and agree on a range of performance indicators and targets which will be used to monitor, track, analyse and focus performance in key result areas.

8.2 The indicators will be reviewed by the Enterprise Consultative Committee on a regular basis and will also be discussed and used by the work groups in order for the work groups to ensure their performance meets the required targets

8.3 The indicators and targets will be finalised by 30th June 1999.

9.—QUALITY IMPROVEMENT PROGRAMMES

9.1 Employees will actively participate in the introduction of the following programmes – Hazard Analysis & Critical Control Points (HACCP), Good Manufacturing Practice (GMP), Housekeeping Audits and other quality improvement programmes.

9.2 Employees will comply with the requirements of applicable QA policies and procedures, practices etc so as to ensure the policy compliance and product quality.

9.3 Employees will through their active participation in these programmes contribute to the identification and resolution of quality related issues.

10.—OCCUPATIONAL HEALTH & SAFETY

10.1 Employees will actively participate in the introduction of the OHS Programme which will address the identification, assessment and control of workplace hazards.

10.2 Employees will comply with the requirements of applicable OHS policies and procedures, practices etc so as to ensure both policy and legal compliance and improved safety performance.

10.3 Employees will through their active participation in these programmes contribute to the identification and resolution of OHS related issues.

11.—ENTERPRISE CONSULTATIVE COMMITTEE

The parties are committed to establishing and operating an effective consultative process in accordance with the guidelines in Appendix 1 of this agreement which may be varied form time to time as agreed by the parties.

12.—TRAINING

12.1 The parties will progressively implement a competency based approach to training with alignment to appropriate National Certificates.

12.2 The parties will develop and implement a competency based classification structure which will be aligned with a nationally recognised and applicable qualification(s) for our industry. The structure will be designed to facilitate the acquisition of the required competencies and to recognise and reward employee's who achieve the requirements of the various classification levels. Once developed the new classification structure will be used to classify and reward all employees, both existing and new.

12.3 Where possible, training will be undertaken during normal working hours. However, in order to ensure the smooth, efficient and continued operation of the plant, it may be necessary to schedule training outside normal hours. Where this is required consultation with employees will occur. Training undertaken in such circumstances (ie outside normal hours) will be paid at ordinary rates of pay (ie single time).

13. – CLASSIFICATION

13.1 Both parties to the agreement are committed, via the Enterprise Consultative Committee, to the development and implementation of a competency based classification structure during the life of this agreement.

13.2 The existing four (4) level classification structure, as outlined in Schedule A, will remain in place until replaced by the competency based classification structure developed by the Enterprise Consultative Committee.

13.2 Employees may be used in all parts of the operation, including those duties of a lower level classification, subject to them having the required skills and competence and having regard to OHS considerations.

13.3 Employees shall be given every available option to progress through the career structure, subject to the following conditions—

(a) The rate of pay for a particular employee while performing higher duties as part of training equates to his/her lower substantive classification.

(b) Higher duties shall be paid where an employee relieves a higher classification.

14.—PAY IN LIEU OF TAKING ROSTERED DAYS OFF

14.1 By mutual agreement, employees may be asked to take their RDO's or receive payment in lieu of taking RDO's

14.2 Employees may only "bank" up to 10 rostered days. When 10 RDO's are reached an employee will be required to advise the company that they wish to be paid for the RDO's in excess of the 10 or take an RDO, so that the balance of RDO's does not continue to exceed 10.

15.—PUBLIC HOLIDAY PAY DAY

Where a public holiday coincides with the day on which pays are processed, then the pay day for that week shall be delayed by one working day.

16.—WORKING HOURS

16.1 The scheduled start times on any given day may be varied within the spread of hours defined below, in order to meet operational needs. Changes to scheduled start times will be done by consultation and notified at least 24 hours ahead of time or shorter notice by mutual agreement between the employee and the employer.

16.2 The following spread of hours will be adopted for the operation—

16.2.1 *Day Shift*—

Mixing area/Laboratory/Despatch
—0400 hrs to 1800 hrs

Production areas
—0500 hrs to 1800 hrs

16.2.2 *Afternoon Shift*—

Afternoon shift will be any shift where the majority of an employee's hours are worked between 1400 hrs and 2400 hrs.

16.2.3 *Night Shift*—

Night shift will be any shift where the majority of an employee's hours are worked between 2200 hrs and 0800 hrs.

17.—LABOUR FLEXIBILITY

The parties agree that the company will continue to engage contract labour to supplement the permanent Berri Ltd workforce so as to meet customer service requirements, manage leave arrangements, absenteeism etc. The use of contract labour will be kept to a minimum and used only for the above reasons.

18.—ANNUALISED SALARIES

The parties will assess and evaluate the opportunities presented by changing to an annualised salary concept. This analysis will be completed by 31st December 1999. Implementataion where appropriate will then be negotiated by the parties.

19—SHIFT CHANGES

19.1 In order to change an employee from one shift to another (as per the shift details in clause 16.2), 24 hours notice is required, unless an employee advises and discusses with the employer any extenuating circumstances which preclude the employee from changing with such notice.

19.2 In addition, with mutual agreement the employer and employee may agree to less than 24 hours notice of a change of shift.

20.—SHIFT ALLOWANCE

A 15% shift allowance will be paid to an employee for working their ordinary hours either on afternoon shift or night shift as described above in 16.2.2 and 16.2.3.

21.—SHIFT HANDOVER

21.1 To improve communication between shifts and to ensure continuity of operations, working hours for employee's on shifts will allow for a 10 minute shift handover (at the appropriate rate). The objective of the shift handover is to ensure that production lines and the operations generally continue to run smoothly.

21.2 To enable the shift to run smoothly and effectively the employee from the outgoing shift will remain on duty until the handover is fully completed with the employee from the incoming shift.

21.3 In the event that an incoming employee is late in arriving or fails to arrive, an outgoing employee will continue working to ensure continuity of operations whilst replacement arrangements are established. This work in excess of the ordinary hours will be paid at the appropriate overtime penalty.

22.—WEARING OF COMPANY CLOTHING

Employees will be required to conform with the company clothing policy which may vary from time to time, with no additional cost to employees.

23.—COUNSELLING & DISCIPLINE

The parties to this agreement agree to the Counselling & Disciplinary Procedure contained in Appendix 2, which may be varied from time to time as agreed by the parties.

24.—DISPUTES RESOLUTION

24.1 The following procedures shall apply in connection with questions, disputes or difficulties arising under this award/industrial agreement.

(a) The persons directly involved, or representatives of person/s directly involved shall discuss the question, dispute or difficulty as soon as is practicable.

(b) (i) If these discussions do not result in a settlement, the question dispute or difficulty shall be referred to senior management for further discussion.

(ii) Discussions at this level will take place as soon as practicable.

24.2 The terms of any agreed settlement should be jointly recorded.

24.3 Any settlement reached which is contrary to the terms of this agreement shall not have effect unless and until that conflict is resolved to allow for it.

24.4 Nothing in this procedure shall be read so as to exclude the Australian Liquor, Hospitality & Miscellaneous Workers' Union from representing its members.

24.5 Any question, dispute or difficulty not settled may be referred to the Western Australian Industrial Relations Commission. The parties shall confer among themselves and make reasonable attempts to resolve questions, disputes or difficulties before taking those matters to the Commission.

25.—FORTNIGHTLY PAY

25.1 The parties agree to the implementation of fortnightly pays effective within one month of this agreement being registered.

25.2 The company will work with the employees via the consultative process to ensure as far as practicable a smooth transition from weekly to fortnightly pays.

25.3 Fortnightly pays will continue to be made by electronic funds transfer.

25.4 Fortnightly pays will be payments in arrears for the time worked (both ordinary and overtime hours) in the preceding 2 week period.

26.—SICK LEAVE

26.1 An employee shall advise the employer as early as is reasonably practicable but at least prior to the start of their shift of his/her inability to attend work, the nature of his/her absence or injury and the estimated duration of the absence.

26.2 Where compliance with clause 26.1 is not practicable then the notification of absence due to sickness is to be given no later than two hours after normal start time.

Where, as a consequence of extraordinary circumstances, advice is not practicable within two hours of the normal start time, then advice to the employer must occur within 24 hours of the commencement of the absence.

26.3 Medical certification or a statutory declaration must be provided to the employer for all absences (paid or unpaid) with the exception of the two absences of two days or less in any year of service where absence(s) from work do not need to be supported by the above certification.

26.4 Reporting of absences must be undertaken in accordance with the commonly followed practices and procedures within the Balcatta operation and which are reviewed and modified as required in consultation with the Enterprise Consultative Committee.

27.—WORK BY MANAGEMENT/SUPERVISION

27.1 In order to promote teamwork, flexibility and to assist with the continuity of operations Supervisors may perform direct production or warehouse duties as and when required without notice, including providing relief during breaks, short absences from work areas, emergencies etc.

27.2 Managers may, in a restricted manner, also undertake direct production or warehouse duties as described in clause 27.1.

28. – RATES OF PAY

28.1 Subject to registration of this Agreement by the Western Australian Industrial Relations Commission, employees shall receive the following rates of pay—

	Current	**1.9.98–31.1.99 4% increase**	**1.2.99–1.8.2000 4% increase**
Level I	$433.94/wk	$451.30/wk	$469.35/wk
	$11.4195/hr	$11.8763/hr	$12.3514/hr
Level II	$452.37/wk	$470.47/wk	$489.28/wk
	$11.9045/hr	$12.3807/hr	$12.8759/hr
Level III	$463.29/wk	$481.82/wk	$501.09/wk
	$12.1918/hr	$12.6795/hr	$13.1867/hr
Level IV	$468.92/wk	$487.67/wk	$507.18/wk
	$12.3399/hr	$12.8335/hr	$13.3468/hr

For the period 1st September 1998 to 31st January 1999 a one off Commencement Payment will be paid. This payment will be based on a 4% increase applicable for that period and paid on all purposes of the award for the above period. The payment will be made as soon as practicable following registration.

28.2 In addition to the above rates, an employee who has been designated by the company as a leading hand shall receive level IV plus leading hand allowance, as per the Award.

29.—NO EXTRA CLAIMS

There shall be no extra claims for the life of this agreement.

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APPENDIX 1

CONSULTATIVE COMMITTEE GUIDELINES

GENERAL:

These guidelines have been produced to assist in creating a stable and co-operative environment within the Company. It is not the objective of the parties to this Agreement that the Committees usurp the function and responsibility of Management or Union.

ADMINISTRATION:

1. The Committees shall meet on a regular basis with the chair alternating between Management and shop floor representatives.
2. Committee members shall hold office for a period of twelve months, with no limitations on the number of terms.
3. The agenda shall be drafted and circulated to all Committee members ideally three days before the due meeting date, which shall be established by the previous meeting. All Committee members shall have the right to submit matters for the agenda. The agenda shall be prepared by Management in consultation with one nominated employee representative. The first item on the agenda shall be to confirm the accuracy of the minutes of the previous meeting.
4. Agendas and minutes of meetings will be circulated without delay. A nominated employee representative from the Consultative Committee will be given a draft copy of the meeting minutes, to proof. That employee representative will report back to the Secretary of the Committee any amendments/additions within forty-eight hours of receipt of draft minutes. Minutes from the Consultative Committee meetings will be posted on notice-boards.

FUNCTION & SCOPE:

The function and scope of the consultative process will include the following—

1. To increase understanding of the Company's objectives and plans and to promote a more co-operative approach to resolving operational problems of the Balcatta operation.
2. To obtain and discuss the views and concerns of the employees.
3. To discuss Management proposals and the effects of proposed changes on employees.

App 1 Page 2 of 2

4. To identify problems and work co-operatively to develop solutions in all areas of the Company's operations.
5. To provide and discuss information and reports to Management on particular areas of the Company's operations including aspects such as;
   - The Berri Ltd (Balcatta Plant) Enterprise Agreement 1999
   - Progress and performance issues as per regular KPI reviews
   - Review of OHS performance, matters and concerns
   - Work practices and performance
   - Other matters of concern to Management or employees.
6. To review progress and issues to do with the development of a team based organisation structure.
7. Overseeing the establishment of a team based structure through workgroups. This does not mean the Consultative Committee will be physically involved within each team. The Consultative Committee will—
   - Be informed of the progress of teams;
   - Assist teams in meeting their objectives;
   - Ensure that problems encountered by a team are known to other teams so as not to reproduce the same problems; and
   - Ensure such teams do not become insulated within their own areas and understand how they relate to overall Company objectives.
8. To promote improved employee relations through consultation and discussion.
9. Establish and oversee a Sub-Committee which will facilitate the development and implementation of a competency based classification during the life of this Agreement.
10. To oversee the development and subsequent progress with a Competency Based training programme which is consistent with the needs of employees and the Company.
11. To review, monitor and advise management and employees on the on-going effectiveness of the training.
12. To assess, evaluate and report on the development of annualised salary concepts. Implementation of such would then be negotiated between the parties.
13. To discuss the Company's plans and objectives and to disseminate information to employees as appropriate.
14. The parties to this Agreement accept that certain information could be considered as commercially sensitive. Every effort will be made by the parties to this agreement to respect such considerations of confidentiality while making available as much information as possible.
15. Evaluate the effectiveness of these guidelines and the operation of the consultative process, so that it remains relevant to the requirements of the Company and employees.

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APPENDIX 2

COUNSELLING & DISCIPLINE PROCEDURE

Introduction

The principal objective of this procedure is to improve and then maintain the performance standards of employees rather than to punish them.

No formal action will be taken concerning an employee without an investigation to establish the facts. This will also apply before making written or verbal warnings. "Formal action" includes final written warning and dismissal with or without notice.

An integral part of the Discipline/Dismissals Procedure is a SYSTEM of WARNINGS. The employee will always be given an opportunity to state their case in the course of an investigation and may, if he/she wishes, be accompanied by his/her Union Representative or another Company Colleague on any such occasion and at any stage in this procedure.

The employee will always be informed of the outcome of an investigation. Any decision to take formal action will be conveyed to him/her in writing.

An appropriate management representative (or the Human Resources Manager) must be advised of any impending counselling/disciplinary action to ensure that the correct procedure is used and to monitor/advise on all documentation.

Counselling (Stage One)

Involves the Supervisor, or Manager, talking to an employee about their performance. This should be used to address ordinary day-to-day incidences involving minor infringements or unsatisfactory performance. Poor timekeeping and erratic attendance are examples of unsatisfactory performance. The following steps or considerations are usually involved in counselling.

- Explanation of why the employee is being counselled;
- Explanation of behaviour or performance standard expected; and
- Action/assistance identified, where appropriate.

The objective of Counselling is to ensure that the employee is given the opportunity to give reasons for their unsatisfactory performance. If the problem is resolved,

no further action is required. However, if the employee does not respond to the first counselling, within an appropriate period, the procedure should be repeated or if there is some improvement but the problem is not resolved, further counselling may also be required. If there has been no improvement, disciplinary action, in the form of a formal verbal warning (Stage Two), will be issued.

App 2 page 2 of 5

A brief file note of these discussions must be retained by the Manager/Supervisor/Team Leader.

If the employee is not satisfied with the counselling procedure, he/she can raise it through the Dispute Procedure (Clause 24).

Formal Verbal Warning (Stage Two)

The employee will again be counselled but in a more formal manner. The aim is to improve the performance of the employee not to punish.

Previous discussions, where conducted, should be reviewed. Reasons should be sought as to why work performance has not improved since counselling.

Depending upon the nature of the neglect of duty, or misconduct, an employee can be given a verbal warning without counselling.

The employee is informed that such misconduct or neglect of duty could ultimately lead to dismissal. It will be made clear to the employee that the Verbal Warning is recorded in the employee's Personnel File. The warning will be given in the presence of another employee chosen by the employee or the employee's Shop Steward.

The appropriate "Employee Counselling Report" must be completed by the Manager/Supervisor/Team Leader.

At the conclusion of the Formal Verbal Warning process, specific action should be agreed, so as to bridge the gap between the present unsatisfactory performance and the standard required, with a review date set in the immediate future (preferably within four to six weeks).

The verbal warning will remain in the employee's Personnel File for no more than thirteen months but will not be used after six months of the date of the warning for the purposes of deciding further disciplinary action until consultation and discussion has occurred between the company and an appropriate shop steward.

Formal Written Warning (Stage Three)

The Formal Written Warning will inform the employee of the Company's intention to institute termination proceedings if no improvement is evident. The employee's Shop Steward must be in attendance at the interview and is to be notified of the intention to proceed with the issuing of a formal written warning.

The "Employee Counselling Report" must be completed by the Manager/Supervisor/Team Leader.

The written warning will remain in the employee's Personnel File for thirteen months but will not be used after six months of the date of the warning for the purposes of deciding further disciplinary action until consultation and discussion has occurred between the company and an appropriate union official.

App 2 page 3 of 5

Should there be a recurrence of unsatisfactory performance, by an employee, after the expiration of the six months probationary period, then discussions will be conducted with that employee, the employee's Shop Steward and Management. These discussions will be undertaken so that the employee and union can present their views as to why the previous counselling reports should not be used. Management will then determine whether past counselling reports will be used as part of the counselling process.

Dismissal (Stage Four)

The termination interview must be conducted in the presence of a Senior Manager. The interview must establish the circumstances/issues and provide the employee with every opportunity to provide a full explanation.

The employee's Shop Steward must be in attendance during the entire interview involving the employee.

Subject to a careful investigation of all the facts and after the employee has had the opportunity to offer an explanation it will be open to the company to DISMISS the employee either with or without notice.

The reason for termination must be communicated in writing to the employee that is dismissed.

All monies, up to the time of dismissal, and outstanding accruals are to be paid to the employee, at the time of dismissal by cheque.

All company property, keys, tools etc) are to be collected from the employee. Employees, who are dismissed, must be escorted from the premises.

BERRI LTD

EMPLOYEE COUNSELLING REPORT

This form is to be used by Team Leaders/Supervisors/Managers to formally report and record counselling of an employee. Employees are to be offered the opportunity to have a nominated representative/witness present.

COUNSELLING STAGE: SECOND / THIRD

EMPLOYEE:.....CLOCK NO: .....

REPRESENTATIVE/WITNESS OFFERED:

ACCEPTED/DECLINED

NAM E OF REPRESENTATIVE/WITNESS:.....

.....

TIME AND DATE OF COUNSELLING: ……. am/pm…….. / ……. / ……..

INTERVIEWED ATTENDED BY: .....

.....

DETAILS OF ISSUE/INCIDENT: .....

.....

.....

.....

KEY MATTERS DISCUSSED DURING COUNSELLING:.....

.....

.....

ACTION REQUIRED: .....

.....

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NEXT REVIEW DATE: ...../...../.....

EMPLOYEE'S RESPONSE/COMMENTS: .....

.....

.....

..../...../.....

Team Leader/ Manager Signature Date

..../...../.....

Employee's Signature Date

..../...../.....

Witness's Signature Date

• ORIGINAL to be retained on the employee's Personnel file

• COPY retained by Team Leader/Supervisor/Manager

• COPY to Employee

• COPY to Employee Representative

SCHEDULE A

SKILL LEVEL DESCRIPTIONS

Level I

Performing at least one of the following functions—

- Stacking cartons;
- Feed bottles;
- Cleaner

Level II

- Forklift driving;
- Order picking;
- Portion pack filler operator
- Cask filler operator

Level III

- Filler operator;
- Labeller operator (carb line);
- Receiving staff

Level IV

- Mixers;
- Despatch clerk;
- Filler operator (carb line)

SCHEDULE B

SIGNATORIES

Signed (Simon Todd) Date: 5.2.99 .

SIMON TODD

Manufacturing Manager

For and on behalf of:

Berri Ltd

Common seal

Signed (Helen Creed) Date : 5.2.99 .

HELEN CREED

Secretary

Australia Liquor, Hospitality & Miscellaneous Workers' Union, Miscellaneous Workers Division, WA Branch.

BHP TRANSPORT PTY LTD KWINANA BULK MATERIALS HANDLING ENTERPRISE AGREEMENT 1998.

No. AG 83 of 1998.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Transport Workers' Union of Australia, Industrial Union of Workers, Western Australian Branch

and

BHP Transport Pty Ltd.

No. AG 83 of 1998.

BHP Transport Pty Ltd Kwinana Bulk Materials Handling Enterprise Agreement 1998.

COMMISSIONER P E SCOTT.

15 February 1999.

Order.

HAVING heard Mr G Ferguson on behalf of the Applicant, Mr G Sturman on behalf of The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers Western Australian Branch, Mr J Fiala on behalf of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering Electrical Division WA Branch and Mr J Uphill 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 BHP Transport Pty Ltd Kwinana Bulk Materials Handling Enterprise Bargaining Agreement 1998 in the terms of the following schedule be registered on the 6th day of October 1998.

(Sgd.) P. E. SCOTT,
[L.S.] Commissioner.

BHP TRANSPORT PTY LTD

KWINANA BULK MATERIALS HANDLING ENTERPRISE AGREEMENT 1998

1.—TITLE

This Agreement shall be known as the BHP Transport Pty Ltd Kwinana Bulk Materials Handling Enterprise Agreement 1998.

2.—ARRANGEMENT

3.—DEFINITIONS

In this Agreement—

"Company" shall mean The Broken Hill Proprietary Company Limited at Kwinana, operated and managed by BHP Transport Pty Ltd.

"Union" shall mean the Transport Workers' Union, Australian Manufacturing Workers' Union, Communications Electrical and Plumbing Union.

"Union Official" shall mean a duly accredited representative of the Transport Workers' Union, Australian Manufacturing Workers' Union, Communications Electrical and Plumbing Union.

"Employee Representative" shall mean an elected representative and notified from the Union to the Company as being the recognised accredited representative of the Union.

"Casual Employee" shall mean personnel on hourly hire. This includes, but is not limited to, personnel from a labour hire firm.

4.—AREA, INCIDENCE AND DURATION

4.1. This Agreement shall apply to employees employed by The Broken Hill Proprietary Company Ltd (the Company) at BHP Transport Pty Ltd Kwinana, in the classifications set out in Clause 10 and the Transport Workers' Union, Australian Manufacturing Workers' Union, Communications Electrical and Plumbing Union (the Union) whether or not such employees are members or not of the Union. Currently, Kwinana Bulk Materials Handling employees covered by this agreement number twenty-three (23)

4.2. This Agreement shall take effect from the beginning of the first pay period to commence on or after the 16 February 1998 and shall remain in force for a period of 18 months.

4.3. The terms and conditions of this agreement shall be read and interpreted in conjunction with The Iron & Steel Industry Workers' (BHP Steel International—Rod and Bar Division) Award No 1 of 1968, as amended and consolidated or as replaced, provided that where there is any inconsistency, this agreement shall take precedence to the extent of any inconsistency.

5.—OBJECTIVES

The primary objective of the management and the employees at Kwinana is to provide a quality transport and bulk materials handling service that is responsive to and satisfies the requirements of customers and is characterised by its safety, reliability, flexibility, quality and cost effectiveness, thereby enhancing its ability to successfully operate in a competitive market.

This Agreement is intended to facilitate the creation of a work environment which will encourage and support a skilled

and committed workforce where teamwork, cooperation, flexibility, effective work arrangements and employee development are priorities in achieving the business objectives.

The parties recognise the importance of monitoring the effectiveness of the Agreement and will consult each other on the operation of the Agreement. Consultation between parties will occur prior to any change in arrangements that may apply from time to time which are outside the scope of this agreement or the parent award.

Kwinana is operating within a context of increased competition for a limited amount of business. In order to position the business for future growth there is a need for continual change and improvement in the way we operate. Everyone has a contribution to make which will help build our future.

All parties are committed to building the basis for future business growth at Kwinana. This is best achieved by working cooperatively towards joint goals. Continual improvement and change in both management and work practices is essential to ensuring the future of the operation. This document is intended to facilitate the ability to adapt to that change and will not be used by either party to impede change. All parties agree to operate within the spirit of this agreement and to build upon the foundation of cooperation that has been set.

6.—OCCUPATIONAL HEALTH AND SAFETY

All parties are committed to continually improving safety standards and will actively participate in encourage the development and maintenance of these standards.

All operations at Kwinana will be conducted in accordance with the Occupational Health and Safety policies of the Company and the relevant statutory requirements (Occupational Safety and Health Act, 1984, Mines Safety & Inspection Act, 1994). Development and implementation of 'work site' safe working practices will be by consultation with management, employees and appropriate technical advisers.

Occupational Health and Safety Committees will continue, with composition being in accordance with the Occupational Safety and Health Act, 1984 and comprising representatives of both management and employees. Minutes of each meeting shall be kept, agreed and where appropriate, circulated to employees. Each and every employee is encouraged to raise through any Committee member or any staff member, any issues relating to safety.

A condition of employment shall be that all employees shall wear the designated safety clothing and equipment when in the workplace.

7.—COMMUNICATION AND CONSULTATION

Effective communication and consultation is essential in promoting a successful operation. Consultation provides employees with an opportunity to input into the decision making process before the Company decides on action affecting its employees. Focus groups will facilitate the involvement of employees in decisions involving the work teams. All parties commit to continue Focus Groups as a mechanism for consultation and communication. Focus groups are intended to improve the way we work together and how we do our work.

8.—QUALITY ASSURANCE

Employees are encouraged participate in the implementation of quality assurance consistent with the Company's commitment of involving employees in developing customer focussed quality management systems.

The Company and the employees recognise the importance of and are committed to, ensuring the quality of services they provide to the customers. To achieve this, it is essential that responsibilities of individuals are structured so that all work requirements are properly defined, communicated, carried out and verified.

9.—COMMITMENT TO TRAINING

The Company and the employees recognise that in order to increase the efficiency, productivity and competitiveness of Kwinana a genuine commitment to training and skill development is required. This commitment is shared with the Company being obliged to provide equitable training opportunities and employees being required to participate in the training and apply the skills acquired on the job. Accordingly, the parties are committed to—

(a) developing a suitably qualified skilled and flexible workforce;

(b) providing employees with career opportunities through appropriate training to acquire additional skills; and

(c) removing barriers to allow the effective utilisation of skills required.

All parties agree to participate in a review of the current training program to ensure it is consistent with the current and future needs of the operations.

10.—CLASSIFICATION STRUCTURE

The current classification structure remains unchanged for Operators Level 1 to 6 and Trades Level 1 to 4. A Team Leader position has been added and the Position Description is attached, as Appendix I, to this document.

The parties agree to periodically review the classification structure for relevance and currency. Any changes in the classification structure will be done in consultation between the Company and relevant employees.

Flexibilities agreed to in this and previous agreements are incorporated as part the classification structure.

11.—CONDITIONS OF EMPLOYMENT

11.1. A casual employee is an employee who is engaged and paid as such. A casual employee shall not be entitled to the following—

Public Holidays
Annual Leave
Long Service Leave
Sick Leave
Jury Service Pay
Parental Leave

nor shall a casual employee be entitled to any payment for a holiday, unless the casual employee works on the holiday.

11.2. A person employed on a fixed term contract is one engaged and paid as such. A person on a fixed term contract will be eligible on a pro-rata basis relating to the length of period worked to the same conditions as a permanent employee and will, at the end of the fixed term be paid all monies owing in relation to pro-rata annual leave entitlements.

11.3. The Company may direct any employee to carry out such duties as are within the limits of the employee's skill, competence and training consistent with the provisions of this Agreement and the parent award (where applicable).

11.4. Any employee will participate in training and where appropriate gain accreditation in relevant work skills and knowledge to become a flexible member of the work team. An employee will utilise these skills where their duties require and the only limitations on the use of their skills will be whether or not it is safe for the employee to perform those duties.

11.5. An employee will utilise, as considered necessary and as directed by the Company, industrial and protective clothing. The wearing of protective clothing (PPE) is necessary to minimise risks to employee health. The Company has a duty of care to ensure the provision of PPE, as does the employee to wear PPE provided. Recommended standards of dress are set by the Company and various legislative bodies and must be adhered to.

11.6. An employee will comply with Kwinana's safety procedures or as prescribed by Government regulation.

11.7. Any direction issued by the Company pursuant to the provisions of this Clause will be consistent with the Company's policies and procedures and in accordance with the Company's responsibility to provide a safe and healthy work environment.

11.8. In emergency circumstances employees will safely perform any duties required to prevent injury or to mitigate loss/damage of plant and equipment.

11.9. An employee, for the purpose of meeting the operational requirements of Kwinana site, will work such reasonable overtime as required by the Company.

12.—ROSTERS

12.1. Any roster arrangement must satisfy Company operational requirements. In this context operational requirements include day to day operations, maintenance, clean up, meetings, safety/emergency drills and any other such duties as may be required.

12.2. Operation of roster—

12.2.1. There will be four (4), two person crews consisting of operators and electricians with casual employees to suit operational requirements.

12.2.2. There will be three (3) fitters that work with these crews in order to fulfil operational needs. They will not be assigned to particular crews.

12.2.3. Ordinary hours for operators, electricians and fitters shall be 38 per week paid at 7.6 hours ordinary time per day, Monday to Friday. The current roster anticipates that employees will work 40 hours per week.

12.2.4. Operators and electricians will operate under a five (5) day, eight (8) hour shift roster will operate from Monday to Friday each week. These employees will be on weekly rotations within the roster of **D**ay, **A**fternoon and **I**rregular shift.

12.2.5. Operators and electricians rostered on the Irregular shift will work on day shift but may swing onto night shift with 24 hours notice, with no additional payment. When employees are rostered on the Irregular they will be paid as if they were on night shift, regardless of which shift they work.

12.2.6. Fitters will operate under a five (5) day, eight (8) hour shift roster will operate from Monday to Friday each week. Fitters will be rostered on weekly rotations of **D**ay, **A**fternoon/**I**rregular and **N**ight/**I**rregular shift.

12.2.7. Fitters rostered on **A**fternoon/**I**rregular and **N**ight/**I**rregular will work on day shift but may swing onto afternoon or night shift with 24 hours notice, with no additional payment. When employees are rostered on the Irregular they will be paid as if they were on afternoon or night shift, regardless of which shift they work.

12.2.8. For operators, fitters and electricians normal shift start times for day, afternoon and night shift will be 6 am, 2 pm and 10 pm respectively. Night shift commencing on Sunday night shall be designated as the Monday night shift.

12.2.9. Employees will work in accordance with the roster and operational requirements as determined by the Company.

12.2.10. Should an employee be required to work through their Irregular shift, either afternoon or night shift, they will continue to work the shift pattern (Monday to Friday) as long as operations require. Employees who work Afternoon or Night shift in such circumstances will rotate the shift originally set out in the roster as required, with a minimum of a 10 hour break, in order to meet operational requirements.

12.2.11. Not withstanding clauses 12.2.5 and 12.2.7, in the event that the operation of the roster results in employees working less than five consecutive afternoon or night shifts no overtime or penalty payment will apply.

12.2.12. Employees of the same skill level may elect to swap shifts between themselves. Such arrangements will not attract any additional payments and must not affect the operation of the roster.

12.2.13. Should an employee be absent for a rostered shift, the remainder of the shift crew will continue to work. If required, the company will arrange a relief crew member as soon as is practicable.

12.2.14. In the event of circumstances referred to in 12.2.13 where coverage is needed for the operation, the Company may require a member from previous crew to work back for a minimum period of two hours to allow time to find appropriate relief personnel. Should an employee genuinely be unable to work back in these circumstances, the Company shall not pursue the issue further. No additional payments or penalties shall apply for the expectation that an employee may be required to work back.

12.2.15. Additional employees required for operational overtime shall be secured in the most efficient manner available, which will include use of casual employees (as defined in Clause 3 of this agreement). Permanent employees will be offered the opportunity to work overtime on an equitable basis, skills permitting, and in line with BHPT ALS safe working hours guidelines.

12.2.16. During operational periods, where weekend overtime is required, the following shall apply—

- During unloading, BMH fitters picked up for weekend overtime will work as per current operations.
- During loading, the opportunity to work overtime will be available to one permanent BMH employee from each category, on a skills based assessment, prior to utilising casuals. Fitters' will perform duties as required and not limited to relief work. The intent of this arrangement is to provide equitable opportunity for operators and trades to work weekend overtime.
- The Company reserves the right to choose between utilising casual employees and double shifts for BMH employees.
- The availability of weekend overtime will be on the basis that it will not interfere with the normal operation of the roster or result in the payment of additional penalty rates.

12.2.17. A maximum of one (1) operator, one (1) fitter/mechanic and one (1) electrician may be absent on annual leave or long service leave at any one time. Where special circumstances arise the Company will give consideration to the granting of leave on a case by case basis.

13.—TEAMWORK

13.1. The intent of team work is to facilitate the development of a skilled and committed workforce by developing employee skills, knowledge, responsibilities and increasing job satisfaction.

13.2. There will be four (4) teams consisting of one (1) operator and one (1) electrician. Fitters will work with teams in order to meet operational requirements.

13.3. Teams will ensure that work is carried out in an efficient and practical manner.

13.4. Teams will be required to operate such that, at a minimum, current productivity levels will be maintained.

13.5. Criteria of work to be done during a shift will be set by the Production Coordinator. The Production Coordinator will determine what is to be done, set priorities and monitor the

quality of the work. In this context Production Coordinator includes—

(a) any employee with authority higher than that of the Production Coordinator.

(b) any employee acting as the Production Coordinator deputy in the absence of the Production Coordinator.

13.6. How the set tasks are achieved will be determined by the team. The team is required to work in a safe manner, within Company and legislative guidelines.

13.7. Each crew shall have a designated Team Leader, the Team Leader will ensure that the operations work effectively. One Team Leader per shift will be paid an additional rate of, 6% of the Level 6 operator rate per shift, for this additional responsibility. On any shift there shall be only one nominated Team Leader, who, where possible, shall be a designated Team Leader who would normally be working that shift. (See attached Appendix regarding position description of Team Leaders).

13.8. The Team Leader function is key to the successful operation of this agreement. The employees and unions party to this agreement commit to ensuring that sufficient suitable employees are willing to perform Team Leader duties.

13.9. The Company is committed to providing appropriate training and support to the teams in order to assist employees make the transition to the new working arrangements. The Parties recognise that the concept of Teams and Team Leaders are new to the site and arrangements may need to be reviewed and varied as required.

13.10. The Company has the discretion to determine that a particular employee is unsuitable to act as Team Leader.

13.11. In the event of a situation, which is beyond the normal scope of the team, decisions are to be referred to the Production Coordinator (as defined in 13.5).

14.—CROSS SKILLING/FLEXIBILITY

14.1. All employees are required to cross-skill as set out below—

14.1.1. Total cross skilling of operators and drivers

14.1.2. Trades persons to operate control room for relief purposes and on an overtime basis when operators not available.

14.1.3. Trades persons to drive front end loaders and other mobile equipment on a relief basis

14.1.4. Non trades and electricians to change idlers, perform brush or scraper adjustments, carry out skirt maintenance, removal/installation of flexible chutes

14.1.5. Staff to reset trips/vibros

14.1.6. Trades person to drive crane for up to 3 hours

14.2. The Company and employees commit to undertake the following training, and to apply the acquired skills at work—

14.2.1. Rigging tickets for non trades and electrical trades

14.2.2. Scaffolding tickets optional for both non trades and trades

14.2.3. R class electrical licence for mechanical trades

14.2.4. Oxy cutting and welding for non trades and electrical trades

14.2.5. Crane drives tickets for both non trades and trades

14.3. Parties agree that staff may perform operational duties in emergency circumstances or where it is impractical to do otherwise. This is not intended to replace operational jobs, rather to support the flexibilities agreed to between the parties. Accordingly, staff will not be used to meet operational requirements in the following circumstances—

14.3.1 During periods of industrial action

14.3.2 To provide full shift relief for a wages employee

14.3.3 Where a wages employee is *reasonably* available to do such work (including, but not restricted to, instances in which an employee does not have to be removed from another job; is in the vicinity of the work; is capable of performing such work).

14.4. In order to improve operational efficiency, all authorised and appropriately trained personnel (including staff) can perform the duty of racking in and out of electrical equipment on modified switch gear similar but not limited to the type currently installed on the stacker/reclaimer.

14.5. The parties to this agreement agree to TiWest or their nominated contractors loading out Zircon tankers and Synthetic Rutile from the TiWest Sheds, in addition to operating receivals by rail. This operation shall be in respect of TiWest product or TiWest customers only and does not include loading out to ships.

14.6. The parties to this agreement also agree, in the event that a customer requires to make their own arrangements to load or unload product, that the parties will hold discussions prior to implementing any such arrangements.

14.7. All task manning levels will be removed. Teams will allocate labour to tasks in a practical, efficient and safe manner.

14.8. Casual employees will be used as required, and in particular for the provision of leave/training relief for employees. In this context a casual employee is as defined in clause 3 'Definitions'.

14.9. Vehicle maintenance personnel numbers will be reduced to three (3). Where practicable vehicle maintenance personnel will be utilised as reliefs for mechanical trades.

15.—REDUNDANCY

The arrangements outlined in Clause 12.2.1 of this agreement anticipate reductions in labour numbers. A voluntary redundancy program will be used in the first instance to effect the agreed labour levels. Those employees who express an interest to their Superintendent in taking a redundancy package will be subject to an objective assessment of their skills and past performance prior to the Company choosing to accept or reject their application.

16.—RATES OF PAY

The parties agree to increase the current base rates of pay by 6 % (which includes tool allowance for trades). Rates are set out in Schedule I attached.

The parties agree to increase shift allowance to 15% of the Level 6 Operator rate.

The parties also agree that casual employees shall paid a rate equivalent to the BHP Transport Classification that applies to the duties they perform.

Where an employee from a labour hire firm does not accrue entitlements to annual leave, long service leave and sick leave, then a loading of 20% shall be applied to the rate determined above.

17.—TIME AND PAYMENT OF WAGES

Current arrangements will continue as set out in Clause 4, Payment of Wages, of the parent award.

Payments under the Bonus Payment Incentive Scheme will be paid directly into employees primary nominated bank account.

18.—BUSINESS PERFORMANCE INCENTIVE SCHEME

The parties agree to jointly review the Key Performance Indicators (KPIs) for Bulk Materials Handling within six months of signing of this agreement. The parties make a commitment that a portion of the Bonus Performance Incentive Scheme payment will be dependent upon team performance.

19.—ANNUALISED SALARIES

During the term of this agreement, the parties agree to investigate the potential for the introduction of annualised salaries for Kwinana Bulk Materials Handling.

The parties will seek to agree on the most appropriate method by which this issue should be progressed.

No party is committed to accept the introduction of annualised salaries where, following a proper investigation, adoption of such arrangements are deemed unsuitable or inappropriate for Kwinana Bulk Materials Handling.

20.—NEW PARENT AWARD

The Parties to this agreement agree to develop a new award, which truly reflects the identity of BHP Transport's Kwinana operations. The parties commit to having a working draft completed by the end of December 1998.

21.—PROTECTIVE AND INDUSTRIAL CLOTHING

All parties will adhere to the minimum standard of dress for the site. For operational employees the current Minimum standard of dress is—

21.1 Safety helmets (white)—to be worn at all times other than in offices, vehicle cabs, control rooms and lunch rooms.

21.2 Safety glasses—to be worn at all times other than in offices, vehicle cabs, control rooms and lunch rooms.

21.3 Safety footwear—steel capped footwear.

22.—SICK LEAVE

22.1 Employees are entitled to 10 days leave per year on the grounds of personal ill health.

22.2 A Medical Certificate is required for all absences in excess of one day. Employees will be entitled to four (4) single day absences in any one year without a Medical Certificate. Employees will be required to supply a Medical Certificate for all absences once they have had four (4) single day absences without a Medical Certificate.

22.3 The employee will notify the Company if unable to work prior to the commencement of the shift for which they will be absent—

- of the reason for the absence; and
- the anticipated duration of the absence.

For this purpose, notification to the Company means to the appropriate Supervisor, Superintendent or Manager, or in their absence Security personnel.

22.4 If the nature or sudden onset of the sickness makes it impracticable to give notice before the commencement of the shift for which the employee will be absent, the notice is validly given if given as soon as practicable and not later than 24 hours after the shift for which they were absent.

23.—PROCEDURE FOR RESOLVING CLAIMS, ISSUES AND DISPUTES

To facilitate the remedying of any grievance of the settlement of any dispute the following procedure shall apply, namely—

23.1. The worker concerned shall first refer the grievance to his foreman or immediate superiors.

23.2. The shop steward may discuss with the foreman any grievance affecting the workers he represents and, if the matter is not satisfactorily resolved, he may discuss the matter with the Industrial Officer or other officer nominated by the employer to deal with such matters on site.

23.3. The Industrial Officer of other officer referred to in paragraph 1.2 of this sub-clause shall, within forty eight hours of discussing a grievance with a shop steward, advise him of the employer's decision of the matter. Provided that where, owing to the nature of the grievance, the Industrial Officer or other officer and shop steward agree that a longer period than forty eight hours is necessary for a decision to be made, the employer's decision shall be conveyed to the shop steward within the agreed time.

23.4. If the matter is not resolved by the foregoing discussions the shop steward shall notify the appropriate full time official of his union and shall thenceforth leave the conduct of negotiations in the hands of the union.

23.5. Where a matter has been referred to the union by the shop steward the union shall promptly take all steps necessary under its rules and under the relevant applicable statutes for resolution of the matter.

23.6. A shop steward shall not leave his/her place of work to investigate any matter or discuss any matter with the employer's representative unless on each occasion he/she first obtains permission to do so from his/her foreman or supervisor.

23.7. A shop steward shall not during working hours call or hold any meeting of any workers concerned with any grievance or dispute. Work shall be continued normally at the instructions of the employer and there shall be no ban or limitation imposed whilst the above procedure is being carried out.

23.8. The procedures referred to in subclauses in this clause shall provide for the persons involved in the question, dispute or difficulty to confer among themselves and make reasonable attempts to resolve questions, disputes or difficulties before taking those matters to the Commission.

24.—NO EXTRA CLAIMS

It is a term of this Agreement that no further claims will be made by the employees or their union to vary the terms of this Agreement during its term of operation.

25.—RE-NEGOTIATION OF AGREEMENT

The parties will commence re-negotiation of the terms of this Agreement three (3) months prior to the end of its term (as specified in clause 4.2).

Signed for and on behalf of the

TRANSPORT WORKERS' UNION OF AUSTRALIA, INDUSTRIAL UNION OF WORKERS, WESTERN AUSTRALIAN BRANCH

.....Signed..... *Common Seal*

Signed for and on behalf of the

THE AUTOMOTIVE FOOD, METALS, ENGINEERING, PRINTING AND KINDRED INDUSTRIES UNION—WESTERN AUSTRALIAN BRANCH

.....Signed..... *Common Seal*

Signed for and on behalf of the

COMMUNICATIONS ELECTRICAL, ELECTRONIC, ENERGY, INFORMATION, POSTAL, PLUMBING AND ALLIED SERVICES UNION OF AUSTRALIA (WA BRANCH)

.....Signed..... *Common Seal*

on the 8th day of May 1998

Signed for and on behalf of

BHP TRANSPORT PTY LTD (KWINANA)

.....Signed..... *Common Seal*

on the 15 day of May 1998

in the presence of

.....Signed.....

SCHEDULE I

KWINANA BULK MATERIALS HANDLING

WAGE RATES FOR PURPOSE OF ENTERPRISE BARGAINING

Rates to apply from this agreement—

Operator	Award	Fixed Bonus	Total
Level 6	$516.90	$81.00	$597.90
Level 5	$489.90	$81.00	$570.90
Level 4	$469.50	$81.00	$550.50

Operator	Award	Fixed Bonus	Total
Level 3	$442.40	$81.00	$523.40
Level 2	$415.20	$81.00	$496.20
Level 1	$381.40	$81.00	$462.40

Trades	Award	Fixed Bonus	Total
Grade 4	$580.70	$81.00	$661.70
Grade 3	$539.80	$81.00	$620.80
Grade 2	$499.10	$81.00	$580.10
Grade 1	$465.30	$81.00	$546.30

Allowances to apply from this agreement—

Consolidated Allowance	$0.80	Per Hour
Tool Allowance	$11.90	Per Week
Electrical Licence Allowance	$14.90	Per Week
Meal Allowance (first)	$6.90	
Meal Allowance (second)	$4.70	

APPENDIX 1

Companies BHP Transport
BHP Services

POSITION DESCRIPTION

Identifying Information

Position Title:	Shift Team Leader
Position Department:	Bulk Materials Handling—Operations
Position Location:	Kwinana
Reports To:	Production Coordinator
Incumbent—	
Prepared by:	M. Mills
Approved by:	Date—

This document is not intended to be an exhaustive list of tasks.

The Team Leader will be a working member of the team who will perform duties as required by their classification.

SECTION 1—OVERALL PURPOSE/POSITION SUMMARY

The objective in this section is to explain the purpose of your job or what the overall expected end results are.

a. What is done?

1. Carry out tasks allocated by Operations Co-ordinator.
2. Review procedures and work instructions for quality control.
3. Clean up systems as per work instructions.
4. Discuss labour requirements with Operations Co-ordinator and make operational decisions.
5. Arrange setting up of machinery and operations.
6. Ensure safety checks prior to operating machines and conveyors are done—(replace all guards after cleaning, stairways are clear, chutes clear).
7. Control room duties— operate and monitor systems used for load/unload and receival of product, keep and maintain daily records of each operation (delays, material type, tonnages etc).
8. Encourage safety awareness and assist in accident/ incident investigation.
9. Organise the labour for general duties—lawns, road and general housekeeping etc.
10. Cross skilling training as per E.B.A.
11. Organise labour to assist maintenance, e.g. rope changes etc as and when required.
12. Fill out shift reports and update database records, risk management, AMMS, fuel recording etc.
13. Liaise with Jetty Supervisor re operational requirements.
14. Liaise with external customers on operational matters/problems.

b. Why is it done?

1. To ensure quality control of product handled to our customers satisfaction.
2. Some defects/problems could possibly be rectified by teams before long delays or spillage/contamination occur.
3. To ensure machines work to capacity without any spillage in the correct place.
4. To ensure a high safety standard and housekeeping are carried out ensuring that applicable site safety policies are maintained, e.g. personal protective equipment use.
5. To ensure a smooth co-ordinated operation of all systems in BMH department have a record of all operations carried out showing material type, tonnage loaded or discharged, times and reasons for delays.
6. To ensure same type of accident does not happen in same way again.
7. To ensure systems are ready for next product received, loaded, discharged avoiding contamination of customers product.
8. To ensure machines are set up[at correct stockpile/ shed, avoiding contamination of product and to ensure optimum feed rate of product without spillage.
9. Ensure that maintenance activities are carried out in conjunction with maintenance/ operations requirements as deemed necessary by supervisors.

SECTION 2—KEY RESPONSIBILITIES

The objective is to understand what is required to fulfil the purpose of your job.

(Complete the attached table according to the instructions below)

a) Why is it done?

Again you need to identify why your job exists but in this section please provide more details.

Please list each of the key areas of responsibilities and explain why you perform these duties or what the expected end results are—

b) What and How is it done?

To complete the description, please list for each of responsibility what you do to implement the expected end results and how you achieve them. This section focuses upon the “activity” of your job.

It is recommended that you list the key areas of responsibility in order of importance or priority as well as allocating an estimate of the time you currently spend performing these duties.

c) Measurement Indicators

To assist you and your supervisor in determining whether these key areas of responsibilities have been achieved you need to outline measures of accomplishment. These indicators can either be qualitative or quantitative.

d) Importance

Please indicate the importance attached to each of responsibility ie: A, B or C.

SECTION 2—KEY RESPONSIBILITY AREAS

In the boxes below, list a series of brief statements in each box which describe what you do and how you do it (Major action); how much time you devote to it (% of Total Job); why you do it (expected end result); and how you can tell whether you have done it (Ways to Measure Accomplishments). In the left column, rank the statements from most (=1) to least important.

Time Spent %	**Importance**	**Expected End Result** Why is the job done?	**Major Actions** What and How do you do it?	**Ways to Measure Accomplishments** How you can tell you have done it
5%	B	To ensure quality control of customers product with no loss due to contamination and system is ready for next product.	Clean up procedures and WI's use shovels/brooms and wash if required.	Customers satisfaction. Completed check lists.
10%	B	So any problems arising can be rectified by the team before long delays or spillage/contamination occur.	Check systems and report by patrolling system during operation and observing. Allocating maintenance activities as required.	Less down time on systems. Reports/corrective actions.
5%	C	To ensure machines work to capacity in/at correct shed/stock pile with no spillage/contamination.	Operating machines by ensuring machines are set up in position for stockpile/shed and monitoring the feed rate.	Spillage/contamination. Customer survey.
10%	A	To ensure high standard of safety and housekeeping are maintained. Assist in accident investigation when required and ensure same type of accident does not happen again in same place if possible. Review work instructions and safe operating procedures to reflect change.	Safety check on machines/conveyors prior to starting by inspection. Replace safety guards etc. Check as per WI's and SOP instructions. Participation in O.H.S. and encourage safety procedures.	Accident rate/safety record. KPI'S and LTI's. Inspection sheets.
20%	B	To ensure smooth co-ordinated running of systems in BMH area and have a record of all operation - material type, delays, tonnages etc.	Control room duties. Use control room computer to start - monitor - stop systems - record information.	Operations run smooth. Daily reports.
5%	C	To ensure optimum feed rate to ship with no spillage or contamination.	Load silica sand/mineral sand ships from BC10 or BC5 hoppers by operating gates or valves to achieve feed rate required.	Fast turn around of ships with less delays. Tonnage rates. Cost KPI.
15%	A	Load out to trucks product received by rail, road and sea.	Customer requirements and BHP Sales.	Tonnes handled. No contamination Performed in accordance with work and safety procedures.
10%	A	Load product to ship received by road and rail.	Customer requirements as directed by Operations Co-ordinator.	Tonnes per hour loaded. No cross contamination.
5%	A	Load product to rail received from ships.	Customer requirements as directed by Operations Co-ordinator and BHP Sales.	Record tonnes loaded. No cross contamination.
5%	B	General fork lift loading from road, rail and train as per requirements.	Customer and departmental requirements.	Tonnes handled. Rate. KPI'S
5%	C	Mobile crane. To assist in plant maintenance and off load trucks.	Departmental Requirements.	Plant kept in safe condition. KPI'S and LTI'S
5%	C	Allocate labour for miscellaneous duties: weeding, spreading, watering, cutting grass, road repairs, painting, clean up areas. Cross skilling.	General area housekeeping.	General plant. Less contamination/loss. Suppress dust. Maintain plant and road surfaces. Less accidents. KPI'S.

SECTION 3—AUTHORITY

What authority levels are allowed for this position. That is, the right to enforce instructions, delegate responsibility. Please indicate any quantitative limits that are incorporated in these decisions, i.e. dollars levels that you can sign for, tonnes moved.

List the action you—

1. Personally authorise; discuss with your supervisor before authorising or take action, or recommend to your supervisor.
   (1) Personally authorise
   - Pass on instructions to other operators
   - Check with shift supervisor re: work to be done and then allocate labour.
   - Has the authority to halt and/or correct a situation to stop a non-conformance occurring in areas that they have responsibility. Otherwise notify the relevant responsible person.

   (2) Discuss with Supervisor before authorising or taking action.
   - Overall Shift requirements
   - Equipment maintenance requirements/ modification
   - Any disciplinary action.
   - Any major changes to programme
   - Customer requests—any variations from normal
   - Any industrial matters

   (3) Recommend to Supervisor
   - Safety matters/improvements
   - Training requirements/improvements
   - Work improvements
   - E.B.A. initiatives/improvements
   - Net work practice/improvements

SECTION 4 —SKILLS

The ability to perform a task to a pre-determined level of performance (How?)

e.g. (a) Licence/Tickets : "B" Class Licence Driving
(b) Equipment/Plant Operation : Two Way Radio Operation
(c) Personal Skills—Team Management

(a) Licence/Tickets
Crane Tickets
"A" Class Licence
"B" Class Licence
Forklift (Industrial grade 2—to 16 tonnes)
Front end loader

(b) Equipment/Plant Operation
All skills (operating) in BMH department (loading/ unloading/receivals)
Control room computer (CITECH program)
Two Way Radio operation
Front End Loader
Mobile Crane
Tip Truck
Bobcat
Chainsaw
Fork lifts

(c) Personal
Interpersonal and Interactive skills
Senior First Aid
Communication Meetings
O.H. and Safety skills
Supervisory skills
Computer skills

SECTION 5—KNOWLEDGE

The understanding of a process to a pre-determined level.

Please classify knowledge which is mandatory or preferable.

e.g. Knowledge of clean up routines for conveyors.
Mandatory
- Experience in clean up of all conveyor systems, as per work instructions and procedures.
- Experience in clean up of all conveyor systems—bulk sheds, BC11 bins as per work instructions and procedures.
- Control room computer (CITECH program)
- Knowledge of all SOP's and WI's.

- Knowledge of induction.
- Knowledge of safe handling bulk materials (MSDS sheets)
- Proven skills in man management
- Use of safety equipment

Preferable

- Interpersonal skills
- Communication skills
- Control room computer—CITECH program
- Understanding of SOP's or WI's

SECTION 6—OTHER

Please include any other requirements of the job.

Please classify knowledge which is mandatory or preferable.

e.g. Working Conditions

Mandatory

- Work shifts if required

Preferable

- Work overtime to cover shipping program at weekends when necessary

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BUNNINGS FOREST PRODUCTS PTY LTD (ENTERPRISE BARGAINING) AGREEMENT 1998.

AG 11 of 1999.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Bunnings Forest Products Pty Ltd

and

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers, Western Australian Branch.

AG 11 of 1999.

Bunnings Forest Products Pty Ltd (Enterprise Bargaining) Agreement 1998.

COMMISSIONER S J KENNER.

26 February 1999.

Order.

Having heard Mr J Uphill as agent on behalf of the applicant and Mr G Sturman as agent 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 Bunnings Forest Products Pty Ltd (Enterprise Bargaining) Agreement 1998 as filed in the Commission on 21 January 1999 be and is hereby registered as an industrial agreement.

(Sgd.) S. J. KENNER,
[L.S.] Commissioner.

BUNNINGS FOREST PRODUCTS PTY LTD

MANJIMUP ENGINEERING WORKSHOP
(ENTERPRISE BARGAINING) AGREEMENT

1.—TITLE

This Enterprise Agreement shall be referred to as the Bunnings Forest Products Pty Ltd (Enterprise Bargaining) Agreement 1998.

2.—ARRANGEMENT

3.—SCOPE AND PARTIES TO THIS AGREEMENT

This Agreement shall apply to and be binding on Bunnings Forest Products Pty Ltd (the "Company") and the appropriate employees engaged in or in connection with the Company's Manjimup Engineering Workshop.

This Agreement shall also be binding upon the Automotive Food Metals Engineering Printing and Kindred Industries Union of Workers, Western Australian Branch.

It is accepted that approximately 42 employees will be bound by this Agreement upon acceptance and registration.

4.—RELATIONSHIP TO PARENT AWARDS

This Agreement shall be used and interpreted wholly in connection with the Metal Trades (General) Award 1966 No. 13 of 1965.

Where there is any inconsistency between this Agreement and the Award, this Agreement shall take precedence.

5.—SINGLE BARGAINING UNIT

5.1 The employees and the Company have formed a Single Bargaining Unit in respect to the Manjimup Engineering Workshop.

5.2 The Single Bargaining Unit will by regular conference ensure that the framework of the Enterprise Agreement is adhered to through the meeting of the Consultative Committee.

6.—AIMS AND OBJECTIVES OF THE AGREEMENT

6.1 The purpose of entering into this Enterprise Bargaining Agreement is to increase the productivity, efficiency and flexibility of the company's' Manjimup Engineering Workshop to ensure Bunnings Forest Products Pty Ltd remains competitive within the timber industry.

6.2 This agreement is further intended to enhance the quality of working life of employees through continued progress on workplace reform and consultation.

6.3 Bunnings Forest Products Pty Ltd remains committed to the continual training of all personnel so that their skills base can be enhanced, and to provide an environment in which these new skills can be utilised and recognised to the satisfaction of individual employees.

6.4 Furthermore, the Company recognises the need to improve occupational safety and health for all employees and is therefore committed to the development and implementation of safety and health initiatives. This Agreement provides for the participation of all employees in these initiatives in order that that Manjimup Engineering Workshop will become a safer working environment.

7.—WAGES

The wage rates to apply pursuant to this Agreement are as follows—

7.1 The base pay rate for C10 classification will maintain the same percent margin above the award as per the October 96 Agreement.

ie. Oct 96 Award for C10 = 441.20

Over Award payment 40.00 = 9.066%

Subsequent pay rates will be 9.066% above the award.

7.2 The timing of the pay amendment will be

7.2.1 At the time of signing the agreement.

7.2.2 Thereafter a new rate will be determined at 1st March each year and this rate will apply from 1st pay period after the 1st July.

7.3 Allowances (tool, leading hand etc) will be determined by the Award at 1st March each year and this rate will apply from 1st pay period after the 1st July.

7.4 The rate may be varied in future by the implementation of further productivity improvements.

8.—AGREED PRODUCTIVITY IMPROVEMENTS

8.1 Flexibility of Hours

The parties agree that working hours need to be arranged and worked in a manner which provides the greatest flexibility in meeting the continuously changing business environment of the company.

8.2 Non Smoking

Manjimup Engineering Workshop will become "Non Smoking" apart from agreed designated areas and breaks from the implementation of this Agreement.

By mutual consent any employee covered by this Agreement will be entitled to attend a course designed to assist them in stopping smoking. It will be Management's responsibility to organise support courses upon request and as appropriate.

8.3 Flexibility of Working Agreements

8.3.1.1 Rostered Days Off (RDO)

It is agreed between the parties that the following flexibility will apply to RDO's at the Manjimup Engineering Workshop.

2.2.2.2 Should the need arise then employees will not unnecessarily withhold their labour on their expected RDO and will be prepared to work on such occasions upon reasonable management request, e.g. minimum of 24 hours notice, employees will not be expected to work their RDO if they have a bank of 5 days already owing to them.

2.2.2.3 Should an employee work their RDO then that RDO will normally be taken at a mutually agreed future date. Due to work demand Management may decide to offer payment in lieu of taking the RDO.

2.2.2.4 If the employee elects to be paid for the RDO he/she will be paid at time & one half for the 8hrs then at normal week day penalty thereafter (1½ for the first 2 hrs in excess of 8hrs & 2x thereafter). This is in addition to the normal pay hours accumulated for the RDO (6hrs).

2.2.2.5 Employees accept they will work their RDO should that RDO fall on a day during maintenance shutdown unless otherwise agreed through management.

8.3.2 Demarcation Issues

The union and employees party to this Agreement accept that all forms of demarcation must be eliminated from the company's operations.

It is a condition of this Agreement that any employee can be required to complete any task providing such duties are within the limitation of their skill, competence and training.

8.4 Grievance and Dispute Settlement Procedure

8.4.1 The principle of conciliation and direct negotiation shall be adopted for the purpose of prevention and settlement of all industrial disputes.

8.4.2 The parties shall take an early and active part in discussions and negotiations aimed at preventing or settling disputes in accordance with the agreed procedure set out hereunder.

8.4.3 All disputes shall be resolved in the following sequence—

1.1.1.1 Discussions between the employee/s concerned (and/or their representative if required) and the immediate supervisors.

1.1.1.2 Discussions involving the employee/s concerned, the employee representative and the employer representatives'.

1.1.1.3 Discussions involving union representatives and senior management representatives.

1.1.1.4 If the matter is still not settled it may be referred to the WA Industrial Relations Commission for resolution.

8.4.4 Until the matter is resolved in accordance with the above procedure, work shall continue normally. While the above procedure is being followed no party shall be prejudiced as to the final outcome by the continuation of work in accordance with this clause unless safety is compromised.

8.4.5 All parties to this Agreement, the employers, their officials, the union and its members, will take all possible action to settle any dispute within reasonable time. At least 3 days should be allowed for all stages of discussions to be finalised.

8.4.6 If the matter is still not settled it may be referred to the WA Industrial Relations Commission for assistance.

8.4.7 This clause shall not prevent any party to a dispute from making an application to the WA Industrial Relations Commission.

8.5 Skills Development and Training

8.5.1 The parties to this Agreement are committed to the development of the skills and the workforce through improved job design or the introduction of new technology. The aim of which is to enhance the working environment to develop more rewarding and satisfying employment for all employees.

8.5.2 All issues affecting the above matters will be considered by the Enterprise Consultative Committee (ECC). Company representatives on the Committee will be required to ensure relevant matrix, legend and needs identification forms are submitted to the ECC meeting for consideration. Employee representatives on the Committee will be required to facilitate input from the wider workforce as to the appropriateness of the Committees deliberations and recommendations. Refer Additional Information on ECC's on Attachment "A".

8.5.3 Where applicable the parties agree that the outcome of training programmes will need to satisfy as a minimum the appropriate National Competency Standards.

8.5.4 Where possible all training undertaken as a result of this sub-clause will be during normal working hours. By consent between the parties, training may be conducted outside normal working hours, when the employee will be paid Single Time or equivalent Time Off in Lieu at an agreed time between the parties.

8.5.5 Any direct costs incurred by the employee as a result of undertaking training, will be met by the company.

8.5.6 The parties agree that where possible 'in house' training should be provided by employees with sufficient work experience and expertise in a particular skill.

8.5.7 Refer Additional Information on Attachment "B".

8.6 Bereavement Leave

An employee shall be entitled to bereavement leave for a death in the employee's immediate family or immediate household. "Immediate family/household" includes: wife, husband, defacto spouse or partner (including same sex partners), father, mother, father-in-law, mother-in-law, child, step-children, step-brother, step-sister, step-father, step-mother, grand parents.

Such leave will be without deduction of pay for a period of up to a maximum of 2 shifts off work. Any extension to this will be at Management's discretion. Proof of such circumstances is required to the satisfaction of the employer.

8.7 PM Smoko

When working a ten (10) hour day no afternoon smoko will occur. If working a planned day of ten (10) hours or longer duration then a seven minute smoko will apply after ten (10) hours.

8.8 Saturday/Sunday Work

After working weekends, employees may elect to take up to sixteen (16) hours off without pay if agreed by their supervisor, but on a day within the same pay week.

9.—OCCUPATIONAL SAFETY AND HEALTH

9.1 It is agreed that all new employees who commence at the company's' Manjimup Engineering Workshop will be required to undergo a safety induction programme. This will

cover all aspects of occupational safety and health, which may impact upon the employees required duties.

9.2 It is also agreed that existing employees may be required to re-take the induction programme in order to ensure that the working environment at the Manjimup Engineering Workshop is as safe as possible.

10.—UNIFORMS

10.1 Joining Option

Not compulsory, however, employees are encouraged to join.

10.2 initial Issue

This will consist of an issue of 2 sets of clothing plus 1 jacket or 1 jumper for which the employee will pay for 25% of the total cost of the package.

10.2.1 Eligibility—Existing Employees

Will be eligible for this "one off" offer at the time this scheme is introduced at their location.

10.2.2 Eligibility—New Employees

Will be eligible for this "one off" offer after a 3 month qualifying period with the company.

Employees in this category can purchase a "subsequent issue" within the qualifying period should they so request.

Note—

In both cases above the "one off" offer will only be made once. Should an employee refuse the offer at that time then their eligibility for this type of offer will lapse.

10.3 Subsequent Issues—Subsidy

A 50% subsidy for each "subsequent" issue of 1 set per financial year.

Additional jacket/jumper will only be issued on a 2 yearly basis on a 50% subsidy.

10.4 Employee Transfers

Options are—

1.1.1 Continue to wear the clothing issued from their previous location until such time as they would normally be eligible for a new issue.

1.1.2 Immediately purchase a clothing set relevant to the new location style at a 50% subsidy rate.

10.5 Tax Deductibility

Under current tax rulings, the employees contribution to clothing purchases is tax deductable.

10.6 Colour and Style

Choice will be up to the locations, however, final decision should result in one colour/style suiting the location.

10.7 Laundering

Laundering of uniforms will be at the cost of the employee.

11.—PROTECTIVE CLOTHING

Will be in accordance with Award conditions generally but will include the issue of three pairs of appropriate clothing to the value of 3 sets of standard overalls which will be laundered at company expense.

12.—LONG SERVICE LEAVE

Employees covered by this Agreement will be entitled to long service leave in accordance with the provision of the *Western Australian Industrial Gazette, volume 71, page 1*, with the exception that they will be entitled to a pro-rata payment of long service leave after 7 years of continuous service.

Employees who have had their employment terminated from the company, with the exception of redundancy, will not be eligible for this pro-rata benefit.

13.—PRODUCTIVITY BONUS

An appropriate bonus scheme will be maintained at the Manjimup Engineering Workshop and will be dependent upon the company's ability to pay.

Management will consult with ECC regarding changes to the existing scheme.

14.—VOLUNTEER EMERGENCY SERVICES WORK

Employees, with the consent of management, may be absent from work for up to 5 days maximum per annum on paid leave (7.6 hours/shift). This paid leave will be substituted from unused sick leave. Should there be no bank of sick leave to draw from then such days will be approved but not paid for.

Such employees must have an appropriate break from the time of ceasing their volunteer duties until recommencing their normal work function.

Evidence of attendance for such volunteer work shall be furnished to the satisfaction of the employer.

15.—FUTURE MATTERS

1.1 Drug & Alcohol Policy

It is agreed that a BFP Drug & Alcohol Policy will be developed in consultation with employees and their representative and implemented within the workplace, with the assistance of the BUC within the term of this agreement.

1.2 Payment of Untaken Sick Leave

A sick leave payout scheme is being considered by BFP and may if considered appropriate be introduced into the next enterprise agreement.

It is agreed between the parties to review the merits or otherwise of the introduction of annualised salaries and an expanded service exchange facility. If considered appropriate steps to introduce an improved system will be initiated.

16.—COUNSELLING PROCEDURE

The purpose of this procedure is to provide a process, aimed through counselling approach, to influence individuals to conduct themselves in a different way, resulting in conformation of performance acceptable to the general work population in which the individual finds themselves.

This procedure should be viewed, primarily, as a tool to encourage change in individual's habits and not a punishment.

16.1 Stage (I) Verbal Counselling

1.1.1 Advise the individual their specific conduct is of concern.

1.1.2 Provide opportunity for the individual to give reasons for their actions. Should reasons for actions remain unacceptable then the senior location representative will—

1.1.2.1 Confirm continuing actions will be unacceptable.

1.1.2.2 Provide and or develop a plan in conjunction with the individual; attempting to address the individuals shortcomings. This should include a review period.

1.1.2.3 Foreman/supervisor to make notes of actions in appropriate records, eg diary, logbook, etc.

This notation will remain active for a period of 12 months.

Note: Each individual has the option to have with them another person of their choice during this process.

16.2 Stage (2) First Written Warning

16.2.1 Advise the individual that their conduct remain unacceptable referring to the original verbal counselling outcome.

16.2.2 Provide opportunity for the individual to provide reasons for their actions.

Should reasons for actions remain unacceptable, then the senior location representative will—

16.2.2.1 Confirm continuing actions will be unacceptable, indicating the consequences of continuation of their conduct could lead to dismissal if their behaviour is not modified.

16.2.2.2 Again provide advice and or develop a plan in conjunction with the individual attempting to address the individuals shortcomings. This should include a review period.

16.2.2.3 Advise the individual that they will be provided with a copy of the written warning, clearly indicating the misdemeanour will be placed on their personnel file with a copy being provided to the individual within 72 hours.

This notification will remain active for a period of 12 months.

Note: Each individual has the option of having another person of their choice with them during this process.

16.3 Stage (3) Final Written Warning

16.3.1 Advise the individual that their ongoing conduct is unacceptable referring to stage (1) and (2) of the process.

16.3.2 Provide a further opportunity for the individual to give reasons for their actions.

Should reason for the individuals actions be unacceptable then the senior location representative will—

16.3.2.1 Advise this is the final opportunity for the individual to change their ways and that a continuation of their action will result in dismissal.

16.3.2.2 Provide advice and develop a plan in conjunction with the individual, attempting to address the individuals shortcomings. This should include a review period.

16.3.2.3 Advise the individual that they will be provided with a copy of the final written warning, clearly indicating the misdemeanour, together with a copy being placed on their personnel file. This notation will remain active for a period of 12 months.

Note: Each individual has the option of having another person of their choice with them during this process.

16.4 Stage (4) Termination

Prior to taking the final step of termination the senior location representative will—

16.4.1 Ensure all previous stages have been compiled with.

16.4.2 Satisfy themselves that all circumstances have been investigated and considered.

16.4.3 Provide the last opportunity for the individual to provide reasons for their actions.

Should the reasons for the individual's actions remain unacceptable then—

16.4.3.1 Termination of employment should occur ensuring appropriate award, enterprise agreement or legislation is followed. This includes correspondence to the individual, clearly indicating the reasons for termination be provided to the individual, either at the time of termination or as early as possible after the termination date.

16.5 Summary Dismissal

In some cases the above process may not apply, eg theft, fighting, alcohol and prohibited substances.

In the situation of summary dismissal the senior location representative will—

16.5.1 Ensure a full investigation of all the known facts has been undertaken.

16.5.2 Explain the circumstances to the individual ensuring understanding of the facts by the individual.

16.5.3 Provide the opportunity for reply by the individual to the allegations.

16.5.4 Carefully consider all information.

Should the individual's reasons remain unacceptable then the senior location representative will—

16.5.4.1 Terminate the individual's employment ensuring appropriate award, enterprise agreement or legislation is followed. This includes correspondence to the individual, clearly indicating the reasons for termination be provided to the individual either at the time of termination or as early as possible after the termination date.

Note: In general misdemeanours will only have a life of 12 months, however, depending on the type of misdemeanour the matter may be of such a serious nature that the misdemeanour will remain active for a longer period than 12 months as noted in steps (1), (2) and (3).

17.—REDUNDANCY

17.1 Redundancy Pay

In addition to the period of notice prescribed for ordinary termination an employee who is terminated because the employer has made definite decision that the employer no longer wishes the job the employee has been doing done by anyone and this is not due to the ordinary and customary turnover of labour and that decision will lead to the termination of employment, the employer shall pay the following amount of redundancy pay in respect of a continuous period of service (to a maximum of 25 weeks' pay) to each full-time or permanent part-time employee so terminated.

17.1.1 Completed Years of Service

0—12 months	Nil
1 year—7 years	1.5 weeks per completed year of service
7 years and onwards	2 weeks per completed year of service up to a maximum of 25 weeks.

17.1.2 An additional payment of one week's pay to each retrenched employee under this agreement irrespective of notice given.

"Week's pay" means the ordinary time rate of pay for the employee concerned. Provided that the redundancy 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.

17.1.3 Permanent employees, who at the time of termination have been employed for less than 12 months, shall be paid 17.5% loading on pro rata annual leave.

17.2 Employee Leaving During Notice

Employees who leave prior to their termination date will receive appropriate redundancy benefits.

17.3 Alternative Employment

An employer, in a particular redundancy case, may make application to the Commission to have the general redundancy pay prescription varied if the employer obtains acceptable alternative employment for an employee.

17.4 Time Off During Notice Period

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 for the purpose of seeking other employment.

17.5 Transmission of Business

17.5.1 Where a business if before or after the date of this award, transmitted from an employer (in this sub-clause called "the transmitter") to another employer (in this sub-clause called "the transmittee") and an employee who at the time of such transmission was an employee of the transmitter in that business becomes and employee of the transmittee—

17.5.1.1 The continuity of the employment of the employee shall be deemed not to have been broken by reason of such transmission; and

17.5.1.2 The period of employment which the employee has had with the transmittor or any prior transmittor shall be deemed to be service of the employee with the transmittee.

17.5.1.3 In this sub-clause "business" includes trade, process, business or occcupation and includes part of any such business and "transmission" includes transfer, conveyance, assignment or succession whether by agreement or by operation of law and "transmitted" has a corresponding meaning.

18.—TERM OF AGREEMENT

This Agreement shall take effect from the first pay period on or after 1 January 1999 and will remain in force for a period of two years.

19.—NO FURTHER CLAIMS

It is a condition of this Agreement that the parties will not seek any further claims, with respect to wages and working conditions, unless they are consistent with the State Wage Case Principles.

20.—NOT TO BE USED AS A PRECEDENT

It is a condition of this Agreement that the parties will not seek to use the terms contained herein as an example or precedent for other Enterprise Agreements whether they involve Bunnings Forest Products Pty Ltd or not.

21.—SIGNATORIES TO THE AGREEMENT

(1) _____

On behalf of Bunnings Forest Products Pty Ltd

(2) On behalf of the Consultative Committee—

_____

_____

_____

_____

(3) _____

On behalf of the Automotive Food Metals Engineering Printing and Kindred Industries Union of Workers, Western Australian Branch

ATTACHMENT "A"

AGREEMENT—ENTERPRISE CONSULTATIVE COMMITTEE

1. The following sets out the conditions under which the ECC is to operate and includes—

1.1 EEC objective
1.2 EEC function
1.3 matters within ECC jurisdiction
1.4 matters outside ECC jurisdiction
1.5 role of ECC members
1.6 stucture
1.7 ECC administration

- representation
- office bearers
- proxies
- sub committees
- meetings
- quorum
- minutes
- access to information
- facilitation of metal worker employee representative in their role
- observers to ECC
- training of ECC members
- dispute settlement procedure
- evaluation.

2. ECC OBJECTIVE

2.1 Commitment by all parties to continuously strive to improve the operations in line with the company's continuous improvement process including the very important issue of customer service.

2.2 To raise and consider all relevant matters associated with the maintenance/expansion of the business including issues that effect the workplace, leading to job security for all employees.

2.3 To raise and discuss matters enhancing the working environment generally thus improving the quality of working life for all employees.

2.4 To provide input and therefore influence the method of improving the skills of the workforce through enhanced job design or through the introduction of new technology, resulting in access to more rewarding and personally satisfying jobs.

3. ECC FUNCTION

3.1 To accept information from all participants on a range of subjects in line with the objectives.

3.1.1 From management there may be information regarding future plans, market predictions, major organisational change, new technology, training plans, company policy, general industry information.

3.1.2 From employee representatives there may be comment/suggestion on job design, employee feedback, training recommendations, improvement to work conditions and other ideas for overall improvement as raised by other employees.

3.2 To reach agreement following consideration of information provided and where necessary to make recommendation to senior management before final decision and implementation occurs on issues likely to effect the workplace.

3.3 To establish sub committees then overview their progress as and when required, with sub committees reporting back to the ECC prior to any implementation unless otherwise agreed.

3.4 Commitment to and implementation of the agreement.

3.5 To ensure that members of this committee have received the training to equip them for their role.

3.6 To ensure communication of the outcome of ECC meetings is provided to all employees in the most effective way.

4. MATTERS WITHIN THE ECC JURISDICTION

4.1 work organisation/job design

4.2 work practise changes

4.3 introduction of new equipment/technology

4.4 general policy operation and changes eg Equal Employment Opportunity and Affirmative Action

4.5 skills training/requirements

4.6 other issues as agreed by the ECC members

4.7 management practice

4.8 access to training and career path advancement.

5. MATTERS OUTSIDE THE ECC JURISDICTION

5.1 occupational safety and health matters

5.2 industrial relations issues

5.3 day to day operational problems.

6. ROLE OF ECC MEMBERS

6.1 Management

To provide to the meeting all relevant information about matters likely to effect employees in line with the objectives. It is intended that such information to be discussed, under normal circumstances, prior to implementation.

To provide feedback regarding the meeting outcome to relevant managers.

6.2 Employee Representation

To consult with other employees then provide employee input into the decision making process on matters within the jurisdiction of the committee.

To provide feedback to the employees regarding the meeting outcomes.

7. STRUCTURE

7.1 The Manjimup Engineering Workshop ECC will have up to ..... members consisting of—

.... employee representatives

.... management representatives.

7.2 The Forest Harvesting & Treatment ECC will have up to ..... members consisting of—

.... employee representatives

.... management representatives

The size of the ECC may be varied by agreement, however, representation by management may be equal to that of the number of employee representatives.

8. ECC ADMINISTRATION

8.1 Management Representation

Management will select its representatives. Consideration, however, will be given to managers with responsibility for areas where they have the decision making authority.

8.2 Employees Representation

Nominations to be provided similarly as with management. (Consideration would be given to ensuring the widest possible employee representative exposure thus providing benefit to the employees across the workplace).

Should employee representatives not be performing satisfactorily, then they can be replaced following a ballot of the relevant union membership.

8.3 Office Bearers

The ECC will elect the following positions—

Chairperson

Vice Chairperson.

8.3.1 The chairperson will manage the meetings ensuring full participation and that the outcomes are conclusive. The chairperson will work with the vice chairperson to prepare draft agendas, check minutes and organise meeting times and venues, always allowing appropriate times for full and proper participation.

The chairperson will hold the position of chairperson for no longer than 12 months unless otherwise decided by majority of the ECC.

8.3.2 The vice chairperson will be a representative of the group to which the chairperson does not directly relate to eg management or employee representatives.

The vice chairperson will carry out the chairpersons duties any time the chairperson is absent, and will move in to the position of the chairperson which will be vacated after 12 months unless the situation occurs as mentioned in 8.3.1 above.

8.4 Proxies

Committee members where possible will nominate a proxy who will attend meetings on their behalf when they are unavailable. All rights and responsibilities applying to ECC members will apply to their proxies.

8.5 Sub Committees

The ECC may form a sub committee. The sub committee, however, will include at least one of the ECC membership from both management and employee representatives.

The sub committee originated by the ECC may have up to equal management representation.

8.6 Meetings

Will be held monthly or as determined by the members of the ECC.

8.7 Quorum

Shall be a majority of equal representation from management and employee representatives.

8.8 Minutes

A minute taker will be provided to attend ECC meetings for the purpose of record taking only.

All minutes are to show the names of who attended.

Each action point should have the name of the nominated person responsible for that action together with the agreed appropriate time frame.

Minutes are to be distributed within 5 days of the meeting to all ECC participants, notice boards or other suitable means eg group discussion, management as determined by management.

8.9 Access to Information

All parties have rights to access to all information related to issues being considered by the ECC.

For commercial-in-confidence business information, reasons to be provided as to the non release of relevant documentation.

8.10 Facilitation of Employee Representative in their Role

In the spirit of this agreement management will provide assistance to enable the employee representatives to fulfil their responsibility as members of the ECC, this could include such things as: access to office equipment, photocopier, telephone, fax etc; meeting room facility, time to consult to consult with other employees in company time, time to prepare for meetings and time to attend to other business as agreed by the ECC.

8.11 Observers to the ECC

Any party may have the right to bring along an observer to provide input into the meeting where required on a specific topic as the circumstances dictate.

The observer will have speaking rights only and will leave the meeting once their subject is discussed.

Accredited Branch Office Union Officials and Senior Management Representatives have a right to attend ECC or Sub Committee Meetings, but will have no voting rights.

8.12 Training of ECC Members

All members should be provided with training to equip members with the skills to undertake their role in a positive manner by an approved bilateral provider. This training will be carried out at the company's expense.

8.13 Dispute Settlement Procedure

Should issues arise from ECC meetings which cannot be resolved then such matters should be raised in line with the grievance procedure.

8.14 Evaluation

The effectiveness of the ECC should be evaluated initially after 12 months of operation then depending on its success at a suitable time frame agreed by the ECC Members.

ATTACHMENT "B"

AGREEMENT—SKILLS DEVELOPMENT AND TRAINING

1. In conjunction with the ECC Agreement the following supports the ECC objectives—

1.1 ECC Objective

To view ways of improving the development of skills of the workforce through enhanced job design or via the introduction of new technology, resulting in the enhancement of the working environment generally, leading to a more rewarding and satisfying work like for all employees.

1.2 Role of the ECC Members

Management—to ensure relevant matrix, legend and needs identification forms are completed and supplied to the ECC meeting for general input and consensus.

Employee representative—accepting input from workmates then providing comment as to appropriateness of suggested plan as provided by management. Making suggestions relevant to the direction the plan is headed.

1.3 Standards

It is accepted that outcomes of training undertaken need to compliment the appropriate competencies as agreed by the ECC members, as a minimum, in line with the appropriate national competencies.

1.4 ECC Administration—Conditions

Training to be undertaken as far as possible during normal working hours. Training outside of normal working hours is acceptable but by prior agreement. Such training will attract Single Time penalty or equivalent time off in lieu at an appropriate time by agreement between the parties involved.

Direct costs associated with the training will be at the company's expense.

1.5 Occupational Safety and Health

It is agreed that all employees will participate in an induction at the time of their employment, of which part of that induction will cover the necessary aspects of employment, of occupational safety and health likely to effect that employee.

It is also accepted that retraining for all employees will take place periodically in order to support a safe and effective job performance.

ATTACHMENT "C"

RATES OF PAY

APPLICABLE FROM 02.01.99

Cassification		Base	Supp Payment	Safety Net	Sub Total	Tool Allow	Total
Award Rate	C10	365.20	52.00	48.00	465.20	10.00	475.20
Enterprise Agreement — 465.20 + 9.066% = 507.40							
BEW Rate	C10	507.40			507.40	10.00	517.40
" "	C11	93.41% of base			473.96	*10.00	483.96
" "	C11A	97.50%			494.72	00.00	494.72
" "	C9	104.34%			529.42	10.00	539.42
" "	C8	108.66%			551.34	10.00	561.34

Cassification		Base	Supp Payment	Safety Net	Sub Total	Tool Allow	Total
Apprentice	Yr 1	42% of base			213.11	4.20	217.31
	Yr 2	55% of base			279.07	5.50	284.57
	Yr 3	75% of base			380.55	7.50	388.05
	Yr 4	88% of base			446.51	8.80	455.31
Leading Hand	Not less than 3 & not more than 10						18.00
	More than 10 & not more than 20						27.60

*Where applicable

CHICKEN TREAT EMPLOYEES, DUNSBOROUGH SDA ENTERPRISE AGREEMENT 1998.
No. AG 244 of 1998.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Shop, Distributive and Allied Employees' Association of Western Australia

and

Mr D Bosnjak and Mrs G. Bosnjak T/A Chicken Treat Dunsborough.

No. AG 244 of 1998.

16 February 1999.

Order.

REGISTRATION OF AN INDUSTRIAL AGREEMENT
No. AG 244 OF 1998.

HAVING heard Mr T. Pope on behalf of the first named party and there being no appearance on behalf of the second named party; and

WHEREAS an agreement has been presented to the Commission for registration as an Industrial Agreement; and

WHEREAS the Commission is satisfied that the aforementioned agreement complies with the Industrial Relations Act, 1979;

NOW THEREFORE the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the agreement titled the Chicken Treat Employees, Dunsborough SDA Enterprise Agreement 1998 filed in the Commission on 28 October 1998 and as subsequently amended by the parties, signed by me for identification, be and is hereby registered as an Industrial Agreement.

(Sgd.) C.B. PARKS,
[L.S.] Commissioner.

Schedule.

1.—TITLE

This Agreement shall be known as the Chicken Treat Employees, Dunsborough SDA Enterprise Agreement 1998 and replaces the Shop and Warehouse (Wholesale and Retail Establishments) State Award 1977 in respect to the parties to this Agreement.

2.—ARRANGEMENT

3.—AREA AND SCOPE

This Agreement shall be binding upon Dragoljub Bosnjak and Gemma Bosnjak trading as Chicken Treat, location (Dunsborough) (hereinafter referred to as "the employer",) the Shop Distributive and Allied Employees' Association of Western Australia (hereinafter referred to as "the Union") and the employees of the employer who are employed in the classifications set out in Clause 6, of this Agreement. This Agreement shall apply throughout the State of Western Australia.

3A.—PARTIES TO THIS AGREEMENT

The employer party is Dragoljub Bosnjak and Gemma Bosnjak trading as Chicken Treat, location Dunsborough.

The union party is the Shop, Distributive and Allied Employees' Association of Western Australia.

3B.—POTENTIAL NUMBER OF EMPLOYEES COVERED BY AGREEMENT

Approximately 12 employees will be covered by this Agreement.

3C.—NO FURTHER CLAIMS

The parties undertake that for the duration of the agreement there will be no further wage increases sought or granted.

4.—PREVIOUS AWARDS AND AGREEMENTS

This agreement replaces in all respects the Shop and Warehouse (Wholesale and Retail Establishments) State Award 1977 No. R32 of 1976 in relation to the parties to this agreement and the Fast Food Outlets Award 1990.

5.—TERM

(1) This Agreement shall come into force on the day of its certification and shall continue to operate until 30th June 2000.

(2) The parties to the Agreement agree to commence negotiations for a new Agreement six months prior to the expiry of this Agreement.

6.—DEFINITIONS

(1) "Retail Food Establishment" shall mean the establishment or part thereof which is operated by the employer and which is wholly or predominantly engaged in the receipt of

orders for or the preparation, sale, serving or delivery of mass marketed food from a standardised menu and shall include any commissary, whether within such establishment or elsewhere, where such food is prepared or partially prepared.

(2) "Retail Employee Grade I" shall mean an employee engaged in a retail food establishment who is in the first six months of employment and who is gaining the skills required of an Employee Grade II or Grade III.

(3) "Retail Employee Grade II" shall mean an employee with not less than six months service with the employer who is engaged to assist with the preparation, assembly, cooking or packing of product for sale; the maintenance of the work area at a standard of cleanliness as determined by the employer; the cleaning of cooking utensils, cutlery and glassware; and/or in the delivery of product to the customer outside the establishment.

(4) "Retail Employee Grade III" shall mean an employee with not less than six months service with the employer who performs customer service functions including the taking of orders by any means, the entering of information onto a computer, the receipt of monies or other duties involving customer contact except the delivery of product to the customer outside the establishment.

(5) "Retail Employee Grade IV" shall mean an employee involved in the preparation of food using trades equivalent skills and/or required to give direction to or be in charge of Employees Grades I-III.

(6) Any dispute as to grading shall be addressed in accordance with the terms of Clause 41.-Grievance Procedure.

(7) "Daily Spread of Shift" shall mean the time which elapses from the employee's actual starting time to the employee's actual finishing time for the day or shift.

7.—TERMINATION OF EMPLOYMENT

(1) Permanent Employees

(a) Should the employer wish to terminate a permanent employee, the following period of notice shall be provided—

Period of Continuous Service	Period of Notice
Not more than 6 months	1 day
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

(b) 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.

(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 ordinary time weekly wage as prescribed by this Agreement.

(e) The period of notice in this Clause shall not apply in the case of dismissal for conduct that justifies instant dismissal, including malingering, inefficiency or neglect of duty or, if after receiving notice of termination, such employee does not carry out his or her duties in the same manner as he or she did prior to such notice.

(f) Notice of termination by employee

Except in the first 6 month's of service, 1 week's notice shall be necessary for an employee to terminate his or her engagement or the forfeiture of 1 week's pay by the employee to the employer in lieu of notice.

In the first six months' 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.

(g) Unfair Dismissals

Termination of employment by the employer shall not be harsh, unjust or unreasonable, whether notice has been given or not.

Without limiting the above, except where a distinction, exclusion or preference is based on the inherent requirements of a particular position, terminations on the grounds of race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction and social origin shall constitute a harsh, unjust or unreasonable termination of employment.

(2) Casual Employees

The employment of a casual employee may be terminated by the giving or receiving of 1 hour's notice.

(3) Grievance Procedures

In the event of a dispute arising from the operation of this Clause, the matter should be dealt with in accordance with the provisions of Clause 41.-Grievance Procedure hereof.

(4) In all cases, the employer is bound by the provisions of the Industrial Relations Act 1979.

8.—HOURS

(1) The ordinary hours of work shall be thirty eight per week, not exceeding ten per day, to be worked over not more than five days of the week, within a daily spread of eleven hours. Each employee shall be entitled to two clear days off duty per week.

(2) Notwithstanding the provisions of subclause (1) hereof, in cases where employees are rostered over a 19 day, four week cycle, up to forty ordinary hours may be worked in a week provided that the total number of ordinary hours in any four week cycle shall not exceed 152.

9.—OVERTIME

(1) All work done at times other than those which the employee is rostered to work, or outside the daily spread of eleven hours, or beyond ten hours in any one day or beyond five days in any one week or beyond thirty eight hours in any one week—except in the case of an employee rostered over a 19 day, four week cycle as provided by Clause 8 (2) in which case the limit to weekly ordinary hours shall be forty—shall be overtime.

(2) Subject to the provisions of subclause (3) hereof, all overtime worked between Monday to Friday, both inclusive, and prior to twelve noon on Saturday shall be paid for at the rate of time and a half for the first two hours and double time thereafter. All overtime worked after twelve noon on a Saturday and all day on a Sunday, shall be paid for at the rate of double time.

(3) All work done on an employee's rostered day off shall be paid for at the rate of double time with a minimum payment as for three hours' work.

(4) Notwithstanding anything contained in this clause to the contrary, where a part time employee is requested to work over-time beyond his or her regular finishing time in order to meet unforeseen operational and/or staffing requirements, the first hour of such overtime shall be paid for at the ordinary time rate of pay, the second hour of such overtime shall be paid for at the rate of time and a half with double time for any hours worked thereafter. The provisions of this subclause shall only apply to Part Time employees rostered to work nine ordinary hours or less on the day upon which the overtime is worked.

(5) Notwithstanding anything contained in this clause, the employer and an employee may agree that time off with pay may be allowed in lieu of payment for overtime. Such time off shall be allowed subject to—

a) time off for each hour or part thereof shall be equivalent to the overtime rate that otherwise would have been paid.

b) the time of taking time off being agreed at the time of arranging the overtime and shall be no later than four weeks after the overtime is worked.

10.—CASUAL EMPLOYEES

(1) Casual employees shall mean employees engaged on an hourly contract of service.

(2) Casual employees shall not be engaged for less than two consecutive hours per time.

(3) Casual employees shall be paid at the ordinary rate of pay of one thirty-eighth of the full time weekly rate of pay for

the appropriate classification as set out in subclause (1) of Clause 20.-Wages plus twenty one and one half per cent, provided that this rate shall be increased to double time for all work performed on the holidays referred to in subclause (1) of Clause 16 of this Agreement.

(4) The working time for a casual employee on an outside job, shall count from the time appointed for their attendance at the job until they are discharged. Fares to and from the place of engagement and the job shall be paid by the employer.

(5) The wages payable to a casual employee on an outside job shall be forwarded to the employee within seventy two hours of completion of the pay week in which such employee was employed.

(6) The provisions of Clauses 14, 15, 16, 17 and 35 shall not apply to a casual employee.

11.—PART TIME EMPLOYEES

(1) A part time employee shall mean an employee engaged on a weekly contract of service, who works regularly from week to week for not less than three consecutive ordinary hours per time, or more than ten ordinary hours per day, and not less than nine or more than thirty ordinary hours each week over not more than five days of the week.

(2) Subject to the limitations on daily and weekly hours for part time employees as prescribed by subclause (1) of this Clause, the number of ordinary hours to be worked on any one day by a part time employee may be increased but not decreased by agreement between the employer and the employee.

(3) Part time employees shall be paid at the ordinary time rate of pay of one thirty-eighth of the full time weekly rate of pay for the appropriate classification as set out in subclause (1) of Clause 20.-Wages, provided that this rate shall be increased to double time for all work performed on the holidays referred to in subclause (1) of Clause 16.-Holidays of this Agreement.

(4) All time worked by a part time employee beyond ten ordinary hours per day, thirty ordinary hours per week or five days per week or at times other than those which the employee is rostered to work shall be overtime and paid for at the appropriate overtime rate prescribed in Clause 9.-Overtime of this Agreement.

(5) A part time employee shall be eligible for pro rata annual leave and sick leave in accordance with Clauses 14 and 17 in addition to being eligible for bereavement leave and payment in lieu of public holidays. In calculating the pro-rata entitlements of a part time employee pursuant to this subclause, all ordinary hours worked by the employee, including any additional ordinary hours agreed pursuant to subclause (2) of this Clause, shall be included in the calculation.

12.—MEAL BREAKS

(1) Every employee shall be entitled to a meal break of not less than one half hour nor more than one hour after not more than five hours work, provided that where an employee works in excess of eight ordinary hours in any one day, the meal break on that day may be taken after not more than six hours work. Where it is not possible for the employer to grant a meal break on any day, the said meal break shall be treated as time worked and the employee shall be paid at the rate applicable to the employee at the time such meal break is due, plus fifty per cent of the ordinary hourly rate applying to such employee, until such time as the employee is released for a meal.

(2) In addition to breaks for a meal, there may be one other break of at least two hours during each shift. Such break of two hours may include a meal break.

(3) In addition to breaks for a meal as provided in this Clause, any employee who is required to work in excess of eight ordinary hours in any one day shall receive a paid tea break of ten minutes. Such tea break shall be taken to suit the employer's business, but shall not be taken within one hour of the employee's commencement or finishing time or within one hour of the employee's meal break.

13.—MEAL MONEY

Any employee who is required to work overtime for more than two hours on any day, without being notified on the previous day or earlier that he or she will be required to work such overtime, will either be supplied with a meal by the employer or be paid $6.25 meal money.

14.—SICK LEAVE

(1) (a) An employee, including a part time 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 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 the employee is absent on the grounds of personal ill health or injury for a period longer than his or 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.

(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 or 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 extra- ordinary 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 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 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 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 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 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 or her place of residence or an hospital as a result of his or her personal ill health or injury for a period of seven consecutive days or more and he or she 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 employer 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 or 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 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 for in accordance with the provisions of Clause 17.-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 17.-Annual Leave, shall be deemed to have been paid with respect to the replaced annual leave.

(6) The provisions of this Clause with respect to payment do not apply to employees who are entitled to payment under the Workers' Compensation and Rehabilitation Act nor to employees whose injury or illness is the result of the employee's own misconduct.

15.—BEREAVEMENT LEAVE

An employee, including a part time 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, grandparent, brother, sister, child or stepchild be entitled on notice to bereavement 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. Proof of such death shall be furnished by the employee to the satisfaction of the employer if so requested. Provided that this Clause shall have no effect while the period of entitlement to leave coincides with any other period of leave that may be due to the employee concerned.

16.—HOLIDAYS

(1) The following days shall be allowed as paid holidays for full time and part time employees: New Year's Day, Australia Day, Labour Day, Good Friday, Easter Saturday, Easter Monday, Anzac Day, State Foundation Day, Sovereign's Birthday, Christmas Day and Boxing Day.

(2) The paid holidays set out in subclause (1) hereof shall be regarded as falling on the days upon which they are most commonly observed in the State of Western Australia unless the State prescribes an alternate day for celebrating the holiday in which case the alternate day shall be the day of the holiday.

(3) In addition to the paid holidays set out in subclause (1) hereof, any day proclaimed as a public holiday or half holiday under the Public and Bank Holidays Act, not being a day set out in subclause (1) hereof or a day observed in lieu thereof, shall be allowed as a paid holiday for full and part time employees.

(4) All work done on any of the holidays prescribed in this Clause shall be paid at the rate of double time, with a minimum payment as for three hours.

(5) Where a full time employee's rostered day off coincides with any of the holidays prescribed in this clause, such employee shall receive one day's additional pay at ordinary rates from the employer on the next succeeding pay day.

(6) Where a part time employee is rostered such that the day of the week on which a holiday as prescribed by this clause falls forms part of the roster but the employee is not rostered to work on the holiday then such employee shall receive additional payment for the number of hours regularly worked on that day of the week from the employer on the next succeeding pay day.

17.—ANNUAL LEAVE

(1) Except as hereinafter provided, a period of four consecutive weeks' leave with payment as prescribed in this Clause, shall be allowed annually to a full time or part time employee by his/her employer after a period of twelve months' continuous service.

(2) An employee before going on leave shall be paid the wages the employee would have received in respect of the ordinary time the employee would have worked had the employee not been on leave during the relevant period.

(3) During a period of annual leave an employee shall receive a loading of 17.5 per cent calculated on the employee's ordinary rate of wage.

(4) If any holiday proclaimed as per Clause 16.-Holidays falls within an employee's period of annual leave, there shall be added to that period one day being an ordinary working day for each holiday observed as aforesaid.

(5) (a) After one month's continuous service in any qualifying twelve monthly period an employee whose employment is terminated shall, subject to the provisions of paragraph (b) of this subclause, be paid one third of a week's pay at his or her ordinary rate of wage in respect of each completed month of service in the qualifying period. The loading prescribed in subclause (3) of this Clause shall not apply to this pro rata payment.

(b) Where an employee is justifiably dismissed for misconduct during any twelve monthly qualifying period, the provisions of paragraph (a) of this subclause do not apply in respect of any completed month of service in that qualifying period.

(6) An employee whose employment terminates after the employee has completed a twelve monthly qualifying period and who has not been allowed the leave prescribed in this Clause in respect of that qualifying period, shall be given payment in lieu of that leave in accordance with the provisions of this Clause.

(7) Any time in respect of which an employee is absent from work, except time for which the employee is entitled to claim sick pay, or time spent on holidays, annual leave or bereavement leave as prescribed by this Agreement shall not count for the purpose of determining his or her right to annual leave.

(8) In special circumstances and by mutual consent of the employee, the employer and the union, annual leave may be taken in not more than two periods, provided that neither of such periods shall be of less than one week.

(9) Annual leave shall be granted to and taken by the employee within a period three months from the day on which it became due, and the employee shall be given at least two weeks' notice by the employer of the date that such leave will commence.

18.—LONG SERVICE LEAVE

The Long Service Leave provisions published in Volume 59 of the Western Australian Industrial Gazette at Pages 1-6, both inclusive, are hereby incorporated and shall be deemed to be part of this Agreement.

19.—PAYMENT OF WAGES

(1) The employer may elect to pay employees in cash, by cheque or by means of 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 days of the last day of the pay period. Payment by cash or cheque shall be made during the employee's ordinary working hours.

(3) No employer shall change its method of payment to employees without first giving them at least four week's notice of such change.

(4) Employees whose day off falls on pay day and who are paid by cash or cheque, shall be paid their wages upon request from the employee to the employer, prior to the employee taking the day off.

(5) An employee who lawfully terminates employment or is dismissed for reasons other than misconduct, shall be paid all wages due to the employee by the employer on the day of termination of employment, or within twenty four hours following such termination.

(6) At the time of being paid each employee shall be issued with a statement by the employer showing the gross wages and allowances and all deductions made therefrom.

(7) (a) The employer may elect to pay employees weekly or fortnightly in accordance with subclauses (1) to (6) inclusive of this Clause.

(b) No employer shall change 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 be by the payment of an additional week's wages 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 that the period of repayment shall not be less than 10 weeks or by some other method agreed upon by the union and the employer.

20.—WAGES

(1) The following shall be the minimum rates of weekly wage payable to employees covered by this Agreement.

TOTAL WAGE PER WEEK

Classification	From the first pay period following the certification of this Agreement	From the 1st pay period following 1st January 1999	From the first pay period following 1st July 1999	From the first pay period following 1st January 2000
	$/week	$/week	$/week	$/week
Grade I	401.00	406.00	412.00	420.00
Grade II	406.00	415.40	427.10	443.50
Grade III	418.30	427.70	439.40	455.80
Grade IV	443.20	452.60	464.30	480.70

(2) An employee who delivers orders to customers in his or her own vehicle shall receive a payment, in addition to all other amounts provided in this Agreement, equal to $1.70 for every delivery in excess of 3.4 deliveries per hour.

(3) No employee shall suffer any reduction to his or her rate of wage as a result of the operation of this Agreement.

21.—JUNIOR EMPLOYEES

(1) Junior employees, other than those engaged in the preparation and/or serving of alcoholic beverages shall be paid the percentage of the adult rate, as set out in subclause (2) hereof, appropriate to their classification as determined by subclause (1) of Clause 20.-Wages.

(2) The minimum weekly rates of wages for work in ordinary time to be paid to junior employees shall be as follows—

Under 16 years of age	40%	(for employees whose date of commencement was on or after the date of certification of this agreement)
Under 16 years of age	50%	(for employees who date of commencement was before the date of certification of this agreement)
Between 16 and 17 years	50%	
Between 17 and 18 years	60%	
Between 18 and 19 years	70%	
Between 19 and 20 years	80%	
At 20 years and over	90%	

NOTE: No employee who commenced employment before the date of certification of this agreement may have their wage reduced as a result of this clause.

(3) Any junior employee who is primarily engaged in the preparation and/or serving of alcoholic beverages shall be paid the adult rate applicable to a Retail Employee Grade III. Any junior employee whose duties include the preparation and/or serving of alcoholic beverages shall be at least 18 years of age.

(4) No junior female employee under the age of 18 shall be employed after 8.00 p.m. on any day without permission in writing from one of the parents or guardian of such junior employee.

(5) No employee shall be terminated, or have their hours of employment reduced as a result of the operation of this clause.

22.—HIGHER OR LOWER DUTIES

(1) Any employee performing work for two hours or more in any day on duties carrying a higher prescribed rate of wage than that in which the employee is engaged, shall be paid the higher wage for the time so employed, provided that where an employee is engaged for more than half of one day or shift on duties carrying a higher rate, the employee shall be paid the higher rate for such day or shift.

(2) Any employee who is temporarily required to perform duties carrying a lower prescribed rate of wage, shall do so without any loss of pay.

(3) The employer may direct any employee to carry out such duties as are within the limits of an employee's skill, competence and training.

23.—UNIFORMS, LAUNDERING AND PRESENTATION STANDARDS

(1) Where uniforms are required by the employer to be worn they shall be supplied, laundered and/or dry cleaned by the employer and remain the property of the employer, provided that in lieu of the employer laundering and/or dry cleaning same, the employee shall be paid the following laundry allowance per week—

Employees employed on a casual basis	$1.70
Employees employed on a part time basis	$1.95
Employees employed on a full time basis	$2.25

Provided that the provisions of this Clause may be altered by written agreement between the union and the employer.

(2) Employees commencing before the date of certification of the Agreement

Where uniforms are supplied to an employee and where the value of such uniforms exceeds $30.00, a once only deposit of $30.00 shall be paid by the employee by means of six $5.00 instalments withheld by the employer from the employee's wages during the first six pay periods. This deposit shall be repaid to the employee on termination provided the uniforms issued to them are returned to the employer in good condition, fair wear excepted.

In lieu of such $30.00 deposit, employers may withhold $30.00 from the termination payment to any employee engaged prior to the date of certification of this Agreement until such time as the employee returns any uniform in his or her possession in good condition, fair wear excepted.

(3) Employees commencing on or after the date of certification of this agreement.

Where uniforms are supplied to an employee and where the value of such uniforms exceeds $50.00, a once only deposit of $50.00 shall be paid by the employee by means of five $10.00 instalments withheld by the employer from the employee's wages during the first five pay periods. This deposit shall be repaid to the employee on termination provided the uniforms issued to them are returned to the employer in good condition, fair wear excepted.

In lieu of such $50.00 deposit, the employer may withhold $50.00 from the termination payment to any employee engaged after the date of certification of this Agreement until such time as the employee returns any uniform in his or her possession in good condition, fair wear excepted.

Any employee who claims hardship as the result of the operation of sub-clauses (2) and (3) may have the repayment rate set at 10 weekly payments of $5.00. Any dispute will be settled in accordance with Clause 41.-Grievance Procedure.

(4) Grooming

Good personal presentation and hygiene are seen as essential by the employer in upholding the employer's overall image to our customers. When at work, employees shall be attired in a neat, tidy and business like manner at all times.

(i) Hair is to be worn short or tied back away from the face. The hats and hairnets provided are to be worn at all times in line with current government health regulations.

(ii) Minimal jewellery is permitted whilst on duty. A wedding band, engagement ring, wrist watch or medic-alert bracelet is the maximum jewellery that can be worn. Neck chains, ankle bracelets, costume jewellery and dangling earrings can be hazardous to the employee and/or customer and should not be worn.

A stud or sleeper (one pair) will be permissible in pierced ears only. Nose rings, eye rings or any other form of body piercing that does not demonstrate a professional business like manner is not allowable.

(iii) Facial hair is not encouraged however employees with beards, moustaches should keep them neat, trim and tidy. Shaving prior to commencing a shift is required.

(iv) Make-up should be kept to a minimum and be complimentary to the uniform. Heavy make-up should be avoided and nail polish is not allowed.

(v) All employees must ensure that finger nails are maintained at a minimum length.

24.—PROTECTIVE CLOTHING

(1) Employees who are required to wash dishes, clean toilets or otherwise handle detergents, acids, soaps or any injurious substances shall be supplied, free of charge by the employer, with rubber gloves or be paid an allowance of $1.10 per week in lieu.

(2) Where the conditions of work are such that employees are unable to avoid their clothing becoming wet or dirty, they shall be supplied with suitable protective clothing free of charge by their employer.

(3) Where conditions of work are such that employees are unable to avoid their feet becoming wet, they shall be

supplied by their employer free of charge with suitable protective footwear.

(4) All articles supplied shall remain the property of the employer and shall be returned when required, in good order and condition, fair wear and tear excepted.

(5) Any dispute in respect to the application of this Clause will be settled in accordance with Clause 41.-Grievance Procedure.

25.—EMPLOYEES' EQUIPMENT

All knives, choppers, tools, brushes, towels, and other utensils, implements and material which may be required to be used by the employee for the purpose of carrying out his or her duties, shall be supplied by the employer free of charge.

26.—LIMITATION OF WORK

(1) No female employee may be required to climb ladders or any substitute therefore unless appropriately attired.

(2) No female employee shall be required to clean out male public toilets, or male toilets within the employer's establishment unless it has been determined by a male employee that the toilets are vacant and arrangements are made to ensure that the toilets are not in use during the cleaning period.

(3) No female employee under the age of eighteen years shall be required to lift or carry weights in excess of eleven kilograms and no female employee over eighteen years of age shall be required to lift or carry weights in excess of sixteen kilograms.

27.—TRAVELLING FACILITIES

(1) Where an employee is detained at work until it is too late to travel by the last ordinary bus, train or other regular public conveyance to the employee's usual place of residence, the employer shall provide proper conveyance free of charge.

(2) If an employee is required to start work before the first means of public conveyance (herebefore described) is available to convey the employee from his or her usual place of residence to the place of employment, the employer shall provide a conveyance free of charge.

(3) The provisions of this Clause do not apply to an employee who usually has his or her own means of conveyance.

28.—RECORD

(1) The employer shall keep, or cause to be kept, on his or her business premises, or at each of them if more than one, a Time and Wages Record, wherein shall be entered the following information—

(a) the full name, postal address and occupation of each employee employed and whether the employee is being employed on a full time, part time or casual contract of service;

(b) the time each employee commences and finishes work each day, including any breaks in shift;

(c) the number of hours worked each day by each employee and the total hours worked each pay period;

(d) the wages and (if any) overtime and allowances paid to each employee each pay period;

(e) the age of any employee employed on junior rates of pay.

(2) The Record shall be entered up by the employer from day to day and shall be signed, if correct, by the employee at the time of being paid. The employer and the employee shall be severally responsible for the correctness of the Record.

(3) (a) Subject to the provisions of paragraph (b) hereof, the Record shall be open for inspection to a duly accredited representative of the union on the employer's premises from Monday to Sunday, both inclusive, between the hours of 9.00 a.m. to 5.00 p.m., (excepting from 12.00 noon to 2.00 p.m.). The union representative shall be permitted time to inspect the Record and, if he or she requires, shall be allowed to take an extract or copy of any of the information contained in the Record, which shall be maintained by the employer on the business premises for a period of not less than twelve months.

(b) Where the Record for any reason is not available for inspection, an extract or copy from such Record of Information required by the Representative shall be forwarded by the employer to the Registered Office of the union within fourteen days of the date of the request made to inspect the Record.

(4) For the purposes of this Clause the term "Record" shall mean a book or single document wherein shall be entered all the information required to be kept in accordance with the provisions of subclause (1) of this Clause.

(5) Notwithstanding subclauses (1) to (4);

Where this industrial agreement empowers a representative of the Shop, Distributive and Allied Employees' Association of Western Australia to inspect the time and wages records of an employee or former employee, that power shall be exercised subject to the Industrial Relations (General) Regulations 1997 (as may be amended from time to time) and the following—

(a) the employer may refuse a representative access to the records if—

(i) The employer is of the opinion that access to the records by the representative would infringe the privacy of persons who are not members of the organisation; and

(ii) the employer undertakes to produce the records to an Industrial Inspector within 48 hours of being notified of the requirement to inspect by the representative;

(b) the power of inspection may only be exercised by a representative of the union authorised for the purpose in accordance with the rules of the organisation;

(c) before exercising a power of inspection, the representative shall give reasonable notice of not less than 24 hours to an employer.

29.—ROSTER

(1) A roster of the working hours of each full time and part time employee employed shall be exhibited in the office the employer, so as it may be conveniently and readily seen by the employee.

(2) Such roster shall show—

(a) the name, occupation and type of employment of each employee;

(b) the hours to be worked by each employee each day and the breaks in shift to be taken.

(3) Subject to Clause 28.-Record, the roster in the office shall be open for inspection to a duly accredited representative of the union at such time as the "Record" is so open for inspection.

(4) Such rosters shall be drawn up in such a manner as to show the working hours of each employee for at least one week in advance of the date of the roster, and may only be altered on account of the sickness of an employee, or by mutual consent between the employee and the employer concerned.

30.—CHANGE AND REST ROOMS

Adequate change and rest rooms shall be provided by the employer where such are reasonably practicable.

31.—FIRST AID

(1) In each establishment the employer shall provide and continuously maintain at a place easily accessible to all employees an adequate First Aid Kit.

(2) A worker holding either a Red Cross or St John Senior First Aid Certificate of at least "A" level who is appointed by the employer to perform first aid duties shall be paid $6.00 per week in addition to the worker's ordinary rate.

32.—POSTING OF AGREEMENT AND UNION NOTICES

(1) In each establishment, a copy of this Agreement, if supplied by the Union, shall be exhibited by the employer on the business premises in such a place where it may be conveniently and readily seen by each employee employed.

(2) The Secretary of the union, or any other duly accredited representative of the union, shall be permitted to post notices relating to union business in a place where it may be conveniently and readily seen by each employee employed. Provided that nothing in this subclause shall empower a duly accredited official of the union to enter any part of the premises of the

employer, pursuant to this subclause, unless the employer is the employer or former employer of a member of the Union.

33.—SUPPORTED WAGE SYSTEM

(1) This 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 Agreement. In the context of this clause, the following definitions will apply—

(i) "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]".

(ii) "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.

(iii) "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.

(iv) "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

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 Agreement, because of the effects of a disability on their productive capacity and who meet the impairment criteria for receipt of a Disability Support Pension.

(The 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 Agreement relating to the rehabilitation of employees who are injured in the course of their current employment).

The Agreement does not apply to the employer in respect of any 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, unless the employer 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 Agreement for the class of work which the person is performing according to the following schedule—

Assessed Capacity (Sub-clause (d)	% Of Prescribed Agreement 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 Agreement rate to be paid to an employee under this Agreement, the productive capacity of the employee will be assessed in accordance with the Supported Wage System and documented in an assessment instrument by either—

(i) The employer and the Union, in consultation with the employee or, if desired by any of these;

(ii) the employer and an accredited assessor from a panel agreed by the employer and the Union.

(5) Lodgement of Assessment Instrument

(a) All assessment instruments under the conditions of this clause, including the appropriate percentage of the Agreement wage to be paid to the employee, shall be lodged by the employer with the Registrar of the 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 Agreement, 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 workers covered by this Agreement paid on a pro-rata basis.

(8) Workplace Adjustment

The 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 workers in the area.

(9) Trial Period

(a) In order for an adequate assessment of the employee's capacity to be made, the 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 outcome of assessment under Clause 4 of this Clause.

Employees who because of the effects of a disability are eligible for a supported wage shall be assessed and paid in accordance with the provisions of the model clause as provided in the Supported Wage System Test Case Decision (Print L5723 of 1994).

34.—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 described 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	15.20
Argyle (see subclause 12)	39.50
Balladonia	15.00

TOWN	PER WEEK $
Barrow Island	25.70
Boulder	6.20
Broome	24.20
Bullfinch	7.20
Carnarvon	12.30
Cockatoo Island	26.60
Coolgardie	6.20
Cue	15.50
Dampier	20.90
Denham	12.30
Derby	25.10
Esperance	4.60
Eucla	16.90
Exmouth	21.70
Fitzroy Crossing	30.30
Goldsworthy	13.80
Halls Creek	34.60
Kalbarri	5.10
Kalgoorlie	6.20
Kambalda	6.20
Karratha	24.80
Koolan Island	26.60
Koolyanobbing	7.20
Kununurra	39.50
Laverton	15.40
Learmonth	21.70
Leinster	15.20
Leonora	15.40
Madura	16.00
Marble Bar	37.70
Meekatharra	13.30
Mount Magnet	16.50
Mundrabilla	16.50
Newman	14.50
Norseman	12.90
Nullagine	37.60
Onslow	25.70
Pannawonica	19.60
Paraburdoo	19.40
Port Hedland	20.80
Ravensthorpe	8.10
Roebourne	28.50
Sandstone	15.20
Shark Bay	12.30
Shay Gap	13.80
Southern Cross	7.20
Telfer	35.00
Teutonic Bore	15.20
Tom Price	19.40
Whim Creek	24.60
Wickham	24.00
Wiluna	15.50
Wittenoom	33.40
Wyndham	37.30

(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 sixty six and two-thirds 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 24 July 1990.

(4) 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.

(5) 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.

(6) 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.

(7) For the purposes of this clause—

(a) "Dependant" shall mean—

(i) a spouse or de facto spouse; or

(ii) a child where there is no spouse or de facto spouse;

who does not receive a district or location allowance, or who, if in receipt of a salary or wage package, receives no consideration 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 or who, if in receipt of a salary or wage package, receives less than full consideration for which the location allowance is payable pursuant to the provisions of this clause.

(8) 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.

(9) Subject to the making of a General Order pursuant to Section 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 first 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.

LOCATION ALLOWANCES—JULY 1998

	PRICES		ISOLATION		CLIMATE		TOTALS	
	Index No.	Prices	Index No.	Isolation	Index No.	Climate	Amount	50.00%
Maximum Allowance	100	$64.80	100	$10.00	100	$5.00	$78.78	$39.90
Agnew	35	$22.7	68	$6.80	19	$0.95	$30.4	$15.2
Argle	100	$64.8	93	$9.30	99	$4.95	$79.0	$39.5
Balladonia	40	$25.9	40	$4.00	0	$-	$29.9	$15.0
Barrow Island	65	$42.1	62	$6.20	62	$3.10	$51.4	$25.7
Boulder	16	$10.4	15	$1.50	12	$0.60	$12.5	$6.2
Broome	58	$37.6	71	$7.10	73	$3.65	$48.3	$24.2

LOCATION ALLOWANCES—JULY 1998—*continued*

	PRICES		ISOLATION		CLIMATE		TOTALS	
	Index No.	Prices	Index No.	Isolation	Index No.	Climate	Amount	50.00%
Bullfinch	16	$10.4	33	$3.30	15	$0.75	$14.4	$7.2
Carnarvon	30	$19.4	43	$4.30	18	$0.90	$24.6	$12.3
Cockatoo Island	63	$40.8	80	$8.00	86	$4.30	$53.1	$26.6
Coolgardie	16	$10.4	15	$1.50	12	$0.60	$12.5	$6.2
Cue	37	$24.0	55	$5.50	29	$1.45	$30.9	$15.5
Dampier	51	$33.0	58	$5.80	61	$3.05	$41.9	$20.9
Denham	30	$19.4	43	$4.30	18	$0.90	$24.6	$12.3
Derby	60	$38.9	71	$7.10	86	$4.30	$50.3	$25.1
Esperance	9	$5.8	34	$3.40	0	$-	$9.2	$4.6
Eucla	40	$25.9	79	$7.90	0	$-	$33.8	$16.9
Exmouth	55	$35.7	53	$5.30	49	$2.45	$43.4	$21.7
Fitzroy Crossing	74	$47.9	87	$8.70	80	$4.00	$60.6	$30.3
Goldsworthy	26	$16.8	66	$6.60	83	$4.15	$27.6	$13.8
Halls Creek	88	$57.0	91	$9.10	61	$3.05	$69.2	$34.6
Kalbarri	14	$9.1	12	$1.20	0	$-	$10.3	$5.1
Kalgoorlie	16	$10.4	15	$1.50	12	$0.60	$12.5	$6.2
Kambalda	16	$10.4	15	$1.50	12	$0.60	$12.5	$6.2
Karratha	63	$40.8	58	$5.80	61	$3.05	$49.7	$24.8
Koolan Island	63	$40.8	80	$8.00	86	$4.30	$53.1	$26.6
Koolyanobbing	16	$10.4	33	$3.30	15	$0.75	$14.4	$7.2
Kununurra	100	$64.8	93	$9.30	99	$4.95	$79.0	$39.5
Laverton	37	$24.0	58	$5.80	19	$0.95	$30.7	$15.4
Learmonth	55	$35.7	53	$5.30	49	$2.45	$43.4	$21.7
Leinster	35	$22.7	68	$6.80	19	$0.95	$30.4	$15.2
Leonora	37	$24.0	58	$5.80	19	$0.95	$30.7	$15.4
Madura	40	$25.9	60	$6.00	0	$-	$31.9	$16.0
Marble Bar	100	$64.8	70	$7.00	73	$3.65	$75.4	$37.7
Meekatharra	32	$20.7	44	$4.40	29	$1.45	$26.6	$13.3
Mount Magnet	41	$26.6	48	$4.80	33	$1.65	$33.0	$16.5
Mundrabilla	40	$25.9	70	$7.00	0	$-	$32.9	$16.5
Newman	34	$22.10	49	$4.90	42	$2.10	$29.0	$14.5
Norseman	34	$22.10	34	$3.40	7	$0.35	$25.8	$12.9
Nullagine	100	$64.8	75	$7.50	58	$2.90	$75.2	$37.6
Onslow	65	$42.1	62	$6.20	62	$3.10	$51.4	$25.7
Pannawonica	47	$30.4	60	$6.00	55	$2.75	$39.2	$19.6
Paraburdoo	47	$30.4	60	$6.00	48	$2.40	$38.8	$19.4
Port Hedland	51	$33.0	50	$5.00	71	$3.55	$41.6	$20.8
Ravensthorpe	18	$11.7	45	$4.50	0	$-	$16.2	$8.1
Roebourne	73	$47.3	59	$5.90	77	$3.85	$57.0	$28.5
Sandstone	35	$22.7	68	$6.80	19	$0.95	$30.4	$15.2
Shark Bay	30	$19.4	43	$4.30	18	$0.90	$24.6	$12.3
Shay Gap	26	$16.8	66	$6.60	83	$4.15	$27.6	$13.8
Southern Cross	16	$10.4	33	$3.30	15	$0.75	$14.4	$7.2
Telfer	90	$58.3	81	$8.10	73	$3.65	$70.0	$35.0
Teutonic Bore	35	$22.7	68	$6.80	19	$0.95	$30.4	$15.2
Tom Price	47	$30.4	60	$6.00	48	$2.40	$38.8	$19.4
Whim Creek	62	$40.2	54	$5.40	74	$3.70	$49.3	$24.6
Wickham	59	$38.2	59	$5.90	77	$3.85	$48.0	$24.0
Wiluna	35	$22.7	68	$6.80	29	$1.45	$30.9	$15.5
Wittenoom	88	$57.0	71	$7.10	53	$2.65	$66.8	$33.4
Wyndham	92	$59.6	100	$10.00	100	$5.00	$74.6	$37.3

35.—PARENTAL LEAVE

Permanent employees with at least twelve months continuous service shall be entitled to Parental Leave (unpaid Maternity, Paternity and Adoption Leave and the right to work Part Time with the consent of the employer) as determined by the 1990 Parental Leave Test Case (Print J3596).

36.—TEMPORARY TRANSFER [DELETED]

37.—ENTERPRISE AGREEMENTS [DELETED]

38.—TRAINEESHIPS

(1) The National Training Wage Award shall apply in respect of this Agreement and where it refers back to the Award, that shall be read as referring back to this Agreement.

(2) The provision in the National Training Wage Award in respect of overtime shall be read to mean that the hourly rate of pay for the purposes of calculation of overtime or shift penalties is the hourly rate applicable to the relevant age as prescribed in this Agreement.

39.—TECHNOLOGICAL CHANGE AND RESTRUCTURING

(1) Employer's Duty to Notify

(a) Where the 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 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 the 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 employer shall discuss with the employees affected and their Union inter alia, the introduction of the changes referred to above, 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 the union in relation to the changes.

(b) The discussions shall commence as early as practicable after a definite decision has been made by the employer to make the changes referred to above.

(c) For the purposes of such discussions, the employer shall provide in writing to the employees concerned and the 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 the employer shall not be required to disclose confidential information the disclosure of which would be detrimental to the employer's interests.

40.—REDUNDANCY

(1) 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.

(2) Transfer to lower paid duties

Where an employee is transferred to lower paid duties for reasons set out in subclause (1) hereof, the employee shall be entitled to the same period of notice of transfer as they would had they 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.

(3) Severance Pay

In addition to the period of notice provided in Clause 7 of this Agreement, 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	4 weeks pay
2 years but less than 3 years	6 weeks pay
3 years but less than 4 years	7 weeks pay
4 years and over	8 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.

(4) Employee Leaving During Notice

An employee whose employment is terminated for reasons set out in subclause (1) hereof, 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 the notice period prescribed by subclause (1) of Clause 7 of this Agreement.

(5) Alternative Employment

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.

(6) 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 of this Clause a statutory declaration will be sufficient.

(7) Notice to Commonwealth Employment Service

Where a decision has been made to terminate employees in the circumstances outlined in subclause (1) hereof, the employer shall notify the Commonwealth Employment Service or its equivalent 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.

(8) 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.

(9) 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.

41.—GRIEVANCE PROCEDURE

(1) The purpose of this procedure is to ensure that any questions, disputes or difficulties are resolved as quickly as possible.

(a) Any dispute or grievance should, in the first instance be discussed by the employee/s affected and the store management.

(b) In the event that the dispute remains unresolved, the employee and an authorised official of the union should discuss the issue with the store manager and/or area manager.

(c) In the event that the dispute remains unresolved, the Secretary of the union or his/her nominee should discuss the issue with a representative of state management of the employer.

(2) The parties are committed to the efficient resolution of disputes and will endeavour to ensure that a time limit of two days will apply to each of the steps outlined in subclause (1) hereof.

(3) While the steps outlined in subclause (1) hereof are being followed, the parties undertake to continue work in

accordance with the pre-dispute status quo. Neither party will be prejudiced in the outcome of the dispute as a result of the continuance of work pursuant to this Clause.

(4) Once the requirements of subclause (1) of this clause have been complied with either party may refer an issue in dispute to the Western Australian Industrial Relations Commission for assistance in its resolution.

42.—UNION RECOGNITION AND UNION MEMBERSHIP [DELETED]

43.—RIGHT OF ENTRY

Consistent with the terms of the Labor Relations Legislation Amendment Act 1997 and S.23(3)(c)(iii) of the Industrial Relations Act a representative of the Union shall not exercise the rights under this clause with respect to entering any part of the premises of the employer unless the employer is the employer, or former employer of a member of the Union.

(1) A Union Official visiting the employer's premises for the purpose of dealing with an industrial matter involving a member of the union, will—

a) Upon arrival at the store, notify the Store Manager, or Duty Manager, if available, of the general intent and estimated length of the visit, prior to any discussion with employees;

b) minimise their time and interaction with employees in customer contact areas of the store;

c) discuss issues in detail with employees in non-service areas of the store;

d) ensure there is no disruption to the general operation of the store;

e) prior to departure, notify the Store Manager of any concerns or issues with the intent of seeking a satisfactory solution including utilisation of the specified grievance procedure wherever appropriate;

provided that the employer shall provide reasonable access to employees who are members of the Union.

(2) If the union requires group meetings with staff who are members of the union, an official will give at least 48 hours notice to the employer. The meeting will be arranged at a mutually convenient time to both staff and the employer.

44.—TRADE UNION TRAINING LEAVE

(1) Subject to the following conditions, elected Union delegate(s) or appointed Union Representative(s) shall be granted leave with pay to attend courses conducted or approved by the union which are designed to promote good industrial relations and industrial efficiency provided that—

a) No more than 2 paid shifts shall be granted in any store in any calendar year. Any additional shifts shall be unpaid and subject to employer approval.

b) Untaken paid leave shall not accrue from year to year or be transferred from one store to another.

(2) Application to attend shall be in writing and shall include details of the type and content of the course to be attended and the dates upon which the course is to be conducted. Applications shall be made not less than one calendar month before the intended course, or such lesser period as may be agreed between the employer, the Union and the employee concerned.

(3) Once received, applications shall be granted by the employer on the dates notified by the Union, subject to the employer's ability to maintain normal store operating requirements.

(4) Except in the case of a new store opening, only employees who have completed six months continuous service with the employer shall be eligible for leave pursuant to this Clause.

(5) Leave granted pursuant to this Clause shall count as service for all purposes of this Agreement.

(6) Any employee on paid leave in accordance with this Clause shall receive payment in accordance with the roster they would have worked for the period of absence.

(7) The employer shall not be required to pay any other costs associated with such leave.

(8) On completion of the course, the employer may require the employee to provide satisfactory proof of attendance at the course.

45.—SUPERANNUATION

The superannuation provisions contained herein operate subject to the requirements of the hereinafter prescribes provision titled—Compliance, Nomination and Transition.

(1) The employer shall participate in the Retail Employees Superannuation Trust (REST).

(2) All contributions required to be made by the employer on behalf of employees in compliance with the Superannuation Guarantee Legislation shall be made to REST.

(3) Employees who wish to make contributions to REST shall be entitled to authorise the employer to pay into the fund from employees wages amounts specified by the employee and upon authorisation such payments shall be made by the employer.

(4) Contributions provided by subclauses (3) and (4) hereof shall be remitted by the employer to the Fund each calendar month

Compliance, Nomination and Transition

Notwithstanding anything contained elsewhere herein which requires that contribution be made to a superannuation fund or scheme in respect of an employee, on and from 30 June 1998—

(a) Any such fund or scheme shall no longer be a complying superannuation fund or scheme for the purposes of this clause unless—

(i) the fund or scheme is a complying fund or scheme within the meaning of the Superannuation Guarantee (Administration) Act 1992 of the Commonwealth; and

(ii) under the governing rules of the fund or scheme, contributions may be made by or in respect of the employee permitted to nominate a fund or scheme;

(b) The employee shall be entitled to nominate the complying superannuation fund or scheme to which contributions are to be made by or in respect of the employee;

(c) The employer shall notify the employee of the entitlement to nominate a complying superannuation fund or scheme as soon as practicable;

(d) A nomination or notification of the type referred to in paragraphs (b) and (c) of this subclause shall, subject to the requirements of regulations made pursuant to the Industrial Relations Legislation Amendment and Repeal Act 1995, be given in writing to the employer or the employee to whom such is directed;

(e) The employee and employer shall be bound by the nomination of the employee unless the employee and employer agree to change the complying superannuation fund or scheme to which contributions are to be made;

(f) The employer shall not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by a employee;

Provided that on and from 30 June 1998, and until an employee thereafter nominates a complying superannuation fund or scheme—

(g) if one or more complying superannuation funds or schemes to which contributions may be made be specified herein, the employer is required to make contributions to that fund or scheme, or one of those funds or schemes nominated by the employer;

or

(h) if no complying superannuation fund or scheme to which contributions may be made be specified herein, the employer is required to make contributions to a complying fund or scheme nominated by the employer.

46.—SIGNATORIES

(Signed Timothy Irvine)	Signed for and on behalf of
Signature	Gemma Bosnjak trading as
	Chicken Treat Dunsborough

23.12.98

(Signed Timothy Irvine)
Signature

Signed for and on behalf of Dragoljub Bosnjak trading as Chicken Treat Dunsborough

27th October 1998
Date

Common Seal

(Signed Joseph Bullock)
GENERAL SECRETARY - JOE BULLOCK

(Signed M. Bishop)
GENERAL PRESIDENT M. BISHOP

Signed for and on behalf of The Shop, Distributive and Allied Employees' Association of Western Australia.

22nd October 1998
Date

CONTRACT AND MANAGEMENT SERVICES ENTERPRISE BARGAINING AGREEMENT 1998. No. PSA AG 2 of 1999.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Civil Service Association of Western Australia Incorporated

and

Chief Executive Officer Department of Contract and Management Services and Others.

No. PSA AG 2 of 1999.

Contract and Management Services Enterprise Bargaining Agreement 1998.

12 February 1999.

Order.

HAVING heard Ms J van den Herik and with her Ms S Newby on behalf of The Civil Service Association of Western Australia Incorporated, and Ms S Kannis on behalf of the Chief Executive Officer Department of Contract and Management Services now therefore, I the undersigned, pursuant to the powers conferred under the Industrial Relations Act, 1979 do hereby order—

THAT the agreement to be known as the "Contract and Management Services Enterprise Bargaining Agreement 1998" reflected in the schedule to this order shall be and is registered with effect on the 22nd day of January 1999.

(Sgd.) S.A. CAWLEY,
Commissioner,
[L.S.] Public Service Arbitrator.

Schedule.

1.—TITLE

This Agreement shall be known as the "Contract and Management Services Enterprise Bargaining Agreement 1998".

2.—ARRANGEMENT

3.—SCOPE OF AGREEMENT

This Agreement shall apply to all employees of Contract and Management Services including employees in the Senior Executive Service who are members, or eligible to be members, of the Civil Service Association of Western Australia Incorporated ("CSA").

Employees within scope of the Department of State Services, Supply West Enterprise Bargaining Agreement No. PSA AG 129 of 1996 or the Department of State Services, Bureau Services Enterprise Bargaining Agreement No. 130 of 1996 are excluded from the operation of this Agreement.

4.—PARTIES TO THE AGREEMENT

The parties to this Agreement are the Executive Director of Contract and Management Services and the Civil Service Association of Western Australia Incorporated.

5.—NUMBER OF EMPLOYEES COVERED BY THE AGREEMENT

At the date of registration, the Agreement will apply to approximately twenty (20) employees.

6.—DEFINITIONS

(1) "Agreement" means the Contract and Management Services Enterprise Agreement 1998.

(2) "Award" means the Public Service Award 1992.

(3) "CAMS" means Contract and Management Services.

(4) "Executive" means the Executive Director of Contract and Management Services Director.

(5) "Employee" means for the purpose of this Agreement, someone who is referred to in Clause 3.—Scope of Agreement of this Agreement.

(6) "Employer" means the Executive Director of Contract and Management Services.

(7) "Government" means the State Government of Western Australia.

(8) "Parties" means the employer and the union.

(9) "Union" means the Civil Service Association of Western Australia Incorporated.

(10) "WAIRC" means the Western Australian Industrial Relations Commission.

7.—DATE AND PERIOD OF OPERATION OF THE AGREEMENT

(1) This Agreement shall operate from the first pay period on or after the date of registration in the WAIRC and shall remain in force for a period of 30 months.

(2) During the life of the Agreement the parties will continue to address a range of issues and reforms specifically aimed at increasing productivity. The parties agree that these issues will form the basis of future negotiations.

(3) 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.

(4) The Agreement will continue in force after the expiry of the 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 or replaces this Agreement with a subsequent 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, except for those provided under the terms of this Agreement or provided for in National or State Wage Decisions.

(2) This Agreement shall not operate so as to cause an employee a reduction in ordinary time earnings.

9.—RELATIONSHIP TO THE PARENT AWARD

This Agreement shall be read in conjunction with the Public Service Award 1992. In the case of any inconsistencies, this Agreement shall have precedence to the extent of the inconsistencies. Where this Agreement is silent the Award shall apply.

10.—RE-OPEN NEGOTIATIONS

The parties agree to commence negotiations at least six (6) months prior to the expiration of the period of this Agreement to negotiate a replacement Agreement.

11.—PART TIME EMPLOYMENT

This clause replaces subclauses (1) (a), (3) (a) and 4 of Clause 9.—Part Time Employment, of the Award.

(1) Permanent Part Time employment is defined as regular and continuing employment for less than 38 hours per week.

(2) Hours of duty

Except as agreed between the Executive Director and the Union, the parameters for the working of "ordinary hours" shall be 7.00 am to 7.00 pm

(3) Salary and Annual Increments

(a) An employee who is employed on a Part Time basis shall be paid a proportion of the appropriate full-time salary dependent upon time worked. The salary shall be calculated in the following manner—

$$\frac{\text{Hours worked per fortnight}}{76} \times \frac{\text{full-time fortnightly salary}}{1}$$

(b) A Part Time employee shall be entitled to annual increments in accordance with Clause 12.—Annual Increments of the Award, subject to meeting the usual performance criteria.

12.—CASUAL EMPLOYMENT

(1) Definition

"Casual Employee" means an employee engaged by the hour for a period not exceeding one calendar month in any period of engagement, as determined by the Executive Director.

(2) Salary

A casual employee shall be paid for each hour worked at the appropriate classification contained in Appendix A—Salary Schedule of this Agreement in accordance with the following formula—

$$\frac{\text{Fortnightly Salary}}{76}$$

with the addition of twenty percent (20%) in lieu of annual leave, sick leave, long service leave and payment for public holidays.

(3) Conditions of Employment

(a) Conditions of employment, leave and allowances provided under the provisions of this Agreement shall not apply to a casual employee. However, where expenses are directly and necessarily incurred by a casual employee in the ordinary performance of his/her duties, he/she shall be entitled to reimbursement in accordance with the provisions of this Agreement.

(b) Nothing in this clause shall confer permanent status within the meaning of the Public Sector Management Act 1994.

(c) The employment of a casual employee may be terminated at any time by the casual employee or the Executive Director or casual employee failing to give the required notice, one hour's salary shall be paid or forfeited.

(d) The provisions of Clause 22—Overtime Allowance in this Agreement do not apply to casual employees who are paid by the hour for each hour worked. Additional hours are paid at the normal casual rate.

13.—PARENTAL LEAVE

(1) For the purposes of this clause "parental leave" shall refer to unpaid parental leave.

(2) Definitions

(a) "Adoption" shall mean the placement (including any initial temporary placement with a view to a permanent placement) of a child who is less than five (5) years of age, who is not the natural or step-child of the employee or employee's spouse/partner and who has not lived with the employee for longer than six (6) months.

(b) "Certification" shall mean—

(i) For the purposes of "maternity leave" means a certificate from a registered medial practitioner stating that the employee is pregnant and the expected date of confinement.

(ii) For the purposes of "paternity leave" means a certificate from a registered medical practitioner which names the employee's spouse, states that she is pregnant, and the expected date of confinement.

(iii) For the purpose of "adoption leave" and "special adoption leave" means—

(aa) a statement from an adoption agency or other appropriate body of the placement of the child for adoption purposes; or

(bb) presumed date confirming that the employee or employee's spouse is to have custody of the child pending application for an adoption order.

(c) "Child" means a person to whom an employee or employee's spouse has given birth, or a person under the age of five (5) years who is adopted by an employee or employee's spouse or who is placed with an employee or employee's spouse with a view to permanent adoption. This does not include a child or step-child of the employee or employee's spouse who has previously lived with the employee for a period of six (6) months or more.

(d) "Parental leave" means a period of up to fifty two (52) weeks for unpaid leave, taken by an employee who is the primary care giver in connection with the birth or adoption of a child.

(e) "Primary care giver" means a person who assumes the principal role of providing care and attention to the child.

(f) "Replacement employee" is an employee specifically engaged to replace an employee proceeding on parental leave.

(3) Eligibility and Entitlement

(a) An employee is entitled to a period of up to 52 weeks parental leave in respect of the birth of a child or the adoption of a child.

(b) An employee must comply with the certification and notice requirements to be entitled to parental leave, unless the Executive Director agrees to vary these requirements.

(c) Employees on fixed term contracts are not eligible for parental leave beyond the expiry date of their contract.

(d) 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. The employee may elect to take annual leave in lieu of unpaid leave.

(e) A male employee may apply for one week of unpaid parental leave immediately after the birth or adoption of a child, which may be taken concurrently with any leave taken by his spouse.

(f) Any entitlement to parental leave is reduced by any amount of parental leave taken by the employee's spouse in relation to the same child. Parental leave is not to be taken simultaneously by both parents, except for the one week prescribed in paragraph (e) of this subclause.

(4) Notice Requirements

(a) An employee is to give the Executive Director at least ten (10) weeks written notice or the intention to take parental leave.

(b) Every application for parental leave shall be supported by the relevant certification.

(5) Transfer to Safe Job

Where in the opinion of a registered medical practitioner illness or risks arising out of the pregnancy or hazards connected with the duties assigned to the employee make it inadvisable for the employee to continue her present duties, the employee may be transferred to a safe position at the same classification level until the commencement of parental leave.

(6) Variation and/or cancellation of Parental Leave Period

(a) The period of parental leave may be lengthened or shortened by agreement between the Executive Director and the employee provided that the amount of leave does not exceed a maximum of fifty two (52) weeks.

(b) The employee must where practicable give the Executive Director four weeks written notice of any request to vary the period of leave.

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

(d) An employee seeking to adopt a child shall not be in breach of subclause (b) by failing to give the required period of notice if such failure is due to the requirements of the adoption agency to accept an earlier or later placement of the child, or other compelling circumstances.

(7) Other Leave Entitlements

(a) An employee proceeding on parental leave may elect to substitute any part of that leave with accrued annual leave or long service leave for the whole or part of the period of parental leave.

(b) An employee on parental leave is not entitled to paid sick leave.

(c) Where the pregnancy of an employee terminates after twenty eight (28) weeks, other than by the birth of a living child and the employee is not on parental leave, the employee shall be entitled to a period of sick leave for a period as certified by a registered medical practitioner.

(d) Where a pregnant employee, not on parental leave, suffers illness related to the pregnancy or is required to undergo a pregnancy related medical procedure the employee may take sick leave for a period as certified by a medical practitioner.

(8) Effect of parental leave on leave entitlements and employment

(a) Any absence on parental leave will not break the continuity of service but shall not be taken into account for the purpose of salary increment progression and in calculating paid leave entitlements such as sick leave, annual leave and long service leave.

(b) An employee on parental leave may terminate employment at any time during the period of leave by giving written notice in accordance with Clause 7—Contract of Employment of the Award.

(c) The Executive Director 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 employee in respect of the termination of employment shall not be affected.

(9) Replacement Employees

Prior to engaging a replacement employee, the Executive Director shall inform the person of the fixed term nature of the employment and the rights relating to the return to work of the employee on parental leave.

(10) Return to work after Parental Leave

(a) An employee shall confirm the intention to return to work by notice in writing to the Executive Director not less than four weeks prior to the expiration of parental leave.

(b) An employee on return to work from parental leave shall be entitled to the position which the employee occupied immediately prior to proceeding on parental leave. Where the employee was transferred to a safe job the employee is entitled to return to the position occupied immediately prior to transfer.

(c) Where the position occupied by an employee no longer exists the employee shall be entitled to a position at the same classification level with a similar level of responsibility to that of the abolished position.

(d) An employee who has returned to work on a Part Time basis may revert to full-time work at the same classification level within one year of the recommencement of work.

14.—PAID PARENTAL LEAVE

(1) An employee who has completed twelve (12) months continuous service before the expected date of birth or placement, who is the primary care giver and who takes parental leave in accordance with Clause 13—Parental Leave of this Agreement, will be entitled to six (6) weeks paid parental leave, from the anticipated birth date. The employee will provide evidence of primary care given status if requested by the Executive Director.

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

(3) The six (6) weeks paid parental leave will be paid on a fortnightly basis into a bank account nominated by the employee.

(4) Fixed term and contract employees' paid parental leave cannot continue beyond the expiry date of their contract.

(5) If the employee has had periods of service on a full-time or Part Time basis in the twelve (12) months prior to the commencement of parental leave, the employee will have an entitlement of six (6) weeks paid parental leave but the salary to be paid will be an average of the number of ordinary hours that the employee worked in the previous twelve (12) months.

(6) Paid parental leave taken in accordance with subclause (1) of this clause will form part of the fifty two (52) weeks Parental Leave entitlement prescribed by Clause 13.—Parental Leave of this Agreement. Absence on paid parental leave will not count as service for the purpose of annual salary increments and accruing entitlements to sick leave, annual leave or long service leave.

(7) All other conditions relating to parental leave as prescribed in Clause 13.—Parental Leave of this Agreement shall apply.

15.—FAMILY LEAVE

(1) Where the employee has responsibilities in relation to members of his/her family or household, the employee will be entitled to use thirty eight (38) hours per year of his/her sick leave entitlement to care for them when they are ill or to attend to urgent family responsibilities. The days used for this purpose are those sick leave entitlements accrued from previous years of service with the public sector and are not the employee's entitlement for the current year.

(2) For the purpose of this clause, the definition of family shall be the definition for the term 'relative' contained in the Equal Opportunity Act 1984. That is, a person who is related to the employee by blood, marriage, affinity, adoption and includes a person who is wholly or mainly dependent on, or is a member of the employee's household.

(3) Wherever practical, the employee will give the Executive Director prior notice of his/her intention to take Family Leave and the estimated length of absence. If it is not practicable to give prior notice of absence the employee will notify the Executive Director as soon as possible on the day of absence.

(4) If the employee is employed on a Part Time basis then the employee may access Family Leave on a pro rata basis.

(5) The employee will provide, where required by the Executive Director, evidence to establish the requirement to take Family Leave.

(6) Family Leave may be taken as single day absences or part of a single day.

16.—SHORT LEAVE

Short Leave as prescribed in Clause 26.—Short Leave of the Award shall not apply to an employee under this Agreement.

17.—BEREAVEMENT LEAVE

(1) Entitlement

(a) The employee shall be entitled to paid bereavement leave of up to two (2) days duration upon the death in Australia of a spouse, de facto spouse, child, step-child, parent, step-parent, parent-on-law, brother, sister or any other person who, immediately before that person's death, lived with the employee as a member of the employee's household. If requested by the Executive Director, the employee will provide reasonable proof of the death and relationship between the deceased and the employee.

(b) The two (2) days need not be consecutive.

(c) Bereavement Leave is not to be taken during a period of any other kind of leave.

(2) The employee is entitled to payment in respect of Bereavement Leave only where the employee would normally have been on duty.

18.—CEREMONIAL/CULTURAL LEAVE

(1) An employee is entitled to time-off work for tribal/ceremonial/cultural purposes.

(2) Ceremonial/cultural leave may be taken as whole of part days off. Each day or part day shall be deduced from annual leave, public service holidays or flexi leave entitlements.

(3) The Executive Director may request reasonable evidence of the legitimate need for the employee to be allowed time-off.

(4) Time-off without pay may be granted by agreement between the Executive Director and the employee for tribal/ceremonial/cultural purposes.

19.—ANNUAL LEAVE TRAVEL CONCESSIONS

This clause shall be read in conjunction with Clause 19.—Annual Leave of the Award.

(1) Where an employee's headquarters is situated in District Allowance Areas 3, 5, 6 or in that portion of Area 4 located North of 30º South Latitude, an annual leave travel concession will be provided for the employee and his/her dependents when proceeding on annual leave.

(2) The travel concession will be to the value of a return standard economy airfare to Perth for the employee, dependent spouse and dependent children.

(3) An employee is required to serve twelve (12) months in these areas before qualifying for travel concessions. However, an employee with less than twelve (12) months continuous service in these areas and who proceed on annual leave to suit departmental convenience will be allowed the concessions. The concession may also be given to an employee who proceeds on annual leave before completing the twelve (12) months service provided that they return to the area to complete the twelve (12) months service at the expiration of the period of leave.

(4) Travel must be undertaken to be eligible for the concession. Travel concessions not utilised within twelve (12) months of becoming due will lapse.

(5) A Part Time employee is entitled to travel concessions on a pro-rata basis according to the usual number of hours worked.

20.—HIGHER DUTIES ALLOWANCE

The provision of Clause 14—Higher Duties Allowance of the Award apply except that any reference to 71/2 hours per day shall be amended to read 7 hours 36 minutes per day.

21.—HOURS

This clause shall be read in conjunction with Clause 16—Hours of the Award.

(1) The ordinary hours of duty shall be an average of one hundred and fifty two (152) hours per four week cycle, that is an average of 38 hours per week, which may be worked with flexible commencement and finishing times between the hours of 7.00am and 7.00pm Monday to Friday.

(2) (a) Subject to the prior approval of the employee's manager, an employee may be allowed up to a maximum of two (2) consecutive full days of flexi-leave in any one settlement period.

(b) Approval to take flexi-leave is subject to the employee having accrued sufficient credit hours to cover the absence prior to taking the leave. In exceptional circumstances and with the approval of the Executive Director, flexi-leave may be taken before accrual subject to such conditions as the Executive Director may impose.

(3) Settlement Period

(a) For recording time worked, the settlement period which shall consist of four (4) weeks commencing at the beginning of a pay period.

(b) The required hours of duty for a settlement period shall be one hundred and fifty two (152) hours.

(4) Credit Hours

(a) Credit hours in excess of the required one hundred and fifty two (152) hours to a maximum of fifteen (15) hours twelve (12) minutes are permitted at the end of each settlement period. Such credit hours shall be carried forward to the next settlement period.

(b) Credit hours in excess of fifteen (15) hours twelve (12) minutes at the end of a settlement period shall be lost.

(c) Credit hours at any point within the settlement period shall not exceed twenty (20) hours.

(5) Debit Hours

(a) Debit hours below the required one hundred and fifty two (152) hours to a maximum of four (4) hours are permitted at the end of each settlement period. Such debit hours shall be carried forward to the next settlement period.

(b) For debit hours in excess of four (4) hours, an employee shall be required to take leave without pay for the period necessary to reduce debit hours to those specified in sub-paragraph (a) of this subclause.

(6) A maximum of ten (10) hours may be worked in any one day, with a minimum of thirty (30) minutes for lunch.

(7) For the purpose of Leave, Public Holidays and Public Service Holidays, a day shall be credited as seven (7) hours thirty six 36) minutes.

(8) Overtime

(a) Employees receiving at least one day's prior notice of overtime shall be required to work standard hours totalling seven (7) hours thirty six (36) minutes between the hours of 8.30am and 5.00pm before being eligible for the payment of overtime.

(b) Where an employee is required to work overtime at the conclusion of a day with less than one day's notice, and

(i) where the employee has at the commencement of that day two (2) hours or more flexi-leave credits, the employee shall be paid overtime after five (5) hours work on that day, or for time worked after 3.30pm, which ever is the later, or

(ii) where that employee has commenced duty prior to 8.30am and has, at the commencement of that day, less than two (2) hours flexi-leave credits, the employee shall be paid overtime for time worked after the completion of prescribed hours of duty after working seven (7) hours thirty six (36) minutes on that day, whichever is the earlier, or

(iii) where that employee has commenced work after 8.30am and has, at the commencement

of that day, less than two (2) hours flexi-leave credits, the employee shall be paid overtime for time worked after 5.30pm or after working seven (7) hours thirty six (36) minutes on that day, which ever is the earlier.

(9) Other Working Arrangements

The Executive Director may vary the prescribed hours of duty observed in the Department or any branch or section thereof so as to make provisions for—

(a) the attendance of employees for duty on a Saturday, Sunday, Public Holiday or on a Public Service Holiday.

(b) the performance of shift work including working on Saturdays, Sundays, Public Holidays or on a Public Service Holiday; and

(c) the nature of the duties of an employee or class of employees in fulfilling the responsibilities of their office.

Provided that where the hours of duty are so varied an employee shall not be required to work more than five hours continuously without a break.

(10) Employees whose maximum salary or maximum salary and allowances in the nature of salary exceeds that as determined for Level 5 as prescribed in Schedule A—Salary Schedule, are required to work the hours necessary in order to meet operational requirements. The minimum number of hours in any four week cycle that the employee is required to work is 152 hours. The provisions of subclauses (2), (3), (4), (5) and (8) of this clause do not apply to these employees.

22.—OVERTIME ALLOWANCE

The provisions of Clause 18—Overtime Allowance of the Award shall apply except that any reference to—

(1) "Prescribed hours of duty" shall mean between the hours of 7.00am to 7.00pm Monday to Friday;

(2) Seventy-five (75) hours shall be amended to read seventy-six (76) hours; and

(3) Thirty-seven-and-one-half ($37^{1/2}$) hours shall be amended to read thirty-eight (38) hours.

23.—SICK LEAVE

The provision of Clause 22—Sick Leave of the Award shall apply except for subclause (1) which is replaced by the following—

(1) Entitlement

(a) The Executive Director shall credit each permanent employee with the following sick leave credits, which shall be cumulative—

	Sick Leave on full-pay	Sick Leave on half pay
On the day of initial appointment	38 hours	38 hours
On completion of 6 months continuous service	38 hours	38 hours
On the completion of 12 months continuous service	76 hours	76 hours
On the completion of each further period of 12 months continuous service	76 hours	76 hours

(b) An employee employed on a fixed term contract for a period greater than twelve (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 twelve (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 for sick leave shall only be made for those hours worked each fortnight. Payment for sick leave shall only be made for those hours that would normally have been worked had the employee not been on sick leave.

24.—LONG SERVICE LEAVE

The provisions of Clause 2.1—Long Service Leave of the Award shall apply except that the employee may apply to take his/her entitlement to long service leave on full pay or half pay, in multiples of weekly entitlements.

25.— SALARY INCREASES

(1) A wage increase of 4.25% shall be payable from the first pay period on or after the date of registration of the Agreement with the Western Australian Industrial Relations Commission.

(2) A further increase of up to 3.5% will become available 12 months after the date of registration of the Agreement subject to the achievement of the productivity initiatives contained within Schedule 2 of the Agreement.

(3) Employees will not be disadvantaged by Government decisions or policies which impact negatively on the achievement of milestones outlined in the Agreement.

(4) Where agreed targets are not attained in full, employees will receive pro rata payment as agreed by the parties.

26.—COMPACTION OF LEVEL 1 SALARY RANGE

(1) The parties agree that the adult Level 1 increment range will be reduced from 9 to 7 increment points as provided in Schedule A—Salary Schedule from the first pay period on or after the date of registration of the Agreement.

(2) Employees currently employed within the Level 1 incremental range will be transferred to a new incremental point as follows—

Current PSA Classification		EBA Level
Level 1		Level 1
		1.1
1.1	→	1.2
1.2	→	1.3
1.3	→	1.3
1.4	→	1.4
1.5	→	1.5
1.6	→	1.5
1.7	→	1.6
1.8	→	1.6
1.9	→	1.7

(3) The employee's current salary incremental due date will remain unchanged.

(4) Normally appointments of employees at Level 1 will commence from Level 1.2 up to Level 1.7 according to skills and competencies. Level 1.1 will be utilised for developmental/ training purposes.

27.—DISPUTE SETTLEMENT PROCEDURES

In the event of any disputes, questions, or difficulties between the parties as to the implementation and interpretation of this Agreement, the following procedures shall apply—

(1) 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 or a person of their choosing. The supervisor may be accompanied by a representative nominated by the CEO.

(2) If the matter is not resolved within five (5) working days following the discussion in accordance with paragraph (a) hereof, the matter shall be referred by the CSA representative to the CEO or his/her nominee for resolution.

(3) If the matter is not resolved within five (5) working days of the CSA representative's notification of the dispute to the CEO or his/her nominee, it may be referred by either party to the WAIRC.

(4) While the parties attempt to resolve the matter, work will continue as normal unless the employee has a reasonable doubt about an imminent risk to his or her health and safety.

28.—AVAILABILITY OF AGREEMENT

Every employee will be entitled to a copy of this Agreement. In addition, a copy or copies of this Agreement will be kept in an easily accessible place or places within the agency, and the location of the copies will be communicated to all employees.

SCHEDULE A—SALARY

Classification	Current Award (except for points 1.1 to 1.7)	Proposed 4.25% Increase	Proposed 3.50% Increase 12 months later
Level 1			
Under 17 years	$11,730	$12,229	$12,657
17 years	$13,710	$14,293	$14,793
18 years	$15,990	$16,670	$17,253
19 years	$18,509	$19,296	$19,971
20 years	$20,785	$21,668	$22,427
1.1	$22,067	$23,005	$23,810
1.2	$23,330	$24,322	$25,173
1.3	$24,239	$25,269	$26,154
1.4	$25,249	$26,322	$27,243
1.5	$26,511	$27,638	$28,605
1.6	$27,773	$28,953	$29,967
1.7	$28,119	$29,314	$30,340
Level 2			
2.1	$29,036	$30,270	$31,329
2.2	$29,635	$30,894	$31,976
2.3	$30,374	$31,665	$32,773
2.4	$31,155	$32,479	$33,616
2.5	$31,972	$33,331	$34,497
Level 3			
3.1	$33,095	$34,502	$35,709
3.2	$33,970	$35,414	$36,653
3.3	$34,872	$36,354	$37,626
3.4	$35,798	$37,319	$38,626
Level 4			
4.1	$37,068	$38,643	$39,996
4.2	$37,959	$39,572	$40,957
4.3	$38,983	$40,640	$42,062
Level 5			
5.1	$40,955	$42,696	$44,190
5.2	$42,288	$44,085	$45,628
5.3	$43,673	$45,529	$47,123
5.4	$45,110	$47,027	$48,673
Level 6			
6.1	$47,421	$49,436	$51,167
6.2	$48,992	$51,074	$52,862
6.3	$50,618	$52,769	$54,616
6.4	$52,354	$54,579	$56,489
Level 7			
7.1	$55,016	$57,354	$59,362
7.2	$56,858	$59,274	$61,349
7.3	$58,862	$61,364	$63,511
Level 8			
8.1	$62,119	$64,759	$67,026
8.2	$64,452	$67,191	$69,543
8.3	$67,345	$70,207	$72,664
Level 9			
9.1	$70,958	$73,974	$76,563
9.2	$73,399	$76,518	$79,197
9.3	$76,183	$79,421	$82,201
Class 1	$80,393	$83,810	$86,743
Class 2	$84,603	$88,199	$91,286
Class 3	$88,811	$92,585	$95,826
Class 4	$93,021	$96,974	$100,368

Schedule B—Productivity Initiatives

Explanation of Performance Model

The CAMS performance model consists of eight performance measures that are all linked to the new strategic direction. These performance indicators are—

1. savings to Government from the establishment of auditable whole-of-government contracting arrangements;
2. efficiency in contracting;
3. management of risk in contracting;
4. Minister's satisfaction with CAMS performance in selected priority areas;
5. CAMS' professional relationships with small business;
6. agency satisfaction with CAMS support in building related goods and services contracting;
7. agency satisfaction with CAMS support in whole-of-government contracting; and
8. agency satisfaction with CAMS advice in procurement and asset planning.

The first three measures relate to CAMS' performance as a centre of expertise in contracting, i.e., savings to Government, contracting efficiency and the management of risk. The fourth measure is designed to improve the quality of our reporting to the Minister for Works. The fifth measure is oriented towards improving our working relationships with the small business sector. The remaining measures focus on our client relationships.

1. Savings to Government from the establishment of auditable whole-of-Government contracting arrangements

This performance measure is based on figures that are collected annually and are subject to auditing by the Office of the Auditor General. The figure measures the amount of discount that is achieved across a range of whole-of-Government contracts. The discounts are achieved by negotiating large-scale price agreements with our suppliers. The benchmark is based on savings to Government last year totalling $67.8 million. The target for 1998/99 is a further savings of 3% or an additional $2 million.

2. Efficiency in contracting

This performance indicator measures CAMS efficiency in handling contracts. The nominator measures CAMS' input costs in contract development and contract management. The denominator measures dollars spent on contracts, except in the case of goods and services where it is the value of contracts let. The benchmark of 2.7% is a pro-rata figure for the period July 1995 to November 1997. The reasons for using this figure are—

- auditable figures for the whole of CAMS are only available from 1 July 1997;
- no historical figures are available for the former State Contracts Directorate which was previously part of the Department of State Services; and
- no relevant information can be extracted from the former Maintenance Services Directorate time keeping system as their time keeping was aligned to work roles which have since changed.

The reason for using figures over a period of more than two years is that short term records do not allow for the natural variation in the size and complexity of contracts that occur over several State Budgets.

3. Management of risk in contracting

This measure is designed to ensure that risk management plans are prepared for all high or significant risk category projects. Whether a project is determined as being in a high or significant risk category depends on the results of analysing important aspects of the planned financing and delivery of the project against an appropriate standard matrix. Risk management plans will be required so that the identified areas of risk in projects falling in these categories can be managed and reduced. The estimated number of contracts falling in the high or significant risk categories annually is 600. Currently only

some 16% of high or significant risk category projects have risk management plans.

4. Minister's satisfaction with CAMS performance in selected priority areas

This measure is designed to indicate how CAMS is improving its service to the Minister. The Minister was surveyed to identify areas in which CAMS could improve its performance in meeting his service expectations. The area identified as requiring improvement is the quality of verbal and written briefing relating to Strategic Asset Management that scored a below average rating (i.e., a rating of 4 or less) in the Minister's annual survey for 1997/98. Since all other areas scored above average results (i.e., greater than 5) it has been decided that the target should be not less that 5.5 in the next annual survey.

5. CAMS professional relationships with small business

This measure is designed to indicate how much improvement CAMS is making in its business relations with its small business suppliers. The Minister has identified this area as being of significant importance as Government is changing the way in which it carries out its business with greater emphasis to be placed on small business involvement. This importance was recognised in the new strategic direction plan with the establishment of the new strategic area of Procurement Information and Education. The newly established Industry Liaison Branch commissioned Patterson Market Research to carry out a survey of small business to establish where CAMS' processes are causing unnecessary problems. The survey highlighted the following areas as needing improvements—

- improved clarity in specifications;
- reduce time required to develop responses to and prepare presentation of tender documents;
- make tender selection criteria more industry specific; and
- decrease time taken to evaluate tenders.

These areas scored a below average rating (i.e., 4 or less) in the recent survey. By improving the understanding of the tender/quotation process and the overall understanding of contracting, WA suppliers are more likely to tender and win contracts. CAMS is seeking a 10% improvement in performance in this area.

6. Agency satisfaction with CAMS support in building related goods and services contracting

This performance measure is designed to assess agency satisfaction with CAMS' support in building related goods and services contracting. This area was identified in the 1997/98 client survey as where 13% of clients considered the service as unsatisfactory. CAMS is seeking a 10% improvement on current performance in this area.

7. Agency satisfaction with CAMS support in whole-of-government contracting

This performance measure is designed to assess CAMS' efficiency and effectiveness in handling the specific contracts in the areas of fleet services, domestic air travel and building facilities management. These areas were identified in the 1997/98 client survey as being those that agencies are most dissatisfied in the area of whole-of-Government contracts. Some 18% of clients rated these services as unsatisfactory. CAMS is seeking a 10% improvement on current performance in this area.

8. Agency satisfaction with CAMS advice in procurement and asset planning

This performance measure is designed to assess CAMS' efficiency and effectiveness in the area of support for agencies in the development and management of their asset maintenance and minor works program. In the 1997/98 client survey, 12% of clients rated this service as unsatisfactory. CAMS is seeking a 10% improvement on current performance in this area.

How the model is applied

1. Performance is rated against each of the targets in the eight performance measures and depending upon the performance level a rating between from 0 to 4 is achieved. If the required performance target is achieved or exceeded, the performance will receive a 4 rating, while a performance level that is less than the target will be allocated its appropriate rating.

2. Each Performance Measure has been weighted dependent upon whether the performance measure applies across the whole of CAMS or target specific areas within CAMS whose performance has been identified as requiring improvement. The first three measures, for example, relate to CAMS success in improving its performance in contracting and are applicable to the whole-of-CAMS since contracting is CAMS' main business. In addition, the achievement of the targets for performance measures numbers 1 and 2 will result in actual dollar savings. Performance measure number 3 will reduce CAMS' exposure to unforeseen financial losses. Therefore, these performance measures were given high weightings.

The remaining performance measures are subjective, as they are dependent upon the results of the Ministerial, client and supplier surveys. These performance measures were therefore not weighted as high as the quantitative measures.

3. At the end of June 1999, the ratings achieved for each of the eight performance measures are multiplied by the relevant weightings to give a "score". The maximum possible score is 100 and the minimum is zero.

4. The pay rise payable is determined by multiplying the possible pay rise of 3.5% by the ratio of the actual score to 80, except that a score of 80 or above will be regarded as equal to 80, the formula is—

$$\frac{\text{actual score}}{80} \times \frac{3.5\%}{1} = \text{percentage salary increase}$$

Examples—

i) A score of 85 is achieved which is adjusted to 80. The salary increase is—

$$\frac{80}{80} \times \frac{3.5\%}{1} = 3.5\% \text{ salary increase payable from 1/7/99}$$

ii) A score of 70 will result in a reduced salary increase—

$$\frac{70}{80} \times \frac{3.5\%}{1} = 3.06\% \text{ salary increase payable from 1/7/99}$$

PERFORMANCE MEASURES - 1998/99

PERFORMANCE MEASURE	TARGET	RATING 0	1	2	3	4	WEIGHTING	POSSIBLE SCORE
1. Savings to Government from the establishment of auditable whole-of-Government contracting arrangements instead of buying at market prices. (Market costs - Cost to Government) Total savings for auditable contracts let	3% improvement on previous year's result	<1.5%	1.5% to <2%	2% to <2.5%	2.5% to <3%	3% or greater	5	20
2. Efficiency in contracting. (CAMS contract costs) X 100% (Total spent on contracts)	2.6% or less	>2.7%	2.7% to >2.67%	2.67% to >2.64%	2.64% to >2.61%	2.6% or less	5	20
3. Management of risk in contracting. Percentage of High and Significant Risk contracts with risk management plans developed within the specified time.	90% (Current benchmark 16%)	<70%	70% to <75%	75% to <80%	80% to <90%	90% to <100%	4	16
4. Minister's satisfaction with CAMS performance in selected priority areas for improvement. Survey of Minister's satisfaction. Specifically in the areas of "Asset Management", and the "Quality of briefing notes"	Target 5.5 or greater (average score).	4 or less	>4 to <4.5-	4.5 to <5	5 to <5.5	5.5 or greater -	3	12
5. CAMS professional relationships with Small Business Improve clarity in specifications, make tender selection criteria more industry specific. Reduce time required to develop responses and prepare tender documents as well as time taken to evaluate tenders	Target 5.5 or greater (average score).	4 or less	>4 to <4.5-	4.5 to <5	5 to <5.5	5.5 or greater -	2	8

CAMS PERFORMANCE MEASURES - 1998/99

PERFORMANCE MEASURE	TARGET	RATING 0	1	2	3	4	WEIGHTING	POSSIBLE SCORE
6. Agency satisfaction with CAMS support in building-related activity, goods and services contracting. Survey of Agencies at CEO or Director level.	Reduce the number of dissatisfied customers with CAMS support during the procurement process to 10% or less	>13%	13% to 12%	12% to 11%	11% to 10%	<10%	2	8
7. Agency satisfaction with CAMS support in whole-of-Government contracting. Survey of Agencies at CEO or Director level	Reduce the number of dissatisfied customers with the Fleet Services, Domestic Air Travel and Building Facilities Management contracts to 15% or less.	>18%	18% to 17%	17% to 16%	16% to 15%	<15%	2	8
8. Agency satisfaction with CAMS advice in procurement and asset planning. Survey of Agencies at CEO or Director level	Reduce the number of dissatisfied customers with CAMS support in the development and management of their asset maintenance and minor works program to 9% or less.	>12%	12% to 11%	11% to 10%	10% to 9%	<9%	2	8
						TOTAL	25	100

CUTTING CONCRETE INDUSTRIAL AGREEMENT.
No. AG 271 of 1998.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders Labourers, Painters & Plasterers Union of Workers

and

Mark Richard Alexander & Linda Jane Munro t/a Cutting Concrete.

No. AG 271 of 1998.

COMMISSIONER S. J. KENNER.

24 February 1999.

Order.

HAVING heard Ms J Harrison as agent 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 application be and is hereby discontinued by leave.

(Sgd.) S.J. KENNER,
[L.S.] Commissioner.

DEPARTMENT OF TRANSPORT ENTERPRISE AGREEMENT 1998.
No. PSGAG 5 of 1998.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Department of Transport

and

The Civil Service Association of Western Australia Incorporated & Other.

No. PSGAG 5 of 1998.

COMMISSIONER J F GREGOR.

19 May 1998.

Order.

REGISTRATION OF AN INDUSTRIAL AGREEMENT

No. PSGAG 5 of 1998.

HAVING heard Mr R De Blank and with him Mr S Hollingworth on behalf of the applicant and Ms J Blake on behalf of the respondents, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the document titled the Department of Transport Enterprise Agreement 1998, filed in the Commission on 16 April 1998, be and is hereby registered as an Industrial Agreement.

(Sgd.) J. F. GREGOR,
[L.S.] Commissioner.

DEPARTMENT OF TRANSPORT
ENTERPRISE AGREEMENT 1998

1—TITLE

This Agreement shall be known as the "Department of Transport Enterprise Agreement 1998" and shall replace "Department of Transport Enterprise Bargaining Agreement 1995 No. AG 32 of 1995".

2—ARRANGEMENT

3—PURPOSE AND OBJECTIVES OF THE AGREEMENT

(1) This Agreement reflects the continued commitment of the parties to ongoing productivity improvement in Transport.

(2) The Agreement introduces a number of initiatives which will assist in enhancing the flexibility of Transport. The initiatives will assist Transport to meet its objectives as well as improve the working life of its employees.

(3) The Agreement also recognises the productivity improvements achieved by the parties from recent reforms, particularly in the Licensing Division. In keeping with the need to reward the achievement of the outcomes of the organisation and not just the completion of activities, this Agreement introduces a number of future productivity measures which are linked to outcomes to be met for the payment of the second increase available per Clause 18(2).

(4) The shared objectives of the parties are to—

- achieve Transport's purpose and improve productivity and efficiency in Transport through ongoing improvements;
- facilitate greater flexibility in decision making and allocation of human and other resources;
- promote increased satisfaction from jobs and secure employment opportunities;
- develop and pursue changes on a co-operative continuing basis by using participative practices; and
- promote health, safety, welfare and equal opportunity for all employees.

4—SCOPE

With the exception of those employees of Transport who are covered by the Western Australian Regional Ports Integrated Labour Force (Department of Marine and Harbours) Agreement 1992, this Agreement shall apply to all other employees of Transport under the terms and conditions as contained in this Agreement and the awards and other agreements of the associations and unions listed in Clause 6 of this Agreement.

5—NUMBER OF EMPLOYEES

The number of employees covered by this agreement as at the date of registration is 868.

6—PARTIES TO AGREEMENT

(1) Subject to sub-clauses (3) and (4) of this clause, this Agreement applies to the parties shown below and no other parties shall be able to be joined to this Agreement during its term—

- Civil Service Association of Western Australia Incorporated;
- Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch;
- Director General of Transport.

(2) The Agreement relates to the employment, by the Director General of Transport as the employing authority of Transport, of persons who are members or eligible to be members of the unions mentioned above.

7—DEFINITIONS

(1) "Agreement": the "Department of Transport Enterprise Agreement 1998".

(2) "Awards": the industrial awards and agreements under which the employees are covered by the unions in this Agreement—

- Public Service Award 1992; and
- Engineering Trades (Government) Award, 1967 No 29,30,31 of 1961 & 3 of 1962.

(3) "Employee": for the purpose of this Agreement, someone who is referred to at Clause 4—Scope.

(4) "Employer": The Director General of Transport.

(5) "Government": the State Government of Western Australia.

(6) "Transport": Department of Transport.

(7) "Unions": the unions and associations listed as parties to this Agreement which are listed in clause 6 of this Agreement.

(8) "WAIRC": the Western Australian Industrial Relations Commission.

8—DATE AND PERIOD OF OPERATION OF AGREEMENT

(1) This Agreement shall operate from the first pay period commencing on or after the date on which this Agreement is registered by the Western Australian Industrial Relations Commission , and shall remain in force for a period of twenty four (24) months from the date of registration.

(2) The parties will commence a review of this Agreement at least six months prior to the date of expiry.

(3) Following the process of reviewing this Agreement it will be renewed or replaced by another Agreement or cancelled as appropriate.

(4) This Agreement shall not be cancelled or varied during its term unless otherwise provided for.

(5) This Agreement will continue after the expiry of its term until it is replaced by a further Agreement, or such other time as either of the parties withdraws from the Agreement in accordance with Section 41 (7) of the Industrial Relations Act (WA) 1979.

9—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) However, the parties recognise that it is important to encourage future productivity improvements beyond those currently identified in this Agreement. Where such improvements are identified and implemented they will be considered as part of the next enterprise agreement.

10—RELATIONSHIP TO PARENT AWARDS

(1) This Agreement shall be read in conjunction with the existing awards and agreements which apply to the parties bound to this Agreement. In the case of any inconsistencies, this Agreement shall have precedence to the extent of the inconsistencies.

(2) The relevant parent awards are the Public Service Award 1992 and the Engineering Trades (Government) Award, 1967 No. 29, 30, 31 of 1961 & 3 of 1962.

11—TRANSPORT ENTERPRISE BARGAINING GROUP

(1) Transport together with the employees and unions has formed the Transport Enterprise Bargaining Group covering all employees of Transport.

(2) The Transport Enterprise Bargaining Group has ratified this Agreement which documents the negotiations that have taken place between the parties outlined in Clause 6 for all employees covered by this Agreement.

12—AVAILABILITY OF AGREEMENT

Every employee will be entitled to a copy of this Agreement. In addition, a copy or copies of this Agreement will be kept in an easily accessible place or places within Transport, and the location of the copies will be communicated to all employees.

13—VALUES STATEMENT

Transport has developed a set of values to guide its people in achieving its purpose and objectives. These values will be reviewed from time to time to ensure that they meet the needs of customers and other stakeholders. The parties are committed to applying these values which are contained in the Values Statement as shown below—

VALUES STATEMENT

Put the customer first

Understand and value your customers; Find out what your customer needs: Don't assume you know; Develop services in collaboration with customers; Don't let internal problems get in the way of meeting the customer's needs; Support others as they work with their customers; Seek feedback from customers

Honest and open communication

Give people the information they need in an honest and open manner; Be frank and constructive in your point of view; Be open to feedback; When there's a problem, talk directly to the person concerned; Communication is a shared responsibility—be prepared to seek out, listen to and respect what others think

Passion

Pursue goals with enthusiasm and commitment; When you see an opportunity, act on it; Appreciate the value of your work; Embrace change and be prepared to take risks and push the boundaries; Strive to improve the way you work and be the best; Challenge behaviour that doesn't fit our values; Take responsibility for your decisions, your actions and the consequences; Do what you say you'll do; Contribute your ideas and expertise to the task; Take problems seriously and work to sort them out

Working together

Be clear about the purpose of your work; If it has to be done, just get in and do it; Work with your team and the whole of Transport in mind; Build partnerships within Transport, with customers and external stake holders; Make clear agreements about what is to be done, by whom, by when; Go about your work with integrity and fairness

Valuing our people

Set realistic expectations and give people the power and resources to do the job; Build a fulfilling work environment; Care for and value each other; Recognise and value each person's contribution; Give all staff opportunities for development; Trust and enable people to use their skills and experience; Cherish difference

14—LEARNING ORGANISATION

(1) Transport is committed to adopting the qualities of a learning organisation as it strives to achieve its purpose and objectives through a changing environment. According to Senge (1990) a learning organisation is one in which—

- "people continually expand their capacity to create the results they truly desire;
- where new and expansive patterns of thinking are nurtured;
- where collective aspiration is set free; and

- where people are continually learning how to learn together."

(2) As a learning organisation, Transport will strive to—

- develop a shared vision for the organisation;
- accept, embrace and seek change;
- learn from its experiences rather than being bound by past experiences;
- be open to the widest possible range of perspectives in order to identify trends and generate choices;
- foster teamwork;
- encourage flexibility and be willing to take risks; and
- facilitate self-awareness and proactive problem solving.

15—STUDY LEAVE

For those employees who are eligible for study leave under their relevant award, study leave may be granted by the employer for certified courses or any other courses approved by the employer, subject to operational convenience and provided satisfactory progress is being made by the employee. Approval of study leave is at the discretion of the employer.

16—TRAINING AND DEVELOPMENT

(1) A training needs analysis will be undertaken in Transport to assist in the identification of skill requirements in a changing environment affecting Transport.

(2) Employees will be provided with timely training and development to enable them to obtain the skills necessary for Transport to achieve its objectives and for employees to enhance their career opportunities. Training plans will be developed jointly by each employee and his/her manager through the Performance Development Program. Training and development undertaken will be accredited by State and/or National Training Authorities and be documented in employee records.

(3) The parties agree that training and development of employees should reflect both the needs of Transport and those of the employee.

17—PRODUCTIVITY MEASUREMENT

(1) (i) The parties agree that the measurement and monitoring of productivity improvements is important because it provides critical feedback on the performance of Transport to management, the workforce and other relevant stakeholders;

(ii) It is agreed that employees' understanding of productivity measurement concepts is vital for performance monitoring arrangements to be successful on an ongoing basis. The productivity measures and targets will be developed and provided to the Cabinet Standing Committee on Labour Relations by 31 March 1998 for approval;

(iii) Consistent with the above, it is agreed that a productivity measurement model be jointly developed between management, employees and unions, as part of an overall aim of improving productivity in Transport; and

(iv) The productivity measurement model will assess organisational productivity at the conclusion of the 1998/99 financial year and each subsequent financial year if appropriate. The Productivity Measurement Plan will measure and reward employees for the overall improvement in labour productivity at Transport, rather than improvements at a divisional level.

(2) (i) The methodology for measurement and/or calculations for assessment of productivity must be agreed by the parties and available for examination by the union at any time during the life of the Agreement;

(ii) Agreed productivity measures should contain targets that are both realistic and achievable within agreed time frames;

(iii) The parties agree that relevant productivity measures assist in the attainment of corporate goals in the interests of clients, employees, Transport and the Government on behalf of the community; and

(iv) Any proposed changes to Transport's Productivity Measurement Plan will be as agreed between the parties.

(3) If unforseen circumstances result in the productivity measures no longer being appropriate or relevant, then the parties to this Agreement agree to develop a submission to the Cabinet Standing Committee on Labour Relations. This submission will provide evidence to the Standing Committee to support a percentage wage increase not exceeding 3.5%.

18—SALARY INCREASES

(1) From the first pay period commencing on or after the date of registration, employees covered by this Agreement shall be paid the rate of pay as contained in Column A of the tables in Schedule A—Salaries. This represents an increase of 3.5% above the salary levels provided under the Department of Transport Enterprise Agreement 1995 and is in return for all realised and continuing productivity improvements.

(2) An increase of up to 3.5% on the rates set out in Column A of the tables in Schedule A—Salaries will be payable from the first pay period on or after 1 July 1999, subject to the successful achievement of various productivity targets and the satisfaction of the parties. The productivity measures and targets will be developed and provided to the Cabinet Standing Committee on Labour Relations by 31 March 1998 for approval.

19—CONSULTATION

(1) The parties to this Agreement recognise that participative practices are the means by which they can work together to make the enterprise more productive and provide more satisfying and secure employment. Co-operation and trust in the workplace, better communication, more information and more sharing of decisions between management and employees, it is acknowledged, are keys to achieving that outcome. The parties to this Agreement commit themselves to full, frank and timely exchange of information relevant to the achievement of this objective.

(2) Nevertheless, Transport will continue to make decisions as it is accountable to Government through legislation for the efficient and effective operation of its business. Accordingly, the employer may choose not to notify the relevant employee/s and union/s until it has made a definite decision to introduce major changes in operation, organisation, structure or technology that are likely to have significant effects on employees. However, the employer will consult with the relevant employee/s and/or union/s on the likely effects on the employee/s of the action and measures that may be taken by the parties to avoid or minimise the effect.

20—DISPUTE RESOLUTION PROCEDURES

(1) In the spirit of the Agreement the parties are committed to avoidance of industrial disputes. In the event of any questions, disputes or difficulties, the parties agree to participate in consultation to resolve all matters (relating both to the operation of this Agreement and to matters of personal grievance) in a timely and conciliatory manner.

(2) It is agreed that during any question, dispute or difficulty, normal work should continue as instructed by Transport, provided that matters relating to health and safety shall be exempt from this Agreement. It is understood that no party shall be prejudiced as to the final settlement by the continuance of work in accordance with this subclause.

(3) It is further agreed that a personal grievance of any employee will be settled with as much privacy and confidentiality as is practicable and the employee shall be free from any retaliation using this procedure.

(4) This dispute resolution procedure will apply to any questions, disputes or difficulties that arise under this Agreement—

(i) 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;

(ii) If the matter is not resolved within ten (10) working days of the discussion in accordance with sub-clause (i) hereof the matter shall be referred by the employee and/or Union representative to the relevant Executive Director for resolution;

(iii) If the matter is not resolved within seven (7) working days of the discussion in accordance with sub-clause (ii) hereof the matter shall be referred by the employee and/or Union representative to the Director General of Transport or his/her nominee for resolution; and

(iv) If the matter is not resolved to the employee's satisfaction by the Director General of Transport, it may be referred by either party to the Western Australian Industrial Relations Commission.

21—PART-TIME EMPLOYMENT

(1) Part-time employees may be employed for up to the full-time hours prescribed in the relevant award. The number of part-time hours is to be agreed between the employer and the employee.

(2) A part-time employee will be paid a proportion of the appropriate full-time salary dependent on time worked.

(3) A part-time employee shall be entitled to the same leave and conditions prescribed in this Agreement together with the relevant award as for full-time employees, with payments proportionate to the hours worked. Such payments in respect of annual leave and long service leave will be averaged where the employee's ordinary working hours have varied during the accrual period. Sick leave and any other paid leave shall be paid at the current salary, but only for those hours or days that would normally have been worked had the employee not been on such leave.

22—CASUAL EMPLOYMENT

An employee may be employed on a casual basis for up to three months. If the services of the casual employee are required for a period greater than three months then he/she will be offered a fixed term contract in accordance with public sector standards.

23—CONTRACT EMPLOYMENT

To the extent that it is operationally convenient, Transport will engage employees on fixed-term contracts for periods of no less than three months. However, the parties recognise that in some circumstances fixed-term contracts of less than three months may be required by the employer and will be entered into at the discretion of the employer.

24—LEVEL 1 COMMENCEMENT OF EMPLOYMENT

An adult employee employed pursuant to Level 1 of the Public Service Award shall commence employment at Level 1.1 and the date of such commencement shall be the anniversary date for that employee for the purpose of annual increments subject to satisfactory performance. At the discretion of the Director General, the employee may be appointed to a maximum of Level 1.9 upon commencement of employment to a Level 1 position subject to the relevant knowledge and experience of the employee.

25—WORKPLACE FLEXIBILITY

(1) The employer may temporarily deploy an employee to perform duties that are within the limits of the employee's skills, provided that any such worksite is generally within 50 kilometres of the employee's present workplace location. However, the employee may be temporarily deployed to a more distant location if the employer and the employee agree in writing.

(2) Employees will be provided with a minimum of two (2) weeks' notice, unless a lesser period is agreed between the employer and the employee, and an up-front estimate of the length of any temporary move. It will be expected that an employee will return to his/her substantive position after such temporary placement. Where an employee will not be returned to his/her substantive position he/she will be notified immediately such a decision is made.

(3) Employees may on occasion be required to be permanently transferred to an alternative position within Transport to meet changing business needs and work practices. The transferring of an employee will occur with employee consultation and with regard to the employee's family and financial responsibilities.

26—ANNUAL LEAVE TRAVEL CONCESSION

Employees who are eligible for the annual leave travel concession under a relevant award may, subject to the agreement of the employer, travel to any destination provided the cost does not exceed the cost of an economy return airfare to Perth. Travel must be undertaken to be eligible for the concession.

27—FAMILY LEAVE

(1) The term *"immediate family"* includes—

(i) a partner or spouse (including a former spouse, a de facto spouse and a former de facto spouse) of the employee; 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 employee or spouse of the employee.

(2) An employee with responsibilities in relation to members of his/her household or immediate family shall be entitled to take up to 37.5 hours Family Leave per accrual year without loss of pay to provide care and support for such persons when they are ill.

(3) Family Leave entitlements shall be deducted from accrued sick leave entitlements from previous accrual years.

(4) The employee shall provide a medical certificate if—

(i) Family Leave exceeds two consecutive days;

(ii) a total of five days of any combination of sick leave and Family Leave has already been taken without a medical certificate in the accrual year; or

(iii) at any other time it is required by the employer.

28—CEREMONIAL/CULTURAL LEAVE

(1) Subject to the approval of the employer, an employee may take time off work to meet the employee's customs, traditional law and to participate in ceremonial/cultural activities. Prior notice must be given of the intention to take the leave, the reasons for taking the leave and the estimated length of absence.

(2) Ceremonial/cultural leave may not exceed ten working days in any one year and will be deducted from annual leave or long service leave, or granted as leave without pay.

29—CAREER BREAKS

(1) The employer may approve an unpaid career break scheme for an employee. Approval is at the discretion of the employer.

(2) It is the responsibility of the employee to explore his/her personal taxation and superannuation implications and make any necessary arrangements in these areas.

30—FAMILY ROOM

(1) The employer agrees to provide a family room at the Murray Street office and Marine House.

(2) The family room is available for employees to bring children into work when unable to arrange any alternative child care arrangements. The room is to be used for short-term emergency use only and not on an ongoing basis. The employee must obtain the approval of his/her manager before making use of the room.

(3) Where the child is ill, family carer's leave should be utilised if possible. However, if the employee brings in an ill child, the child must not have an infectious disease. To ensure that the health of the other employees is not being jeopardised, a medical certificate must be provided if requested by the employer.

31—PARENTAL LEAVE

(1) For the purpose of this clause the following definitions apply—

(i) "Adoption", in relation to a child, is a reference to a child who is not the natural child or step-child of the employee or the employee's spouse, is less than 5 years of age and has not lived with the employee for 6 months or longer;

(ii) "Employee" includes full-time, part-time, permanent and fixed term contract employees; and

(iii) "Replacement employee" is an employee specifically engaged to replace an employee proceeding on parental leave.

(2) Eligibility for Parental Leave

(i) An employee is entitled to a total 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, provided the employee has, before the

expected date of birth, completed at least 12 months' continuous service in the public sector;

(ii) 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;

(iii) An employee is entitled to a total period of up to 52 weeks' unpaid parental leave in respect to the adoption of a child, including three weeks parental leave at the placement of the child, provided the employee has, before the expected date of adoption, completed at least 12 months continuous service in the public sector;

(iv) 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 day's leave. The employee may take any paid leave entitlement in lieu of this leave;

(v) Subject to subclause (ii) of this clause, where both partners are employed by Transport the leave shall not be taken concurrently except under special circumstances and with the prior approval of the Director General; and

(vi) If requested by the employer, the employee must provide a medical certificate or other evidence of the pregnancy or intended adoption.

(3) Other Leave Entitlements

(i) An employee proceeding on parental leave may elect to utilise any accrued annual leave or accrued long service leave for the whole or part or the period of parental leave or extend the period of parental leave with such leave;

(ii) An employee may extend the maximum period of parental leave with a period of leave without pay subject to the Director General's approval;

(iii) An employee on parental leave is not entitled to paid sick leave and other paid award absences;

(iv) 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 leave for a period certified as necessary by a registered medical practitioner; and

(v) 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.

(4) Notice and Variation

(i) The employee shall give not less than ten weeks' notice in writing to the employer of the date the employee proposes to commence parental leave, stating the estimated period of leave to be taken; and

(ii) An employee proceeding on parental leave may elect to take a shorter period of maternity leave. At any time during that period of parental leave, subject to 14 days' written notice being given, the employee may elect to lengthen the period once only or, subject to the approval of the employer, further lengthen or shorten the period.

(5) Transfer to a Safe Job

(i) 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; and

(ii) 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.

(6) Replacement Employee

(i) Prior to engaging a replacement employee Transport 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.

(7) Return to Work

(i) An employee shall confirm the intention to return to work by notice in writing to Transport not less than four weeks prior to the expiration of the period of parental leave;

(ii) 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 subclause (5) hereof, the employee is entitled to return to the position occupied immediately prior to the transfer;

(iii) 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; and

(iv) 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.

(8) Effect of Leave on Employment Contract

(i) 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;

(ii) 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; and

(iii) Termination of Employment—An employee on parental leave may terminate employment at anytime during the period of leave by written notice in accordance with the relevant award.

32—UNION BUSINESS LEAVE

(1) Transport shall grant paid leave during ordinary working hours to an employee—

(i) who is required to give evidence before any Industrial Tribunal;

(ii) who as a Union nominated representative is required to attend negotiations and/or conferences between the Union and Transport;

(iii) when prior agreement between the Union and Transport has been reached for the employee to attend official Union meetings preliminary to negotiations or industrial hearings; or

(iv) who as an Association/Union nominated representative is required to attend joint Association /Union/ Management consultative committees or working parties.

(2) The granting of leave pursuant to subclause (1) shall only be approved—

(i) where an application for leave has been submitted by an employee a reasonable time in advance;

(ii) for the minimum period necessary to enable the Union business to be conducted or for evidence to be given;

(iii) for those employees whose attendance is essential; and

(iv) when the operation of the organisation is not being unduly affected and the convenience of Transport impaired.

(3) (i) Leave of absence provided under this clause will be granted at the ordinary rate of pay;

(ii) Transport shall not be liable for any expenses associated with an employee attending to Union business; and

(iii) Leave of absence provided under this clause shall include any necessary travelling time in normal working hours.

33—SIGNATURES OF PARTIES TO THE AGREEMENT

Signed by the Director General of Transport

.....*signed*.....

Date 5.4.98

Signed for and on behalf of the Civil Service Association of Western Australia Incorporated

.....*signed*.....

Date 6.4.98

(Seal Affixed)

Signed for and on behalf of the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch

.....*signed*.....

Date 7.4.98

(Seal Affixed)

SCHEDULE A—SALARIES

Public Service Award

Classification	Column A Annual Rate Effective from First Pay Period on or After Registration 3.5% incr. ($)	Column B Annual Rate ($) As Per EBA 1995
Level 1		
U/17	11,693.99	11,298.54
17 YEARS	13,666.57	13,204.42
18 YEARS	15,940.86	15,401.80
19 YEARS	18,452.12	17,828.14
20 YEARS	20,720.93	20,020.22
1.1	22,762.63	21,992.88
1.2	23,477.94	22,684.00
1.3	24,192.15	23,374.06
1.4	24,901.98	24,059.88
1.5	25,616.19	24,749.94
1.6	26,330.40	25,440.00
1.7	27,152.13	26,233.94
1.8	27,720.43	26,783.02
1.9	28,560.80	27,594.98
Level 2		
2.1	29,566.84	28,567.00
2.2	30,338.11	29,312.18
2.3	31,148.86	30,095.52
2.4	32,005.70	30,923.38
2.5	32,902.03	31,789.40
Level 2/4 (For specified callings only)		
1st Year	29,566.84	28,567.00
2nd Year	31,148.86	30,095.52
3rd Year	32,902.03	31,789.40
4th Year	35,094.03	33,907.28
5th Year	38,492.85	37,191.16
6th year	40,707.90	39,331.30
Level 3		
3.1	34,134.07	32,979.78
3.2	35,094.03	33,907.28
3.3	36,083.62	34,863.40
3.4	37,099.53	35,844.96
Level 4		
4.1	38,492.85	37,191.16
4.2	39,584.46	38,245.86
4.3	40,707.90	39,331.30
Level 5		
5.1	42,871.38	41,451.62
5.2	44,333.81	42,834.60
5.3	45,853.29	44,302.70
5.4	47,429.83	45,825.92
Level 6		
6.1	49,965.22	48,275.58
6.2	51,688.77	49,940.84
6.3	53,472.65	51,664.40
6.4	55,377.22	53,504.56

SCHEDULE A—SALARIES—*continued*

Public Service Award

Classification	Column A Annual Rate Effective from First Pay Period on or After Registration 3.5% incr. ($)	Column B Annual Rate ($) As Per EBA 1995
Level 7		
7.1	58,297.70	56,326.28
7.2	60,318.56	58,278.80
7.3	62,517.15	60,403.04
Level 8		
8.1	66,090.40	63,855.46
8.2	68,649.93	66,328.44
8.3	71,823.85	69,395.02
Level 9		
9.1	75,787.67	73,224.80
9.2	78,465.69	75,812.26
9.3	81,520.02	78,763.30
Class		
C.1	86,138.81	83,225.90
C.2	90,757.60	87,688.50
C.3	95,374.19	92,148.98
C.4	99,992.98	96,611.58

Engineering Trades (Government) Award

Classification	Column A Annual Rate Effective from First Pay Period on or After Registration 3.5% incr. ($)	Column B Annual Rate ($) As Per EBA 1995
C5 Level II	32,896.98	31,784.52
C6 Level I	31,649.33	30,579.06
C7 Special Class Level II	29,154.00	28,168.12
C8 Special Class Level I	27,906.34	26,962.65
C9 Level II	26,658.69	25,757.19
C10 Level I Production Systems Employee	25,411.03	24,551.72
C11 Level IV	23,516.65	22,721.40
C12 Level III	22,268.99	21,515.93
C13 Level II	20,918.31	20,210.93
C14 Level I	19,922.48	19,248.77

OTHER RATES DEEMED TO BE PART OF ORDINARY PAY

Industry Allowance:	**$ pft**
(a) After 12 months service	10.40
(b) After 24 months service and additional	10.20
	20.60
Tool Allowance:	18.40

Construction Allowance:

Construction work meaning:

The construction, erection or alteration of any outer building structure or civil engineering project which the employee and union or unions agree or, in the event of a disagreement, which the Board of Reference declares to be construction work for the purposes of the Award. 31.20

Leading Hand Allowance:

(a) In charge of not less than 3 and not more than 10—33.20

(b) In charge of not less than 10 and not more than 20—50.80

(c) In charge of more than 20—65.40

SCHEDULE B

VARIATION OF AWARD AND AGREEMENT PROVISIONS

Without limiting the statements of intent contained within the Agreement, the parties agree to the following specific alterations to Awards and Agreements limited to the scope detailed within this schedule.

a) Metropolitan Taxi Branch

Those officers within the Metropolitan Taxi Branch currently in receipt of a 10% Commuted Overtime Allowance undertake to waive penalty rates for up to 15 Saturdays and/or Sundays and two Public and/or Public Service Holidays in any 12 month period in exchange for an increase in the Commuted Overtime Allowance to 15%. Any shifts undertaken in excess of those detailed will be paid at existing overtime and penalty rates in accordance with the Exchange of Letters concerning commuted overtime allowance and uniforms (Inspectors & Field Officers Department of Transport) April 1991.

b) Metropolitan Taxi Branch

Those officers within the Metropolitan Taxi Branch currently in receipt of a 10% Commuted Overtime Allowance undertake to increase the hours worked per shift to 8 hours 20 minutes and reduce the number of shifts to nine per fourteen day roster period.

SCHEDULE C

EXCHANGED LETTERS OF AGREEMENT IN RELATION TO TRANSPORT INSPECTORS' AND FIELD OFFICERS' COMMUTED OVERTIME ALLOWANCE AND UNIFORMS

Notwithstanding the provisions of this Enterprise Agreement the following agreement which has not been certified by the WAIRC will remain operative.

Our Ref: (BAT:BN)

Mr M Smith
General Secretary
Civil Service Association
445 Hay Street
PERTH WA 6000

Attention: Ken Ross

Transport Commission (Administrative, Clerical & General) Conditions of Service Agreement No. 6 Of 1974

I refer to your letter dated 10 April and acknowledge your agreement with the continuation of the "commuted allowance" and furthermore we agree with the continuation of supply of uniforms as set out in the above Agreement as amended.

This Department will now proceed with the formal retirement of the Agreement.

Thank you for your assistance in this matter.

B A Tapper
DIRECTOR
CORPORATE SERVICES

c.c. John Lang

29 April 1991

General Secretary

Civil Service Association of

Western Australia (Inc)

445 Hay Street

PERTH WA 6000

5 April 1991

Attention: Mr Ken Ross

Dear Sir

Commuted Allowance—Inspectors and Field Officers

I refer to the meeting on 21 March 1991 concerning this Department's proposal to retire the Transport Commission (Administrative, Clerical and General) Conditions of Service Agreement No 6 of 1974.

There was agreement that, following the creation of the Department of Transport with effect from 1 January 1986, all employees of the former Transport Commission were appointed to the Public Service and conditions of service are now those prescribed by the Public Service Act, Regulations, Administrative Instructions, Awards and Agreements. In effect the Transport Commission Agreement had become redundant.

It was agreed that the existing commuted allowance would continue to be paid and that this was to be confirmed by an exchange of letters.

Inspectors shall be paid a commuted allowance of 10% on gross annual salary, which shall continue to be paid during annual leave, long service leave, sick leave and as part of any retiring allowance to cover—

(i) shift work conditions,

(ii) work in excess of the ordinary hours of the shift up to a maximum of 2.5 hours a week.

Field Officers shall be paid a commuted allowance of 7.5% on gross annual salary, which shall continue to be paid during annual leave, long service leave, sick leave and as part of any retiring allowance to cover—

(i) the nature of the duties involving country investigations,

(ii) work in excess of the ordinary hours of the shift up to a maximum of 2.5 hours a week.

Your written agreement confirming the above would be appreciated.

Yours sincerely

Brian Tapper
DIRECTOR CORPORATE SERVICES

SCHEDULE D

EXCHANGED LETTERS OF AGREEMENT IN RELATION TO MARINE OFFICERS ENTITLEMENT TO HIGHER DUTIES AND SEAGOING ALLOWANCES

Notwithstanding the provisions of this Enterprise Agreement the following agreement which has not been certified by the WAIRC will remain operative.

KR:DN

7/92

Civil Service Association
445 Hay Street
Perth WA 6000

Attention: Ken Ross

Dear Sir

Marine Officer Commuted Overtime Agreement

I refer to your letter to the Department dated 5 January 1993 on the above subject and recent discussion between myself Mr Ross and Mr Floate of the CSA.

In regard to the claim I am prepared to agree to Item 4—payment of HDA on a daily basis to suitable qualified Marine Officers and Item 5—Sea Going Allowances.

I feel that the other items in your claim should be incorporated into the Enterprising Bargaining process currently in place within the Department.

Yours faithfully

Kevin Woods
Deputy Executive Director

8 June 1993

Mr S Hicks
Chief Executive Officer
Department of Transport
Stirling Highway
NEDLANDS WA 6000

January 5, 1993 Our Ref: KR:DN

Attention: Mr Richard Purkiss

Dear Sir

Marine Officers Commuted Overtime Agreement

The Marine Officers have expressed their views to the Association concerning a number anomalies surrounding their

conditions of employment. Consequently the following claim is presented on their behalf—

(1) Officers Engaged in Duties at Sea

Claim: That the 30% allowance of gross annual salary for days spent at sea be increased to 50%.

(2) Emergency Overtime

Claim: That the requirement to complete ten hours duty on the day which the emergency arises before overtime commences, be reduced to nine hours.

(3) Work on Sundays and Public Service Holidays

Claim: That officers rostered to work regularly on Sundays and a Public Service Holiday shall be entitled to one weeks leave in addition to the officers normal entitlement to annual leave.

(4) Higher Duties Allowance

Claim: That on those occasions requiring level 2 or level 3 officers to perform the duties and responsibilities of the "master" then, the hourly rate of pay applicable to the "master" will be paid to those officers replacing the "master" with payment calculated for each day that lower paid officers carry out those duties.

(5) Seagoing Allowance

(a) Victualling Allowance

Claim: That when officers carry out their duties above the 26th parallel and are required to live on board a vessel, the victualling allowance on those occasions will be $31.50 per day and $27.50 per day below the 26th parallel.

(b) Hard Lying Allowance

Claim: That the requirement to deduct a total of 36 hours for officers engaged in trips exceeding 36 hours be deleted.

As grounds for these claims have not been spelt out in great detail, the Association would welcome the opportunity to meet with both representatives of management and a delegation drawn from the ranks of the Marine Officers.

Yours faithfully

MARK SMITH
GENERAL SECRETARY

7/92

Neil Winzer
Civil Service Association
445 Hay Street
Perth WA 6000

Attention: Ken Ross

Application of Provisions of Letter of Agreement Concerning Marine Officers

In his letter to CSA 8 June 1992, Kevin Woods agreed to—

* higher duties allowance related to emergency call outs to apply on an daily basis ie. without a 5 day minimum acting provision.
* an increase in seagoing allowances as provided for under the Department of Marine and Harbours Commutted Overtime and Seagoing Allowances Agreement 1983.
  - Hard Lying allowance to apply to first and subsequent hours of a sea patrol which exceeds 36 hours ie. claims cannot be made for patrols of a duration shorter than 36 hour.
  - Victualling allowance shall be paid as prescribed in the Public Service Award 1992, Schedule C Camping Allowance—
    * South of 26° South Latitude—Item 2 ... $27.35
    * North of 26° South Latitude—Item 2 ... $31.35

  Where a portion of a day spent 'camping', the formula contained in Clause 42—Travelling Allowance of this Award shall be used for calculating the portion of the allowance to be paid for that day.

However a difficulty in adopting the rate for camping allowance for the purpose of victualling allowance arises in the definition of a permanent camp. Vessels being our equivalent of a camp may not necessarily be permanent in relation to the 26° south latitude in the course of a day.

Could you please discuss this item with the Marine Officers. My suggestion for applying the agreed provision would be on the basis of whether the vessel is above or below the 26° south latitude at midday.

NEIL WINZER
A/Industrial Officer
23 July 1993

DJOORAMINDA DIRECT CARE WORKERS' INDUSTRIAL AGREEMENT 1998.
No. AG 279 of 1998.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Djooraminda

and

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

No. AG 279 of 1998.

Djooraminda Direct Care Workers' Industrial Agreement 1998.

11 February 1999.

Order.

HAVING heard Mr M. A. O'Connor as agent for Applicant and Ms S. Ellery as agent for 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 as lodged in the Commission on the 21st day of December, 1998 entitled Djooraminda Direct Care Workers' Industrial Agreement 1998 and as subsequently amended by direction of the Commission in the terms of the following Schedule be registered as an industrial agreement.

(Sgd.) G. L. FIELDING,
[L.S.] Senior Commissioner.

Schedule.

1.—TITLE

This agreement shall be referred to as the Djooraminda Direct Care Workers' Industrial Agreement 1998.

2.—ARRANGEMENT

22. Term

23. Signatures of Parties and Witnesses

Appendix 1—Operation of Salary Packaging

3.—PARTIES BOUND

This Agreement shall be binding on the Employer and direct care workers employed at Djooraminda, an Agency of the Catholic Archdiocise of Perth which provides residential care to Aboriginal children and support to their families and the Australian Liquor, Hospitality and Miscellaneous Workers Union.

4.—DEFINITIONS

"Direct Care Worker" (full time) means an employee responsible for the day to day care of children in the residential cottages operated by the Agency.

"Part time Relief Direct Care Worker" means an employee regularly employed to work less hours per fortnight than a Direct Care Worker and responsible for the care of children in the residential cottages when the Direct Care Worker is not at work.

"Casual Direct Care Worker" means an employee engaged on an intermittent basis with no guarantee of continuing or additional employment for the purpose of providing care for children in the residential cottages when the Direct Care Worker is not at work.

"Employer" means the Board of Management for the time being of Djooraminda an unincorporated association.

5.—CONTRACT OF SERVICE

(1) (a) The employee will be required to work in accordance with her/his job description and the Agency's policies and procedures.

(b) The Agency may vary the employee's job description if the variation is reasonable and the duties are within the employee's skill, competence and training.

(2) The first three months of employment with the employer shall be probationary during which time either party may terminate the contract by giving 1 week's notice or payment or forfeiture in lieu thereof.

(3) The Agency may require the employee, in the event that the Agency expands or relocates its operations, to transfer, either temporarily or permanently, to another place of work within the Perth metropolitan area.

6.—HOURS

Direct Care Worker (Full Time)

(1) The employee is required to reside at the nominated cottage and be on duty or available for duty for a period of 10 consecutive days in each fortnightly period.

(2) The period in residence shall be immediately followed by 4 days free of all duty. The employee is required to vacate the cottage during this 4 day relief period to enable a relief Direct Care Worker to reside in the cottage.

(3) On each day (ie 24 hour period) in residence the employee is required to be on duty for such time as is necessary to oversee the care of the children resident in the cottage.

7.—SALARY PACKAGING

(1) Subject to approval by the employer, a Direct Care Worker may elect to forego up to 30% of his/her annual salary for an agreed benefit or benefits provided by the employer. This amount ("the expense benefit") will be applied to expenses nominated by the employee and may include amounts which the employee wishes to contribute to their superannuation.

(2) Salary packaging shall operate in accordance with Appendix 1.

(3) Upon election by the employee, the level of salary packaging shall be committed to writing. This arrangement will be reviewed on a 12 monthly basis at which time it may be varied by mutual agreement.

(4) In the event that changes in state or federal legislation, Income Tax Assessment Act determinations or rulings, particularly in respect of the employer's fringe benefit tax exempt status, remove the employer's capacity to maintain the salary packaging arrangement, the employer shall be entitled to withdraw from the salary packaging arrangements by giving notice to the employee with effect from the date the legislation becomes operative.

(5) The employer shall as soon as practicable after being advised of the legislative change advise the employee and convene a meeting with a view to reaching an alternative arrangement on salaries and salary benefits.

(6) The cancellation of salary packaging does not cancel or otherwise affect the operation of this Agreement or the employees contract of employment.

8.—SALARIES/WAGES

(1) A full time Direct Care Worker shall be paid a salary of $29,398 per annum.

(2) A Part time Direct Care Worker shall be paid at the rate of $112.71 per 24 hour attendance.

(3) A Casual Direct Care Worker shall be paid at the rate of $10.40 per hour up to $135.25 per 24 hour attendance. This includes a casual loading.

(4) The rates of pay in this Agreement shall be adjusted from time to time in accordance with the Minimum Wage under the Minimum Conditions of Employment Act.

9.—CONTRIBUTION TO COSTS

(1) An employee shall contribute an amount to be deducted from their salary or from their expense benefit according to the number of family members residing with them in the cottage (if any)—

Amount for each family member over 12yrs:
$10.00 per 24 hr attendance

(2) This amount covers the reimbursement to the employer of a cash advance to purchase personal food and groceries.

(3) An employee is not required to make a contribution toward costs for any attendance of less than 24 hours.

(4) The employee shall be responsible for the cost of all private phone calls in excess of $30.00 per month.

(5) Work related calls

(a) The cost of any calls made or received by the employee in the course of employment shall be borne by the employer.

(b) Only calls recorded in the cottage carbon book as work related shall be paid for by the employer.

10.—ANNUAL LEAVE & PUBLIC HOLIDAYS

(1) Entitlement

(a) The Employee shall be entitled to 4 weeks' paid leave with 17.5% loading plus 2 weeks paid leave in lieu of public holidays at the completion of each 12 months' service.

(b) The entitlement accrues pro rata on a weekly basis.

(c) "Service" shall not include any period of unpaid leave or any period in which the Employee was in receipt of workers' compensation or other similar benefits.

(2) Payment on Termination

If the employee's employment terminates, the Employee shall be paid pro rata annual leave on the basis of 6 weeks' pay for each 12 months of service in respect of each completed week of service, for which annual leave has not already been taken. Provided that leave loading is not payable on pro rata annual leave on termination.

(3) Taking Annual Leave

(a) The annual leave may be taken at times agreed between the employer and the employee.

(b) Where the employer and employee have not agreed when annual leave is to be taken, the employer shall give the employee at least 2 week's notice of the period of time when it will be convenient for the employee to take the leave and the employee will take the leave at that time.

(c) Annual Leave shall not accumulate to more than 6 weeks without the agreement of the Agency Director.

(d) Annual leave may, with the approval of the employer, be taken before the completion of 12 months' continuous service.

(e) If the services of the employee terminate and the employee has taken any period of annual leave which exceeds the annual leave accrued to the employee at that time, the employer may deduct the amount paid in respect of annual

leave taken but not accrued from any amount due to the employee at the time of termination.

(4) Part time employees shall be entitled to annual leave in proportion which their part time hours relate to full time.

(5) Casual employees shall not be entitled to annual leave.

11.—SICK LEAVE

(1) The employee shall be entitled to 10 days paid sick leave per annum.

(2) Sick leave shall accrue pro rata on a weekly basis.

(3) Where more than 3 consecutive days sick leave is taken the employee must produce to the employer evidence that would satisfy a reasonable person of the entitlement including, but not limited to a medical certificate.

(4) Untaken sick leave shall accumulate from year to year.

(5) For the purposes of this Clause, a days pay shall be 1/10 of the employee's fortnightly remuneration.

(6) This clause does not apply to casual employees.

12.—SPECIAL LEAVE

Special paid leave is available on a short term basis for purposes including study, compassionate and cultural reasons in accordance with the employer's policy. The Director of the Agency has discretion in granting certain types of special leave.

13.—UNPAID LEAVE

(1) Leave without pay may be granted at the discretion of the Agency Director.

(2) Leave without pay will normally be granted only when an employee has exhausted all other types of leave and the employer will not be inconvenienced by the employee's absence.

(3) Employees are required to give 6 weeks notice of their application for unpaid leave.

(4) Periods of unpaid leave shall not be considered "service" for the purpose of calculating the employee's entitlement to annual, sick, long service and parental leave, except where the period of unpaid leave is less than 2 weeks.

14.—PARENTAL LEAVE

The employee shall be entitled to parental leave in accordance with the *Minimum Conditions of Employment Act 1993*. In summary—

- The employee is entitled to up to 12 months' unpaid maternity or paternity leave provided that they have had at least 12 months' continuous service with the employer;
- The 12 month period of leave maybe shared by the employee and their spouse or defacto spouse;
- Except for one week at the time of the birth, the employee and their spouse or defacto spouse must take parental leave at different times;
- The entitlement is subject to the employee complying with certain other requirements relating to notice periods, information documentation, cancellation and variation of leave;
- In most circumstances, the employee is entitled to return to their former position.

15.—LONG SERVICE LEAVE

(1) The employee shall be entitled to 13 week's paid long service leave after 10 years continuous service.

(2) The employee is entitled to payment of pro rata long service leave upon termination after 7 years continuous service.

(3) Long service leave must be taken within a period of 6 months of it becoming due unless otherwise agreed by the Agency Director.

16.—BEREAVEMENT LEAVE

(1) On the death of a person where a close family relationship can be demonstrated, an employee shall be entitled to 5 days paid leave including the day of the funeral of such relation.

(2) Further paid leave may be negotiated between the employee and employer.

(3) In cases where the Agency closes because of the funeral of a prominent community member, absences by employees shall be regarded as paid leave.

17.—NOTICE OF TERMINATION

(1) The contract of employment may be terminated by either party giving to the other one month's notice in writing and the contract shall expire at the end of that period of notice.

(2) Payment in lieu of the required period of notice may be made by the Agency if the required notice is not given. The Agency may terminate the contract of service by providing part of the required notice and payment in lieu of the balance.

(3) If the employee fails to give the required notice or leaves during the notice period, the Agency may deduct, from any monies due to the employee, an amount equal to the employee's salary for the period of notice not given.

(4) The required notice may be dispensed with by agreement in writing between the Agency and employee.

(5) Nothing in this clause affects the Agency's right to dismiss an employee without notice for serious misconduct which justifies instant dismissal.

(6) If it is alleged that the employee has done or failed to do anything that may constitute serious misconduct, depending on the circumstances, the employee may be relieved of duty on full pay while the allegation is investigated. The employee shall be advised of the allegation under investigation.

18.—SUPERANNUATION

(1) The Agency shall contribute on behalf of the employee in accordance with the requirements of the *Superannuation Guarantee (Administration) Act 1992*.

(2) The Fund for the purposes of this clause shall be the National Catholic Superannuation Fund.

(3) The employee's earnings base for the purpose of this clause shall be the amount of the salary/wage as prescribed in clause 8 as varied from time to time.

(4) Compliance, Nomination and Transition

Notwithstanding anything contained elsewhere herein which requires that contribution be made to a superannuation fund or scheme in respect of an employee, on and from 30 June 1998—

(a) Any such find or scheme shall no longer be a complying superannuation fund or scheme for the purposes of this clause unless—
  (i) the fund or scheme is a complying fund or scheme within the meaning of the Superannuation Guarantee (Administration) Act 1992 of the Commonwealth; and
  (ii) under the governing rules of the fund or scheme, contributions may be made by or in respect of the employee permitted to nominate a fund or scheme;

(b) The employee shall be entitled to nominate the complying superannuation fund or scheme to which contributions are to be made by or in respect of the employee;

(c) The employer shall notify the employee of the entitlement to nominate a complying superannuation fund or scheme as soon as practicable;

(d) A nomination or notification of the type referred to in paragraphs (b) and (c) of this subclause shall, subject to the requirements of regulations made pursuant to the Industrial Relations Legislation Amendment and Repeal Act 1995, be given in writing to the employer or the employee to whom such is directed;

(e) The employee and employer shall be bound by the nomination of the employee unless the employee and employer agree to change the complying superannuation fund or scheme to which contributions are to be made;

(f) The employer shall not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by a employee;

Provided that on and from 30 June 1998, and until an employee thereafter nominates a complying superannuation fund or scheme—

(g) if one or more complying superannuation funds or schemes to which contributions may be made be

specified herein, the employer is required to make contributions to that fund or scheme, or one of those funds or schemes nominated by the employer;

or

(h) if no complying superannuation fund or scheme to which contributions may be made be specified herein, the employer is required to make contributions to a complying fund or scheme nominated by the employer.

19.—CONFIDENTIALITY

It is a condition of employment that no confidential information relating to the Agency, its clients or activities may be released or divulged by the employee to a third party other than in the proper performance of the employee's obligations under this Agreement. This obligation shall apply notwithstanding the expiration or termination of this Agreement or the termination of the employee's employment.

20.—DISPUTE SETTLEMENT PROCEDURE

(1) Any questions or disputes arising in the course of employment shall be dealt with in accordance with the following procedure.

(2) As soon as practicable after a question or dispute has arisen, it shall be considered jointly by the employee and the Agency Director, or the representative of the Agency Director.

(3) If the question or dispute is not resolved it shall be considered jointly by the employee and a representative of the Board of Management. The employee may be represented in the discussions by the Union or a person of their choice.

(4) If the question or dispute is not resolved it shall be considered jointly by the employee and the Board of Management. The employee may be represented in the discussions by a person of their choice.

(5) Sensible time limits shall be set by the parties in proceeding through the steps of dispute resolution.

(6) While the dispute settlement steps are in progress no industrial action shall be taken and no action prejudicial to any party shall be taken pending resolution of the matter.

(7) The provisions of (1) to (6) of this clause shall also be applicable where relevant to disputes or grievances involve a group of employees or all staff.

(8) By mutual agreement of the parties directly involved in a dispute or grievance, one or more steps in this procedure may be bypassed in the interests of a fair or expedited resolution of the dispute.

(9) Any dispute between the Union and the Employer arising out of the application or interpretation of this Agreement, or concerning a union member's entitlements shall be discussed between the relevant representatives of the Union, the Employer and, where appropriate, its Employer body. In the event of no agreement being reached, the parties may refer the matter to the Western Australian Industrial Relations Commission for resolution.

21.—NUMBER OF EMPLOYEES

The number of employees covered by this Agreement is ten (10).

22.—TERM

This Agreement shall operate for a period of one year commencing on the date of Registration.

23.—SIGNATURES OF PARTIES AND WITNESSES

Employer

(signed Kathleen Callow)

Signature on behalf of Djooraminda

Kathleen Callow

Name of person
authorised to sign (print) Date: 10/12/1998

(signed D McAluster)

Signature of Witness

Don McAluster

Name of Witness (print) Date: 10/12/1998

Australian Liquor, Hospitality and Miscellaneous Workers Union

(signed S M Jackson)

Assistant Secretary

Sharryn Jackson Date: 17/12/1998

(signed Helen M Creed)

Secretary

Helen Creed Date: 17/12/1998

APPENDIX 1—OPERATION OF SALARY PACKAGING

(1) Administration Charge

(a) The Agency will charge an administration fee of 3% of the amount packaged. This fee will be automatically deducted with the employee's contribution to costs described in Clause 9 from the packaged amount. The 3% fee will be utilised only for the administration of the salary packaging scheme.

(2) Pay Advice Slips and Group Certificates

(a) Pay advice slips will indicate the gross salary and allowances and the amount that has been credited to the employee's salary packaging account. This amount will appear in the "Before Tax Additions/Deductions" space on the pay slip.

(b) "Taxable Income" will be reduced by the amount packaged and the figure appearing under the "Tax" column will be the tax payable on the reduced "Taxable Income".

(c) Group Certificates will indicate the total taxable income and tax deducted for the year. The amount packaged will not be shown on Group Certificates.

(3) Operation of the System

(a) Each fortnight the Agency will calculate the employee's non cash benefit in accordance with the agreed sacrifice percentage. Such amount will be credited to the employee's salary packaging account.

(b) To pay a bill through their salary packaging account staff members will be required to complete a Salary Package Payment Authority and forward this to the Agency together with the original account. In normal circumstances payment will be made within 5 working days of receipt by the Agency.

(c) At the end of the financial year it will be necessary for the employee to utilise any unused amount in their salary packaging account as at the 30 June, within the next 3 months, ie by 30 September).

(d) If the employee terminates employment with the Agency they may elect to either use their remaining salary package balance prior to Termination or to have the balance paid out as a salary and wages. Where the balance is paid out as salaries and wages income tax instalment deductions will be deducted from the salary by the Agency.

(4) Superannuation Guarantee Charge

Superannuation Guarantee payments will be based upon the total package amount as defined under the Superannuation Guarantee Charge Act 1992.

(5) Components of Salary Packaging

The following items will be those for which salary packaging amounts may be utilised;

Telephone Accounts—bills from telephone service providers for the personal telephone expenses of the employee at their private residence.

Rent—personal rental expenses of the employee, such as the rent paid for their private residence.

Loan Repayments—the amount of a regular repayment required to be made to a financial or other institution or agency to repay borrowings, such as personal loans, home building mortgages.

RAC Accounts—membership and other expenses of the employee as a result of their membership of the RAC.

Any insurance premiums incurred by the employee, such as home and contents, motor vehicle, life and medical benefits.

Water Authority Accounts, personal employee expenses payable to the WA Water Authority or any similar country agency.

Rates—State or Local Government land rates and taxes incurred by the employee.

Educational Expenses—any expenses incurred by the employee as part of an educational activity, undertaken by themselves or dependent child.

Utilities (such as Western Power & Alinta Gas)—expenses incurred by the employee for these types of utility or energy purchases.

Household Repairs and Maintenance—expenses incurred by the employee for household repairs and maintenance for which an invoice is produced.

Medical and Dental Accounts – doctor and dentist bills (and bills from other medical service providers) incurred in respect of self, spouse or dependant.

Superannuation Contributions. Employee contributions payable to a superannuation fund.

When an account for an eligible item including electricity, gas, telephone, household insurance and water is not in the name of the employee but applies to their private place of residence, payment may be made through their salary packaging account.

Under no circumstances will a payment from a packaged amount be made directly to the employee. All payments will be made by cheque (or direct deposit) to a third party in payment of an expense incurred by the employee.

FIRE AND EMERGENCY SERVICES AUTHORITY ENTERPRISE BARGAINING AGREEMENT 1998. No. PSAAG 6 of 1999.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Chief Executive Officer, Fire and Emergency Services Authority

and

The Civil Service Association of Western Australia Incorporated.

No. PSAAG 6 of 1999.

Fire and Emergency Services Authority Enterprise Bargaining Agreement 1998.

8 March 1999.

Order.

HAVING heard Mr M. Forbes on behalf of the applicant and Ms J. van den Herik 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 Fire and Emergency Services Authority Enterprise Bargaining Agreement 1998 as filed in the Commission on the 29th day of January 1999 is registered on and from the 5th day of February 1999.

(Sgd.) A.R. BEECH,
[L.S.] Public Service Arbitrator.

Schedule.

1.— TITLE

This Agreement shall be known as the Fire and Emergency Services Authority Enterprise Bargaining Agreement 1998.

2. —ARRANGEMENT

Clause

3.—SCOPE OF THE AGREEMENT

1) Subject to subclause 2, this Agreement applies to the Fire and Emergency Services Authority employees, including the Senior Executive Service, who are eligible to be members of the Civil Service Association of Western Australia (Incorporated).

2) Employees of FESA who are not working within FESA, will not be covered by this enterprise agreement unless it is agreed between that employee and the CEO that this enterprise agreement should apply.

3) Any employee who is working on secondment to FESA will be covered by this Agreement if it is agreed between that employee and the CEO that this Agreement should apply.

4.—PARTIES TO THE AGREEMENT

This Agreement is made between the Chief Executive Officer, Fire and Emergency Services Authority and the Civil Service Association of Western Australia (Incorporated).

5.—NUMBER OF EMPLOYEES COVERED

As at the date of registration the approximate number of employees covered by this Agreement is approximately 200.

6.—DEFINITIONS

In this Agreement, the following terms shall have the following meanings.

"Agreement" means The Fire and Emergency Services Authority Enterprise
Bargaining Agreement 1998.

"Department" means Fire and Emergency Services Authority

"Employee" means for the purposes of this Agreement, someone who is referred to at Clause 3.—Scope.

"Employer" means Chief Executive Officer, Fire and Emergency Services Authority

"Government" means the State Government of Western Australia

"GOSAC" means Government Officers Salaries Allowances and Conditions Award 1989

"Minister" means the Minister or the Ministers of the Crown responsible for the administration of the Department

"Metropolitan Area" means the area within a radius of fifty (50) kilometres from the Perth city Railway Station.

"Union" means Civil Service Association of Western Australia Incorporated

"WAIRC" means The Western Australian Industrial Relations Commission

7.—DATE AND OPERATION OF AGREEMENT

1) This Agreement shall operate from the date of registration in WAIRC and shall remain in force for two years

2) During the life of the Agreement the parties will continue to address a range of issues and reforms specifically aimed at increasing productivity. The parties agree that these issues will form the basis of future negotiations.

3) 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.

4) The Agreement will continue in force after the expiry of the 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 or replaces this Agreement with a subsequent Agreement.

8.—NO FURTHER CLAIMS

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 National or State Wage Case Decisions.

This agreement shall not operate so as to cause a reduction in ordinary time earnings.

9.—SINGLE BARGAINING UNIT

This Agreement has been negotiated through a Single Bargaining Unit (SBU). The SBU comprised of the Union party to this Agreement and the employer.

10.—RELATIONSHIP TO PARENT AWARDS

This Agreement shall be read in conjunction with the Government Officers Salaries Allowances and Conditions Award 1989. In the case of any inconsistencies, this Agreement shall have precedence to the extent of any inconsistencies.

Where this agreement is silent the award shall apply.

11.—RE-OPEN NEGOTIATIONS

The parties agree to commence negotiations at least six (6) months prior to the expiration of the period of this Agreement to negotiate a replacement Agreement.

12.—AVAILABILITY OF AGREEMENT

Every employee will be entitled to a copy of this Agreement. This Agreement will be kept in an easily accessible place in each *division* of the agency, and this place will be communicated to all employees.

13.—DISPUTE RESOLUTION PROCEDURE

1) The following procedures shall apply for the purpose of dealing with any question, dispute or difficulties between an employee and the employer arising out of this Agreement, including any provisions implied in the Agreement in the Minimum Conditions of Employment Act 1993. The principle of conciliation and direct negotiation shall be adopted for the purpose of prevention and settlement of any industrial dispute that may arise.

2) The parties to the Agreement acknowledge that commitment to the dispute resolution procedure is essential for ensuring that service delivery is not interrupted.

3) Wherever possible disputes will be resolved by the parties directly affected.

4) At any stage of the dispute resolution procedure, an employee may elect to be accompanied by another employee or a representative from the union.

5) Where in any case a dispute cannot be resolved by the affected parties, it is to be processed according to the following procedure—

Stage 1

The matter is to be discussed between the employee(s) and the relevant line manager with a view to improving communication and achieving immediate resolution.

Stage 2

If not settled at stage 1, the matter is to be discussed between the employee(s), the line manager and the relevant director or branch manager.

Stage 3

If not settled at stage 2, the matter is to be discussed further involving a representative from the Employee Relations Branch.

Stage 4

If not settled at stage 3, the matter is to be referred to the CEO or his nominee and a reply shall be provided in 7 working days**.**

Stage 5

If the matter is still not resolved, either party may refer the matter to the Commission for conciliation and/or arbitration. The parties agree to abide by the decision of the Commission.

14.—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 Fire and Emergency Services Authority mission and improve productivity and efficiency in the Fire and Emergency Services Authority through ongoing improvements;
3) To promote the development of trust and motivation and to continue to foster enhanced employee relations;
4) To facilitate greater flexibility in decision making and allocation of other and human resources;
5) To promote increased satisfaction from jobs and secure employment opportunities;
6) To develop and pursue changes on a cooperative basis by using participate practices
7) To promote the health safety and welfare and equal opportunities for all employees

15.—PRODUCTIVITY MEASUREMENT

The purpose of this agreement is to facilitate the progression of an integrated Fire and Emergency Services Authority which will enable improved coordination and planning across the Emergency Services portfolio. In this sense the agreement seeks to enhance the opportunities for the organisation to achieve the three key outcomes that have been identified by Government—

- improvement in the delivery of service to the community and to volunteers by bringing together the Bush Fires Service (BFS), Emergency Management Unit (EMU), Fire and Rescue Service (FRS) and the State Emergency Service (SES) under the umbrella of one agency and one Chief Executive Officer;
- improvement in the effectiveness and coherence of policy development and implementation; and
- a coordinated approach to planning and management matters across agencies.

Significant work has already been undertaken to establish FESA. Savings have resulted and will continue to occur through the restructure. With the commencement of legislation to create FESA in January 1999, there is still much work and commitment required to ensure that the outcomes expected from the new organisation come to full fruition.

The objectives of this agreement include—

- to recognise the significant work and savings already generated through the restructure;
- to ensure employees remain committed to achieving the outcomes required for the new organisation;

- to contribute to the achievement of a new, single integrated organisation; and
- the development of consistency of salaries for all employees covered by the agreement.

FESA is a new organisation. Even though the entities that are being integrated to form FESA are established public sector agencies and have been so for some time, there is little or no data that is of any real use in establishing performance outcomes.

To measure the productivity improvement of FESA once in operation, efficiency and effectiveness measures will be more appropriately used after the organisation has had the opportunity to settle down, establish its objectives and relevant baseline data can be obtained.

The more immediate improvements, and the basis for the salary increases in this agreement are the savings achieved through reduced and reallocated staffing levels which are coupled with savings in contingency costs.

As mentioned earlier, one of the aims of the agreement is to help ensure that employees are committed to the reforms necessary for the restructure to deliver the benefits required. The agreement will therefore commit employees to the following—

- completing the strategic planning process including the business plans;
- implementing the planned achievements for the next twelve months as outlined in the strategic plan;
- developing performance measures for use in the next round of agreements;
- establishing baseline data for performance measures;
- reducing in the Authority's leave liability by at least 10% by 30 June 1999;
- willingly and constructively contributing to collocation (including shared use of land, buildings, associated amenities and/or facilities) as opportunities arise;
- developing, implementing and adhering to all new integrated policies, strategies and systems;
- participating in joint training;
- improving the coordination of services within the portfolio and with related services provided by other portfolio agencies, other levels of government and the community;
- eliminating duplication of resources;
- embracing the concept of FESA as a values-driven organisation so that it progresses on the basis of continuous improvement and customer focus; and
- implementation of a performance management system focused on achieving business outcomes and high quality service provision.
- Development of a comprehensive risk management plan for the Authority;
- Introduction of best practice diversity management policies and procedures;
- Introduction of policies to acknowledge employee effort, innovation and achievement.

The initiatives, including the outputs and outcomes are represented in more detail in Schedule F, Productivity Improvement Plan.

16.—IMPLEMENTATION OF EBA INITIATIVES.

1) The parties will develop an agreed process for the implementation of the initiatives outlined in this Agreement.

2) The employer recognises the need to involve employees in an effective consultative arrangement to ensure that initiatives produce desired outcomes.

3) The employer will ensure that adequate resources are allocated to support the implementation of the initiatives outlined in this Agreement in order to achieve the milestones within the life of the Agreement.

4) Employees will not be disadvantaged by Government decisions or policies which impact directly on the achievement of milestones outlined in the Agreement.

17.—CONSULTATION

1) The parties to this Agreement are committed to working together to achieve improved services and provide a rewarding work environment for all employees.

2) The parties will form a Joint Forum for consultation within 3 months of registration of this agreement. Its purpose is to actively progress the implementation of the Agreement and monitor achievements in productivity.

3) By consultation is meant effective two way communication leading to agreement on further action.

4) The parties to the Agreement acknowledge that decisions will continue to be made by the Fire and Emergency Service which is accountable to Government, through legislation, for the operation of its business.

18.—SALARY INCREASES

1) Employees will receive the salary as contained in Schedule A .—Salaries of this Agreement.

2) In recognition of the initiatives contained in this Agreement, employees will receive the following salary increase:

a) 3.5% from the date of registration in terms as contained in Schedule A—Salaries of this Agreement.

b) 3.5% one year after registration.

3) Employees will not be disadvantaged if targets are not achieved due to factors outside of their control.

19. HOURS OF SERVICE.

Spread Of Hours

1) The ordinary hours of work and normal office hours will be between the hours of 7.00am and 7.00pm Monday to Friday.

Hours Of Work

2) The ordinary hours of work for levels 1 to 5 will be 304 hours over an 8 week cycle i.e. an average of 38 hours per week.

3) Employees may be required to work a minimum of 6 or up to a maximum of 10 ordinary hours on any day. The minimum hours the employee shall be required to work in any one day may be varied to meet the employees needs subject to Clause 27, Family Carers Leave.

4) Employees may be required to work an annuamised hours arrangement as set out in Schedule B of this agreement of 2080 hours per annum.

Meal Break

5) An unpaid meal break of a minimum of 30 minutes will be taken at a time mutually agreeable between the employee and his or her supervisor usually between the hours of 12 noon an 2.00pm.

Consultation

6) The hours will be worked in each branch or section as determined by the employer in consultation with the employees.

Roster Technician

7) The roster technician in the Planning and Information Branch will work a standard number of hours based on the average of 38 hours per week while so rostered as determined by the employer in consultation with the employees.

Credit And Debit Hours

8) Employees may carry forward a maximum of 10 credit hours or 10 debit hours from one cycle to the next.

Employees Classified At Level 6 And Above

9) Subclause (2), (3), (4), (6) and (7) will not apply to employees classified at Level 6 and above who will work a minimum average of 38 hours per week Monday to Friday on an outcome basis to ensure the needs of clients are met and the objectives of the employer are satisfied. In exceptional circumstances however, the CEO may approve overtime.

20.—EMPLOYEE FUNDED EXTRA LEAVE—48 WEEKS PAY OVER 52 WEEKS

1) Upon application by an employee covered by this Agreement, the employee may be entitled to receive 48 weeks pay spread over the full 52 weeks of the year. The employee may be entitled to take 4 weeks extra leave in addition to their normal leave entitlements.

2) The additional 4 weeks per year will not be able to be accrued. In the event that the employee cannot take the leave, his/her salary will be adjusted at the completion of the 12 month period to take account of the time worked during the year that was not included in salary.

3) The additional 4 weeks per year will not attract leave loading.

4) The employer will ensure that superannuation arrangements and taxation effects are fully explained to the employee by the relevant Authority. Any necessary arrangements will be put into place by the employer.

21.—FLEXIBILITY IN PART-TIME WORK

1) Part time employees are employees who are engaged to work less than 38 hours per week.

2) A employee engaged on a part time basis will be paid a proportion of the appropriate full time salary (including increments where applicable dependent upon time worked). The pay will be calculated in accordance with the following formula—

$$\frac{\text{hours worked per week}}{\text{full time hours per week}} \times \text{full time weekly pay}$$

3) A part time employee will be entitled to the same leave and conditions as are prescribed for full time employees on a proportionate basis.

4) The days a part time employee works Monday to Friday may be varied by agreement between the employer and the employee. Where agreement cannot be reached the minimum notice period will be 4 weeks**.**

5) Any employee may make application to the employer to convert to part time work for defined periods of time after which the employee and the position may revert back to full time.

22.—CASUAL EMPLOYEES

Casual employees are engaged on an hourly basis. They are paid an hourly rate based on the appropriate classification, plus an additional 20% casual loading in lieu of annual leave, sick leave, long service leave and payment for public holidays.

23.—PARENTAL LEAVE

1) Definitions

'employee' includes full time, part time, permanent and fixed term contract employees.

'replacement employee' is an employee specifically engaged to replace an employee proceeding on parental leave.

2) 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) 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 parental leave taken by the pregnant employee.

c) Subject to subclause (b) of this clause where both partners are employed by the Fire and Emergency Services Authority the leave shall not be taken concurrently except under special circumstances and with the approval of the employer.

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. Where both partners are employed by the Fire and Emergency Services Authority, the three week 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.

3) Other Leave Entitlements

a) An employee proceeding on parental leave may elect to substitute any part of that leave with accrued annual leave or long service leave for the whole or part of the period of parental leave.

b) Upon return to work employees will be entitled to the same position or a position equivalent in pay, conditions and status and commensurate with the employee's skills and abilities as the one held immediately prior to commencement of leave.

c) An employee on parental leave is not entitled to paid sick leave.

d) Should the birth or adoption result in other than the arrival of a child, the person concerned 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 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 unpaid leave for a period as certified necessary by a registered medical practitioner.

4) 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 (a) by failing to give the required 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 elect to reduce or extend the period stated in the original application provided four weeks written notice is provided.

5) Transfer to a Safe Job

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 at the same classification level until the commencement of parental leave.

6) Replacement Employee

Prior to engaging a replacement employee the Fire and Emergency Services Authority 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.

7) 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 parental leave.

b) An employee on return to work from parental leave shall be entitled to the position which the employee occupied immediately prior to proceeding on parental leave. Where the employee was transferred to a safe job the employee is entitled to return to the position occupied immediately prior to transfer.

c) Where the position occupied by the employee no longer exists the employee shall be entitled to a position at the same classification level.

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 in accordance with the part time provisions of the Agreement.

e) An employee who has returned on a part time basis may revert to full time work at the same classification level within two years of the recommencement of work where there exists the capacity to do so.

8) Effect of Leave on the Employment Contract

a) An employee engaged 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) 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 agreement.

c) 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 or agreement.

d) An employer shall not terminate the employment of an employee on the grounds of the employee's application for parental leave or absence on leave but otherwise the rights of the employer in respect of termination of employment are not affected.

24.—BEREAVEMENT LEAVE

1) An employee is entitled to paid bereavement leave of up to 2 days on full pay on the death of a person who is the employee's spouse or defacto spouse, child or step child, parent or step parent, sibling, mother or father in law.

2) The days need not be consecutive and cannot be taken during a period of any other kind of leave.

25.—DAYS IN LIEU OF PUBLIC SERVICE HOLIDAYS.

The two days leave in lieu of former public holidays (Easter Tuesday and day after New Years day) will not apply to employees for the term of this agreement.

26.—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 and cultural activities.

3) Ceremonial/cultural leave may be taken as whole or part days off. Each day or part thereof, will be deducted from annual leave entitlements.

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

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

27.—FAMILY CARERS 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, will be entitled to use, in accordance with this clause, leave on full pay, up to a maximum of 5 days per annum, to provide care and support for such persons when they are ill.

2) Any entitlements to carers leave may be deducted from—

a) accrued sick leave entitlements;

b) annual leave entitlements; and

c) leave in lieu of overtime the employee has accrued.

3) Carers leave will be available on an hourly basis.

4) The entitlement to carers 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 will, 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 will not take carers leave under this clause where another person has taken leave to care for the same person.

7) The employee will, wherever possible, 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 possible for the employee to give prior notice of such absence, the employee will 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.

9) An employee may elect, with the consent of the employer, to work make up time, under which the employee takes time off ordinary hours, and works those hours at a later time, during the spread of ordinary hours provided in the award.

28.—ANNUAL LEAVE TRAVEL CONCESSIONS

1) Subject to the provisions of this clause, employees whose headquarters are located above 26 degrees south latitude are entitled to apply for an annual leave travel concession.

2) For the purposes of this clause, economy airfare is defined as a fully refundable, transferable and re-routable ticket

3) To be entitled to the concession employees must:

a) complete twelve months service in the area although the employer may approve the granting of a concession prior to the completion of the twelve months qualifying period; and

b) proceed on annual leave to a location other than where his/her headquarters is situated.

c) The cost of the concession is not to exceed a return economy air fare to Perth.

4) Annual leave travel concessions not used within twelve months of becoming due will lapse.

5) Provided the concession does not exceed the cost of a return economy airfare to Perth:

a) The employee may elect to use the concession to purchase return economy airfare to any destination of his or her choice. Should the cost of the chosen return economy airfare be less than the value of the return economy airfare to Perth the lesser amount shall be paid.

b) Accommodation costs of any travel package arrangement will not be paid as part of this concession.

6) Exceptions to the 12 month qualifying period are:

a) where an employee is required to proceed on annual leave to suit departmental convenience.

b) the employer may grant the concession where the employee returns to the area to complete the year's service at the expiration of the period of leave.

7) An employee who elects to take Annual Leave outside the District Allowance Area in which their headquarters is located is entitled to the following travelling time—

Approved Mode of Travel		Travelling Time
Air		Two days
Road or Air and Road:	North of 26^0	Four days
	North of 20^0	Five days

8) The mode of travel to be at the discretion of the Chief Executive Officer.

9) Part-time employees are entitled to annual leave travel concessions and travelling time on a pro-rata basis according to the number of hours work.

10) The employer may grant to employees, other than those stationed in remote areas, whose headquarters are situated two hundred and forty kilometres or more from the Perth General Post Office and who travel to Perth for their Annual Leave reasonable travelling time to enable them to complete the return journey.

29.—ANNUAL LEAVE LOADING.

Annual Leave Loading will be annualised and shall be paid weekly or fortnightly

Payout of Annual Leave Loading.

Where an employee has a credit of annual leave loading this will be paid out as soon as possible after the date of registration of this agreement.

30.—LONG SERVICE LEAVE.

Long service leave may be taken in periods not less than 7 calendar days in duration.

31.—STUDY LEAVE AND REIMBURSEMENT.

1) An employee may be granted time off with pay for study purposes and fees assistance subject to the discretion of the employer.

2) Approval of time off and fees assistance will be subject to—

a) the course being of benefit to the organisation;
b) the course being relevant to current needs;
c) the course being relevant to the employee's future career in the Fire and Emergency Services Authority of Western Australia;
d) the course being relevant to the position occupied by the employee;
e) the employee making satisfactory progress with his/her studies; and
f) the employee demonstrating personal commitment to learning and studying by undertaking an acceptable formal study load in his/her own time and/or financial contribution.

32.—SHORT LEAVE.

Due to the inherent benefits Flexible Working Arrangements provide employees covered by this agreement, Short Leave, as prescribed by Clause 26 of GOSAC, will not be available.

33.—SALARY PACKAGING

1) An employee may, by agreement with the employer, enter into a salary packaging arrangement.

2) Salary packaging is an arrangement whereby the entitlements under this Agreement, contributing toward the Total Employment Cost (as defined) of an employee, can be reduced by and substituted with another, or other benefits.

3) For the purpose of this clause, Total Employment Cost (TEC) is defined as the cost of salary and other benefits aggregated to a total figure or TEC, less the cost of Compulsory Employer Superannuation Guarantee contributions.

The TEC, for the purpose of salary packaging, is calculated by adding—

i) The base salary;
ii) Other cash allowances, eg annual leave loading;
iii) Non cash benefits, eg superannuation, motor vehicles, etc;
iv) Any Fringe Benefit Tax liabilities currently paid; and
v) Any variable components, eg performance based incentives (where they exist).

4) Where an employee enters into a salary packaging arrangement they will be required to enter into a separate written agreement with the employer that sets out the terms and conditions of the arrangement.

5) The salary packaging arrangement must be cost neutral in relation to the total cost to the employer.

6) The salary packaging arrangement must comply with relevant taxation laws and the employer will not be liable for additional tax, penalties or other costs payable or which may become payable by the employee.

7) In the event of any increase or additional payments of tax or penalties associated with the employment of the employee under the salary packaging agreement or the provision of employer benefits under the salary packaging agreement, such tax, penalties and any other costs shall be borne by the employee.

8) In the event of significant increases in Fringe Benefit Tax liability or administrative costs relating to arrangements under this clause, the employee may vary or cancel a salary packaging arrangement.

9) The cancellation of salary packaging will not cancel or otherwise affect the operations of this Agreement.

10) An employer shall not unreasonably withhold agreement to salary packaging on request from an employee.

11) The Dispute Settlement Procedures contained in this Agreement shall be used to resolve any dispute arising from the operations of this clause. Where such a dispute is not resolved, the matter may be referred by either party to the Western Australian Industrial Relations Commission.

34.—SIGNATURES OF PARTIES TO THE AGREEMENT

Signatories

Signed on behalf of the
FIRE AND EMERGENCY SERVICES AUTHORITY
R. Mitchell Date 29/01/99

Signed for and on behalf of the
THE CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA INCORPORATED
Dave Robinson
General Secretary Date 29/01/99

SCHEDULE A.

PART 1:

NORMAL SALARIES.

	GOSAC Award Rates	Annulised Annual Leave Loading	First Increase Payable from Date of Signing, (4.7+3.5) 8.2%	Second Increase Payable 12 Months after Signing: 3.5%
Level 1				
Under 17	11,703	156.82	12,832	13,281
17 years	13,710	183.71	15,033	15,559
18 years	15,990	214.27	17,533	18,147
19 years	18,609	249.36	20,405	21,119
20 years	20,785	278.52	22,791	23,588
1st year	22,834	305.98	25,037	25,914
2nd year	23,486	314.71	25,752	26,654
3rd year	24,137	323.44	26,466	27,393
4th year	24,784	332.11	27,176	28,127
5th year	25,435	340.83	27,889	28,866
6th year	26,086	349.55	28,603	29,604
7th year	26,835	359.59	29,425	30,454
8th year	27,353	366.53	29,993	31,042
9th year	28,119	376.79	30,832	31,912
Level 2				
1st year	29,036	389.08	31,838	32,952
2nd year	29,635	397.11	32,495	33,632
3rd year	30,374	407.01	33,305	34,471
4th year	31,155	417.48	34,161	35,357
5th year	31,972	428.42	35,057	36,284
Level 3				
1st year	33,095	443.47	36,289	37,559
2nd year	33,970	455.2	37,248	38,552
3rd year	34,872	467.28	38,237	39,575
4th year	35,800	479.72	39,255	40,629
Level 4				
1st year	37,068	496.71	40,645	42,068
2nd year	37,959	508.65	41,622	43,079
3rd year	38,983	522.37	42,745	44,241
Level 5				
1st year	40,955	548.8	44,907	46,479
2nd year	42,288	566.66	46,369	47,992
3rd year	43,673	585.22	47,887	49,563
4th year	45,110	604.47	49,463	51,194
Level 6				
1st year	47,421	635.44	51,997	53,817
2nd year	48,992	656.49	53,720	55,600
3rd year	50,618	678.28	55,503	57,445
4th year	52,354	701.54	57,406	59,415
Level 7				
1st year	55,016	737.21	60,325	62,436
2nd year	56,858	746.4	62,328	64,509
3rd year	58,862	746.4	64,496	66,754
Level 8				
1st year	62,119	746.4	68,020	70,401
2nd year	64,452	746.4	70,545	73,014
3rd year	67,345	746.4	73,675	76,254
Level 9				
1st year	70,958	746.4	77,584	80,300
2nd year	73,399	746.4	80,225	83,033
3rd year	76,183	746.4	83,238	86,151
Class 1	80,393	746.4	87,793	90,866
Class 2	84,603	746.4	92,348	95,580
Class 3	88,811	746.4	96,901	100,293
Class 4	93,021	746.4	101,456	105,007

PART 2—

SALARIES APPLYING TO ANNUALISED ARRANGEMENTS.

			Annualised Hours					Annualised Hours		
			First Increase: Payable from Date of Signing.				Second Increase: Payable 12 months after signing.			
	GOSAC Award Rates	Annulised Annual Leave Loading	Base Rate, (4.7+3.5) 8.2%	Plus 4%	Plus 8%	Plus 12%	Base Rate (8.2+3.5) 11.7.	Plus 4%	Plus 8%	Plus 12%
Level 1										
Under 17	11,703	156.82	13,283	13,814	14,346	14,877	13,748	14,298	14,848	15,398
17 years	13,710	183.71	15,561	16,183	16,806	17,428	16,106	16,750	17,394	18,038
18 years	15,990	214.27	18,149	18,875	19,601	20,327	18,784	19,535	20,287	21,038
19 years	18,609	249.36	21,121	21,966	22,811	23,656	21,861	22,735	23,609	24,484
20 years	20,785	278.52	23,591	24,535	25,478	26,422	24,417	25,394	26,370	27,347
1st year	22,834	305.98	25,917	26,953	27,990	29,027	26,824	27,897	28,970	30,043
2nd year	23,486	314.71	26,657	27,723	28,789	29,856	27,590	28,693	29,797	30,901
3rd year	24,137	323.44	27,396	28,492	29,587	30,683	28,355	29,489	30,623	31,757
4th year	24,784	332.11	28,130	29,255	30,380	31,506	29,115	30,279	31,444	32,608
5th year	25,435	340.83	28,869	30,024	31,178	32,333	29,879	31,075	32,270	33,465
6th year	26,086	349.55	29,608	30,792	31,976	33,161	30,644	31,870	33,096	34,321
7th year	26,835	359.59	30,458	31,676	32,895	34,113	31,524	32,785	34,046	35,307
8th year	27,353	366.53	31,046	32,288	33,530	34,771	32,132	33,418	34,703	35,988
9th year	28,119	376.79	31,915	33,192	34,469	35,745	33,032	34,354	35,675	36,996
Level 2										
1st year	29,036	389.08	32,956	34,274	35,593	36,911	34,110	35,474	36,838	38,203
2nd year	29,635	397.11	33,636	34,981	36,327	37,672	34,813	36,206	37,598	38,991
3rd year	30,374	407.01	34,475	35,854	37,233	38,612	35,681	37,109	38,536	39,963
4th year	31,155	417.48	35,361	36,776	38,190	39,605	36,599	38,063	39,527	40,991
5th year	31,972	428.42	36,288	37,740	39,192	40,643	37,559	39,061	40,563	42,066
Level 3										
1st year	33,095	443.47	37,563	39,066	40,568	42,071	38,878	40,433	41,988	43,543
2nd year	33,970	455.20	38,556	40,098	41,641	43,183	39,906	41,502	43,098	44,694
3rd year	34,872	467.28	39,580	41,163	42,746	44,330	40,965	42,604	44,243	45,881
4th year	35,800	479.72	40,633	42,259	43,884	45,509	42,055	43,738	45,420	47,102
Level 4										
1st year	37,068	496.71	42,072	43,755	45,438	47,121	43,545	45,287	47,029	48,770
2nd year	37,959	508.65	43,084	44,807	46,530	48,254	44,592	46,375	48,159	49,943
3rd year	38,983	522.37	44,246	46,016	47,786	49,556	45,795	47,626	49,458	51,290
Level 5										
1st year	40,955	548.80	46,484	48,344	50,203	52,062	48,111	50,036	51,960	53,885
2nd year	42,288	566.66	47,997	49,917	51,837	53,757	49,677	51,664	53,651	55,638
3rd year	43,673	585.22	49,569	51,552	53,535	55,518	51,304	53,356	55,408	57,461
4th year	45,110	604.47	51,200	53,248	55,296	57,344	52,992	55,112	57,232	59,351
Level 6										
1st year	47,421	635.44	53,823				55,707			
2nd year	48,992	656.49	55,606				57,553			
3rd year	50,618	678.28	57,452				59,463			
4th year	52,354	701.54	59,422				61,502			
Level 7										
1st year	55,016	737.21	62,444				64,629			
2nd year	56,858	746.40	64,517				66,775			
3rd year	58,862	746.40	66,761				69,098			
Level 8										
1st year	62,119	746.40	70,409				72,874			
2nd year	64,452	746.40	73,022				75,578			
3rd year	67,345	746.40	76,262				78,932			
Level 9										
1st year	70,958	746.40	80,309				83,120			
2nd year	73,399	746.40	83,043				85,949			
3rd year	76,183	746.40	86,161				89,177			
Class 1	80,393	746.40	90,876				94,057			
Class 2	84,603	746.40	95,591				98,937			
Class 3	88,811	746.40	100,304				103,815			
Class 4	93,021	746.40	105,019				108,695			

PART 3:

COMMUNICATION SYSTEMS OFFICERS.

	GOSAC Award Rates	Annulised Annual Leave Loading	First Increase: 4.7+3.5 8.2%	Payable from Date of Signing, Plus Loading.	Second Increase: , 3.5%	Payable 12 Months after signing Plus Loading.
Level 1						
3rd year	24,137	403.09	26,552	37,439	27,482	38,749
4th year	24,784	413.89	27,264	38,442	28,218	39,788
5th year	25,435	424.76	27,980	39,452	28,960	40,833
6th year	26,086	435.64	28,696	40,462	29,701	41,878
7th year	26,835	448.14	29,520	41,624	30,554	43,081
8th year	27,353	456.80	30,090	42,427	31,143	43,912
9th year	28,119	469.59	30,933	43,615	32,016	45,142

PART 4—

SALARIES APPLYING TO EMPLOYEES WORKING WITHIN EMU—FESA.

LEVEL 1	Current Salaries
Under 17	13,166
17 years	15,388
18 years	17,949
19 years	20,777
20 years	23,331
1st year	25,630
2nd year	26,419
3rd year	27,208
4th year	27,992
5th year	28,779
6th year	29,568
7th year	30,475
8th year	31,102
9th year	32,030
LEVEL 2	
1st year	33,140
2nd year	33,991
3rd year	34,887
4th year	35,832
5th year	36,821
LEVEL 3	
1st year	38,181
2nd year	39,241
3rd year	40,333
4th year	41,455
LEVEL 4	
1st year	42,993
2nd year	44,198
3rd year	45,438
LEVEL 5	
1st year	47,825
2nd year	49,440
3rd year	51,117
4th year	52,856

SCHEDULE B : ANNUALISED WORKING ARRANGEMENTS

The hours of service in this schedule will be worked by those employees in operational or other positions classified at level 5 or below and designated by the Chief Executive Officer following consultation with the employee.

Hours of Service

1) The ordinary hours of service will be annualised and worked on a flexible arrangement with employees working 2080 hours per annum, (average of 40 per week).

2) The annualised hours arrangements are designed to meet customer requirements and are subject to the following—

a) Employees will be required to manage their own time to meet customer needs in accordance with approved work programs.

b) Employees may be required to work up to a maximum of 300 hours per annum outside normal business hours (eg. nights, weekends) which will form part of the total 2080 hours per annum.

c) Employees may be required to work up to 6 weekend days and 14 nights each eight (8) week period.

3) Where applicable, 12 monthly programs will be submitted to the Regional Director/ Manager annually for approval to demonstrate how the position's program of activities will be managed and will be reviewed regularly to ensure the utilisation of time is consistent with the spirit and intent of this agreement.

4) Each position that is designated as requiring annualised hours will be set for a minimum of one year but may be reviewed and/or varied annually.

5) Long service and annual leave will be rostered during times when the out of hours activities are at a minimum.

Out of Hours Loading

6) The Chief Executive Officer will determine the number of hours employees, who occupy positions subject to this schedule, will perform out of hours.

7) Employees will receive a loading of four (4) percent on a sliding scale, on top of their ordinary rate of pay, for each one hundred (100) hours they are required to work out of hours.

ie. The total hours worked per year will be 2080 per annum.

Employees who work 100 hours out of normal office hours will work 1980 hours during normal office hours and receive a 4% loading on their base rate.

Employees working 200 hours out of normal office hours will work 1880 hours during normal office hours and receive an 8% loading on their base rate.

Employees working 300 hours out of normal office hours will work 1780 hours during normal office hours and receive an 12% loading on their base rate.

Customer Focus.

8) Offices or sections are required to be staffed between the hours of 8.00 am and 5.00 pm Monday to Friday. Staff will enter into arrangements at their respective offices or within their sections to ensure that this requirement is achieved as far as is practicable to meet customer needs and operational requirements.

9) The hours specified in paragraph (5) of this Schedule are minimum office hours. Nothing prevents staff in offices or sections from agreeing to expand the period of time the office or section may be staffed to meet customer needs and operational requirements.

Span of Hours

10) Ordinary hours may be worked on any or all days of the week.

Credit for Leave Purposes

11) Paid leave will be credited as 8 hours for each day of such leave.

Overtime

12) Employees will be paid overtime after having worked—

a) in the case of an operational incident, 8 consecutive hours exclusive of meal breaks;

b) hours in excess of those specified in agreed monthly programs including normal and programmed hours.

i) Availability of overtime is subject to the incumbent having worked all allocated hours as set out in agreed monthly programs.

ii) Where agreed monthly programs have not been met due to operational requirements sub paragraph b(i) of this Schedule will not otherwise limit the availability of overtime.

13) For the purposes of overtime, each day will stand alone.

14) Approval must be gained prior to working overtime.

Overtime Rates

15) Overtime will be paid at the following rates—

a) In relation to operational incidents, time and one half.

b) All other overtime will be paid at the rates specified in GOSAC.

16) Overtime payments will be calculated on the base rate.

Payment of Overtime

17) Overtime may be worked for time off in lieu of payment or a combination of time off and payment, if requested by the employee and approved by the employer. Time off in lieu will be calculated at the appropriate overtime rates, or a combination of time off in lieu and payment, calculated at the appropriate overtime rate.

Recall to Work

18) When the employee is recalled to work at a time that he/she would not ordinarily be on duty, regardless of whether prior notice is received of the recall, the employee will receive minimum payment for such overtime of 2 hours.

Hour Break

19) A break of not less than 10 hours will be taken between the completion of work on one day and the commencement of work on the next. This break may be varied to not less than 8 hours by agreement between the employer and employee.

After Hours Contact

20) Employees will be required to be on call when so rostered for the purpose of providing out of normal office hours operational response.

For the purpose of after hours contact—

"On Call" will mean a written instruction to the employee rostered to remain at the employee's residence or to otherwise be immediately contactable by telephone or paging system outside the employee's normal hours of duty in case of a call out requiring an immediate return to duty.

"Availability" shall mean a written instruction to an officer to remain contactable, but not necessarily in immediate proximity to a telephone or paging system, outside the officer's normal hours of duty and be available and in a fit state at all such times for recall to duty.

21) When the employee is rostered on call or available, he/she will remain in a fit state at all times to be able to return to duty.

22) An employee required to be on call or available, when off duty who is recalled to duty, will be renumerated for time worked, including time spent travelling to and from the place of duty, in accordance with the overtime provisions of this agreement.

SCHEDULE C

Conditions attached to schedule B Annualised Hours—

1) As per GOSAC unless indicated otherwise.

2) Each position attracts an annualised salary, the incumbent is responsible for ensuring the position's programmed activities are undertaken in the hours allocated.

3) Monthly programs will be submitted to the Regional Director/Manager annually to demonstrate how the position's program of activities will be managed, this will be reviewed regularly to ensure the utilisation of the time is consistent with the spirit and intent of this agreement.

4) A position's program of activities will incorporate all leave requirements of the occupant. The person acting in the position during the period of leave will be expected to carry out the duties scheduled over that period of leave. Staff may decline to act if they feel they are being disadvantaged by such acting.

5) It is expected that long service and annual leave will be taken during times when out of normal hours activities are at a minimum. Staff will not be required to make up for programmed out of hours activities falling within their leave period.

6) When the program of activities has been published for the year, any future commitment of the employee to be scheduled on a specific date during that period must be by mutual agreement, with the exclusion of emergency operations

7) In the event of acting or a temporary transfer, staff would receive the annualised salary for the position or portion thereof depending on any modified list of duties agreed prior to the acting/transfer commencing.

8) Operational overtime is to be worked in accordance with FESA policy, operation instructions and standing operating procedures.

SCHEDULE D

Additional Conditions Applicable To Communication System's Officers

Due to the nature of the work undertaken by the Communication Systems Officers the conditions within this schedule have been developed which recognise the needs of both the employees and the organisation.

The following conditions apply to the Communication Systems Officers. The conditions in the remainder of this agreement and the award apply to the extent that they are not inconsistent with the conditions contained within this schedule.

1) Shift Work

a) The hours of attendance at work to be observed by employees will be 42 hours on any 4 days a week, Monday to Sunday inclusive.

b) The shifts worked will be worked by 4 teams known as the "A", "B", "C" and "D" teams.

c) The ordinary daily hours of work will be 10 on day shift and 14 on night shift.

d) An employee may, for the efficient working of the service, be required to change from one team to another.

e) The Chief Executive Officer may vary the length and or number of shifts worked per week following consultation with the employees subject to operational requirements.

2) Commuted Allowance

a) Employees will receive a loading of 41% in addition to their substantive salary in lieu of payment for weekend penalties, certain overtime penalties subject to paragraph 3, shift loadings and public holiday penalties.

b) The loading mentioned in subparagraph 2 (a) of this schedule may be altered by the employer, following consultation with employees, should the shift arrangements be varied in accordance with subparagraph 1 (e) of this schedule.

3) Overtime

Overtime will be paid in accordance with GOSAC for any hours worked in excess of an average of 42 per week.

4) Leave

(a) Each employee will be entitled to—

i) 4 weeks annual leave per year;

ii) 1 week leave for working shift work;

iii) 1 week leave in lieu for public holidays rostered off.

5) Variation

Should the shift arrangements be varied in accordance with subparagraph 1 (e) of this schedule, the conditions of employment for Communications Systems Officers may be altered by the employer following consultation with affected employees.

6) Sick Leave

Communication Systems Officers will be entitled to the following sick leave credits—

	Sick Leave on full pay	Sick Leave on half pay
On the day of initial appointment	42 hours	21 hours
On the completion of 6 months service	42 hours	21 hours
On the completion of 12 months service	84 hours	21 hours
On the completion of each further period of 12 months continuous service	84 hours	21 hours

SCHEDULE E—

SALARY AND CONDITIONS OF EMPLOYMENT EMERGENCY MANAGEMENT UNIT

The following conditions of employment shall apply to those three (3) former employees of the Western Australian Police Service who were employed in the Emergency Management Unit (EMU). Should any of these employees accept a position other than in the Emergency Management Unit these employment conditions shall no longer apply. *The salaries applicable to those employees within EMU will be as shown in Schedule A: Part 4—Salaries.*

1) Hours

a) This clause shall be read in conjunction with Clause 16 Hours of GOSAC and clause 19 Hours of Service of this Agreement

b) Prescribed hours of duty to be observed by employees within EMU shall be eight (8) hours per day in lieu of seven (7) hours and thirty (30) minutes to be worked between 7.00am and 6.00pm, Monday to Friday, as determined by the employer with a lunch interval of a minimum of thirty (30) minutes to be taken after a maximum of five (5) hours of duty. Subject to the lunch interval prescribed hours are to be worked as one (1) continuous period.

c) Throughout this agreement to accommodate an increase in prescribed hours from seventy five (75) per fortnight to eighty (80) hours per fortnight, seven (7) hours and thirty (30) minutes becomes eight (8) hours and a four (4) week period shall be one hundred and sixty (160) hours in lieu of one hundred and fifty (150) hours.

2) Higher Duties Allowance

a) Employees within EMU will be eligible for a higher duties allowance only after working continuously in a higher classified position for a period of ten (10) working days or more, in lieu of the award provision of five (5) working days. The higher duties allowance will then be paid for the full period of higher duties undertaken by the employee.

b) All periods of acting of less than ten (10) days in a higher position may be claimed as experience by employees applying for higher positions.

SCHEDULE F:

Productivity Improvement Plan.

Initiative	Output	Outcome	Date to be Achieved
FESA Strategic Plan	A strategic plan is developed which establishes the corporate direction and goals for FESA.	Enables unity of purpose Facilitates the establishment of Directorate and Branch plans Sets corporate goals Emphasises the integrated organisation Establishes performance indicators for the organisation	12 Months after implementation of agreement.
Directorate Plans	A strategic plan is established for each Directorate which contains the strategic objectives to be achieved by each Directorate in accordance with the requirements of the FESA strategic plan.	Directorate objectives are established which are linked to the strategic plan. Facilitates the establishment of branch plans Establishes performance indicators for the Directorate	12 Months after implementation of the agreement
Branch Plans	Branch plans are established for each Branch in each Directorate which are linked to the Directorate and Strategic plans.	The Branch goals are established. Each person within each Branch is aware of the outcomes that need to be achieved. Facilitated planning of work programmes Facilitates integration of the three organisations into FESA Re-establishes performance indicators for the Branch Assists in the collection of base line performance data.	12 Months after implementation of the agreement.
Establishment of performance measures and the collation of baseline data	Performance measures are developed throughout the organisation. Baseline data is collected with reference to those performance measures	Performance of the organisation as a whole, of directorates and branches can be measured. Progress of the organisation towards its targets can be monitored. The base line position is established. Facilitate the development of subsequent agreements.	Date to be determined
Leave liability	FESA's leave liability will be reduced by at least 10%.	Reduction in the outstanding leave liability held by FESA employees. Increases the level of leave management within the organisation. Increased awareness of both staff and management of the importance of managing leave.	30 June 1999
Collocation	Collocated service delivery whenever opportunities arise	Integrated service delivery. Shared facilities resulting in a reduced cost to the organisation and subsequently to the community. Shared resources.	Ongoing

Initiative	Output	Outcome	Date to be Achieved
Integrated policies and procedures	Integrated policies and procedures developed across FESA as a whole.	FESA complies with statutory requirements (eg. financial reporting, public sector standards) Standards apply across FESA. Facilitates integration of FESA as a whole.	Ongoing
Training	FESA employees will participate in joint training programmes across all its divisions wherever possible.	Integrated training across FESA. Emphasises the whole of FESA approach to training. Reduction of training costs associated with shared resources and facilities.	Ongoing
Coordination of services	Coordinated approach to service delivery to the community, government and other portfolio agencies.	Satisfied Minister with the services provided by the emergency services portfolio. Satisfied community with the emergency services preparation, preparedness, response and recovery. Satisfied government agencies who interact with FESA on the service, coordination and response.	Ongoing
Duplication of resources	Elimination of duplication of resources	Reduction in costs associated with service delivery	Ongoing
Embracing of the concept of FESA	Positive approach undertaken by all staff in FESA to work towards a fully integrated organisation.	Facilitates the effective operation of FESA as a whole entity. Embraces the concept of FESA. Creates corporate identity. Facilitates the achievement of all corporate objectives.	Ongoing
Performance management	A standard performance management appraisal system focussed on achieving business outcomes and high quality service provision is introduced for all.	An effective and efficient performance management system. Focuses on the requirement to achieve business outcomes. Emphasises the need to deliver high quality services.	The performance management system will be trialed in Human Services within the period 12 months after implementation of the agreement
Risk Management	A comprehensive risk management plan will be developed for FESA.	Ensure corporate strategic objectives are achieved through effective and efficient processes and well balanced risks versus controls and costs associated with managing risks. Improve the risk profile of FESA. Enhance statutory compliance and reduce the costs and risks associated with non compliance. Enhance risk awareness and add value to management processes. Reduce risk likelihood and/or risk impact. Protect employees, property, information and clients. Increase quality of service. Respond to increasing levels of expectation and scrutiny from various other bodies.	The plans will contain recommendations with action plans that will be implemented by the end of 1999.

Initiative	Output	Outcome	Date to be Achieved
Diversity management	Best practice diversity management policies and procedures. Training packages relating to skills development for line managers, employees and volunteers.	A more diverse workforce actively serving a diverse community. Better service to the community of Western Australia. A workforce that is representative of the community. Improved understanding and tolerance of different cultural groups. Improved ability to work and liaise with different cultural groups.	Ongoing
Staff Performance	Best practice procedures to acknowledge the effort, innovation and achievement by the staff within FESA.	Promotion of the feeling of ownership by staff of the achievements of FESA. Encouragement for employees to strive to achieve. Encouragement for employees to deliver an improved level of service. Reinforcement of the importance of “Living the Values” within FESA particularly “Respecting and valuing each other”.	Ongoing.

HOME BASE CEILINGS WALL AND CEILING INDUSTRIAL AGREEMENT.
No. AG 230 of 1998.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders Labourers, Painters & Plasterers Union of Workers

and

Christine Anne French, Trevor Stephen French & Adam William French t/a Home Base Ceilings & Maintenance.

No. AG 230 of 1998.

COMMISSIONER S. J. KENNER.

24 February 1999.

Order.

HAVING heard Mr G Giffard as agent 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 application be and is hereby discontinued by leave.

(Sgd.) S.J. KENNER,
[L.S.] Commissioner.

INNES TRANSPORT PTY LTD AND THE TRANSPORT WORKERS UNION ENTERPRISE BARGAINING AGREEMENT 1998.
No. AG 24 of 1999.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Innes Transport Pty Ltd

and

Transport Workers' Union of Australia, Industrial Union of Workers, Western Australian Branch.

No. AG 24 of 1999.

Innes Transport Pty Ltd and The Transport Workers Union Enterprise Bargaining Agreement 1998.

3 March 1999.

Order.

HAVING heard Mr J. Uphill 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 Innes Transport Pty Ltd and The Transport Workers Union Enterprise Bargaining Agreement 1998 as filed in the Commission on the 15th day of February 1999 and as amended by agreement before the Commission on the 3rd day of March 1999 and as reflected in the Schedule attached to this Order is registered on and from the 3rd day of March 1999.

(Sgd.) A.R. BEECH,
[L.S.] Commissioner.

Schedule.

1.—TITLE

This Agreement shall be known as the Innes Transport Pty Ltd and The Transport Workers Union Enterprise Bargaining Agreement 1998.

2.—CONTENTS

This agreement is arranged as follows—

3.—SCOPE

This Agreement shall apply to and be binding upon Innes Transport Pty Ltd ("the Company"), the Transport Workers Union of Australia, Industrial Union of Workers, WA Branch ("the Union") and all persons employed by the Company who are members of, who are eligible to be members of the Union and whose employment is covered by the terms and conditions of the Transport Workers (General) Award No 10 of 1961 ("the Award").

4.—RELATIONSHIP TO PARENT AWARD

The terms and conditions of employment contained in this Agreement shall be read in conjunction with the Transport Workers (General) Award No 10 of 1961.

Where there is any inconsistency between this Agreement and the Award, then this Agreement shall take precedence.

There are approximately 18 employees covered by this Enterprise Bargaining Agreement.

5.—DATE AND PERIOD OF OPERATION

This Agreement will become operative from 11 December 1998 and shall remain in force for a period of two years.

6.—JOINT CONSULTATIVE COMMITTEE

The parties agree to establish a mechanism and procedures which enables them to communicate and consult about matters arising out of the Award and this Agreement which they agree would assist in achieving and maintaining co-operative workplace relations and mutually beneficial work practices.

7.—DISPUTE SETTLEMENT PROCEDURE

Any dispute, grievance or problem shall be dealt with in accordance with the Award provisions (ie. Clause 32—Dispute Settlement Procedures and the Appendix—Resolution of Disputes Requirements).

8.—WAGE RATES

Employees shall be paid on either of the following basis—

(a) **Full Time Employees**

(i) Full-time employees shall be paid for ordinary hours worked at the following rates—

Grade	Weekly Wage	Hourly Rate
4	$455.00	$11.97
5	$462.80	$12.18
6	$470.70	$12.39

(ii) The rates in subclause (i) above shall be increased by 5% on 11 December 1999.

(b) **Casual Employees**

(i) Casual employees shall be paid $15.50 (except a semitrailer driver who shall be paid $16.00) for all hours worked regardless of when those hours are worked or the number of hours worked each week.

(ii) The rate in subclause (i) above shall be increased by 5% on 11 December 1999.

(c) **Trip Money Employees**

(i) Merredin Contract

The employee shall undertake 4 trips (at $236.26 per trip) plus 9 hours additional work per week (ie. 7.6 ordinary hours and 1.4 hours at overtime rates).

(ii) Busselton Contract

The employees shall be paid $202 per trip.

(iii) The rates in subclause (i) and (iii) above shall be increased by 5% on 11 December 1999.

(iv) For leave and all other purposes the rate payable shall be that applicable for full time employees as shown in subclause (a) above.

9.—UNIFORMS

The employer shall pay for the laundering of coats supplied by the employer and required to be worn by the employee during working hours.

10.—NO FURTHER CLAIMS

There shall be no further claims for the life of the Agreement.

11.—INCOME PROTECTION

The Company agrees to enter into and fund an Income Protection Policy to cover all employees covered by this Agreement. The preferred policy is the Injury and Sickness Scheme arranged by the ACTU Insurance Broking Pty Ltd, although the company may select another policy, provided it provides employees with the same or superior benefits.

12.—DEFINITIONS

In this Agreement, unless the context otherwise requires—

"WAIRC" means the Western Australian Industrial Relations Commission

"Award" means the Transport Workers (General) Award No 10 of 1961 as varied from time to time

"Employer" means Innes Transport Pty Ltd

"Employee" means any employee whose work is covered by this Agreement

"TWU" means the Transport Workers' Union of Australia

"The Company" means Innes Transport Pty Ltd

13.—SIGNATORIES

Signed on behalf of
Innes Transport Pty Ltd
Roy Innes
Managing Director Date 15.1.99

Signed on behalf of
Transport Workers Union of Australia,
Industrial Union of Workers, Western
Australian Branch
James McGiveron
State Secretary Date 19.1.99

NURSES BOARD OF WESTERN AUSTRALIA ENTERPRISE AGREEMENT 1998.

No. PSAAG 8 of 1999.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Civil Service Association of Western Australia Incorporated

and

Nurses Board of Western Australia.

No. PSAAG 8 of 1999.

Nurses Board of Western Australia Enterprise Agreement 1998.

4 March 1999.

Order.

HAVING heard Mr E P Rea for the Applicant and Mr I R Ludlow 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 made between the parties as lodged in the Commission on the 16th day of February, 1999 entitled Nurses Board of Western Australia Enterprise Agreement 1998 in the terms of the following Schedule be registered as an industrial agreement in replacement of the Nurses Board of Western Australia Enterprise Agreement 1996 (PSAAG 151 of 1996) which is hereby cancelled.

(Sgd.) G.L. FIELDING,
[L.S.] Senior Commissioner.

Schedule.

1.—TITLE

This Agreement shall be known as the Nurses Board of Western Australia Enterprise Agreement 1998 and shall replace the Nurses Board of Western Australia Enterprise Agreement 1996.

2.—ARRANGEMENT

3.—SCOPE OF THE AGREEMENT

This Enterprise Agreement shall apply to the Nurses Board of Western Australia and to those employees of the Nurses Board of Western Australia who are members of or eligible to be members of the Union party to this Agreement.

The number of employees bound by this Agreement is seven (7).

4.—PARTIES TO THE AGREEMENT

This agreement is made between the Nurses Board of Western Australia and the Civil Service Association of Western Australia Incorporated.

5.—DEFINITIONS

"Agreement" The Nurses Board of Western Australia Enterprise Bargaining Agreement 1998

"Board" The Nurses Board of Western Australia

"Employee" For the purpose of this Agreement, someone who is referred to at Clause 3—Scope.

"Employer" The Nurses Board of Western Australia

"Government" The State Government of Western Australia

"Minister" The Minister or Ministers of the Crown responsible for the administration of the Nurses Board of Western Australia

"Union" The Civil Service Association of Western Australia Incorporated

"WAIRC" The Western Australian Industrial Relations Commission

6.—DATE AND PERIOD OF OPERATION OF THE AGREEMENT

(1) This Agreement shall operate from the date of registration for a period of twenty six months.

(2) The parties will assess achievements in performance, productivity and efficiency during the term of this Agreement.

(3) 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.

(4) 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, or until this Agreement is replaced by a new Agreement.

(5) The parties agree to commence negotiations at least six months prior to the expiration of the period of the Agreement to negotiate a replacement agreement.

7.—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 or provided for in a National or State Wage Case Decision.

(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 Government Officers Salaries Allowances and Conditions Award 1989 which applies to the parties bound to this Agreement. In the case of any inconsistencies, this Agreement shall have precedence to the extent of the inconsistencies. Where this agreement is silent the award shall apply.

9.—SINGLE BARGAINING UNIT

(1) This Agreement has been negotiated through a Single Bargaining Unit (SBU).

(2) The SBU comprises representatives from the Nurses Board of Western Australia and Civil Service Association of Western Australia (CSA).

10.—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 Board's mission and improve productivity and efficiency in the Board through ongoing improvements.

(3) To promote the development of trust and motivation and to continue to foster enhanced employee relations.

(4) To facilitate greater flexibility in decision making and allocation of human and other resources.

(5) To promote increased satisfaction from jobs and secure employment opportunities.

(6) To develop and pursue changes on a co-operative continuing basis by using participative management practices.

(7) To promote health, safety, welfare and equal opportunity for all employees.

11.—PRODUCTIVITY IMPROVEMENT

The parties are committed to the continued development and implementation of productivity improvement designed to increase the efficiency and effectiveness of the Board in line with the Board's Strategic Objectives.

Initiatives will be developed within the first 6 months of the Agreements setting agreed targets to be achieved within the first twelve months of the Agreement. The second pay rise under this Agreement (see clause 12) will be subject to the achievement of these targets.

12.—SALARY INCREASES

(1) The following salary increases are payable under this Agreement—

(a) an increase of 3.5% from the date of registration of this Agreement

(b) a further increase of 3.5% payable twelve months from the date of registration of this Agreement subject to the achievement of productivity initiatives to be developed in the first 6 months of the Agreement

(2) The rates of pay shall be as set out in Schedules A and B of this Agreement.

13.—LEVEL 1 CLASSIFICATION

(1) The parties agree that the adult level one increment range will be reduced from 9 to 7 increment levels, as provided for in Schedule A, from the date of in principle agreement between the parties.

(2) All employees currently employed at Level 1 will progress to the nearest salary point in the new range that is not less than the salary that applied immediately prior to the commencement of the agreement.

(3) Upon commencement of employment to a level 1 position, an employee may be appointed within the salary range subject to the relevant knowledge and experience of the employee.

14.—EMPLOYMENT CONDITIONS

(1) Annual Leave Loading

(a) A loading equivalent to 17.5% of normal salary on annual leave is payable to officers, including accumulated annual leave.

(b) Annual leave loading will be paid to the Employee in the first pay period in December for annual leave credited to the Employee in that year.

(c) Maximum payment shall not exceed that amount as advised from time-to-time by the Department of Productivity and Labour Relations via Circular to Departments and Authorities or any other form of notification.

(d) Where payment in lieu of accrued or pro rata annual leave is made on the death, dismissal, resignation or retirement of an officer, a loading calculated in accordance with the terms of this clause is to be paid. Provided that no loading shall be payable in respect of pro rata annual leave paid on resignation or where an officer is dismissed for misconduct.

(e) Part-time officers shall be paid a pro rata loading at the salary rate applicable.

(f) An officer who has been permitted to proceed on annual 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. Provided that no refund shall be necessary in the event of the death of an officer.

(2) Bereavement Leave

This subclause supersedes **Clause 27** of the Government Officers Salaries Allowances and Conditions Award 1989 Short Leave.

(a) On the death of—

(i) the spouse or de facto spouse of an employee;

(ii) the child or step-child of an employee;

(iii) the parent or step-parent of an employee;

(iv) the sister or brother of an employee; or

(v) any other person who immediately before that person's death, lived with the employee as a member of the employee's family the employee is entitled to paid bereavement leave of up to 2 days.

(b) Bereavement leave is not to be taken during a period of any other kind of leave.

(c) If so requested by the employer, an employee who claims to be entitled to paid leave under this Clause, is to provide to the employer, evidence that would satisfy a reasonable person as to—

(i) the death that is the subject to the leave sought; and

(ii) the relationship of the employee to the deceased person.

(3) Flexible Hours of Work

This subclause supersedes **Clause 16** Hours of the Government Officers, Salaries Allowances and Conditions Award 1989.

(a) Objective

It is agreed that the implementation of flexible working hours will take into consideration customer needs, business efficiency and where possible the preference of the employee subject to the provisions of this clause.

(b) Hours of Duty

(i) The Employee's starting and finishing times shall be as agreed between the employer and the employee, provided an average of 38 hours per week are completed.

(ii) The required hours shall be worked between 7.00 am and 8.30 pm Monday to Friday, and between 7.30 am and 2.00 pm on a Saturday where required.

(iii) Notwithstanding paragraph (ii), work completed beyond 6.00 pm on week days, on Saturdays and outside normal span of hours shall be by agreement between the employer and employee.

(iv) Except by mutual consent an employee will not be required to work in excess of 9 hours per day.

(v) The employee may apply for temporary variations to his/her hours of work, start and finish times and/or span of hours to cater for the employee's special situation. The Employer and the Employee agree to ensure the provision of services is not unduly compromised.

(c) Level 6s

(i) Employees Level 6 and above will be required to work reasonable hours on an outcome basis to ensure that the needs of clients are met as they arise and the objectives of the Board and the Government are satisfied.

(d) Cycle Period

For the purposes of recording and monitoring time worked, the Employee will work a total of 1,976 hours over a 52 week cycle period. Paid leave will be recognised for the 52 week cycle period.

The Employee will, in conjunction with the Employer, provide updates as to the amount of hours that they have worked every 13 weeks, so that both parties can monitor the progress towards the 1,976 hours.

(i) If at the end of the cycle period an employee has worked an amount of hours which is greater than 1,976, they shall have 3 months in which to clear the excess amount, in which time the right expires.

(ii) If at the end of the cycle period an employee has worked an amount of hours which is less than 1,976, they shall have 3 months to make up the deficit, in which time the employer may deduct from the employee the value of the hours in deficit.

(iii) The employer shall endeavour to accommodate the employee's circumstances as mentioned in either (a) or (b) of this subclause.

(iv) After the cycle period the parties shall meet to discuss the impact of the cycle period, and to, where appropriate, vary working arrangements for future cycle periods.

(v) If both the employer and the employee have done everything within their control to ensure the excess hours have been cleared and excess hours still remain, these may be paid out at normal time.

(e) Overtime

(i) Where a Level 1 to Level 5 employee is required to work in excess of 9 hours per day they will have the option of paid overtime in accordance with Clause 18 of the Government Officers Salaries, Allowances and Conditions Award 1989 (for excess time).

(ii) Alternatively, they may choose time off in lieu of overtime to form part of their excess hours in the cycle period.

(f) Meal Breaks

(i) An unpaid meal break of not less than 30 minutes will be taken by the employee during the Employee's normal hours of duty. Unless otherwise agreed to, the Employee will not work for longer than five (5) consecutive hours without taking a meal break.

(ii) The time and length beyond 30 minutes, of a meal break, may be altered by the Employer to meet operational requirements.

(iii) In emergency situations, the Employee may be required, by the employer, to work for more than five (5) hours without a break, in which case, the Employee will take a meal break as soon as is possible after the emergency situation.

(g) Office Slow Down

(i) The Nurses Board may be staffed by a limited number of employees over the week following Easter or other periods as nominated by the Chief Executive Officer. Such time has been nominated by the Board as an appropriate time for a large number of staff to take time off in lieu of excess hours worked at this stage of the yearly work cycle, as prescribed in subclause 13 3(2) – Flexible Hours of Work of this Agreement.

(ii) Unless otherwise provided, employees will be able to utilise office slowdown to clear excess hours of accrued time off in lieu accumulated during the cycle period.

(iii) Employees shall notify the employer of their wish to take time off in lieu during this period of time. The Chief Executive Officer shall, at least two weeks prior to the Office Slow Down, advise employees of the period of the office slow down, and the staffing arrangements required in that period to maintain a level of customer service.

(iv) Other periods of Office Slow Down may be nominated by the employer.

(v) Office Slow Downs are not the only times in which employees can take time off in lieu. An employee shall notify the employer of his/her intention to take time off in lieu, and such a request will be granted subject to operational requirements and existence of excess hours of time off in lieu accumulated during the cycle period.

(h) Recording Attendance

The employee, in conjunction with the Employer, is required to manage start and finish times and hours of duty each day, and to maintain adequate records.

(i) Administration

(i) Following consultation with employees, a system to administer flexible hours of work will be developed and implemented.

(4) Parental Leave

This subclause replaces **Clause 23** Maternity Leave of the Government Officers Salaries, Allowances and Conditions Award 1989.

(a) Definition

(i) "Employee" includes full time, part time, permanent and fixed term contract employees

(ii) "Replacement Employee" is an employee specifically engaged to replace an employee proceeding on parental leave

(b) Eligibility for Parental Leave

(i) 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.

(ii) 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.

(iii) Subject to sub-clause (ii) of this clause where both partners are employed by the Board, the leave shall not be taken concurrently except under special circumstances.

(iv) 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.

(v) 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. The employee may take any paid leave entitlement in lieu of this leave.

(c) Other Leave Entitlements

(i) An employee proceeding on parental leave may elect to utilise an 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.

(ii) An employee may extend the maximum period of parental leave with a period of leave without pay subject to the Chief Executive Officer's approval.

(iii) 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.

(iv) 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.

(v) 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.

(d) Notice and Variation

(i) The employee shall give not less than four weeks' notice in writing to the Board of the date the employee proposes to commence maternity leave stating the period of leave to be taken.

(ii) An employee seeking to adopt a child shall not be in breach of paragraph d(i) 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.

(iii) An employee proceedings on 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.

(e) Transfer to Safe Job

(i) 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.

(ii) 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.

(f) Replacement Employee

Prior to engaging a replacement employee the Board 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.

(g) Return to Work

(i) An employee shall confirm the intention to return to work by notice in writing to Nurses Board not less than four weeks prior to the expiration of the period of parental leave.

(ii) 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 paragraph (e) hereof the employee is entitled to return to the position occupied immediately prior to the transfer.

(iii) Where the position occupied by the employee no longer exists the employer shall be entitled to the position of the same classification level with duties similar to that of the abolished position.

(iv) 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.

(v) An employee who has returned on a part-time basis may revert to full time employment at the same classification level within two years of the recommencement of work.

(h) Effect of Leave on Employment Contract

(i) 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.

(ii) 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.

(iii) 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.

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.

(5) Family Carers Leave

The parties recognise that employees have family responsibilities and that employment conditions must be responsive to this.

(a) An employee may use a total of 38 hours of his/her personal accrued sick leave to supervise the convalescence of a family member, provided that if requested, satisfactory documentation of the family member's illness is sighted by the employer.

(b) These hours are not cumulative.

(c) In this clause "family member" means the employee's spouse, de facto spouse, child, step-child, parent, step-parent, sibling or another person who lives with the employee as a member of the employee's family.

(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 (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.

(e) 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) Public Holidays

The following days shall be allowed as holidays with pay—

(a) New Year's Day, Australia Day, Labour Day, Good Friday, Easter Monday, Anzac Day, Foundation Day, Sovereign's Birthday, Christmas Day, Boxing Day.

(b) Such Public Service Holidays as are prescribed by regulations.

When any of the days mentioned in paragraph (a) 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 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.

The Employer can agree to an alternative arrangement with the Employee for the taking of public holidays.

(7) Ceremonial/Cultural Leave

An employee covered by this agreement is entitled to time off without loss of pay for tribal/ceremonial/cultural purposes. Ceremonial/Cultural leave may be taken as whole or part days off. Each day or part thereof, shall be deducted from annual leave entitlements.

15.—DISPUTE SETTLEMENT PROCEDURE

The parties to the Agreement recognise the benefits to flow from the speedy and effective resolution of any issues that may arise under this Agreement. Issues should be resolved as informally and quickly as possible by the parties directly involved at the lowest level possible.

In the event of any questions, disputes or difficulties between the parties as to the interpretation and implementation of this Agreement the following procedures shall apply—

(1) The employee/s concerned and/or the CSA representative shall discuss the matters with the immediate supervisor in the first instance. An employee may be accompanied by a CSA Representative.

(2) 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 Chief Executive Officer or his/her nominee for resolution.

(3) If the matter is not resolved within 5 working days of the CSA Representative's notification of the dispute to the Nurses Board of Western Australia it may be referred by either party to the Western Australian Industrial Relations Commission.

16.—SIGNATURES OF PARTIES TO THE AGREEMENT

SIGNATORIES

Signed for and on behalf of the

CIVIL SERVICE ASSOCIATION WESTERN AUSTRALIA INCORPORATED by:

……..…*signed*……..

Dave Robinson—General Secretary

Date: 15/2/99

Signed for and on behalf of the

NURSES BOARD OF WESTERN AUSTRALIA by:

……..…*signed*……..

Rhea Hitchins – Chief Executive Officer

Date: 1/2/99

Schedule A

SALARY Schedule.

Annual salaries applicable to officers covered by this Agreement.

	Column 1 Previous salary	**Column 2** Total Salary per annum includes 3.5%	**Column 3** Total Salary per annum includes 3.5%
Level 1			
Under 17 years	11,761	12,173	12,599
17 years	13,745	14,226	14,724
18 years	16,033	16,594	17,175
19 years	18,559	19,209	19,881
20 years	20,841	21,570	22,325
21 years or 1st year of adult service	22,894	23,695	24,524
22 years or 2nd year of adult service		24,681	25,545
23 years or 3rd year of adult service		25,667	26,565
24 years or 4th year of adult service		26,653	27,586
25 years or 5th year of adult service		27,639	28,606
26 years or 6th year of adult service		28,625	29,627
27 years or 7th year of adult service	28,611	29,612	30,648
Level 2			
1st year	29,603	30,639	31,711
2nd year	30,364	31,427	32,527
3rd year	31,163	32,254	33,383
4th year	32,008	33,128	34,287
5th year	32,892	34,043	35,234
Level 3			
1st year	34,106	35,300	36,535
2nd year	35,053	36,280	37,550
3rd year	36,029	37,290	38,595
4th year	37,030	38,326	39,667
Level 4			
1st year	38,404	39,748	41,139
2nd year	39,480	40,862	42,292
3rd year	40,588	42,008	43,479
Level 5			
1st year	42,721	44,216	45,764
2nd year	44,163	45,709	47,308
3rd year	45,661	47,259	48,913
4th year	47,216	48,868	50,579
Level 6			
1st year	49,715	51,455	53,256
2nd year	51,415	53,214	55,077
3rd year	53,174	55,035	56,961
4th year	55,051	56,978	58,972
Level 7			
1st year	57,931	59,964	62,063
2nd year	59,923	62,020	64,191
3rd year	62,091	64,264	66,513

	Column 1 Previous salary	Column 2 Total Salary per annum includes 3.5%	Column 3 Total Salary per annum includes 3.5%
Level 8			
1st year	65,614	67,910	70,287
2nd year	68,138	70,523	72,991
3rd year	71,267	73,761	76,343
Level 9			
1st year	75,176	77,807	80,530
2nd year	77,816	80,540	83,358
3rd year	80,828	83,657	86,585
CLASS 1	85,382	88,370	91,463
CLASS 2	89,936	93,084	96,342
CLASS 3	94,457	97,763	101,185
CLASS 4	99,041	102,507	106,095

1. The rates of pay set out in column 2 apply from date of commencement.

2. The rates of pay set out in column 3 apply with effect from twelve months from the date of commencement of this agreement subject to the development and implementation of productivity initiatives in accordance with clauses 11 and 12.

Schedule B

SPECIFIED CALLINGS

Officers who possess a relevant tertiary level qualification, or equivalent determined by the employer, and who are employed in the callings of Agricultural Scientist, Architect, Architectural graduate, Dental Officer, Dietitian, Education Officer, Engineer, Geologist, Laboratory Technologist, Land Surveyor, Legal Officer, Librarian, Medical Officer, Pharmacist, Planning Officer, Podiatrist, Psychiatrist, Clinical Psychologist, Psychologist, Quantity surveyor, Medical Imaging Technologist, Nuclear Medicine Technologist, Radiation Therapist, Scientific Officer, Social Worker, Therapist (Occupational, Physio or Speech), Veterinary Scientist, or any other professional calling determined by the employer, shall be entitled to annual salaries as follows.

	Column 1 Previous salary	Column 2 Total Salary per annum includes 3.5%	Column 3 Total Salary per annum includes 3.5%
Level 2/4			
1st year	29,603	30,639	31,711
2nd year	31,163	32,254	33,383
3rd year	32,892	34,043	35,234
4th year	35,053	36,280	37,550
5th year	38,404	39,748	41,139
6th year	40,855	42,008	43,479
Level 5			
1st year	42,721	44,216	45,764
2nd year	44,163	45,709	47,308
3rd year	45,661	47,259	48,913
4th year	47,216	48,868	50,579
Level 6			
1st year	49,715	51,455	53,256
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4th year	55,051	56,978	58,972
Level 7			
1st year	57,931	59,964	62,063
2nd year	59,923	62,020	64,191
3rd year	62,091	64,264	66,513
Level 8			
1st year	65,614	67,910	70,287
2nd year	68,138	70,523	72,991
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1st year	75,176	77,807	80,530
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CLASS 1	85,382	88,370	91,463
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CLASS 3	94,457	97,763	101,185
CLASS 4	99,041	102,507	106,095

1. The rates of pay set out in column 2 apply from date of commencement.

2. The rates of pay set out in column 3 apply with effect from twelve months from the date of commencement of this agreement subject to the development and implementation of productivity initiatives in accordance with clauses 11 and 12.

PIONEER CONCRETE CEMENT TANKER DRIVERS AGREEMENT 1999.

No. AG 17 of 1999.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Pioneer Concrete (WA) Pty Ltd

and

Transport Workers' Union of Australia, Industrial Union of Workers, Western Australian Branch.

No. AG 17 of 1999.

Pioneer Concrete Cement Tanker Drivers Agreement 1999.

3 March 1999.

Order.

HAVING heard Mr J. Uphill 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 Pioneer Concrete Cement Tanker Drivers Agreement 1999 as filed in the Commission on the 4th day of February 1999 and as amended by agreement before the Commission on the 3rd day of March 1999 and as reflected in the Schedule attached to this Order is registered on and from the 3rd day of March 1999.

(Sgd.) A.R. BEECH,
[L.S.] Commissioner.

Schedule.

This Enterprise Agreement is made on the 4th day of February 1999 between—

PIONEER CONCRETE (WA) PTY LTD of 123 Burswood Road, Victoria Park, WA, (hereinafter referred to as "the Company") of the one part; and

THE TRANSPORT WORKERS UNION OF AUSTRALIA, INDUSTRIAL UNION OF WORKERS, WA BRANCH of 82 Beaufort Street, Perth, WA, (on behalf of the employees of the Company) of the other part.

THE PARTIES HERETO HEREBY AGREE as follows—

1.—TITLE

This Agreement shall be known as the Pioneer Concrete Cement Tanker Drivers Agreement 1999 and will replace the Pioneer Concrete Cement Tanker Drivers Agreement 1997.

2.—SCOPE AND STATUS

2.1 This Agreement applies to Cement Tanker Drivers, employees of Pioneer Concrete (WA) Pty Ltd employed pursuant

to the provisions of the Transport Workers (General) Award Number 10 of 1961 of which there are four (4) persons employed at 4th February 1999.

2.2 Where the provisions of this Agreement and the Award are inconsistent then the provisions of this Agreement shall prevail.

3.—FLEXIBLE START TIMES

The parties agree that the existing flexible work practice of which the Company has the benefit shall continue.

This practice is that employees will be required to start work at any time between the hours of 4.00 am and 7.00 am. This flexibility in starting times will apply to week days only and will be implemented on a daily basis having regard for the needs of delivery schedules and the time of the year.

Starting times earlier than 4.00 am will attract normal overtime payments.

4.—ROSTERED DAYS OFF

4.1 The existing short working day of 8.0 hours shall be continued with full flexibility in the taking of Rostered Days Off. That is Rostered days off will coincide where possible with maintenance down time.

4.2 All employees will only be allowed to accrue a maximum of three (3) rostered days off. Once this limit has been reached then the employer may direct the employee to take any excess days off by giving the employee notice prior to the close of the shift of the requirement to take a Rostered Day Off the following day.

4.3 Employees may from time to time take part Rostered Days Off when suitable to both parties.

5.—ROUTINE MAINTENANCE

The performance of routine non-expert truck maintenance which shall include but is not limited to cleaning the vehicle and checking the fluids and other matters contained in the drivers day sheet.

6.—PRODUCTIVITY LEVELS

The employees agree to commit to maintain to the best of their ability the existing levels of productivity.

These levels are to be continuously monitored and discussed at each Consultative Committee Meeting.

7.—HEALTH & SAFETY

The parties acknowledge and accept the intention of the Company to improve its health and safety performance. To assist with this improvement the employees agree to commit to continuously improve their own health and safety performance in the workplace.

All safety equipment to be supplied by the Company and worn by employees as necessary.

8.—TRAINING

The Company remains committed to the continual training of all personnel so that their skills base can be enhanced, and to provide an environment in which these new skills can be utilised and recognised to the satisfaction of individual employees.

9.—INDUCTION

All new employees to participate in the Company employee induction process.

10.—MINIMUM BREAK

When overtime is worked it shall, wherever practical, be arranged for employees to have at least eight (8) consecutive hours break between the work of successive days. When this is not possible then employees will be paid at the rate of double time until an eight (8) hour break can be taken. The above paragraph will be superseded with the requirements of the Department of Transport "Fatigue Management Code of Practice" when applicable.

11.—DISPUTE SETTLEMENT PROCEDURES

A procedure for the avoidance and settlement of industrial disputes shall apply to all operations covered by this Agreement.

Any question of dispute or difficulty shall be dealt with in accordance with the following procedure.

The objectives of the procedure is to prevent disputes and 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.

The following principles shall apply—

11.1 A procedure involving the following three sequential stages of discussion/negotiation shall apply. These are—

11.1.1 discussions between the employee/s concerned and at his/her request the union shop steward, delegates, and the immediate supervisors; and, in the event of the issue not being resolved

11.1.2 discussions involving the employee/s, the shop steward/s and more senior management; and, in the event of the issue not being resolved

11.1.3 involving representatives from the union and the nominated employer representatives.

There shall be an opportunity for any party to raise the issue to a higher stage and status quo remains until all avenues are exhausted.

11.2 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.

11.3 Throughout all stages of the procedure all relevant facts shall be clearly identified and recorded.

11.4 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.

11.5 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.

11.6 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 limitations on the performance of work while the procedures of negotiation and conciliation are being followed and status quo shall apply.

11.7 The Company 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 practice at the workplace.

12.—LUNCH BREAK

A flexible lunch break arrangement will apply, i.e. employees will take their half hour lunch break when appropriate so as not to cause interruptions to delivery schedules. Under this clause employees will go onto overtime rates after they have completed eight (8) hours.

However if because of the workload a driver is unable to take his lunch break, then at the end of the 8 hour shift a half hour will be paid at overtime rates if the time card is endorsed "No Lunch".

13.—IMMEDIATE START

Employees will ensure that all pre-start checking of their vehicle, as stated in the Pioneer Concrete "Guide for all Truck Operators" and noted on each drivers' Daily Work Sheet, is completed and that they are ready to commence their duties at their designated start time.

14.—SICK LEAVE BONUS

As an incentive to a reduction in sick leave, all employees who over the previous 12 months period from 1st January to 31 December each year have taken no more than 3 sick days will be awarded a bonus 3 days paid leave which will generally be taken over the Christmas/New year period. In the event that such leave cannot be taken over this period then a mutually acceptable alternative time will be arranged.

Upon compliance, this payment shall be paid to all permanent full time employees.

15.—NO FURTHER CLAIMS

There shall be no further claims during the life of this Agreement except for—

15.1 increases flowing from National Wage Case decisions which are expressed to apply to Enterprise Agreements.

15.2 site allowances, site conditions and productivity increases which are recoverable from the Principal and which are applicable across the transport industry.

16.—RATE OF PAY

The rate of pay listed at item 19 shall apply to all work performed which may from time to time require a second trailer to be towed.

17.—MULTI-SKILLING

All employees are expected to learn to use other Company trucks and equipment in order to improve the overall versatility in the use of Company assets.

Cement Tanker operators are to learn and comply with all the regulations regarding self loading practices at cement loading facilities from which they are operating.

18.—NOT TO BE USED AS PRECEDENT

It is a condition of this agreement that the parties will not seek to use the terms contained herein as an example or precedent for other Enterprise Agreements whether they involve Pioneer Concrete (WA) Pty Ltd or not.

19.—WAGE INCREASES

19.1 Wages shall increase by 4% effective from the 10th February 1999 to $560.37 per 38 hours.

19.2 Wages shall be increased by a further 4% effective from 10th February 2000 to $582.78 per 38 hours.

20.—TERM

This Agreement has a term of two (2) years and expires on 3 February 2001.

21.—SIGNATORIES

SIGNED for and on behalf of PIONEER CONCRETE (WA) PTY LTD

G. Leghissa

In the presence of

T. Prka

SIGNED for and on behalf of THE TRANSPORT WORKERS UNION OF AUSTRALIA, INDUSTRIAL UNION OF WORKERS, WA BRANCH

J. McGiveron

In the presence of

B. Owens

PIONEER CONCRETE (WA) PTY LTD RED HILL QUARRY AND MAINTENANCE WORKSHOP (ENTERPRISE BARGAINING) AGREEMENT 1998.

No. AG 6 of 1999.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Pioneer Concrete (WA) Pty Ltd

and

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch

Transport Workers' Union of Australia, Industrial Union of Workers, Western Australian Branch.

No. AG 6 of 1999.

Pioneer Concrete (WA) Pty Ltd Red Hill Quarry and Maintenance Workshop (Enterprise Bargaining) Agreement 1998.

10 February 1999.

Order.

HAVING heard Ms C. Brown on behalf of Pioneer Concrete (WA) Pty Ltd and Mr G. Ferguson on behalf of the Transport Workers' Union of Australia, Industrial Union of Workers, Western Australian Branch and Mr G. 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 Pioneer Concrete (WA) Pty Ltd Red Hill Quarry and Maintenance Workshop (Enterprise Bargaining) Agreement 1998 as stamped by the Registrar on the 10th day of February 1999 is registered on and from the 10th day of February 1999.

(Sgd.) A.R. BEECH,
[L.S.] Commissioner.

Schedule.

1.—TITLE

This Enterprise Agreement shall be referred to as the Pioneer Concrete (WA) Pty Ltd Red Hill Quarry and Maintenance Workshop (Enterprise Bargaining) Agreement 1998.

2.—ARRANGEMENT

3.—SCOPE AND PARTIES TO THIS AGREEMENT

This Agreement shall apply to and be binding on Pioneer Concrete (WA) Pty Ltd ("*the Company*") and all the employees engaged in or in connection with the Company's Red Hill Quarry operations and Maintenance Workshop personnel. Upon registration, the terms of the Agreement shall be binding upon an estimated seventeen (17) employees.

This Agreement shall also be binding upon the following organisations of employees—

1. Transport Workers' Union of Australia, Industrial Union of Workers, Western Australian Branch (TWU).
2. The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch (AMWU).

In so far as this Agreement binds the AMWU and Pioneer Concrete (WA) Pty Ltd it shall replace the Herne Hill Quarry (Enterprise Bargaining) Agreement 1996 but only in so far as that Agreement concerns the AMWU and Pioneer Concrete (WA) Pty Ltd.

4.—RELATIONSHIP TO PARENT AWARDS

This agreement shall be applied and interpreted wholly in connection with the following Awards;

(1) Quarry Workers Award No 13 of 1968

(2) Transport Workers (General) Award No. 10 of 1961

(3) Metal Trades (General) Award 1966 No. 13 of 1965

Where there is any inconsistency between this Agreement and the Awards, this Agreement shall prevail to the extent of any inconsistency.

5.—SINGLE BARGAINING UNIT

(1) In accordance with the State Wage Decision in January 1992 (72 WAIG 191) the employees and the Company have formed a Single Bargaining Unit in respect to the Red Hill Quarry and Maintenance Workshop operations.

(2) The Single Bargaining Unit will ensure that the framework of this Enterprise Agreement is adhered to by regularly conferring with management through the meeting of the Consultative Committee established pursuant to Clause 14 of this Agreement.

6.—AIMS AND OBJECTIVES OF THE AGREEMENT

(1) The purpose of entering into an Enterprise Bargaining Agreement is to increase the productivity, efficiency and flexibility of the Red Hill Quarry and the Maintenance Workshop to ensure Pioneer Concrete remains competitive within the quarrying industry.

(2) Pioneer Concrete remains committed to the continual training of all quarry and maintenance personnel so that their skills base can be enhanced, and to provide an environment in which these new skills can be utilised and recognised to the satisfaction of individual employees.

(3) Furthermore, the Company recognises the need to improve occupational health and safety for all employees and is therefore committed to the development and implementation of health and safety initiatives. This Agreement provides for the participation of all employees in these initiatives in order that the quarry and workshop become a safer working environment.

7.—WAGES

The wage rates to apply pursuant to this Agreement are as follows—

	Level	Current Base Rate	Rate @ 5.08.98	Rate 12 months after Rate @ 4.08.99
Quarry Workers	Commencement	n/a	493.77	513.52
	Level 1	527.53	548.63	570.58
	Level 2	533.87	557.00	581.04
	Leading Hand/ Driller	550.07	573.20	597.24

Note: Other than the meal, shift and agreed allowances specified in this Agreement, the above wage rates are inclusive of all other industry and work related allowances and special rates and provisions which would have otherwise been payable under the awards relevant to work under this Agreement. This clause is subject to the Leave Reserved identified in clause16 of this Agreement.

Maintenance Workers	Level 1	n/a	616.18	633.24
	Level 2			
	Mechanic	666.72	689.84	713.89
	Fitter/Turner	666.72	689.84	713.89

Note: Other than the meal and agreed allowances specified in this Agreement, the above wage rates include all work related allowances, industry allowances, leading hand allowance, shift allowance, tool allowance, electrical allowance and special rates and provisions which would have otherwise been payable under the awards relevant to work under this Agreement

Note: Casuals shall be paid 20% in addition to the ordinary rate

Agreed allowances

(a) Crane—for holders of recognised Certificate of Competence—$12.30/week

(b) First Aid—for holders of recognised Senior 1st Aid certificate—$6.35/week

A—Quarry Workers

(i) Commencement—Up to one (1) months permanent employment

(ii) Level 1—Greater than one (1) months employment and carry out work such as mobile plant operation, assist quarry workers at higher levels and train quarry workers up to Level 1.

(iii) Level 2—Level 1 plus recognition of skills attained. Shall include at least 2 of —

Weighbridge competency (Computer Dispatch operation)

Make up and reconcile banking returns

Face loader operation competency

Sales loader operation competency

Fixed Plant competency

(Including computer/PLC control operation)

Train workers up to Level 2

(iv) Leading Hand

—Level 2 plus leading hand responsibilities and/or

—Drill Operation competency

B—Maintenance Workers

(i) Level 1—Up to 1 (one) months permanent employment

(ii) Level 2- Mechanic / Fitter Turner—Level 1 and recognised Trade Certificate

8.—AGREED PRODUCTIVITY IMPROVEMENTS

(1) *Electronic Funds Transfer*

It is agreed that all wages for all employees will be paid weekly by the electronic funds transfer into the employee's nominated financial institution account.

(2) *Use of Staff Personnel*

(a) Staff personnel will be engaged to operate any plant or machinery for the purpose of optimising productivity and efficiency. This will only apply in situations of employee absenteeism, up to one (1) shift, or to relieve employees during rest periods and meal breaks.

(b) It is not the intention of the Company to reduce ordinary or overtime earnings for employees, however the parties acknowledge the importance of keeping plant and machinery working within the scope of operating hours.

(3) *Work Distribution and Contractors*

The Company will offer to employees the opportunity to perform work which is ordinarily and able to be performed by Pioneer employees, before offering such work to contractors. This commitment is subject to the nature of work being suitable and the hours of work being equally flexible as provided for in Addendum 1 of this Agreement.

The Company will consult with delegates on site prior to the use of any contractor so that employees are aware of what the contractor is doing and what the duration is.

(4) *Immediate Starts*

(a) Employees will ensure that they are on their machines or at their place of work by their designated start times.

(b) The Company may require up to two employees to start work half an hour earlier to ensure the preparations of machines and plant for a prompt start.

(5) *Staggered Rest Periods*

Meal breaks may be staggered to ensure the continued use of plant and machinery. No employee will be required to commence a meal break before 11.30am or after 1.30pm. (Refer Addendum 1—Maintenance Workers)

(6) *Rostered Days Off*

(a) At least two working days notice will be given prior to the taking of a rostered day off.

(b) All employees will only be allowed to accrue a maximum of five (5) rostered days off. Once this limit has been exceeded the employer may direct the employee to take any excess accrued in accordance with subparagraph (a).

(c) Employees shall by agreement with the employer have the option of working ordinary hours by either—

(i) 38 hours per week or;

(ii) working 39 hours per week and accruing 1 hour per week for rostered days off or;

(iii) working 40 hours per week and accruing 2 hours per week for rostered days off.

(7) *Annual Leave*

(a) All employees will reduce total accrued annual leave entitlements to ten days or less by each anniversary date of this Agreement.

(b) Notwithstanding this, on the occasion of a written leave application submitted prior to 1st November in any year the total accrual of ten days may be extended.

(8) *Absence Through Sickness*

(a) The Consultative Committee has agreed that Management/Employees work together to achieve a significant reduction in absenteeism through sickness.

(b) A target of 8 days (per single/double sickness days) has been agreed by the committee, whereby employees commit to achieving this target.

(c) Normal award provisions will apply in that any employee will be required to produce a doctors certificate after having had 2 days off in the 12 months period with no certificate. Genuine sickness (e.g. broken arm) would not be included in this annual target of 8 days.

(9) *Occupational Health and Safety*

(a) The parties to this Agreement recognise the need to continue the occupational health and safety of the workplace by targeting zero lost time injuries through the implementation of health and safety improvement programs.

(b) A consultative pro active approach to health and safety initiatives shall continue to the benefit of all whom work on the site and to assist in the development of work place best practices.

(10) *Flexible Starts*

(a) Parties to this Agreement recognise that starting times need to be arranged on a flexible basis to gain optimum productivity and satisfy our customer's requirements. The commitment to flexible starting times is intended to be used in periods of downturn in sales and/or production attributable to seasonal change (ie: winter months of June, July, August) or maintenance or any unforeseen circumstance.

(b) Employees shall be notified before finishing a shift on the previous day if their start time for the following day is to alter within the agreed spread of hours.

(c) The spread of hours shall be 5.30am to 6.30pm and work outside these hours incurs normal overtime penalties.

Given this, no worker shall be asked to start work after 7.30am Monday to Friday. (Refer Addendum 1—Maintenance Workers)

Note however, these spread of hours may be varied by mutual agreement on site between employees and the employer.

(d) If an employee is asked to start a shift before 5.30am then normal overtime penalties apply up until 5.30am. The work day shall not be completed prior to the normal knock off time as a result of this earlier start.

(e) If an employee is not notified prior to conclusion of a shift of a change to start time, then 6.00am shall be deemed to be the start time for the following day.

9.—RECOGNITION OF IMPROVEMENTS

(a) Quarry Workers

(1) For a minimum of 1% improvement on Budgeted variable costs a payment of 1.0% of normal time earnings for the assessed period.

(2) For a minimum of 20% improvement in NCR's (total of quality and environmental) over the previously assessed period, a payment of 1.0% of normal time earnings for the assessed period.

(b) Maintenance Workers

(1) For a minimum of 1% improvement on Budgeted variable costs a payment of 1.0% of normal time earnings for the assessed period.

(2) For a minimum 98% compliance to Workshop and Registers Audits, a payment of 1.0% of normal time earnings for the assessed period.

The preceding payments shall be paid to each permanent employee (not casual), on a pro rata basis of completed weeks of service within the assessed period, whom has qualified for the recognition payment by achieving at least our (4) full weeks of continuous service within the 26 week period of measurement.

Payment shall be in the first full pay period immediately after the completion of financial accounts for the assessed period (6 monthly).

10.—MEAL ALLOWANCE

(1) All permanent employees will receive a weekly meal allowance of $42.00 in lieu of all other meal allowances, providing a full week has been worked.

A full week is deemed to include time off on Rostered Days Off, paid Public Holidays and certified sick leave. Upon compliance, this payment shall be paid in the following manner—

(a) $20.00 shall be added to the Base Rate for all permanent full time employees and

(b) $22.00 shall be a lump sum payment.

(2) This payment will not be made during periods of annual leave or workers compensation

11.—COMMITMENTS

The Company recognises that employee contribution is essential to improve performance and therefore accepts those commitments by employees to work towards agreed targets as sincere and in the overall interest of increasing productivity and efficiency for the collective benefit of the Company and its workforce.

Furthermore, the Company maintains a commitment to multiskilling and training so that employees can improve their skills base, develop a career within the mining industry and have greater job satisfaction.

All employees agree to carry out any tasks which may or may not involve use of tools, plant and equipment, within their skills, competency or training as directed by the Company.

12.—TERM OF AGREEMENT

This Agreement shall remain in force until 1 October 2000.

At least three (3) months prior to 31st July 2000, the parties to this Agreement shall meet to negotiate a new agreement.

13.—DISPUTE RESOLUTION PROCEDURE

The following procedure is to be followed by the parties at Red Hill Quarry and Maintenance Workshop in connection with questions, disputes or difficulties arising under this Agreement—

(a) The matter shall first be discussed by the employee or shop steward with his foreman or supervisor.

(b) If not settled, the matter shall be discussed between the accredited union representative and the other appropriate officer of the employer.

(c) If not settled, the entire dispute shall be documented, and then further discussions between the Union Secretary or other appropriate official of the Union, and the appropriate representative of the employer.

(d) The parties shall make all reasonable attempts to resolve the questions, disputes or difficulties before referring it to the Western Australian Industrial Relations Commission.

(e) Throughout the above procedures, work shall continue normally and the status quo remains, on the understanding that there is to be no other action, including strikes, work bans, nor variations to work practices.

(f) It is understood that reasonable time be given for each of stages (a) to (d) to be finalised.

14.—CONSULTATIVE COMMITTEE

A Consultative Committee shall be established for the purpose of reviewing the operation of this Agreement and to assist in the implementation of measures that are designed to improve the efficiency and productivity of the Enterprise.

The Consultative Committee shall consist of a representative from each work group covered by this Agreement and relevant management personnel.

15.—MEETING PROCEDURES

To ensure all employees are kept informed of progress and to maintain levels of productivity and service to our clients during negotiations of this Agreement, replacement Agreements and matters arising from this Agreement, the parties have agreed to adopt the following procedure for conducting "Report Back Meetings".

A report back meeting shall mean a meeting of all, or the majority of available employees covered by this Agreement including the duly elected union delegates which is authorised by the Quarry Manager for purpose of discussing progress of the Enterprise Agreement.

(a) Report back meetings will usually be scheduled after lunch;

(b) All report back meetings shall be authorised by the Quarry Manager and such authorisation shall not be unreasonably withheld;

(c) The duration of the meeting will be determined by the Quarry Manager before the meeting is convened. Any subsequent extension may be approved by the Quarry Manager before the authorised time of the initial meeting expires;

(d) An employee who fails to return to work within 15 minutes of any authorised report back meeting will not be paid beyond the authorised duration.

16.—NO FURTHER CLAIMS & LEAVE RESERVED

(1) Subject to subclause (2) hereof, it is a condition of this Agreement that the parties will not seek any further claims, with respect to wages and working conditions, unless they are consistent with the State Wage Case Principles.

(2) The parties remain in dispute over the entitlement to allowances for Quarry workers and have agreed to resolve this matter during the life of this Agreement by arbitration. Any decision arising from arbitration of the allowances which results in an amendment to this Agreement shall be incorporated into this Agreement with effect from the first pay period on or after 1 December 1998. Whilst this issue is being resolved and for the duration of this Agreement, normal work practices will continue.

17.—NOT TO BE USED AS A PRECEDENT

It is a condition of this Agreement that the parties will not seek to use the terms contained herein as an example or precedent for other Enterprise Agreements whether they involve Pioneer Concrete (WA) Pty Ltd or not.

18.—SIGNATORIES TO THE AGREEMENT

G. Leghissa

On behalf of Pioneer Concrete (WA) Pty Ltd

J. McGiveron

On behalf of the Transport Workers' Union, Industrial Union of Workers, Western Australian Branch

J. Sharp-Collett 10/02/99

On behalf of The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union.

ADDENDUM 1—Maintenance Workers (for Workshop Employees only)

1. *Hours of Work*

Maintenance personnel (Workshop employees only) recognise the need to repair and maintain plant and machinery after normal hours of production at Red Hill and as such shall extend normal hours of work in respect to Clause 8.,(10), (d) to 8.00pm Monday to Friday.

The parties recognise the need for a consultative approach to the arrangement of this spread of working hours to achieve the maximum productivity for Pioneer Quarries. Where agreement between the Company and the majority of affected employees is reached, the hours of work may be varied and recorded as an agreement in writing.

RCR TOMLINSON LTD (BUNBURY OPERATIONS) ENTERPRISE AGREEMENT 1999.
No. AG 20 of 1999.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

RCR Tomlinson Ltd

and

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers, Western Australian Branch.

AG 20 of 1999.

RCR Tomlinson Ltd (Bunbury Operations) Enterprise Agreement 1999.

COMMISSIONER S J KENNER.

22 February 1999.

Order.

HAVING heard Ms L Avon-Smith 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 RCR Tomlinson Ltd (Bunbury Operations) Enterprise Agreement 1999 as filed in the Commission on 10 February 1999 be and is hereby registered as an industrial agreement.

(Sgd.) S.J. KENNER,
[L.S.] Commissioner.

RCR TOMLINSON LTD (BUNBURY OPERATIONS) ENTERPRISE AGREEMENT 1999

CONTENTS

PART A—FORMALITIES AND DEFINITIONS

1.—TITLE

This Agreement shall be known as the RCR Tomlinson Ltd (Bunbury Operations) Enterprise Agreement 1999.

2.—OBJECTIVES OF AGREEMENT

The objectives of this Agreement are to assist RCR and its employees in their commitment to—

2.1 Introducing flexible work arrangements that are suited to both the needs of the business and the employee's personal needs;

2.2 Fostering a culture that encourages a spirit of cooperation and trust;

2.3 Developing a reputation for providing excellent customer service;

2.4 Fully utilising our plant to ensure maximum return on our investment in capital and therefore our continued viability;

2.5 Simplifying administration of rostering and payroll procedures to ensure greater efficiency and enable us to be more responsive to customer needs;

2.6 Reducing the amount of rejected work which will reduce costs and ensure prompt delivery to customers;

2.7 Participating in training and development to improve employees' skills and experience which will assist in the achievement of these objectives, reaching performance and productivity targets and enhancing employees work and responsibilities.

Achieving the above objectives will enable RCR to prosper and grow and therefore provide greater job security and rewards to its employees.

3.—STYLE OF AGREEMENT

3.1 How This Agreement Was Made

This Agreement was made through consultation with the Works and Safety Committee, RCR managers, and the Union. Before applying for this Agreement to be registered, the majority of employees in RCR Tomlinson's Bunbury Operation voted in favour of this Agreement and RCR managers agreed to apply for its registration.

3.2 Plain English

RCR believes that it is important for its employees to fully understand this Agreement. For that reason, where ever possible this Agreement has been written in plain English, the "employee" has been referred to as "you"/"your" etc and the employer is referred to as "RCR".

4.—PARTIES BOUND BY THIS AGREEMENT

This Agreement shall be binding upon—

4.1 RCR Tomlinson Ltd; and

4.2 The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers Western Australian Branch.

5.—APPLICATION OF THIS AGREEMENT

5.1 This Agreement shall apply to all employees at RCR who work in RCR Tomlinson's engineering operations in Bunbury.

5.2 The parties to this Agreement and the employees referred to in 5.1 above agree that they shall apply and abide by the terms of this Agreement.

5.3 The number of employees that this agreement shall apply to upon registration of this agreement is approximately 20.

6.—DATE AND PERIOD OF OPERATION

This Agreement shall take effect from the beginning of the first pay period commencing on or after the date of signing of this Agreement by the parties and shall remain in force for a period of two years.

7.—RELATIONSHIP TO AWARD

Except where this Agreement specifically overrides the Metal Trades (General) Award 1966 no 13 of 1965, it shall be read and applied in conjunction with the Award. Where there is any inconsistency with the Award, this Agreement shall prevail to the extent of the inconsistency.

8.—NO EXTRA CLAIMS

The parties to this Agreement and employees covered by this Agreement agree that there shall be no extra claims outside this Agreement before the expiry of this Agreement .

9.—COPY OF AGREEMENT

A Copy of this Agreement shall be made available to each employee before it is registered by the Commission. A copy of the final Agreement shall also be provided to each employee after it is registered. The registered Agreement shall also be available for inspection at the work place.

10.—FUTURE NEGOTIATIONS

RCR operations, employees and the Union agree to commence negotiations approximately 3 months before this Agreement ends, with a view to agreeing on a replacement Agreement.

11.—DEFINITIONS

11.1 "Agreement" shall mean the RCR Tomlinson Ltd (Bunbury Operations) Enterprise Agreement 1999.

11.2 "Award" shall mean the Metal Trades (General) Award 1966 no 13 of 1965.

11.3 "Commission" shall mean the Western Australian Industrial Relations Commission.

11.4 "Ordinary Hours" shall mean the hours of work specified in subclause 14. HOURS OF WORK of this Agreement.

11.5 "Ordinary rate of pay" shall mean the rate of pay provided in this Agreement for ordinary hours worked.

11.6 "RCR " shall mean RCR Tomlinson Ltd.

11.7 "Union" shall mean the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers Western Australian Branch.

11.8 "You" or "your" or the like, shall at all times refer to the employee.

PART B—FLEXIBLE WORK ARRANGEMENTS

12.—RELATIONSHIP OF PART B OF THIS AGREEMENT TO THE AWARD

The clauses in Part B of this Agreement shall completely replace the following clauses in the Award—

Clause 13.—HOURS;
Clause 14.—OVERTIME;
Clause 15.—SHIFT WORK; and
Clause 19.—SICK LEAVE.

13.—CLASSIFICATIONS AND DUTIES

13.1 This Agreement covers all of the classifications of work that are covered by the Award.

13.2 In addition to the specific duties under your classification, you shall be required to carry out any duties that are incidental or peripheral to your main tasks or functions and are within the limits of your skills, competence and training.

14.—HOURS OF WORK

14.1 Ordinary Hours of Work—General Flexibility Provisions

The ordinary hours of work shall be worked in accordance with the following—

14.1.1 Subject to the provisions of this clause, 8 hours per day to be worked from Monday to Friday inclusive (that is, a 40 hour week), with payment made as if 7 hours and 36 minutes (that is, a 38 hour week) were worked;

14.1.2 2 hours per week shall accrue towards one flexiday per 28 day cycle which shall be taken in accordance with Appendix "A" Flexidays;

14.1.3 Ordinary hours for all employees, except when working shift work, shall be worked between the spread of 6.00am to 6.00pm or some other spread of hours as agreed between RCR and the relevant employees;

14.1.4 Ordinary hours shall not exceed 8 hours on any day; unless otherwise agreed to accommodate special working hours;

14.1.5 Ordinary hours shall be consecutive except for a meal break;

14.1.6 Preparation for work (eg changing into work clothing) and washing up at the end of your shift shall be carried out in your own time;

14.1.7 Your rostered hours of work shall be arranged and changed from time to time by RCR in accordance with 14.3 Arrangement Of Ordinary Hours Of Work.

14.2 Ordinary Hours of Work During the Life of This Agreement

14.2.1 To help achieve the objectives of this Agreement, during the life of this Agreement different ways of working ordinary hours of work may be examined and introduced by RCR and the Works Committee.

14.2.2 Any new arrangement/s of ordinary hours that are introduced during the life of this Agreement—

(A) Must be developed with consideration given to the issues specified in subclause 14.3 below;

(B) Must still operate within the terms of subclause 14.1 above; and

Must be agreed between RCR and the majority of employees in the engineering operations.

14.2.3 Notwithstanding clause 14.2.2 RCR may implement a system of flexidays in relation to any group of employees covered by this Agreement by giving four weeks' notice. Implementation of flexidays shall be in accordance with the conditions set out in Appendix A to this Agreement.

14.3 Arrangement of Ordinary Hours of Work

When arranging your starting and finishing times, the number of hours, and the days on which you will be required to work, RCR shall discuss any changes with you and the Works Committee, where agreement shall be reached after taking the following issues into consideration—

14.3.1 forecasted and actual customer demand;

14.3.2 the most productive and efficient way to operate;

14.3.3 maximum utilisation of the plant at the workplace;

14.3.4 your personal and family needs;

14.3.5 applying the flexible work arrangements fairly to all employees in your section;

14.3.6 giving you reasonable notice of a change in your hours.

14.4 Meal and Rest Breaks

14.4.1 You shall not be required to work for more than 5 hours without an unpaid meal break of 25 minutes, except where an alternative arrangement is agreed between you and RCR. Where the majority of employees in the engineering operations agree, you may work 6 hours instead of 5 hours before a break.

14.4.2 Each morning you shall be entitled to a paid rest break of 15 minutes, including wash up time, to be taken at a time and in a manner determined by your Supervisor or Manager to ensure minimal disruption to the work in your area.

15.—SHIFT WORK

15.1 Introducing Shifts

15.1.1 Work in any section of the Bunbury engineering operations may be carried out on afternoon and/or night shifts.

15.1.2 Any change to shift work shall where practicable be introduced in accordance with 14.3 Arrangement Of Ordinary Hours Of Work.

15.1.3 Regardless of 15.1.2 above, where the work load has increased significantly or there is an urgent need to meet customer demand, you shall be required to be available to carry out shift work at short notice, in which case you will be paid in accordance with either 15.2 or 15.3 below.

15.1.4 Shift work may be worked between any spread of ordinary hours which may commence and finish outside the spread of hours in 14.1.3.

15.2 Payment For Shift Work

15.2.1 Shift work on Monday to Friday shall be paid at 15% more than your ordinary rate of pay.

15.2.2 Where a shift starts at or after 11.00 pm on any day, the whole of that shift shall be deemed to have been worked on the following day.

15.2.3 Where the first afternoon or night shift in any week starts on Monday night, the night shift starting on Friday and ending no later that 8.00 am on Saturday shall be deemed to be ordinary hours and shall be paid at the shift work rate.

15.2.4 By agreement between the Works and Safety Committee and RCR, the first afternoon or night shift in any week may start on Sunday to enable you to have Friday night off work. In such case, any time worked on Sunday shall be deemed to be ordinary hours and shall be paid at the shift work rate (ie. 15%).

15.3 Shifts Must Be Consecutive

15.3.1 Shifts shall be for five consecutive afternoons or five consecutive nights, Monday to Friday, unless the ordinary hours in your section are worked over less than five days in one week, in which case the number of consecutive shifts shall equal the number of ordinary days worked in your section.

15.3.2 Where you are required to work on less than the number of consecutive shifts in accordance with 15.3.1 above, hours worked

on such shifts shall be part of your ordinary hours of work but such hours shall be paid at overtime rates.

15.3.3 Shifts shall be deemed to be continuous where they are broken due to work not being carried out on a Saturday, Sunday, public holiday, day of paid leave, or a flexiday.

16.—OVERTIME

16.1 You may be required to work reasonable overtime and shall not unreasonably refuse.

16.2 Overtime shall mean all work performed outside your ordinary hours of work in accordance with Clause 14. HOURS OF WORK.

16.3 Overtime Payments

16.3.1 Overtime worked on Monday to Friday inclusive shall be paid as follows—

First 2 hours per day - time and one half based on your ordinary rate plus shift work penalty (if you are working shifts);

After 2 hours per day - double time based on your ordinary rate.

16.3.2 Work done up to 12.00 noon on Saturday shall be paid as follows—

First 2 hours per day - time and one half-based on ordinary rate plus shift work penalty;

After 2 hours per day - double time based on your ordinary rate.

16.3.3 Work done after 12.00 noon on Saturday or on Sunday shall be paid as follows—

All hours - double time based on your ordinary rate.

16.3.4 Work done on a public holiday—

All hours - double time and one half based on your ordinary rate.

16.3.5 In calculating overtime, each day shall stand alone but if you work overtime that continues beyond midnight on any day, the time worked after midnight shall be deemed to be part of the previous day's work for the purpose of overtime.

16.3.6 Overtime performed on shift work shall be based on the rate payable for shift work. However, no provision of this subclause (16.3) shall operate so as to require payment of more than double time rates, or double time and a half for a public holiday prescribed under this Agreement, for any work except and to the extent that the provisions of Clause 18.—Special Rates and Provisions of the Award apply to that work.

16.3.7 Any overtime hours outstanding at the time of termination of your contract of employment shall be paid out to you at the rates specified in this subclause (16.3).

16.3.8 Notwithstanding any other provision in clause 16, if at your request and with the agreement of your supervisor, you reduce your working hours on one day to attend to personal matters and then make up those hours on another day, you will not be entitled to overtime in respect of those hours if, had you worked those hours as originally intended, you would not have been paid overtime for those hours.

16.4 10 Consecutive Hours Off Duty

16.4.1 When you are required to work overtime, where ever it is reasonably practicable, RCR shall arrange for you to have at least 10 consecutive hours off duty between finishing work on one day and the start of work on the next day.

16.4.2 Where you work so much overtime that there would be less than 10 consecutive hours off duty, subject to any instruction by RCR for operational requirements, you shall not be required to start work until you have had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

16.4.3 If RCR instructs you to start work or continue work without having had 10 consecutive hours off duty, you shall be paid at double your ordinary rate of pay until you are released from duty and shall then be entitled to 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

16.4.4 Where you are called into work overtime on a Sunday or Public Holiday preceding an ordinary working day, you shall wherever reasonably practicable, be given 10 consecutive hours off duty before your usual starting time on the next day. If this is not reasonably practicable, then the provisions of 16.4.3 above shall apply. This paragraph (16.4.4) does not apply if you are a casual employee.

16.4.5 Overtime worked as a result of a recall shall not be regarded as overtime for the purpose of this subclause (16.4) when the actual time worked is less than 3 hours on such recall or on each of such recalls.

16.5 Recall To Work

When you are recalled to work after leaving the job you shall be paid for at least 3 hours at overtime rates and the time reasonably spent in getting to and from work shall be counted as time worked.

17.—PUBLIC HOLIDAYS

17.1 You are entitled to the following public holidays or the days observed in lieu, without loss of pay (subject to 16.3.4 of this Agreement)—

New Year's Day; Good Friday; Easter Monday; Christmas Day; Boxing Day; Australia Day; Anzac Day; Labour Day; Foundation Day; and Sovereign's Birthday.

Provided that another day may be taken as a holiday by Agreement between you and RCR in lieu of any of the above days. In such case the substituted day shall be a holiday without loss of pay and the day for which it is substituted shall not be a holiday.

17.2 When any of the days in 17.1 above falls on a Saturday or Sunday the holiday shall be observed on the next succeeding Monday and 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 loss of pay and the day for which it is substituted shall not be a holiday.

18.—ANNUAL LEAVE—FLEXIBILITY PROVISIONS

18.1 Taking Annual Leave

18.1.1 This subclause shall completely replace subclause (9) of Clause 23.—HOLIDAYS AND ANNUAL LEAVE in the Award.

18.1.2 You must give RCR as much notice as possible and at least one month's notice of your request to take annual leave, unless a lesser period of notice is agreed between you and RCR.

18.1.3 RCR shall endeavour to grant your requests for annual leave at the time of your choice, however, depending on the needs of the business, sometimes you may be required to take annual leave as specified by RCR in which case you shall receive at least 1 month's notice, unless a lesser period of notice is agreed between you and RCR.

18.1.4 In the interests of your rest and recreation, in most circumstances RCR will require you to take your accrued annual leave in periods of

one week or more. However, provided you have reached Agreement with RCR, you may take up to 5 single days of paid annual leave each year.

18.1.5 The purpose of annual leave is to take time off work at regular intervals for rest and recreation. However, some employees have not been taking annual leave regularly and have accrued large amounts of annual leave. To correct this situation, after the commencement of this Agreement—

(A) No employee shall be allowed to accrue more than 6 weeks annual leave. Once you have accrued 5 weeks, RCR shall advise you so that you can plan your next period of annual leave to ensure your accrual does not exceed 6 weeks. However, in exceptional circumstances, such as a long overseas holiday, you may request to accrue more than 6 weeks annual leave. If granted, RCR shall provide you with written approval.

(B) If you already have a large annual leave accrual upon commencement of this Agreement, you must make genuine attempts in consultation with RCR to reduce your accrual to 6 weeks or less.

18.2 Payment for Annual Leave

18.2.1 This subclause shall completely replace paragraphs (3)(b) and (c) of Clause 23.—HOLIDAYS AND ANNUAL LEAVE in the Award.

18.2.2 Before going on annual leave you shall be paid the wages you would have received for the ordinary hours you would have worked had you not gone on annual leave. This amount shall include any applicable leading hand allowance but shall not include any payment for overtime nor any other allowances.

18.2.3 You shall continue to receive any applicable shift penalty when you take a period of annual leave provided that—

(A) You have been working rostered night or afternoon shifts for at least 6 weeks immediately before taking that period of annual leave; and

(B) You have worked such shifts for 50% or more of the past 12 months.

18.3 Annual leave loading is not payable because it is already included in your base wage rate.

19.—SICK LEAVE INCLUDING CARER'S LEAVE

19.1 You are entitled to up to 10 days paid leave due to personal ill health or injury for each year of completed service of which 3 days can be taken as carer's leave. Unused sick leave will accumulate from year to year but will not be paid out upon termination of employment.

19.2 If you take sick leave, you must provide a medical certificate immediately upon your return to work if requested by RCR.

PART C—PRODUCTIVITY AND PAY

20.—MINIMUM RATES OF PAY

20.1 Minimum Adult Rates

The following rates of pay are the minimum adult rates of pay applicable under this Agreement. Adult apprentices will receive a minimum of the C13 rate of pay.

Classification	Minimum Agreement rate per week
C14	$373.40
C13	$390.10
C12	$412.60
C11	$433.50
C10	$475.20
C9	$496.10
C8	$516.90
C7	$537.80
C6	$579.50
C5	$600.40

20.2 Minimum Apprentice Rates

The following rates of pay are the minimum apprentice rates of pay applicable under this Agreement. Nothing in this Agreement shall cause your rate of pay to fall below the Award. Apprentices shall not be required by RCR to provide any tools and therefore shall not receive a tool allowance.

4 Year Term	3.5 Year Term	3 Year Term	Minimum Agreement Rate per Week
1st year	first 6 months		$199.58
2nd year	next year	1st year	$261.36
3rd year	next year	2nd year	$356.40
4th year	final year	3rd year	$418.18

20.3 Minimum Junior Rates

The following rates of pay are the minimum junior rates of pay applicable under this Agreement. Nothing in this Agreement shall cause your rate of pay to fall below the Award.

Age	Minimum agreement rate per week
Under 16 years of age	$136.53
16 years of age	$175.54
17 years of age	$214.56
18 years of age	$253.57
19 years of age	$306.23
20 years of age	$362.79

20.4 Above Award Rates

Where you receive a higher weekly rate of pay for ordinary hours of work, at the time this Agreement commenced, nothing in this Agreement shall cause your rate of pay to fall below that rate.

21.—PRODUCTIVITY AND PERFORMANCE PAYMENTS

21.1 Productivity and Performance Targets

Pay increases shall be available under this Agreement in recognition of reaching productivity and performance targets. Key performance indicators and targets shall be set for the engineering operations for the improvement of—

- Reduced rework;
- Reduced sick leave;
- Reduction in lost time due to workers' compensation claims;
- Reduced wastage;
- The participation by all engineering operations employees in achieving and maintaining QA certification to AS/NZS ISO 9002.

Within 1 month after the signing of this Agreement, these targets shall be set by RCR management but with direct consultation with the Works Committee. Once agreed and set, all employees under this Agreement shall be advised of the targets and given regular feedback on progress towards the targets. The parties will meet to review progress and identify measures to be required to meet the identified targets.

21.2 Productivity pay increases

21.2.1 The 2.25% increase at Increase number 1 in the table below is an amount determined in recognition of your commitment to the objectives of this Agreement.

21.2.2 Increases 2, 3 and 4 shall be paid as follows—

(A) The first part of each increase (column A) is guaranteed and has been determined in recognition of your continued commitment to the objectives of this Agreement.

(B) The second part of each increase (column B) is payable in addition to the first part of each increase, provided the engineering operations reaches the targets set in accordance with 20.1 above.

Increase	Date applicable	A Enterprise Agreement Increase	B Productivity Increase
1	First pay period commencing on or after— the date of signing of this Agreement.	2.25% on your wage rate	Not applicable
2	First pay period commencing on or after— 6 months after the signing of this agreement.	1% on your wage rate after increase 1	1% on your wage rate after increase 1
3	First pay period commencing on or after— 12 months after the signing of this agreement.	1% on your wage rate after increase 2	1% on your wage rate after increase 2
4	First pay period commencing on or after— 18 Months after the signing of this agreement	1% on your wage rate after increase 3	1% on your wage rate after increase 3

21.2.3 "Wage rate" referred to in the table above shall mean your—

(A) minimum applicable rate of pay in subclause 20.1, 20.2 or 20.3 above; plus

(B) any applicable Above Award rate in subclause 20.4 above; plus

(C) applicable productivity pay increases in subclause 21.2 above.

Allowances, penalties, overtime payments and any other similar payments are not included in your "wage rate" for the purpose of determining your increases under this Agreement.

22.—OTHER ALLOWANCES

22.1 Leading Hand

Depending on the number of employees a Leading Hand is responsible for, Leading Hands shall receive the following weekly amounts in addition to their wage rate.

Number of employees	Rate per week
3—10	$18.00
11—20	$27.60
21 and above	$35.70

22.2 First Aid

A first aid allowance of $6.85 per week is payable to employees who hold a current Senior First Aid Certificate and have been nominated as a first aid representative. This is a separate allowance which is not added to the employee's wage rate for all purposes of this Agreement or the Award.

22.3 Tool Allowance

A tool allowance of $10.00 per week shall be payable to all trades persons who are required to provide their own tools. The tool allowance is part of and included in the ordinary wage rate in subclause 20.1 above for all purposes of this agreement.

23.—PAYMENT OF WAGES

Wages shall be paid fortnightly in arrears by electronic funds transfer.

PART D—OTHER PROVISIONS

24.—CLOTHING AND BOOTS

24.1 RCR shall provide you with 2 sets of work clothing in the each year of employment, which shall be either overalls or shirts and pants at your option. Disposable overalls will be made available for use by employees on specific jobs only at the manager's discretion. RCR shall replace work clothing on a fair wear and tear basis up to a maximum of two sets per year. You shall be responsible for cleaning and maintaining your work clothing.

24.2 RCR shall provide you with 1 pair of work boots which shall be replaced on a fair wear and tear basis up to a maximum of two pairs per year.

24.3 Your issue of clothing and boots in 24.1 and 24.2 above shall be carried out in accordance with company policy and, once issued, clothes and boots must be worn at work. In order to obtain fair wear and tear replacement clothing or boots, you must return the old set to RCR whose decision on whether they should be replaced will be final.

25.—EMPLOYEE TRAINING

25.1 You will from time to time be required to attend training covering matters such as safety, quality, skills improvement and operations. RCR will pay for the full cost of these courses.

25.2 You agree that if the training is in relation to safety or quality and is being provided for a group of employee of 10 or more, the time required to attend such training will be borne 50:50 by you and RCR ie RCR will pay for 50% of the time spent in training at your ordinary time rate.

25.3 Training other than that covered by clause 25.2 will be in the Company's time.

26.—INCOME PROTECTION INSURANCE SCHEME

26.1 As part of this agreement, RCR will take out a Personal Income Protection cover at RCR's cost. The scheme will be based on an injury or sickness only covered with a waiting period of 14 days and a premium of 0.99%

26.2 Employees covered by this agreement may elect to take out an additional top up cover on this insurance cover and at their request RCR will make deductions from their net wages and pay these deductions over to the Income Protection Insurance Scheme on a monthly basis.

27.—SUPERANNUATION

27.1 Superannuation contributions on your behalf shall be paid into a superannuation fund or scheme, in accordance with the Superannuation Guarantee (Administration) Act 1992 (Cth) and section 49C of the Industrial Relations Act 1979 WA.

27.2 RCR shall notify you in writing that you may nominate in writing a complying superannuation fund or scheme. If you do not nominate a fund or scheme, or until you do nominate a fund or scheme, superannuation contributions shall be paid into a fund or scheme nominated by RCR.

27.3 The requirement to notify and nominate in writing in this subclause is subject to the requirements of regulations made under the Industrial Relations Legislation Amendment and Repeal Act 1995 (WA).

27.4 If you nominate a fund or scheme, RCR and you are bound by your choice of fund or scheme unless there is agreement between you and RCR to change the fund or scheme.

27.5 RCR shall not unreasonably refuse to agree to a change of fund or scheme.

28.—CONSULTATIVE ARRANGEMENTS

28.1 This Clause shall completely replace subclause (9) Structural Efficiency of Clause 31 of the Award.

28.2 The Works and Safety Committee shall continue to meet regularly and shall be responsible for discussing the following issues with the aim of identifying and implementing continuous improvements that benefit the company and employees:

28.2.1 matters affecting efficiency or productivity; or

28.2.2 changes to the organisation or performance of work; or

28.2.3 reviewing the operation of this Agreement; or

28.2.4 Issues related to the objectives of this Agreement.

28.3 The size, structure and operation of the Works and Safety Committee shall be appropriate to the number of employees and operational arrangements in the engineering operations, and the matters requiring discussion.

29.—PROBLEM SOLVING AND AVOIDING DISPUTES

29.1 This Clause shall completely replace clause 34.—Avoidance of Industrial Disputes in the Award.

29.2 The aim of the procedure in this clause is to resolve problems quickly and avoid disputes through consultation and co-operation.

29.3 Procedure to be Followed

In the event of a question, dispute or difficulty arising out of this Agreement that affects one or more employees, or from your work or contract of employment at RCR, the following procedures shall be used—

29.3.1 In the first instance the matter shall be discussed without delay between you and your Supervisor;

29.3.2 If not resolved, the matter shall be discussed between you, your nominated representative (if you wish to have a representative) and your Manager;

29.3.3 If not resolved, the matter shall be discussed between you, your nominated representative (if you wish to have a representative) and the General Manager;

29.3.4 If the matter is still not settled, it may be referred to a mediator to assist in resolving the matter. The mediator shall be chosen by Agreement between you and RCR. If the matter concerns all employees in the engineering operations, the mediator shall be chosen by Agreement between the Works and Safety Committee and RCR.

29.4 Team Approach and Representation

If there is a matter that your co-workers are also concerned about, nothing in this clause prevents you from—

29.4.1 Dealing with that matter at the same time as your co-workers in a team approach; and

29.4.2 Choosing someone to represent you who may be representing other employees as well, such as a union official or co-worker.

29.5 Code of Conduct While Solving Problems or Resolving Disputes

So that matters can be resolved quickly and peacefully, you, RCR and the Union (if they are involved in the matter) agree to—

29.5.1 Genuinely carry out all of the processes in this clause quickly, taking no longer than three days unless there are exceptional circumstances where it is not possible to resolve the matter in three days;

29.5.2 Only by-pass earlier stages where you and your Supervisor or Manager agree that it is appropriate to refer the matter straight to the General Manager;

29.5.3 Continue working without involvement in any form of action such as bans, limitations, stoppages or lockouts.

29.6 Nothing in this clause will override the rights of the parties regarding access to conciliation and arbitration in accordance with the Industrial Relations Act 1979. However, prior to exercising these rights the parties must make reasonable attempts to resolve the problem or dispute.

30.—LONG SERVICE LEAVE

30.1 This clause shall completely replace Clause 25—LONG SERVICE LEAVE in the award.

30.2 RCR Shall endeavour to grant your request for long service leave at the time of your choice, depending on the needs of the business, sometimes you may be required to take long service leave as specified by RCR.

30.3 An employee, other than a casual employee is entitled to long service leave as provided below—

30.3.1 In respect of ten years' service so completed—thirteen weeks leave.

30.3.2 In respect of each ten years' service completed after such ten years—thirteen weeks leave

30.3.3 On the termination of the employees employment—

(i) by his/her death: or

(ii in any circumstances otherwise than by his/her employer for serious misconduct.

In respect to the number of the years; service with the employer since he/she last became entitled to an amount of long service leave a proportionate amount on the basis of thirteen weeks for ten years service.

30.4 Where an employee has completed at least seven years service but less than ten years service since their commencement and their employment is terminated—

(i) by his/her death: or

(ii) in any circumstances otherwise than by his/her employer for serious misconduct.

30.5 An employee shall be entitled to be paid for each weeks' leave to which he/she has become entitled at the ordinary hourly rate of pay applicable to them at the date he/she commences such leave.

Where by agreement between the employer and the employee, the commencement of the leave to which the worker is entitled, or any portion thereof, is postponed to meet the convenience of the employee, the rate of pay will be the ordinary hourly rate of pay applicable to them at the date he/she commences such leave.

30.6 Such rate of pay shall be the ordinary hourly rate applicable to him/her for the standard weekly hours which are agreed and shall not include, special rates, disability allowance, travelling allowance or the like.

31.—DISCIPLINARY PROCEDURES

Stage 1 An employee may be verbally counselled by the employer's representative and has the right to have the Shop Steward present. The counselling will be noted on the employee's file and will be acknowledged by both the employee and the Shop Steward, if present.

Stage 2 If a further misdemeanour occurs then the verbal counselling will be supported by a written warning. Again with a note to the employee's file with acknowledgment from the employee and Shop Steward, if present.

Stage 3 The procedure for Stage 3 will be the same as Stage 2.

Stage 4 In the event that the employee fails to comply with the employer's directions outlined in previous counselling sessions and the written notification, then the employee may be dismissed. The employee has the right to be represented by the Union if they wish.

Verbal and written warnings will not be collectively valid after expiration of two years from date of issue.

Nothing in this clause will override the rights of the parties as they may be under applicable unfair dismissal legislation.

The provisions of this clause shall not apply in the case of serious misconduct or other serious breaches of behaviour. In such cases, dismissal may occur instantly or after fewer warnings, depending on the seriousness of the circumstance.

APPENDIX A—FLEXIDAYS

1. The ordinary hours of duty shall be 8 hours per day to be worked Monday to Friday inclusive (ie a 40 hour week) with payment made as if 7 hours and 36 minutes (ie 38 hours) are worked.

2. At the end of each 28 day cycle an employee will be entitled to one flexiday.

3. Flexidays must be taken at a time that is mutually convenient to both the employee and RCR and must be staggered to ensure minimal disruption to RCR Tomlinson's customers and operational requirements.

4. The employee must give reasonable notice of his or her request to take a flexiday and RCR must give the employee reasonable notice of when the employee is required to take a flexiday.

5. Unless there are exceptional circumstances flexidays must be taken as whole days.

6. An employee may accrue up to 5 flexidays which may be—

(a) taken as single days or consecutive days; OR

(b) taken at the beginning or end of a period of annual leave, provided such arrangement is mutually agreed between the employee and RCR; OR

(c) at the employee's request and with RCR Tomlinson's agreement, once the employee has accrued 5 flexidays, up to 5 flexidays may be paid out at the employee's ordinary daily rate of pay, in which case such days will be deducted from the employee's accrual.

7. Once an employee has accrued 5 flexidays, the employee will be required to take each subsequent flexiday before the next flexiday has accrued.

SIGNATURES OF THE PARTIES

This Agreement has been agreed to by the parties whose signatures appear below—

RCR 's signature—

Signed for and on behalf of RCR Tomlinson Ltd (ACN 008 898 486)—

C. Birmingham	CHARLES BIRMINGHAM	3-2-99
Signature	Full Name (Print)	Date

Union's signature—

Signed for and on behalf of the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers Western Australian Branch—

J. Sharp-Collett	JOHN SHARP-COLLETT	5.2.99
Secretary's Signature	Full Name (Print)	Date

The Common Seal of the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers Western Australian Branch—

Common Seal

RCR TOMLINSON LTD (PERTH FOUNDRY) ENTERPRISE AGREEMENT 1998.

AG 253 of 1998.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

RCR Tomlinson Ltd

and

Communications, Electrical, Electronic, Energy, Information,

Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch

AG 253 of 1998.

RCR Tomlinson Ltd (Perth Foundry).

Enterprise Agreement 1998.

COMMISSIONER S J KENNER.

10 February 1999.

Amending Order.

HAVING heard Ms L Avon-Smith on behalf of the applicant and Mr C Young 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 order AG 253 of 1998 dated 18 January 1999 be and is hereby cancelled.

(2) THAT the RCR Tomlinson Ltd (Perth Foundry) Enterprise Agreement 1998 as filed in the Commission on 19 November 1998 be and is hereby registered as an industrial agreement.

(3) THAT the RCR Engineering Ltd (Perth Foundry) Enterprise Agreement 1996 No. AG 209 of 1996 be and is hereby cancelled.

(Sgd.) S.J. KENNER,
[L.S.] Commissioner.

RCR TOMLINSON LTD
(PERTH FOUNDRY)
ENTERPRISE
AGREEMENT 1998

CONTENTS

PART A—FORMALITIES AND DEFINITIONS

1.—TITLE

1.1 This Agreement shall be known as the RCR Tomlinson Ltd (Perth Foundry) Enterprise Agreement 1998 (the "Agreement").

1.2 This agreement shall replace the RCR Engineering Pty Ltd Enterprise Bargaining
agreement No. AG 209/96

2.—OBJECTIVES OF AGREEMENT

The objectives of this Agreement are to assist RCR and its employees in their commitment to—

2.1 Introducing flexible work arrangements that are suited to both the needs of the business and the employee's personal needs;

2.2 Fostering a culture that encourages a spirit of cooperation and trust;

2.3 Developing a reputation for providing excellent customer service;

2.4 Fully utilising our plant to ensure maximum return on our investment in capital and therefore our continued viability;

2.5 Simplifying administration of rostering and payroll procedures to ensure greater efficiency and enable us to be more responsive to customer needs;

2.6 Reducing the amount of rejected work which will reduce costs and ensure prompt delivery to customers;

2.7 Participating in training and development to improve employees' skills and experience which will assist in the achievement of these objectives, reaching performance and productivity targets and enhancing employees work and responsibilities.

Achieving the above objectives will enable RCR to prosper and grow and therefore provide greater job security and rewards to its employees.

3.—STYLE OF AGREEMENT

3.1 How This Agreement Was Made

This Agreement was made through consultation with the Works and Safety Committee, RCR Managers and the Union. Before applying for this Agreement to be registered, the majority of employees in RCR Tomlinson's Perth Foundry operations voted in favour of this Agreement and RCR Managers agreed to apply for its registration.

3.2 Plain English

RCR believes that it is important for its employees to fully understand this Agreement. For that reason, where ever possible this Agreement has been written in plain English, the "employee" has been referred to as "you"/"your" etc and the employer is referred to as "RCR" and the CEPU is referred to as the "Union".

4.—PARTIES BOUND BY THIS AGREEMENT

This Agreement shall be binding upon—

4.1 RCR Tomlinson Ltd; and

4.2 The Communications, Electrical, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia Engineering and Electrical Division Western Australian Branch ("C.E.P.U.").

5.—APPLICATION OF THIS AGREEMENT

5.1 This Agreement shall apply to all employees at RCR who work in RCR Tomlinson's Foundry operations in Perth and who would, but for this Agreement be bound by the terms of the Award.

5.2 The parties to this Agreement and the employees referred to in 5.1 above agree that they shall apply and abide by the terms of this Agreement.

5.3 The number of employees that this agreement shall apply to upon registration of this agreement is approximately 35.

6.—DATE AND PERIOD OF OPERATION

This Agreement shall take effect from the beginning of the first pay period commencing on or after the date of signing of this Agreement by the parties and shall remain in force for a period of two years.

7.—RELATIONSHIP TO AWARD

Except where this Agreement specifically overrides the Metal Trades (General) Award 1965 no 13 of 1966, it shall be read and applied in conjunction with the Award, as it applied at the date of signing. Where there is any inconsistency with the Award, this Agreement shall prevail to the extent of the inconsistency.

8.—NO EXTRA CLAIMS

The parties to this Agreement and employees covered by this Agreement agree that there shall be no extra claims outside this Agreement before the expiry of this Agreement.

9.—COPY OF AGREEMENT

A Copy of this Agreement shall be made available to each employee before it is registered by the Commission. A copy of the final Agreement shall also be provided to each employee after it is registered. The registered Agreement shall also be available for inspection at the work place.

10.—FUTURE NEGOTIATIONS

RCR foundry employees and the Union agree to commence negotiations approximately 3 months before this Agreement ends, with a view to agreeing on a replacement Agreement.

11.—DEFINITIONS

11.1 **"Agreement"** shall mean the RCR Tomlinson Ltd—Perth Foundry Operations Enterprise Agreement 1998.

11.2 **"Award"** shall mean the Metal Trades (General) Award 1965 no 13 of 1966.

11.3 **"Commission"** shall mean the Western Australian Industrial Relations Commission.

11.4 **"Ordinary Hours"** shall mean the hours of work specified in Sub-clause **14. HOURS OF WORK** of this Agreement.

11.5 **"Ordinary rate of pay"** shall mean the rate of pay provided in this Agreement for ordinary hours worked.

11.6 **"RCR "** shall mean RCR Tomlinson Ltd.

11.7 **"Union"** and "**C.E.P.U.**" shall mean the Communications, Electrical, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division Western Australian Branch.

11.8 **"You"** or **"your"** or the like, shall at all times refer to the employee.

PART B—FLEXIBLE WORK ARRANGEMENTS

12.—RELATIONSHIP OF PART B OF THIS AGREEMENT TO THE AWARD

The clauses in Part B of this Agreement shall completely replace the following clauses in the Award—

* Clause 13.—HOURS;
* Clause 14.—OVERTIME; and
* Clause 15.—SHIFT WORK.

13.—CLASSIFICATIONS AND DUTIES

13.1 This Agreement covers all of the classifications of work that are covered by the Award.

13.2 In addition to the specific duties under your classification, you shall be required to carry out any duties that are incidental or peripheral to your main tasks or functions and are within the limits of your skills, competence and training.

14.—HOURS OF WORK

14.1 Ordinary Hours of Work—General Flexibility Provisions

The ordinary hours of work shall be worked in accordance with the following—

14.1.1 38 hours per week which may be worked as 38 hours per week or may be averaged over a cycle longer or shorter than one week;

14.1.2 Ordinary hours shall be worked on any days of the week from Monday to Friday inclusive, except when working shift work in which case, ordinary hours may be worked on a Saturday or Sunday for the purpose of starting or finishing shifts;

14.1.3 Ordinary hours for all employees, except when working shift work, shall be worked between the spread of 5.00am to 6.00pm or some other spread of hours as agreed between you and RCR;

14.1.4 Ordinary hours shall not exceed 10 hours on any day;

14.1.5 Ordinary hours shall be consecutive except for a meal break;

14.1.6 Preparation for work (eg. changing into work clothing) and washing up at the end of your shift shall be carried out in your own time;

14.1.7 Your rostered hours of work shall be arranged and changed from time to time by RCR in accordance with **14.4 Arrangement of Ordinary Hours of Work.**

14.2 Ordinary Hours of Work at the Commencement of This Agreement

14.2.1 To meet the operational needs of the RCR foundry at the commencement of this Agreement, ordinary hours shall be 8 hours per day on Monday to Thursday inclusive, and 6 hours on Friday. This arrangement of ordinary hours may be changed in accordance with **14.3 Ordinary Hours of Work During the Life of This Agreement.**

14.3 Ordinary Hours of Work During the Life of This Agreement

14.3.1 To help achieve the objectives of this Agreement, during the life of this Agreement different ways of working ordinary hours of work may be examined and introduced by RCR and the Works and Safety Committee. Such ways may include but are not limited to—

(a) 19 day month with a flexiday arrangement; or

(b) 9 day fortnight with a flexiday arrangement; or

(c) Some other arrangement developed during the life of this Agreement.

14.3.2 Any new arrangement/s of ordinary hours that are introduced during the life of this Agreement—

(a) Must be developed with consideration given to the issues specified in Sub-clause **14.4 Arrangement of Ordinary Hours of Work** below;

(b) Must still operate within the terms of Subclause 14.1 above; and

Must be agreed between RCR and the majority of employees in the foundry.

14.4 Arrangement of Ordinary Hours of Work

When arranging your starting and finishing times, the number of hours, and the days on which you will be required to work, RCR shall discuss any changes with you and the Works and Safety Committee, where agreement shall be reached after taking the following issues into consideration—

14.4.1 forecasted and actual customer demand;

14.4.2 the most productive and efficient way to operate;

14.4.3 maximum utilisation of the plant at the workplace;

14.4.4 your personal and family needs;

14.4.5 applying the flexible work arrangements fairly to all employees in your section;

14.4.6 giving you reasonable notice of a change in your hours.

14.5 Meal and Rest Breaks

14.5.1 You shall not be required to work for more than 6 hours without an unpaid meal break of 30 minutes, except where an alternative arrangement is agreed between you and RCR.

14.5.2 Each morning you shall be entitled to a paid rest break of 15 minutes, including wash up time, to be taken at a time and in a manner determined by your Supervisor or Manager to ensure minimal disruption to the work in your area.

14.5.3 To ensure the continuity of foundry operations (such as casting), you may be required to stagger or postpone your morning rest break or your meal break to allow tasks to be completed. Such postponement shall be without penalty to RCR.

15.—SHIFT WORK

15.1 Introducing Shifts

15.1.1 Work in any section of the foundry may be carried out on afternoon and/or night shifts.

15.1.2 Any change to shift work shall where practicable be introduced in accordance with **14.4 Arrangement Of Ordinary Hours Of Work**.

15.1.3 Regardless of 15.1.2 above, where the work load has increased significantly or there is an urgent need to meet customer demand, you shall be required to be available to carry out shift work at short notice, in which case you shall be paid in accordance with 15.2 below.

15.1.4 Shift work may be worked between any spread of ordinary hours, which may commence and finish outside the spread of hours in 14.1.3.

15.2 Payment For Shift Work

15.2.1 Shift work on Monday to Friday shall be paid at 15% more than your ordinary rate of pay.

15.2.2 Where a shift starts at or after 11.00 p.m. on any day, the whole of that shift shall be deemed to have been worked on the following day.

15.2.3 Where the first afternoon or night shift in any week starts on Monday night, the night shift starting on Friday and ending no later that 8.00 am on Saturday shall be deemed to be ordinary hours and shall be paid at the shift work rate.

15.2.4 By agreement between the Works and Safety Committee and RCR, the first afternoon or night shift in any week may start on Sunday to enable you to have Friday night off work. In such case, any time worked on Sunday shall be deemed to be ordinary hours and shall be paid at the shift work rate (ie. 15%).

15.3 Shifts Must Be Consecutive

15.3.1 Shifts shall be for five consecutive afternoons or five consecutive nights, unless the ordinary hours in the Foundry are worked over less than five days in one week, in which case the number of consecutive shifts shall equal the number of ordinary days worked in the Foundry.

15.3.2 Where you are required to work on less than the number of consecutive shifts in accordance with 15.3.1 above, hours worked on such shifts shall be part of your ordinary hours of work but such hours shall be paid at overtime rates.

15.3.3 Shifts shall be deemed to be consecutive where they are broken due to work not being carried out on a Saturday, Sunday, public holiday, day of paid leave, or a flexiday.

16.—OVERTIME

16.1 You may be required to work reasonable overtime and shall not unreasonably refuse.

16.2 Overtime shall mean all work performed outside your ordinary hours of work in accordance with Clause 14. **HOURS OF WORK**.

16.3 Overtime Payments

16.3.1 Overtime worked on Monday to Friday inclusive shall be paid as follows—

First 2 hours per day—time and one half based on your ordinary rate plus shift work penalty (if you are working shifts);

After 2 hours per day—double time based on your ordinary rate.

16.3.2 Work done up to 12.00 noon on Saturday shall be paid as follows—

First 2 hours per day—time and one half based on your ordinary rate;

After 2 hours per day—double time based on your ordinary rate.

16.3.3 Work done after 12.00 noon on Saturday or on Sunday shall be paid as follows—

All hours—double time based on your ordinary rate.

16.3.4 Work done on a public holiday—

All hours—double time and one half based on your ordinary rate.

16.3.5 In calculating overtime, each day shall stand alone but if you work overtime that continues beyond midnight on any day, the time worked after midnight shall be deemed to be part of the previous day's work for the purpose of this clause.

16.3.6 Overtime performed on shift work shall be based on the rate payable for shift work. However, no provision of this Sub-clause (16.3) shall operate so as to require payment of more than double time rates, or double time and a half for a public holiday prescribed under this Agreement, for any work except and to the extent that the provisions of Clause 18.—Special Rates and Provisions of the Award apply to that work.

16.3.7 Any overtime hours outstanding at the time of termination of your contract of employment shall be paid out to you at the rates specified in this Subclause (16.3).

16.3.8 Notwithstanding any other provision in Clause 16, if at your request and with the agreement of your supervisor, you reduce your working hours on one day to attend to personal matters and then make up those hours on another day, you will not be entitled to overtime in respect of those hours if, had you worked those hours as originally intended, you would not have been paid overtime for those hours.

16.4 10 Consecutive Hours Off Duty

16.4.1 When you are required to work overtime, where ever it is reasonably practicable, RCR shall arrange for

you to have at least 10 consecutive hours off duty between finishing work on one day and the start of work on the next day.

16.4.2 Where you work so much overtime that there would be less than 10 consecutive hours off duty, you shall not be required to start work until you have had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

16.4.3 If RCR instructs you to start work or continue work without having had 10 consecutive hours off duty, you shall be paid at double your ordinary rate of pay until you are released from duty and shall then be entitled to 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

16.4.4 Where you are called into work overtime on a Sunday or Public Holiday preceding an ordinary working day, you shall wherever reasonably practicable, be given 10 consecutive hours off duty before your usual starting time on the next day. If this is not reasonably practicable, then the provisions of 16.4.1 and 16.4.2 above shall apply. This paragraph (16.4.4) does **not** apply if you are a casual employee.

16.4.5 Overtime worked as a result of a recall shall not be regarded as overtime for the purpose of this Subclause (16.4) when the actual time worked is less than 3 hours on such recall or on each of such recalls.

16.5 Recall To Work

When you are recalled to work after leaving the job you shall be paid for at least 3 hours at overtime rates and the time reasonably spent in getting to and from work shall be counted as time worked.

16.6 On call

When you are instructed by RCR to remain available at your home in readiness for a call to work after ordinary hours, you shall be paid at ordinary rates for the time you are required to remain in readiness at your home.

17.—PUBLIC HOLIDAYS

17.1 You are entitled to the following public holidays or the days observed in lieu, without loss of pay (subject to 16.3.4 of this Agreement)—

New Year's Day; Good Friday; Easter Monday; Christmas Day; Boxing Day; Australia Day; Anzac Day; Labour Day; Foundation Day; and Sovereign's Birthday.

Provided that another day may be taken as a holiday by Agreement between you and RCR in lieu of any of the above days. In such case the substituted day shall be a holiday without loss of pay and the day for which it is substituted shall not be a holiday.

17.2 When any of the days in 17.1 above falls on a Saturday or Sunday the holiday shall be observed on the next succeeding Monday and 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 loss of pay and the day for which it is substituted shall not be a holiday.

18.—ANNUAL LEAVE—FLEXIBILITY PROVISIONS

18.1 Taking Annual Leave

18.1.1 This Sub-clause shall completely replace Sub-clause (9) of Clause 23.—HOLIDAYS AND ANNUAL LEAVE in the Award.

18.1.2 You must give RCR as much notice as possible and at least one month's notice of your request to take annual leave, unless a lesser period of notice is agreed between you and RCR.

18.1.3 RCR shall endeavour to grant your requests for annual leave at the time of your choice, however, depending on the needs of the business, sometimes you may be required to take annual leave as specified by RCR in which case you shall receive at least 1 month's notice, unless a lesser period of notice is agreed between you and RCR.

18.1.4 In the interests of your rest and recreation, in most circumstances RCR will require you to take your accrued annual leave in periods of one week or more. However, provided you have reached Agreement with RCR, you may take up to 5 single days of paid annual leave each year.

18.1.5 The purpose of annual leave is to take time off work at regular intervals for rest and recreation. However, some employees have not been taking annual leave regularly and have accrued large amounts of annual leave. To correct this situation, after the commencement of this Agreement—

(a) No employee shall be allowed to accrue more than 6 weeks annual leave. Once you have accrued 5 weeks, RCR shall advise you so that you can plan your next period of annual leave to ensure your accrual does not exceed 6 weeks. However, in exceptional circumstances, such as a long overseas holiday, you may request to accrue more than 6 weeks annual leave. If granted, RCR shall provide you with written approval.

(b) If you already have a large annual leave accrual upon commencement of this Agreement, you must make genuine attempts in consultation with RCR to reduce your accrual to 6 weeks or less.

18.2 Payment for Annual Leave

18.2.1 This Sub-clause shall completely replace Paragraph (3)(b) of Clause 23.—HOLIDAYS AND ANNUAL LEAVE in the Award.

18.2.2 Before going on annual leave you shall be paid the wages you would have received for the ordinary hours you would have worked had you not gone on annual leave. This amount shall include any applicable leading hand allowance but shall not include any payment for overtime nor any other allowances.

18.2.3 You shall continue to receive any applicable shift penalty when you take a period of annual leave provided that—

(a) You have been working rostered night or afternoon shifts for at least 6 weeks immediately before taking that period of annual leave; and

(b) You have worked such shifts for 50% or more of the past 12 months.

18.3 Annual Leave Loading

Annual leave loading is not payable because it is already included in your base wage rate.

19.—SICK LEAVE INCLUDING CARER'S LEAVE

19.1 You are entitled to up to 10 days paid leave due to personal ill health or injury for each year of completed service. Unused sick leave will accumulate from year to year but will not be paid out upon termination of employment.

19.2 Upon request in writing by RCR, following 2 absences of 2 days or less without a doctor's certificate, you must provide a medical certificate immediately upon your return to work if you take sick leave.

19.3 If you have responsibilities in relation to either members of your immediate family or members of your household who need your care and support shall on your request be entitled to use, in accordance with this Sub-clause, any sick leave entitlements up to 3 days per year for absences to provide care and support for such persons.

19.3.1 You shall establish by production of a medical certificate or Statutory declaration, the need for care of the person/s concerned.

19.3.2 The entitlement to use sick leave in accordance with this Sub-clause is subject to—

Being responsible for the care of the person/s concerned; and the person/s concerned being either;

A member of the your immediate family, or

A member of your household.

19.3.3 The term "immediate family" includes—

Your spouse, a de facto spouse.

Your child (including an adopted child, step child or ex nuptial child), parent or sibling.

19.3.4 You shall, wherever practicable, give the Company notice prior to the absence of the intention to take leave, the name of the person/s requiring care and their relationship to you and the estimated length of the absence. If it is not practicable for you to give prior notice of the absence at the first opportunity you must do so (preferably before 8.00 a.m.) on the day of the absence.

PART C—PRODUCTIVITY AND PAY

20.—MINIMUM RATES OF PAY

20.1 Minimum Adult Rates

The following rates of pay are the minimum adult rates of pay applicable under this Agreement. The rate at C10 below includes tool allowance as all C10 trades persons in the RCR Foundry are required to provide their own tools. Adult apprentices will receive a minimum of the C13 rate of pay.

Classification	Minimum Agreement rate per week
C14	422.18
C13	441.56
C12	467.40
C11	493.62
C10	580.64
C9	605.72
C8	630.42
C7	651.70
C6	699.58
C5	722.00

20.2 Minimum Apprentice Rates

The following rates of pay are the minimum apprentice rates of pay applicable under this Agreement. Nothing in this Agreement shall cause your rate of pay to fall below the Award. Apprentices shall not be required by RCR to provide any tools and therefore shall not receive a tool allowance.

4 Year Term	3 1/2 Year Term	3 Year Term	Minimum Agreement Rate per Week
1st year	first 6 months		212.42
2nd year	next year	1st year	277.78
3rd year	next year	2nd year	378.86
4th year	final year	3rd year	444.22

20.3 Minimum Junior Rates

The following rates of pay are the minimum junior rates of pay applicable under this Agreement. Nothing in this Agreement shall cause your rate of pay to fall below the Award.

Age	Minimum agreement rate per week
Under 16 years of age	148.58
16 years of age	188.86
17 years of age	230.66
18 years of age	272.84
19 years of age	329.46
20 years of age	389.50

20.4 Above Award Rates

Where you receive a higher weekly rate of pay for ordinary hours of work, at the time this Agreement commenced, nothing in this Agreement shall cause your rate of pay to fall below that rate.

21.—PRODUCTIVITY AND PERFORMANCE PAYMENTS

21.1 Productivity and Performance Targets

Pay increases shall be available under this Agreement in recognition of reaching productivity and performance targets. Key performance indicators and targets set for the Foundry for the improvement of—

- Production efficiency estimated hours compared to actual hours worked (monthly).
- Rejected rate (monthly).
- Absenteeism (monthly).
- Reduction of lost time due to workers' compensation claims (monthly).
- The participation by all Foundry employees in maintaining QA certification of AS/NZS ISO 9002.

Within 1 month after the signing of this Agreement, these targets shall be set by RCR management but with direct consultation with the Works and Safety Committee. Once agreed and set, all employees under this Agreement shall be advised of the targets and given regular feedback on progress towards the targets. The parties will meet to review progress and identify measures to be required to meet the identified targets.

21.2 Productivity Pay Increases

21.2.1 The 3% increase at Increase number 1 in the table below is an amount determined in recognition of your commitment to the objectives of this Agreement.

21.2.2 Increases 2, 3 and 4 shall be paid as follows—

(a) The first part of each increase (column A) is guaranteed and has been determined in recognition of your continued commitment to the objectives of this Agreement.

(b) The second part of each increase (column B) is payable in addition to the first part of each increase, provided the foundry reaches the targets set in accordance with 21.1 above.

Increase	Date applicable	A Enterprise Agreement Increase	B Productivity Increase
1	First pay period commencing on or after 1st October 1998.	3% on your wage rate	Not applicable
2	First pay period commencing on or after— **6 months** after the signing of this agreement.	1% on your wage rate after increase 1	1% on your wage rate after increase 1
3	First pay period commencing on or after— **12 months** after the signing of this agreement.	1% on your wage rate after increase 2	1% on your wage rate after increase 2
4	First pay period commencing on or after— **18 Months** after the signing of this agreement.	1% on your wage rate after increase 3	1% on your wage rate after increase 3

21.2.3 "Wage rate" referred to in the table above shall mean your—

(a) Minimum applicable rate of pay in Sub-clause 20.1, 20.2 or 20.3 above; plus

(b) Any applicable Above Award rate in Subclause 20.4 above; plus

(c) Applicable productivity pay increases in Subclause 21.2 above.

Allowances (except tool allowance), penalties, overtime payments and any other similar payments are not included in your "wage rate" for the purpose of determining your increases under this Agreement.

22.—OTHER ALLOWANCES

22.1 Leading Hand

Depending on the number of employees a Leading Hand is responsible for, Leading Hands shall receive the following weekly amounts in addition to their wage rate.

Number of employees	Rate per week
3—10	$18.00
11—20	$27.60
21 and above	$35.70

22.2 First Aid

A first aid allowance of $6.85 per week is payable to employees who hold a current Senior First Aid Certificate and have been nominated as a first aid representative. This is a separate allowance which is not added to the employee's wage rate for all purposes of this Agreement or the Award.

22.3 Tool Allowance

A tool allowance of $10.00 per week shall be payable to all trades persons who are required to provide their own tools. The tool allowance is part of and included in the ordinary wage rate in Sub-clause 20.1 above for all purposes of this agreement.

22.4 Foundry Allowance

A foundry allowance of $0.23 shall be paid for each hour worked to all employees covered by this agreement.

23.—PAYMENT OF WAGES

Wages shall be paid fortnightly in arrears by electronic funds transfer.

PART D—OTHER PROVISIONS

24.—CLOTHING AND BOOTS

24.1 RCR shall provide you with 3 sets of work clothing in the first year of employment and 1 extra set in the second year (a maximum issue of 4 sets) which shall be either overalls or shirts and pants at your option. Disposable overalls will be made available for use by employee's on specific jobs only at the manager's discretion. RCR shall replace work clothing on a fair wear and tear basis. You shall be responsible for cleaning and maintaining your work clothing.

24.2 RCR shall provide you with 1 pair of work boots, which shall be replaced on a fair wear and tear basis.

24.3 Your issue of clothing and boots in 24.1 and 24.2 above shall be carried out in accordance with company policy and, once issued, clothes and boots must be worn at work. In order to obtain fair wear and tear replacement clothing or boots, you must return the old set to RCR whose decision on whether they should be replaced will be final.

25.—CONSULTATIVE ARRANGEMENTS

25.1 This Clause shall completely replace "Sub-clause (9) Structural Efficiency" of Clause 31 of the Award.

25.2 The Works and Safety Committee shall continue to meet regularly and shall be responsible for discussing the following issues with the aim of identifying and implementing continuous improvements that benefit the Company and employees—

25.2.1 Matters affecting efficiency or productivity; or

25.2.2 Changes to the organisation or performance of work; or

25.2.3 Reviewing the operation of this Agreement; or

25.2.4 Issues related to the objectives of this agreement, or

25.2.5 The use of contract or casual labour to meet short term customer requirements.

25.3 The size, structure and operation of the Works and Safety Committee shall be appropriate to the number of employees and operational arrangements in the foundry and the matters requiring discussion.

26.—PROBLEM SOLVING AND AVOIDING DISPUTES

26.1 This Clause shall completely replace clause 34.—Avoidance of Industrial Disputes in the Award.

26.2 The aim of the procedure in this clause is to resolve problems quickly and avoid disputes through consultation and co-operation.

26.3 **Procedure to be Followed**

In the event of a problem, grievance, question or difficulty arising out of this Agreement that affects one or more employees, or from your work or contract of employment at RCR, the following procedures shall be used—

26.3.1 In the first instance the matter shall be discussed without delay between you and your Supervisor;

26.3.2 If not resolved, the matter shall be discussed between you, your nominated representative (if you wish to have a representative) and your Manager;

26.3.3 If not resolved, the matter shall be discussed between you, your nominated representative (if you wish to have a representative) and the General Manager;

26.3.4 If the matter is still not settled, it may be referred to a mediator to assist in resolving the matter. The mediator shall be chosen by Agreement between you and RCR. If the matter concerns all employees in the engineering operations, the mediator shall be chosen by Agreement between the Works and Safety Committee and RCR.

26.4 **Team Approach and Representation**

If there is a matter that your co-workers are also concerned about, nothing in this clause prevents you from—

26.4.1 Dealing with that matter at the same time as your co-workers in a team approach; and

26.4.2 Choosing someone to represent you who may be representing other employees as well, such as a union official or co-worker.

26.5 **Code of Conduct While Solving Problems or Resolving Disputes**

So that matters can be resolved quickly and peacefully, you, RCR and the Union (if they are involved in the matter) agree to—

26.5.1 Genuinely carry out all of the processes in this clause quickly, taking no longer than three days unless there are exceptional circumstances where it is not possible to resolve the matter in three days;

26.5.2 Only by-pass earlier stages where you and your Supervisor or Manager agree that it is appropriate to refer the matter straight to the General Manager;

26.5.3 Continue working without involvement in any form of action such as bans, limitations, stoppages or lockouts, whilst the above procedures are being followed.

26.6 Nothing in this clause will override the rights of the parties regarding access to conciliation and arbitration in accordance with the Industrial Relations Act 1979. However, prior to exercising these rights the parties must make reasonable attempts to resolve the problem or dispute.

27.—INCOME PROTECTION INSURANCE SCHEME DEDUCTIONS

27.1 You may elect to take out personal income protection insurance at your own cost.

27.2 At your request RCR will make deductions from your net wages and pay these deductions over to your nominated Income protection Insurance Scheme on a monthly basis.

28.—EMPLOYEE TRAINING

28.1 You will from time to time be required to attend training covering matters such as safety, quality, skills improvement and operations. RCR will pay for the full cost of these courses.

28.2 You agree that if the training is in relation to safety or quality and is being provided for a group of employees of 10 or more, the time required to attend such training outside ordinary hours will be borne 50:50 by you and RCR, ie. RCR will pay for 50% of the time spent in training at your ordinary time rate.

28.3 Training other than that covered by Clause 28.2 will be in the Company's time.

29.—SUPERANNUATION

29.1 Superannuation contributions on your behalf shall be paid into a superannuation fund or scheme, in accordance with the Superannuation Guarantee (Administration) Act 1992 (Cth) and Section 49C of the Industrial Relations Act 1979.

29.2 RCR shall notify you in writing that you may nominate in writing a complying superannuation fund or scheme. If you do not nominate a fund or scheme, or until you do nominate a fund or scheme, superannuation contributions shall be paid into a fund or scheme nominated by RCR. The requirements to notify and nominate in writing in this subclause is subject to the requirements of regulations made under the Industrial Relations Legislation Amendment and Repeal Act 1995 (WA).

29.3 If you nominate a fund or scheme RCR and you are bound by your choice of fund or scheme unless there is agreement between you and RCR to change the fund or scheme.

29.4 RCR shall not unreasonably refuse to agree to a change or fund or scheme.

30.—LONG-SERVICE LEAVE

30.1 Long-Service Leave will be paid at the rate of 13 weeks pay only after a period of 10 years of continuous service, or on a pro-rata basis after a period of 7 years continuous service.

SIGNATURES OF THE PARTIES

This Agreement has been agreed to by the parties whose signatures appear below—

RCR 's signature—

Signed for and on behalf of RCR Tomlinson Ltd. (ACN 008 898 486)—

.....	LEWIS JOHN DILKES	13/11/98
Signature	Full Name (Print)	Date

Union's signature—

Signed for and on behalf of the Communications, Electrical, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division Western Australian Branch—

.....	WILLIAM ERNEST GAME	12/11/98
Secretary's Signature	Full Name (Print)	Date
.....	JOE DANIEL FIALA	12/11/98
Organiser's Signature	Full Name (Print)	Date

The Common Seal of the Communications, Electrical, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia ,Engineering and Electrical Division Western Australian Branch:

WESFI MANUFACTURING PTY LTD DARDANUP, (WESBOARD PARTICLEBOARD AND LPM DIVISION) ENTERPRISE BARGAINING AGREEMENT 1998.
No. AG 260 of 1998.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Wesfi Manufacturing Pty Ltd

and

The Forest Products, Furnishing and Allied Industries Industrial Union of Workers, WA Branch & Others.

AG 260 of 1998.

Wesfi Manufacturing Pty Ltd Dardanup, (Wesboard Particleboard and LPM Division) Enterprise Bargaining Agreement 1998.

COMMISSIONER S J KENNER.

26 February 1999.

Order.

HAVING heard Ms L Avon-Smith as agent on behalf of the applicant and Mr F Salisbury, Mr G Sturman and Mr C Young as agents 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 Wesfi Manufacturing Pty Ltd Dardanup, (Wesboard Particleboard and LPM Division) Enterprise Bargaining Agreement 1998 as filed in the Commission on 2 December 1998 be and is hereby registered as an industrial agreement.

(Sgd.) S. J. KENNER,
[L.S.] Commissioner.

ENTERPRISE AGREEMENT 1998

1.0—TITLE

The WESFI Manufacturing Pty Ltd Dardanup, (WESBOARD Particleboard and LPM Division) Enterprise Bargaining Agreement 1998.

2.0—ARRANGEMENT

3.0—APPLICATION

This agreement shall apply to WESFI Manufacturing Pty Ltd, Dardanup (WESBOARD Particleboard and LPM Division) and to all employees engaged under the terms and conditions of the following awards—

- Particleboard Industry Award (SWLD) No 101978
- Metal Trades (General) Award No 13 of 1965

4.0—PARTIES BOUND

(a) This agreement shall be binding on —

- WESFI Manufacturing Pty Ltd, Dardanup (WESBOARD Particleboard and LPM Division)
- The Forest Products, Furnishing and Allied Industries, Industrial Union of Workers', WA.
- The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers', Western Australian Branch.
- Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers' Union of Australia, Engineering and Electrical Division, WA Branch.
- All employees who are engaged under the terms and conditions of the Awards referred to in Clause 3—APPLICATION.

(b) The parties will oppose any applications by other parties to be joined to this agreement.

5.0—DATES AND PERIOD OF OPERATION

The parties agree—

- that this agreement will become effective from the first pay period commencing on or after September 3rd 1998.
- that this agreement shall remain in operation for a period of 24 months from September 3rd 1998.
- that negotiations for a new enterprise agreement will commence during the month of June 2000.

- that the increases will be processed via the Pay Office after the agreement is ratified by the Western Australian Industrial Relations Commission.

6.0—RELATIONSHIP TO PARENT AWARDS & PREVIOUS ENTERPRISE BARGANING AGREEMENTS—

6.1 This agreement shall be read and interpreted wholly in conjunction with those awards specified in clause 3.0—Application, provided that where there is any inconsistency, this agreement shall take precedence.

6.2 This agreement is a compilation of the previous Enterprise Bargaining Agreements applying at the site, namely the 1993, 1995 and 1996 agreements. It is the intention of the parties in compiling the agreements to capture—

(a) all active clauses (ie those that have not been superseded by subsequent agreements); and,

(b) the spirit and intent of the previous agreements.

6.3 The previous enterprise bargaining agreements will continue to exist for the purposes of clarifying matters within this agreement and other terms and conditions of employment.

7.0—NO EXTRA CLAIMS

All parties agree that State or Federal Wage Case Decisions occurring during the life of this agreement will not be made available to employees covered by this agreement and that no extra claim or claims will be made unless consistent with Wage Case Decisions.

8.0—OBJECTIVES

The objectives of the agreement are to facilitate and commit the parties to ensuring the WESBOARD plant becomes a more productive and efficient operation and further to—

- minimise costs, facilitate innovation and improve customer service.
- provide rewarding and fulfilling jobs.
- ensure the plant operates to best standards in safety and quality.
- facilitate continuing investment in the productive capacity of the enterprise and other measures to increase the security of employees' employment.

9.0—TRADE UNION TRAINING LEAVE

9.1 Permanent employees nominated by the relevant union shall be allowed leave without the loss of pay to attend Trade Union Training Courses conducted and approved by the relevant trade union subject to the following conditions—

9.1.1 An accredited union representative shall upon application in writing from the union be granted up to 4 days leave with pay each calender year (maximum of 25 days across the three site unions per year), non cumulative to attend Trade Union Training Courses.

9.1.2 The application for leave shall contain the period of time for which leave is sought and the description and content of the course to be attended and where the course is to be conducted by the relevant trade union.

9.1.3 The granting of such leave shall be subject to the union giving not less that four weeks notice in writing or such lesser period as may be agreed between the company and the union.

9.1.4 An employee who has completed six months with the company (or lesser period of service as may be agreed upon between the company and the union) shall be eligible for such leave.

9.1.5 The time of taking such leave shall be arranged so as to minimise any adverse affect on the company's operations.

9.1.6 The company shall not use sub-clause 9.1.5 to avoid its obligation under this clause.

9.1.7 The company shall not be liable for any additional expenses associated with an employee's attendance at a course other than the payment of ordinary time earnings for such absence. For the purpose of this clause ordinary time earnings shall be defined as the relevant award classification rate including supplementary payments and shiftwork loadings where relevant plus over-award payment where applicable.

9.1.8 Leave rights granted in accordance with this clause will not result in an additional payment of alternative time off to the extent that the course attended coincides with a rostered day off or any other concessional leave.

10.0—RIGHT OF ENTRY

On notifying the company or the company's representative, the Secretary or any authorised officer of a union party to this agreement shall have the right to visit any job at any time when work is being carried on, whether during or outside the ordinary working hours for the purpose of discussing legitimate union business with employees covered by this agreement provided that the Secretary or any authorised officer does not unduly interfere with the work in progress.

The Secretary or authorised officer of a union party to this agreement shall recognise the company's safety standards when visiting any job and will advise the company's representative on leaving the company premises.

11.0—CONTRACT LABOUR

11.1 It is agreed that contract labour may be used on site to satisfy the short term demands of the business or to perform work that cannot be performed by WESFI personnel. Contractors will not be used to replace or diminish permanent employee status. Some examples of short term demand are as follows—

- above normal increases in work output which results in peak work loads which are beyond the capacity of the workforce to complete with reasonable overtime;
- breakdown, repair or modification work deemed as an emergency case;
- the requirement for skills not currently held by permanent employees or to supplement skills currently held by permanent employees. Where skills are not present on site, emphasis should be placed on the provision of training and development of those skills by permanent personnel on site where viable;
- installation work;
- site services, repairs and installation works (eg plumber);
- capital expenditure work.

11.2 In addition to the above, the following principles shall be observed—

11.2.1 that the use of an individual contractor will be limited to three months full-time work, although it is recognised that a contractor that is to be appointed to a permanent position may be engaged for greater than 3 months whilst pre-employment administration is finalised;

11.2.2 that recruitment of all contractors will only be undertaken with the approval of the respective team leader for either maintenance or particleboard;

11.2.3 that production contractors are best utilised within the Strapping Area so as to allow training and development opportunities for other employees, provided this does not compromise the safety of the area and the availability of skills;

11.2.4 that during periods of extended absence from work by permanent employees, contractors may be utilised for periods greater than three months in accordance with 11.2.5 and 11.3. (The parties recognise that special arrangements exist with respect to overtime and absences in the logyard.)

11.2.5 that a monthly communication meeting will be held to ensure all employees are kept informed of site contractor utilisation.

11.3 Where the employee representatives believe the engagement of contractors does not follow the agreed principles, the Operations Manager will be informed at the time rather than waiting for the monthly communication meeting so the situation can be addressed.

12.0—APPRENTICE TRAINING

As specified in the Metal Trades (General) Award No 13 of 1965, the company will commit to all apprentices and trainees continuing to receive paid training which meets the requirement of the Industry Training Advisory Board and results in a consistent national qualification.

13.0—CLASSIFICATION DETERMINATION

13.1 Maintenance Employees—

The parties agree that the current exercise of reviewing the application of Metal Trades classification determination criteria to maintenance employees will continue. Further it is recognised that this exercise will be an ongoing matter subject to periodic review and refinement.

13.2 Production Employees—

The parties agree that the production operators' 'training matrix' will be finalised and implemented at the earliest opportunity, subject to production operators' giving in principle agreement via the AWU shop steward to the training matrix structure within 4 weeks of signing of this agreement. Further it is recognised that the training matrix will be a 'living' document, subject to review and refinement on an ongoing basis and that a set of implementation guidelines has to be developed.

14.0—FAMILY LEAVE

14.1 To assist employees with family responsibilities, the parties agree to the following family leave provisions:

14.2 Full and part time employees shall be entitled to utilise up to 5 days (non cumulative) of accrued annual or sick leave per annum to provide short term assistance to ill members of their immediate family, provided—

14.2.1 Satisfactory evidence of illness is provided.

14.2.2 The employee has responsibility for the care of the family member concerned.

14.2.3 The family member is either—

(a) A member of the employee's household, or

(b) A member of the employee's family (as defined in the Sex Discrimination Act 1984).

15.0—DISPUTE RESOLUTION PROCEDURE

Clause 34—Avoidance of Industrial Disputes in the Metal Trades (General) Award 1965 will be used for the purposes of resolution of matters for all employees covered by the agreement.

16.0—SPECIAL CONDITIONS

16.1 Tool Replacement Policy

16.1.1 The tool allowance is intended to allow for normal maintenance, replacement or upgrade of a tradesperson's toolbox. After all due care is taken by the tradesperson, and there is damage or loss of property, then the costs of replacement will be reimbursed.

16.1.2 Where tools are lost through normal day to day use, then these shall be replaced through the tool allowance. Each case of damage or loss will be judged on its merit by the Engineering Manager.

16.2 Additional Call Out Provision

16.2.1 The purpose of this clause of to deter unnecessary disturbances to employees outside of working hours. All calls to employees homes for technical advice are to be made with the Senior Shift Supervisors authority.

16.2.2 If an employee is called at home for technical advice they will be paid—

(a) one hour at overtime rates if the call(s) are made before 10:00pm; or

(b) two hours at overtime rates if the call(s) are made between 10:00pm and 06:00am.

16.3 Safety Boots

16.3.1 The parties agree that the site arrangement for issuing safety boots will be a choice between the following two options—

- the issue of two pairs of boots per annum up to a value of $80.00 per pair;
- the issue of one pair of boots per annum up to a value of $160.00.

16.3.3 This arrangement is subject to suitable boots being selected for the area of work and will be monitored by the respective Team Leaders to ensure it is not being abused. The purchase of all safety boots is to be approved by the respective Team Leader.

16.3.4 The intent of this choice is to allow the purchase of a more expensive pair of longer lasting boots where preferred.

16.3.5 Nothing in this clause reduces the company's obligations under the Occupational Safety and Health Act 1995.

17.0—WORKPLACE AGREEMENTS

17.1 The company recognises employees concerns with respect to the introduction of workplace agreements and confirms that it will not actively seek during the life of this agreement to engage employees properly covered by the awards referred to in clause 3.0—APPLICATION on workplace agreements.

17.2 For the purposes of clarification the company will continue with the existing programme of converting some employees to salaried positions (not workplace agreements) and indicates that where positions are newly created or restructured and the work is not covered by the awards referred to in clause 3.0—APPLICATION, salaried packages may be offered.

18.0—SHIFT SWAP

The company agrees that shifts may be "swapped" between two employees subject to the agreement of the relevant shift supervisor and team leaders. It is understood that shift swaps are only possible where the employees are competent at operating the equipment they will operate on the swapped shift.

19.0—CONSULTATIVE MECHANISM

The parties agree that a properly functioning consultative mechanism has considerable benefits. Therefore, a consultative mechanism using the site safety committee as a model will be established. The first item for discussion will be the development and agreement to a charter. It is accepted that the consultative mechanism will not be used as the primary forum to resolve industrial relations grievances and that the Grievance and Disputes Resolution Procedure is available for this purpose. However, any item of urgent general business relating to industrial relations issues may be raised and dealt with accordingly where it is in the interests of the business to do so.

20.0—DAYS IN LIEU

Continuous shift employees that are NOT rostered to work on a public holiday are entitled to a day in lieu of eight (8) hours. The taking of these days in lieu will be in accordance with the award provisions.

21.0—ANNUAL LEAVE

21.1 Annual leave entitlements under the award are retained with respect to the accrual of annual leave, leave loadings and other such minimum conditions available under the award.

21.2 By agreement of both parties up to four weeks annual leave may be accrued by employees. This accrual will be reviewed by the company before the end of February each year.

21.3 Shutdowns (for example annual shuts or annual maintenance) may vary in length and in timing to suit the market conditions. This may result in non-production periods as considered appropriate by the company to meet market conditions.

21.4 The company will provide as much advance notice of the non-production periods as possible and will communicate via the consultative mechanism to seek agreement. Notwithstanding this, the company will endeavour to meet individual employee's needs and requirements.

22.0—MAINTENANCE OF QUALITY AND ENVIRONMENTAL MANAGEMENT SYSTEMS

WESFI is committed to the maintenance and support of the AS9001/AS9002 quality and AS14001 environmental management systems. These systems commit the company to following a rigid audited system of operation with respect to procedures and policies that may affect product quality. WESFI believes, and the parties agree, that the maintenance of the

systems is fundamental to the capacity of the enterprise to maintain sales of its products. The parties commit to supporting and promoting the systems that are put in place.

23.0—MAINTENANCE OF CONTINUOUS IMPROVEMENT METHODOLOGY

23.1 WESFI and the parties agree that the effective application of the continuous improvement methodology is an important concept to achieve to maintain greater competitiveness and thereby ensure that the plant achieves targeted levels of efficiency or better.

23.2 The continuous improvement process is to be further developed and WESFI will continue to commit resources to this area. In addition, all parties commit to achieving a continuous improvement culture that is effective and that is providing increased satisfaction for the employees and competitive improvement for the company.

24.0—EMPLOYEE DEVELOPMENT

24.1 Employee Development principles at the site are—

- evaluation and assessment of employees
- interview and discussion of training and learning requirements
- agreed plans to develop employees
- reviews of the plans and progress by the supervisor or team leader.

24.2 The parties recognise that employee development is directed at improving the competitive advantage of the company and the skills of its employees. Training has been provided in continuous improvement techniques as an aid to achieving performance goals set in this and previous agreements.

24.3 The parties commit to full support of employee development.

24.4 The parties commit to and through the consultative process, continue to review and develop the training programme for the facility.

24.5 It is also understood by the parties that training of personnel will assist in maintaining a safe work environment and is of critical importance to the success of the operation.

24.6 Further it is agreed that the cost of delivering training to individuals as part of their skills formation and career path progression must be kept to a reasonable level. This is to ensure that the availability of training is sufficient to satisfy both the company needs and individual expectations of career path progressions.

24.7 Therefore it is agreed that the implementation and planning of structured training must be such so as not to adversely affect the plant operation or financial performance. It is agreed that the following be adopted—

24.7.1 Structured training of employees in current tasks. It is agreed that any person on site may be required to undertake structured training in this category as necessary. Payment will be at single time.

24.7.2 Structured training to increase skills and career path advancement where this is considered necessary for the business. Payment will be at single time.

24.7.3 Structured training to increase skills and career path advancement where this is not considered necessary for the business. It is agreed that this structured training is elective and will be facilitated by the company where possible. There will be no payment in this instance by the company.

24.8 The company will make every attempt to schedule structured training during the ordinary hours of work but may require personnel to attend structured training sessions at other times. As above this structured training time will be paid at the single time rate.

24.9 TAFE or other external courses attended by employees that fall into category 24.7.3 above will not be paid for by the company.

25.0—HOURS OF WORK

25.1 The parties to this Agreement agree to the following with respect to scheduling of hours of work—

25.1.1 Normal hours of work will be scheduled to allow manning to maximum advantage of the business and to suit market conditions, whilst not compromising the quality of life to employees.

25.1.2 The provision of meal breaks, leave and leisure time will be managed to meet the employee's needs and ensure the ongoing efficient operation of the enterprise.

25.2 Normal hours of work are based on the current 12 hour shift roster (42 hours per week) for the continuous shift, or with an average of 7.6 hours per day (38 hours per week) for day workers, or other such rosters agreed between the parties. Normal minimum award conditions will apply such as an average of 38 ordinary hours per week.

26.0—JOURNEY INSURANCE

The parties agree that the current workers' compensation policy covering employees for journey insurance will continue for the duration of this agreement.

27.0—EQUAL EMPLOYMENT OPPORTUNITY—AFFIRMATION ACTION

The parties to this agreement are committed to providing equal employment opportunities at the workplace and undertaking appropriate affirmative action policies.

28.0—ANNUALISED WAGES

A committee will be established during the first six months of this agreement to assess the viability of implementing an annualised wage arrangement at the site. The charter and representation of the committee will be set at the first meeting. Annualised wages packages may be implemented subject to agreement being reached between the company, union and the employees in a section or sections.

29.0—REMUNERATION

29.1 This agreement provides for two fixed wage increases during the life of the agreement conditional upon the following—

(a) the existing "Performance Based Increases" provided for in the 1996 EBA be withdrawn by the company and no longer paid at any time;

(b) the existing "Attendance Pay" of $5.00 per week as provided for by an historical arrangement at the site be withdrawn by the company and no longer paid at any time;

(c) the claim for an increase in the safety boot allowance be dropped for the life of this agreement;

(d) the claim for ACTU accident insurance be dropped for the life of this agreement;

(e) the claim for additional clothing allocations be dropped for the life of this agreement except where such additional claims are for "protective clothing" where the matter will be raised via the Safety Committee.

29.2 "Performance Based Increases" will cease to be paid after August 1998. "Attendance Pay" will no longer be paid from the first pay period commencing on or after September 3, 1998.

29.3 The increases payable under this agreement are—

(a) A fixed increase of 4.3% on the ordinary hourly rate payable from the first pay period commencing on or after September 3, 1998; and,

(b) A fixed increase of 4.3% on the ordinary hourly rate payable from the first pay period commencing on or after September 3, 1999.

30.0—SIGNATORIES

Employee Representative	(date)
Employee Representative	(date)
Employee Representative	(date)
On behalf of the WESFI Manufacturing Pty Ltd	(date)

Dardanup, WESBOARD Particleboard and LPM Division

On behalf of the Communications, Electrical Electronic, Energy, Information, Postal, Plumbing and Allied Workers' Union of Australia, Engineering and Electrical Division, WA Branch	(date)
On behalf of the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers'—Western Australian Branch	(date)
On behalf of the Forest Products, Furnishing and Allied Industries Industrial Union of Workers', WA	(date)

Appendix

EMPLOYEES BOUND BY AGREEMENT

As at December 1, 1998 this agreement will apply to a total of 190 employees as per the following—

Employees eligible to be or are members of The Forest Products, Furnishing and Allied Industries, Industrial Union of Workers', WA	168
Employees eligible to be or are members of the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers'—Western Australian Branch	13
Employees eligible to be or are members of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers' Union of Australia, Engineering and Electrical Division, WA Branch	9

WESFI MANUFACTURING PTY LTD, MDF DIVISION ENTERPRISE BARGAINING AGREEMENT (CEPU VERSION) 1998-2000. No. AG 275 of 1998.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Wesfi Manufacturing Pty Ltd

and

Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch.

AG 275 of 1998.

Wesfi Manufacturing Pty Ltd, MDF Division Enterprise Bargaining Agreement (CEPU Version) 1998-2000.

COMMISSIONER S J KENNER.

26 February 1999.

Order.

Having heard Ms L Avon-Smith as agent on behalf of the applicant and Mr C Young as agent 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 Wesfi Manufacturing Pty Ltd, MDF Division Enterprise Bargaining Agreement (CEPU Version) 1998-2000 as filed in the Commission on 15 December 1998 be and is hereby registered as an industrial agreement.

(Sgd.) S.J. KENNER,
[L.S.] Commissioner.

1.—TITLE

This agreement will be known as the WESFI Manufacturing Pty Ltd, MDF Division Enterprise Bargaining Agreement (CEPU version) 1998-2000.

2.—ARRANGEMENT

3.—APPLICATION AND PARTIES BOUND

This agreement shall be binding on—

- WESFI Manufacturing Pty Ltd (MDF Division);
- the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers' Union of Australia, Engineering and Electrical Division, WA Branch
- All employees who are engaged under the terms of the Metal Trades (General) Award No 13 of 1965 (Award hereafter).

4.—PERIOD OF OPERATION

The parties agree—

- that this agreement will become effective from the first pay period commencing on or after October 27, 1998.
- that this agreement shall remain in operation for a period of 24 months from October 27, 1998.
- that negotiations for a new enterprise agreement will commence during the month of June 2000.
- that the increases will be processed via the Pay Office after the agreement is ratified by the Western Australian Industrial Relations Commission.

5.—OBJECTIVES

The objective of this agreement is to promote real gains in productivity and/or efficiency and/or flexibility at the workplace and to provide more varied, skilled and better paid jobs for workers by continued progress on the implementation of workplace reform.

The parties agree that the provisions for reform set out in this agreement, when implemented and managed professionally will result in significant productivity and efficiency benefits at the enterprise level.

6.—RELATIONSHIP TO AWARDS AND OTHER AGREEMENTS

WESFI Manufacturing (MDF Division) Enterprise Bargaining Agreements 1993, 1995 and 1996 (CEPU version) shall form part of this agreement. This agreement shall be read and interpreted wholly in conjunction with the Award and previous enterprise bargaining agreements provided that where there is any inconsistency this agreement shall take precedence.

The company agrees for the life of this agreement not to reduce existing pay and employment conditions and will continue to abide by the terms and provisions of the Award (as it applied on October 27, 1998) and any other agreements applying to the parties at that time.

The parties agree that the Enterprise Consultative Committee will exist in accordance with the ECC Constitution attached to this agreement.

The company agrees to maintain the existing collective process of negotiation of pay and employment conditions for employees through the CEPU.

7.—CONSULTATION AND PARTICIPATION

The parties agree that the Enterprise Consultative Committee will exist in accordance with the ECC Constitution attached to this agreement.

8.—ENGLISH LANGUAGE LITERACY AND NUMERACY TRAINING

All English language literacy and numeracy training initiatives should be progressed in the first instance via the Enterprise Consultative Committee.

9.—REDUNDANCY PROVISIONS

The parties agree that the Redundancy Agreement attached to this agreement will form part of and be valid for the life of this agreement.

10.—RIGHT OF ENTRY

Union representatives holding certification from the state or national secretary of the CEPU will be granted permission to enter sites covered by this agreement at which a member of the CEPU is or was employed with 5 minutes notice to the site manager during the life of this agreement.

Union representatives will not hinder the productivity of the workplace but can interview employees and by agreement with the company hold paid meetings of union members to discuss issues associated with this agreement.

11.—TRADE UNION TRAINING

For the purposes of this clause only the Forest and Building Products, Manufacturing and Merchandising (General) Award 1996 clause 71—Trade Union Training Leave provisions shall apply to employees covered by the provisions of this agreement.

Where the union nominates an employee for leave without loss of pay to attend a trade union training course under the Trade Union Training Leave provisions in the award, the union will provide the employer with two weeks notice of the nomination of the employee.

The employee will be required to apply for the leave in the normal manner. It is agreed that the employer will not unreasonably withhold agreement. Trade union courses are any union training courses that are endorsed by the union.

12.—WORKERS' COMPENSATION

Where an employee is incapacitated through injury within the meaning of any Workers' Compensation Act the company shall pay the injured employee the entitlements due under the Workers' Compensation Act and in addition the company will pay the Superannuation Guarantee Levy requirements for a period of 12 months or as specified by legislation, after the date of the injury providing the injured person remains an employee of the company.

13.—BEREAVEMENT LEAVE

The parties agree that in special circumstances employees may require bereavement leave in addition to the award/agreement entitlement. In these circumstances the employee will put their case to the Site Manager for approval. Each case will be considered on its individual merits.

14.—SKILLS BASED GRADE STRUCTURE

The parties agree that the outcomes of the current review of the Metal Trades classification criteria being undertaken at the company's Dardanup operation will (with necessary amendments) form part of this agreement.

15.—SHIFT CHANGES

The parties agree that a process will be developed via the ECC for implementing personnel changes to rosters. The principles for the development of this process are that—

- the company will consult with the people involved prior to the implementation of the change;
- short term changes from time to time will be necessary that will have to be implemented expeditiously.

16.—WAGE RATES AND BONUS PAYMENT FACILITATIVE CLAUSE

16.1 This agreement provides for two fixed wage increases during the life of the agreement conditional upon the following—

(a) the existing "Performance Based Increases" provided for in the 1996 EBA be withdrawn by the company and no longer paid at any time;

(b) the existing "dirt money" allowances paid via an historical site arrangement be withdrawn by the company and no longer paid at any time;

(c) recognition that components have been built into this wage increase for increases in the "dirt allowances" and an averaged payment for fire fighters, although the parties agree that further discussions re fire fighting arrangements may occur during the life of this agreement.

(d) a fair and equal two team rostering system of bar changes being implemented within each shift subject to agreement that employees may be directed to perform bar changes in addition to the roster due to unforseen circumstances. Further, a commitment to reduce unnecessary bar changes being given and implementation of a programme to investigate stopless pressing being undertaken.

16.2 "Performance Based Increases" will cease to be paid after October 1998. "Dirt Money" will no longer be paid from the first pay period commencing on or after October 27, 1998.

16.3 The increases payable under this agreement are—

(a) A fixed increase of 4.4% on the ordinary hourly rate payable from the first pay period commencing on or after October 27, 1998; and,

(b) A fixed increase of 4.4% on the ordinary hourly rate payable from the first pay period commencing on or after October 27, 1999.

16.4 An individual employee may elect to have deducted income protection insurance from their wages where so requested in writing.

16.5 A sub-committee of the consultative committee shall meet before February 28, 1999 and monthly thereafter to discuss a bonus payment related to company performance. Deliberations should be completed by the close of 1999.

16.6 The goal of the sub committee is to develop a performance bonus based upon improvements in company performance.

16.7 The consultative committee is to prepare a joint submission for consideration by the company executive on all aspects of the bonus payment.

17.—TRAINEES

The parties agree that if the company intends to engage trainees under any government subsidised scheme the Enterprise Consultative Committee will be consulted on the likely impact of such engagement.

18.—GRIEVANCE AND DISPUTES PROCEDURE

Clause 34—Avoidance of Industrial Disputes in the Award will be used for the purposes of resolution of matters for all employees covered by the agreement.

19.—NO EXTRA CLAIMS COMMITMENT

The parties agree that wage case decisions occurring during the life of this agreement will not be made available to employees covered by this agreement and that no extra claim or claims will be made. In the event that a wage case awards an increase that provides for the Award rate to exceed the rates payable by the company under this agreement, then the Award rates will be paid

20.—SIGNATORIES

Employee Representative	(date)
On behalf of the WESFI Manufacturing Pty Ltd MDF division	(date)

On behalf of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers' Union of Australia, Engineering and Electrical Division, WA Branch	(date)

Appendix

EMPLOYEES BOUND BY AGREEMENT

As at December 3, 1998 this agreement will apply to a total of 12 employees as per the following—

Employees eligible to be or are members of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers' Union of Australia, Engineering and Electrical Division, WA Branch	12

WORSLEY EXPANSION PROJECT PARTNERSHIP AGREEMENT.
No. AG 264 of 1998.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Coastal Welding and Fabrication Services & Others

and

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers, Western Australian Branch & Others.

AG 264 of 1998.

Worsley Expansion Project Partnership Agreement.

COMMISSIONER S J KENNER.

18 February 1999.

Order.

HAVING heard Ms J Wesley as agent on behalf of the applicants and Mr G Sturman and Ms J Harrison as agents 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 Worsley Expansion Project Partnership Agreement as filed in the Commission on 7 December 1998 be and is hereby registered as an industrial agreement.

(Sgd.) S.J. KENNER,
[L.S.] Commissioner.

WORSLEY EXPANSION
PROJECT PARTNERSHIP AGREEMENT

PART 1: OBJECTIVES OF AGREEMENT

PART 2: REMUNERATION AND WORK WEEK

PART 3: EMPLOYMENT CLASSIFICATIONS

PART 4: EMPLOYMENT

PART 5: ADMINISTRATION OF AGREEMENT

PART 6: PAID TIME OFF

PART 7: OTHER PROVISIONS

APPENDIX: S 49B INSPECTION OF RECORDS REQUIREMENTS

TABLE OF CONTENTS

1.—OBJECTIVES OF AGREEMENT

The fundamental objective of this Agreement is to create a structure consistent with the intent of the parties to achieve the following goals on the establishment of the Worsley Alumina Expansion Project—

- A safe and healthy work site, where every employee should expect to work without injury.
- Employee relations effectiveness which delivers positive benefits to all participants in the Project.
- Excellent quality.
- Positive relationships with local communities.
- Maximise productivity through motivation and effective teamwork.
- Value to the owners.
- Maximised value to employees including improvement opportunities.

2.—REMUNERATION AND WORK WEEK

2.1 REMUNERATION

The following project salaries are payable to employees in respect of the Scheduled Week set out in Clause 2.2

Project Team Member—Group A: $1,299.50 / week

Project Team Member—Group B: $1,243.00 / week

Project Team Member—Group C: $1,186.50 / week

Project Team Member—Group D: $1,130.00/ week

Project Team Member—Group E: $1,084.80 / week

Project Team Member—Group F: $1,050.90 / week

Project Team Member—Group G: $1,017.00 / week

Project Team Member—Group H: $ 994.40 / week

An employee specifically appointed by the employer as a leading hand and engaged in providing leadership to a work crew and who has completed requisite project leadership training programme shall be paid an additional $53.50 per week which shall form part of the employee's all purpose salary.

The following are the guiding principles reflecting the intent of this structure—

- The above salaries are an aggregate salary inclusive of all elements included in awards and agreements.
- In developing these aggregate salaries and conditions of employment on the Project, specific consideration has been given to, amongst other things: base salary rates; allowances for disabilities and work conditions; tool allowance, locality payments; license, qualification, supplementary and additional payments; travel time (including R & R travel time); distance allowance; time in excess of an average thirty-eight hours per week contained in the Work Week (set out in Clause 2.2); crib payments and meal allowances within the Work Week.
- The project salaries set out above are payable for the Scheduled Work Week set out in Clause 2.2. Time worked outside of the Work Week is dealt with in Clause 2.3.
- To establish an hourly rate for the purposes of administering the Agreement and for payroll addition or deduction purposes, the applicable project salary is to be divided by 50 and calculated to the nearest cent.
- Each employee will be assigned to a Group based on skills, qualification and experience and in consideration of the substance of the duties to be carried out on site. This assignment will be specified in the contract of employment between employer and employee. Group assignments are set out in Part 4 to this Agreement.

2.2 WORK WEEK

2.2.1 SCHEDULED WORK WEEK

The Scheduled Work Week shall be a ten day fortnight, comprising of 10 hour days, as set out in the following example—

	M	**T**	**W**	**T**	**F**	**S**	**S**	**TOTAL**
WEEK:	10	10	10	10	10	0	0	**50**

The following are the guiding principles reflecting the intent of this Work Week—

- The Work Week forms the basis for organising the staffing of the Project. It represents a mutual commitment between employer and employee/s. No reduction in the Work Week will take place for any reason (such as inclement weather).
- The intent of the above Work Week is that it will be the actual plan-base and scheduled hours of work on site. Additional time may be worked with the prior approval of Project Management. Such approval will generally be limited by Project Management to issues such as—
  - Critical path recovery or enhancement.
  - Work best performed when other personnel numbers are at a minimum in the area—'interface' work.
  - Indirect and support work to service the main scope development work.
  - Work performed for reasons of health and safety.

  The statistical incidence of actual hours v. Work Week hours will be tabled and analysed at the Partners Review Forum described in Clause 5.4.

  The scheduled work week as set out in this Clause may be altered by agreement between the employer and employees, provided—
  - 100 hours are scheduled and worked during any fortnightly pay period.
  - all the rescheduled hours are paid at the employees rate nominated in Clause 2.1.
  - KBJV approves the rescheduled hours proposal.

  For example a Friday or Monday may be transferred to the previous Saturday, within the same fortnightly pay period, to create one week of six days, followed by one week of four days.

2.2.2 DAILY WORK PATTERNS

The employer shall schedule each work day so that it is split into three approximately equal work periods separated by two, 30 minute work breaks.

The first work break shall be in 'paid' time and the second shall be in 'unpaid' time. The work day shall therefore be structured as follows—

On site:	10.5 hours
Paid time:	10.0 hours
Unpaid break:	0.5 hours
Paid break:	0.5 hours (included in 'Paid time')

The following are the guiding principles reflecting the intent of this Daily Work Pattern—

- Break durations are intended to allow a realistic period for rest; the stated durations are therefore not to be exceeded.
- The work periods are meant to be of approximately equal duration; they may be scheduled to suit the specifics of the work and may vary, subject to general conformity with the above intent.
- The work breaks may be taken at different times—
  - by each employer;
  - for each crew within a contract;
  - for individual employees within a crew;
  - to suit the specifics of the work; provided that there is general conformity with the above intent.
- No employee will be required to work in excess of four hours without a 30 minute work break. Work breaks in additional time shall be treated as paid time.
- Work breaks on shift work are in paid time.

2.2.3 PROJECT START AND FINISH TIMES

Except for split work-day arrangements set out in Clause 2.2.2, general project start and finish times are—

Start:	7:00am
Finish:	5:30pm (Monday through Friday)

The following are the guiding principles reflecting the intent of these times—

- Generally, employers will operate within the above start and finish times. Where necessary to suit the specifics of the work, the start and finish times may, by agreement, be moved up to one hour either way without penalty. A move of greater than one hour either way will carry with it a 50% loading on salary for the time falling prior to 6:00am or after 6:30pm.
- Support systems (eg. catering, bussing etc.) will operate to suit the 7:00am start and 5:30pm finish. Where an employer intends to start and/or finish outside those times, the employer must make its own arrangements to provide these services or make appropriate arrangements with Project Management for the services to be provided.
- The start time is 'at the work face'. Completion of actual productive work will be at the time appropriate for each employee to ensure the integrity and safety of the work area, pack up and wash up by the finish time.

2.3 ADDITIONAL WORK

Time worked in addition to the Scheduled Work Cycle set out in Clause 2.2.1 shall be paid for at the employees rate nominated in Clause 2.1 plus 100%.

All time worked on Saturdays and/or Sundays shall be paid for at the rate nominated in Clause 2.1 plus 100% except where altered by mutual agreement as specified in Clause 2.2.1.

If so agreed between employer and employee, the additional time worked, or the additional time worked plus 100% (as the case may be) may be added to the employee's Paid Time Off account (see Part 6) and then taken at a mutually agreed time or paid out at completion of employment, at the appropriate prevailing rate.

2.4 SHIFT WORK

Where an employee's work cycle, or part of it, is transferred to night work (ie where at least 5 hours of the shift falls between the hours of 5.00pm and 6.00am), the employee shall receive a 20% loading on remuneration for each day so worked.

The rate for additional work as described in Clause 2.3 shall be cumulative on this 20% loading but it will not be compounded. Work breaks on shift work are in paid time.

To be eligible for this provision, the shift cycle must be of at least five day's duration and must be established with at least 48 hours notice. Absent either of these requirements, the provisions of Clause 2.3 shall apply.

2.5 PAYMENT OF REMUNERATION

Remuneration shall be paid weekly no later than Wednesday of the following week.

Payment shall be by direct deposit/electronic funds transfer to the bank account nominated by the employee.

Facilities for employees to obtain cash or access EFTPOS will be made available.

2.6 ESCALATION

In consideration of the nature and duration of this Project and the Agreement, the following escalation shall apply;

Classification	01 April 1998	01 October 1998	01 April 1999	01 October 1999
Group A	$1,325.49	$1,352.00	$1,379.05	$1,406.62
Group B	$1,267.86	$1,293.22	$1,319.09	$1,345.47
Group C	$1,210.23	$1,234.43	$1,259.13	$1,284.31
Group D	$1,152.60	$1,175.65	$1,199.17	$1,223.15
Group E	$1,106.50	$1,128.62	$1,151.20	$1,174.22
Group F	$1,071.92	$1,093.35	$1,115.23	$1,137.53
Group G	$1,037.34	$1,058.09	$1,079.25	$1,100.84
Group H	$1,014.29	$1,034.57	$1,055.27	$1,076.37

3.—EMPLOYMENT CLASSIFICATIONS

Each employee will be assigned to a Group based on skills, qualification and competency and in consideration of the substance of the duties to be carried out on site. This assignment will be specified in the employee's contract of employment and will be in accordance with the following—

PROJECT TEAM MEMBER—GROUP A

An employee having the skills, qualification and competency and substantially assigned to exercise the skills of an Advanced Tradesperson including—

- Electronic Tradesperson
- Instrument Tradesperson Complex Systems

In addition to performing any duties within Group A (subject to capability), employees in this Group will perform any of the duties of a Project Team Member Groups B, C, D, E, F, G and H provided that such duties are—

- within the skills, competence, qualification and training of the employee concerned; and
- consistent with occupational health and safety and statutory requirements; and
- related to the contract work of the employer and incidental to the employee's substantive role.

PROJECT TEAM MEMBER—GROUP B

An employee having the skills, qualification and competency and substantially assigned to exercise the skills of an Advanced Tradesperson including;

- Electrician Special Class
- Instrument Tradesperson
- Instrumentation and Controls Tradesperson

In addition to performing any duties within Group B (subject to capability), employees in this Group will perform any duties of a Project Team Member Groups C, D, E, F, G and H, provided that such duties are—

- within the skills, competence, qualification and training of the employee concerned; and
- consistent with occupational health and safety and statutory requirements; and
- related to the contract work of the employer and incidental to the employee's substantive role.

PROJECT TEAM MEMBER—GROUP C

An employee having the skills, qualification and competency and substantially assigned to exercise the skills of an Advanced Tradesperson including

- Welder Special Class
- Mechanical Tradesperson Special Class
- Electrical Fitter
- Electrical Installer
- Licenced Plumber

Employees required to operate a tower crane or a mobile crane 80 tonnes and over.

In addition to performing any duties within Group C (subject to capability), employees in this Group will perform any duties of a Project Team Member Groups D, E, F, G and H, provided that such duties are—

- within the skills, competence, qualification and training of the employee concerned; and
- consistent with occupational health and safety and statutory requirements; and
- related to the contract work of the employer and incidental to the employee's substantive role.

PROJECT TEAM MEMBER—GROUP D

An employee having the skills, qualification and competency and substantially assigned to exercise the skills of a tradesperson.

Operate Mobile Crane (Lifting capacity in excess of 20 tonnes and up to 80 tonnes)

Operate the following type of mobile plant—

- Crawler loader (above 15,000kg mass up to and including 60,000kg mass);
- Crawler tractor with power operated attachments (above 15,000kg mass up to and including 60,000kg mass);
- Dumper, rear and bottom (above 30 cubic metres, up to and including 120 metres struck capacity);
- Excavator (above 0.5 cubic metres, up to and including 5.5 cubic metres struck capacity—this group includes Gradall);
- Grader (35kw up to and including 190kw nett engine power);
- Pneumatic tyred loader (over 105kw up to and including 500kw nett engine power);
- Pneumatic tyred tractor with power operated attachments (above 150kw up to and including 500kw nett engine power);
- Scraper (above 10 cubic metres, up to an including 50 cubic metres struck capacity).

In addition to performing any duties within Group D (subject to capability), employees in this Group will perform any of the duties of a Project Team Member Groups E, F, G and H provided that such duties are—

- within the skills, competence, qualification and training of the employee concerned; and
- consistent with occupational health and safety and statutory requirements; and
- related to the contract work of the employer and incidental to the employee's substantive role.

PROJECT TEAM MEMBER—GROUP E

An employee having the skills, qualification and competency and substantially assigned to exercise the following duties—

- Rigger or scaffolder holding an advanced or full rigger or scaffolder certification;
- Dogperson;
- Pipe laying or draining;
- Operation of mobile crane with lifting capacity up to 20 tonnes;
- Operation of articulated on site vehicles;
- Operation of concrete pump.

Operation of the following types of mobile plant—

- Bitumen sprayer (driver);

- Crawler loader (up to and including 15000kg mass);
- Crawler tractor with power operated attachments (over 2,000kg up to and including 15,000kg shipping mass);
- Dumper, rear and bottom (above 2 cubic metres up to and including 30 cubic metres struck capacity);
- Excavator (up to and including 0.5 metres struck capacity);
- Grader (below 35kw nett engine power);
- Pile Driver;
- Pneumatic tyred loader (up to and including 105kw nett engine power);
- Pneumatic tyred tractor with power operated attachments (above 15kw up to and including 150kw nett engine power);
- Roll er (8 tonnes and above);
- Scraper (up to and including 10 cubic metres struck capacity).

In addition to performing any duties within Group E (subject to capability), employees in this Group will perform any of he duties of a Project Team Member Group F, G and H provided that such duties are—

- within the skills, competence, qualification and training of the employee concerned; and
- consistent with occupational health and safety and statutory requirements; and
- related to the contract work of the employer and incidental to the employee's substantive role.

PROJECT TEAM MEMBER—GROUP F

An employee having the skills, qualification and competency and substantially assigned to exercise the following duties—

- Structural work on concrete operations, including assisting tradespersons fixing form work, fixing steel (including tack welding steel reinforcement), placing concrete and finishing placed concrete;
- Unlicensed rigging and scaffolding (ie, a rigger or scaffolder not holding an advanced or full rigger or scaffolder qualification;
- Powder Monkey;
- Prepare foundation shafts;
- Civil Drilling;
- Undertaking spotters duties for mobile equipment.

Operation of the following types of equipment—

- Bitumen sprayer;
- Concrete batching plant;
- Aggregate crushing plant ;
- Concrete finisher powered;
- Crawler tractor with power operated attachments (up to and including 2,000kg shipping mass);
- Hand sprayer, lance type;
- Pneumatic tyred tractor with power operated attachments (up to and including 15kw nett engine power);
- Roller vibrating or non-vibrating (under 8 tonnes)—not hand controlled;
- Trenching machine (small Ditch-Witch type);
- Drilling Machine.

In addition to performing any duties within Group F (subject to capability), employees in this Group will perform any of the duties of a Project Team Member Groups G and H, provided that such duties are—

- within the skills, competence, qualification and training of the employee concerned; and
- consistent with occupational health and safety and statutory requirements; and
- related to the contract work of the employer and incidental to the employee's substantive role.

PROJECT TEAM MEMBER—GROUP G

An employee having the skills, qualification and competency and substantially assigned to exercise the following duties—

- Work in a tools or materials store, including the receiving, dispatching, distributing, sorting, checking, documenting and recording of goods, materials and components which may involve the use of forklifts, hand trolleys and similar lifting equipment;
- Operation of hand controlled roller;
- Application and installation of insulation.
- Assisting on a full time basis tradespersons holding an A or B grade Electrical Licence.

In addition to performing any duties within Group G (subject to capability), employees in this Group will perform any duties of a Project Team Member Group H provided that such duties are—

- within the skills, competence, qualification and training of the employee concerned; and
- consistent with occupational health and safety and statutory requirements; and
- related to the contract work of the employer and incidental to the employee's substantive role.

PROJECT TEAM MEMBER—GROUP H

An employee having the skills, qualification and competency and substantially assigned to exercise the following duties—

- General construction labouring and cleaning duties;
- Assisting employees at higher classification levels, including tradespersons other than electrical;
- Uses hand held grinding machines;
- Assists surveyors/chainperson.

Employees in this group will perform any of the listed Group H duties provided that such duties are—

- within the skills, competence, qualification and training of the employee concerned; and
- consistent with occupational health and safety and statutory requirements; and
- related to the contract work of the employer and incidental to the employee's substantive role.

CLASSIFICATION DEFINITIONS

The following definitions are applicable to the classification structure set out above—

WELDER—SPECIAL CLASS

A special class welder is a welder who meets the coding requirements of their employer and the Regulations and requirements of Australian Standards AS1200—Boiler Code, AS1228—Boiler Water Tube, AS4041—Pressure Piping, AS3992—Welding Certification Code and who is engaged on work requiring such qualifications.

MECHANICAL TRADESPERSON SPECIAL CLASS

Means subject to paragraph (c) hereunder, a mechanical tradesperson who—

(a) (i) is engaged on work on or in connection with fluid power circuitry, which work requires for its performance the standard of knowledge and skills referred to in (iii) and (iv) hereof; and

(ii) is able, where necessary and practicable, to perform such work without supervision and to examine, diagnose and modify systems comprising interconnected fluid power circuits; and

(iii) has satisfactorily completed the following TAFE units—

Course	Syllabus No.
Industrial Hydraulics 1	85007
and	
Industrial Pneumatics 1	85009
and either	
Industrial Hydraulics 2	85008
and	

Course	Syllabus No.
Hydraulic Component Repair	85012
or	
Pneumatic System Maintenance (Industrial)	85010
and	
Pneumatic System Control (Industrial)	85014; or

(iv) has, whether through practical experience or otherwise, achieved a standard of knowledge comparable to that which would be achieved under subparagraph (iii) hereof or in the case of a dispute has been satisfactorily assessed and/or examined pursuant to the Fluid Power Exemptions Course detailed in paragraph (d);

but does not include such an employee unless the work on which the employee is engaged requires for its performance knowledge in excess of that gained by the satisfactory completion of the appropriate Technical College Trade course.

(b) For the purpose of this award an employee shall be deemed to be a Mechanical Tradesperson—Special Class only for the time during which the employee meets the foregoing conditions unless—

(i) that time exceeds sixteen hours per week; or

(ii) in the opinion of his/her employer or, in the event of disagreement, in the opinion of the Board of Reference, that time is likely during the course of employment to exceed sixteen hours per week on average,

in which case the employee shall be classified as Mechanical Tradesperson—Special Class for as long as the employment continues on either of those bases.

(c) For the purpose of this definition, employees who have completed courses in any other states shall, in the event of a dispute, submit their credentials for assessment by TAFE or be assessed in accordance with (a)(iv) above.

(d) Fluid Power Exemption Course

Course exemptions for Fluid Power Certificate Units can only be granted on completion of the TAFE divisional exam. However, class attendance exemptions may be granted for the following reasons—

(i) Attending Short Vocational Course (30 hours). This will exempt the student from the practical component of the course. However, the theory component can be completed by 24-hour correspondence course with TAFE External Studies.

(ii) Students claiming exemption from the practical course requirements due to their industrial skills, could obtain an exemption through a documented case presented by their employer. Full course accreditation can then be obtained by completing the 24-hour correspondence course with TAFE External Studies.

(iii) Students without documented evidence may obtain a practical exemption through 5 hours skill testing. These students, if successful, may then enter the correspondence mode to obtain full unit accreditation.

(iv) Students who have claimed subject exemptions in the certificate of workshop technology, can only gain an automatic exemption from the introductory units on full completion of the certificate.

(e) For the purpose of this definition, fluid power circuitry involves Industrial Hydraulics and/or Industrial Pneumatics.

ELECTRICIAN SPECIAL CLASS

Electrician Special Class shall mean an electrical fitter or electrical mechanic, who is engaged on complex and/or intricate circuitry, the performance of which work requires the use of "additional knowledge" as defined.

For the purpose of this definition "additional knowledge" means knowledge in excess of that gained by the satisfactory completion of the appropriate technical college trade course which has been acquired by the tradesperson by virtue of—

(a) having had not less than two years on-the-job experience as a tradesperson working mainly in such complex and/or intricate circuitry as will enable performance of such work unsupervised where necessary and practicable; and

(b) having, by virtue of either the satisfactory completion of a prescribed post-trade course in industrial electronics or the achievement of a comparable standard of knowledge by other means including the on-the-job experience referred to in provision (a) hereof, gained a sufficient comprehension of such complex or intricate circuitry work as will enable the tradesperson to examine, diagnose and modify systems comprising inter-connected circuits.

For the purpose of this definition the following courses are deemed to be prescribed post-trade courses in industrial electronics—

(i) Industrial Electronics (Course "C") of the Department of Education, Queensland;

(ii) Post Trade Industrial Electronics Course of the NSW Department of Technical Education;

(iii) The Industrial Electronics Course (Grades 1 & 2) as approved by the Education Department of Victoria;

(iv) The Industrial Electronics Course of the South Australian School of Electrical Technology;

(v) The Industrial Electronics Course of the Technical Education Department of Tasmania;

(vi) The Certificate in Industrial Electronics of the Technical Education Division of the Western Australian Educational Department.

INSTRUMENT TRADESPERSON—COMPLEX SYSTEMS

An instrument tradesperson who is mainly engaged in installing, repairing, maintaining, servicing, testing, modifying, commissioning, calibrating and fault finding instruments which make up a complex control system which utilises some combination of electrical, electronic, mechanical, hydraulic and pneumatic principles, including work on complex digital and/or analogue control systems utilising integrated circuits.

To be classified as an instrument tradesperson—complex systems, a tradesperson will have—

(a) had a minimum of two years on the job experience as a tradesperson working predominantly on complex and/or intricate instruments and instrument systems, as will enable performance of such work under minimum supervision and technical guidance; and

(b) satisfactorily completed an appropriate post trade course equivalent to at least two years part time study or has achieved to the satisfaction of the employer, a comparable standard of skill and knowledge by other means including in-house training or on the job experience referred to in (a) above.

INSTRUMENTATION AND CONTROLS TRADESPERSON

An instrument tradesperson working mainly at a level beyond that of instrument tradesperson—complex systems and who is mainly engaged in applying skills and knowledge to installing, repairing, maintaining, servicing, testing, modifying, commissioning, calibrating and fault finding industrial instruments which make up a complex control system which utilises some combination of electrical, mechanical, hydraulic and pneumatic principles and electronic circuitry containing complex analogue and/or digital control systems utilising integrated circuitry.

The application of this skill and knowledge would require an overall understanding of the operating mode or principles of the various types of measurement and

control devices on which the tradesperson is required to perform tasks. To be classified as an Instrumentation and Controls Tradesperson, a tradesperson must have at least three years relevant on the job experience as a tradesperson—12 months of which must be at the level of "Instrument Tradesperson—Complex Systems" and in addition must have satisfactorily completed a related post-trades course equivalent to at least two years part time study.

In addition, to be classified as an Instrumentation and Controls Tradesperson, a tradesperson must be required as part of those duties to—

(a) Maintain and repair multi-function printed circuitry of the type described in this definition using circuit diagrams and test equipment;

(b) Work under minimum supervision and technical guidance;

(c) Provide technical guidance to other tradespeople or to management within the scope of the work described in this definition; and/or

(d) Prepare reports of a technical nature on specific tasks or assignments as directed and within the scope of the work described in this definition.

INSTRUMENT TRADESPERSON

A tradesperson who is mainly engaged in installing, (including the installing of inter connecting instrumentation wiring, not prohibited by the Electricity Act 1976—1990) or hydraulic or pneumatic instrumentation tubing, repairing, maintaining, and servicing industrial instruments and control systems, including instruments and systems utilising integrated circuits.

An instrument tradesperson will have completed an apprenticeship, the greater part of which involved industrial instrumentation, or alternatively can demonstrate a knowledge and understanding of industrial instrumentation and can apply that knowledge and understanding to the tasks assigned by the employer. The required knowledge and understanding would have been gained by undertaking a formal training course run by a State Education Department or Technical Education Department or its equivalent or by at least 12 months on the job experience as a tradesperson at instrument work.

ELECTRONICS TRADESPERSON

Electronics Tradesperson means an electrical tradesperson working at a level beyond Electrician Special Class and who is mainly engaged in applying knowledge and skills to the tasks of installing, repairing, maintaining, servicing, modifying, commissioning, testing, fault finding and diagnosing of various forms of machinery and equipment which are electronically controlled by complex digital and/or analogue control systems utilising integrated circuitry.

The application of this skill and knowledge would require an overall understanding of the operating principles of the system and equipment on which the tradesperson is required to carry out tasks.

To be classified as an electronics tradesperson a tradesperson must have at least three years on-the-job experience as a tradesperson in electronic systems utilising integrated circuits and in addition, must have satisfactorily completed a post trades course in electronics equivalent to at least two years part time study.

In addition, to be classified as an electronics tradesperson a tradesperson must be required, as part of those duties, to—

(a) Maintain and repair multi-function printed circuitry of the type described in this definition using circuit diagrams and test equipment.

(b) Work under minimum supervision and technical guidance.

(c) Provide technical guidance to other tradespersons or to management within the scope of the work described in this definition; and/or

(d) Prepare reports of a technical nature on specific tasks or assignments as directed and within the scope of the work described in this definition.

ELECTRICAL MECHANIC—A GRADE LICENCE

A tradesperson who is required to hold an Electrical Mechanics A Grade Licence issued by the Electrical Licensing Board, or its equivalent, as a result of additional responsibilities assumed for testing and connecting work so performed.

4.—EMPLOYMENT

4.1 CONTRACT OF EMPLOYMENT

The contract of employment of all full-time employees shall be by the week in accordance with the project work week set out in Clause 2.2.

One weeks notice shall be given by employer or employee of termination of employment or the equivalent of one weeks remuneration paid or forfeited in lieu provided that the employer will not unreasonably require the employee to forfeit one weeks remuneration in lieu of notice. Provided that the employer shall at all times comply with the provisions of the *Workplace Relations Act 1996*.

The employer shall have the right to terminate employment without notice in accordance with the requirements of the Fair Treatment System provisions of Clause 4.4.2.

Generally, the employment on the project will be on a full time basis. It is however, recognised that there may be a requirement to employ people on other than a full time basis in order to satisfy project requirements. The terms and conditions of such arrangements shall, subject to the approval of the partners, be agreed between employer and employee.

In addition, it is agreed that short term (up to one month) and service personnel may be employed on a non full-time basis.

In each of the above cases, the contract for employment may include a lesser period of notice than set out above.

Employees engaged on other than a full time basis in accordance with this Clause shall have their rate of remuneration increased by 20% in lieu of the provisions of Part 6.

Should an employer wish to terminate a full time employee's contract of service from their Company, with no further offer of employment at another site, they will pay the employee one weeks salary in lieu of notice.

Employers will provide income protection insurance for employees who are covered by this Agreement.

4.2 LEADERSHIP RESPONSIBILITY

The Partners to this Agreement consider leadership crucial to the achievement of the goals set out in Part 1. The project will establish a leadership training module which will be undertaken by all personnel engaged on the project in a leadership role. The responsibilities of all leaders are to strive to—

- Establish and maintain a safe and healthy work area and to ensure safe and healthy work practices are used at all times by all team members.
- As a matter of fundamental priority, to focus on 'people' issues within the team.
- Deal with each team-member with fairness, equity and respect.
- Recognise the talents and capabilities of all members of the team and encourage excellence.
- Address any concerns raised by team-members promptly, obtaining advice and assistance from functional support personnel if necessary.
- Ensure an environment is created where all personnel are able to work to the full extent of their capability subject only to regulatory requirements.
- Provide timely open and frequent information regularly on the status of the project and contract to all team members.
- Engage in strong interactive communication processes.
- Identify opportunities for improved performance including counselling any team-members whose behaviour is causing concern within the guidelines established in the Fair Treatment System established in Clause 4.4.2.
- Establish and maintain continuous improvement and drive for excellence within the team.

- Personally comply with and ensure team compliance with project work rules.
- Understand and apply the intent and provisions of this Agreement and to seek appropriate advice in respect of provisions not clearly understood. To provide leadership to the team in respect of the application of the Agreement.

4.3 EMPLOYEE RESPONSIBILITY

The responsibilities of all employees are to strive to—

- Maintain a safe and healthy work area and to ensure safe and healthy work practices are used at all times. Take responsibility for personal safety and that of team-mates.
- Deal with team-mates and with team-leaders with fairness, equity and respect.
- Work towards project and team goals to the full extent of personal capability. Undertake any work task assigned subject only to meeting any applicable regulatory requirement.
- Raise any personal concerns or grievance directly with the team-leader. Pursue the process of resolution of grievances in accordance with the guidelines established in the Disputes Procedure Clause 4.4.3.
- Engage in strong interactive communication processes.
- Accept counselling offered within the Fair Treatment System (clause 4.4.2) positively.
- Respond positively to opportunities to improve personal performance.
- Actively support continuous improvement in work methods and the drive for excellence within the team.
- Comply with project work rules and accommodation rules.
- Seek and develop a clear understanding of the intent and provisions of this Agreement.
- Raise inappropriate leadership behaviour as set out in the Fair Treatment System Clause 5.4.2 with more senior leaders within the team.

4.4 EFFECTIVENESS ENHANCEMENT

4.4.1 CONTINUOUS IMPROVEMENT

The Partners to the Agreement are committed to the philosophy of continuous improvement and will provide leadership and support in respect of the establishment of a continuous improvement culture on the project.

Leaders and employees will consult in respect of the identification and implementation of work process improvement opportunities and the organisation of the work.

Employers will establish performance expectation criteria with each employee and undertake a formal process to ensure regular feedback on personal effectiveness.

Training and development opportunities will be made available to employees including opportunities to participate in continuous improvement, personal development, skill enhancement, occupational health and safety and, for agreed employees, trade union training.

4.4.2 FAIR TREATMENT SYSTEM

The Fair Treatment System is an interactive process to deal with any concern in respect of an employee's behaviour. Employee means any person directly employed on the expansion involved in the scope of work as described in Clause 5.1. It shall operate as follows—

1 In the first instance, the leader and employee will discuss the issue in an informal manner.

2 If the concern continues, the employee concerned shall receive formal counselling from the leader.

3 If the concern continues, the employee concerned shall be counselled by a more senior manager of the employer.

4 If the concern continues, the employee concerned shall be formally warned of the behaviour required and of the impact of continuing with inappropriate behaviour. This shall be documented.

5 If the concern continues, employment may be terminated.

At any level of the above procedure, the employee may choose to have another employee or representative in attendance and shall be advised of this right.

In certain circumstances involving serious unacceptable behaviour, immediate termination of employment may be appropriate. Any dispute in respect of this process shall be dealt with in accordance with the Disputes Procedure Clause 4.4.3.

The provisions of this clause are subject to the employer undertaking appropriate investigatory processes.

4.4.3 DISPUTES PROCEDURE

Any dispute arising on the Project shall be dealt with in the following manner—

1 The employee concerned shall raise the matter with the appropriate leader for resolution.

2 If not resolved, the employee will raise the matter with the next more senior manager of the employer for resolution.

3 If not resolved, the employer will involve Project Management in respect of the matter.

4 If not resolved, the matter may be referred to the appropriate Union Partner to this Agreement who will discuss the matter with the employer.

5 If not resolved, the matter may be referred by the Union to Project Management.

6 If still not resolved, the matter may either be referred to the Partners Review Forum described in Clause 5.4 or referred to the Industrial Relations Commission for resolution.

At any level of the above procedure, the employee may choose to have another employee or representative in attendance and shall be advised of this right.

While the above process is being pursued, work shall continue as normal.

Any suspected breach of this Agreement shall be reported to the Partners Review Forum for investigation and, if necessary, corrective action.

5.—ADMINISTRATION OF AGREEMENT

5.1 APPLICATION OF AGREEMENT

This Agreement shall apply to the on site construction work within the scope of management of Kaiser Bechtel Joint Venture (an unincorporated joint venture) at the Worsley Alumina Refinery Site, the Bauxite Mine facility at Boddington, the bauxite overland conveying system and the Portsite Facilities at Bunbury.

Provided that the Agreement shall not apply to—

- Staff Supervisory personnel (however rules of conduct as described herein do form part of staff supervisory personnel's ongoing employment conditions on this expansion);
- Employees of Worsley Alumina Pty Ltd;
- Mining, mine development and associated work undertaken by Worsley Alumina Pty Ltd and by contractors to Worsley Alumina Pty Ltd;
- Deliveries of personnel and material and equipment to and from site;
- Statutory employees other than those involved in the scope of work managed by KBJV as described above;
- Pipelines and transmission lines and towers associated with utilities to their initial point of tie in to the development within the known and accepted site boundary and recognised as on site project works;
- Off site infrastructure including manufacture and fabrication associated with the development; and
- The construction and operation of any hostel or camp that may house employees engaged on the Worsley Alumina Expansion Project.

5.2 PARTNERS TO AGREEMENT

This Agreement shall be binding upon the named respondents, the Unions, its officers and members. There are approximately 50 employees covered by this agreement.

The following organisations are parties to the partnership entered into for the term of the Project represented by this Agreement—

- Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers, Western Australian Branch, its officers, employees and members (hereafter 'AFMEPKIU');
- The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia, Western Australian Branch, its officers, employees and members (hereafter 'CMETU').
- Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, Western Australian Branch, its officers, employees and members (hereafter 'CPU');
- Coastal Welding and Fabrication Services;
- S.J. Piavaini Welding & Fabrication;
- Thommo's Roofing;
- West Coast Lining Systems;
- G & T Spooner Plumbing;
- G.S. & K.F. White Home Improvers;
- Obyco;
- L.A.D. Machining;
- Australind Premix;
- David Evans & Co Painting Contractors;
- Breaker Earthmoving;
- M.P. & C.S. Ferrbache Crane Hire;
- Ram Jet Concrete Pumping;
- Crest Industries;
- Pemberton Earthmoving;
- South West Splicing Services;
- KMA Maintenance Group;
- Boddington Earthmoving
- Employees of the employer engaged on the Project covered by the classification structure set out in Clause 3.

The parties set out above shall be referred to hereafter as the 'Partners' to this Agreement.

5.3 TERMS OF AGREEMENT

This Agreement shall apply exclusively to the construction of facilities. No other Awards or Agreements shall apply.

This Agreement is stand-alone and insular in nature and has been developed by the Partners to reflect and accommodate the specific circumstances of the Project.

This Agreement is made in full and final settlement of all claims with respect to this project and the parties to this Agreement shall not make any further claims with respect to this project for the period of operation of this Agreement.

The rates and conditions as contained herein this Agreement are recognised by the parties as covering all circumstances and disabilities of work in constructing the alumina refinery expansion, including working within the existing alumina refinery operations, from commencement through all phases to practical completion.

This Agreement shall not be used as a precedent by any of the Partners in respect of any other project.

5.4 OPERATION OF AGREEMENT

This Agreement shall take effect as from 1 October, 1997 and shall remain in force until 1 October 2000.

The Partners shall institute a process to periodically review the effective operation of this Agreement in terms of achieving the Objectives set out in Part 1. It is the role of the Partners, in this review forum, to review Project status and resolve any issues of Agreement interpretation or application.

6.—PAID TIME OFF

6.1 CONCEPT

In consideration of the specific circumstances of this Project, the concept of Paid Time Off has been adopted in respect of all paid absence entitlements.

The system involves the calculation of the appropriate annual entitlement to paid absence based on industry standards, ie—

Annual leave:	4 weeks (5 weeks shift work)
Sick Leave:	10 days
Public Holidays:	10 days

This entitlement is calculated **as if the employee was at work**, ie at the rate of 10 hours per day of paid absence. This entitlement is then accrued weekly on a pro rata basis which forms the employee's Paid Time Off (hereafter 'PTO') account.

Each time the employee takes leave, the PTO account is reduced by the number of hours taken and the project salary is maintained.

In addition to the PTO system described in Part 6, Parental Leave and Jury Service shall be applicable in accordance with the provisions of Clauses 7.12 and 7.13.

6.2 ACCRUAL OF PAID TIME OFF

PTO shall accrue at the rate of 7.7 hours per week; there is no accrual for additional time. Accrual continues during periods of PTO or authorised unpaid time off. There is no accrual for any period of unauthorised absence.

The 7.7 hours per week shall be increased to 8.7 hours for any full week where an employee is engaged on shift work.

This accrual is in consideration of annual leave, sick leave, public holidays, annual leave loading and bereavement leave.

6.3 UTILISATION OF PAID TIME OFF

Accrued PTO shall be utilised for any period of paid absence. On each occasion of leave where PTO is to be used, the employee PTO account is reduced by the period of absence and the employee's project salary is maintained at the full amount.

For full day absences, PTO is utilised at the rate of ten hours per day and the employee's project salary sustained at that level. An employee other than essential services personnel, shall not be compelled to work on a Public Holiday.

The following examples illustrate the intent of PTO utilisation—

A. PUBLIC HOLIDAY—DAY OFF TAKEN

The employee's weekly project salary is maintained at the normal level and the employee's PTO account is reduced by 10 hours.

B. PUBLIC HOLIDAY—WORKED

The employee's weekly project salary is maintained and the employee's PTO account is not reduced. The effect of this is to pay the employee 10 hours at an aggregated rate for the work on the holiday while already having credited the employee PTO account (through the accrual process) by an additional 10 hours at the aggregated rate.

C. ANNUAL LEAVE—FOUR DAYS TAKEN

The employee's weekly project salary is maintained at the normal level and the employee's PTO account is reduced by 40 hours.

D. BEREAVEMENT, FAMILY LEAVE OR OTHER PERSONAL NECESSITY

PTO can be used for bereavement leave, family leave or, by agreement between employer and employee, for other personal necessity including family "emergencies". In these circumstances the employee's weekly project salary is maintained and the employee's PTO account is reduced by the period of leave, which may in some cases be part of a day. In these circumstances the account will be drawn down by the actual period of time absent only.

E. LEAVE IN EXCESS OF ACCRUAL

Where an employee takes leave in excess of the employee's PTO account balance this may be taken as leave without pay and a rateable deduction made in the project salary in the method prescribed in Clause 2.1. Alternatively, the employer may maintain the employee's weekly Salary by allowing the employee's PTO account to go negative.

6.4 UNUSED PAID TIME OFF

When employment is terminated, the unused accrued PTO shall be paid to the employee as a termination payment at the rate set out in Clause 2.1 applicable at the time of termination.

Where employment is terminated and the employee's PTO account balance is negative, the employer may recover the cost from the employee's final pay.

6.5 PORTABLE LONG SERVICE LEAVE

Employees covered by this Agreement shall be entitled to long service leave under and subject to the provisions of the Building and Construction Industry (Portable Long Service Leave) Act 1991.

7.—OTHER PROVISIONS

7.1 UNION REPRESENTATION

7.1.1 SCOPE OF COVERAGE

The Union Partners to this Agreement have coverage as follows—

AFMEPKIU: All mechanical tradespersons and non-tradespersons engaged in engineering construction work.

CPU: All employees of electrical contractors and all electrical, plumbing and roofing/siding tradespersons engaged by other contractors

CMETU: All civil tradespersons and non-tradespersons (other than those employed by electrical contractors) engaged in civil construction work and all crane drivers.

Provided that such coverage shall not constitute any barrier to undertaking work of each Project Team Group as set out in Part 3.

Within the parameters established at law, the parties undertake to encourage and facilitate all employees covered by this Agreement to become and remain financial members of the relevant union party to this Agreement.

7.1.2 RIGHT OF ENTRY

Accredited officials of the Union Partners to this Agreement have the right to enter the Worsley Alumina Expansion Site during working hours. Officials will comply with access and orientation requirements and site rules.

7.1.3 SHOP STEWARDS

A Shop Steward holding accreditation from a Union Partner to this Agreement will be recognised by the direct employer and will have reasonable work time when mutually convenient to undertake matters related to the Shop Steward's Union and the direct employer.

7.2 REDUNDANCY

7.2.1 EMPLOYER MEMBER OF INDUSTRY SCHEME

Where an employer is a member of an industry redundancy scheme, the employer shall contribute $50 per week to the scheme on behalf of each employee.

7.2.2 EMPLOYER NOT MEMBER OF INDUSTRY SCHEME

Where an employer is not a member of an industry redundancy scheme, the employer shall accrue $50 per week for each employee, which shall be paid out upon completion of employment.

Changes in the quantum of the payment shall only be in accordance with the Trust Deed and Deed of Adherence to the particular scheme.

7.3 SUPERANNUATION

Contributions shall be paid into a complying superannuation fund or scheme in accordance with the *Superannuation Guarantee (Administration) Act 1992*, which shall be nominated by the employee.

The employer shall notify the employee that they may nominate a complying superannuation fund or scheme. If the employee does not nominate a fund or scheme, or until they do nominate a fund or scheme, superannuation contributions shall be paid into a fund nominated by the employer.

The employer and the employee are bound by the employee's choice of fund unless there is agreement between them to change the fund. The employer shall not unreasonably refuse to agree to a change of fund requested by the employee.

An earnings base for the purposes of the Superannuation Guarantee Act, will be created by dividing the weekly project salary by fifty and multiplying that amount by thirty eight.

7.4 TEAM BASED GAINSHARING REMUNERATION

An employer may, at its absolute discretion, establish a system to share contract incentives or other profit resulting from the project with members of the team that achieved the outcome. KBJV review and approval of the system proposed is required prior to implementation.

The employer will publish details of the scheme's operation for employees and will provide periodic status reports.

7.5 TRANSPORT

The Project shall provide employees with transport to and from the Project work sites each day through a bussing service. The localities that will be serviced through bus transport are—

Collie

Bunbury

Australind

Boddington

Project Accommodation Facility

A bus service shall be provided from the project Accommodation Facility to Perth each week leaving the Accommodation Facility after work on Fridays and Saturdays and returning on Sunday evenings or Monday mornings.

7.6 NON-LOCAL PERSONNEL

A non-local employee is an employee working at such a distance from the employee's usual place of residence that it is impracticable for the employee to return home each evening.

Project Management will ensure that each applicant makes a declaration of usual place of residence upon application for employment and that each applicant is briefed on the consequences of this declaration.

Eligibility or non-eligibility for the provisions of this clause, based on the application declaration, shall be included in each contract of employment between employer and employee. A non-local employee shall be entitled to fully found accommodation on a single person status.

7.7 PROTECTIVE CLOTHING, EQUIPMENT AND FOOTWEAR

7.7.1 PROJECT ISSUE

Upon commencement on the project, employees will be issued with the following protective clothing, equipment and footwear—

- One pair of approved safety footwear.
- Three pairs of standard-issue long pants and three standard-issue shirts or alternatively, three pairs of overalls (employee choice)
- One hard hat (with substantial add-on shade 'brim') designating the employee's contractor, assigned area organisation and name.
- One pair of approved safety glasses (either tinted or non-tinted—employee choice). Employees with prescription glasses will be issued with monogoggles or prescription safety glasses (employee choice).
- One pair of approved chemical monogoggles.
- One Bluey Jacket of Norwellan Bluey type of 14oz material.

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

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

Hard hats, safety glasses and safety foot wear must be worn at all times other than whilst in offices and crib sheds. Monogoggles must be worn in designated areas of the plant.

Reissue shall be on the basis of fair wear and tear provided the worn out item is produced for replacement. An employee who loses parts of the issue may be required to purchase necessary replacements.

7.7.2 EMPLOYER SUPPLY

The employer shall supply, for the use of employees on the Project, all safety equipment and protective clothing necessary for specific work tasks. Requisite safety equipment shall be worn.

The employer shall make available sun-screen (SPF 15+) for personnel engaged in outside work.

7.8 APPRENTICES AND TRAINEES

APPRENTICES

Apprentices may be engaged on the project. In general, it is considered that construction project activity is more suited for 3rd and 4th year apprentices. Apprentices so engaged on the project shall be paid the following percentages of the Project salary for the trade to which they are indentured—

First year of apprenticeship:	42%
Second year of apprenticeship:	55%
Third year of apprenticeship:	72%
Fourth year of apprenticeship:	88%

TRAINEESHIPS

Appropriate arrangements for structured traineeships for community-based people will be established by the Partners to this Agreement in consultation with Worsley Alumina Pty Ltd and regional communities.

7.9 TIME AND SALARY RECORDS

(a) The employer shall maintain and retain time and salary records in respect of each employee.

(b) Inspection of records shall be in accordance with Section 49B of the *Industrial Relations Act 1979* as set out in the appendix to this agreement.

7.10 AMENITIES

The project and/or the employer shall provide all requisite amenities to a universally high standard.

7.11 FIRST AID

The project and/or the employer shall provide first aid facilities on the project.

7.12 PARENTAL LEAVE

An employee is entitled to unpaid maternity, paternity and adoption leave or to work on other than a full-time basis in connection with the birth or adoption of a child.

Provided that an employee may use accrued PTO for the purposes of Parental Leave. Notwithstanding the provisions of Clauses 6.2, 7.2 and 7.3, PTO, redundancy and superannuation do not accrue during Parental Leave.

7.13 JURY SERVICE

An employee required to attend for jury service shall be reimbursed by the employer the difference between the amount paid in respect of attendance for jury service and the employee's salary.

SIGNATORIES TO AGREEMENT

Coastal Welding and Fabrication Services

(Sgd.)
Signature Print Name
(Sgd.) 20/3/98
Witness Date

S.J. Piavaini Welding & Fabrication

(Sgd.)
Signature Print Name
(Sgd.) 25/3/98
Witness Date

Thommo's Roofing

(Sgd.)
Signature Print Name
(Sgd.) 23/4/98
Witness Date

West Coast Lining Systems

(Sgd.)
Signature Print Name
(Sgd.) 1/4/98
Witness Date

G & T Spooner Plumbing

(Sgd.)
Signature Print Name
(Sgd.) 15/5/98
Witness Date

G.S. & K.F. White Home Improvers

(Sgd.)
Signature Print Name
(Sgd.) 29/4/98
Witness Date

Obyco

(Sgd.)
Signature Print Name
(Sgd.) 23/4/98
Witness Date

L.A.D. Machining

(Sgd.)
Signature Print Name
(Sgd.) 5/5/98
Witness Date

Australind Premix

(Sgd.)
Signature Print Name
(Sgd.) 24/3/98
Witness Date

David Evans & Co Painting Contractors

(Sgd.)
Signature Print Name
(Sgd.) 6/4/98
Witness Date

Breaker Earthmoving

(Sgd.)
Signature Print Name
(Sgd.) 10/5/98
Witness Date

M.P. & C.S. Ferrbache Crane Hire

(Sgd.)
Signature Print Name
(Sgd.) 28/4/98
Witness Date

Ram Jet Concrete Pumping

(Sgd.)
Signature Print Name
(Sgd.) 7/4/98
Witness Date

Crest Industries

(Sgd.)
Signature Print Name
(Sgd.) 15/4/98
Witness Date

Pemberton Earthmoving

(Sgd.)
Signature Print Name
(Sgd.) 26/10/98
Witness Date

KMA Maintenance Group

(Sgd.)
Signature Print Name
(Sgd.) 11/10/98
Witness Date

South West Splicing Services

(Sgd.)
Signature Print Name
(Sgd.) 5/11/98
Witness Date

Boddington Earthmoving

(Sgd.)

Signature Print Name

(Sgd.) 25/11/98

Witness Date

The COMMON SEAL of)
Automotive, Food, Metals, Engineering,)
Printing and Kindred Industries Union) Common Seal
of Workers, Western Australian Branch)
was hereto affixed in the presence of)

(Sgd.)

Signature Print Name

(Sgd.) 22/5/98

Witness Date

The COMMON SEAL of)
Communications, Electrical, Electronic,)
Energy, Information, Postal, Plumbing)
and Allied Workers Union of Australia,)
Engineering and Electrical Division,)
Western Australian Branch)
was hereto affixed in the presence of)

(Sgd.)

Signature Print Name

(Sgd.) 5/6/98

Witness Date

The COMMON SEAL of)
The Construction, Mining, Energy,)
Timberyards, Sawmills and Woodworkers) Common Seal
Union of Australia, Western Australian)
Branch was hereto affixed in the presence)
of)

(Sgd.)

Signature Print Name

(Sgd.) 16/6/98

Witness Date

APPENDIX—S.49B—INSPECTION OF RECORDS REQUIREMENTS

(1) Where this award, order or industrial agreement empowers a representative of an organisation of employees party to this award, order or industrial agreement to inspect the time and wages records of an employee or former employee, that power shall be exercised subject to the Industrial Relations (General) Regulations 1997 (as may be amended from time to time) and the following—

(a) The employer may refuse the representative access to the records if:—

(i) the employer is of the opinion that access to the records by the representative of the organisation would infringe the privacy of persons who are not members of the organisation; and

(ii) the employer undertakes to produce the records to an Industrial Inspector within 48 hours of being notified of the requirement to inspect by the representative.

(b) The power of inspection may only be exercised by a representative of an organisation of employees authorised for the purpose in accordance with the rules of the organisation.

(c) Before exercising a power of inspection, the representative shall give reasonable notice of not less than 24 hours to an employer.

PUBLIC SERVICE ARBITRATOR—Awards/Agreements—Variation of—

EDUCATION DEPARTMENT MINISTERIAL OFFICERS SALARIES ALLOWANCES AND CONDITIONS AWARD 1983 No. 5 of 1983. No. P43 of 1998.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Civil Service Association of Western Australia Incorporated

and

Minister for Education.

No. P 43 of 1998.

Education Department Ministerial Officers Salaries Allowances and Conditions Award 1983 No. 5 of 1983.

9 February 1999.

Reasons for Decision.

COMMISSIONER S A CAWLEY: The decision in this matter was given at the conclusion of the hearing on 4 February 1999. These reasons and the minutes of order now issue.

This is an application to vary the Education Department Ministerial Officers Salaries Allowances and Conditions Award 1983 No. 5 of 1983 to insert a new clause to allow for a salary packaging arrangement to be entered into between an employee and the employer. The clause sought mirrors that inserted in other public sector awards following a decision by the Commission in Court Session in 1998. To that extent the clause is not controversial and the respondent does not raise any issue as to its merits. The respondent says, however, that the Commission should have regard for the preference of the respondent that an industrial agreement providing for salary packaging be registered at the same time as any variation to the award. Endeavours so far to reach such an agreement with the application union were described in the course of this submission but to date these have not been successful.

Having considered the respective positions of the parties I am not persuaded by the respondent that there is any sufficient reason now why the award should not be varied as sought. The fact that the parties have endeavoured to reach an agreement which, if registered, would have the effect of overriding the award clause but have failed so far is a matter for them. In the meantime there is no good reason of which I am aware why the employees covered by this award should not have the right to raise an application for salary packaging to be reasonably considered by the employer. The respondent suggests that none or few of such employees will exercise such a right. But that would be a matter for each individual. To refuse to establish a right at all on this basis would be unfair.

The claim is made out. The award is to be varied accordingly.

Appearances: Mr D Newman appeared on behalf of the applicant.

Ms M Erneste appeared on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Civil Service Association of Western Australia Incorporated

and

Minister for Education.

No. P 43 of 1998.

Education Department Ministerial Officers Salaries Allowances and Conditions Award 1983 No. 5 of 1983.

12 February 1999.

Order.

HAVING heard Mr D Newman on behalf of the applicant and Ms M Erneste on behalf of the respondent, now therefore I the undersigned, pursuant to the powers conferred under the Industrial Relations Act, 1979 do hereby order —

THAT the Education Department Ministerial Officers Salaries Allowances and Conditions Award 1983 No. 5 of 1983 as amended be further varied in accordance with the following schedule with effect on and from the 4th day of February 1999.

[L.S.]

(Sgd.) S. A. CAWLEY,
Commissioner,
Public Service Arbitrator.

———

Schedule.

1. Clause 2.—Arrangement: Immediately following "19. Award Modernisation" in this clause, insert—

20. Salary Packaging

2. Clause 19.—Award Modernisation: Immediately following this clause, insert a new clause as per the following—

20.—SALARY PACKAGING

(1) For the purposes of this award "salary packaging" shall mean an arrangement whereby the wage or salary benefit arising under a contract of employment is reduced, with another or other benefits to the value of the replaced salary being substituted and due to the employee.

(2) An employer and employee bound by this award may enter into a salary packaging arrangement subject to the following—

(a) The employer shall take all reasonable steps to ensure that any salary package complies with taxation and other relevant laws;

(b) (i) The employer shall record the arrangement at the time it is entered into and provide a copy to the employee before the arrangement comes into effect;

(ii) The record shall include details of the employee's classification and salary level applying immediately prior to the salary packaging coming into effect and the details of the package;

(c) The value of any agreed salary package, viewed objectively, shall not be less than the value of the entitlements under this award which would otherwise apply;

(d) The value of any agreed salary package, viewed objectively, shall not be greater than the value of the contractual benefits which would otherwise be due to the employee.

(3) An employer shall not unreasonably withhold agreement to salary packaging on request from an employee.

(4) In the event of a dispute involving—

(a) refusal by an employer to discuss after having received a request for salary packaging; and/or

(b) a claim by an employee or the union party to this award that an employer is unreasonably refusing to enter into a salary packaging arrangement with its employees;

such dispute may be determined under the Industrial Relations Act 1979 as amended.

AWARDS/AGREEMENTS— Variation of—

BUILDING TRADES (CONSTRUCTION) AWARD 1987.

No. R14 of 1978, No. 1968 of 1998.

ARTWORKERS AWARD.

No. A30 of 1987, No. 2010 of 1998.

BUILDING TRADES AWARD 1968.

No. 31 of 1966, No. 2011 of 1998.

ENGINE DRIVERS' (BUILDING AND STEEL CONSTRUCTION) AWARD.

No. 20 of 1973, No. 2012 of 1998.

BUILDING TRADES (GOVERNMENT) AWARD 1968.

No. 31A of 1966, No. 2013 of 1998.

INDUSTRIAL SPRAYPAINTING & SANDBLASTING AWARD 1991.

No. A33 of 1987, No. 2014 of 1998.

EARTHMOVING & CONSTRUCTION AWARD.

No. 10 of 1963, No. 2015 of 1998.

FOREMEN (BUILDING TRADES) AWARD 1991.

No. A5 of 1989, No. 2016 of 1998.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Builders' Labourers, Painters & Plasterers Union of Workers, WA & Another

and

Master Builders' Association of Western Australia (Union of Employers) & Others.

No. 1968, 2010, 2011, 2012, 2013, 2014, 2015 & 2016 of 1998.

COMMISSIONER S J KENNER.

28 January 1999.

Reasons for Decision.

THE COMMISSIONER: These applications seek variations to a range of building industry awards in relation to expense related allowances.

Ms Harrison as agent for the applicant unions in all applications, submitted to the Commission that the applications to adjust the various allowance provisions in the awards reflect the past practice in relation to adjustments of these allowances in the awards under consideration. She submitted that the adjustments proposed to the various awards are based upon movements in the Consumer Price Index ("CPI") components relevant to the specific categories of expenses in the awards under consideration.

Tendered in these proceedings, by way of exhibit A1, was a schedule setting out various allowance adjustments made to the National Building & Construction Industry Award 1990 in 1998, based upon the relevant CPI components for the various allowances there under consideration. Ms Harrison submitted that the CPI components set out in exhibit A1, are the appropriate adjustments to be made to the allowances under consideration in these applications. Ms Harrison also submitted that the applications were consistent with the Commission's

Wage Fixing Principles specifically section 3 principle 5—Adjustment of Allowances and Service Increments on the basis that the allowances under consideration constitute a reimburseable expense and accordingly, are able to be adjusted from time to time to reflect the relevant change in the level of such expenses.

The respondents consent to the applications to vary the awards in respect of the expense related allowance provisions and also submit that the applications are consistent with the Commission's Wage Fixing Principles in relation to the adjustment of allowances and service increments as applying to reimbursement of expense allowances.

Based on what is before the Commission, I am satisfied that the applications for the variation of the awards before me are consistent with the Commission's Wage Fixing Principles in relation to the adjustment of allowances that are of the character of reimburseable expense allowances. Accordingly, the applications will be granted.

The parties have reached agreement that except in respect of application 1968 of 1998 in relation to the Building Trades (Construction) Award 1987, an operative date from the first pay period commencing on or after the date of these proceedings, that being 23 December 1998, is appropriate. In relation to application 1968 of 1998, Mr Varidel and Mr Richardson on behalf of various respondents to that application, argued for a prospective date of operation insofar as that application was concerned. The primary submission put in support of the prospective date having application, related to the adjustment to the tool allowance under the Building Trades (Construction) Award 1987. It was submitted that whilst the quantum of the adjustment to the tool allowance was small insofar as an employee was concerned, due to the Christmas holiday period, employers would be required to in effect, calculate retrospectively the tool allowance adjustment. It was said that as the tool allowance under the Building Trades (Construction) Award 1987 is a part of the hourly rate calculation—follow the job loading pursuant to clause 8 (4) of that award, this may involve a considerable administrative burden in recalculating any payments already made in respect of leave entitlements over the holiday period.

Ms Harrison on behalf on the applicants strongly opposed the respondent's submissions that the operative date be prospective. She submitted that it would be totally inappropriate to excise one group of employees from the majority covered by these applications, and deny them the benefit of the allowance adjustments received by others. Further, Ms Harrison submitted that there was no justification for the Commission in this circumstance, to depart from the usual practice that orders arising out of proceedings such as these have an effective date from the date of hearing. The applicant further submitted that there was no evidence before the Commission as to the extent to which employees covered by the Building Trades (Construction) Award 1987 took annual leave at this time of year. Moreover, given that the application to amend the award was served on the respondents on 3 November 1998, the applicant submitted the respondents have had due notice that the expense allowance adjustments may take effect at about this time.

Having considered the matter and with respect to the submissions of Mr Varidel and Mr Richardson, I am not satisfied on this occasion, that there is sufficient justification for the Commission to order a prospective date of operation pursuant to s 39(1) of the Act. There is insufficient before me in this matter to determine the extent to which there may need to be retrospective adjustments to employees' wages covered by the award to justify a departure from the usual course on this occasion.

In all the circumstances, the order giving effect to the variation to the Building Trades (Construction) Award 1987 will have an operative date from the same date as the other applications, that being from the first pay period commencing on or after 23 December 1998.

Minutes of proposed order now issue.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Adsigns Pty Ltd & Others.

No. 1968 of 1998.

Building Trades (Construction) Award 1987.

No. R 14 of 1978.

COMMISSIONER S J KENNER.

22 February 1999.

Order.

Having heard Ms J Harrison as agent on behalf of the applicant and Mr K Richardson and Mr S Varidel as agents 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 (Construction) 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 23 December 1998.

(Sgd.) S. J. KENNER,
[L.S.] Commissioner.

Schedule.

1. Clause 8—Rates of Pay: Tool Allowance: 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	18.90
Plasterers, Fixers	15.50
Bricklayers	13.50
Roof Tile Fixers	9.90
Signwriters, Painters, Glaziers	4.60

2. 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 $7.80 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.

3. Clause 21—Living Away From Home—Distant Work: Delete subclauses (3) and (4) of this clause and insert the following in lieu thereof—

(3) Entitlement

Where an employee qualifies under subclause (1) of this clause the employer shall either—

(a) Provide the employee with reasonable board and lodging; or

(b) Pay an allowance of $288.80 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 $41.30 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

(c) in circumstances prescribed in subclause (7) of this clause, provide camp accommodation and messing constructed and maintained in accordance with subclause (10) of this clause.

"Reasonable board and lodging" shall mean lodging in a well kept establishment with three adequate meals each day, adequate furnishings, good bedding, good floor coverings, good lighting and heating and with hot and cold running water, in either a single room or a twin room if a single room is not available.

(4) Travelling Expenses

An employee who is sent by his/her employer or selected or engaged by an employer or agent to go to a job which qualifies him/her to the provision of this clause shall not be entitled to any of the allowances prescribed by Clause 12A.—Fares and Travelling (Except Plumbers) covered by this Award, and Clause 12B.—Fares and Travelling Time—Plumbers Only, of this award for the period occupied in travelling from his/her usual place of residence to the distant job, but in lieu thereof shall be paid—

(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 $7.80 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.

4. Clause 33—Compensation for Clothes and Tools: Delete subclause (2) 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 $1098.00 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.

(b) Where an employee is absent from work because of illness or accident and has advised the employer in accordance with Clause 23.-Sick Leave the employer shall ensure that the employee's tools are securely stored during his/her absence.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Town of Narrogin & Other.

No. 2010 of 1998.

Artworkers Award.

No. A 30 of 1987.

COMMISSIONER S J KENNER.

22 February 1999.

Order.

Having heard Ms J Harrison as agent 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 Artworkers 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 23 December 1998.

(Sgd.) S. J. KENNER,
[L.S.] Commissioner.

Schedule.

1. Clause 6—Wages: Delete subclause (3) of this clause and insert the following in lieu thereof—

(3) Artworker Allowances—

(a) Equipment Allowance 32.20

Provided that the equipment allowance shall not be paid where the employer supplies an employee with all necessary equipment

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WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Crystal Softdrinks & Others.

No. 2011 of 1998.

Building Trades Award 1968.

No. 31 of 1966.

COMMISSIONER S J KENNER.

22 February 1999.

Order.

Having heard Ms J Harrison as agent on behalf of the applicant and Ms J Wesley as agent 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 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 23 December 1998.

(Sgd.) S. J. KENNER,
[L.S.] Commissioner.

Schedule.

1. Clause 10—Wages: Delete subclause (4) of this clause and insert the following in lieu thereof—

(4) Tool Allowance: (Per Week)	$
(a) Bricklayers and Stoneworkers	13.49
(b) Plasterers	15.47
(c) Carpenters and Joiners	18.79
(d) Joiners—Assembler A or B	9.50
(e) Plumbers	18.79
(f) Painters	4.67
(g) Signwriters	4.67
(h) Glaziers	4.67

Note 1: The tool allowance prescribed in paragraphs (a) to (h) inclusive of this subclause, each include an amount of 5 cents for the purpose of enabling the employees to insure their tools against loss or damage by theft or fire.

Note 2: The abovenamed allowances shall not be paid where the employer supplied the employee with all necessary tools.

2. Clause 19—Overtime: Delete subclause (6) of this clause and insert the following in lieu thereof—

(6) Any employee who is required to continue working for more than two hours after his usual knock-off time on any day shall be supplied by the employer with a reasonable meal or, in lieu of such meal, shall be paid an allowance of $7.80 for that meal.

Provided that this subclause shall not apply to a worker who has been notified on the previous day that he would be required to work such overtime.

3. Clause 23—Distant Work: Delete subclause (4) of this clause and insert the following in lieu thereof—

(4) The employer shall pay all fares which shall be deemed to include the cost of transporting the employee's tools, in connection with such travelling, and shall pay the cost of each ordinary meal actually and reasonably required during such travelling but the minimum allowance for such meal shall be $7.80.

Provided that the amount of the return fare shall not be payable if the worker be dismissed for misconduct or, within one working week of his commencing work on the job, for incompetency or if the worker terminates or discontinues his work on the job within one month of his commencing thereon.

Provided further that where such travelling is to or from or within the area of the State north of latitude 26°S., the following provisions shall apply—

(a) The amount of the original fare shall be deducted from the subsequent earnings of the worker.

(b) One-third of the amount of such fare shall be refunded by the employer to any worker who continues for each of the first three months of the duration of the job, with the full fare being refunded by the employer to a worker who continues in his service until the completion of any job of less than three months' duration or to any worker dismissed by the employer within the first three months of the employment unless such dismissal was due to the worker's misconduct.

(c) Where a worker continues in the employer's service at a distant job for three months or six months, he shall be paid by the employer either one half or the full amount as the case may be, of the fares incurred in returning to his home, with the full amount of such fares being payable by the employer to a worker who continues in his service until the completion of any job of less than six months' duration or to any worker dismissed by the employer within the first six months of the employment unless such dismissal was due to the worker's misconduct.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Construction, Mining, Energy Timberyards,

Sawmills and Woodworkers Union of Australia,
Western Australian Branch

and

Master Builders' Association of Western Australia
(Union of Employers) & Others.

No. 2012 of 1998.

Engine Drivers' (Building and Steel Construction) Award.

No. 20 of 1973.

COMMISSIONER S J KENNER.

22 February 1999.

Order.

Having heard Ms J Harrison as agent on behalf of the applicant and Mr K Richardson and Ms J Wesley as agents 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' (Building and Steel Construction) 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 23 December 1998.

(Sgd.) S. J. KENNER,
[L.S.] Commissioner.

Schedule.

1. Clause 11—Meal Allowance: Delete subclause (1) of this clause and insert the following in lieu thereof—

(1) Where an employee, without being notified on the previous day or earlier, has to continue working after the usual knock-off time for more than two hours, he/she shall be provided with any meal required or shall be paid $7.80 in lieu thereof, and if owing to the overtime worked, a second or subsequent meal is required he/she shall be supplied with each meal or be paid $4.80 for each meal so required. Provided that this subclause shall not apply to an employee residing in the same locality as his/her place of employment who can reasonably return home for a meal.

2. Clause 23—Distant Work: Delete subclause (1) of this clause and insert the following in lieu thereof—

(1) Where an employee is engaged or selected or advised by an 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—

(a) provide the employee with reasonable board and lodging; or

(b) pay an allowance of $288.80 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 the end of the employment on a distant job, the allowance shall be $41.30 per day.

Provided that the foregoing allowances shall be increased if the employee satisfies the employer that he 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.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Contract & Management Services & Others.

No. 2013 of 1998.

Building Trades (Government) Award 1968.

No. 31 A of 1966.

COMMISSIONER S J KENNER.

22 February 1999.

Order.

Having heard Ms J Harrison as agent on behalf of the applicant and Ms C Eftos as agent 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 23 December 1998.

(Sgd.) S. J. KENNER,
[L.S.] Commissioner.

Schedule.

1. Clause 9—Wages: Delete subclause (2) of this clause and insert the following in lieu thereof—

(2) Tool Allowance	(Per Week) $
(a) Bricklayers and Stoneworkers	13.50
(b) Plasterers	15.50
(c) Carpenters and Joiners	18.80
(d) Plumbers	18.80
(e) Painters and Sign-writers	4.60
(f) Glaziers	4.60

(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 $1.47 per week.

NOTE 1: The tool allowance prescribed in paragraphs (a), (b), (c) and (d) of this subclause each include an amount of six cents for the purpose of enabling the employees to insure their tools against loss or damage by theft or fire.

NOTE 2: The abovenamed allowances shall not be paid where the employer supplies an employee with all necessary tools.

2. Clause 19—Overtime: Delete subclause (6) of this clause and insert the following in lieu thereof—

(6) Any employee who is required to continue working for more than two hours after his usual knock-off time on any day shall be supplied by the employer with a reasonable meal, or in lieu of such meal, shall be paid an allowance of $7.80 for a meal.

Provided that this subclause shall not apply to a worker who has been notified on the previous day that he would be required to work such overtime.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Abrasive Blasting Services Pty Ltd & Others.

No. 2014 of 1998.

Industrial Spraypainting & Sandblasting Award 1991.

No. A 33 of 1987.

COMMISSIONER S J KENNER.

22 February 1999.

Order.

Having heard Ms J Harrison as agent on behalf of the applicant and Ms J Wesley as agent 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 Industrial Spraypainting and Sandblasting Award 1991 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 23 December 1998.

(Sgd.) S. J. KENNER,
[L.S.] Commissioner.

Schedule.

1. Clause 17—Meal Allowance: Delete this clause and insert the following in lieu thereof—

17.—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 11(1) or 16(4) shall be paid by his/her employer an amount of $7.80 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 18.—Living Away From Home—Distant Work and is provided with a suitable meal.

2. Clause 18—Living Away from Home—Distance Work: Delete subclause (3) in this clause and insert the following in lieu thereof—

(3) Entitlement

Where an employee qualifies under subclause (1) of this clause the employer shall either—

(a) Provide the employee with reasonable board and lodging; or

(b) Pay an allowance of $288.80 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 $41.30 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

(c) In circumstances prescribed in subclause (7) of this clause, provide camp accommodation and messing constructed and maintained in accordance with subclause (10) of this clause.

"Reasonable board and lodging" shall mean lodging in a well kept establishment with three adequate meals each day, adequate furnishings, good bedding, good floor coverings, good lighting and heating and with hot and cold running water, in either a single room or a twin room if a single room is not available.

3. Clause 18—Living Away from Home—Distance Work: Delete subclause (4) of this clause and insert the following in lieu thereof—

(4) Travelling Expenses

An employee who is sent by his/her employer or selected or engaged by an employer or agent to go to a job which qualifies him/her to the provision of this clause shall not be entitled to any of the allowances prescribed by the apporpriate fares and travel rates where applicable for the period occupied in travelling from his/her usual place of residence to the distant job, but in lieu thereof shall be paid—

(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 $7.80 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 is dismissed for misconduct.

(c) Departure Point

For the purposes of this clause, travelling time shall be calculated as the time taken for the journey from the central or regional rail, bus or air terminal nearest the employee's usual place of residence to the locality of the work.

4. Clause 31—Compensation for Clothes and Tools: Delete subclause (2) 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 $1,098.00 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 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.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Construction, Mining, Energy Timberyards, Sawmills and Woodworkers Union of Australia, Western Australian Branch

and

Goldfields Contractors Pty Ltd & Others.

No. 2015 of 1998.

Earth Moving & Construction Award.

No. 10 of 1963.

COMMISSIONER S J KENNER.

22 February 1999.

Order.

Having heard Ms J Harrison as agent on behalf of the applicant and Ms J Wesley as agent 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 Earth Moving and Construction 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 23 December 1998.

(Sgd.) S. J. KENNER,
[L.S.] Commissioner.

Schedule.

1. Clause 11—Meal Money: Delete this clause and insert the following in lieu thereof—

11.—MEAL MONEY

When an employee is required for overtime without having been notified on the previous day, he/she shall be supplied with a meal or be paid $7.80 in lieu thereof, and if owing to the overtime worked, a second or subsequent meal is required he/she shall be supplied with each meal or be paid $4.80 for each meal so required. Provided no such meal or payment is due unless the employee works more than two hours after the usual knock off time. Provided that an employee who is allowed not less than one hour and a half in which to get a meal before resuming work, and facilities for obtaining a meal are available, shall not be entitled to meal money or a meal under this clause.

2. Clause 17—Living Away from Home: Delete subclause (1) of this clause and insert the following in lieu thereof—

(1) Where an employee is engaged or selected or advised by an employer to proceed to construction work at such a distance that he cannot return to his home each night and the employee does so, the employer shall—

(a) provide the employee with reasonable board and lodging; or

(b) pay an allowance of $288.80 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 the ending of the employment on a distant job the allowance shall be $41.20 per day.

Provided that the foregoing allowances shall be increased if the employee satisfies the employer that he 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.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Master Builders' Association of Western Australia (Union of Employers) & Others.

No. 2016 of 1998.

Foremen (Building Trades) Award 1991.

No. A 5 of 1987

COMMISSIONER S J KENNER.

22 February 1999.

Order.

Having heard Ms J Harrison as agent on behalf of the applicant and Mr K Richardson, Mr S Varidel and Ms J Wesley as agents 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 Foremen (Building Trades) Award 1991 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 23 December 1998.

(Sgd.) S. J. KENNER,
[L.S.] Commissioner.

———

Schedule.

1. Clause 14—Distant Work: Delete subclause (3) of this clause and insert the following in lieu thereof—

(3) Entitlement—

Where a foreman qualifies under subclause (1) of this clause the employer shall either—

(a) Provide the foreman with reasonable board and lodging; or

(b) Pay an allowance of $288.80 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 $41.30 per day.

Provided that the foregoing allowances shall be increased if the foreman 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

(c) In circumstances prescribed in subclause (7) of this clause, provide camp accommodation and messing constructed and maintained in accordance with subclause (10) of this clause.

"Reasonable board and lodging" shall mean lodging in a well kept establishment with three adequate meals each day, adequate furnishings, good bedding, good floor coverings, good lighting and heating and with hot and cold running water, in either a single room or a twin room if a single room is not available.

2. Clause 14—Distant Work: Delete subclause (4) of this clause and insert the following in lieu thereof—

(4) Travelling Expenses—

A foreman who is sent by his/her employer or selected or engaged by an employer or agent to go to a job which qualifies him/her to the provision of this Clause shall not be entitled to any of the allowances prescribed by Clause 18.—Fares and Travelling Time of this Award for the period occupied in travelling from his/her usual place of residence to the distant job, but in lieu thereof shall be paid—

(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 $7.80 per meal.

Provided that the employer may deduct the cost of the forward journey fare from a foreman 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.

———

FOODLAND ASSOCIATED LIMITED (WESTERN AUSTRALIA) WAREHOUSE AWARD 1982.

No. 1387 of 1998.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Shop, Distributive and Allied Employees' Association of Western Australia

and

Foodland Associated Limited.

No. 1387 of 1998.

Foodland Associated Limited (Western Australia) Warehouse Award 1982.

No. 27 of 1982.

CHIEF COMMISSIONER W.S. COLEMAN.

15 February 1999.

Order.

HAVING heard Ms P. Anderson on behalf of the Applicant and Ms N. Lilley 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 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 3rd day of February 1999.

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

———

Schedule.

1. Clause 1B.—Minimum Adult Award Wage: Delete the subclauses (1) to (7) inclusively and insert in lieu thereof the following:

1B.—MINIMUM ADULT AWARD WAGE

(1) No adult employee shall be paid less than the Minimum Adult Award Wage unless otherwise provided by this clause.

(2) The Minimum Adult Award Wage for full time adult employees is $373.40 per week payable from the beginning of the first pay period commencing on or after 3rd February 1999.

(3) The Minimum Adult Award Wage of $373.40 per week is deemed to include all arbitrated safety net adjustments from State Wage Case decisions to February, 1999, including the $14.00 per week arbitrated safety net adjustments from Matter No. 1387 of 1998.

(4) Unless otherwise provided in this clause adults employed as casual or part time employees shall not be paid less than pro rata the Minimum Adult Award Wage according to the hours worked.

(5) Juniors shall be paid no less than the wage determined by applying the percentage prescribed in the junior rates provision to the Minimum Adult Award Wage of $373.40 per week.

(6) (a) The Minimum Adult Award Wage shall not apply to apprentices, employees engaged on traineeships or Jobskills placements, or to other categories of employees who by prescription are paid less than the minimum award rate.

(b) Liberty to apply is reserved in relation to any special categories of employees not included here or otherwise in relation to the application of the Minimum Adult Award Wage.

(7) Subject to this clause the Minimum Adult Award Wage shall—

(a) apply to all work in ordinary hours.

(b) apply to the calculation of overtime and all other penalty rates, superannuation, payments during sick leave, long service leave and annual leave and for all other purposes of this award.

The rates of pay in this award include the minimum weekly wage for adult employees payable under the June 1998 State Wage Case Decision. Any increase arising from the insertion of the adult minimum wage will be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award which are above the wage rates prescribed in the award. Such above award payments include wages payable pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements and over award arrangements. Absorption which is contrary to the terms of an agreement is not required.

Increases 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 the adult minimum wage.

2. Clause 28.—Wages: Delete paragraph (a) of subclause (3) and insert in lieu thereof the following—

The following shall be the minimum weekly rate of wage payable to employees covered by this award from the first pay period commencing on or after 3rd February 1999.

ADULTS (Classification and wage per week)	Award Rate $
(i) Storeworker Grade 1 (as defined)	
(aa) During first 3 months service	449.10
(bb) After 3 months service	452.90
(cc) After 12 months service	457.00
(ii) Grade 2 (as defined)	
(aa) During first 3 months service	454.50
(bb) After 3 months service	458.40
(cc) After 12 months service	462.30
(iii) Grade 3 (as defined)	
(aa) During first 3 months service	459.80
(bb) After 3 months service	463.60
(cc) After 12 months service	467.70
(iv) Grade 4 (as defined)	
(aa) During first 3 months service	472.90
(bb) After 3 months service	476.80
(cc) After 12 months service	480.80

(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 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.

Furthermore the rates of pay in this award include the $10.00 per week arbitrated safety net adjustment payable from the beginning of the first pay period on or after 14th day of November 1997.

This arbitrated safety net adjustments shall be offset against any equivalent amount in rates of pay received by employees since 1 November 1991 whose wages and conditions are regulated by this award and which are above the wage rates prescribed in it, provided that the above award payments include wages payable under an enterprise agreement in which absorptions is not contrary to the terms of the enterprise agreement.

The rates of pay in this award include the arbitrated adjustment payable under the June 1998 State Wage Decision. This arbitrated safety net adjustment may be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this Award which are above the wage rates prescribed in the Award. Such above award payments include wages payable pursuant to enterprise agreements, consent awards, or award variations to give effect to enterprise agreements and over award arrangements. Absorption which is contrary to the terms of an agreement is not required.

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.

MINERAL SANDS INDUSTRY AWARD 1991.

No. 2178 of 1998.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Construction, Mining, Energy, Timberyards, Sawmills & Woodworkers' Union of Australia, WA Branch and Others

and

RGC Mineral Sands Limited and Others.

No. 2178 of 1998.

22 February 1999.

Reasons for Decision.

COMMISSIONER C.B. PARKS: By a notice of application filed in the registry of the Commission on 9 December 1998 the applicant unions applied to the Commission to amend the Mineral Sands Industry Award 1991 and insert therein a new clause titled "Freedom of Choice". The terms of the proposed clause are set out in full hereunder—

"**Preamble**

The intention of this clause is to allow future employees of the companies to which this clause applies to decide whether they will be employed on a workplace agreement registered under the Workplace Agreements Act or on a contract of employment to which this award applies.

Operative provisions

1. This clause shall apply to RGC Mineral Sands Ltd and Westralian Sands Ltd and to each subsidiary, whether direct or indirect, and each holding company, whether direct or indirect, of each of them and to each of their successors, assignees or transmittees, whether immediate or not, to or of the whole of part of either of any of their businesses ("the employer")
2. Whenever the employer proposes to engage any natural person to perform work which is referred to in, or covered by, wholly or in part, a classification contained in this award the employer shall offer to engage that person pursuant to a contract of employment the terms and conditions of which shall be those on which persons already employed by RGC Mineral Sands Ltd to perform like work are employed. The offer shall not include any requirement that there be a registered workplace agreement.
3. Nothing herein shall prevent the employer from also offering to engage the persons referred to in 2 hereof pursuant to a workplace agreement provided that the offer of employment that shall be made to that person pursuant to clause 2 hereof shall be made at the same time as any offer to engage pursuant to a workplace agreement.
4. Where the employer offers employment on the basis of a workplace agreement as well as on the basis set out in clause 2 hereof the employer shall, at the same time, provide a written statement to the person as follows—

   Important Notice to Prospective Employee

   You are being offered employment with [insert name of employer] on 2 alternative bases. You have the choice as to which basis upon which you will be employed.

   The first choice is employment under a contract of employment to which the Mineral Sands Industry Award applies. The WA Industrial Relations Commission can make orders affecting this type of employment.

   The second choice is pursuant to a workplace agreement to which no award applies. The WA Industrial Relations Commission cannot make orders affecting this type of employment.

   This is an important decision for you to make. Your decision will irrevocable affect many matters in your employment for as long as that employment lasts and afterwards.

   You should take expert advice as to these 2 different forms of employment before you decide which one to take.

   You can obtain advice from any of the following—

   The Australian Manufacturing Workers Union

   Telephone: 9481 1511

   The Australian Workers Union

   Telephone: 9221 1686

   The Construction Forestry Mining Energy Union of Australia

   Telephone: 0897345600
5. Where the employer offers employment pursuant to a workplace agreement the agreement offered shall contain a dispute settlement clause which provides for—
   5.1 representation of the employee, at the employee's option, throughout the procedure by a person or union of the employee's choice; and
   5.2 determination, after no more than a reasonable number of intermediate steps, of any dispute between the employer and employee by an arbitrator constituted by a Commissioner of the WA Industrial Relations Commission appointed by the Chief Commissioner"

It is plain from the terms of the claimed clause that it is intended to have a limited scope of operation, the immediate effect of which would be limited to RGC Mineral Sands Ltd (hereinafter referred to as "RGC") and Westralian Sands Ltd (hereinafter referred to as "WSL") and to any subsidiary or holding company of each presently operating. Each named company, through their same solicitors, filed a notice of Answer and Counterproposal in response to the claim, on 4 January 1999. These answers each contain seven paragraphs, six of which are common to them both and are produced immediately hereunder—

"1. The Commission is without jurisdiction to grant the award variation sought as it seeks to apply to offers of employment to future potential employees as opposed to employees.
2. In enacting the Workplace Agreements Act 1993 (WA) ("the WA Act") and the Industrial Relations Amendment Act 1993, which varied the Industrial Relations Act 1979 (WA), the Western Australian Parliament established two distinct and alternate forms of workplace regulation—
   (a) the award stream; and
   (b) the workplace agreement stream
3. The award variation sought seeks to merge the two streams. Parliament never intended the Commission to interfere with the workplace agreement stream.
4. The WA Act is a complete code in relation to the offering, registering and operation of workplace agreements. In particular, it sets out the requirement for provisions for dealing with any questions or dispute that arises between the parties about the meaning or effect of the agreement; and prior to registration, the Commissioner of Workplace Agreements must be satisfied that, amongst other things, each party appears to understand his or her rights and obligations under the agreement and that they genuinely wish to have the agreement registered.
5. The variation sought does not comply with the current State Wage Fixation Principles.
6. To variation sought is without merit.
7. …."

Answer 7. for RGC states—

"7. In relation to the proposed subclause 5—
   (a) RGC denies the allegation that its fair treatment procedure is not an effective dispute settlement procedure;

(b) to the extent that the variation sought seeks to stipulate the contents of the dispute settlement clause in a workplace agreement, it is not within the jurisdiction of the Commission."

The final and different answer of WSL is in the following terms—

"7. It is beyond the jurisdiction of the Commission to stipulate the provisions to be inserted in workplace agreements."

It is plain from the answers of both respondent parties that they did not consent to the Award being amended in the manner claimed.

Section 32 of the Industrial Relations Act, 1979 ("the IR Act") requires that the Commission endeavour to resolve an industrial matter by conciliation unless it be satisfied that the resolution of the matter would not be assisted by that process.

On 12 February 1999 the Commission conducted a conference pursuant to s32 of the IR Act, at which the applicant unions, RGC and WSL were each represented. Thereat the Commission was advised it was imminent that employees of RGC will be made redundant and that WSL has notified that it has 35 vacant employment positions to be filled. The right to apply for these positions was said to shortly close and given the usual practice of WSL the employment which follows will be offered on terms which, if accepted, will render nugatory the claimed clause before it is dealt with by the Commission sitting in Court Session as the applicants have requested. It is the policy of WSL to offer prospective employees engagements on the condition they enter into a Workplace Agreement regulating their terms and conditions of employment. Hence each person so employed will become bound by such an Agreement the effect of which will be to cause their employment relationship to be so regulated and not be covered by the Award and furthermore they will be removed from the usual jurisdiction of the Commission.

It is against this background that Counsel made an oral application to the Commission in conference for what was described as an injunction of an interim nature directing that RGC, and WSL, be required to include in any future offer of employment the alternative to a Workplace Agreement of the nature expressed in the claimed award variation (the substantive application), where such an offer is made prior to the disposition of the substantive application by arbitration. Counsel undertook to provide, and did subsequently provide on 12 February 1999 by way of a letter addressed to the solicitors for RGC and WSL, copied to the Commission, a draft order specifying the several orders for interim relief sought by the applicant unions. The orders sought are numbered 1. through 7. which, save for draft 1. declaring the interim nature of the order, 6. addressing a dispute settlement to be included in a workplace agreement, and 7. a liberty to apply to amend any interim order granted, are identical to the provisions numbered 1. through 4. in the substantive application but numbered 2. through 5. During the course of the subsequent hearing of the application for the interim order the applicants sought, and were granted, leave to withdraw the claimed order 6. directed at dispute settlement in relation to a workplace agreement.

The substantive application is said to raise a serious matter to be decided by the Commission and the balance of convenience according to the applicant unions, favours them, these being the test for the grant of injunctive relief and which are said to be satisfied.

There was argument on behalf of RGC and WSL that the matter raised by the application for relief do not have the character of an "industrial matter" as defined by the IR Act and therefore the Commission does not have jurisdiction to deal with the application. The Commission, having heard the parties thereon ruled that it had the necessary jurisdiction and declared the reasons for so holding would subsequently be expressed by the Commission in writing. At that time the Commission was persuaded by the Judgement of the Western Australian Industrial Appeal Court, in the matter, Totalisator Agency Board and others v Federated Clerks' Union of Australia Industrial Union of Workers, WA Branch and others (60 WAIG 624) (the TAB v FCU).

The Commission is a creature of statute whose jurisdiction is that prescribed by s23 of the IR Act to be—

"Subject to this Act the Commission has cognisance of and authority to inquire into and deal with any industrial matter"

An "industrial matter" is, at s7 of the IR Act, so far as is material to the matter before the Commission, defined to mean—

"… subject to section 7C, any matter affecting or relating to the work, privileges, rights, or duties of employers or employees in any industry or of any employer or employee therein and, without limiting the generality of that meaning, includes any matter relating to—

(a) …

(b) the hours of employment, leave of absence, sex, age, qualification, or status of employees and the mode, terms, and conditions of employment including conditions which are to take effect after the termination of employment;"

There is no dispute that RGC and WSL are "employers", and are engaged in an "industry" as are defined elsewhere in the same section. Consideration need also be given to the term "employee" which s7 of the IR Act prescribes, again so far as is material—

"(a) any person employed by an employer to do work for hire or reward including an apprentice or industrial trainee;

(b) any person whose usual status is that of an employee;

(c) …

(d) …

(e) …

(f) …"

It is the further argument of the two respondent employers that given the terms "industrial matter", "employee", and "employer" having a meaning that is subject to ss7C and 7B, that together with the operation of s7A, of the IR Act ousts the jurisdiction of the Commission to make an order which affects their rights to follow the separate lawful stream of employment regulation provided by the Workplace Agreements Act, 1993 ("the WR Act").

Section 7A, and the material parts of ss7B and 7C of the IR Act prescribe as follows—

"7A. Without limiting the other provisions of this Part, this Act has effect subject to the Workplace Agreements Act 1993."

"7B. Where any employer and any employee are parties to a workplace agreement, they are not, in relation to one another, within the definitions of ``employer'' and ``employee'' respectively in section 7 (1)."

"7C. (1) Where any employer and any employee are parties to any workplace agreement, a matter that is part of the relationship between that employer and that employee—

(a) is not—

(i) an industrial matter; or

(ii) capable of being agreed to be an industrial matter,

for the purpose of the definition of **"**industrial matter" in section 7 (1);

(b) is not capable of being determined under section 24 (1) to be an industrial matter; and

(c) ….

(2) …

(3) …"

In the Judgment delivered on 11 April 1980 in the matter TAB v FCU (op cit), the Western Australian Industrial Appeal Court considered the definition of "industrial matter" and held that it had been within the jurisdiction of a Commission sitting in Court Session to grant a provision requiring Government employers respondent to the Order, where any of them were engaging employees, to engage employees who had become

redundant with another Government employer. The general words of the definition then considered were "… means all matters affecting or relating to the work, privileges, rights and duties of employers or workers in any industry …"and the Court held that the order dealt with " … a matter which affects or relates to the rights or privileges of a worker in an industry, that industry being the industry of the worker, namely, the clerks industry."

Since the Commission expressed the opinion that it has jurisdiction in the present matter I have been able to analyse more carefully the Judgement of the Western Australian Industrial Appeal Court, in the matter of Robe River Iron Associates v The Metal & Engineering Workers' Union Western Australian Branch, delivered 4 August 1995, (75 WAIG 2478) to which the Commission was referred by Counsel for RGC and WSL. Therein the Court relied upon the law as decided in Robe River Iron Associates v Association of Drafting, Supervisory and Technical Employees of WA (68 WAIG 11), in 1987, and a line of subsequent authority and held that the matter of a defined type which may be dealt with ie, work, privileges, rights, or duties, must relate to the time at which there is the connection of an employment relationship between an employer and an employee in an industry. This more recent line of authority I am now satisfied shows that the Commission erred in its earlier conclusion.

Although both RGC and WSL are named within the claimed injunctive orders, the urgent need for them is said to be necessary to overcome the nature of employment offers expected to be made by WSL to ex-employees of RGC, or other applicant persons. Both of these categories of persons have no present employment with WSL and therefore neither of them has the relationship of employee and employer with WSL. Hence there is no "industrial matter" to found the claim that a duty be placed upon WSL, or RGC for that matter should it engage a new employee in the future, to allow alternatives in the terms and conditions of employment to be offered to prospective new employees.

The WA Act provides a stream of employment regulation separate to that provided by the IR Act and where employer and employee parties enter into a Workplace Agreement they are no longer an "employer" and an "employee" and the terms of their relationship do not fall within the definition of an "industrial matter". That is plainly evident from the extracts of ss7A, 7B and 7C quoted herein (supra).

Counsel for RGC and WSL submitted to the Commission that the provisions of the WA Act which prohibit certain conduct by an employer in relation to the procurement of a Workplace Agreement do not preclude an employer from offering a prospective employee employment conditional upon such being regulated by a Workplace Agreement. Given that the Act "has effect subject to the Workplace Agreements Act, 1993" and that this last mentioned statute allows an employer to so engage a new employee the Act is to be read, and to be applied, as having no effect in relation to a matter authorised by the WA Act.

The WA Act relevantly prescribes—

"(1) Where a workplace agreement—

(a) has been made between—

(i) an employer and an employee under a contract of employment; or

(ii) an employer and employees under contracts of employment

and

(b) has come into force,

no award, whether existing or future, applies to—

(c) that contract of those contracts of employment; or

(d) the employer or any such employee as a party to any such contract, so long as the workplace agreement remains in force.

(2) Where a workplace agreement has been made as mentioned in subsection (1)(a), in relation to any contract of employment, and has come into force, any award provision that applied to that contract immediately before that coming into force is not be to implied into, or in any way read as being part of, the workplace agreement unless the agreement expressly so requires.

(3) A workplace agreement also has the effects described in sections 7B, 7C, 7D and 7E of the *Industrial Relations Act, 1979.*

(4) …

(5) …"

And an Award is defined by s3 thereof to mean—

"(a) an award under the Industrial Relations Act 1979, and includes any industrial agreement or order under that Act; and

(b) an award under the Coal Industry Tribunal Western Australia Act 1992 …"

That the WA Act creates an alternative stream of employment regulation to that provided by the IR Act is self evident. Embarkation upon the alternate stream commences at the time when an employer and an employee enter into a Workplace Agreement and when that has effect according to the WA Act. It is not until this event occurs that the jurisdiction of the Commission is ousted and that is plainly why ss7B and 7C of the IR Act have been drafted with reference to an employer and an employee being a party to a Workplace Agreement which for the purposes of the Act is defined in s7 to mean an agreement that is "in force" under the WA Act.

Counsel for the applicants contends there is an arguable case that the WA Act does not allow WSL to require that a new employee be subject to a Workplace Agreement. That is not an issue for the Commission to render a concluded opinion on. However, I observe that the view expressed would seem to rely upon prohibitions expressed in s68 of the WA Act. If that be the case, and if the view is a valid one, it may well be that s65 of the statute would then place the injunctive relief sought within the sole prerogative of the Supreme Court.

There was argument from Counsel for the respondents that the Commission lacked the necessary power to make the order sought. Firstly on the premise that there is no express and general power to grant injunctive relief and secondly the application for such relief arose in relation to proceedings conducted pursuant to s32 of the IR Act wherein, if such a power exists, it is limited in its use to the pursuit of a resolution of a matter by conciliation.

The substantive application has been made pursuant to s40 of the IR Act. This section allows an organisation, ie a union, party to an award to apply to vary the award and empowers the Commission to refuse or grant an order of that kind, and in the view of the Commission, no other order may be made pursuant to that section. The oral application for injunctive relief was made during the conduct of a conference pursuant to s32 of the IR Act.

This lastmentioned section, at subsection (3), expressly empowers the Commission to "give such direction and make such orders as well in the opinion of the Commission – prevent the deterioration of industrial relations in relation to the matter until conciliation or arbitration has resolved the matter; enable conciliation or arbitration to resolve the matter; …". However these limited powers may be exercised for the purposes of subsection(2), that is, "In (the Commission) endeavouring to resolve an industrial matter by conciliation …". In the view of the Commission s32 of the IR Act authorises the making of mandatory and prohibitive orders of an injunctive nature however such are restricted to assisting the process of conciliation (see Robe Rive Iron Associates v Amalgamated Metal Workers and Shipwrights Union of Western Australia, and others – 66 WAIG 1553).

The very reason that the injunctive orders have been sought is that it had become apparent that the respondents, particularly WSL was not prepared to consider any alteration to its employment practice. The sections under which the injunctive application arises do not empower the Commission to make the orders sought.

Appearances: Mr D. Schapper (of Counsel) on behalf of the applicants.

Mr R. LeMiere (of Counsel) on behalf of the respondents.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Construction, Mining, Energy, Timberyards, Sawmills & Woodworkers' Union of Australia, WA Branch and Others

and

RGC Mineral Sands Limited and Others.

No. 2178 of 1998.

22 February 1999.

Order.

HAVING heard Mr D. Schapper (of Counsel) on behalf of the Applicants and Mr R. LeMiere (of Counsel) on behalf of the Respondents, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the interlocutory application for injunctive relief be and is hereby dismissed.

(Sgd.) C. B. PARKS,
[L.S.] Commissioner.

MOTOR VEHICLE (SERVICE STATION, SALES ESTABLISHMENTS, RUST PREVENTION AND PAINT PROTECTION) INDUSTRY AWARD No. 29 of 1980.
No. A 29 of 1980.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Workers' Union, Western Australian Branch, Industrial Union of Workers

and

Allpike's Honda and Peugeot and Others.

No. 1560 of 1997.

Motor Vehicle (Service Station, Sales Establishments, Rust Prevention and Paint Protection) Industry Award
No. 29 of 1980
No. A 29 of 1980.

17 October 1997.

Order.

HAVING heard Mr M. Lourey on behalf of the applicant and Ms C. Brown and Ms J. Moss on behalf of respondents and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Motor Vehicle (Service Station, Sales Establishments, Rust Prevention and Paint Protection) Industry Award No. 29 of 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 1st day of November 1997.

(Sgd.) A.R. BEECH,
[L.S.] Commissioner.

Schedule.

Clause 21.—Wages: Delete the preamble and subclause (1) of this clause and insert in lieu thereof the following—

21.—WAGES

The following shall be the minimum rate of wages payable to employees under this award from the beginning of the first pay period commencing on or after 1st November 1997.

		Base Rate per week	Supplementary Payment	First & Second Arbitrated Safety Net Adjustments	Total Rate per week
		$	$	$	$
(1)	Adult Employees:				
	Service Station Attendant Grade 1 reclassified to				
	Levels I	306.40	14.70	16.00	337.10
	II	306.40	27.50	16.00	349.90
	Service Station Attendant Grade 2 reclassified to				
	Levels II	329.30	9.70	16.00	355.00
	III	329.30	27.30	16.00	372.60
	IV	329.30	43.50	16.00	388.80
	Service Station Attendant Grade 3 reclassified to				
	Levels III	346.10	14.30	16.00	376.40
	IV	346.10	30.40	16.00	392.50

Provided that any increase in rates of pay flowing from implementation of the Minimum Rates Adjustment Principle, may be absorbed into any existing overaward payment, insofar as that overaward payment is not being used for the purposes of absorption of Arbitrated Safety Net Adjustments.

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 Other.

No. 1388 of 1998.

Supermarkets and Chain Stores (Western Australia) Warehouse Award 1982
No. A 26 of 1982.

CHIEF COMMISSIONER W.S. COLEMAN.

15 February 1999.

Order.

HAVING heard Ms P. Anderson on behalf of the Applicant and Ms N. Lilley 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 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 3rd day of February 1999.

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

Schedule.

1. Clause 1B.—Minimum Adult Award Wage: Delete the subclauses (1) to (7) inclusively and insert in lieu thereof the following:

1B.—MINIMUM ADULT AWARD WAGE

(1) No adult employee shall be paid less than the Minimum Adult Award Wage unless otherwise provided by this clause.

(2) The Minimum Adult Award Wage for full time adult employees is $373.40 per week payable from the beginning of the first pay period commencing on or after 3rd February 1999.

(3) The Minimum Adult Award Wage of $373.40 per week is deemed to include all arbitrated safety net adjustments from State Wage Case decisions to February, 1999, including the $14.00 per week arbitrated safety net adjustments from Matter No. 1388 of 1998.

(4) Unless otherwise provided in this clause adults employed as casual or part time employees shall not be paid less than pro rata the Minimum Adult Award Wage according to the hours worked.

(5) Juniors shall be paid no less than the wage determined by applying the percentage prescribed in the junior rates provision to the Minimum Adult Award Wage of $373.40 per week.

(6) (a) The Minimum Adult Award Wage shall not apply to apprentices, employees engaged on traineeships or Jobskills placements, or to other categories of employees who by prescription are paid less than the minimum award rate.

(b) Liberty to apply is reserved in relation to any special categories of employees not included here or otherwise in relation to the application of the Minimum Adult Award Wage.

(7) Subject to this clause the Minimum Adult Award Wage shall—

(a) apply to all work in ordinary hours.

(b) apply to the calculation of overtime and all other penalty rates, superannuation, payments during sick leave, long service leave and annual leave and for all other purposes of this award.

The rates of pay in this award include the minimum weekly wage for adult employees payable under the June 1998 State Wage Case Decision. Any increase arising from the insertion of the adult minimum wage will be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award which are above the wage rates prescribed in the award. Such above award payments include wages payable pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements and over award arrangements. Absorption which is contrary to the terms of an agreement is not required.

Increases 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 the adult minimum wage.

2. Clause 29.—Wages: Delete the preamble and subclause (1) and insert in lieu thereof the following—

An employer may direct an employee to carry out such duties as are within the limits of an employee's skill, competence and training.

The following shall be the minimum weekly rate of wage payable to employees covered by this award from the first pay period commencing on or after 3rd February 1999.

(1) Adults	Rate per week for employees of Coles Supermarkets Australia $	Rate per week for employees of Woolworths (WA) Ltd $
(a) Probationary Storeworker	441.20	455.00
(b) Storeworker Grade 1		
(i) During first 3 months' service	441.20	455.00
(ii) After 3 months' service	445.00	458.90
(iii) After 12 months' service	449.00	463.00
(c) Storeworker Grade 2		
(i) During first 3 months' service	446.50	460.40
(ii) After 3 months' service	450.40	464.50
(iii) After 12 months' service	454.20	468.40
(d) Storeworker Grade 3		
(i) During first 3 months' service	451.70	465.80
(ii) After 3 months' service	455.50	469.80
(iii) After 12 months' service	459.50	473.90
(e) Storeworker Grade 4		
(i) During first 3 months' service	464.60	479.20
(ii) After 3 months' service	468.40	483.10
(iii) After 12 months' service	472.40	487.30

(f) A 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 rate prescribed in paragraphs (b), (c), (d) and (e) of this subclause—

	Rate per week for employees of Coles Supermarkets Australia $	Rate per week for employees of Woolworths (WA) Ltd $
(i) If placed in charge of a store or warehouse with no other employees or if placed in charge of less than three other employees	12.30	12.70
(ii) If placed in charge of three or more other employees but less than ten other employees	22.40	23.20
(iii) If placed in charge of ten or more other employees	40.50	41.90

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.

Furthermore the rates of pay in this award include the $410.00 per week arbitrated safety net adjustment payable from the beginning of the first pay period on or after 14th day of November 1997.

This arbitrated safety net adjustments shall be offset against any equivalent amount in rates of pay received by employees since 1 November 1991 whose wages and conditions are regulated by this award and which are above the wage rates prescribed in it, provided that the above award payments include wages payable under an enterprise agreement in which absorptions is not contrary to the terms of the enterprise agreement.

The rates of pay in this award include the arbitrated adjustment payable under the June 1998 State Wage Decision. This arbitrated safety net adjustment may be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this Award which are above

the wage rates prescribed in the Award. Such above award payments include wages payable pursuant to enterprise agreements, consent awards, or award variations to give effect to enterprise agreements and over award arrangements. Absorption which is contrary to the terms of an agreement is not required.

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.

CANCELLATION OF AWARDS/ AGREEMENTS/ RESPONDENTS—

A.W.U. BELLWAY MOUNT SEABROOK TALC MINING AGREEMENT 1980.
No. 2 of 1980.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

s.47

Cancellation of Agreement

No. 686 of 1977, Part 69.

A.W.U. Bellway Mount Seabrook Talc Mining Agreement 1980 No. 2 of 1980.

CHIEF COMMISSIONER W.S. COLEMAN.

1 February 1999.

Order.

WHEREAS the Commission, being of the opinion that there was no employee to whom the following agreement applies, did give notice on the 23 day of December, 1998 of an intention to make an Order cancelling such agreement;

AND WHEREAS at the 25 day of January, 1999 there were no objections to the making of such an Order;

NOW THEREFORE, I, the undersigned Chief Commissioner of the Western Australian Industrial Relations Commission, pursuant to the powers conferred by the said Act, do hereby order that the following agreement be cancelled.

A.W.U. Bellway Mount Seabrook Talc Mining Agreement 1980 No. 2 of 1980.

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

CONTRACT CLEANERS' (MINISTRY OF EDUCATION) AWARD 1990.
No. A5 of 1981.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

s.47

Deletion of Respondents

No. 76 of 1980, Part 244.

Contract Cleaners' (Ministry of Education) Award 1990, No. A5 of 1981.

CHIEF COMMISSIONER W.S. COLEMAN.

1 February 1999.

Order.

HAVING read and considered the documents relating to this matter and there being no party desiring to be heard in opposition thereto;

NOW THEREFORE, being satisfied that the requirements of the abovementioned Act have been complied with, I, the undersigned, Chief Commissioner of the Western Australian Industrial Relations Commission, acting on my own motion in pursuance of the powers contained in Section 47 of the abovementioned Act, do hereby order and declare—

THAT from the date of this order the following employers be struck out of the Schedule of Respondents to the Contract Cleaners' (Ministry of Education) Award 1990, No. A5 of 1981

namely—

Azaores Cleaning Company, 55 Brodie Crescent, South Hedland WA 6722

Tempo Services Pty Ltd, 21 Colray Avenue, Osborne Park WA 6017

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

DRAUGHTSMEN'S, TRACERS' AND PLANNERS' (MT NEWMAN MINING COMPANY

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

S.47

Cancellation of Awards/Agreements/Orders
(No. 686 of 1977, Parts 37, 170 & 177—180)

Draughtsmen's, Tracers' and Planners' (Mt Newman Mining Company
Pty Ltd & Goldsworthy Mining Ltd) Award 1976 No. 3 of 1975;
Goldsworthy Mining Limited ADSTE Staff Award No. A33 of 1981;
Pilbara Energy Project Construction Agreement No. AG 31 of 1995;
Pilbara Energy Project (Newman Power Station) Agreement No. AG 13 of 1996;
Yandi Construction Order No. CR 361 of 1991;
Yarrie Construction Order No. C 230 of 1993.

CHIEF COMMISSIONER W.S. COLEMAN.

1 February 1999.

Order.

WHEREAS the Commission, being of the opinion that there was no employee to whom the following awards/agreements/orders apply, did give notice on the 23 day of December, 1998 of an intention to make an Order cancelling such awards/agreements/orders;

AND WHEREAS at the 25 day of January, 1999 there were no objections to the making of such an Order;

NOW THEREFORE, I, the undersigned Chief Commissioner of the Western Australian Industrial Relations Commission, pursuant to the powers conferred by the said Act, do hereby order that the awards/agreements/orders set out in the Schedule attached hereto be cancelled.

(Sgd.) W. S. COLEMAN,
[L.S.] Chief Commissioner.

Schedule.

Draughtsmen's, Tracers' and Planners' (Mt Newman Mining Company Pty Ltd & Goldsworthy Mining Ltd) Award 1976 No. 3 of 1975;

Goldsworthy Mining Limited ADSTE Staff Award No. A33 of 1981;

Pilbara Energy Project Construction Agreement No. AG 31 of 1995;

Pilbara Energy Project (Newman Power Station) Agreement No. AG 13 of 1996;

Yandi Construction Order No. CR 361 of 1991;

Yarrie Construction Order No. C 230 of 1993.

DRESSER MINERALS—A.W.U. BARITES MINING AND PROCESS AWARD 1979.
No. R 33 of 1979.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

s.47

Cancellation of Award.

No. 686 of 1977, Part 171.

Dresser Minerals—A.W.U. Barites Mining and Process Award 1979 No. R 33 of 1979.

CHIEF COMMISSIONER W.S. COLEMAN.

1 February 1999.

Order.

WHEREAS the Commission, being of the opinion that there was no employee to whom the following award applies, did give notice on the 23 day of December, 1998 of an intention to make an Order cancelling such award;

AND WHEREAS at the 25 day of January, 1999 there were no objections to the making of such an Order;

NOW THEREFORE, I, the undersigned Chief Commissioner of the Western Australian Industrial Relations Commission, pursuant to the powers conferred by the said Act, do hereby order that the following award be cancelled.

Dresser Minerals—A.W.U. Barites Mining and Process Award 1979 No. R 33 of 1979

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

ENROLLED NURSES & NURSING ASSISTANTS (PRIVATE) AWARD.
No. 8 of 1978.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

s.47

Deletion of Respondents.

No. 76 of 1980, Part 242.

Enrolled Nurses & Nursing Assistants (Private) Award. No. 8 of 1978.

CHIEF COMMISSIONER W.S. COLEMAN.

1 February 1999.

Order.

HAVING read and considered the documents relating to this matter and there being no party desiring to be heard in opposition thereto;

NOW THEREFORE, being satisfied that the requirements of the abovementioned Act have been complied with, I, the undersigned, Chief Commissioner of the Western Australian Industrial Relations Commission, acting on my own motion in pursuance of the powers contained in Section 47 of the abovementioned Act, do hereby order and declare—

THAT from the date of this order the following employer be struck out of the Schedule of Respondents to the Enrolled Nurses & Nursing Assistants (Private) Award, No. 8 of 1978 namely—

Annesley Private Hospital, Mt Lawley

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

FERRIES MASTERS' ENGINEERS' AND DECKHANDS' (TRANSPERTH) AWARD 1964.
No. 8 of 1965.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

s.47

Cancellation of Award.

No. 686 of 1977, Part 175.

Ferries Masters' Engineers' and Deckhands' (Transperth) Award 1964 No. 8 of 1965.

CHIEF COMMISSIONER W.S. COLEMAN.

1 February 1999.

Order.

WHEREAS the Commission, being of the opinion that there was no employee to whom the following award applies, did give notice on the 23 day of December, 1998 of an intention to make an Order cancelling such award;

AND WHEREAS at the 25 day of January, 1999 there were no objections to the making of such an Order;

NOW THEREFORE, I, the undersigned Chief Commissioner of the Western Australian Industrial Relations Commission, pursuant to the powers conferred by the said Act, do hereby order that the following award be cancelled.

Ferries Masters' Engineers' and Deckhands' (Transperth) Award 1964 No. 8 of 1965

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

METAL TRADES (GENERAL) AWARD 1966.
No. 13 of 1965.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

s.47

Deletion of Respondents.

No. 76 of 1980, Part 198.

Metal Trades (General) Award 1966. No. 13 of 1965.

CHIEF COMMISSIONER W.S. COLEMAN.

1 February 1999.

Order.

HAVING read and considered the documents relating to this matter and there being no party desiring to be heard in opposition thereto;

NOW THEREFORE, being satisfied that the requirements of the abovementioned Act have been complied with, I, the undersigned, Chief Commissioner of the Western Australian Industrial Relations Commission, acting on my own motion in pursuance of the powers contained in Section 47 of the abovementioned Act, do hereby order and declare—

THAT from the date of this order the employers set out in the Schedule attached hereto be struck out of the Schedule of Respondents to the Metal Trades (General) Award 1966 No. 13 of 1965.

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

Schedule.

Adams, William & Co. Ltd, 362 South Street, O'Connor WA 6163

Avery, W. & T. (Aust.) Pty Ltd, 374 Murray Street, Perth WA 6000

Barclay & Sharland Pty Ltd, PO Box 295, Hamilton Hill WA 6163

Bouchers Industries Ltd, 349 Scarborough Beach Road, Osborne Park WA 6017

Bradshaws Pty Ltd, 97 Belmont Avenue, Belmont WA 6104

Bushell, Charles & Co., 18 King Edward Road, Osborne Park WA 6017

Carse, E.W. & Co., 83 Abernethy Road, Belmont WA 6104

Cosmo Prod., 44 Morrison Road, Midland WA 6056

Crump & Cornish, Leger Street, Balcatta WA 6021

Diamond Ice & Cold Storage Coy. Pty Ltd, 278 Scarborough Beach Road, Osborne Park WA 6017

Forrestfield Industries Pty Ltd, Hale Road, Forrestfield WA 6058

Fry, E.J., 45 Munt Street, Bayswater WA 6053

Gaunt, C.W. & Sons, 12 Clune Street, Bayswater WA 6053

Golden Gleam Fish Processing Co. Pty Ltd, Augustus Street, Geraldton WA 6530

Hadfields (W.A.) 1934 Ltd, Railway Parade, Bassendean WA 6054

List, F. & Sons Pty Ltd, 223 Collier Road, Bayswater WA 6053

McAlister, T. Pty Ltd, 18 Denninup Way, Malaga WA 6062

Mr Whippy (Perth) Pty Ltd, 396 Scarborough Beach Road, Osborne Park WA 6017

Sawyers Engineers Pty Ltd, 8 Palmerston Street, Bentley WA 6102

Singer Aust. Pty Ltd, 30 Coolgardie Street, West Perth WA 6005

Supa-Furn Distributors, 485 Scarborough Beach Road, Osborne Park WA 6017

Telcon Aust. Pty Ltd, 198 Railway Parade, West Perth WA 6005

Thomas Bros., 15 Mallard Way, Canington WA 6107

Turner, E.J., 4 Ensign Street, Narrogin WA 6312

W.A. Forge Co. Ltd, Gnangara Road, Wanneroo WA 6065

West Australian Rope & Twine Co. Pty Ltd, 719 Stirling Highway, Mosman Park WA 6102

Wiltshire Bros., Fitzgerald Street, Geraldton WA 6530

PHOTOGRAPHIC INDUSTRY AWARD 1980
No. A9 of 1980.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

s.47

Deletion of Respondents

No. 76 of 1980, Part 161.

Photographic Industry Award 1980 No. A9 of 1980.

CHIEF COMMISSIONER W.S. COLEMAN.

1 February 1999.

Order.

HAVING read and considered the documents relating to this matter and there being no party desiring to be heard in opposition thereto;

NOW THEREFORE, being satisfied that the requirements of the abovementioned Act have been complied with, I, the undersigned, Chief Commissioner of the Western Australian Industrial Relations Commission, acting on my own motion in pursuance of the powers contained in Section 47 of the abovementioned Act, do hereby order and declare—

THAT from the date of this order the following employers be struck out of the Schedule of Respondents to the Photographic Industry Award 1980 No. A9 of 1980 namely—

Craftsman Prints, 2 Edward Street, Fremantle WA 6160

Photo Laboratories Ltd, 5 Belmont Avenue, Belmont WA 6104

Viva Colour, 26 Brown Street, Claremont WA 6010

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

RETAIL FOOD ESTABLISHMENTS EMPLOYEES AGREEMENT
No. AG 15 of 1992.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

s.47

Deletion of Respondents.

No. 76 of 1980, Part 138.

Retail Food Establishments Employees Agreement No. AG 15 of 1992.

28 January 1999.

Order.

WHEREAS the Commission on its own motion pursuant to s.47 of the Industrial Relations Act 1979, gave notice of its intention to strike out respondents to the Retail Food Establishments Employees Agreement No. AG 15 of 1992, on the grounds that the respondents are no longer carrying on business in an industry to which the agreement applies (see [78 WAIG 4960]);

AND WHEREAS the Commission, being satisfied that subsection (3) of s.47 has been complied with, is of the opinion that the respondents set out in the Schedule attached hereto are no longer carrying on business in an industry to which the agreement applies;

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 from the date of this order the employers set out in the Schedule attached hereto is struck out of the Schedule of Respondents to the Retail Food Establishments Employees Agreement No. AG 15 of 1992.

(Sgd.) A.R. BEECH,
[L.S.] Commissioner.

Schedule.

Amalgamated Food and Poultry Pty Ltd Inc in WA Trading as Red Rooster Foods, 342 Scarbourough Beach Rd, Osborne Park WA 6017

N.J. & A.S. Wise & Neil and Ann Wise Trading as Pizza Hut, 77 Walter Rd, Bedford WA 6052

Russoney Pty Ltd (Russell & Yvonne Furner) Trading as Pizza Hut, Adalia St, Kallaroo WA 6025 and 4/551 Moolandah Boulevard,Kingsley WA 6026

Malvery Pty Ltd and James Lavender Trading as Pizza Hut, 2861-2869 Albany Hwy, Kelmscott WA 6111

Linda & Tony Cuccovia Trading as Pizza Hut, Shop 2, Willetton, Neighbourhood Shopping Centre, Willetton WA 6155

Competitive Foods Ltd Trading as Hungry Jacks & Kentucky Fried Chicken, 77 Hay St, Subiaco WA 6008

Aleht Holdings Pty Ltd Trading as Chicken Treat, Cnr Ferndale Crs and Meltcalf Rd, Ferndale WA 6155

Montello Holdings Pty Ltd Trading as Chicken Treat, 484 Stirling Hwy, Cottesloe WA 6011

Afra Pty Ltd Trading as Chicken Treat, Shop 8, Coolibah Plaza, Greenwood WA 6024

Glen Hawkins Trading as Chicken Treat, 427B Carrington St, Hamilton Hill WA 6163

Abkam Pty Ltd Trading as Chicken Treat, Shop 22, Kelmscott Plaza, Kelmscott WA 6111

Lynne Ellen Harris Trading as Chicken Treat, 1699 Albany Hwy, Kenwick WA 6107

Vinod & Kirja Bhautoo Trading as Chicken Treat, Shop 3A Langford Village, Langford WA 6155

Nigrus Holdings Pty Ltd Trading as Chicken Treat, 2 Pace Rd, Medina WA 6167

Chiron Pty Ltd Trading as Chicken Treat, 37 Mends St, South Perth WA 6151

Roland Sylvester Ott Trading as Chicken Treat, 98A Wanneroo Rd, Tuart Hill WA 6060

Chickenco Pty Ltd & River Rooster Australia Pty Ltd Trading as River Rooster, c/- Papalia & Reynolds, 12 Prince St, Busselton WA 6280

Graphic Holdings Pty Ltd and David Grylls Trading as Pizza Hut, Shop 36A Forrestfield Forum, Strelitzia Ave, Forrestfield WA 6058

NOTICES—
Award/Agreement matters—

Application No. PSAA 1 of 1999.

APPLICATION FOR AN AWARD ENTITLED

"THE GRAYLANDS SELBY-LEMNOS AND SPECIAL CARE HEALTH SERVICES AWARD 1998"

NOTICE is given that an application has been made to the Commission by the Hospital Salaried Officers Association of Western Australia (Union of Workers) under the Industrial Relations Act 1979 for the above Award.

As far as relevant, those parts of the Award which relate to area of operation or scope are published hereunder.

3.—AREA OF OPERATION

This Award shall apply throughout the State of Western Australia.

4.—SCOPE

This Award shall extend to and bind—

(1) all Government Officers employed at Graylands Selby-Lemnos and Special Care Health Services (GSL) by the Metropolitan Health Services Board;

(a) in any calling in which they are eligible for membership of the Hospital Salaried Officers Association of Western Australia (Union of Workers) (the HSOA); or,

(b) in the case of employees who as at 6 May 1998 were financial members of the Civil Service Association of Western Australia Incorporated (the CSA) and who continues without break to be a member and to be permanently employed at GSL, in any calling in which they are eligible for membership of the CSA; and

(2) the HSOA;

(3) the CSA to the extent that they have eligible members so employed; and

(4) The Metropolitan Health Service Board.

A copy of the proposed Award may be inspected at my office at National Mutual Centre, 111 St George's Terrace, Perth.

J. SPURLING,
Registrar.

PUBLIC SERVICE ARBITRATOR—
Matters Dealt With—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Civil Service Association of Western Australia Incorporated

and

Chairman
Government Employees Superannuation Board.

No. PSAC 1 of 1999.

2 March 1999.

Order.

WHEREAS the Commission has been advised by the applicant that this matter has been resolved;

NOW THEREFORE, I the undersigned, pursuant to the powers conferred under the Industrial Relations Act, 1979 do hereby order —

THAT this application shall be and is hereby discontinued by leave.

[L.S.]

(Sgd.) S.A. CAWLEY,
Commissioner,
Public Service Arbitrator.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Civil Service Association of Western Australia Incorporated

and

Executive Director, Education Department

No. PSAC 74 of 1998.

PUBLIC SERVICE ARBITRATOR
COMMISSIONER P E SCOTT.

5 January 1999.

Reasons for Decision.

THE COMMISSIONER: The matter before the Public Service Arbitrator ("the Arbitrator") is an application for conference made pursuant to s.44 of the Industrial Relations Act, 1979 ("the IR Act"). The Schedule attached to the Notice of Application is in the following terms—

"The Association seeks the assistance of the Commission is(sic) resolving the following issues—

The Education Department has advised Ms Cabrera that the recent notification of her recommendation to the position of Personal Secretary Level 2, ED3000679, Strategic Initiatives Policy and Planning Directorate is invalid and therefore withdrawn. The Union considers the employer's actions to be in contravention of the Public Sector Management Act 1994, Sections 8(a) and (c), and Section 64(5)(b). Ms Cabrera is a contract employee employed at level 1 with the Western Australian Department of Training and therefore meets the requirements of Section 64(5)(b) and eligible for appointment. The fact that she was acting in a Higher Duties position at the time, does not rule her ineligible, as claimed by the Department.

The Union seeks and(sic) order—

that the recommendation be declared valid and reinstated immediately.

All correspondence related to this matter is attached.

The Union request this matter be listed for conference at the Commissions earliest convenience to prevent further complications by the appointment of another officer to the position prior to this matter being determined"

The Commission convened a conference for the purpose of dealing with the matter. At this conference the Respondent challenged the jurisdiction of the Arbitrator to deal with the matter on the basis that the Arbitrator does not have jurisdiction to inquire into or deal with any matter in respect of which a procedure referred to in s.97 (1)(c) of the Public Sector Management Act 1994 ("the PSM Act") is, or may be, prescribed under that Act. It says that, in essence, this matter relates to enforcement of public sector standards.

The parties have each now provided written submissions in respect of that matter.

The parties have also submitted an "agreed statement of facts" which in points 1 to 13 inclusive, encapsulate the details of this matter. Those are as follows—

"1. In June 1994, Ms Magdalena Cabrera accepted an offer of a 3 month contract of employment by the Western Australian Department of Training. The position was for a Clerical Officer, Level 1.
2. WADOT is part of the Public Service.
3. Ms Cabrera is employed as a public service officer.
4. From commencement Ms Cabrera has had her contracts continually extended. Effective from July 1995 Ms Cabrera has been undertaking Higher Duties to a Level 2 position.
5. In July 1998, the Education Department ("EDWA") advertised a Level 2, Personal Secretary position in the Strategic Initiatives, Policy and Planning Directorate via the Intersector. Ms Cabrera applied for this position, was shortlisted and interviewed for the position.
6. Around the same time as the advertisement of the Level 2, Personal Secretary position, Ms Cabrera also submitted an application for another position within EDWA. The position was for Personal Secretary, Level 2 in the Staffing Directorate. During the initial checks to determine each applicant's eligibility, the Human Resources Branch identified that Ms Cabrera was on contract to WADOT as a Level 1, Clerical Officer on higher duties allowance to Level 2.
7. EDWA forwarded a letter of recommendation to Ms Cabrera, which was incorrectly dated 15 August 1998 (probably should have been 15 September 1998) (Attachment 1).
8. On 15 September, 1998 WADOT provided written advice to EDWA that Ms Cabrera was initially employed by them as a Level 1 Contract Officer, has had continuous service since the initial appointment and is currently on higher duties allowance to a Level 2 position (Attachment 2). WADOT also advised that Ms Cabrera's employment status is consistent with the recruitment provisions pursuant to clause 64 of the Public Sector Management Act (WA) 1994 and that she is eligible to apply for positions advertised in the Public Service Notices – Intersector.
9. By correspondence dated September 17, 1998, EDWA advised Ms Cabrera that the recent notification of her recommendation was invalid and hence withdrawn (Attachment 3).
10. The reason for the withdrawal was in accordance with the approved Procedures and Department Policy, in relation to fixed term contractors, developed by the Education Department.
11. On September 25, 1998 Ms Cabrera lodged a claim for a Breach of the Recruitment, Selection and Appointment Standard and more specifically in respect of Compliance Requirements 1.3 and 1.7 (Attachment 4).
12. An Independent Reviewer was appointed in accordance with Regulation 5 of the Public Sector Management (Review Procedures) Review Regulations 1995. The Independent Reviewer found that Compliance Standards 1.3 and 1.7 had not been breached.
13. On September 24, 1998, the CSA/CSPU ("the Association") lodged application PSAC 74 of 1998. The Association claimed that EDWA's actions contravened the Principles enunciated in Sections 8(a) and 8(c) of the PSM Act. The Association sought the Public Service Arbitrator's assistance in determining eligibility pursuant to Section 64(5)(b) of the Public Sector Management Act (WA) 1994.

…"

On 20 November 1998, the Arbitrator provided the parties with an opportunity to speak to their written submissions, and at this point raised with the parties the question of whether the matter the subject of the application constituted an industrial matter on the basis that the application does not relate to Ms Cabrera in her relationship with her employer but relates to her seeking employment with another employer.

The parties have now provided their written submissions on that matter although those submissions are of limited assistance in dealing with this issue.

The first matter to be dealt with is whether there is an industrial matter before the Arbitrator, due to Ms Cabrera not being in an employer/employee relationship with the Respondent, listed in this application as the Executive Director, Education Department.

The jurisdiction of the Arbitrator is set out in s.80E of the IR Act and is specifically prescribed in subsections (1), (2), (5) and (7).

"Jurisdiction of Arbitrator

80E. (1) Subject to Division 3 of Part II and subsections (6) and (7) of this section, an Arbitrator has exclusive jurisdiction to enquire into and deal with any industrial matter relating to a Government officer, a group of Government officers or Government officers generally.

(2) Without limiting the generality of subsection (1) the jurisdiction conferred by that subsection includes jurisdiction to deal with —

(a) a claim in respect of the salary, range of salary or title allocated to the office occupied by a Government officer and, where a range of salary was allocated to the office occupied by him, in respect of the particular salary within that range of salary allocated to him; and

(b) a claim in respect of a decision of an employer to downgrade any office that is vacant.

…

(5) Nothing in subsection (1) or (2) shall affect or interfere with the exercise by an employer in relation to any Government officer, or office under his administration, of any power in relation to any matter within the jurisdiction of an Arbitrator, but any act, matter or thing done by an employer in relation to any such matter is liable to be reviewed, nullified, modified or varied by an Arbitrator in the course of the exercise by him of his jurisdiction in respect of that matter under this Division.

…

(7) Notwithstanding subsections (1) and (6), an Arbitrator does not have jurisdiction to enquire into or deal with, or refer to the Commission in Court Session or the Full Bench, any matter in respect of which a procedure referred to in section 97 (1) (a) of the *Public Sector Management Act 1994* is, or may be, prescribed under that Act.

Section 80G of the IR Act provides that subject to Division 2, "the provisions of Division 2 of Part II that apply to or in relation to the exercise of the jurisdiction of the Commission constituted by a Commissioner shall apply with such modifications as are prescribed and such other modifications as may be necessary or appropriate", to be exercised by an Arbitrator of his jurisdiction under this Act.

The jurisdiction of the Arbitrator relies on the matter before it being an industrial matter. The definition of an industrial matter as referred to in s.80E (1) is not contained within Part IIA – Constituent Authorities in which s.80E falls, but relies on the definition contained within s.7 of the IR Act. The definition of industrial matter provides—

> **"industrial matter"** means, subject to section 7C, any matter affecting or relating to the work, privileges, rights, or duties of employers or employees in any industry or of any employer or employee therein and, without limiting the generality of that meaning, includes any matter relating to —
>
> (a) the wages, salaries, allowances, or other remuneration of employees or the prices to be paid in respect of their employment;
>
> (b) the hours of employment, leave of absence, sex, age, qualification, or status of employees and the mode, terms, and conditions of employment including conditions which are to take effect after the termination of employment;
>
> (c) the employment of children or young persons, or of any person or class of persons, in any industry, or the dismissal of or refusal to employ any person or class of persons therein;
>
> (d) any established custom or usage of any industry, either generally or in the particular locality affected;
>
> (e) the privileges, rights, or duties of any organization or association or any officer or member thereof in or in respect of any industry;
>
> (f) in respect of apprentices or industrial trainees—
>
> (i) their wage rates; and
>
> (ii) subject to the *Industrial Training Act 1975* —
>
> (I) their other conditions of employment; and
>
> (II) the rights, duties, and liabilities of the parties to any agreement of apprenticeship or industrial training agreement;
>
> *[(g) deleted]*
>
> [*(h) deleted*]
>
> (i) any matter, whether falling within the preceding part of this interpretation or not, where —
>
> (i) an organization of employees and an employer agree that it is desirable for the matter to be dealt with as if it were an industrial matter; and
>
> (ii) the Commission is of the opinion that the objects of this Act would be furthered if the matter were dealt with as an industrial matter;
>
> but does not include —
>
> (j) compulsion to join an organization of employees to obtain or hold employment;
>
> (k) preference of employment at the time of, or during, employment by reason of being or not being a member of an organization of employees;
>
> (l) non-employment by reason of being or not being a member of an organization of employees; or
>
> (m) any matter relating to the matters described in paragraph (j), (k) or (l);

Section 7C deals with limitations to jurisdiction in respect of employees parties to workplace agreements and is not relevant to this matter.

The issue before the Arbitrator is that the Applicant seeks a declaration that the recommendation of Ms Cabrera for a particular position, such recommendation previously issued and rescinded by an employing authority not being her employer, be declared valid and reinstated, on the basis of alleged breaches of the PSM Act dealing with her eligibility to apply for the position concerned.

To be an industrial matter, the matter in dispute must affect or relate to the work, privileges, rights or duties of employers or employees in any industry or of any employer or employee therein and, without limiting the generality of that meaning, includes any matters relating to a number of specified issues. Those specified matters elaborate on rather than extend the meaning of industrial matter. One such issue, which may be considered to be related to this matter, is that set out in paragraph (c) of the definition of industrial matter as being "the dismissal of or refusal to employ any person (in any industry)". I say that it may be related because the refusal to employ arises prior to the establishment of an employer/employee relationship. The matter before the Commission relates to circumstances arising prior to or in the absence of any employment relationship between the parties.

It should be noted that s.29 sets out by whom various types of industrial matter may be referred to the Commission. Section 29(1)(a)(ii) provides that an industrial matter (any industrial matter subject to any other restriction specified within the IR Act) may be referred to the Commission by an organisation in which persons to whom the industrial matter relates are eligible to be enrolled as members, or by an employer with sufficient interest in the matter, or by the Minister. S.80F (1) of the IR Act is in similar terms in respect of industrial matters referred to the Arbitrator. .

The Applicant in this matter is the organisation concerned and is referring a matter relating to a person eligible to be enrolled as a member. The Applicant then is entitled to refer any matter, subject to it being "industrial", relating to a person eligible to be a member.

On the other hand, pursuant to s.29 of the IR Act, an employee can refer only to two types of industrial matter—

(1) a claim of harsh, oppressive or unfair dismissal; and

(2) a claim for non-award contractual benefits.

The individual employee is not entitled to make claims regarding any other industrial matter, such as refusal to employ, whereas an organisation is so entitled.

The definition of industrial matter, with particular reference to a refusal to employ was dealt with by the Industrial Appeal Court in *Princess Margaret Hospital and the Hospital Salaried Officers Association of Western Australia (Union of Workers) (1975) (55 WAIG 543)* ("PMH"). This matter involved a person who had been offered employment by the Hospital but that offer was withdrawn prior to the person commencing employment. Burt CJ, with whose reasons the other members of the Court agreed, said—

> "I agree entirely with the decision and with the reasons in the Kwinana case and in substance with the reasons which led the Commission in Court Session to its conclusion in the present case. In a case such as the present one where, as I think is the case, there has been a refusal to employ a person, that refusal is an industrial matter clearly within paragraph (c) of the definition. If there is a dispute about that refusal between an industrial union of workers of which the worker concerned is or is eligible to be a member and the employer concerned, then there is an industrial dispute and then with reference to its determination, if an order directing the employer to employ or in the case of dismissal (the Kwinana case) an order for reinstatement is "fair and right in relation" to that matter "having regard to the interests of the persons immediately concerned, and of the community as a whole" then it too, that is to say, the employment of the worker or the reinstatement of the worker as the case might be, becomes an industrial matter. See paragraph (h) of the definition of industrial matters. And if the making of an order to employ or to reinstate as the case might be, be thought of as the exercise of a power within the jurisdiction, then it is I think within the power to "determine (the) industrial matter". Section 61-(1) (e).
>
> Furthermore the same conclusion can I think be sustained on a broader ground, it being that the dismissal or refusal to employ a worker is within the general words of the definition of "industrial matters" as being a matter "affecting or relating to the work, privileges, rights, and

duties of employers or workers in any industry". If this is so, and, by analogy, s. 61(2)(c) would suggest that the legislature considered it to be so, then again and for the same reasons, if the required relationship to that matter appears, then the employment or the reinstatement of the worker becomes an industrial matter and if it be the subject of a dispute between an industrial union of workers and an employer it is then an industrial dispute, and an order to reinstate or to employ as the case may be is then seen to be an order within power, being an order made "determining" the industrial matter in dispute."

(at page 545)

The decision of the Full Bench *in Sir Charles Gairdner Hospital and the Australian Liquor, Hospitality and Miscellaneous Workers' Union, Miscellaneous Division, WA Branch (1994) (74 WAIG 2319)* ("HSOA") which relates to an employee whose employment had been the subject of a series of contracts for specified terms, recognises the matter of refusal to employ as being an industrial matter. In that case, at the expiration of the last contract, the employee had an expectation that the employment would continue, however, it did not. The Union had claimed that the employee had been unfairly dismissed. The Acting President noted that "the Commission has authority to enquire into and deal with a claim by (the Union) that the (employer's) refusal to re-employ (the employee) was unfair or otherwise industrially unacceptable" (page 2320).

On the basis of the reasons in PMH and HSOA (supra), the refusal to employ is an industrial matter because—

(1) it is specifically referred to in the definition of industrial matter as one of the examples thereof; and

(2) it is within the generality of a matter "affecting or relating to the work, privileges, rights, and duties of employers or employees in any industry".

The next question to arise is whether the rescinding of a recommendation constitutes a refusal to employ. I find that it does not, although, as noted earlier, it is related. However, the issuing of the recommendation is one of a number of steps involved in the employment process. Further, the issuing of the recommendation and its rescinding affect or relate to the work, privileges, rights and duties of employers or employees in any industry or of any employer or employee therein. In accordance with PMH and HSOA (supra), the definition of industrial matter does not require there to be or have been a relationship of employer and employee between the two parties concerned for the matter to fit within that definition. (See also *Orange City Bowling Club Ltd v. Federated Liquor and Allied Industries employees Union of Australia (NSW Branch [1979] AR (NSW) 90)*. Accordingly, the matter referred to the Public Service Arbitrator would appear to be an industrial matter.

The Respondent also says that the Arbitrator is prohibited from dealing with this matter by the terms of s.23 (2a) of the IR Act, which provides—

(2a) Notwithstanding subsections (1) and (2), the Commission does not have jurisdiction to enquire into or deal with any matter in respect of which a procedure referred to in section 97 (1) (a) of the *Public Sector Management Act 1994* is, or may be, prescribed under that Act.

Section 80 (E)(7) of the IR Act is in almost identical terms in respect of the jurisdiction of the Arbitrator.

Section 97(1)(a) of the PSM Act is contained under the heading of "Functions of Commissioner concerning relief in respect of breach of public sector standards" and provides—

97. (1) The functions of the Commissioner under this Part are —

(a) to make recommendations to the Minister on the making, amendment or repeal of regulations prescribing procedures, whether by way of appeal, review, conciliation, arbitration, mediation or otherwise, for employees and other persons to obtain relief in respect of the breaching of public sector standards;

The "Commissioner" referred to is the "person for the time being holding the office of Commissioner of Public Sector Standards created by s.16 (1)" (s3 PSM Act).

On 1 January 1996, the Public Sector Standards in Human Resources Management came into effect (Government Gazette 1 September 1995). These contain standards for dealing with Recruitment, Selection and Appointment.

On 1 January 1996, Part 7 – Procedures For Seeking Relief in Respect of Breach of Public Sector Standards came into operation (Government Gazette 24 November 1995). This is the Part of the PSM Act, which contain s.97. On the same date, the Public Sector Management (Review Procedures) Regulations 1995 came into operation. Regulation 8(1) of those Regulations provides—

Applications for review of breach of public sector standards

8. (1) Subject to regulation 10 and section 96 of the Act, a person, other than a chief executive officer or chief employee, who is aggrieved by a decision made or action taken by—

(a) a department or organization; or

(b) the employing authority of a department or organization,

that the person considers to be a breach of a public sector standard, may apply to the employing authority of the department or organization to have the decision or action reviewed by a reviewer.

(2) An applicant under subregulation (1) shall be in writing, setting out the grounds on which the applicant considers that the public sector standard has been breached and any other information that the claimant considers relevant to the review.

(3) Subject to subregulation (4) and regulation 9, an application under this regulation shall be lodged within 15 days after the decision was made or action was taken, as the case may be, that the applicant considers to be a breach of a public sector standard.

(4) An employing authority may accept an application made under this regulation after the period of 15 days has expired if the authority considers that, in all the circumstances, it is just and reasonable to do so.

The question that arises is whether the matter referred to the Arbitrator is a matter in respect of which a procedure for employees or other persons to obtain relief in respect of the breaching of public sector standards, is or may be, prescribed under the PSM Act. The matter before the Arbitrator, as set out in the schedule to the application, involves Ms Cabrera's application, recommendation, and the rescinding of the recommendation for appointment to a particular position. At the heart of the matter is her eligibility to apply for the position.

It is noted that Ms Cabrera applied for a review of her situation according to the Recruitment, Selection, and Appointment Standard. One of the areas of alleged breach was that her skills, knowledge and abilities relevant to the job had not been fairly assessed on the basis of her being "incorrectly deem(ed) … ineligible". The Reviewer's report found that there was no evidence that Ms Cabrera's skills, knowledge and abilities relevant to the job were not fairly assessed. "However, the issue of Ms Cabrera's eligibility to apply for this vacant position in the Education Department is outside the scope of this independent review and relates directly to issues involving contract law."

The Department's process in respect of the alleged breach of the Public Sector Standard has already been reviewed. The complaint the subject of the application before the Arbitrator is not limited to a matter in respect of which a procedure referred to in s.97 of the PSM Act (ie a procedure for employees to obtain relief in respect of the breaching of public sector standards) is or may be prescribed. Her complaint centres on an alleged breach of the PSM Act, in particular s.8 (1)(a) and (c) and s.64 (5)(b) as they relate the Respondent's policy which deemed her ineligible, not on a breach of a standard. Therefore, the provisions of s.97 (1) of the PSM Act and 23(2a) or s.80(E)(7) if the IR Act do not prohibit the Arbitrator dealing with this industrial matter. Accordingly, I find that s.23 (2a) of the IR Act places no impediment on the Arbitrator's jurisdiction to deal with this matter.

The Respondent's submission in respect of s.29 of the PSM Act, stating that "the recruitment and selection of employees are a managerial prerogative subject to certain provisions" requires comment. It is noted that s.80E (5) of the IR Act provides that—

> (5) Nothing in subsection (1) or (2) shall affect or interfere with the exercise by an employer in relation to any Government officer, or office under his administration, of any power in relation to any matter within the jurisdiction of an Arbitrator, but any act, matter or thing done by an employer in relation to any such matter is liable to be reviewed, nullified, modified or varied by an Arbitrator in the course of the exercise by him of his jurisdiction in respect of that matter under this Division.

Accordingly, any decision of the employer, in relation to an industrial matter within the jurisdiction of the Arbitrator, is open to review by the Arbitrator, and may be nullified, modified or varied by the Arbitrator. The prohibition contained at the beginning of s.80E (5) is subject to the second part of that subsection.

In conclusion, I find that the matter the subject of the application is an industrial matter, it does not relate to a breach of public sector standards and is therefore not a matter in respect of which a procedure referred to in s.97 (1)(a) of the PSM Act is or may be prescribed under that Act. It is a matter relating to an alleged breach of the PSM Act, by Ms Cabrera being deemed ineligible for the position to which she was recommended.

Accordingly, the preliminary matters raised as impediments to the conference proceeding are dismissed. The parties will be contacted in the near future with a view to the conference being convened for the purpose of conciliation.

APPEARANCES: Mr D Newman on behalf of the Applicant.

Ms L O'Brien on behalf of the Respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Minister for Education

and

Civil Service Association of
Western Australia Incorporated.

No. P 56 of 1998.

9 February 1999.

Order.

WHEREAS this application has been overtaken by subsequent developments between the parties; and

WHEREAS the applicant employer does not seek to proceed further;

NOW THEREFORE, I the undersigned, pursuant to the powers conferred under the Industrial Relations Act, 1979 do hereby order —

THAT this application shall be and is hereby discontinued by leave.

(Sgd.) S.A. CAWLEY,
[L.S.] Commissioner,
Public Service Arbitrator.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Hospital Salaried Officers Association of Western Australia (Union of Workers)

and

North Metropolitan Health Service.

No. PSACR 9 of 1997.

16 February 1999.

Reasons for Decision.

PUBLIC SERVICE ARBITRATOR C.B. PARKS: A conference conducted pursuant to s44 of the Industrial Relations Act, 1979 ("the Act") failed to settle a matter by conciliation, which matter is now before the Arbitrator by way of a memorandum of matters for hearing and determination the material part of which is set out hereunder—

"**CLAIM**

The applicant Union claims that—

1. Mr Griggs' contract of service with the Board of Management of Lower North Metropolitan Health Service was continuing subject only to the ongoing funding of the project for which he was employed.
2. In all of the circumstances, Mr Michael Griggs has been unfairly dismissed in his employment, on or about 15 January 1997, by the Board of Management of Lower North Metropolitan Health Service.
3. Mr Griggs be re-employed by the Board of Management of Lower North Metropolitan Health Service and/or its successor without loss of pay or conditions for all periods when he was available for employment.
4. In the event that the Health Service refuses to re-employ Mr Griggs, that he be paid compensation.

ANSWER

The respondent answers that—

(1) At no time during his three discrete contracts of employment with the Board of Management of the Lower North Metropolitan Health Service (LNMHS) was Mr Griggs given and expectation of continuing employment.

(2) There was no dismissal relating to Mr Griggs' employment with LNMHS. Mr Griggs was employed under three two month contracts each of which came to an end in accordance with its own terms.

(3) There has been no unfairness in the process by which Mr Griggs' employment came to an end. If contrary to the prime contentions of the respondent, Mr Griggs has been unfairly dismissed, neither redeployment nor reinstatement is an appropriate remedy. Either remedy would be impracticable in all of the circumstances, in particular because there are no positions available in the "LNMHS Respite Accommodation Service" for which funding has diminished and may ultimately cease.

(4) The respondent maintains that Mr Griggs is not entitled to any remedy at all."

During the course of hearing the matter the applicant sought and was granted leave by the Arbitrator to amend claim 2. to include the alternative claim that Mr Griggs was "unfairly not re-engaged in employment" at the date specified. Since the matter first arose by way of an application for a conference in February 1997 there has been a change in the name of the respondent. With the consent of the parties the name of the respondent has been amended from that of the Lower North Metropolitan Health Service to that now cited in the head note to these reasons.

The respondent conducts a respite house where persons who are mentally ill may be accommodated for a period so as to allow respite to the persons who usually care for them at home.

Employed by the respondent and located on duty at the respite house are employees classified as Rehabilitation Assistants. Mr Griggs had been one such employee for the period from July 1996 to a date in January 1997.

A complaint by a female resident of the respite home alleging misconduct by Mr Griggs led to his suspension from duty on 12 December 1996. Between the date of suspension and the termination of employment in January 1997 the respondent continued to pay Mr Griggs his usual salary. A preliminary investigation was conducted by management personnel between the date of suspension and 19 December 1996 and on 31 December 1996, Mr DW Gibbens, a security agent contracted to the Health Department of Western Australia, was requested to investigate the complaint made against Mr Griggs. There were delays in that investigation for reasons which do not matter here. Although Mr Griggs was aware that his employment had ended he continued to participate in the investigation which was finalised by the submission of Mr Gibbens' written report on 5 March 1997.

The establishment of the respite house and the service it provides is a project which was commenced in early 1996, the first employee Mr K Leach was engaged in May of 1996, and the house opened to residents in July 1996. The respite house project is an initiative which relies on funding made available by the Australian Government over a three year period, the financial years 1995/96, 96/97 and 97/98.

Mr Griggs has told the Arbitrator that he became aware that his employment had ended when, on 29 January 1997, he made an inquiry to his employer why funds in excess of his usual fortnightly salary had been credited to his bank account, as had been the practice since the commencement of his suspension. Mr Griggs said he was then informed to the effect that his contract of employment had expired on 15 January 1997 and as a consequence all monies which had accrued during his employment had therefore been paid to him.

It is not in dispute that when Mr Griggs commenced employment he did so on what has been described as a fixed term contract for a period of two months from 15 July 1996. There is evidence that Mr Griggs signed a subsequent written contract wherein it is stated that he would be employed for the period from 14 September 1996 to 15 November 1996 and that unless the contract was formally extended his employment would cease on the specified date without further advice from the respondent. A document containing the same essential terms and encompassing the period from 16 November 1996 to 15 January 1997, directed to Mr Griggs and dated 11 November 1996, was tendered to the Arbitrator (exhibit T5). This document is unsigned by either party and according to Mr Griggs he did not receive a copy of it in November 1996, or at all.

There is no dispute that at the time of his engagement Mr Griggs was informed by his superior Mr MB Harris, the Rehabilitation Co-Ordinator, Psychiatry, for the respondent, that the respite house project depended on Government funding and the extent of employment which the respondent may be able to provide to him in the future depended on that funding. The dependence of employment on the availability of funds had been mentioned to Mr Griggs on several occasions. He recollects that Mr Harris made mention of the matter in late 1996 when he made the oral offer of a further two months of employment to January 1997. Mr Griggs also recollects that Mr Harris, when mentioning to him the importance of funding, had also mentioned that the respondent may have to reduce the 24 hours service provided to the residents by employees, the inference being such would reduce cost and ease the difficulty with inadequate funding. At the commencement of his suspension Mr Griggs was informed by Mr Harris that funding was such that employment may not be available to him beyond January 1997.

I am satisfied on the evidence that Mr Griggs understood and accepted that his employment was to be continued beyond 15 November for a period of 2 months, ie ending 15 January 1997, and that such was subject to the same essential terms regarding its cessation or possible extension as are expressed in the written contract covering the period September to November 1996 (exhibit T4). Mr Griggs was given to understand that notwithstanding he was engaged according to a series of contracts he could expect further employment to be available to him, but subject to the funding of the project. It is plain from what Mr Harris conveyed to Mr Griggs that it was not the availability of funding per se that was material because it was known that there would be funding each year for a three year period, the crucial factor was the adequacy of the funding to meet the operating costs of the service each year.

The Arbitrator has been referred to a number of authorities on whether consecutive contracts of employment made in similar terms to that entered into by the respondent and Mr Griggs expire with the effluxion of time, or were brought to an end by the employer and constitute a dismissal. The Arbitrator is bound by rulings of the Full Bench of the Commission, and in turn, those of the Industrial Appeal Court. A decision of the Full Bench in the matter of appeal, Sir Charles Gairdner Hospital v ALHMWU (74 WAIG 2319) is directly on point and therefore I find no need to consider decisions from other jurisdictions. The Full Bench held—

- it is not permissible to imply into a contract of employment a term which is inconsistent with an expressed term of the contract.
- A contract of employment which states that employment will end on a given date allows no scope to imply that the contract will extend beyond that date.
- Where a contract of employment expires the employment terminates on that date through the effluxion of time and by the prior agreement of the parties, therefore there is no dismissal by the employer.
- A failure, or refusal, to re-employ a person following upon the expiration of a contract of employment does not constitute a dismissal.
- Absent a dismissal by the employer there can be no unfair dismissal.

Plainly Mr Griggs was not dismissed on 15 January 1997, his contract of employment was one which expired on that date with the effluxion of time. The claim for reinstatement of employment or alternatively monetary compensation, on that ground must therefore fail. I turn to consider the alternative claim that the failure of the respondent to re-employ Mr Griggs at the expiration of his contract of employment was unfair or unreasonable and that the Arbitrator ought order his re-employment.

It is the uncontroverted evidence of Mr Harris that the Australian Government funding provided for each financial year meets the operational needs of the respite house for approximately five months in each year and the maintenance of the service level for the remainder of a year depends on obtaining additional funds from the State Government. In August 1996 Mr Harris reached the conclusion that the funds then available meant there would be a need to significantly reduce the level of service in or about January 1997. In or about November 1996 he was more convinced that would be the case. Additional funding was received from the State Government, however it did not increase the total funds available to the level required to meet the direct employment costs associated with the provision of a 24 hour service. The payment of salary to Mr Griggs whilst he was on suspension exacerbated the situation because further funds were also expended to remunerate the employees who undertook the duties he would usually have undertaken. According to Mr Harris the expiration of Mr Griggs' employment on 15 January 1997 relieved the respondent of this financial burden, furthermore it was not prudent to re-employ Mr Griggs given that he would not be available for work until such time as the complaint made against him had been investigated and a conclusion reached as to his conduct. Mr Harris therefore elected to provide the service to residents essentially through other employees performing additional hours of work. This situation continued until ultimately the decision was taken that the respondent could no longer afford to provide a 24 hour service. In mid March 1997 the service provided to residents was reduced. The statement of agreed facts shows that thereafter an employee was no longer required to work for the period Monday to Thursday from 2200 hours each day to 0830 hours the next following day, on Friday from 2200 hours to 0900 hours on Saturday, on Saturday from 1900 hours to 0900 hours Sunday, and on Sunday from 1900 hours to 0830 hours on Monday, ie 83 hours less service were provided and the man hours were correspondingly reduced.

The statement of agreed facts also reveals that had Mr Griggs been re-employed, the hours he had previously been rostered to work each week would have been reduced by marginally less than 50% and the hours which Mr Leach had usually been rostered to work would reduce by slightly more than 80%.

The applicant union does not contest that the respondent had justifiable reason to reduce the level of service provided and consequently the required level of manning at March 1997. The argument as I understand it is a simple one. It is that whilst the respite house project continued to receive funding, and continued in operation, Mr Griggs had a reasonable expectation he would have future employment with the respondent. Consequently, it was unfair not to provide him with that employment, particularly given that the shifts which are no longer manned are predominantly those of Mr Leach who is a secondee to the respite house project with ongoing tenure of employment with the respondent. Therefore, Mr Leach ought have been removed to another position of employment and further employment provided to Mr Griggs.

Counsel for the respondent argues that the decision not to re-employ Mr Griggs should be approached on the basis of general principles of fairness and equity, the relevant test for which is whether the action of the employer was unfair or otherwise industrially unacceptable. The essence of his argument is that the question to be considered is whether the legal right of the respondent not to re-employ Mr Griggs was exercised so unfairly in relation to Mr Griggs so as to amount to an abuse of that right. Counsel contends that the measurement of what is fair is to be judged according to an objective standard and it is well settled that it is not a matter of whether the Arbitrator would have acted differently had it been in the respondent's position, but whether the action of the respondent exceeded that which was fair. With all of this I agree.

Throughout the whole period Mr Griggs had been employed it had been made known that the future offer of employment depended on the respondent obtaining adequate funding to meet operational costs, Mr Harris had made it known that in his estimate there would be inadequate funding to continue the same level of service, and therefore manning, beyond January 1997. A change of this nature was not implemented at that time however Mr Harris viewed it as imprudent to re-employ Mr Griggs. That decision has not been shown to be wrong or flawed. There is acceptance that by March 1997 the respondent had the need to reduce its labour costs and that that be achieved by a reduction in the manning.

The Arbitrator has been told that the cessation of Mr Leach's secondment and the re-employment of Mr Griggs would have been the fairer course. The logic of this proposition, as I comprehend it, is that Mr Leach being a secondee would not suffer any loss because he would retain employment but be moved elsewhere and in consequence Mr Griggs ought have gained re-employment, he having been cleared of misconduct by then. That Mr Leach had tenure of employment is not reason to remove him from the project. He was the first employee to commence work with the respite house project and to now suggest that he ought have been removed to favour Mr Griggs completely ignores what the comparable performance of the two employees may have been and also what may have been the personal circumstances and wishes of Mr Leach. The onus lies with the applicant to show the respondent acted unfairly. That has not been discharged and the claim for re-employment fails.

The application will be dismissed.

Appearances: Ms C. Thomas on behalf of the applicant.

Mr N. Monahan (of Counsel) on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Hospital Salaried Officers Association of Western Australia (Union of Workers)

and

North Metropolitan Health Service.

No. PSACR 9 of 1997.

16 February 1999.

Order.

HAVING heard Ms C. Thomas on behalf of the Applicant and Mr N. Monahan (of Counsel) on behalf of the Respondent, the Public Service Arbitrator, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT this application be and is hereby dismissed.

(Sgd.) C.B. PARKS,
[L.S.] Public Service Arbitrator.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Hospital Salaried Officers Association of Western Australia (Union of Workers)

and

Royal Perth Hospital and Others.

No. P 72 of 1995.

16 February 1999.

Reasons for Decision.

PUBLIC SERVICE ARBITRATOR C.B. PARKS: The Hospital Salaried Officers Award No. 39 of 1968 (the Award), as amended, by the operation of Clause 19.—Long Service Leave prescribes the rights of employees and the obligation of employers regarding the taking of paid leave or alternatively a pro rata payment in lieu thereof. The applicant union asks that the Public Service Arbitrator interpret the meaning of paragraph (c), of subclause (8), of the aforementioned clause and the question posed is in these terms—

> "Is a person who terminates his/her employment following pregnancy or a spouses pregnancy for the purpose of being the primary caregiver of a child, entitled to pro-rata Long Service Leave in accordance with the provisions of this sub-clause?"

It was agreed between the parties that the question posed would better convey that which was intended if the words "his or her" replaced the adjective "a" preceding the word "child". However, given the explanation of the question by the advocate for the applicant, and there being no objection on behalf of the respondent that the question extend to include the termination of employment by a pregnant person and not only "following pregnancy", the full scope of the question intended by the applicant is better reflected in the form reframed by the Public Service Arbitrator hereunder—

> "If an employee terminates their employment to undertake the role of primary care giver to a child—
>
> (a) during their preceding pregnancy, or following upon their giving birth to the child;
>
> (b) whom their spouse has recently given birth;
>
> is each such class of employee entitled to payment of pro-rata long service leave upon termination of the employment."

So far as is material to interpreting the meaning of clause 19(8)(b), the clause of the award provides at subclauses (5), (8) and (9)—

> "(5) An employee who resigns or is dismissed, shall not be entitled to long service leave or payment for long

service leave other than leave that had accrued to the employee prior to the date on which the employee resigned or the date of the offence for which the employee is dismissed.

.....

.....

(8) A lump sum payment for long service leave accrued in accordance with this clause and for pro-rata long service leave shall be made in the following cases—

(a) To a worker who retires at or over the age of fifty-five years or who has retired on the grounds of ill health, provided that no payment shall be made for pro-rata long service leave unless the worker has completed not less than twelve months' continuous service.

(b) To a worker who has retired for any other cause: Provided that no payment shall be made for pro-rata long service leave unless the worker had completed not less than three years' continuous service before the date of his retirement.

(c) To the widow of a worker or such other person as may be approved by the employer in the event of the death of a worker: Provided that no payment shall be made for pro-rata long service leave unless the worker had completed not less than twelve months' continuous service prior to the date of his death.

(9) A calculation of the amount due for long service leave accrued and for pro-rata long service leave shall be made at the rate of salary of a worker at the date of retirement, resignation or death, whichever applies and no such payment shall exceed the equivalent of twelve months' salary."

The provision now contained at paragraph (b), of subclause (8), had at an earlier time been designated paragraph (c). When so designated the Commission interpreted and declared the meaning of the provision in matter no. 646 of 1973 (53 WAIG 896). The Commission observed that the then current three paragraphs (a), (b) and (c), of subclause (8), where pertaining to pro-rata entitlement, each respectively referred to "a worker who retires …", "a female worker who resigns …" and "a worker who has retired …" and held that—

> "Although the words 'resign' and 'retire' can be said to be synonymous in that each can be ascribed the meaning of the 'giving up of office' a distinction is found in the case of a person who 'resigns' or 'retires' voluntarily and a person who 'retires' by force of circumstance and is therefore obliged to retire."

The then current subclause (5), of clause 19, was viewed by the Commission to be a relevant consideration. That subclause, save for the substitution of the word "employee" for that of "worker" and the deletion of an exception to its operation regarding a female employee, remains worded the same today and this wording the Commission found was patently inconsistent with the then paragraph (c), of subclause (8), if the words "a worker who has retired …" were construed to mean an employee who resigned voluntarily. In reference to the then paragraph (c), of subclause (8), the Commission ultimately concluded—

> "The qualifying words 'for any other cause' in paragraph (c) is (sic) designed, in my opinion, to expand the entitlement conferred in paragraph (a) 'to a worker who has retired on the grounds of ill health'. In other words a worker who has completed 'not less than three years continuous service before the date of this retirement' and is obliged to retire for reasons other than ill health has an entitlement to payment of pro-rata long service leave.
>
> It follows that 'a person who resigns from employment' is not so entitled …"

In the matter No. CR 222 of 1980 (60 WAIG 1576) the Commission considered a claim made on behalf of a female employee who terminated her employment and in relation to whom it was asserted that clause 19(8)(c) entitled her to be paid pro-rata long service leave. At the time this claim was determined the provision contained in paragraph (c) remained the same as that considered in the matter No.646 of 1973. The meaning declared by the Commission in matter No. 646 of 1973 regarding the word "retired" was cited with approval.

Clause 19(8)(c) was again considered in matter No. CR 221 of 1981 (61 WAIG 2042). Here again the Commission cited with approval the meaning of paragraph (c) declared in matter No. 646 of 1973 and also expressed the added opinion—

> "The draftsman of the clause has clearly drawn a distinction particularly in subclause (8) between a person who has 'retired' and one who 'resigns', and it would be wrong to regard the words as synonymous in this context. Furthermore, it is a distinction which I would have thought was commonly understood and accepted throughout the community.
>
> To qualify for pro rata payment under the Award it is, therefore, necessary for Mrs Bell to be shown to have retired. Normally retirement connotes withdrawal from the workforce. I am prepared to accept, although I do uneasily that a person who, simply tenders her resignation as distinct from retiring in the normally understood sense of the word can for the purposes of the Award nonetheless be said to have 'retired' Generally, that could only be so if the resignation so called results because the person is unable to continue working in a given occupation because of some decision or event over which he has little or no control."

Although none of the aforementioned reasons for decision consider subclause (9) of clause 19, a subclause then contained in the clause and which has remained unchanged, contained therein is reference to "retirement, resignation or death, whichever applies". The words "whichever applies", have, in my view, been used in order to refer to the occurrence of any one of the before described events, ie each is a different and separate event, so as to show their significance within the provision. Given the inconsistency which has been held to exist in relation to subclause (5) and the then paragraph (c) (now paragraph (b)) of subclause (8), and correctly so, subclause (9) serves to reinforce that to "resign" and to "retire" do not have the same meaning.

Following upon the pronouncement of the Commission in matter No. 646 of 1973, Government commenced to treat the resignation of a pregnant female employee as a retirement envisaged by the then paragraph (c) of clause 19(8). It is also apparent that following upon the Award being amended, firstly in 1975 to permit a pregnant female employee to observe a period of maternity leave, and secondly in 1983 to prescribe which leave as a right, Government thereafter treated a resignation given either during pregnancy or such a period of leave as retirement envisaged by paragraph (c).

The present matter has come before the Arbitrator because of an operational instruction issued by the Health Department of Western Australia that directs the recipient employers bound by the Award to discontinue the past administrative practice of "…payment of pro-rata long service leave to hospital salaried officers resigning on the grounds of pregnancy either before or during maternity leave."

In the present matter the applicant contends that the resignation of an employee, whether female or male, to undertake the role of primary care giver to their child is to be viewed as occasioned by necessity or force of circumstance and hence constitutes a "retirement" within the meaning the Commission has ascribed to this term in matter No. 646 of 1973 and subsequent determinations. Support for this contention is said to be found in determinations which hold the resignations of females on account of pregnancy to be resignations caused by domestic necessity; see Wood .v. Harris Scarf and Sandovers Ltd (45 WAIG 152). This conclusion is said to presume that the provision of primary care to a child after birth is axiomatic and hence is the fundamental element of the "domestic necessity".

I agree with the advocate for the applicant union that the condition pregnancy per se does not force a female employee to cease employment. However at an advanced stage of the condition, regulation requires that the performance of work be halted. The need to cease performing work may however arise at any stage of the condition for any one of a number of compelling reasons, the most obvious being an inability to physically cope with the work, or ill health. Although circumstances associated with the condition may compel the female

to cease performing work such circumstances may not also compel the termination of employment. Given the availability of maternity leave, and that pregnancy is a temporary condition, the circumstances which cause a cessation of work will generally pass with the end of the pregnancy. The cessation of work may therefore be generally accommodated through the female undertaking a period of maternity leave in which case there is no compulsion to terminate the employment.

Society generally presumes that pregnancy will lead to the birth of a child. That presumption is accompanied by the expectation that the parents of a child will provide the necessary primary care to that child and convention has been for the female parent to cease employment and undertake that role while the male parent continues in employment. There is now some incidence of transposition in these parental roles and an even greater incidence of, where both parents are employed, they both continue in employment and arrange for another party to provide the primary care to their child during their absence occasioned by the employment.

Although the engagement of another party to provide the primary care to a newborn child is an option available to parents, such does not mean there is any less compulsion upon those parents whose approach or conviction to the rearing of their child is to have one parent personally care for the child. If this be the commitment of a parent, whatever be the gender of that parent, and the consequence is that the parent who is to undertake the role of primary care provider terminates their employment in order to fulfil that role, such amounts to a domestic necessity which also has the degree of compulsion to resign necessary to bring it within the meaning of "retirement" envisaged by clause 19(8)(b). It is apposite to record that not every other situation of domestic necessity will necessarily provide the warrant to retire. The answer to parts (a) and (b) of the question is therefore yes.

Appearances: Ms C.P. Drew on behalf of the applicant

Mr P.G. Brunner on behalf of the respondent

UNFAIR DISMISSAL/ CONTRACTUAL ENTITLEMENTS—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Michael John A'Court

and

Barbeques Galore Pty Ltd.

No. 505 of 1998.

COMMISSIONER J F GREGOR.

5 March 1999.

Reasons for Decision.

On 20 March 1998, Michael John A'Court (the applicant) applied to the Commission for an order pursuant to section 29 of the Industrial Relations Act, 1979 (the Act) on the grounds that he had been dismissed from employment with Barbeques Galore Pty Ltd (the respondent) in a manner which was harsh, oppressive or unfair and that at the termination of his contract of employment he was entitled to outstanding benefits under the contract not being benefits payable under an award or order of the Commission. In his original application he sought orders for reinstatement and for contractual benefits described in the application in the following way; "*Balance of contractual benefits from July 1997 to 21 February 1998 at the salary package benefit being a fixed term balance 1 year appointment (sic)*".

The application was subject to a conference before the Commission on 19 May 1998. The matter was not resolved at the conference. It was heard first on 9 August 1998. During the proceedings it was adjourned to allow the parties to have further discussions with an aim of settlement. The Commission was advised by them that settlement could not be achieved and a further hearing took place on 15 February 1999.

The applicant commenced duties with the respondent on 14 February 1996 as a Store Manager at the respondent's Cannington premises. The terms of the contract of employment were reduced to writing which the applicant signed on 1 March 1996. The letter of appointment is included hereunder—

22 February 1996

Mr Michael A'Court
Barbeques Galore
CANNINGTON

Dear Michael

I have pleasure in offering you the position of Store Manager at Cannington.

The Retail Support Team is looking forward to working with you.

Details of the position are as follows—

JOB DESCRIPTION—STORE MANAGER

As detailed in the company Procedure Manual.

PACKAGE

Your salary will be Thirty Seven Thousand Dollars ($37,000) per annum, subject to performance reviews.

VEHICLE

As discussed, you will be supplied with a company motor vehicle to allow you to carry out your duties.

STARTING DATE

You will commence duties on Wednesday 14 February 1996.

OTHER CONDITIONS

(a) Four (4) weeks annual leave.

(b) Five (5) days sick leave for the first year and eight (8) days per year thereafter.

(c) All work is to be carried out in accordance with the standards as set out in the Company Procedure Manual.

(d) Complete performance reviews with your Manager and respond in accordance to your results.

(e) You will participate in an induction programme for Retail Staff.

May we take this opportunity to congratulate you on being successful in winning this position. We hope you will accept the position on the basis outlined above, by signing and returning the office copy of this letter. We hope you have a long and happy association with this Company.

Yours sincerely

PETER DAVEY

GENERAL MANAGER—STORE OPERATIONS

I, **MICHAEL A'COURT** accept the position and conditions set out above.

M A'COURT	1.3.96
Signature	Date

(Exhibit C1)

The employment contract has been included in full as it is part of the applicant's argument that he was employed on a yearly engagement and at the termination of his employment he is entitled to contractual benefits on the grounds that I will discuss later in this recitation.

In his evidence, the applicant told the Commission that he had 2 weeks training in the Eastern States before taking up his position in Cannington. It is relevant to note that the respondent runs an Australia wide operation. It has stores in each of the States. In Western Australia there are 4 stores, each of them with their own Manager, an Assistant Manager or Operations Manager. The events which led to the applicant severing his

connection with the respondent was not controversial and can be summarised as follows—

The respondent had experienced relatively poor outcomes in the market place across its Australian operations. There had been a down turn in the industry and stores including those in Western Australia had suffered as a result. The respondent took decisions nationally that it would restructure its management in order to cut down costs. This was done not only in Western Australia but also across the Australian operations. The technique was to reorganise the top end of the management, namely the regional management structure, which prior to the changes had seen various persons operating as regional managers to cover stores in each of the states in which the company traded.

In Western Australian, Mr Michael Crooymans was the Area Manager for both this state and South Australia. It was his job to oversee, as a senior manager, the successful trading of the company's stores in both states. He relied upon the support of the Store managers in each of the 4 Western Australia stores. A decision was taken in order to defray administrative costs that the Area Manager position for Western Australia and South Australia would be reduced to an Area Manager for Western Australia and Mr Michael Crooymans would also be appointed a Manager of a store to fully occupy his position. Because of the trading patterns of the Morley store, that being a smaller store in Western Australia, it was decided that Mr Crooymans would be appointed as the Morley store Manager as a subsidiary function to his regional management job. That meant that he would absorb the duties of the applicant as State Manager into his function as Area Manager and Manager for the Morley store.

The National Operations Manager for retail, Gary Heading, visited the Morley store on 21 February 1998. He first met with Mr Crooymans and advised him about the company restructure. He later spoke to the applicant and told him that as a result of the restructure he would be made redundant because Mr Crooymans would move back into the position presently occupied by the applicant. It is common ground that the applicant was very upset about being told he had been made redundant particularly in light of the personal circumstances of the health with his wife. The applicant was given 2 week's notice. He later approached Mr Headings and raised the possibility of him being employed at the Joondalup store as Assistant Manager. Mr Heading was not aware of the potential vacancy himself and he discussed the possibility of the applicant being employed in the capacity of Assistant Manager with Mr Crooymans. It was decided that rather than have him work at Joondalup they would offer him a position of Assistant Manager at Morley working under Mr Crooymans who had always been his Area Manager in any event. The respondent thought that this would be a better position for him. The offer was put to him and according to the evidence of Mr Heading, he appeared to be relieved that he had been offered the position rather than being made redundant.

There were penalties for the applicant in accepting the new position. His salary was reduced from $38,000 as a Store Manager to $32,000 as an Assistant Manager and he would not have the use of a company vehicle which was available to him prior to the redundancy. The applicant worked for a day in the job as Assistant Manager at Morley but then from 24 February to 16 March 1998 he was absent sick *(Exhibit D1)*. He had returned to work on 17 March 1998 and advised in writing that he wished to terminate his employment on 2 week's notice. The notice of termination was in the following form—

> CLG Australian
>
> 17/3/98
>
> To Whom it May Concern,
>
> I Mike A'Court hereby wish to hand in two weeks notice.
>
> I will cease to be employed by the Galore Group as of the Thirty First of March 5.30pm.
>
> Yours Faithfully
>
> M A'Court
>
> (Exhibit D2)

When the applicant submitted his resignation he discussed the matter with Mr Crooymans who shared his disappointment with him. As he himself had suffered a change of position within the company and had some empathy with the applicant. He asked the applicant to reconsider his position over night. He did so and later communicated the final decision that he could not work for the respondent and his notice stood.

Mr Clohessy, who appeared for the applicant, argued that there were a number of elements of unfairness in the way that the respondent dealt with the applicant. Even though the respondent would have the Commission believe that there were falling sales and some staff needed to be made redundant, it was clear that even the Area Manager in Western Australia did not know this to be the case. This is clear because he was only told what would happen to him and the Western Australian operation half an hour before Mr Heading told the applicant of his fate. Up until that time the applicant had been a good and faithful servant. There had been no issue about the quality of his work; he was simply told that his job was no longer going to be available because of the restructure. It was news which the applicant found hard to accept. Such a termination which would be by way of redundancy was completely and utterly unfair, said Mr Clohessy.

Another element of unfairness is that the employment manual *(Exhibit D4)* indicates that termination of employment for Store Managers would require a minimum of 1 month against the general premise that responsible persons would give as much notice as possible. The applicant was given only a fortnight. He could have legitimately expected at least a month's payment. Another element of unfairness is that when he was asked to take the Assistant Manager's job, he was told that the vehicle was not going to be available to him. Provision of the vehicle had been an important factor in the applicant's employment package. He had been able to use the vehicle in a private capacity and it had assisted him. Mr Clohessy also argues that it cannot be said that the manual formed part of the contract because the contract in page 2 *(Exhibit C1)* refers to the manner in which the work is carried out, it has nothing to do with conditions of pay and remuneration or benefits. The procedure manual is to deal with conduct and not benefits. The benefit that the applicant is entitled to is that he was appointed by the year. He was entitled to conclude that his employment was by annual employment. Mr Clohessy argued this did not mean that it was a fixed term appointment. It was annual, nevertheless it may have been terminated by an implied period of notice but that notice should, on the authorities, be of a more substantial period then the 2 weeks given. At best it should be a month.

The final indicator of unfairness is that the applicant suffered a drop of $6,000 per annum in salary. His contract of employment continued for another 4 weeks after the salary reduction and this is a loss which ought to be taken into account. Mr Clohessy argued that there was an unfair dismissal because of the manner of its delivery, the secrecy which was going on and the fact that it is undisputed that the applicant was a good employee. This is attested to in the various achievement certificates he received from the respondent *(Exhibits C2, C3 and C4)*. He was simply confronted with advice that the respondent was going to restructure around Australia and he was not wanted as part of that restructure. He even had to make suggestions himself about a job. The respondent was merely going to terminate his services. Ultimately the applicant decided that it was not fair and reasonable for him to go back from Store Managers job to an Assistant Manager. The effect on him in doing so was a reactivation of stress. He made a decision that he was entitled to make that he could not continue in employment. Mr Clohessy argued that the Commission should find that the applicant was entitled to recognition of an annual contract. There is consequently loss arising from superannuation and loss of use of the vehicle.

Mr Jones who appeared for the respondent argues that the respondent was concerned about the response of the applicant when he was told he was redundant particularly in the face of being advised of the illness of the applicant's wife. Attempts were made to find him a job and he was employed as Assistant Manager to Mr Crooymans. Mr Crooymans discussed the matter with him, sharing his disappointment because his position was changed also. Mr Crooymans had empathy with the applicant and asked him to consider his decision to resign. Clearly the respondent was not looking for a resignation from the applicant at all. It had found a position for him. In doing so, it did not act unfairly because what it did simply was change its structure and as a result of that structural change the applicant was demoted to Assistant Manager of Morley. He accepted

the change in status albeit reluctantly but he accepted it nevertheless. Over a period of illness he decided to take a course of action, he was implored by Mr Crooymans to think it over; he gave consideration to the request but continued nevertheless with his resignation. It is open to find that the applicant chose to terminate his employment after due consideration of all of the facts.

This was a termination of the employee's choosing and therefore the Commission is without jurisdiction under s.29 of the Act. However, in the alternative, if there was a constructive dismissal it was fair in all of the circumstances because the employment came to an end because of decisions that had been made to restructure. The applicant was appraised of those; there was no alternative course of action. He was demoted and offered an Assistant Manager's role. The employer took all steps it could reasonably be expected to take to preserve an employee in the company in the capacity which was appropriate to the applicant's talents. He took the decision in light of his personal anguish over his wife's state of health. He was offered employment albeit at a reduced salary, but nevertheless it was good employment and he accepted and continued in employment. It was his decision and his alone, some 2 weeks later, on notice in writing, to terminate this good employment with the respondent.

As for the contractual benefit claim, Mr Jones says that there is no fixed term. The contract of employment clearly refers to the importance of the company procedures manual *(Exhibit C1)*. While conceding the words in the letter of employment may not be complete, Mr Jones argues that they point to the importance of the company's procedures manual. Any person who is appointed by the company to positions within it ought to know what the company's procedures manual says. It is a policy which operates in every store. Mr Jones suggested that it is possible to argue that the terms and provisions of the Shop Assistant and Warehouse Employees Award may apply and if that were the case, the respondent would have been required to give 2 weeks notice to the applicant. If on the other hand he was Award free, the respondent is entitled to imply reasonable notice into the contract based upon issues such as position of employment, length of service, salary, how often wages or salary were paid, but in this case Mr Jones says that it is legitimate to have reference to the personnel policies of the respondent which required Store Managers and Assistant Managers give the minium of 1 month's notice of termination. Therefore there is an express term which reserves the rights of parties to terminate on notice and that destroys the notion of any fixed term contract. If one examines the totality of the understanding between the parties the contract could be clearly terminated on notice and it is the presence of that right which destroys the proposition advanced by the respondent that in this case there was a contract for 12 months.

The preceding recitation is sufficient scan of the information that has been placed before the Commission. In so far as the credibility of witnesses are concerned there is nothing that has been put before the Commission that would allow me to conclude that the evidence of the applicant ought be preferred over the evidence of the respondent or vice versa on the basis of any lack of consistency or obvious flaw in their evidence. Each of the witnesses told the Commission of facts as they best remember them. There is little divergence between the facts and the Commission is left with the task of having to analyse those facts and produce findings on the balance of probabilities as to what occurred. I find that on the balance of probabilities the events occurred in the following way.

Mr Heading arrived in Western Australia to see Mr Crooymans. He did not announce the intention of his visit. Mr Crooymans was surprised when he was told at the Morley store that there would be a substantial restructure of the respondent's operations in Western Australia. That restructure affected Mr Crooyman's position, he was still to remain as Area Manager but he had to manage a store as well. The Morley store was picked because it was one of a smaller volume stores and this would allow Mr Crooymans to continue as Area Manager and at the same time comfortably manage the Morley operations. Mr Heading had decided that to accommodate this change the applicant would have to be dismissed and he forthwith told the applicant that his position would be terminated on 14 days notice. This caused the applicant great distress. He was suffering considerable pressure from his domestic situation caused by the serious illness of his wife and it is reasonable to conclude that he was in a fragile state emotionally because of the events surrounding his personal life. The notice that he was to loose his job came as a great shock and it had a severe impact upon him. The parties almost immediately though, commenced discussions as to what could be done to ameliorate the situation for the applicant. He sought a position as Assistant Manager at the Joondalup store, however, it was decided eventually that he would be appointed as the Assistant Manager to Mr Crooymans at the Morley store. The applicant accepted but with the acknowledgment that there would be some difficulty for him that is a decrease in status in the eyes of the customers; a reduction in his salary from $38,000 to $32,000 and the loss of the use of a motor vehicle. The applicant attempted to commence the work but his health suffered to such an extent that he had to take leave. He eventually decided that he would resign and he did so on 17 March 1998 when he wrote a resignation in the following terms.

> CLG Australian
>
> 17/3/98
>
> To Whom it May Concern,
>
> I Mike A'Court hereby wish to hand in two weeks notice.
>
> I will cease to be employed by the Galore Group as of the Thirty First of March 5.30pm.
>
> Yours Faithfully
>
> M A'Court
>
> (Exhibit D2)

Mr Crooymans tried to convince the applicant not to resign but to no avail and the relationship came to an end on 31 March 1998 with the applicant at that time occupying the position as Assistant Manger at Morley.

A fair analysis of what happened is that Mr Heading terminated the services of the applicant as a Manager by giving him 2 week's notice. The contract would have continued for another 2 weeks at which time it would have come to an end. Prior that time and reasonably contemporaneous with the termination itself, the parties agreed to continue the relationship with the applicant then to be classified as an Assistant Manager on a salary of $32,000 without the use of a company vehicle and employed at the Morley store. It is open to find, and that I do, that the applicant was demoted. This was a forced transfer in a position, but he was not dismissed. The circumstances are similar to those described in *Transport Worker's Union of Australian Industrial Union of Workers, Western Australian Branch v. Mt Newman Mining Company Pty Ltd* 1989 69 WAIG 1036. That case concerned a truck driver which who had been unilaterally transferred by the employer following incidents relating to his truck driving. It was found that the transfer of the driver concerned was not effected as punishment for any misconduct but because the respondent upon consideration of his entire driving record, had lost confidence in him. About this Senior Commissioner observed—

> "*Ordinarily the unilateral transfer of an employee from one job to another is notionally at least a dismissal and re-employment in the new classification. (See: Midland Junction Abattoir Board v. West Australian Branch, Australasian Meat Industry Employees' Industrial Union of Workers, WA (1963) 43 WAIG 1082 and see too: O'Connor v the Argus and Australasian Ltd (1957) VR 374.) It seems proper therefore to treat the unilateral transfer on that basis. That required the Commission, relying on the principals expounded in Miles v. Federated Miscellaneous Workers' Union of Australia, Hospital, Service and Miscellaneous WA Branch (1985) 17 IR 179, to consider whether in all the circumstances the respondent had abused its contractual right to terminate the employment of Mr Savic*".

Although the originating facts are different, the ultimate outcome in *Savic's* case and the matter before the Commission are the same. In effect, the applicant suffered a demotion. On the rules to be applied that is to be regarded notionally as a dismissal and the rules that are set out in the *Undercliffe* case then need to be applied. Fundamentally that is whether the applicant was fairly treated. It is this that I now consider.

There is undoubted unfairness about the way the respondent went about dealing with the applicant in this matter. It gave him no notice and it would have known before Mr Heading

came to Western Australia that it needed to make staff adjustments to its Western Australian operations. It could have given some notice that the purpose of his visit was to do so. It did not, instead it surprised both its Area Manager and the applicant with its intentions for them. For Mr Crooymans it was a substantial change in his duties although the evidence does not indicate any change to his remuneration. In so far as the applicant was concerned the intention of the respondent was executed brutally and without sufficient human consideration of the position in which he was in. He was already having problems with his domestic situation and the initial shock of having no job at all exacerbated the situation for him personally. The applicant and respondent quickly came to terms about a new position and it appears that the respondent, at that time, tried to assisted the applicant but for the purposes of this case and the fairness or otherwise of his transfer, that was too late. The facts and circumstances of these events all point to the transfer as being unfair. That being the case and the parties having reached the conclusion that there could be no meeting of the minds on reinstatement, the Commission is obliged to consider the question of compensation.

The contemporary situation for the assessment of compensation is cited in detail by His Honour, the President and Commissioner Kenner in the Supplementary Reasons for Decision *Ramsay Bogunovich v. Bayside Western Australia Pty Ltd* No 939 of 1998 (23 December 1998 Unreported). The Commission needs to examine the fact and law to make an assessment of loss and injury. Both of these matters are examined in the *Bogunovich* case. In his Reasons for Decision of *Frank Scott and Consolidated Paper Industries WA Pty Ltd (1999) 79 WAIG 601* Commissioner Kenner has made some further observations to those set out in *Bogunovich*. He writes as follows—

> *As I observed in the decision of the Full Bench in Bogunovich v Bayside Pty Ltd (unreported Full Bench 24 December 1998), an unfairly dismissed employee has no automatic entitlement to compensation for the loss of wages or salary from the date of dismissal to the date of hearing of the application, although this may be the ultimate outcome, depending upon findings by the Commission as to a loss and/or injury, and the assessment of fair compensation. It may well be the case that a finding is open that an unfairly dismissed employee could have been dismissed fairly by the employer, some time after the date on which the employee was in fact dismissed. Thus prospects of an ongoing employment relationship is a relevant consideration in the ultimate assessment of compensation pursuant to s 23A(1)(ba) of the Act.*

These observations are important in the assessment of loss in this case particularly given my findings as to the events in the matter. Clearly Commissioner Kenner is saying that there is no automatic entitlement to compensation for loss of wages or salary from the date of dismissal to the date of hearing. It may well be that the employment contract would have come to an end before that time. That is exactly what happened in this case by the hand of the applicant himself. He only worked in the job as Assistant Manager for a day; he was on sick leave until the 16 March 1998 and his resignation took effect on 31 March 1998. I agree with method of calculation that Commission Kenner has described in *Bogunovich* case and as further explained in *High Form Concrete (ibid)*. During the period from the date that Mr Heading told the applicant that he would be dismissed until the time of his contract came to end by resignation, he had suffered a loss equivalent to a reduction of $6,000.00 per annum. The contract continued for circa 1 month. For this loss he will receive compensation of $500.00. In addition the applicant lost the use of a motor vehicle. Mr Clohessy suggested that a reasonable value of the limited use of the vehicle that the applicant had was $30.00 per week. That sum is not untoward in the circumstances and I will grant additional compensation for loss of the use of the motor vehicle in the sum of $150.00.

I need to consider the question of injury. Section 23A(1)(ba) provides that an assessment of compensation for an unfair dismissal may include recognition for a component for injury sustained. The established authorities indicate a caution must be exercised in this regard as there is a degree of distress in every dismissal. However, in this case, the dismissal of the applicant was extremely upsetting to him. His Honour the President wrote in his Supplementary Reasons for Decision in *Bogunovich,* the word injury includes humiliation, injury to feelings, result of callous treatment, the loss of repudiation and nervous shock. From the evidence here there was injury to the applicant that he was shocked, he was terribly concerned about his family situation, it was more than a minor set back to him, this was aggravated by the method of delivery of the respondent's intention to him. There was lack of consideration to him in failing to give him appropriate notice to enable him to prepare himself. It was at the least callous if not brutal. There needs to be a fair and proper assessment of injury. The applicant, in addition to the factors I have described, suffered humiliation in the store so much so that he could not continue and had to take sick leave. I consider that in all the circumstances an appropriate amount of compensation for injury having regard to the circumstances would be in the sum of $3,000.00. I therefore assess the amounts of compensation for loss and injury proven according to the principles described in the *Bogunovich* case as $500.00 for loss of earning plus $150.00 for loss of use of motor vehicle plus compensation for injury of $3,000.00 making a total sum $3,650.00.

There remains a final issue to deal with. Mr Clohessy claimed that there was entitlement to a contractual benefit based upon the proposition that by virtue of the contract of employment the applicant was entitled to have his contract treated as if it was an annual contract or a yearly appointment. Mr Clohessy mentioned that the tests established by the Full Bench in *Antonio Carlo Tarozzi v. WA Italian Club (Inc.)(1991)(71 WAIG 2499)* may be appropriate but that the amount of notice which was given of 2 weeks was not reasonable and was contrary to the employment manual in any event. I deal with the question first of whether the contract was an annual one. The Full Bench has dealt with a similar matter in *Breeze v. BNZ (1992) 72 WAIG 1268.* In its Reasons for Decision the Full Bench described the ingredients of the contract between the parties. There was an emphasis that the remuneration of the applicant in that matter was based on net profit generated and seeing that the company traded over a year the net profit was calculated for salary purpose after a year's trading. The letter of appointment prescribed a base of $100,000.00 per annum salary, 30% of the first $150,000 net profit before and 50% of the net profit of the next $150,000 before tax. It was clear that the first year package ended on 30 June and would be replaced by a second year package. This letter was accepted by the applicant. It clearly indicated that the contract was a yearly one. It referred to the first year and not part of a year package. It refers to annual remuneration calculated on an annual profit as well as salary per annum. I have recited the letter of appointment of the applicant in this matter earlier in these Reasons and apart from a reference to a salary of $37,000 per annum there are none of the ingredients present of a nature described in *Breeze's* case which led the Full Bench to conclude that the contract was of the nature that it found. In my view, the contract of the employment in this case is quite different to that examined by the Full Bench in *Breeze's* case and the conclusion reached by the Full Bench is therefore clearly distinguishable.

The contract of employment is not worded precisely but it does refer to other conditions. Those conditions specify that all work has to be carried out in accordance with the standards as set out in the company procedural manual. That procedural manual or at least an extract from it, before the Commission *(Exhibit D4)* specifically addresses termination of employment in clause 18.1. It notes that there are minium periods of employment prescribed awards but insofar as Managers are concerned 'a minimum of 1 month' would be required. When Mr Heading terminated the service of the applicant he gave him 2 week's notice. On the face of it that appears to be contrary to the notice period specified in the personnel policy however, one has to examine what actually happened between the parties. The evidence of the applicant is that when he decided to resign he discussed the situation with Mr Crooymans. Because he was Assistant Manager he thought he did not need to give a month's notice. Mr Crooymans agreed with him and by mutual consent the contract was terminated by the applicant giving 2 week's notice in writing. If there were any doubt about the notice period that doubt was removed by the negotiation by the parties as to how the contract was actually bought to conclusion. The parties made an agreement that the

arrangement would end by 2 week's notice. This may well have varied the period set out in the personnel policy but was a variation freely made by consent. This answers the question posed by Mr Clohessy in his submissions on behalf of the applicant. There was no annual contract. The arrangement was terminated by mutual consent by a period of notice agreed by mutual consent and there is no contractual entitlement. This part of the application will be dismissed.

The Commission will order that the applicant was unfairly dismissed and he will be awarded compensation of $3,650.00.

Appearances: Mr R W Clohessy appeared on behalf of the applicant.

Mr D G Jones appeared for the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Michael John A'Court

and

Barbeques Galore Pty Ltd.

No. 505 of 1998.

COMMISSIONER J F GREGOR.

5 March 1999.

Order.

HAVING heard the Mr R W Clohessy on behalf of the applicant and Mr D G Jones on behalf of the respondent, the Commission pursuant to the powers vested in it under the Industrial Relations Act, 1979 hereby orders—

1. THAT the applicant was unfairly dismissed; and
2. THAT the respondent pay to the applicant compensation in sum of $3,650.00.

(Sgd.) J.F. GREGOR,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Peter Blake

and

Veritas DGC Australia Pty Ltd.

No. 1949 of 1998.

12 February 1999.

Reasons for Decision.

SENIOR COMMISSIONER: The Respondent carries on business as a seismic driller working principally off the coast of North West Australia. For this purpose, the Respondent uses the seismic survey ship "Arcadian Searcher". The ship is manned by personnel employed by the Respondent who, at all material times worked on a roster of five weeks on followed by five weeks off work. Each shift is under the immediate control of a Party Manager.

The Applicant was employed by the Respondent from on or about April of 1995 until on or about the 12th October 1998. He was initially employed as a junior observer but at the time of the termination of his employment he was employed as a Party Manager.

On the morning of 23rd September 1998 the Applicant and his party were discharged from the ship to commence their five weekly period rostered off duty. At that time the ship was moored at Darwin. After being discharged from the ship the Applicant, in company with a number of fellow employees, went into the Darwin town site preparatory to catching an aircraft later that day to return home to Perth. The Applicant left the ship at approximately 11.00am. The aircraft was due to leave at 6.00pm. Whilst in Darwin the Applicant with others visited two bars where he consumed a quantity of alcohol. Later that day he and some of his colleagues from the ship flew to Perth as arranged, via Kununurra and Broome.

Upon boarding the aircraft the cabin manager observed the Applicant to be adversely affected by alcohol. The cabin manager made a written report to his leader regarding the conduct of the Applicant and one of his colleagues whilst en route to Perth. In the Cabin Crew Trip Report the cabin manager reported to his leader that, amongst other things, the Applicant and his colleague were "visibly intoxicated upon boarding" the aircraft in Darwin; that the Applicant "was quite calm though staggering badly and almost falling in the door" of the aircraft, and that "also had slurred speech and smelt very strongly of alcohol beverage." In addition, the cabin manager reported that prior to arrival in Broome the Applicant had said that he wanted to be served an alcoholic drink after the Broome stopover. Furthermore, the cabin manager reported that the Applicant and his colleague were spoken to by an official of the airline at the bar at the Broome airport and were told that they must behave or they would be offloaded. The Report also noted that the Applicant and his colleague both "maintained during the entire flight they were sober (with slurred speech)". The Report concluded by indicating that both the Applicant and his colleague must be told "their behaviour is unacceptable on an" aircraft.

Subsequently the contents of the Report were made available to the Respondent's marine supervisor for the ship, Mr Ward, who was the Applicant's immediate manager. After consulting with his immediate superior, Mr Price, who is based in Singapore, Mr Ward raised the matter with the Applicant and indicated that in accordance with the Respondent's policies his employment would have to be terminated. The Respondent has a "zero tolerance policy towards alcohol" for employees working off-shore covering the work period commencing 12 hours before joining the company ship, until discharged from offshore duty by ship management on completion of the work rotation. The Respondent says this extends to travel on the day of discharge from off-shore duty. Moreover, the Respondent has a policy that if an adverse report is made by an airline official against one of it's employees regarding conduct on an aircraft travelling to or from offshore duty, the employee is liable to dismissal.

After being informed by Mr Ward of his fate, the Applicant spoke to Mr Price in Singapore. Mr Price is said to have said that if the Applicant could convince the airline to retract the Report the Applicant could remain in the Respondent's employ. Both the Applicant and Mr Ward failed to have the airline retract the Report. Accordingly, on the 12th October the Applicant was advised in writing that effective from the 24th September, 1998 his employment with the Respondent was terminated. That action was said to have been taken in response to a report filed by Ansett Australia concerning "your behaviour during flight AN393 from Darwin to Perth on September 23rd". The Respondent wrote that his behaviour on that occasion was classified as "unprofessional and unacceptable". His actions on that day were said to be in direct contravention of the Respondent's "zero tolerance policy towards alcohol consumption" during work rotation and furthermore, "involved inappropriate behaviour on an aircraft, which was observed by members of the public and of Ansett's flight crew." The Respondent also pointed out to the Applicant that as a Party Manager he had a high level of responsibility and leadership and his conduct on the day in question "involved poor judgement, inappropriate personal behaviour, potential prejudice of safety and contravention of corporate policy, and has caused the company name to be bought into disrepute."

The Applicant claims that in terminating his employment the Respondent acted either harshly, oppressively or unfairly. He acknowledges that the Respondent at all material times had a policy of zero tolerance for the consumption of alcohol but denies that the policy applied whilst travelling after having being discharged from off-shore duty. Rather, he says, relying on a memorandum given to the Respondent's employees when the current shift arrangements were introduced, that "an employee is considered to be on his own time and not subject to the policy at the time he is discharged from the boat by the Party Manager." The Applicant also acknowledges that the Respondent has a policy that if employees misbehave on an aircraft when travelling to and from off-shore duty, the

employees are liable to be dismissed from their employment. However, the Applicant denies that he misbehaved as alleged by the Respondent or at all.

The Applicant says that when he boarded the aircraft he was not intoxicated and boarded the aircraft without difficulty. In particular, he denies having staggered onto the aircraft or having almost fallen at the entrance to the aircraft. One of his colleagues was so intoxicated that he was stopped by airline officials at the boarding gate and was only allowed to board the aircraft after undertaking not to drink alcohol or misbehave. The Applicant admits that the cabin manager approached him shortly after taking his seat and accused him of being intoxicated, an accusation to which the Applicant says he took exception. He also admits that the cabin manager told him he would not be able to have any alcoholic beverage during the course of the flight to Perth. He admits to having inquired of the cabin manager subsequently regarding the possibility of being served a drink during the flight. He admits to standing in the garden area of the airport at Broome where there was a bar serving alcoholic drinks but denies that he consumed alcohol on that occasion. Moreover, he denies having annoyed or otherwise caused problems for passengers during the course of the flight from Darwin to Perth.

On the evidence adduced in these proceedings, I do not accept that the zero tolerance policy for alcohol applied once the Applicant was discharged from the ship. The policy as specified in the Applicant's contract of employment stipulates relevantly that it applies "until discharged from offshore duty on completion of the work rotation by vessel management". The Respondent's argument, as I understand it, is that this provision should be interpreted so that the policy applies until "completion of the work rotation" which, is said not to occur until the Applicant completes his journey home. In my opinion that is a misinterpretation of the provision in question. Such an interpretation involves rewriting the provision to read that the policy "applies until completion of the work rotation following discharge from off-shore duties" by ship management. That is not what the provision says. Rather, the operative words in the provision are "until discharged from offshore duties … by vessel management."

This interpretation is consistent with the 1995 memorandum answering "some and the most commonly asked questions from the field regarding the work schedule." In answer to a question as to when an employee's leave period actually commences in the context of the policy, the response given by the Respondent was that the "leave period starts at the time he is discharged from the boat by the Party Manager". Mr Ward's attitude to employees drinking after that time appears to be consistent with that answer. Although, Mr Ward testified that this interpretation was subsequently varied by an e-mail from the Respondent's managers in Singapore, in the end he acknowledged that, in fact, that might not have been the case. Certainly, he was unable to point to any such variation or reinterpretation. Furthermore, Mr Ward appears to base his interpretation of the policy on the fact that discharged employees were paid the offshore loading for the day of their discharge. However, he acknowledges, and it is clear, that the employees were in fact discharged from duty when they left the ship to go ashore. Moreover, if the policy is to be applied in a way in which the Respondent suggested, one is driven to ask why the other employees who acknowledge that they had been drinking with the Applicant in Darwin were not dismissed for breach of the policy. Indeed, if the policy is to be interpreted as the Respondent now argues, it is odd that Mr Ward did not dismiss the Applicant when, or soon thereafter, he saw him in Darwin and concluded that the Applicant had been drinking rather than wait until receiving the adverse airline Report. I simply do not accept that the Applicant was in breach of the zero alcohol tolerance policy as alleged. The evidence clearly indicates that the Applicant was discharged from duty, at the very latest, when the Applicant and his colleagues left the "Arcadian Searcher" to go to the Darwin township.

Although in terminating the Applicant's employment the Respondent made much of the Applicant's breach of its zero tolerance policy for alcohol it is clear, from the evidence of Mr Ward, that the gravamen of the Respondent's complaint against the Applicant is that he misbehaved as a result of consuming too much alcohol. Mr Ward testified that a "few drinks" after leaving the ship were "not a problem." Rather, what he said worried the Respondent was the Applicant's misconduct, particularly on the aircraft, associated with his consumption of alcohol. Indeed, that was the basis upon which the Respondent argued its case on this occasion.

There is some conflict in the evidence as to the nature of the Applicant's behaviour on the day in question. In general I accept the evidence of the Applicant as being reliable except where it conflicts with that of Mr Tyler. Mr Tyler impressed me as being an entirely honest witness with a good recollection of the events so far as he observed them. Equally, the Applicant impressed me as being frank and open about the matter. He was not reluctant to make concessions which were, or might be taken to be, in the Respondent's interests.

I accept the Applicant's evidence that he did not misbehave at any time on the aircraft or preparatory to boarding the aircraft as alleged or at all. Indeed, there is nothing in the Report upon which the Respondent relies to suggest any misconduct on his part, except perhaps to suggest that he staggered onto the aircraft and almost fell in the doorway. The author of the Report, Mr Tyler, agreed in his testimony that although the Applicant staggered onto the aircraft he did not almost fall at the door, but simply stumbled. If that can be said to be misconduct, which I doubt, it is not such as to warrant dismissal from employment. In contra distinction to the position regarding the Applicant's colleague the Report did not suggest that the Applicant annoyed other passengers. Mr Tyler in his testimony confirmed that the Applicant was not a nuisance to other passengers and nor was he the subject of any complaint from other passengers. This confirms what the Applicant said of himself. What the Applicant says in this regard is supported by a statement, albeit, unsworn and untested, by another passenger, Mr Wells. Likewise, what the Applicant says of his conduct on the plane is, to some extent, corroborated by the unsworn statement of Mr Hales, a fellow employee who observed the Applicant in Darwin. Mr Hales suggests that despite his apparent state of intoxication, the Applicant "was not causing any problems at the time he was about to the leave for the airport". I accept that the Applicant did not consume any alcohol thereafter, and in particular at the airport before boarding the aircraft in Darwin. Though Mr Tyler testified that the Applicant asked for alcoholic beverages during the course of the flight the evidence, including that of Mr Tyler, suggests that he did not do so in an obnoxious manner nor react adversely to the denial of his request. Furthermore, what the Applicant says in this regard seems, to some degree, consistent with what Mr Ward acknowledges to be the Applicant's disposition. Mr Ward testified that he was quite surprised by the Report since he regarded the Applicant as not being of an aggressive disposition.

The gravamen of Mr Tyler's complaint against the Applicant's conduct in the aircraft was that he stared at some or all of the flight attendants in an intimidatory fashion. That is not a matter mentioned in the Report. Mr Tyler showed the Report to the cabin crew before he handed it over to the team leader. They made no comment about the fact that there was no mention of this occurrence in the Report. In the circumstances I find it difficult to accept that this matter was one of any real significance. Moreover, it is inconsistent with the Applicant's sworn testimony which I accept as being reliable.

The Respondent contends that by his conduct the Applicant has brought the company into disrepute. There was no evidence to suggest that the company had in fact suffered in this way. Indeed, if it had suffered or even was likely to suffer in this way it is odd that the Respondent should have been prepared to retain the Applicant in its employment if the Report was retracted. The retraction of the Report could not remove the conduct said to have embarrassed the Respondent. In any event, as I find there was little about the Applicant's conduct on the aircraft to bring the Respondent into disrepute. To the extent that the Respondent relies on the mere existence of the adverse Report against the Applicant, there is, as already indicated, little in it to suggest that his conduct, as distinct from that of his colleague, reflected badly on the Respondent. Similarly, the evidence does not suggest that whilst in Darwin and before boarding the aircraft he conducted himself in a manner to bring the company into disrepute. Mr Ward, who saw the Applicant in Darwin shortly before the Applicant left for the airport to return to Perth, says that although the Applicant was intoxicated, he was "kind of okay on his feet" and that he was

not "really worried" about the Applicant's condition. As mentioned, I accept the evidence of the Applicant that he did not have anything to drink after leaving the Darwin township and seeing Mr Ward. Furthermore, Mr Hales, says in his unsworn and untested statement that although at the time the Applicant was about to leave for the airport he was drunk, the Applicant was not causing any problems. In so far as Mr Hales also says that the Applicant was unsteady on his feet and difficult to understand that is somewhat inconsistent with the sworn testimony of both the Applicant and Mr Ward. In the circumstances I question its credibility.

The principal reason for terminating the Applicant's employment appears to have been the fact that he was the subject of an adverse report by the airline officials overseeing his flight home from off-shore duty. The Respondent may well have had a policy that provided for such an eventuality but it is not sufficient for the Respondent to say simply that it will rely upon any adverse Report from the airline flight attendants. The modern unfair dismissal laws do not allow for the slavish application of such a policy without a proper consideration of the circumstances leading to its application in any particular case *(see: Bostik (Australia) Pty Ltd v Gorgevski (No.1) (1992) 41 IR 450)*. Nor is not enough that the Respondent genuinely believes, as it appears to have done in this instance, that the Applicant was guilty of misconduct in breach of its policies. That belief must be a reasonable one based upon thorough examination of the circumstances. On the basis of the evidence adduced in these proceedings it may well be questionable whether in the circumstances the belief was a reasonable one on this occasion. In any event, the punishment must fit the crime. To the extent that the Applicant was guilty of any improper conduct on the day in question that misconduct was not such that a reasonable employer possessed of the material facts would have acted to terminate the Applicant's employment. I do not suggest that the Applicant's conduct on the occasion in question was exemplary but as I find it did not warrant dismissal even on the basis of the Respondent's policies. At worst he presented at the airport in a state of intoxication but was not so intoxicated that he was a nuisance to others. In my assessment, to have dismissed the Applicant from his employment on the basis of his conduct on the occasion in question was harsh, if not also unfair. Accordingly in my view, the Applicant has established, at least on balance, that he was dismissed harshly, if not also unfairly.

The Industrial Relations Act 1979, by section 23A, makes it clear that the prime remedy for employees who have been either harshly, oppressively or unfairly dismissed from their employment is reinstatement or re-employment. Only if the Commission is satisfied that reinstatement or re-employment of the former employee is impracticable or that the former employer has agreed to pay compensation instead of reinstating or re-employing the former employee, is the Commission authorised to award compensation rather that reinstatement or re-employment. Impracticable for these purposes is not synonymous with inconvenience either for the employee or for the employer. Nor is it synonymous with a lack of desire on the part of the employer to reinstate the former employee. In this instance, far from being satisfied that it is impracticable to reinstate the Applicant, I am satisfied that it is practicable. It is clear from what the Applicant said that a good and proper working relationship could be re-established. Although the Respondent objects to the Applicant being reinstated in its employment Mr Ward did not disagree unequivocally with the Applicant's assessment in this respect. Instead Mr Ward appeared to suggest that he was acting on a directive from the Respondent's officials in Singapore. The fact that the Respondent was prepared to retain the Applicant in its employment, in the event that the Report was retracted, supports the Applicant's claim that reinstatement is not impracticable in the industrially accepted sense of that term.

It follows that in my opinion the Applicant is entitled to a declaration that he was harshly dismissed from his employment and an order that he be reinstated in his employment. He would also be entitled as an incident of that order to an order that he be compensated for the income lost during the period since his termination until the present date. He is entitled to be put into the position he would have been in, had he not been harshly dismissed from his employment.

The Respondent purported to terminate the Applicant's employment retrospectively to the 24th September. As I find, and in the end it was not disputed, his employment was not terminated until the 12th October. At the date of termination the Applicant was entitled to a base salary of $45,600US per year, together with a marine bonus of 40% when rostered on duty off-shore. It is accepted that he was paid for the period he was rostered off duty commencing from the 24th September. It is common ground that any loss of income should therefore be calculated from the 28th October. On the basis of the information adduced in these proceedings, taking into account that the Applicant was rostered off for five weeks and then on for five weeks the income lost by the Applicant until on or about the 10 February is in the order of US$16,499 which converts to AUD $25,467. The Applicant testified that he was also entitled to a performance or production bonus but there is no evidence to suggest that the ship in question reached the target which gives rise to payment of that bonus. Accordingly, I have not taken the bonus into account in assessing the Applicant's loss.

Appearances: Mr G. K. Paull of Counsel on behalf of the Applicant.

Mr R. H. Gifford as agent on behalf of the Respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Peter Blake

and

Veritas DGC Australia Pty Ltd.

No. 1949 of 1998.

16 February 1999.

Order.

HAVING heard on Mr G. K. Paull of Counsel on behalf of the Applicant and Mr R. H. Gifford as agent on behalf of the Respondent the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby—

1. DECLARES that Peter Blake the Applicant was harshly dismissed from his employment with the Respondent on or about 12 October 1998.
2. ORDERS that upon presenting himself for work no later than the start of business 15 February 1999, the Respondent shall reinstate the Applicant in its employ as if his contract of employment had not been determined, and further that the Respondent pay to the Applicant the sum of $25,467 as reimbursement of the remuneration lost by reason of the termination of his employment.

(Sgd.) G.L. FIELDING,
[L.S.] Senior Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Andrew Bodger

and

Cockburn Ice Arena.

No. 1016 of 1996.

CHIEF COMMISSIONER W. S. COLEMAN.

6 January 1999.

Reasons for Decision.

CHIEF COMMISSIONER: The applicant has planned and developed an ice ring in the metropolitan area. This involved considerable investment and commitment. People with an interest in skating and other ice sports volunteered their services

to get the project off the ground. They were rewarded with the availability of a rink in their community and free access to the facility for a period of time.

The applicant a young man with an interest in ice sports worked as a volunteer in helping set up the ice rink. The arrangement was formulised when certain volunteers were "put on roster" and became paid employees. Others would be asked to work if the demand warranted extra hands at the time. The applicant became a casual employee. He would work on "an as and when required" basis subject to his availability. From time to time he would be contracted to work or while he was attending the rink as a patron he would be asked to fill in as a floor supervisor or to work as an attendant. For the period from 15 April until 30 June 1996 arrangements for his casual employment with the respondent were covered by a registered workplace Agreement. When that expired it was not renewed.

As far as the respondent is concerned the applicant last worked on 2nd June and as such his employment was covered by the operation of the workplace agreement. His employment terminated with the expiry of the Agreement.

The applicant claims that he was asked to work on 13th July, that in fact he did work on that day and was subsequently terminated from employment two days later. It is from the circumstances of this alleged termination that the applicant claims unfair dismissal under section 29(1)(b)(i) of the Act.

The respondent denies that the applicant worked on 13th July and argues that as the relationship was regulated by a workplace agreement when the applicant was last employed, there was no dismissal to attract jurisdiction under section 29(1)(b)(i) of the Act when that contract of employment expired.

Central to the determination of the matter is the finding of fact as to whether or not the applicant worked on the 13th July.

The owner of the rink gave evidence for the respondent. He stated that from early in June the applicant had been suspended from the rink. This suspension applied both as a patron and as an employee. The suspension arose from complaints received about the way the applicant interacted with some of the patrons. However the basis of those allegations are not relevant to the issue of jurisdiction. The period of suspension was four weeks. The applicant was told that he would not be given any work for that time. The suspension was imposed in the first week of June shortly after the applicant had worked on the second day of the month. It appears that notwithstanding that suspension the applicant attended the rink from time to time after that date. The owner was aware of this but in the interests of public relations elected not to confront the applicant.

On 13th July an ice show was presented. This was the culmination of months of work for those associated with the rink. It provided the opportunity for student skaters to exhibit their skill. Volunteers were called upon to assist at the function. The applicant attended the ice show as a member of the public although he was not required to pay an admittance fee. Apparently, his presence was noted by the owner. During the course of the performance the owner operated a piece of machinery on the ice. At the time the applicant was standing in an area not open to the public. The owner requested the applicant to move a ramp so that the machine could exit the rink. This was done without discussion between them. As a result of performing this task the applicant submitted a wage claim. On 15th July the owner called the applicant into his office and claims to have told him that he had not been asked to work, he had merely been requested to remove a ramp. An argument ensued over what the owner claims was his insistence that the applicant adhered to instructions concerning his behaviour towards some patrons. When that undertaking was not forthcoming the owner demanded that the applicant remove himself from the premises. In the course of that altercation the owner admits to having stated that "your terminated". This was said to be in the context that the applicant was not an employee at the time and that he would not be prepared to reinstate him on the roster. It was the owner's intention to have the applicant leave the premises, that he would not be allowed back as a patron and would not be offered any more work.

The applicant claims that the suspension invoked by the owner commenced on 12th April, a date he deducted by reference to events associated with his university commitments. Notwithstanding the prohibition imposed on his attendance at the rink as a patron and that work would not be offered to him he regularly skated and trained for ice hockey during the period from April until June. Furthermore he worked 5 hours in April and another 5 hours on 26th May 1996. On the last occasion he accepted employment he claims to have pointed out to the supervisor that he was still under suspension. This had made no difference. A time sheet/wage payment carried the notation that he was "unsuspended then suspended again".

When the applicant attended the ice show on 13th July he claims that the request from the owner to move the ramp from the ice rink had been communicated in terms of an order. Although that task only took 5 minutes he claims that at the conclusion of the show he had been directed by the owner to remove pot plants from the ice. He completed this task and subsequently lodged a time sheet for payment of 1 hour's work. At the time he had been ordered to remove the ramp he had commented to another employee words to the effect that this indicated that he was "back on roster".

According to the applicant when he was confronted by the owner on 15th July he was told that he was being dismissed from employment. This was because of staff cutbacks. The owner is alleged to have noted that insufficient funds were being generated to employ all of the casual staff. The applicant claims he pleaded his case to remain employed by pointing out his expertise in operating the re-cutting machine and his qualifications as a sports trainer. He claims that the conversation became heated when he questioned whether the termination was associated with the complaints raised against him and the fact that he was taking legal action arising from allegations associated with that matter. It is claimed that this prompted the owner to issue the ultimatum that if the applicant took legal action he would no longer have access to the rink as a patron. It appears that another employee was told to escort the applicant from the premises.

Evidence called in support of the applicant's case failed to establish that the suspension from employment arose in April. Indeed it is clear from a co-worker, Mr Munday that the applicant's period of suspension dated from early in June, just after Mr Munday commenced employment at the end of May. However it was established that the manager of the rink, Mr Blake, considered the applicant to be an employee in July even though he understood him to be "off roster" and suspended at the time. Mr Blake had been told earlier in the year by the owner to roster the applicant "down to nothing". This had not been possible given the levels of patronage from time to time and the availability of casual staff.

From the evidence it is clear that the task of removing the ramp takes only a matter of minutes. However, it is not a task that would be given to an inexperienced person. It demands some degree of physical strength. Quite properly the task had been designated by the owner as one to be done by a "rink area technician". This reflected the potential hazard of working near machinery on a slippery surface.

The respondent is emphatic that the suspension commenced in the first week of June. Furthermore, it was for a period of four weeks. It must be accepted that the notation on a wage sheet indicated that the applicant was "unsuspended then suspended again" would cause confusion. However, I accept that this was an accounting instruction for the purpose of identifying workforce numbers and did not relate to the factual situation.

It is important to note that the period of suspension was invoked for a specified time of four weeks. This would expire before 13th July. The applicant having being covered by a workplace agreement was no longer designated a volunteer. When he attended the ice show his presence was noted, he was not asked to leave nor was he removed from an area of restricted access. The task he was asked to perform was part of the job inadequately undertaken by an employee immediately prior to the direction given to him. There was evidence of a further task undertaken at the direction of the owner that night. The suspension imposed on the first week in June had either expired with the effluxion of time or the inadequacy of its enforcement, given that it also related to attendance at the rink. This created room for uncertainty.

The arrangement that took place on 13th July was convenient to both parties. The owner needed someone with skill to perform the task promptly. He may not have consciously designated the applicant as an employee but he certainly did not

invoke the suspension, if indeed it still operated. As a matter of equity and the substantive merits of the case on this issue I accept that the applicant was employed on 13th July. The arrangement entered into was consistent with the practice of meeting needs at the rink from time to time. Furthermore, I accept that the discussion that ensued on 15th July resulted in the relationship being terminated. The claim attracts jurisdiction under section 29(1)(b)(i) of the Act. Nothing put to the Commission disposes of the question as to whether the termination of employment was harsh, oppressive or unfair.

Appearances: Mr T Crossley appeared on behalf of the applicant.

Ms E Hartley (of Counsel) appeared on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Brian Calthorpe

and

Tahl Holdings Pty Ltd.

No. 325 of 1998.

COMMISSIONER A.R. BEECH.

1 February 1999.

Reasons for Decision.

(Given extemporaneously at the conclusion of the proceedings as edited by the Commission.)

THE application which is before the Commission is an application by Mr Calthorpe that he has been unfairly dismissed.

In my view, the dismissal which occurred was as a direct result of the issue that Mr Halligan referred to regarding what I might describe as the "bottle shop prices" issue. That, in Mr Halligan's mind, was a factor to be taken into account, together with Mr Calthorpe's response to the questionnaire and what Mr Halligan understood as the counselling which had been given to Mr Calthorpe in November 1997.

In the view which I take for the dismissal to have been fair, either Mr Calthorpe's conduct on the day that he was dismissed was sufficient of itself to warrant termination or, if it was not, then if the dismissal was based on Mr Calthorpe's alleged poor work, was Mr Calthorpe ever issued with a warning that his conduct could warrant dismissal?

As I think is conceded, it is clear that Mr Calthorpe was not given any warning that his employment was in jeopardy. I do not find whatever happened on 5 November 1997 to constitute a warning and, in any event to the extent that it may even have been counselling, I find that as of December 1997, whatever concerns there were, had been resolved and I rely upon the performance appraisal that had been given to, or made about, Mr Calthorpe and the salary review to support that finding. I therefore find that, as at December 1997, there was nothing of a disciplinary nature to count against Mr Calthorpe. In January 1998 Mr Curly was absent on leave and Mr Calthorpe was Acting Manager.

I then come to the two or three days after Mr Halligan's employment commenced on 9 February 1998. In my view there is nothing in whatever occurred over those two or three days that could allow the Commission to conclude that Mr Halligan's dismissal of Mr Calthorpe on 11 February 1998 was fair. In my view the worst that can be said about Mr Calthorpe relates to the bottle shop prices issue and, in my view, that is not an issue which, of itself, would warrant dismissal. In that regard I accept Mr Halligan's evidence that he, himself, appreciates that he acted somewhat hastily on that day.

To the extent that Mr Halligan relied, according to paragraph 17(g) of his statement, on "the serious counselling given to Mr Calthorpe in November 1997" he was, with respect, in error. The November issue had been overcome by December and, in any event, it was not "serious counselling".

Furthermore, paragraph 16 of Mr Halligan's statement indicates that he may have relied upon his questioning of Mr Curley about the extent to which Mr Calthorp had completed the Action Plan. However, there is no evidence that he discussed Mr Curley's response with Mr Calthorpe prior to dismissing him.

If he took into account the issues in paragraph 15 which arose out of his discussion with the Bar Managers, the Housekeeper and the Front Office Manager, he did not raise those with Mr Calthorpe either.

Even the newspaper incident was, according to Mr Halligan's own evidence, not raised with Mr Calthorpe in a way that was disciplinary sufficient to be relied upon as a reason for the dismissal which occurred.

For those reasons I find that the dismissal of Mr Calthorpe was, indeed, unfair.

The primary remedy is re-instatement. It is the common ground of both parties that re-instatement is not sought and, although the mere fact that it is not sought does not necessarily mean that it is impracticable but for the purpose of these proceedings I find that re-instatement is impracticable. I am therefore obliged to consider compensation.

For the reasons which may have become apparent in the discussions I have had, particularly with Mr Jones but also with Mr Maughan, that is a matter that I am not prepared to rule on extemporaneously from the Bench. To that extent, that part of the decision is reserved.

I merely add that, if what I have said to you so far allows you to reach any kind of an agreement yourselves in relation to compensation that is entirely a matter for you and that would be a means of concluding the matter other than by the calculation of the Commission. Once again, that is a matter for the parties. However I have taken the matter as far as I can for the moment and the balance of the decision is accordingly reserved.

Appearances: Mr A. Maughan (of Counsel) of behalf of the applicant.

Mr D. Jones on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Brian Calthorpe

and

Tahl Holdings Pty Ltd.

No. 325 of 1998.

COMMISSIONER A. R. BEECH.

26 February 1999.

Further Reasons for Decision.

Mr Maughan, who appeared on behalf of Mr Calthorpe, asked for compensation to be awarded to the limit of the Commission's jurisdiction. This is a period of six months. In support of his position, Mr Maughan highlighted the work history of Mr Calthorpe. His last employment had been for some five and one half years. He submitted that Mr Calthorpe does not present as a person who stays in a job for only a short term. Rather, Mr Calthorpe is more likely to have stayed with the respondent for a considerable period of time and it was only the dismissal which occurred which prevented that from occurring. Indeed, Mr Calthorpe may well have had a long career with the respondent. Mr Maughan pointed to Mr Calthorpe's ability to be trained if Mr Halligan saw need for improvement of Mr Calthorpe in some areas. If there was a problem between Mr Halligan and Mr Calthorpe, the problem lay in communication rather than in Mr Calthorpe's ability, or alleged lack of it.

In contrast, however, Mr Jones, who appeared on behalf of the respondent, stated that it was uncertain how long the contract would have continued in any event. On that basis, the Commission should exercise its discretion and award compensation for a period less than the limit set by the legislation.

Although both Mr Maughan and Mr Jones made submissions regarding the manner in which the Commission is able to assess compensation, I find it necessary to state only that

the Commission is able to award compensation for the loss or injury which occurred. It is clear that Mr Calthorpe suffered a loss of the income he would have earned had he not been dismissed. He has certainly attempted to mitigate his loss. He tendered a number of letters (exhibit 8) from potential employers to whom he had written asking for employment. The dates on those letters show an even spread from 15 April 1998 until at least 12 October 1998. His evidence is that he commenced alternative employment in August 1998. I unhesitatingly accept his evidence that, following his dismissal, he sought employment outside Newman and contacted approximately 30 to 35 potential employers since his dismissal.

I do not accept that he would have remained in the respondent's employment for only a short period of time. I do not accept the evidence of Mr Curley which may have led to a contrary conclusion. His evidence that—

> "Mr Calthorpe was reluctant to improve his skills and had poor communication skills and had received absolutely no respect from other staff management or line staff due to his rudeness and abrupt manner"

is effectively countered by the evidence of Ms Luckie. Although Mr Curley may not have added Mr Calthorpe to the list of persons who would have progressed to General Manager, his evidence is in contrast to the Management Performance Evaluation (exhibit 14) which does not contain any reference at all which could lead to a conclusion that Mr Calthorpe would not have had continuing and ongoing employment with the respondent. In that context it is appropriate to refer to the letter of 11 December 1997 which gave Mr Calthorpe his salary increase. That letter states—

> "We are very please to advise you that your annual salary has been reviewed and increased to $38,750.00 from the first pay period commencing on or after 1 January 1997. As you know, salary increases are performance based … Your contribution towards our results in 1997 is very much appreciated and we look forward to our continuing success and mutually rewarding times in 1998"

There is everything in that letter which points to a conclusion that Mr Calthorpe was viewed favourably by the respondent and that his employment would continue in 1998. In contrast, there is nothing in that letter which would permit a contrary conclusion. Furthermore, the performance review itself, upon which the salary was based (exhibit 14), leads me to a similar conclusion. This conclusion is supported by the Action Plan prepared by Mr Curley, for Mr Calthorpe, and which certainly saw him as continuing for the period until April. Furthermore, I accept that Mr Calthorpe's previous work history indicates that he cannot be said to move regularly from job to job.

As to Mr Halligan's view of Mr Calthorpe, while Mr Halligan may have had the dissatisfaction with Mr Calthorpe as he stated in his evidence, that dissatisfaction was based on a quite inadequate period of time, three days observing Mr Calthorpe, and his conclusion is in marked contrast to the formal approval of Mr Calthorpe referred to in the preceding paragraph.

On the material before the Commission there is little other conclusion open than that Mr Calthorpe would have remained in employment during 1998. His loss, caused by the dismissal, is for the period between the date of his termination on 11 February 1998 until his commencing new employment in August 1998. The period of time is six months. From that period of time would be deducted the one month's wages which he received as payment in lieu of notice. The deduction of the one month's wages in lieu of notice measures Mr Calthorpe's loss, caused by the dismissal, as five months' wages at his annual salary rate.

An Order will issue requiring that payment to him of five months' wages as compensation for that loss and a Minute of that Order now issues.

Appearances: Mr A. Maughan (of Counsel) of behalf of the applicant.

Mr D. Jones on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Brian Calthorpe

and

Tahl Holdings Pty Ltd.

No. 325 of 1998.

4 March 1999.

Order.

HAVING heard Mr A. Maughan (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—

(1) DECLARES that Mr Calthorpe was unfairly dismissed.

(2) ORDERS that Tahl Holdings Pty Ltd pay to Mr Calthorpe the amount of $16,145.83 as compensation for the loss caused by the dismissal.

(Sgd.) A. R. BEECH,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Barry Chittleborough

and

Biologic International Limited.

No. 1882 of 1998.

Siak Ku Lee

and

Biologic International Limited.

No. 1895 of 1998.

COMMISSIONER P E SCOTT.

16 February 1999.

Reasons for Decision.

THE COMMISSIONER: These are applications pursuant to s.29(1)(b)(i) of the Industrial Relations Act. The first matter is an application filed by Chittleborough who says that at the time of the termination of his employment, being the 25 September 1998, he was employed by the Respondent as Manager Machinery-Acquisitions and Operations. The second application is by Siak Ku Lee, who was also known as Richard Lee. Lee says that he was employed by the Respondent as Executive Director for Asian Operations at the time of his termination of employment on 14 October 1998.

The Respondent says that at the time of the alleged dismissals, the Applicants were not employees of the Respondent, and accordingly the matters do not fall within the Commission's jurisdiction.

On 17 December 1998, the Commission convened a conference for the purpose of conciliating between the parties, however, no agreement was reached. The Applicants wished to expedite the resolution of the matter because they believed that should the matters proceed in the normal course the Respondent would not have adequate financial capacity to pay any amounts which might be ordered if their claims were successful. Accordingly, the parties agreed that the Commission should determine the issue of jurisdiction based on the written submissions of the parties, and that a hearing may be convened to deal with any other evidence, but this would only occur at the request of the parties.

The Commission has received written submissions and supporting documents from the parties. There has been no request, from any of the parties, for a hearing to be convened for the purpose of evidence being presented. In light of some comments within the Applicants' written submissions, the

Commission has also confirmed with the Applicants' representative that the submissions and documents before the Commission form the complete matters which they wish the Commission to take into consideration.

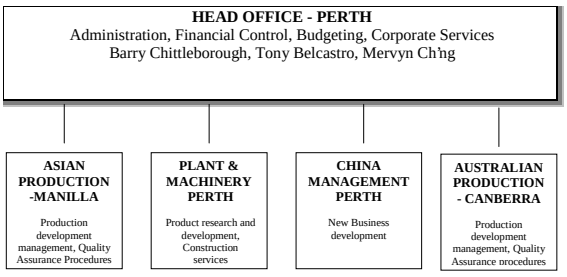
The essence of Chittleborough's submission refers to documentation relating to his and the Respondent's relationship and can be found at 4.(i) to (vii) of the written submissions.

Lee's submissions in respect of his relationship with the Respondent are set out in 4.(i) to (vii) of his submissions.

The Respondent says that the Applicants are unable to demonstrate that an employer and employee relationship, in accordance with the appropriate criteria set out in the in relevant authorities, existed between the Applicants and the Respondent at the relevant times. The Respondent also says that Lee was employed by a company operating in the Philippines, and not by the Respondent. In either event, the Commission is said to have no jurisdiction in these matters.

The documents referred to in the submissions of the Applicants are—

- The Prospectus for the Respondent's business, lodged with the Australian Securities Commission on 10 December 1997 which describes the Applicants as Directors of that company. Section 4—Profiles of Directors and Management, under the heading of Board of Directors, describes Chittleborough as Managing Director and Lee as the Director Asian Operations. This section provides brief profiles of each of the members of the Board of Directors. At the end of the section dealing with the Board of Directors there is a box arrangement which reads—



There is then a section dealing with "Management Team" which lists various persons and their positions and profiles.

Section 9—Material Contracts, (page 48) refers to the initial capital contribution of partners including the Applicants, and of the Assignment of Intellectual Property by the partners in consideration of particular allotments of ordinary shares in the Respondent. Certain share allocations are noted for the Applicants.

Section 11—Additional Information, (page 58) includes "Directors and Directors' Interests" which notes the numbers of shares and options held by Directors including the Applicants. It also notes a loan by a company associated with Chittleborough "on commercial terms". The final paragraph of the section dealing with Directors and Directors' Interests says—

> "The Company has resolved in General Meeting that the total amount of Directors fees which may be divided amongst the Directors is set at a maximum of $200,000. The Directors have resolved that, for the year ended 30 June 1998 only Mr Kerin will receive a Directors fee. The Directors have resolved that Mr Kerin will be paid $25,000 per annum by way of Directors fees. Messrs Chittleborough and Richard Lee each receives a salary of between $69,999 and $79,999 per annum."

This Prospectus also notes that the Respondent is related to a number of other companies, including companies with the word "NutriGrowth" in their names, including a company called NutriGrowth Philippines Inc.

- The Respondent's Annual Report 1997/98, for the financial year ended 30th June 1998 and dated 23rd October 1998 is in 2 parts, one being a glossy document of 12 pages containing various reports, the other being a document including the financial reports. Both parts record the Applicants as members of the Board of Directors. Under the heading "Information on Directors" in the financial reports (page 4), there are brief profiles of the Directors and their share and options interests. Chittleborough is listed as the "Director/Machinery Technology, Retired Managing Director in 1998 and a Board Member since April 1996". Lee is listed as "Director Asian Operations, joined the Board in April 1996 in an Executive Capacity". These profiles of each of the Applicants are in similar terms to the profile of each of them contained in the Prospectus referred to above. Page 6 contains a heading of "Director's Benefits", which includes—

  "…

  (iii) Mr Barry Chittleborough, former Managing Director and a Director of the Company, received a salary of $69,871 (1997: $70,386) plus the use of a motor vehicle from the Company at a cost of $22,529 (1997: $24,865) during the year.

  …

  (vi) Mr Richard Lee, a Director of the Company, received a salary of $69,871 (1997: $70,386) plus the use of a motor vehicle from the Company at a cost of $20,794 (1997: $19,690) during the year."

Page 28 contains "Note 28: Related Party Transactions" which records Mr B Chittleborough's interest and directorship of other companies.

The information provided by Chittleborough includes a Prudential Select Superannuation Plan Member Statements for the periods 1 July 1996 to 30 June 1997 and 1 July 1997 to 31 December 1997, which lists the employer as the Respondent, the Member category as "Senior Staff", the "Date Joined Employer" is "29/04/96" and "Membership Date" as "25/06/97".

There is also a copy of a Group Certificate for the period of 1 July 1997 to 30 June 1998 listing the employer as the Respondent and signed by an authorised person on 10 July 1998. There is bank statement extract in the name of Mr Barry Ralph Chittleborough and Mrs Beverley Chittleborough for the period of 16 July 1998 to 21 July 1998. There is an entry on 16/7/98 which reads "Deposit/Salary Biologic Intern Pay".

There is a very poor copy of pages 1 and 4 of a document headed BIOLOGIC INTERNATIONAL LTD ACN 073 653 175, Minutes of Meeting of Directors Held by Telephone Conference on Friday, 25 September 1998 that 4.10pm EST. Page 4 includes the following—

"…

The Chairman put forward this resolution to the Board that "Mr Barry Chittleborough step down from the day to day management as an employee of Biologic and all its subsidiary companies" and asked each Director present to vote in turn.

Mr Belcastro voted in favour of the resolution.

Mr Chittleborough voted against the resolution.

Mr Richard Lee voted against the resolution.

Mr Mellick voted in favour of the resolution.

Mr Tang abstained from voting.

The Chairman voted in favour of the resolution.

The Chairman declared the resolution carried and concluded in saying

That Mr Matthew Green has the authority to hire and fire in the Company; and

That Mr Barry Chittleborough's employment with Biologic and all its subsidiaries be terminated effective immediately.

..."

There is a document on paper headed "BIOLOGIC" dated 4 November 1998 addressed to the Applicant, the relevant parts of which say—

"Dear Mr Chittleborough,

Your employment with Biologic terminated on 25 September 1998.

You were given until 5 October 1998 to return all Biologic International assets in your possession including but not limited to the company vehicle and mobile phone to the Biologic office at 7 Ventnor Ave Perth.

Biologic continues to incur the financing expense of the motor vehicle and you will be on charged the $1063.63 per month fiance costs and associated FBT exposure.

Your failure to return these assets is equivalent to theft of the assets.

If all Biologic assets in your possession are not returned to the above address by midday Friday 6 November appropriate action will be taken.

Matthew Green

Chief Executive Officer"

As to Chittleborough's relationship with the Respondent, the Respondent submitted the following—

…

4. The applicant was, until 27 November 1998, a Director of the respondent company.
5. The applicant was, until 6 April 1998, an employee of the respondent.
6. The applicant commenced his employment, with the respondent on 17 April 1996
7. The applicant was employed as the respondent's Managing Director.
8. On 6 April 1998 the applicant resigned as the respondent's Managing Director. At the same meeting the Directors resolved to appoint a Chief Executive Officer to replace the former Managing Director (copy of the minutes of the meeting is attached).
9. Following his resignation as Managing Director, the applicant remained a Director of the respondent company.
10. Following the applicant's resignation as managing Director, conflict arose between him and the new Chief Executive Officer in relation to the management of the respondent's operations.
11. Since the time of his resignation, the applicant continued his involvement, with the respondent, as a Director. As such, he was involved in minor project work.
12. On 31 July 1998 the applicant ceased attending at the respondent's offices and the respondent did not allocate any work to him.
13. As a result of the confusion over the management of the respondent's organisation the matter was clarified at the meeting of Directors held on 25 September 1998. The minutes of the meeting (which are attached) indicate that a decision to terminate Mr Chittleborough's employment. In reality, however, that decision was effectively a clarification of the fact that Mr Chittleborough had resigned as Managing Director and that as the respondent had appointed a new Chief Executive Officer, the applicant was to have no role in day to day management of the respondent's operations.
14. The letter from Matthew Green, the respondent's Chief Executive Officer to the applicant dated 4 November 1998 is no more than a confirmation of the clarification that the applicant had resigned from his position as Managing Director and had no day to day role in the operational affairs of the respondent.
15. Factors referred to in paragraphs 4i), 4ii), 4iii) and 4iv) are only indicia of an employment relationship. The (sic) do not, without more disclose that such a relationship existed (particularly after the Applicant's resignation).
16. Following the applicant's resignation, any payments made to the applicant cannot be described as salary. Those payments are ex gratia payments, made by the respondent to the applicant due to—
    (a) His continuing involvement as a Director;
    (b) His involvement in minor and limited project work; and
    (c) The fact that the applicant was involved in a bitter dispute between two factions of Directors which was set to be resolved at an Annual General Meeting which, at the time of the confirmation of resignation, was set to be held later in the year (and was ultimately held on 27 November 1998.
17. As a result of the facts contained at paragraph 16(c), the respondent took the view that, although the Applicant had resigned as Managing Director of the Respondent, it was better to leave all arrangements as they were, until the Annual General Meeting.
18. The friction between the applicant and the respondent and its CEO reached a stage where the respondent had not (sic) option but to confirm the resignation of the applicant, which in turn led to this application."

There is a copy of the Minutes of a Meeting of the Directors of the Respondent of 6 April 1998. The relevant parts of these Minutes record discussion regarding a move to remove Mr Chittleborough from the Board of Directors. It also notes, under the heading "Resignation of Managing Director"—

"Mr Barry Chittleborough tendered his resignation as Managing Director."

In addition, there is a full copy of the Minutes of the Meeting of the Directors of 25 September 1998, referred to earlier. However, this copy also includes page 3. Under the heading "Management Structure", the Minutes record—

"The Chairman reported that there is a conflict between Mr Chittleborough and Mr Green as to who is managing the Company and this matter must be resolved. The Chairman then invited Mr Green to comment on the management structure of the Company.

Mr Green explained that the conditions of him accepting the appointment as CEO of the Company was subject to the resolution of the Wuxi deal, the authority to restructure the Company and resolving the skill requirements in the Company. He briefed the Board that he had reviewed the structure of the Company and as presented in the 10 August 1998 CEO's report to the Board, the position of General Manager – Australasian Machinery Technology is no longer required. In an effort to accommodate Mr Chittleborough, a position of Relationship Manager – Koch was offered to him and this was verbally accepted by him on 11 August 1998. Mr Chittleborough however immediate (sic) requested and Mr Green gave verbal approval for 9 weeks leave commencing 1 August 1998. Subsequently Mr Chittleborough submitted in a facsimile dated 23 September in which he rejected the position offered.

Mr Chittleborough asked for clarification if his position is now redundant. He questioned why the Board has not considered his skill in machinery as disclosed in the Company prospectus.

Mr Richard Lee commented that Mr Jim Graham was not around during the development of this position and Mr Chittleborough has not been given the opportunity to demonstrate his skill. Mr Lee pointed out that Mr Chittleborough has been assisting Mr Graham through the USA.

Mr Mellick expressed his view that Mr Chittleborough has been given a fair go and understands what skills are required to put deals together. He commented that the Company appointed Mr Green to clean the mess and the Company must give Mr Green the support to choose his team.

Mr Belcastro supported the comments made by Mr Mellick and Mr Green. He said that projects have been managed with no plans and specification being documented.

Mr Tang commented that the CEO must be given a free hand in running the Company and the team must work in good faith of the CEO."

These minutes go on to record at page 4 the extract referred to earlier including that "Mr Barry Chittleborough's employment … be terminated effective immediately".

The documents submitted by Lee in support of his having been an employee of the Respondent include a Membership Certificate for his membership of Select Superannuation Plan. The first paragraph of this document reads—

> "As an employee of Biologic International Ltd, Prudential would like to welcome you as a member of the Select Superannuation Plan. This Plan is part of the Prudential Master Superannuation Fund".
>
> "Personal Details

Member	Siak Ku Lee
Membership Number	75029
Date of Birth	09-08-1950
Employer Plan	BIOLOGIC INTERNATIONAL LTD
Date Joined Employer	29-04-1996
Date Joined Fund	25-06-1997
Normal Retirement Date	09-08-2015
Annual Salary	$70,000
Membership Category	SENIOR STAFF"

This document also refers to the contribution made to Lee's plan which is said to be "mandated 6.000%".

There are also Member Statements for that Superannuation Plan for the periods of 1 July 1996 to 30 June 1997 and 1 July 1997 to 30 June 1998. These statements contain the same personal details referred to above.

There are Australian Taxation Office Group Certificates for the income year 1 July 1996 to 30 June 1997 and 1 July 1997 to 30 June 1998 for Lee, indicating the Name of the Employer as Biologic International Ltd signed by an authorised person on 11 July 1997 and 10 July 1998 respectively.

There are also extracts from bank statements in the name of Mrs C S and Mr R S K Lee covering the period of 1 June 1998 to 11 November 1998 which includes amounts listed as BIOLOGIC INTERN-PAY, the last such amount being on 20 October 1998.

There is a very poor copy of part of a document on paper headed "BIOLOGIC" which is a Memo from Matt Green to Eddie Lee dated 7 October 1998, the subject is "Management of the Philippines …erations". The first part states—

> "The Price Waterhouse Audit has identified that at the very least Mr Richard Lee has failed to discharge his obligations as an executive of Biologic.
>
> In addition to the findings of the above audit, there is a body of evidence demonstrating that Mr Lee has for quite some time been pursuing his own business agenda at the expense of Biologic.
>
> This situation cannot continue.
>
> I know that at the 25 September Board meeting, the Board reconfirmed the CEO's power to make the staff hiring and firing decisions but due to the severity of this situation and the director status of Mr Lee, I now seek your approval to the following course of action—
>
> 1) Immediately dismiss Mr Richard Lee from his operational role.
>
> Issues to manage include:
>
> - Immediately stopping all salary and benefits payments, including use of two company apartments in the Philippines; company car use in the Philippines and repossession of the car used by his wife in Australia; use of a company credit card; use of a company mobile phone; return of the company laptop computer and other assets.
> - Permitting one supervised return visit to the NGPI offices to remove his personal belongings. Thence preventing his return to the premises.
>
> I suggest we give Mr Lee 1 week to get his affairs in the Philippines and Australia in order. That is, give him access to the apartments, the mobile phone and the company cars up until 13 October.
>
> He currently holds a Manila to Perth airline ticket that is valid before 1 December.
>
> I will seek to advice of Rick Anthon to draft an appropriate letter to go to Mr Lee".

There is also a poor copy of first page of a letter from solicitors to Mr Eddie Lee, Chairman, Biologic International Limited dated 12 November 1998, the relevant parts of which say—

> "I have been requested by you to review recent events which have come to light in relation to the management of NGPI and in particular the events which give rise to the decision by the board of Biologic to firstly suspend Mr Richard Lee from his position as Director of Asian Operations and subsequently to terminate his position as an executive of the company.
>
> …
>
> My review is limited to the issue of whether the activities of Mr Richard Lee constitute breach of his obligations as a director of Biologic and/or a breach of his obligations as an employee of Biologic. I cannot and do not venture any opinion as to whether Mr Lee's activities may give rise to any civil or criminal actions in the Philippines, although I note that this matter has been dealt with by Accra Law."

As to Mr Lee's relationship with the Respondent, the Respondent says that the facts are these—

> "…
>
> 14. The applicant was, until 27 November 1998, a Director of the respondent company.
> 15. The applicant was never employed by the respondent.
> 16. There is no written contract evidencing an employment relationship between the applicant and the respondent (see minutes of meeting of directors on 25 May, 11 August).
> 17. In his application, the applicant described himself as the Chief Executive Officer (Chairman/President) of a company which he referred to as "Nutrigrowth Philippine office".
> 18. To the best of the respondent's knowledge, there is no corporation known as "Nutrigrowth Philippine office" or of any similar name, registered in Australia.
> 19. There is a company called "Nutri-Growth Philippines Inc" ("Nutri-Growth").
> 20. To the best of the respondent's knowledge, Nutri-Growth is a company registered in the Philippines.
> 21. To the best of the respondent's knowledge, the applicant is a Director of Nutri-Growth.
> 22. The respondent has invested in Nutri-Growth and provides funding for its operations. Those funds are applied to the following purposes—
>
> (a) Wages for employees of Nutri-Growth;
>
> (b) Operating expenses for Nutri-Growth.
>
> (see fourth paragraph on page 3 of the minutes of a meeting of directors, of the respondent, held on Monday 21 September 1998).
>
> 23. Nutri-Growth is a separate company from the respondent and is, by the applicant's own description an "...stand alone operation..." (see minutes of the meeting of directors held on 11 August 1998 under the heading "Philippines Operation".
> 24. To the extent that the applicant undertook extensive work in Western Australia, that work was not performed for the respondent.
> 25. The applicant has not been able to establish that any of the relevant tests of employment have been satisfied. In particular the applicant has not demonstrated—
>
> (a) that there was an appointment or engagement of him by the respondent;
>
> (b) that the respondent required him to perform any particulars duties or any duties at all;
>
> (c) that there was a sufficient degree of control by the respondent over the applicant or any control at all;
>
> (d) that there was any obligation on the applicant to perform work for the respondent at all;

(e) the hours of work which the respondent may allegedly have required the applicant to work;

(f) that he was entitled to any annual leave and the circumstances in which that leave would be taken;

(g) that he was entitled to public holidays and circumstances in which the applicant may be so entitled;

(h) that he was entitled to long service leave and the circumstances in which the applicant may be so entitled;

(i) the reporting relationship between the applicant and the respondent including, whether or not the applicant was required to report on the alleged work relationship at all;

(j) that he was required to exclusively work for the respondent;

(k) that he worked as an integral part of the respondent's organisation or whether his work was merely incidental to it;

(1) that he received an employment separation certificate.

26. Factors referred to in paragraphs 4i), 4ii), 4iii) and 4iv) are only indicia of an employment relationship. The (sic) do not, without more disclose that such a relationship existed (particularly after the Applicant's resignation).

27. On balance, when weighing up the indicia disclosed in both the applicant's and respondent's submissions, the applicant has not been able to demonstrate that there ever was, on the key indicia, an employment relationship between himself and the respondent. The Commission should have regard to the totality of the indicia of the relationship or lack thereof."

For the sake of completeness, I record here those extracts from the Minutes referred to in points 16 and 23 above. The Minutes of the Meeting of the Respondent's Directors on 25 May 1998 includes under the heading "Employment Contracts", that—

> "Richard Lee enquired as to the position with regard to individual employment contracts. Matt Green advised that he would discuss the matter with individual staff members."

The Minutes of the Meeting of Directors Held on 11 August 1998, under the heading "Philippines Operation" records—

> "Richard Lee briefed the directors on the operations in the Philippines.
>
> The indications were such that this operation was a viable as a stand alone operation and and (sic) would provide a cash resource for the Company."

There is no direct evidence to demonstrate a number of the sorts of indicia of an employment relationship referred to in *Stevens and Brodribb Sawmilling Company Pty Ltd (1986) (160 CLR 16)*, and there is no direct evidence of the Respondent reserving the right to control the Applicants in the conduct of their work *(Zuijs v Wirth Bros Pty Ltd (1995) 93 CLR 571)*. However, the parties have agreed that the Commission should determine these matters on the basis of the material placed before it in written submissions and supporting documentation and I intend to use those documents for the purpose of coming to conclusions about the nature of the relationship between the Applicants and the Respondent.

In respect of Chittleborough's claim, the Respondent acknowledges that there was an employer/employee relationship between the parties until 6 April 1998. The question to be asked is whether his employment relationship with the Respondent continued beyond his resignation as Managing Director on 6 April 1998 to 25 September 1998, the date upon which he says that his employment was terminated by the Respondent in a dismissal.

The documentation tends to indicate that Chittleborough did continue in his employment. The Minutes of the meeting of 25 September 1998 refer to Chittleborough "stepping down as an employee of Biologic"; and that his "employment with Biologic …. be terminated effective immediately". Those minutes also indicate that Chittleborough was offered and he verbally accepted a position of "Relationship Manager – Koch" on the 11 August 1998, that Chittleborough "requested" and was "given approval" to take nine weeks leave commencing on 1 August 1998, and that he subsequently rejected the position previously offered to him. The letter written to Chittleborough by the Respondent's Chief Executive Officer dated 4 November 1998 acknowledges that "your employment with Biologic terminated on 25 September 1998".

It may be, as submitted by the Respondent, that Chittleborough tendered his resignation as Managing Director in April 1998, however, it seems that the employment relationship continued.

Indicia of an employment relationship include that the employer reserves the right to direct the employee in his work, and the employee has a obligation to work. In this regard, it is significant that Chittleborough "requested" leave and that it was "approved". That leave applied from 1 August 1998 for a period of nine weeks. So, as late as 11 August 1998, Chittleborough was still an employee of the Respondent. He was on leave until nine weeks after 1 August 1998, which comprehends the period of the meeting of 25 September 1998. I also note that the Respondent's submission at point 12 says that Chittleborough ceased attending the Respondent's offices and the Respondent did not allocate any work to him from 31 July 1998. This corresponds with his applying for and being granted leave for that period.

The Respondent says that it continued to pay monies to Chittleborough but that they should be seen as ex gratia payments rather than salary, however, there is nothing before the Commission, apart from that submission, to indicate any change in the nature of the payments, which had previously been salary.

In all of these circumstances, I conclude that Chittleborough was an employee of the Respondent up until 25 September 1998 when his employment was terminated at the meeting of the Board of Directors.

As to Lee's relationship with the Respondent, the Respondent says that Lee was never employed by it. It is true that Lee was a Director of the Respondent and some of his involvement with the Respondent may have been in accordance with his position as a Director but there are indicators too that he was an employee. He appears to have been provided with a monthly salary paid directly into his bank account. The payment each month on 16 July, 18 August and 15 September 1998 was a regular amount of $3,770.23. An amount of $1746.00 was paid on 20 October. Payments to Lee were described as "salary" in the Respondent's Annual Report and its Prospectus. Further, Lee was provided with Group Certificates in 1997 and 1998 which list the Respondent as the employer. He was also a member of a superannuation fund which listed his employer as the Respondent. These documents were not completed in the name of any other company or employer.

From the context of the use of the initials NGPI in the various documents, I conclude that these initials refer to NutriGrowth Philippines Inc. The Respondent refers to the fourth paragraph of page 3 of the Minutes of Meeting of the Directors of the Respondent held on Monday 21 September 1998 to demonstrate point 22 of its answer that the Respondent had invested in NutriGrowth, the company which the Respondent says may have been Lee's employer, and that the funds were applied for the purpose of wages of employees of NutriGrowth and operating expenses for NutriGrowth. The section of the Minutes of the Meeting referred to indicates that the Board of Directors of the Respondent considered the question of Lee "temporarily step (ping) down from day to day management of NGPI until an independent auditor goes to the Philippines to investigate the matters raised in CEO's report and reports back to the Board". This motion was carried. The Chairman also instructed the Chief Executive Officer of the Respondent to take over the management of NGPI. It would seem from these minutes that Lee, as an employee of the Respondent, quite separately from his role as a Director of the Respondent, or in conjunction with that role, undertook the management of NGPI on behalf of or at the direction of the Respondent, and that on the instruction of the Chairman of the Respondent, the Respondent's Chief Executive Officer, Matt Green, took over management of NGPI.

Accordingly, it is difficult to come to the conclusion that NGPI or NutriGrowth Philippines Inc was a separate company which employed Lee. Lee was subject to the direction of the Board of the Respondent as an employee of the Respondent, acting to manage NutriGrowth Philippines Inc. Further, the note within the Minutes of the Board of Directors of 21 September 1998, referred to at point 23 of the Respondent's submission was not that NGPI was a separate company although it may have been. Rather, it was that the operation was viable as a stand alone operation which would provide cash for the Respondent. Clearly, Lee was reporting to the Respondent's Board of Directors in respect of the Respondent's interests in the Philippines.

There are clear indications in the memorandum dated 7 October 1998, that the Respondent viewed Lee as an employee. This memorandum was to Eddy Lee who, at that time, appears to have been the Chairman of the Respondent's Board, from Matt Green the Chief Executive Officer. This memorandum refers to dismissing Mr Richard Lee. Green says in the fourth paragraph that even though, as the Chief Executive Officer, he has the power to make staff hiring and firing decisions, due to the severity of the situation and due to Richard Lee's Director status he is seeking Eddie Lee's approval to immediately dismiss Richard Lee. The memorandum refers to stopping all salary and benefit payments. It is not my understanding that a Chief Executive Officer dismisses a member of the Board of Directors, from his position as a Director. A Chief Executive Officer would dismiss an employee of the company.

The letter of 12 November 1998 from solicitors Hemming and Hart to Mr Eddie Lee the Chairman of the Respondent, while referring to matters "in relation to the management of NGPI" notes "the decision by the Board of Biologic to firstly suspend Mr Richard Lee from his position as Director of Asian Operations and subsequently terminate his position as an executive of the company", goes on to refer to Mr Richard Lee breaching "his obligations as a Director of Biologic and/or a breach of his obligations as an employee of Biologic". It further refers to providing "a short summary of the legal obligations of a Director and employee of a company".

The whole tenor of these documents indicates that the Respondent believed Lee was an employee and dealt with him accordingly, quite separately from his position as a Director of the company. It may be that he was also an employee of another company, or that as an employee of the Respondent he undertook certain responsibilities in respect of an associated company. However, there is sufficient evidence to satisfy me, on the balance of probabilities, that Lee was employed by the Respondent at the time of his termination on 14 October 1998.

I also note that one of the indicia referred to in decisions regarding the employee/employer relationship is the manner of dismissal or of the relationship coming to an end. In both Chittleborough's and Lee's cases, the relationship appears to have been brought to an end by the decision of the Respondent which the Respondent has termed a dismissal or the termination of employment. Such an end to a relationship would be indicative of an employment relationship. *ABLF and PB & KA Brajkovich Pty Ltd (FB) 71 WAIG 23 @ 25.*

The documentation supporting both the Applicant's and the Respondent's submissions, on the balance of probabilities, demonstrates that the Applicants were both employees of the Respondent at the times that their respective employment terminated.

The next matter is whether Lee was employed within the geographical area of jurisdiction of the Commission. The Respondent's submission in that regard is largely based on the premise that Lee was employed by NutriGrowth Philippines Inc. I have already found that Lee was an employee of the Respondent which is a company registered in Western Australia and which its documentation ie. the Prospectus, shows its registered and principal office is at 267 St George's Terrace Perth, although I note that the Annual Report for 1997/98 shows the registered office as 7 Ventnor Avenue West Perth and its principal office as 15 Murray Crescent Manuka ACT 2603. However, that does not end the matter. I note the decision of Coleman C, as he then was, in *Van Dijken v Bunnings (Northern Territory) Pty Ltd (67 WAIG 957 at 958)* where the learned Commissioner said—

> "The various wholly owned companies in Bunnings Group perform specialised functions which service the corporate body headed by Bunnings Limited. The corporate entity's marketing division, Bunnings Building Supplies Pty Ltd, comprises a network of some thirty branches and trade centres throughout Western Australia and three branches in other States, all of which draw on resources provided by Bunnings Management Services Pty Ltd. The facilities for servicing or supporting the "industry" in which the corporate group are engaged, are established and maintained in this State. The decisions affecting or relating to the work of employees, their privileges, rights, duties and entitlements are determined by their employer which in its various corporate forms, is incorporated in Western Australia. However, although the corporate entity which directs the operation of its industry, and which as employer regulates the contractual relationships with many of its employees, resides in Western Australia, that in itself is insufficient to determine the matter of jurisdiction as raised by the respondent in these proceedings. Those persons employed in Queensland for instance, in a branch of the Company, although incorporated in Western Australia and controlled from Western Australia, would have all the rights and entitlements set down in statutes of that State. The fact that the Company is domiciled in Western Australia and control is exercised from Head Office, would not displace that entitlement. However for those persons employed by the corporate body in Western Australia and who are transferred to another State for a specified term, or who perform duties on a temporary basis, although their notional employer may change to a different entity within the corporate group, should not be disadvantaged with respect to entitlements which existed under the arrangements which prevailed when the employment relationship was established. An application of these considerations to the operations of the Bunnings Group results in the following—
>
> (a) Where employment commences with Bunnings (Northern Territory) Pty Ltd and rights and entitlements accrue from service with that Company alone, a claim against unfair dismissal would, in the absence of legislation comparable to the Western Australia Industrial Relations Act, need to be pursued under the Local Courts Act of the Northern Territory. In this situation the entitlements have accrued in the employment of the named employer and the cause of action arose out of that employment.
>
> (b) Where employment commences with Bunnings Building Supplies Pty Ltd in Western Australia and rights and entitlements accrue from service with that Company in this State, and the employee is transferred interstate for a finite period under the notional employment of another corporate entity, a claim for unfair dismissal arising from service with Bunnings Building Supplies Pty Ltd should be considered under the Industrial Relations Act 1979. In this situation the entitlements accrued from service in Western Australia and the cause of action arose out of that period of employment."

The evidence before the Commission as to the circumstances of Lee's employment are sparse, and those which are in evidence conflict. They are—

1. Lee's salary was paid into the Canning Vale, WA branch of the Commonwealth Bank.
2. The Applicant's home address as stated in his Group Certificates, bank account and Notice of Application, indicate that his address is in Western Australia.
3. The Memo from Green which refers to dismissing Lee and wanting to stop salary and benefit payments refers to Lee having use of two apartments in the

Philippines and company car use in the Philippines, and it also refers to repossession of the car used by his wife in Australia.

4. In the Form 1 – Notice of Application, Lee has said that he is the Executive Director, Asian Operations, and at paragraph 12 of his Notice of Application under main duties, has listed "developing waste conservation system in fertiliser for the Philippine Co-operatives and new ventures in Asia". He describes the location of workplace as in "Asia" "Philippines".
5. Page 20 of the Prospectus provides a flow chart with the Head Office – Perth and as an offshoot reference is made to Asian Production – Manila, where Lee appears to have spent time.
6. The minutes of meetings/teleconferences held on 25 May, 21 September, 25 September, all refer to Lee in Manila and the meeting of 11 August was held in the ACT.

On the basis of this information, I am unable to ascertain whether the Applicant's employment was established in Perth or in the Philippines, whether his work in the Philippines was of a permanent nature or whether he was either temporarily or permanently transferred to the Philippines, or the amount of work he undertook in Perth or the Philippines. Generally, I am unable to ascertain, based on the material before the Commission, that Lee's employment by the Respondent was within the jurisdiction of this Commission.

Accordingly, the issues of jurisdiction raised by the Respondent during the conciliation conference and addressed in written submissions are dismissed in respect of Chittleborough. It is now appropriate for the Commission to convene a conference for the purpose of conciliation, particularly in relation to the merits of that claim.

As I am unable to find that Lee's claim is within jurisdiction, that application must be dismissed.

Order accordingly.

APPEARANCES: Dr P Keating on behalf of the Applicants
Mr D Howlett (of Counsel) for the Respondent

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Siak Ku Lee

and

Biologic International Limited.

No. 1895 of 1998.

COMMISSIONER P E SCOTT.

16 February 1999.

Order.

HAVING heard Dr P Keating on behalf of the Applicant and Mr D Howlett (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 this application be, and is hereby dismissed.

(Sgd.) P.E. SCOTT,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Priscila C Cronin

and

Mimi Wong Ferguson – Joy Tours.

No. 1367 of 1998.

COMMISSIONER P E SCOTT.

4 March 1999.

Reasons for Decision.
(Extempore)

THE COMMISSIONER: The Applicant claims, pursuant to s.29 of the Industrial Relations Act 1979, that she has been harshly, oppressively or unfairly dismissed from her employment with the Respondent. She also claims payment of non-award contractual benefits which she says have been denied to her, including one week's notice and money deducted from her pay.

The Applicant's employment with the Respondent commenced in May 1998, after she had met Ms Wong Ferguson and the two of them discussed terms for her employment. The Applicant was initially interested in employment on the basis that her then employer was likely to be ceasing to operate in the near future and she would be without work. I accept that she was the one who instigated the discussion about employment with the Respondent. The Respondent's initial proposal to her was for her to work on a commission basis, then on a retainer to be paid against future commissions earned, but the Applicant said that she would not be happy with that and she sought $25,000 as salary. This was agreed to and she commenced employment.

Her employment was as a travel consultant in the Respondent's business.

During her evidence, the Applicant agreed that she was on a period of 3 months probation. The Respondent offered the Applicant training to enable her to undertake her work, to deal with any areas of lack of knowledge on her part, although it appears from the Respondent's evidence that the Applicant represented herself as being a senior consultant who had experience in the industry. From the Applicant's own evidence, she did not have experience in ticketing.

In any event, the Applicant did not take up all of the offers of training that were given to her or, according to the Respondent, she was late or did not pay attention to the training that was provided to her. There were problems experienced with her performance during the short period of her work. One of those problems included that the Applicant was short over $500 from receipts issued by her. Her employer offered to assist by contacting the person who was likely to have been the one who had not paid but the Applicant declined that assistance. There is a conflict in the evidence as to whether she declined that help, having already attempted to make contact herself. On the basis of her declining the help offered, the Respondent believed it had no particular obligation to undertake that contact itself, other than to pursue the under-payment.

The Applicant says in her evidence that she volunteered to the Respondent that she would bear that cost and the money could be deducted from her pay.

It seems that the problem of the underpayment by the client arose because the Applicant did not check her takings for that day, prior to giving the money to the accountant. One would have thought that a person handling money would, as a matter of standard practice, check it before handing it over. Nonetheless, the Applicant did not do so.

I find that approximately two weeks prior to the termination of the Applicant's employment, she was advised by Ms Wong Ferguson that her performance was not up to the standard expected, that the Applicant was advised that she had a further 2 weeks in which to improve her performance, although the Applicant seemed to have been of the view that she was told that she had the remainder of the 3 months in which to demonstrate adequate performance.

At the expiration of that fortnight, Ms Wong Ferguson had decided that the Applicant's performance was not to her

expectation and decided to terminate the Applicant's employment at the conclusion of that day. The Applicant said that she was not surprised by the decision to terminate her employment. The Applicant was not paid for any period in lieu of notice.

In dealing with the question of harsh, oppressive or unfair dismissal, the onus is on the Applicant to demonstrate that she has not been given what is called an industrial fair go. The employer has a right to dismiss, but it is not an unfettered right. The Commission is entitled to intervene where the employer has exercised that lawful right to dismiss in a manner which is harsh**,** oppressive or unfair. Having observed the witnesses during the course of the hearing, where there is a conflict in the evidence, I accept the evidence called for the Respondent.

An important aspect of the Applicant's employment during this period of time was that her employment was of a probationary nature. There are authorities which say that during the period of probation the employer is entitled to treat the process as if the employee were at first interview, in deciding whether or not to continue with employment.

In this case, it is clear that the Respondent was not satisfied with the Applicant's performance and, in accordance with the principles behind probation, was entitled to bring that probationary period to an end.

I am satisfied that the Applicant, were she not subject to a probationary period, had been given the opportunity to undertake training to ensure that she was competent to perform her work. I find that she did not undertake the reasonable training which was available to her in a diligent manner. There were problems with her performance and it was made clear to her that her job was in jeopardy. Her employer brought the employment to an end a fortnight after giving her a formal and final warning. Accordingly, I am not satisfied that the dismissal was unfair.

If I am wrong in the question of there being no unfairness in the dismissal, the first remedy available is reinstatement. Alternatively, if the Commission finds that it would be impracticable to re-establish the employment relationship, then the Commission can award compensation for loss. From the evidence before me, I am not satisfied that following, or as a consequence of, the termination of the Applicant's employment, she has actually suffered any loss. Her evidence was that on the Monday following the termination of her employment, she took up employment with her previous employer, Noranda Travel, and, although she earned no income while she was there, when she left that employment and went to Westate Travel in approximately August 1998, she took with her the bookings which had been made while she was at Noranda Travel and received commission for those bookings.

Secondly, the Applicant commenced employment with Centrelink on 12 October 1998 and would now appear to be in a more advantageous position in terms of her income than she was with the Respondent. So, even if I were to find that the Applicant had been unfairly dismissed, it would appear that she has suffered no economic loss which is able to be attributed to the termination of that employment. There is no evidence of any other loss or injury.

As to the question of contractual benefits, I shall deal firstly with the question of the deduction from pay. The Minimum Conditions of Employment Act provides that an employer is not entitled to make deductions from an employee's pay unless authorised by the employee. It is clear and uncontested by the Applicant that she not only agreed to the deduction being made, but she volunteered it. This is not a prosecution of the Minimum Conditions of Employment Act which actually requires that the deduction be authorised in writing. This is a claim by the Applicant that she has not been paid all that she is entitled to under her contract of employment. I am satisfied that she agreed to the deduction being made and therefore I am not satisfied that the money is now owed to her.

In terms of the claim for payment of notice, the Applicant relies on a pamphlet which she has received regarding unfair dismissal claims and upon some unspecified legislation. The purpose of s. 29(1)(b)(ii) is for employees to enforce the terms of their employment contracts, not for the enforcement of legislation. There is nothing before me which would indicate that pay in lieu of notice was a condition of the Applicant's contract of employment that she is entitled to bring before this Commission. There is nothing before me as to a claim for pay in lieu of reasonable notice, rather it is a claim pursuant to some unspecified legislation. It may be that the Applicant is entitled to enforce the provisions of other legislation in another jurisdiction should it be that she is entitled to a week's pay in lieu of notice. I make no finding in that regard because the matter of enforcement of other legislation is not properly before me.

Accordingly, there will be an Order for dismissal of the application.

APPEARANCES: The Applicant on her own behalf.

Ms M Wong Ferguson on behalf of the Respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Priscila C Cronin

and

Mimi Wong Ferguson – Joy Tours.

No. 1367 of 1998.

COMMISSIONER P E SCOTT.

4 March 1999.

Order.

HAVING heard the Applicant on her own behalf and Ms Wong Ferguson 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,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Graham Thomas Evans

and

Midekeha Pty Ltd.
t/a Leederville Autocare

No. 1522 of 1998.

COMMISSIONER G F GREGOR.

25 February 1999.

Reasons for Decision.

ON 12 August 1998, Graham Thomas Evans applied to the Commission for an order pursuant to s. 29 of the Industrial Relations Act, 1979 (the Act) on the grounds that amongst other things, the respondent had failed to pay him contractual benefits. In relation to this part of the claim on 7 January 1998, the solicitors for the applicant applied to the Commission for an order pursuant to Regulation 80 of the Industrial Relations Commission Regulations 1985 that the respondent produce for inspection all records showing labour charged by the respondent and paid by customers of the respondent from 3 March 1998 to the date of the application.

The application was heard on 18 February 1999. Through his solicitors, the applicant alleged that there was incorporated into his contract of employment an incentive program which entitled him to a gross payment of the equivalent of 25% of the labour charged and actually paid by customers of the respondent which the applicant bought to the respondent or referred to it. It is argued by Mr Baird, of Counsel, who appeared for the applicant that the contract properly interpreted entitles the applicant to 25% of the sum of the labour charged and actually paid by customers of the respondent, whether or not such labour charges were paid either prior or subsequent

to the applicant's termination. Therefore the applicant seeks production of documents showing the labour charges actually paid by specific customers from 3 March 1998 until the date of the hearing on 18 February 1999. Mr Baird told the Commission that the documents sought by the applicant are diary sheets and job cards. In addition it wanted the accounting records which were based on those job cards. These were all essential to allow the applicant to properly quantify his claim and prepare his case for hearing.

The respondent, represented by Ms Drew-Forster, of Counsel, argued that there was never any contractual arrangement with the applicant which would result in entitlement to the claim, on the contrary he was presented with a document in the form of a proposal. That proposal was not a binding contract. In any event, if there were an arrangement it only lasted for one week between 3 March 1998 and 10 March 1998 as a trial arrangement. At the end of that week, an officer of the respondent presented a cheque to the applicant for the sum equal to 25% of the labour charges for that week. Ms Drew-Forster says that the information relating to that week has already been discovered to the applicant and the discovery of the diary sheets from 27 February 1998 to 9 March 1998 makes it clear that no further records were kept.

Ms Drew-Forster objected to the applicant's submission that all job cards should be discovered as they contain more information than simply labour charges. For instance, information on costs of parts supplied to customers. None of this is relevant to the matter to be decided. The applicant requests all records showing labour charges raised by the respondent and paid by the customers of the respondent from 3 March 1998 until the present date which encompasses information which is wide enough to establish the financial position of the respondent and in terms of the provisions of s. 33(3) of the Industrial Relations Act, that information is not capable of being discovered.

In a nutshell, the position of the respondent is that there was never any provision of the nature alleged by the respondent incorporated in the employment contract. If there was, there was a one week trial arrangement and at the end of that week there were discussions about what would happen from then on and a different arrangement was put in place. Documents relating to that week have already been discovered and there is no basis to provide other information because that would establish the financial position of the respondent which would be contrary to the Act.

I respond to the application in the following way. There is a dispute between the parties about whether there was a contract of the nature claimed by the applicant. It seems that the respondent concedes there may have been a trial arrangement but there was not a binding contract. In order to assist the applicant it has given discovery of information relating to that trial week. In my opinion it is not reasonable for the applicant to use an application of this nature as a fishing expedition to discover information concerning the respondent's business to which it has no right. However, it ought to be able to quantify its claim. It would be most unlikely if the claim could have life after the end of the contract of service given the form that it is alleged to have taken. The Commission will not grant discovery of any information in the possession of the respondent subsequent to the date of termination of the relationship that is, on 24 July 1998. The applicant says there is a key identifier on each of the diary sheets. This identifier is the letter "G", which the applicant placed on the diary sheets as part of his understanding of the arrangement. The respondent will be required to produce any diary sheet marked with the letter "G" for any day up until the end of the contract of employment on 24 July 1998 and the associated job cards. It will not be required to produce financial information which is initiated by job cards but it will be required to produce a schedule showing the charges which were raised for labour from those job cards if any such charges were in fact made.

Minutes of a proposed order will now issue.

Appearances: Mr Baird, of Counsel, appeared on behalf of the applicant.

Ms Drew-Forster, of Counsel, appeared on behalf of the respondent

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WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Graham Thomas Evans

and

Midekeha Pty Ltd.
t/a Leederville Autocare

No. 1522 of 1998.

COMMISSIONER GREGOR.

8 March 1999.

Order.

HAVING heard Mr Stephen Baird on behalf of the applicant and Ms Drew-Forster on behalf of the respondent, the Commission pursuant to the powers vested in it by s, 33 of the Industrial Relations Act, 1979, hereby orders—

1. THAT the respondent produce to the applicant diary sheets from 10 March 1998 until 24 July 1998, where those diary sheets contain the identification mark "G"; and
2. Job cards raised in respect of the work done and identified on the diary sheets marked with the identified mark "G" from 10 March 1998 until 24 July 1998; and
3. A schedule setting out the total labour costs raised if any, for job cards created in respect of any work which is identified in the diary sheets by the letter "G".

(Sgd.) J. F. GREGOR,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Kim Anthony Fitzpatrick

and

Balderstone Clough Joint Venture.

No. 2165 of 1998.

9 February 1999.

Reasons for Decision.

SENIOR COMMISSIONER: By this application the Applicant seeks relief pursuant to section 29(1)(b)(i) in respect of an alleged unfair dismissal from his employment which occurred on or about the 25th of November 1998.

The Respondent has filed a Notice of Answer opposing the claim and asserting that the Applicant's employment was, at all material times, governed by a federal agreement in conjunction with a federal award. Moreover, the Respondent asserts by its Notice of Answer that the Applicant has commenced proceedings before the Australian Industrial Relations Commission alleging that his dismissal for employment was unfair and seeking relief under the Commonwealth Workplace Relations Act 1996. Those proceedings have already been the subject of an informal conference under the auspices of the Australian Industrial Relations Commission and have been listed for a formal conciliation conference before a member of the Commission. No challenge has been made that the Australian Industrial Relations Commission does not have the jurisdiction to deal with the matter.

The Respondent submits that this application should now be dismissed as an abuse of process. It argues that this application is essentially the same as that before the Australian Industrial Relations Commission and the Respondent should not have to face the prospect of having to answer the claim in this jurisdiction as well as before the Australian Industrial Relations Commission. The Applicant on the other hand, wants to keep open the option of pursuing his claim in this jurisdiction should there be technical reasons why the application

before the Australian Industrial Relations Commission cannot proceed on its merits. The Applicant is however, prepared to consent to an order staying further proceedings in this application pending the outcome of the application before the Australian Industrial Relations Commission. The Respondent opposes that course saying that it sends a message that the Commission will countenance duplicate applications regarding the same matter.

I am minded to exercise the power vested in the Commission which dismiss this section 27(1)(a) of the Industrial Relations Act 1979 as a non application. Quite apart from the impact on the Respondent it is not in the public interest that there be two virtually identical claims between the same parties in different tribunals at the same time. It is no answer for the Applicant to say that it will refrain from prosecuting one of the claims whilst it prosecutes the other. In the case of the proceedings before this Commission it is patently clear from the fact that Parliament has imposed a strict time limit on the institution of proceedings of this nature that they should be dealt with expeditiously and not simply at the whim of the Applicant. Industrial tribunals as with the traditional courts have frowned on the practice of "forum shopping" of the kind revealed on this occasion. For example, tribunals have consistently refused to extend the time for installing proceedings out of time in cases where the applicant has deliberately chosen to take proceedings initially another forum (see: Melbourne v. J C Techforce Pty Ltd (1998) 44 AILR 11-102, Brunning v. Kingmill (Australia) Pty Ltd (1988) 44 AILR 5-183; and see too: Ciseros v. Wadepock Pty Ltd (1997) 42 AILR 5-133(6)). It is not consistent with that approach for the Commission to sanction institution of like applications concurrently before both the Western Australian Industrial Relations Commission and the Australian Industrial Relations Commission.

It might seem prudent for the Applicant to cover all eventualities by lodging concurrent applications but, as the agent for the Respondent points out, that arrangement imposes an undue hardship to the Respondent. The Respondent cannot be expected to ignore the proceedings in this Commission. Accordingly it is put to added expense and trouble in having to answer identical claims before separate tribunals. By any measure that is neither just nor equitable. The Applicant is entitled to make a claim in respect of an alleged unfair dismissal. He is not entitled to make two claims, so as to in effect, hedge his bets. He should elect to make the claim in one tribunal or the other. In this case having elected to prosecute the proceedings before the Australian Industrial Relations Commission the Applicant should not be allowed to proceed further with the proceedings in the Commission.

The application should be dismissed pursuant to section 27(1)(a) of the Industrial Relations Act 1979; it being contrary to the public interest to allow the Applicant to seek relief in this Commission some time as he rules identical relief in respect of the same matter before the Australian Industrial Relations Commission.

Appearances: Ms D.P. Scadden as counsel on behalf of the Applicant.

Mr C. Mitsopoulos as agent for the Respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Kim Anthony Fitzpatrick

and

Baulderstone Clough Joint Venture.

No. 2165 of 1998.

9 February 1999.

Order.

HAVING heard Ms D.P. Scadden as counsel on behalf of the Applicant and Mr C. Mitsopoulis as agent 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.) G.L. FIELDING,
[L.S.] Senior Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Brenton Hayes

and

Khabar Pty Ltd t/a Morgan Filter Cleaning Services.

No. 1899 of 1998.

COMMISSIONER S J KENNER.

22 January 1999.

Reasons for Decision.

(Given extemporaneously at the conclusion of the proceedings, taken from the transcript as edited by the Commission)

THE COMMISSIONER: Mr Brenton Hayes ("the applicant") has brought this claim to the Commission pursuant to s 29(1)(b)(i) of the Industrial Relations Act 1979 ("the Act") for orders pursuant to s 23A of the Act arising from an allegation that he was harshly, oppressively and unfairly dismissed by Morgan Filters ("the respondent") on or about 7 October 1998. The respondent wholly contests the applicant's claim.

As a preliminary issue, the name of the respondent was incorrectly described in the notice of application in this matter and leave to amend by consent was granted.

Facts

The facts in this matter are relatively straightforward and are as follows. The applicant says that he was engaged by the respondent, which is engaged in the business of cleaning filters for mining companies in the Kalgoorlie/Boulder region, to perform wet and dry cleaning of filters and customer service deliveries. The applicant was engaged for the first few weeks of his employment as a casual employee. Subsequently, the applicant and the respondent entered into a Job Start/Newstart Allowance agreement ("the Agreement"). The Agreement provided for a wage subsidy for the applicant commencing on or about 26 September 1995. The terms of the Agreement are set out in exhibit A1 in these proceedings. I observe that the Agreement carries the signature of Mr Morgan, who is the Director of the respondent who appeared on behalf of the respondent.

The Agreement provides that the applicant's employment would be on a full time basis. It was stated to expire on or about 25 September 1996. I also observe that pursuant to the terms of the Agreement, the applicant was to be engaged on the basis of working a 38 hour week with a gross wage of $450 per week.

It was also common ground that the applicant was engaged on the basis that he worked regularly each day, Monday to Friday, on a weekly basis. There was also some evidence that the applicant worked on occasional Saturdays, which evidence I accept.

The applicant says that subsequent to the expiry of the Agreement, he remained in employment with the respondent, substantially on the same terms and conditions as in the prior period. The applicant said he remained employed on the basis that he received annual leave and sick leave entitlements and was entitled to payment for work performed on public holidays.

At a time subsequent to the Agreement coming to an end, which date was uncertain on the evidence, the applicant said that following discussions with the business partner of Mr Morgan, a "workplace agreement", so-called, was proposed and entered into between the parties. I pause to observe that the "workplace agreement" was, it appears, no more than an

oral variation to the terms of the applicant's employment contract as at that date. There is certainly nothing before the Commission to indicate that that agreement was reduced to writing and was registered as a workplace agreement pursuant to the Workplace Agreements Act 1993.

The terms and conditions of employment, as a varied according to that arrangement provided, as the Commission understands it, that the applicant would continue to be employed on the basis of working a minimum of 40 hours per week and be in receipt of a flat rate of pay at $14 per hour. The Commission understands from the evidence that the rate of pay was intended to incorporate entitlements in respect of annual leave and sick leave. The statutory authority for such an arrangement in relation to sick leave is questionable, but it is not a matter I need concern myself with in order to dispose of these proceedings. The agreed hours of work as at that time, on the evidence, were 6.00am to 5.00pm each day.

Subsequently, some two to three weeks prior to the dismissal of the applicant, the applicant said that a further agreement was reached between himself and Mr Morgan, to the effect that he would work no more than 40 hours per week. Apparently, that arose out of a concern the applicant had as to his hours of work and, in particular, a concern he had regarding working overtime which, in his view, was properly covered by the terms of an award. I will refer to that matter subsequently. The applicant said that the respondent agreed to these revised working arrangements and thereafter, the applicant worked on the basis of a 40 hour week.

The applicant said that once the working hours were varied privileges he formerly enjoyed in the workplace were no longer available to him. In this regard, the applicant referred to the use of a motor vehicle and the respondent's telephone.

As to his conduct and performance, the applicant said that generally there were no complaints from the respondent as to his work performance or conduct. However, the applicant concedes that some two to three months prior to his dismissal, he was told by the respondent that there were concerns as to his attitude and he needed to "pull his socks up". The applicant said in his evidence that he did so and there were no further complaints following this event.

On or about 7 October 1998, the applicant said that he was dismissed because he questioned his rate of pay. He said he was given two hours notice by the respondent on the basis that he said the respondent had the view the applicant was employed as a casual employee. I pause to observe that this allegation was disputed by the applicant who said the respondent signed declarations to the effect that the applicant was a full time employee. In that regard, I refer to the terms of the Agreement.

The applicant further said in evidence that there was no reason given by the respondent for his dismissal and moreover, he was never told by his employer that he was a casual employee, save for in the two days prior to him actually being dismissed.

On behalf of the respondent, evidence was adduced from Mr Morgan. In essence, the respondent said that the applicant was dismissed because he was disruptive on the job and had a poor attitude to his work. Mr Morgan also said that the applicant's pursuit of award entitlements was a central issue in this matter. Prior to the matter of these entitlements arising, he said that in all other respects the applicant was an exemplary employee.

Mr Morgan's evidence was that in the last month of the applicant's employment, the applicant's attitude at work became what he described as surly, and this affected other employees. I pause to note that this allegation was also contested by the applicant. Mr Morgan also testified that the attitude of the applicant on the job affected customers and the applicant showed some reluctance to perform his duties. Again I observe this was contested by the applicant in his evidence.

On or about 6 October 1998, Mr Morgan said that the applicant again raised the issue as to whether he was covered by an award. He said this was done in front of other employees of the respondent. He said the applicant said in this conversation that he was "looking to resolve this matter out of court". It was not suggested by Mr Morgan that this exchange was confrontational nor were their any raised voices between the two of them. Both met later after the working day had finished in the respondent's office, to discuss the matter further.

The respondent's bookkeeper also attended the meeting. I pause to note that she was not called to give evidence in these proceedings, but in any event, there was no real contest on the evidence as to what occurred during the course of that meeting.

Mr Morgan said that he had decided that in view of what had occurred to that time, the applicant was not going to be kept in the workshop any longer. Mr Morgan's evidence was that he decided to, and in fact did in that meeting, dismiss the applicant on two hours notice on the basis that in his view, the applicant was a casual employee. It was common ground that there was no reason given to the applicant for the applicant's dismissal. However, I should observe that importantly, and perhaps critically, Mr Morgan told the Commission that the reason that the applicant was dismissed was because of his claim for wages and overtime.

My Findings

I turn now to my findings. There was much common ground in this matter. To the extent there is any conflict in the evidence in these proceedings, I prefer the evidence of the applicant, whom I found to have given his evidence in a forthright manner and had a good recollection of the events. I accept that the applicant was told some two to three months prior to his dismissal that there was a need for an improvement in his attitude at work and I also accept that the applicant did, in fact, demonstrate such an improvement.

I also find that save for the initial few weeks of the applicant's employment, that the employment was of an ongoing and permanent nature. I do not accept that the applicant in this matter was casually employed, as that concept is well known and well understood in employment law. I have no reason to doubt that the applicant continued to work on the same basis essentially as contained in the terms of exhibit A1, subject to the variation that I have referred to and I so find.

However, I do not conclude from the variation to the applicant's terms and conditions of employment, involving as they did the loss of annual leave and sick leave benefits, that indicated other than a desire by the respondent, and which was agreed to by the applicant, to offset these benefits with an increase in wages paid and commensurate change to hours of employment.

I also find on the evidence before me that there was no discussion, let alone any agreement, that the applicant be employed as a casual employee either at the time of this variation or at any other time.

I am also satisfied on the evidence and I find that the applicant's work performance was not an issue subsequent to the applicant "pulling up his socks" and the respondent's concern for the applicant's "attitude" was based more on the applicant's pursuit of what he considered a genuine claim as to proper award entitlements. Indeed on the applicant's evidence, which I accept, the pursuit of that matter was based upon advice which he received and no doubt took in good faith.

As to the real basis for the respondent's decision to dismiss the applicant, I have no doubt in my mind that the respondent's decision to dismiss the applicant was motivated by the applicant's pursuit of his claim for wages and overtime which he thought he was entitled to. Indeed, to his credit, Mr Morgan conceded as much in the witness box. I am also satisfied on the evidence and find, that as at the time of the dismissal, the respondent gave the applicant no reason for dismissing the applicant.

Principles

I turn now to consider some of the relevant principles in relation to matters of this nature. It is well settled in matters such as these that the test as to whether a dismissal is harsh, oppressive or unfair is whether the right of the employer to dismiss an employee has been exercised so harshly or oppressively such as to constitute an abuse of that right: *Miles v Federated Miscellaneous Workers Union of Australia, Industrial Union of Workers, Western Australian Branch* (1985) 65 WAIG 385.

Additionally, in assessing a claim such as the present matter, it is not the province of the Commission to assume the role of the manager, but to consider the dismissal objectively and in accordance with the obligations imposed on the Commission pursuant to ss 26(1)(a) and 26(1)(c) of the Act. Moreover,

in objectively assessing the circumstances of the case, the practical realities of the workplace need to be considered and a commonsense approach to the application of the statutory provisions should be adopted: *Gibson v Bosmac* (1995) 60 IR 1.

It is also the case in this jurisdiction, that the lack of any procedural fairness in matters such as these, can be a most important circumstance: *Shire of Esperance v Mouritz* (1991) 71 WAIG 891.

In relation to the status of the applicant's employment, that being permanent or casual, even if I am incorrect as to my conclusions as to the nature of the applicant's employment, the fact that an employee is a casual employee is no bar to a claim of this nature and for relief being granted: *Serco v Moreno* (1996) 76 WAIG 937 at 939; *Swan Yacht Club v Bramwell* (1997) 77 WAIG 579 at 583.

Conclusions

I now turn to my conclusions in this matter. Based upon the findings of fact which I have made, and in accordance with equity, good conscience and the substantial merits of the case, which as to good conscience is my good conscience, I conclude that the applicant was harshly, oppressively and unfairly dismissed by the respondent. In my view, in all of the circumstances, the applicant has not been given a fair go all round as the authorities require. I should observe that the fact that an employee has a claim, based upon what he or she considers a proper legal entitlement, and puts that before an employer, or even has to institute legal proceedings in respect of that matter, is not any proper basis for the termination of an employee's employment. The veracity of any such claim is for the relevant court or tribunal to resolve if indeed, the matter takes that course.

In so concluding I should also say however, that I am not suggesting in this case that the respondent acted out of malice or bad faith towards the applicant. However in my view, the respondent proceeded upon a misguided basis as to a proper foundation for termination of an employee's employment.

Remedy

I now turn to the issue of remedy in view of my finding that the applicant has been unfairly dismissed. The statutory scheme in section 23A of the Act, when read in the context of the Act as a whole, makes it clear that the intention of the legislature in enacting s 23A was to provide reinstatement or re-employment as the primary belief in the event of a finding by the Commission that an employee has been dismissed harshly, oppressively or unfairly. The question of compensation for loss or injury caused by an unfair dismissal, pursuant to s 23A(1)(ba), only arises in the event the preconditions specified in s 23A are satisfied, those being that reinstatement is impracticable or that the employer has agreed to pay compensation.

I should also note that "impracticable" in the context of s 23A of the Act does not mean "impossible" and requires a consideration by the Commission of all the circumstances of the particular matter and an evaluation of the practicability of a reinstatement order in a way consistent with the dictates of commonsense: *Nicholson v Heaven and Earth Gallery Pty Ltd* (1994) 126 ALR 233; *Liddell and Lembke* (1995) 127 ALR 342; *Gilmour v Cecil Bros FDR Pty Ltd* (1996) 76 WAIG 4434. In these proceedings, the applicant does not seek reinstatement. He says that he now intends to reside in South Australia. In view of these matters, in my view, it would be impracticable to order reinstatement of the applicant in employment with the respondent and I so conclude.

I turn then to the question of compensation. Pursuant to s 23A(1)(ba) of the Act, the Commission may order an employer to pay compensation to an employee who has been unfairly dismissed, for loss or injury caused by a dismissal. The power is subject to the cap prescribed by s 23A(4) of the Act to the extent that compensation not exceed six months remuneration of the claimant. The discretion residing in the Commission to make an award of compensation for loss or injury in a case of unfair dismissal is a very wide discretion: *Cecil Bros FDR Pty Ltd v Gilmour* (1998) 78 WAIG 1099 per Anderson J at 1102 (with Kennedy and Franklyn JJ agreeing).

The assessment of compensation for loss and injury was considered by the Full Bench of this Commission in *James A Capewell v Cadbury Schweppes Australia Ltd* (1998) 78 WAIG 299. I apply the principles in *Capewell* for the purposes of these proceedings.

I should also observe in dealing with the issue of compensation, that it is important to note that the legislative cap on compensation in s 23(4) of the Act is not representative of a scale of possible compensation in terms of the seriousness or gravity of the conduct of employer in unfairly dismissing an employee, nor does it import notions of punitive compensation. It is a statutory limit that must not be exceeded unrelated to the circumstances of the particular case.

The question for resolution in this matter is what is the loss that the applicant has sustained as a result of the unfair dismissal by the respondent and, secondly, what should be the award of compensation that should be made in respect of the loss so found. The applicant has submitted in evidence by way of exhibit A3, a schedule representing loss of income between 7 October 1998, that being the date of dismissal, and 22 January 1999, that being the date of these proceedings. The schedule of loss of income has included a deduction of income derived from employment from a number of employers between that same period, those employers being Quality Paving Contractors, A&M Cleaning and Kennedy Drilling. The applicant has earned the sum of $2798.75 from those employers.

The amounts set out in exhibit A3 are not contested by the respondent and I find that the applicant has suffered loss by way of lost remuneration in that amount.

The applicant in seeking and obtaining other employment to which I have referred, has done so in accordance with his duty to mitigate his loss as far as possible. The Commission has also been told that the applicant has received approximately $2,600 by way of social security payments, but I am not minded to take that into account in considering the applicant's loss: *Swan Yacht Club* (supra) at 585.

Furthermore on the evidence before me in these proceedings, I have no basis to conclude that but for the unfair dismissal of the applicant, the applicant's employment would not have continued for the foreseeable future and I so find. There is no evidence before me of other loss or injury.

In my opinion, having regard to all of the circumstances of this case, I consider fair and reasonable compensation to be the sum of $5,000. As to the claim in the applicant's particulars of claim in the amount of $1,680, which purports to represent three weeks notice, there is no evidence before me as to a term of the contract of employment between the applicant and the respondent to that effect. Furthermore, and in any event, I am not able to imply a term which would entitle the applicant to a payment in lieu of notice in respect of that amount: *Sanders v Snell* (unreported HCA 8 October 1998). Nor do I have jurisdiction in respect of any statutory entitlement in that regard and accordingly that claim must fail.

As to the various claims for leave benefits also set out in the particulars of claim, it is apparent to me that those matters arise either by way of statutory or award provisions and those matters are not able to be pursued before me in this jurisdiction.

Minutes of proposed order now issue.

APPEARANCES: The applicant appeared in person.

Mr G Morgan appeared on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Brenton Hayes

and

Khabar Pty Ltd t/a Morgan Filter Cleaning Services.

No. 1899 of 1998.

COMMISSIONER S J KENNER.

23 February 1999.

Order.

HAVING heard Mr B Hayes on his own behalf and Mr G Morgan on behalf of the respondent the Commission,

pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby—

1. ORDERS that the named respondent in the notice of application be deleted and in lieu thereof there be inserted Khabar Pty Ltd t/as Morgan Filter Cleaning Services;
2. DECLARES that the applicant was harshly, oppressively and unfairly dismissed from his employment by the respondent on or about 7 October 1998;
3. DECLARES that reinstatement or re-employment of the applicant is impracticable;
4. ORDERS the respondent to pay to the applicant within 14 days of the date of this order the sum of $5,000.00 less any amount payable to the Commissioner of Taxation pursuant to the Income Tax Assessment Act 1936 and actually paid.

(Sgd.) S.J. KENNER,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Kevin Lance Noack

and

BGC Australia Pty Ltd.

No. 2031 of 1997.

COMMISSIONER A.R. BEECH.

12 February 1999.

Reasons for Decision.

Mr Noack commenced employment with the respondent in September 1992. He was initially employed as a casual truck driver. One month later he was made permanent. In June 1993 he was employed as a dispatcher. From 1 January 1994 he was employed as Operations Manager.

On 23 October 1997 he was involved in an altercation with a fellow employee, Mr Hudston. The respondent's investigation of that altercation led to the decision to dismiss Mr Noack. Upon being informed of this decision, Mr Noack asked the company to reconsider its position. It did so, and informed him that he would, instead, be demoted to the position of truck driver. Mr Noack did not agree with that decision. Although he was treated by the company as being on annual leave whilst he considered his position he did not, in fact, accept the position of truck driver, and did not work as a truck driver. He claims to have been dismissed and that his dismissal was harsh, oppressive and unfair.

On the evidence of Mr Hobbs, the General Manager of the employer's concrete operations, his decision to dismiss Mr Noack was because he believed Mr Noack, and Mr Hudston, were both involved in an altercation and both should be dismissed. In Mr Hobbs' view at the time, their conduct amounted to misconduct. Since the determination of the preliminary point in this matter on 27 November 1998, the Compensation Magistrate quashed the decision of the Review Officer. Accordingly the Commission is now free to consider the merits of Mr Noack's application without regard to the decision of the Review Officer.

The Commission turns first to consider whether Mr Noack was dismissed. BGC argues that he was demoted and did not start work in his new position. It is a question of fact whether the change of duties arising from the "demotion" was either a variation of Mr Noack's contract as an Operations Manager or the termination of that contract. The decision of the Full Bench in *City of Canning v OPDU* (1994) 74 WAIG 2321 at 2322, cited by BGC, in fact recognises that a demotion may constitute a dismissal. The significance of the change in the duties and the position is the determining issue (*Kenny v Elmerside Pty Ltd* (1997) 77 WAIG 2172 at 2174; *Quinn v Jack Chia (Australia) Limited* [1992] 1VR 567 at 576-579). The position and duties of an Operations Manager are set out in a document from BGC's Quality Management System Manual (exhibit C) as follows—

> "The Operations Manager is directly responsible to the General Manager for the manufacture of all products in accordance with the prescribed specifications. The OM shall ensure that all quality and production are met with due regard to economy.
>
> Responsibilities and authorities include, but are not limited to, the following—
>
> - Supervision of plant staff and drivers ensuring that all are suitably qualified and skilled in their particular specialism. Organising additional training where necessary.
> - Ensuring that all plant staff and drivers are aware of and implement the procedures applicable to their particular discipline with due regard to health and safety requirements.
> - Responsible for procuring plant staff amenity requirements.
> - Assist Production Manager in plant maintenance, maintenance and servicing of trucks and agitators and procurement of mechanical equipment.
> - Control of fuel and raw material stocks.
> - Security.
> - Providing support to other line managers where necessary.
> - Attend the Quality Management meetings to participate in, and contribute to, all matters affecting product quality.
> - Assist the Sales Manager in attaining new clientele and fulfil the necessary after sales service."

The duties and responsibilities do not include truck driving. It is not possible to imply a term into his contract that he could be required to drive a truck as part of his duties as Operations Manager. To remove all of those duties and responsibilities and replace them with truck driving is manifestly a significant change to his duties. He would not retain his salary, although even if he had been allowed to retain his salary the change to his duties would still be a significant change.

There was no express provision in Mr Noack's contract of employment as an Operations Manager that allowed him to be demoted. It does not alter the situation that Mr Noack was promoted through the ranks, as it were, in that he was originally a truck driver when first employed by the respondent (*Quinn v Jack Chia (Australia) Limited, above; Robowash Pty Ltd v Michael Hart* (1998) 78 WAIG 2325 (a subsequent appeal against this decision was determined on other grounds at p.4307). He ceased to be a truck driver when he became Operations Manager. The position of Operations Manager is a separate position not linked to that of a truck driver. Nor does it alter the situation that the "demotion" meant that Mr Noack would have remained in the employment of BGC for the reasons I outlined in *Grace v David Evans Real Estate* (1998) 78 WAIG 1410. Indeed, and despite the submission of BGC, I see the situation here as quite similar to the situation in that case.

As a consequence, BGC's decision to "demote" Mr Noack was really the termination of his contract of employment as an Operations Manager and the immediate offer of a new contract of employment as a truck driver, an offer which he declined. The Commission accepts that Mr Hobbs acted in good faith in offering a demotion as an alternative to dismissal. Indeed it is to his credit that he was prepared to consider an alternative to dismissal. Nevertheless, in the absence of the contract of employment giving a right to BGC to demote Mr Noack, Mr Hobbs was really only offering a job as truck driver to Mr Noack. Mr Noack was entitled to refuse the offer. Even if he had accepted the offer, he was still being dismissed from the position of Production Supervisor. Accordingly, I find that Mr Noack was dismissed on 24 October 1997.

The incident which occurred between Mr Noack and Mr Hudston involved a verbal and physical tussle. Whilst neither of those two persons admitted punching the other, it is clear that some physical manhandling took place. In the case of Mr Noack he evidently suffered injuries which caused him to lodge a workers' compensation claim. In the case of Mr Hudston the

photographs which he had taken when he got home were tendered in evidence and show that he also suffered injuries. Although the word "fight" may cover a number of situations, there is little difficulty in describing what occurred as a fight even if it was all over in a short space of time. The injuries each saw himself as having suffered are quite consistent with a fight between them. It was sufficiently combative to displace furniture and cause the "racket" heard by Mr Tapping.

It is quite clear that fighting in the workplace is a serious misconduct which constitutes a ground for dismissal as Mr Noack acknowledged. Dismissal is not automatic following a fight. Rather, the circumstances need to be investigated and any mitigating circumstances should be taken into account. The Commission is satisfied that Mr Hobbs had investigated the issue by speaking to both participants. Mr Noack was allowed to tell his side of the story. Mr Hobbs decided to dismiss both Mr Noack and Mr Hudston. He had every justification in doing so. There had been a physical altercation between them. Mr Hobbs was aware of the essential facts and there has not been anything material that Mr Hobbs had not known .

For an employee to argue that dismissal for fighting was harsh, oppressive or unfair requires the employee to establish extenuating circumstances (*AWU-FIME v Queensland Alumina Limited* (1995) 62 IR 385 at 393). For example, if one of the participants is an innocent party dismissal may not be warranted (*Forest Products, Furnishing and Allied Industries Union v Wesfi Pty Ltd* (1992) 72 WAIG 610). However, I am not satisfied that Mr Noack was indeed an innocent party. Although his evidence is that he did little more than defend himself his evidence does not provide an explanation for the injuries received by Mr Hudston. If Mr Noack's evidence was accurate Mr Hudston would not have suffered the injuries he did. Further, Mr Noack set the scene for the confrontation by abruptly questioning Mr Hudston's right to be in the dispatch room looking for milk. He lunged at the teaspoon Mr Hudston was waving under his nose. For his part, Mr Hudston acted aggressively in waving the teaspoon directly under Mr Noack's nose. Both of them should have known better. However, Mr Noack's lunge led to such pushing and shoving between them that they both ended up brawling on the floor of the dispatch room.

Not surprisingly, Mr Noack argues that his dismissal was unfair because while he was dismissed, Mr Hudston received a final warning and remained in employment. Although that was not the outcome intended by BGC, the fact remains that that is how it occurred. The Commission was told that, in the case of Mr Hudston, there was no position below that of a truck driver to which he could have been "demoted". Hence he was given a final warning. Mr Hudston remained in employment whilst Mr Noack lost his job.

At one level, the Commission has every sympathy for Mr Noack's relative position. It is hardly a fair outcome if two equal participants in the fight receive inconsistent punishment. However, Mr Noack was not in an equal position to Mr Hudston. Mr Noack was an Operations Manager. He was part of a management structure with supervisory authority. His responsibilities included the supervision of plant staff and drivers (exhibit C). That is significantly different from the position of truck driver held by Mr Hudston. Mr Hobbs was quite entitled after the incident to hold the view that Mr Noack should no longer hold a supervisory position. Therefore, giving a warning to Mr Noack was inappropriate because it would leave Mr Noack in a supervisory position. Consistency of treatment does not necessarily mean equality of treatment. Thus, although there is a large gap between a final warning and a dismissal, there is also a large gap between the relative positions, and relative culpability, of the two employees. The Commission does not see this case as a case of inequality of treatment of equal employees and Mr Noack's argument is not made out.

For those reasons, the Commission finds that Mr Noack's dismissal was not unfair and an order will issue accordingly.

Mr Noack claimed that he had been denied a benefit under his contract of employment of 4 weeks' sick leave. It is my understanding that this claim refers to a period of time after Mr Noack had been dismissed and before he refused the offer of a truck driver's position. Unlike annual leave, there is not usually a provision for the payment of untaken sick leave on termination. Further, unlike the position in *Reynolds v Swift and Moore* (1994) 74 WAIG 861, Mr Noack was not on sick leave when he was dismissed. The intervening period between his dismissal and his refusal of the truck driver's position was not on the evidence, sick leave. Accordingly, the claim is not made out. Further, to the extent that it was claimed, it cannot be said to have been a term of Mr Noack's contract that pro-rata annual leave paid on termination would include the notional value of the motor vehicle and telephone costs which were part of his employment package.

The application is dismissed.

Appearances: Mr R.W. Clohessy on behalf of the applicant.

Mr M. Hotchkin (of counsel) on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Kevin Lance Noack

and

BGC Australia Pty Ltd.

No. 2031 of 1997.

12 February 1999.

Order.

HAVING heard Mr R.W. Clohessy on behalf of the applicant and Mr M. Hotchkin (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.) A.R. BEECH,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Lautaro A. Peredo

and

Metland Products.

No. 1311 of 1998.

13 January 1999.

Reasons for Decision.

SENIOR COMMISSIONER: The Respondent carries on business as a sheet metal fabricator. It is essentially a family business run by the Buggins family. At all material times it employed four production personnel, one of whom was the Applicant. The other production employees were sons of the manager and co-proprietor of the Respondent, Mr Dennis Buggins. With the exception of the Applicant, all of the production employees were members of the religious order known as the Exclusive Brethren.

The Applicant was employed by the Respondent from 31 January 1994 until 3 July 1998. He was employed in the position of a sheet metal worker's assistant. The history of his employment appears to have been uneventful, at least for the purposes of these proceedings, until on or about 11 June 1998. On that day he and another employee, Mr Andrew Buggins, the son of the co-proprietor of the Respondent had a difference of opinion about the activities of the Brethren. It appears that this difference arose out of discussions prompted by newspaper articles which appeared at or about that time regarding the activities of the Brethren. At all events, the Applicant asserts that on that day Mr Andrew Buggins told him that he would soon be "removed from the face of the earth". The Applicant took that as a threat on his life and reported the matter to Mr Dennis Buggins, who was the manager and a co-proprietor of the business. Mr Dennis Buggins indicated that he would

be surprised if his son had made such a threat. He took the matter up with his son in the presence of the Applicant. Mr Andrew Buggins, whilst not disputing that he had said what he was alleged to have said, denied that he intended it as a death threat or to otherwise harm the Applicant. Rather, he intended it as a statement of biblical fact. This did not satisfy the Applicant, who left the workplace, reported the matter to the police and obtained an interim violence restraining order against Mr Andrew Buggins. The Applicant returned to work the next day. Thereafter it seems to be common ground Mr Andrew Buggins and the Applicant had little to do with each other. However, the Applicant asserts from that time he was "under constant harassment, intimidation, provocation and offensive behaviour by two other sons of the manager-owner : N. Buggins and J. Buggins". In short, he says that they taunted and mocked him almost daily by giving him a single finger sign or poking their tongue out at him when eye contact was made. On at least one occasion one of them passed wind in an offensive manner in his presence. On another occasion he was forcibly pushed aside by one of them. In addition, he asserts that after that time Mr Dennis Buggins on two occasions and another of his sons, Mr Nelson Buggins, accused him of being "the mythical Antichrist". On 1 July 1998 he complained to Mr Dennis Buggins about this harassment and at the same time indicated to him that he would be taking the following day off work to report the actions of Mr Nelson Buggins to the police.

On 3 July 1998 the Applicant tendered his resignation, principally on the grounds of the "death threats" made against him by Mr Andrew Buggins on 11 June 1998; "the intent of physical attack on the same date and by the same person"; the "climate of harassment and provocation created by" Nelson and Geoffrey Buggins following 11 June 1998; and the belief of Mr Dennis Buggins and his sons that the Applicant was "the mythical Antichrist". The Applicant indicated that he had "extreme concern" for his personal safety because of the strong religious beliefs held by the Buggins family and "the cases of mental illness affecting" Messrs Dennis and Nelson Buggins which the Applicant said he witnessed some months before his resignation.

The Applicant asserts that he was constructively dismissed. He asserts that he was forced to resign on "the grounds of extreme stress" brought about by the conduct of the Respondent and its employees towards him. Moreover, he asserts that the dismissal was either harsh, unjust or unfair and seeks compensation equivalent to six months' pay.

The Respondent denies that the Applicant was dismissed from his employment, either constructively or otherwise. It asserts that the resignation was tendered without encouragement from the Respondent and that the instrument of resignation "contained untrue and unfounded accusations towards all other personnel, including the manager, of an extreme discriminatory nature".

In order to succeed, it is essential that the Applicant first establish, on balance, that he was dismissed from his employment. It is trite to say that for these purposes an employee may be taken to have been dismissed from his employment, although the actual termination of employment was effected by a resignation on the part of the former employee. For a resignation to be taken as a dismissal, it is necessary, for these purposes, for the Applicant to establish that the real and effective initiator of the termination of employment was the conduct of the employer (see: *Allison v. Bega Valley Council (1995) 63 IR 68*). Whether or not that position obtains in a given case is largely a question of fact involving an analysis of facts and circumstances which led to the termination of the employment. The critical question in matters of this nature is simply whether on the facts the former employee can be said in reality to have been dismissed from his employment by his former employer. The answer to that question does not depend upon the concept of "constructive dismissal", which is essentially a statutory concept created in some other jurisdictions based on breach of contract (see: *The Attorney General v. Western Australian Prison Officers' Union of Workers (1995) 75 WAIG 3166*; and see too: *Allison v. Bega Valley Council (supra)*).

On this occasion there is a marked conflict in the evidence adduced by and on behalf of the respective parties. Of all the witnesses, I consider Mr Dennis Buggins to have been the most credible. The more I heard from him, the more convinced I became that he had the most accurate and reliable recollection of the events. At least from and after 11 June 1998 he kept notes of what occurred and apart from that impressed me by his demeanour as being a reliable witness. Where his evidence conflicts with that of the Applicant, I accept his evidence in preference to that of the Applicant. Whilst I have no doubt that the Applicant honestly believed what he said to be true, he left me with the distinct impression that for one reason or another he had a propensity to exaggerate and too readily to convert assumptions to fact or otherwise embellish the facts. In short, he left me with the impression that his evidence was not always reliable. In general I accept the evidence of Mr Nelson Buggins in preference to that of the Applicant. He impressed me as being a frank and reliable witness. On the other hand, Messrs Geoffrey and Andrew Buggins impressed me as being more interested in protecting their position than reciting the facts as they happened. Where their evidence conflicts with that of the Applicant, except where it is supported by Messrs Dennis or Nelson Buggins, I prefer the evidence of the Applicant.

The decided authorities make it abundantly clear that for a resignation to constitute a dismissal for the purposes of proceedings of the kind now in question, the resigning employee must have no real alternative but to resign so that in effect the act of resignation is really the act of the employer (see: *The Attorney General v. Western Australian Prison Officers' Union of Workers (supra)*). The conduct of the employer must be such that no reasonable employee could be expected to put up with it any longer.

It is common ground that the Applicant knew from the commencement of his employment, or soon afterwards, that he was the only employee of the Respondent who was not a member of the Brethren. With one exception, the religious beliefs of the Buggins family do not appear to have led to any difficulties between the Applicant and the Respondent until the existence of the newspaper article concerning the Brethren early in June. The exception concerned him being prevented from eating his lunch with members of the Buggins family, apparently on religious grounds. I do not accept that the Applicant's inability to eat with the Buggins family was as significant a problem as he claimed. Rather, I accept the evidence of Mr Dennis Buggins that from and after his first day at work when he was told that he could not eat with them he appeared happy to eat in his car parked on the premises, as did other employees in the same situation. Furthermore, I accept the evidence of Mr Dennis Buggins that this arrangement continued thereafter without complaint from the Applicant until shortly before his resignation. That is, it existed for over four years without complaint. Equally, I do not accept that Mr Andrew Buggins threatened the well-being of the Applicant on 11 June 1998 as claimed. Even if Mr Buggins' remarks were capable of the interpretation initially placed on them by the Applicant, I am satisfied and find that soon afterwards that the Applicant was assured, not only by Mr Dennis Buggins but also by Mr Andrew Buggins, that the latter did not intend his remarks to constitute a death threat or to otherwise harm him. Likewise, I remain unconvinced, in the face of Mr Dennis Buggins' evidence, that Mr Andrew Buggins attempted to strike him, as distinct from attempting to knock the tape recorder the Applicant was then holding from his grasp. In any event, as the Applicant acknowledges, from and after the issue of the interim violence restraining order, there was little or no communication of any sort between him and Mr Andrew Buggins. Indeed, the Applicant in effect said that because of the interim restraining order he felt secure from any interference by Mr Andrew Buggins.

So far as the allegations of mocking and taunting thereafter are concerned, whilst I have little or no doubt that from time to time Messrs Geoffrey and Nelson Buggins either pulled faces or made finger signs to him, I remain unconvinced that this occurred as frequently as the Applicant complained or was as severe as he complains. Also, it seems clear that at least on one occasion the Applicant engaged in such conduct. In any event, on the first and only occasion the Applicant took this matter up with Mr Dennis Buggins, Mr Buggins took positive steps to stop such conduct. He issued the Applicant and his sons with a written directive that no religious or personal matters were to be discussed at the workplace and they were to co-operate with each other. The Applicant resigned before that edict was tested.

Insofar as the Applicant complains that he was accused of being "the mythical Antichrist", the Applicant was not told that directly by Mr Dennis Buggins. Instead, it appears that the Applicant inferred that Mr Buggins held such a belief from the fact that he was given a pamphlet explaining the beliefs of the Brethren and from the fact that on another occasion, in answer to a complaint by the Applicant that Mr Nelson Buggins held that belief, was told by Mr Dennis Buggins only to make sure that he was not "the mythical Antichrist". I accept the evidence of Mr Dennis Buggins that he did not say or hold the belief that the Applicant was "the mythical Antichrist". Likewise, I accept the evidence of Mr Nelson Buggins that he raised the matter only in answer to a question from the Applicant as to whether he believed the Applicant was the mythical Antichrist and responded to the effect "that he probably was". I accept the evidence of Mr Nelson Buggins that he indicated this to be the case in an equivocal fashion and I find it difficult to accept that the Applicant regarded the answer as being as significant as he now contends. The Applicant acknowledged that Mr Nelson Buggins was the youngest of the brothers and, moreover, contends that he had a mental illness. Furthermore, the Applicant, on his own admission, clearly did not believe himself to be the mythical Antichrist.

The Applicant also complained that from time to time he was given unsavoury tasks to perform or otherwise asked to perform tasks at short notice. However, having regard to the evidence of Mr Dennis Buggins and the other employees, I am far from convinced that these were not routine requests or otherwise untoward.

On the facts as I find them to be, I am not satisfied, even on balance, that the situation was as bad as the Applicant suggests, such that he had no real alternative but to resign. In short, I am far from convinced on the credible evidence that the Respondent was the effective cause of the termination of the Applicant's employment. Rather, my impression is that the Applicant was himself largely the architect of the termination. In the circumstances the application should be dismissed.

Appearances: The Applicant in person.

Mr K.C. Brown as agent for the Respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Lautara A. Peredo

and

Metland Products.

No. 1311 of 1998.

13 January 1999.

Order.

HAVING heard the Applicant in person and Mr K.C. Brown as agent for 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.) G.L. FIELDING,
[L.S.] Senior Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Benjamin John Porter

and

Armadale Datsun Car Repairs and Service.

No. 1607 of 1998.

COMMISSIONER P E SCOTT.

2 March 1999.

Reasons for Decision.

(*Extempore*)

THE COMMISSIONER: The Applicant was employed by the Respondent as a trades assistant for almost two years prior to the termination of his employment on 17 August 1998. the first year being as a casual employee. The Applicant claims to have been harshly, oppressively or unfairly dismissed from that employment. The Respondent denies that it terminated his employment.

The Applicant's relationship with his employer and the circumstances of his employment were quite happy until the latter part of that employment. However, Mr Stevenson, the Respondent's director, says that at least once in the presence of the Applicant's father, but twice in total, he has reprimanded the Applicant over his attitude and language. The Applicant recalls a meeting in the lunch room at which his father was present but does not recall the specifics of what was put to him except to the extent, it would appear, that Mr Stevenson indicated to him that he could be dismissed or he could have three written warnings. The Applicant opted to continue in work and to go through the warning process, because he needed the money, which Mr Stevenson appears to have accepted.

It is not contested that there is swearing in this workplace and that it is not an unusual occurrence. It is said that the Respondent's concern was the volume and frequency of the Applicant's bad language.

Following the last occasion upon which Mr Stevenson spoke with the Applicant about his attitude and language, the Applicant sought other work. There is also evidence that the Applicant made inquiries with some authority after he became dissatisfied with the circumstances of his employment, and as a result of those inquiries, was advised that he had been underpaid. He raised that underpayment with his employer who undertook to rectify the matter. There is conflict in the evidence as to how long that rectification took.

There is conflict in the evidence as to whether the Respondent dismissed the Applicant or whether the Applicant, after he had raised the issue of the underpayment, told the Respondent to give him his back pay and he would leave, and that the next day he was paid his back pay. The Respondent says that his employment had terminated by the Applicant deciding to leave.

In any event, the Applicant turned up to work on the following Monday and Mr Stevenson asked him what he was doing there. There was a brief discussion after which the Applicant went home. The next day, the Applicant turned up for work again and left after a brief discussion with Mr Stevenson.

The first question I have to decide is whether or not there has been a dismissal. Section 29 of the Industrial Relations Act, 1979 provides access to this Commission for an employee who claims that he has been harshly, oppressively or unfairly dismissed from his employment. In a case such as this, the onus is on the Applicant to demonstrate his case. As I have noted, there is a good deal of conflict in the evidence in this matter.

I have observed the Applicant give his evidence and I must observe there was conflict within his own evidence. It strikes me as strange that the Applicant recalls having a meeting with Mr Stevenson at which his father was present but initially he did not recall what was said. When pressed, he recalled the options of dismissal or warnings, but does not seem to recognise this as a warning that his job was in jeopardy.

It also seems strange that the Applicant should say, when initially questioned, that the work he had performed after the termination of his employment was "for a couple of weeks" and yet later said was "a couple of hours for a couple of weeks". Following the luncheon adjournment, when he has consulted

with his representative, he now says that he was employed for a period of time which would have earned him approximately $200 a week over a period of 3 weeks. This is not consistent with a couple of hours work each week.

In his initial evidence, the Applicant also attempted to lead me to believe that he had been looking for work but had been unsuccessful, but that on 18 December 1998 he had an accident which prevented him from seeking or undertaking further work and yet it appears from further advice, that that is not so either.

I am not satisfied, having heard the Applicant give his evidence, that he has demonstrated to me that I should accept what he says. That is not to say that I disbelieve him, but rather there is conflicting evidence before me and the onus is on the Applicant to weight the balance in his favour. Accordingly, the Applicant has not discharged the onus that falls to him to demonstrate that he has been dismissed from his employment. It may be that he has, but I cannot be satisfied to the standard required, based on the evidence before me that that is what occurred.

Accordingly, the only course of action is for me to dismiss the application.

Order accordingly.

APPEARANCES: Mr Edwards on behalf of the Applicant
Mr J Stevenson on behalf of the Respondent

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Benjamin John Porter

and

Armadale Datsun Car Repairs and Service.

No. 1607 of 1998.

COMMISSIONER P E SCOTT.

2 March 1999.

Order.

HAVING heard Mr Edwards on behalf of the Applicant and Mr J Stevenson 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,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Sam Salpietro

and

Anthony & Sons Pty Ltd t/a West Boat Builders.

No. 988 of 1998.

COMMISSIONER A.R. BEECH.

19 February 1999.

Reasons for Decision.

Mr Salpietro claims that he has not been paid a benefit to which he is entitled under his contract of employment. He claims that he was employed by the respondent from the 1st of October 1997 until the 25th of February 1998 to promote and market the aluminium boats and ferries made by the respondent. It was agreed that Mr Salpietro was paid for the months of October, November and December. However, payment was not made for the period of January.

The respondent in its formal Notice of Answer and Counter-proposal denies that Mr Salpietro was ever employed as "our consultant" for which a retainer would be paid. Rather, payments made were advances on commission for the sale of boats. These payments were made to assist with the expenses in contacting prospective purchasers and were able to be deducted from any sales commissions payable. No sales were made, and the respondent regards the payments made as reclaimable by it.

The essential, but not the only, difference between the parties is whether Mr Salpietro was an employee. His status is not clear because in the first place the relationship between Mr Salpietro and the respondent was not the subject of a written agreement. Such agreement as there was, was oral. Given that there is now little, if any, agreement between Mr Salpietro and the respondent regarding the terms of any contract between them, those terms are now only able to be assessed by having regard to the conduct of the parties and any documents which passed between them. It was the use, by Mr Salpietro, of the letterhead "Volt Investments Pty Ltd' on one critical document (exhibit 1 p3) which caused the Commission itself to query whether he was, indeed, an employee. The letter concerned was from Mr Salpietro to the respondent and set out Mr Salpietro's understanding of the terms and conditions of the contract which had been negotiated between them. The letterhead is Mr Salpietro's company and its use suggests that the document was from the company, not from Mr Salpietro personally. That suggestion remains even though the document was jointly signed with Mr Piantadosi who has no link with Volt Investments Pty Ltd. The significance of the suggestion is that, if the parties to the contract were Volt Investments Pty Ltd and the respondent, then Mr Salpietro would not be an employee for the purposes of the Act and could not bring this claim to the Commission. The Commission drew this to Mr Salpietro's attention prior to the hearing. He replied to the Commission indicating that the use of the letterhead had been an oversight. Whilst his original intention had been for Volt Investments Pty Ltd to be the contracting party, the offer by the respondent during the negotiations indicated that Volt Investments Pty Ltd would not be able to operate and maintain office facilities to enable it to discharge its obligations. Accordingly, according to Mr Salpietro, he abandoned the idea of using Volt Investments Pty Ltd and the contracting party was himself. The respondent did not respond to Mr Salpietro's letter to the Commission and the Commission indicated informally to both parties via the Commission's Associate that Mr Salpietro would be regarded by the Commission as an employee. The application was then listed for hearing.

When the matter was heard, the respondent still contended that Mr Salpietro was not an employee and for that reason, and other reasons, the application was without merit. The Commission ruled that it would hear argument regarding the contention notwithstanding its earlier finding. Indeed, with the benefit of hindsight, the earlier informal indication from the Commission would have been more accurately expressed if the parties had been advised that the Commission was prepared to accept that Volt Investments Pty Ltd was not the contracting party and, indeed, that Mr Salpietro had merely made an error in using that letterhead. In the view which the Commission now holds, that is indeed the correct conclusion. I am prepared to accept that Mr Salpietro used the Volt Investment Pty Ltd letterhead on that occasion by way of an oversight. I find that the reasons which he gave for deciding to contract with the respondent himself, that is, the monetary offer from the respondent was insufficient to enable Volt Investments Pty Ltd to adequately perform the task, is plausible. Furthermore, the evidence is that the payments which were made in October, November and December were made to Mr Salpietro personally, and, as I understand his written submissions, paid into his own bank account. The payments were not made out to Volt Investments Pty Ltd. I therefore, reject the respondent's primary contention that the contracting party was Volt Investments Pty Ltd.

However, that does not necessarily mean that Mr Salpietro must therefore have been employed by the respondent. Mr Salpietro may have been an employee. Alternatively, he may have been providing a contract for services in his own name rather than in the name of his company. His original intention

was to have a contract for services between his company and the respondent (exhibit A). All that may have changed from his original proposal is his decision that it would no longer be economic for his company to provide the service. It is quite possible for that service to provided by him by way of a contract for services. Indeed, even if exhibit 1 p3 is read without the letterhead, it proposes that both Mr Salpietro and Mr Piantadosi together "act in the capacity of marketing consultants". A letter in that form is hardly consistent with Mr Salpietro being an employee of the respondent.

In order to answer the question of Mr Salpietro's status, the Commission takes the following into account. Firstly, there is no direct evidence that Mr Salpietro was an employee. To be sure, he received three payments from the respondent. But he would have received those payments even if he had been a contractor to it (see the section "Fees" on the 3rd page of exhibit A). I therefore find the fact that he received three payments over three successive months to be inconclusive on this question. Significantly however, no tax was deducted from those payments. That tends to suggest more of a relationship of principal and contractor than it does employer and employee. Similarly, the absence of any evidence that the respondent either exercised control in Mr Salpietro's work, or had the ability to exercise that control, does not permit the conclusion that Mr Salpietro was an employee. In this regard, the onus of proving that he was an employee is upon him. I agree with Mr Moon that control is not the only test. However, it is still regarded as one of the more significant tests to be applied. There is no evidence of the manner in which Mr Salpietro performed his work which could lead to any positive conclusion that he was an employee. There is no evidence regarding the regularity of his hours of work, the manner in which the work was carried out, the use of the respondent's facilities in the performance of his work rather than his own facilities, or that any other benefits of employment accrued to him.

In fact, such evidence as there is suggests the contrary. The letter which is exhibit 1 p3 describes the money to be paid as being on the basis of a retainer "for direct out of pocket expenditure" which tends to lead to the conclusion that Mr Salpietro used at least some of his own facilities rather than those of the respondent. As that letter further states, although the respondent would cover all reasonable expenditure, it was not liable for salaries, associated loadings and vehicle expenses.

The inclusion of Mr Salpietro, together with Mr Piantadosi, as part of the "management" of the respondent in the corporate profile (exhibit 2) does not demonstrate an employment relationship existed between Mr Salpietro and the respondent even if the profile had been prepared by or with the specific approval of the respondent. A similar conclusion results from the business cards (exhibit 3).

The Commission is therefore unable to conclude that Mr Salpietro was an employee as that is defined in the Act. Although there was certainly a contract between Mr Salpietro and the respondent, and exhibit 3 pages 2-10 show some of the work performed, the contract was not a contract of employment. Mr Salpietro has, therefore, not been denied a benefit under a contract of employment and the Commission cannot decide his claim.

An order now issues dismissing the claim for want of jurisdiction.

Appearances: Mr O. Moon on behalf of the applicant.

Mr A. Metaxas (of Counsel) on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Sam Salpietro

and

Anthony & Sons Pty Ltd.

No. 988 of 1998.

19 February 1999.

Order.

HAVING heard Mr O. Moon on behalf of the applicant and Mr A. Metaxas (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 for want of jurisdiction.

(Sgd.) A.R. BEECH,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Victor Sydney Smith

and

G & F Beltline Services Pty Ltd.

No. 778 of 1998.

COMMISSIONER A.R. BEECH.

5 March 1999.

Reasons for Decision.

The applicant in this matter was employed by the respondent until his dismissal on 24 April 1998. He claims that his dismissal is harsh, unfair and unjust and seeks an order to that effect from the Commission. Conciliation failed to resolve the matter and, after some issues relating to interlocutory matters were dealt with by the Commission in Chambers, the matter was eventually set down for hearing.

When the matter came on for hearing the Commission was asked to determine a preliminary point. The respondent claims that the applicant was employed pursuant to an award of the Australian Industrial Relations Commission. The respondent argues that the application of that award to the applicant's employment means that the Commission does not have jurisdiction in the matter because the dispute settlement procedure of the award specifically states that a dispute over whether a dismissal is harsh, unfair or unjust should be referred to the Australian Industrial Relations Commission.

The relevant award is the *Rubber, Plastic and Cable Making Industry—General—Award 1996*. One of the parties to that award is—

> "G & F Beltlines Pty Ltd, lot 541 Wellard Road, Bibra Lake WA 6163."

It is conceded that the correct identity of Mr Smith's employer, the respondent in this matter, is G & F Beltline Services Pty Ltd. Its present address is in Cutler Road, Jandakot.

Mr Smith argues that the respondent is not the party named in the award and that, therefore, the respondent is not bound by the award. However, I am unable to agree with that submission. I am satisfied from the evidence that the body named in the award does not exist. The evidence of Mr Relf, who is a Director of the respondent, is accepted by the Commission as being proof that there is no company by the name of G & F Beltlines Pty Ltd. His evidence is supported by exhibit B, which is a certificate from the Australian Securities Commission saying that no company exists with that name.

The evidence is that G & F Beltlines Pty Ltd was inserted in to the federal award by a roping-in award made by the Australian Commission in 1990 at the instigation of the National

Union of Storeworkers, Packers, Rubber and Allied Workers (print J2297). I am satisfied that the name in the award is a misdescription of the respondent. On the evidence of Mr Relf, the respondent carries on a business in the manner described by the award. Although Mr Relf is also a director of two other companies with the words G & F Beltline in their names, I am satisfied from his evidence that, in 1989, it was the respondent which operated from premises in Wellard Road, Bibra Lake. It operated from 41 Wellard Way, which is lot 501, and, although the street number is not the same street number mentioned in the address in the award, I am satisfied from the evidence overall that the name in the award is a misdescription of the respondent rather than any of the other two companies to which Mr Relf referred.

In my view that conclusion is consistent with the decision of the High Court in *Australian Commonwealth Shipping Board v Federated Seamens' Union of Australasia* ((1925) 35 CLR 462 per Starke J at 493) and also the conclusions of Pincus J in *Nicol v Parr* ((1985) 11 IR 141 at 142) where he held that "a loose and inaccurate designation" of a respondent's name is not destructive of the Commission's intention "which, in that matter, was held to clearly be that the employer should be bound. That conclusion is also entirely consistent with the exercise of this Commission's jurisdiction to determine matters without regard to technicalities or legal forms and where there should be little scope to allow proceedings to be defeated by the mere misdescription of parties (*Sin-Aus-Bel Pty Ltd t/a The Ascot Inn v Parfitt* ((1994) 74 WAIG 2075 at 2077). Accordingly, the Commission determines that the respondent is bound by the award in question for the purposes of this matter.

The issue of the Commission's jurisdiction which flows from that finding is relatively simply dealt with. Clause 22.6 of the award provides that termination of employment by an employer shall not be harsh, unjust or unreasonable. Clause 22.7 provides for a specific dispute settlement procedure relating to claims of unfair dismissal. By s.22.7.3—

> "If the matter is not settled it should be submitted to the Australian Industrial Relations Commission which shall endeavour to resolve the issue between the parties by conciliation."

In the view which I take, that award provision provides a mandatory referral of a claim of unfair dismissal by an employee whose employment is governed by the award to the Federal Commission. While s.152(1A) of the *Workplace Relations Act 1996* preserves the operation of a State law which provides protection for an employee against harsh, unjust or unreasonable termination of employment, it only does so far as the State law is able to operate concurrently with the award. I cannot see how a requirement that an unfair dismissal claim be referred to the Australian Commission can operate concurrently with the provisions of the *Industrial Relations Act, 1979* which allows a claim of unfair dismissal to be brought to the State Commission. Accordingly, and for that reason alone, I would hold that the Commission is, unfortunately, not able to deal with Mr Smith's claim. It does not have the jurisdiction to do so. Although Mr Smith, through his counsel, submits that the clause in the award is not an "allowable matter" this Commission cannot simply ignore a federal award provision while it exists and s.89A of the *Workplace Relations Act, 1996* is not authority for it to do so.

I use the word "unfortunately" because of the considerable time and trouble the parties have already taken in preparation for this Commission to deal with the merit of Mr Smith's dismissal. If Mr Smith is able to have his claim dealt with by the Australian Industrial Relations Commission on its merits, I frankly see little purpose to have been achieved by the taking of this preliminary point to prevent those merits being determined in this Commission. However, the point having been taken, and it having been found to have been a good one, an Order will now issue dismissing Mr Smith's claim for want of jurisdiction.

Appearances: Mr P. MacMillan (of Counsel) and with him Mr C.P. Mills (of Counsel) on behalf of the applicant.

Mr A. Randles on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Victor Sydney Smith

and

G & F Beltline Services Pty Ltd.

No. 778 of 1998.

5 March 1999.

Order.

HAVING heard Mr P. MacMillan (of counsel) and with him Mr C.P. Mills (of counsel) 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 the application be dismissed for want of jurisdiction.

(Sgd.) A.R. BEECH,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Kimberley Paul Sutton

and

Simto Australia.

No. 122 of 1997.

CHIEF COMMISSIONER W.S. COLEMAN.

9 February 1999.

Order.

HAVING heard Mr P Sheiner (of Counsel) on behalf of the applicant and Ms M Saraceni (of Counsel) on behalf of the respondent; the Commission having determined that the applicant was unfairly dismissed and that re-employment is impracticable hereby orders, pursuant to the powers conferred under the Industrial Relations Act, 1979 —

THAT within 28 days of the date of this order, the respondent pay the applicant the amount of $9,300 for compensation for loss and injury.

(Sgd.) W.S. COLEMAN,
[L.S.] Chief Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Gek Lian Tan

and

Paris & Chrissie Kafetzis t/a Gabriels' Café.

No. 1842 of 1998.

COMMISSIONER S J KENNER.

12 February 1999.

Reasons for Decision.

(Given extemporaneously at the conclusion of the proceedings, taken from the transcript as edited by the Commission)

THE COMMISSIONER: This is an application pursuant to section 29(1)(b)(i) of the Industrial Relations Act, 1979 ("the Act") by which Ms Gek Lian Tan ("the applicant") claims that she was harshly, oppressively and unfairly dismissed by Gabriels Café ("the respondent") on or about 21 September 1998.

At the outset I note that the notice of application and the notice of answer in this matter describes the respondent as Gabriels Café which is a trading name, with the proprietors of that business being Mr and Mrs P Kafetzis. I am satisfied that the applicant has merely misdescribed the respondent, rather than the application having been brought against the wrong respondent. For that reason, the notice of application and notice of answer can and should be amended and I so order.

Facts

The background to this matter is straightforward and is essentially as follows. The applicant was employed by the respondent as a counterhand in the period on or about 5 August 1998 to on or about 22 September 1998. The respondent is a café/restaurant business. The applicant says that she was employed on a full-time basis and her hours of duty on commencement were approximately 15 hours per week which about one week thereafter, increased to about 30 hours per week. The applicant says she was paid $11.00 per hour for each hour worked. The applicant says that her employment was terminated not because of any reason connected with her work performance but because of her unavailability to continue work commencing on 21 September 1998 and continuing to 22 September 1998 by reason of illness.

The applicant says that she attended for work on Monday 21 September 1998 but shortly thereafter complained of feeling unwell and left work at about 10.00 am that morning. I should observe that earlier that morning, the applicant said she rang the respondent's business at about 7.30 am to complain that she felt unwell, but attended work nonetheless.

The applicant then said that on the morning of Tuesday 22 September 1998 she still remained unwell. The applicant said that at approximately 7.30 am that morning, she telephoned the restaurant and spoke to Mrs Chrissie Kafetzis, a partner in the respondent's business, to tell her she would not be able to attend work that morning. The applicant testified that she told Mrs Kafetzis that the reason she was not attending work was because she was still ill. I pause to observe that the applicant tendered in evidence by way of exhibits A1 and A2, medical documents. Exhibit A1 was a medical certificate from the Kiara Family Practice regarding an absence by the applicant for a "medical problem" from 21 September 1998 to 23 September 1998 inclusive. Exhibit A2 was a note from the doctor to the same effect.

In relation to the telephone discussion which occurred on Tuesday morning 22 September 1998, the applicant said that Mrs Kafetzis said words to the effect that "the respondent needed someone more responsible and that the respondent would have to let the applicant go". The meaning of those words and the effect of the conversation are controversial in this matter.

The applicant said that she took the telephone conversation to mean that her employment with the respondent had come to an end there and then and she had been dismissed. The applicant made no further contact with the respondent after that telephone discussion.

The applicant also testified that during the course of her employment she had some time off work to attend to personal matters totalling about two days, apart from the absences for her illness to which I have just referred.

On behalf of the respondent, Mr Kafetzis said that the applicant was employed on a casual basis, and the hours worked by the staff were based upon client demand. The respondent said that all employees, including the applicant, were paid a rate of $11.00 an hour.

The respondent said that during the course of the applicant's employment, the applicant had a number of absences from the workplace for personal reasons. Mr Kafetzis further testified that on other occasions, the applicant requested that she go home as she had felt unwell but was urged to and in fact did remain at work as the respondent was concerned she would not get paid if she went home.

As to the controversial events which commenced on or about Monday 21 September 1998, Mr Kafetzis said that at no time did he tell the applicant that her employment was terminated as a result of the telephone call between the applicant and Mrs Kafetzis. It was his view that after that telephone contact, the applicant simply failed to report for duty the next day, as he expected the applicant to do. I should observe that Mrs Kafetzis did not give evidence in the proceedings, as only Mr Kafetzis attended at the hearing. To that extent, the respondent's evidence, at least in relation to the telephone discussion on 22 September 1998, was not the best evidence.

However, I should observe that Mr Kafetzis did say in evidence that it was the decision of the respondent that in any event, by reason of the number of absences the applicant had in the previous weeks, that the applicant would be replaced. It was the respondent's evidence that this would occur once the applicant had returned to the workplace and the applicant would be given due notice of termination of employment. Mr Kafetzis emphatically denied that the respondent intended, by the events of 22 September 1998, to dismiss the applicant.

Issues and Findings

The issue which arises immediately for determination in this matter is a jurisdictional question and that is whether, for the purposes of s 29(1)(b)(i) of the Act, there has in fact and law been a dismissal to attract the Commission's jurisdiction.

The applicant bears the onus of establishing there was a dismissal. Having done so, it is also incumbent upon the applicant to establish that in all the circumstances and having regard to the relevant legal principles, which require me to consider whether the applicant has been given a fair go all round, the applicant has been harshly, oppressively and unfairly dismissed.

Also, to the extent there was a conflict in the evidence between the applicant and Mr Kafetzis, I prefer the evidence of Mr Kafetzis. At times, I found the applicant somewhat evassive in her answers to questions and reluctant to make concessions that may harm her case.

Having stated the issues for resolution, I now turn to my findings in this matter and they are as follows. On the evidence that has been adduced I am satisfied and find the respondent engaged the applicant as a counterhand, to commence on or about 5 August 1998. I also find that on the basis of the evidence, it was agreed that the applicant would work on a regular basis, Monday to Friday each week, with working hours being 8.00 am to 2.00 pm, that being approximately 30 hours per week. In the first week of the applicant's employment, it was agreed that during what in effect was a trial period, the applicant would work from 8.00 am to 12.00 noon each day. I am also satisfied on the evidence and find that the applicant did, during the course of approximately 6 weeks of employment, have a number of absences from the workplace to attend to personal matters.

As to the other terms and conditions of employment, it is not necessary for me to find precisely what they were but it appears to me from the evidence that the applicant's employment would have been more likely than not, governed by the terms of the Restaurant, Tearoom and Catering Workers Award, R48 of 1978 ("the Award"). The Award applies to businesses such as the respondent and contains a classification of counterhand. Given the hours of work and the rate of pay agreed, I also consider it more likely than not that the applicant was engaged on a casual basis, although a conclusive finding on this issue is not necessary for the determination of the claim.

Turning to the events that are really in contest in this matter, I find that on Monday 21 September 1998, the applicant did telephone the respondent and advised the respondent that the applicant was feeling ill that morning. I find on the evidence that subsequently, the applicant did attend for work that morning but did not really perform her duties and shortly thereafter, at about 10.00 am, left the workplace.

I also find that the next day, that being Tuesday 22 September 1998, the applicant rang the respondent at or about 7.30 am in the morning and spoke to Mrs Kafetzis about her inability to attend for work again that morning. I accept that during the course of that telephone discussion, that the applicant said that she was not attending work because she was still feeling unwell, but I also find that it was also said during that telephone conversation that the applicant said words to the effect "this would not happen again". The significance of this is matter to which I return later in these reasons.

There is, as I have said, some contest on the evidence in relation to what was said during this telephone call with the applicant's version of the events being that she was told that

the respondent needed a person more responsible and in view of that the respondent "would have to let her go". The respondent's version of the events, albeit, through the evidence of Mr Kafetzis, was that the applicant was told she needed to be more responsible and the respondent would "not be able to keep the applicant on". Mr Kafetzis said he was standing next to his wife when the telephone call took place and he heard what his wife said. For the reasons noted earlier, I prefer Mr Kafetzis's version of these events.

Furthermore, I also find that although the respondent expected the applicant to attend for work the next day, the applicant did not do so and that furthermore, following the telephone conversation which took place on the Tuesday morning, there was no further contact by the applicant with the respondent. Based upon the evidence given by Mr Kafetzis however, I do find that following the telephone conversation which took place on that Tuesday morning that the respondent had made a decision that it was going to replace the applicant because of concerns regarding the applicant's reliability, and in fact did so on the evidence, about one week later. I also find that it was the intention of the respondent that after the applicant was expected to return to work on Wednesday 23 September 1998, that the applicant would be given notice of the respondent's intention to terminate the applicant's employment.

Conclusions

I turn now to my conclusions in the matter. As I have said, the onus is on the applicant to establish the jurisdictional facts upon which the claim relies, that the applicant was dismissed by reason of the telephone conversation that took place on the Tuesday morning of 22 September 1998. Having heard the evidence and having considered this matter, acknowledging that the respondent's evidence was not the best evidence as to what was said on the telephone from the respondent's view, I accept the respondent's version of the events of what transpired that morning, that it was not the respondent's intention that the telephone call that morning, be of itself a dismissal.

Whilst it may well have been the case that the applicant was advised of the respondent's concerns that the applicant was not responsible and would not be able to be kept on by the respondent, this is a different proposition to the effect of the telephone call itself being a dismissal. I am not satisfied on the evidence, that as a result of that telephone call, the applicant was, in fact, dismissed. Even accepting the version of events as outlined by the applicant, the words said to have been used by Mrs Kafetzis are not words of actual dismissal in my view. For there to be a dismissal or a resignation, clear and unambiguous words are to be used and if they are not, there may be a requirement for either party to the contract of employment to clarify the other's intentions.

This conclusion is also consistent with Mr Kafetzis's evidence as to the decision taken by the respondent following the telephone discussion. Also it is passing strange that in view of that telephone call the applicant did not seek to clarify the position with the respondent as to her employment status, either during the course of the telephone discussion or at any time subsequently.

I note also on the evidence that at no stage did the applicant attempt to contact the respondent following the events of Tuesday 22 September 1998 to provide to the respondent the medical certificates that are exhibits A1 and A2. Nor did the applicant return the respondent's uniform which the applicant retained in her possession, or follow up any entitlements she may have had which one would have thought would follow, if the applicant had the view that the employment was at an end following the telephone discussion.

Therefore, in my view on all of the evidence, I am not satisfied on the balance of probabilities that the applicant was dismissed as she says she was in order to attract the Commission's jurisdiction in this matter.

In the alternative, even if the applicant was dismissed for the purposes of s 29 of the Act, I am far from convinced, based upon the evidence and findings that I have made that dismissal would have been unfair in any event. Over the short period of the applicant's employment, which was some six weeks, the applicant had approximately one week of absences.

In my view, from that evidence, there clearly was an issue both in the mind of the respondent and indeed in the mind of the applicant, as to her reliability to attend for and remain at work. This is demonstrated somewhat in my view, in the evidence of the applicant's comment to Mrs Kafetzis during the course of the telephone call on the morning of Tuesday 22 September 1998, "that this would not occur again". In my opinion, an inference is open on the evidence that the applicant herself knew there was an issue regarding her reliability.

Having considered all of the circumstances, I am of the view that the application should be dismissed and I so order.

APPEARANCES: The applicant appeared in person

Mr P Kafetzis appeared on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Gek Lian Tan

and

Paris & Chrissie Kafetzis t/a Gabriels' Café.

No. 1842 of 1998.

COMMISSIONER S J KENNER.

26 February 1999.

Order.

HAVING heard Ms G L Tan on her own behalf and Mr P Kafetzis 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.) S.J. KENNER,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Theodore Wade

and

Kyle's Cafe.

No. 889 of 1998.

COMMISSIONER S J KENNER.

16 October 1998.

Reasons for Decision.

THE COMMISSIONER: At all material times Theodore R Wade ("the applicant") was employed by Kyle's café ("the respondent"). The applicant alleges he was employed as head chef of the respondent from 14 April 1998 to 17 May 1998. The applicant says that he was constructively dismissed by the respondent on or about 17 May 1998, when the respondent is alleged to have indicated that it proposed to reduce by half the applicant's salary and working hours. The applicant now seeks relief by way of an application pursuant to s 29(1)(b)(i) of the Industrial Relations Act, 1979, ("Act"), alleging that he was harshly, oppressively and unfairly dismissed by the respondent. The applicant does not seek reinstatement but instead, seeks compensation for the unfairness of the dismissal.

Background

A preliminary issue has arisen in this matter. The present proceedings arise out of what is alleged by the applicant to be an agreement to settle the applicant's claim, following a conciliation conference on 8 July 1998 before the Commission, pursuant to s 32 of the Act. The applicant says that the respondent agreed to settle the applicant's claim in terms that in consideration for the applicant discontinuing his claim and executing a deed of settlement and release, the respondent would pay to him the sum of $2000.00. The respondent denies

that there was an agreement arising out of the conciliation conference. It says that Ms Greatrex, the principal of the respondent, did not finally agree to the settlement but instead, thought that she had an opportunity to receive legal advice in relation to the terms as proposed by the applicant's agent. Moreover it is said that Ms Greatrex was in a state of agitation in relation to the proceedings and did not really appreciate what she was doing.

Facts

The applicant, Mr Wade, gave evidence of what he understood occurred at the conciliation conference before the Commission. He testified that he understood that the matter was settled and that the applicant's agent was going to draw up documents for the conclusion of the matter. In cross-examination, Mr Wade was however, unable to recall the words used by Ms Greatrex to indicate her final agreement or otherwise to the settlement proposal. It appears on the whole, that the applicant's recollection of Ms Greatrex's response was that the proposal was *"fair"*.

Evidence was also adduced by way of correspondence between the applicant's agent and Ms Greatrex, in relation to the outcome of the conference proceedings. By letter dated 8 July 1998 (exhibit A1) the applicant's agent wrote to Ms Greatrex, setting out the terms of what he understood to be the settlement. By facsimile of 13 July 1998 (exhibit A2), Ms Greatrex responded to the applicant's agent raising questions as to the terms of the draft deed enclosed with the letter of 8 July 1998. Furthermore, Ms Greatrex questioned the legal capacity of the applicant's agent to draft the deed, having regard to the provisions of the Legal Practitioners Act 1893. By letter dated 20 July 1998 (exhibit A3), the applicant's agent wrote to Ms Greatrex, attaching a modified draft deed and responding to her concerns regarding his legal capacity to prepare the draft deed. There is further correspondence dated 21 and 22 July 1998 (exhibits A4 and A5), passing between the parties, dealing with the same issues.

Ms Greatrex gave evidence on behalf of the respondent. She testified that it was her understanding that the purpose of the s 32 conference in the Commission was to discuss, in a preliminary way, the terms of the applicant's claim. She said that she attended that conference unrepresented, but had a friend with her. She further testified that she was both very nervous and anxious in relation to the conference proceedings, and did not fully appreciate what was taking place around her. Her evidence also was to the effect that whilst she acknowledged that the terms of the proposed settlement were discussed and were put to her, she understood that following the conclusion of the conference, she could seek advice in relation to what was proposed. In her evidence she said that she indicated at the conference that she wanted the matter all settled and that she had had enough of it. Ms Greatrex denied using the phrase *"that's fair"*, it not being a turn of phrase she used.

Ms Greatrex further testified that she did not understand or expect that there would be any final agreement arising out of the conference proceedings. She said that when she received the draft deed, forwarded to her by the applicant's agent, she had great concerns about both the terms of the proposed deed and secondly, the capacity of the applicant's agent to draw up a document of that nature. She maintained that there was no final agreement arising out of the conference, and that the terms of the proposed deed and the applicant's agent's authority to prepare it, compounded her overall concerns in relation to the matter.

Law

In the case where parties to proceedings settle or compromise the proceedings prior to or during the hearing of the claim or matter, the settlement is a new agreement between the parties and may be enforced like any other contract*: Halsbury's Laws of England* 4th Ed para 391.

Further, it is undoubtedly the case, that given the nature of the Commission's jurisdiction, where agreements are reached in conciliation proceedings, parties should not be able to renege on the terms of their settlement. As has been observed by the Commission, given that one of the fundamental objects of the Act is resolution of disputes by conciliation, parties should be held to their bargain arising out of conciliation proceedings: *Foley v G&J Reely School of Dancing Pty Ltd t/a Arthur Murray School of Dancing* (1996) 76 WAIG 4342; *MacLeod v Paulownia Trees Pty Ltd* (1997) 78 WAIG 1057. However, the circumstances in the instant case are different to those in the cases just cited. In both *Foley* and *MacLeod*, it was common ground that there was an agreement reached between the parties to the conciliation proceedings before the Commission. The question in both of those cases, was whether the respondent should have been held to its bargain.

Was There An Agreement?

In the circumstances of this case, it is in contest that there ever was *consensus ad idem* on the matters the subject of the alleged agreement. Furthermore and alternatively, the respondent's agent argues that even if there was an agreement reached arising from the conference, which it denies, that Ms Greatrex was in such a state that any agreement was reached in circumstances of duress.

It is a fundamental principle of contract law, that for an agreement to be concluded, the parties must be truly *ad idem* as to the terms of the bargain. Furthermore, the terms of the agreement must be sufficiently certain and complete to enable the agreement so reached, to be enforced at law*: Contract Law in Australia* Lindgren et al at para 258.

In this matter the issue is whether there was an agreement. In the absence of clear evidence from which it can be held that such was the case, then it is not open in my opinion, to conclude that there was the necessary *consensus ad idem* to bind the respondent in this case. It is clear on the evidence, that at least as far as the applicant was concerned, a proposal was put and was taken by the respondent, to be fair for the purposes of settling the applicant's claim. However, the circumstances surrounding Ms Greatrex's acceptance or otherwise of the proposal, are far from certain or conclusive. Ms Greatrex's evidence, which I accept, was that she did not consider that at the conclusion of the conference the terms of the proposed settlement were in any way binding on her. Also, there is no evidence that she unambiguously accepted the applicant's offer. Moreover, it is also established on the evidence that one of the essential elements of the proposed settlement, that being the execution of a deed of settlement and release, never occurred. The terms of the proposed deed were in dispute between the parties and that dispute was not resolved. Arguably, on this basis alone, it could be said that in law that there was never any final agreement reached, it being a condition of settlement that an appropriate deed be drafted and executed.

Conclusion

For all of the above reasons in my opinion, it cannot be said that there has been a final agreement reached in this matter and I so find. In view of this conclusion, it is unnecessary for me to deal with the respondent's other argument that the agreement was reached in circumstances of duress.

APPEARANCES: Mr T Crossley appeared as agent on behalf of the applicant.

Mr P Fitzpatrick appeared as agent on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Gary Walker

and

Queststyle Pty Ltd.

No. 1473 of 1998.

COMMISSIONER P E SCOTT.

15 February 1999.

Reasons for Decision.

Extempore

THE COMMISSIONER: The Applicant claims that he has been harshly, oppressively or unfairly dismissed from his employment with the Respondent. The background to this matter

includes that for approximately 8 years prior to his taking up employment with the Respondent, the Applicant was successfully engaged in his own business of painting, decorating and design. He also has experience in coordinating construction jobs, mainly of a domestic renovation or extension nature, but also including industrial and commercial work.

In early 1998, in his capacity as a subcontractor, the Applicant was undertaking work for Mr George Ongarezos who was the Managing Director of the Respondent. The Applicant and Mr Ongarezos discussed the Respondent's need for competent supervision at the Respondent's Radisson Resort construction project at Dunsborough and Ongarezos' view that the two existing supervisors were not doing an adequate job.

Ongarezos was impressed by the Applicant and offered him a job as supervisor. After some encouragement and assurances that he could have a job for life, either if he proved himself or if things worked out, and with Ongarezos advising the Applicant of future projects which the company was interested in at Applecross, East Perth and Geraldton, the Applicant and Ongarezos negotiated terms for his employment. These were a salary of $60,000 per annum, a car, expenses and superannuation. The Applicant was also advised that there was the prospect of a salary of $96,000 per annum based on the salary of another such supervisor.

The Applicant says that one month's trial from both sides was agreed, although Ongarezos says that it was to be a three month trial. The Applicant says that if both sides were happy at the end of the trial period, he would continue in his employment and he would dispose of his business. He took a short time prior to commencing employment to finalise other work that he had, and he commenced on 2 April 1998.

The Applicant says that he arranged with Ongarezos that he would take leave in July, as he already had a holiday booked and he says that his holiday arrangements were known to Ongarezos and to the office staff prior to his going on leave.

After a couple of weeks' work, Ongarezos was very satisfied with the Applicant's performance and he has given evidence to that effect. The Applicant disposed of the major plant he held for conducting his business and he referred work for others to complete.

The Applicant has given evidence that there were problems associated with his work due to his relationship with Pascual Porter, the Respondent's project construction manager for that job. The Commission has heard evidence of a number of matters which the Applicant says were problems.

On 3 July 1998, the Applicant was due to go on his week's pre-arranged annual leave. He was approached by Porter who appeared upset that the Applicant had not informed him of his leave arrangements. The Applicant protested, saying that Ongarezos and the office staff knew about it. Porter said that the timing of the leave was inappropriate and asked the Applicant what he would do when he got back. Porter was due to finish at that project on 17 July 1998 and he says that there was no further work for the Applicant. The Applicant said that he would go to work in the office; that Ongarezos had told him there were numerous other jobs he could do if there was no other work.

The Applicant returned to Perth that afternoon and on his arrival his wife informed him that the Respondent's office administrator, Mrs Daisy Chan, had left a message asking him to call. He did so, inquiring about the pay he had not received that week. She told him that she had his holiday pay, his wages and an Employment Separation Certificate. The Applicant asked if he had been sacked, to which Chan is said to have asked "Has Porter not told you?" and the Applicant said "No." She told him he would need to return the car and he said she'd need to send someone to collect it and to bring his pay. Later that evening, another employee of the company arrived, gave him the cheque for his pay and took the car.

The Applicant has given evidence of his loss and his efforts to find work to mitigate that loss.

The Respondent says that there had been a number of delays and problems associated with the job at Dunsborough. Ongarezos says that by July those problems had become critical. The client paid less than a quarter of the amount owed to the Respondent and this left the Respondent in considerable financial difficulty. It has negotiated settlements with the great bulk of its subcontractors but it appears that there is still disputation associated with that project.

Practical completion of that project was scheduled for 17 July 1998. The hand-over to the client took place on that date. However, there was still three to four weeks of finishing and rectification work on that site.

The Respondent says that it has no complaint with the Applicant's performance of his work, but that his employment terminated because the Respondent had no further work for him; that following its financial difficulties arising from the Dunsborough project, it has been involved only in following up matters associated with that project and has had no work for the Applicant in that follow-up process. The Applicant has not demonstrated that the Respondent applied an unfair process or wrongly chose others to remain to do that follow-up work.

The Respondent says that it has had no further work since that project; that it has not been able to proceed with projects it had hoped to develop, and that on 29 September 1998 the Respondent ceased trading and is in the process of being wound up. The Respondent also says that everyone knew that the project at Dunsborough was coming to an end and has given evidence of employees associated with that project either ceasing employment or being employed elsewhere.

Ongarezos says in his evidence that he played no part in the Applicant's termination of employment. He was away at the time. He says it was Porter's decision. Porter says he does not know who made the decision to terminate the Applicant's employment.

I have considered all of the evidence in this matter, and I make the following findings. The Applicant agreed to enter into employment with the Respondent, and to cease operating his own successful business, based on representations made on behalf of the Respondent. Those representations led the Applicant to reasonably believe that he had a long term future with the Respondent, even if "employment for life" might be an unreasonable expectation.

I am satisfied from hearing and observing the Applicant that he would not have given up his business without a reasonable expectation of long term employment. There is no evidence that the Applicant was aware at any time up until the afternoon or evening of 3 July 1998, the day of his employment terminating, that his employment was linked only to the Dunsborough project; he had good reason to believe he would continue beyond the completion of that job.

The construction industry is one where employees are usually engaged to work only on a particular job, and they can reasonably expect that at the end of that job, unless the employer has another project on which to offer them work, that their employment will end. For employees working on the tools and undertaking the physical work, notice is usually fairly short, on the basis of everyone's knowledge that the job is soon to come to an end, either because of a known end date or because they were employed to complete a particular aspect of the work. This was not the case with the Applicant; he had been given good cause to believe that his employment would go beyond this particular project. It was an expectation of long-term employment which caused him to give up his own business.

However, there is no evidence that when Ongarezos offered the Applicant a job that Ongarezos knew that the Respondent would be ceasing to operate within a few months. The Respondent has, due to serious financial difficulties arising from the Dunsborough project, no further work to offer the Applicant.

I note that, whatever any other company may have done beyond the point of the Respondent ceasing work at the Dunsborough project, and whatever the conduct or intentions of the persons who were involved in the Respondent's business or who were involved with any other company and what they may have done subsequently, the Commission can only deal with the claim by the Applicant insofar as it relates to his employment and dismissal by the Respondent; it cannot deal with any other matters which may be associated with other companies.

Based on the Respondent's inability to provide further work to the Applicant, perhaps beyond one week after he was due to return from holidays, that is, until 17 July 1998, the Respondent had good cause to terminate the Applicant's employment.

However, I find that the Respondent has harshly and unfairly treated the Applicant in a number of aspects. Having led the Applicant to believe that he was entering into secure employment, the Respondent failed to give the Applicant any forewarning that his position was not secure. It terminated his employment in a manner that was harsh, in that he was told of his termination over the telephone, on the evening of his going on leave, with payment for one week's pay in lieu of notice and without any explanation. Neither his immediate superior, Porter, nor his ultimate employer, represented by Ongarezos, advised him of any prospect that his employment was to terminate.

Accordingly, I find that the Applicant has been harshly and unfairly dismissed from his employment with the Respondent. As the Respondent has ceased to trade and is being wound up, there is no prospect of re-employment or reinstatement.

Accordingly, the Commission is to consider compensation for loss. I note the decision of the Industrial Appeal Court in *Gilmore and Cecil Brothers (78 WAIG 1099)*, and I note the decisions of the Full Bench of this Commission in *Capewell and Cadbury Schweppes (78 WAIG 299), Simons and Ismail Holdings (78 WAIG 2332), Smith and CDM Australia Pty Ltd (78 WAIG 307)*, and *Bugonovic and Bayside WA Pty Ltd (79 WAIG 8)*, and decisions of the Australian Industrial Relations Court in *Nicholson v Heaven and Earth Pty Ltd (126 ALR 233)* and in *May v Lilyvale Hotel (61 IR 112)* as to the approach to be taken in the assessment of loss and the awarding of compensation.

The Applicant's loss to date might be said to be the loss of salary and benefits, being approximately 7 month's pay, less the amounts he has earned. They include a total of $12,000, (of which approximately $3000 was the cost of materials) for a particular painting job, and also the income the Applicant has earned from his recent employment.

However, I refer to the reasons for decision of his Honour Wilcox CJ in *Nicholson v Heaven and Earth Gallery Pty Ltd* (supra), particularly at page 246, where his Honour said, in referring to the Workplace Relations Act—

> "In assessing compensation for a breach of section 17ODC, it is appropriate to consider what would have been likely to occur if the breach had not occurred. It should not be assumed that the employee would have been dismissed anyway. Such assumption ignores the rationale of procedural fairness and every day experience that decision makers often change their minds when presented with another side of a case. It devalues the point of section 17ODC to the point of redundancy. On the other hand, it would be unrealistic for a court automatically to assume that if the employer had complied with the section of the Workplace Relations Act, the employee's employment would have continued indefinitely."

I also refer to the reasons of Kenner C in *Bugonovic and Bayside Western Australia Pty Ltd* (supra) at page 13, where he says—

> "As to loss and injury, it is not the case that an Applicant who has been found by the Commission to have been unfairly dismissed and who is to be awarded compensation is automatically entitled to an award of compensation for loss representing the loss of wages or salary from the date of dismissal to the date of hearing. That may be the ultimate outcome after findings are made and an assessment by the Commission as to the quantum of compensation, having regard to section 26 of the Act, and factors such as the employee's duty to mitigate his or her loss.
>
> All of the circumstances of the case need to be considered. For example, it well may be that despite the Commission's findings that the dismissal was harsh, oppressive or unfair, it was characterised as such by reason of the manner or process leading to the dismissal rather than the substantive reasons for the dismissal itself in the sense in which that principle was referred to in the Shire of Esperance v Mouritz.
>
> In such a case, it may be open to find as a fact on the evidence that the unfairly dismissed employee could have been fairly dismissed by the employer shortly after the actual dismissal in any event. In such a case as this, it would be open to the Commission to find that the unfairly dismissed employee's loss is limited to that period between the date of the employee's actual dismissal and when he or she could have been fairly dismissed in any event."

In determining compensation, the Commission is to take into account all of the circumstances of the case. In this case, the Respondent did not have work for the Applicant, and I have found that the Respondent had cause to terminate the Applicant's employment for reasons associated with the conduct of the business. The Applicant could have been fairly dismissed by the Respondent giving appropriate notice that the job was soon to conclude and that the Respondent had no further work for him. The Applicant was given only one week's pay in lieu of notice. I do not consider that to be adequate notice, bearing in mind the circumstances of his employment being the expectation created by his employer of long-term employment. Reasonable notice can be inferred from a range of factors, and I refer to the decision of the Full Bench *in Tarozzi and WA Italian Club (71 WAIG 2499)*.

The factors to be considered in this case include that the Applicant was in his position for only 3 months. He was employed in a lower management capacity in a company with a small staff complement. He was paid a salary and benefits of more than $60,000 per annum. His qualifications and experience in the construction industry are not questioned. His degree of job mobility up until that point had been very limited, he had a reasonable expectation of long-term employment, and I gather from his evidence about the period of time he has been engaged in the industry and when he commenced, that he is in his mid thirties.

In all of the circumstances, I assess the reasonable notice that the Respondent could have given in which to fairly terminate the employment of the Applicant at one month.

Accordingly, the Applicant is to be paid a further 3 weeks pay at the rate set out in Exhibit 12, that is $1153.85 per week, being a total of $3461.55. Payment is to be made within 21 days of today's date.

Order Accordingly,

APPEARANCES: The Applicant on his own behalf.

Mr O Moon on behalf of the Respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Gary Walker

and

Queststyle Pty Ltd.

No. 1473 of 1998.

COMMISSIONER P E SCOTT.

15 February 1999.

Order.

HAVING heard the Applicant on his own behalf and Mr O Moon 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 the Applicant the sum of $3,461.55 within 21 days of the 10th day of February 1999.

(Sgd.) P.E. SCOTT,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Judith Maria Wodcke

and

ABC 123 Home Services Pty Ltd.

No. 2189 of 1998.

19 February 1999.

Reasons for Decision.

(extempore)

THE SENIOR COMMISSIONER: This is an application brought pursuant to section 29(1)(b)(ii) of the Industrial Relations Act 1979 whereby the Applicant seeks to recover the sum of $334.30 comprised of $294.00 as unpaid wages and $40.30 as unpaid travel allowance.

The Applicant testified that she was employed by the Respondent, in effect, as a telemarketer, on the basis that she would be paid wages of $12.00 per hour and be paid 10 cents for each kilometre travelled in connection with her work. She worked for eight days and was paid for five of those days. The Applicant testified that she was not paid for the last three days of her employment, those days being the 29th and 30th September and the 1st October 1998 nor was she paid for mileage she travelled in the course of her employment. I accept her evidence in toto.

I am satisfied and find that at all material times she was employed by the Respondent, that it was a term of her employment that she be paid at the rate of $12.00 per hour and in addition, 10 cents for each kilometre travelled in the course of her work. I accept that she has not been paid that entitlement to the extent she says. Indeed, her evidence is that from time to time she made contact with the Respondent in an attempt to claim payment of the amount outstanding and each time was met with the response that payment would be made. The Applicant has now received a cheque from the Respondent for the amount claimed which can be taken as an admission from the Respondent that the monies are due.

In the circumstances I find that the Applicant has been denied a benefit under her contract of employment totalling $334.30 as she claims.

Appearances: Mrs J. M. Wodcke in person.

No appearance on behalf of the Respondent.

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WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Judith Maria Wodcke

and

ABC 123 Home Services Pty Ltd.

No. 2189 of 1998.

19 February 1999.

Order.

HAVING heard the Applicant in person 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 Respondent pay to the Applicant the sum of $334.30 as payment of a benefit denied to the Applicant under her contract of employment with the Respondent.

(Sgd.) G.L. FIELDING,
[L.S.] Senior Commissioner.

SECTION 29 (1) (b)—Notation of—

Applicant	Respondent	Number	Commissioner	Result
Alderson S	Mr Bernie Ornig—Execucom Technologies	76/1999	Gregor C.	Dismissed
Barker RJ	Kuredale Pty Ltd	2127/1998	Fielding SC	Discontinued
Bates Y	Langtree's	53/1999	Fielding SC	Withdrawn
Bernay A	Computronics Corporation	2230/1998	Gregor C.	Consent Order
Blake TM	Alpha Corporation Pty Ltd ACN 074 225 915 T/A Skadada	1978/1998	Cawley C.	Discontinued
Blake P	Veritas DGC Aust Pty Ltd	1949/1998	Fielding SC	Reinstated
Boyling AD	Galaday Nominees Pty Ltd t/a Cino to Go	79/1999	Beech C.	Discontinued
Burnie R	Eagle Aircraft Pty Ltd	283/1998	Scott C.	Dismissed
Burrows JD	Shire of Esperance	1590/1998	Fielding SC	Discontinued
Campbell-Clause T	Microfusion Pty Ltd	1465/1998	Fielding SC	Discontinued
Carter PL	Westpoint Constructions Pty Ltd	2113/1998	Scott C.	Dismissed
Clowser T	Westphalia	2085/1998	Fielding SC	Dismissed
Cox MK	Messenger Post-Australia Post	2149/1998	Cawley C.	Discontinued
Cramer LJ	Coogee Chemicals Pty Ltd	1163/1998	Gregor C.	Dismissed
Cresswell N	Kalgoorlie Ex-servicemen's Memorial Club Inc.	2034/1997	Beech C.	Discontinued
Cross MS	Quick Corporate Aust Pty Ltd	2209/98	Kenner C.	Discontinued
Dalton KL	Tupperware Australia Pty Ltd and Sovereign Sales Pty Ltd	1961/1998	Scott C.	Dismissed
Davey JM	Panorama Resources NL & Another	678/1998	Fielding SC	Discontinued
Dickie DF	Wesley College of Uniting Church Inc	1983/1998	Beech C.	Discontinued
Down C	Argyle Diamond Mines Pty Ltd	1725/1998	Fielding SC	Dismissed
Elkin R	Geoff Macaulay	2223/1998	Gregor C.	Discontinued
Ellis T	Topaz Promotions (Elena Moriarty)	63/1999	Fielding SC	Discontinued
England JA	Houghton R	2067/1998	Fielding SC	Consent Order
Firman AM	Derrick Nichols Temp Team	2151/1998	Kenner C.	Discontinued
Fisher H	Foodland Associated Limited & Another	1378/1998	Beech C.	Discontinued

Applicant	Respondent	Number	Commissioner	Result
Fitgerald S	BHP Iron Ore Pty Ltd	2044/1998	Fielding SC	Discontinued
Fitzpatrick KA	Baulderstone Clough Joint Venture	2165/1998	Fielding SC	Dismissed
Fontana A	Signlite Australia (Fleurice Nominees Pty Ltd)	2057/1998	Scott C.	Withdrawn
Gemmill D	Golden Health Studio	2281/1998	Scott C.	Dismissed
Gibbs LW	Looma Community Inc.	1864/1998	Fielding SC	Discontinued
Gribble E	Eileen and Doug Krepp	74/1999	Gregor C.	Dismissed
Halse CA	Mining and Resource Contractors	80/1999	Fielding SC	Withdrawn
Harris IP	Eurest Australia Subsidiary SHRM Pty Ltd	1947/1998	Scott C.	Dismissed
Harvey A	Tussle Pty Ltd t/a Raunchy Promotions	1732/1998	Beech C.	Discontinued
Hembrow S	Tonesports t/a B.C. Body Club	1891/1998	Gregor C.	Discontinued
Herbert AJ	TG Garage Doors	2105/1998	Fielding SC	Discontinued
Higgins SP	Brigan Pty Ltd T/A Gosnells Hotel	477/1998	Scott C.	Dismissed
Holland BJ	Theiss Contractors Pty Ltd	2147/1998	Fielding SC	Stayed
Holloway VR	Jamsan Security Patrols	1726/1998	Fielding SC	Dismissed
Hutchings DP	Lush Gro Nursery	2092/1998	Kenner C.	Discontinued
Ilomanoski M	Civil and Mechanical Maintenance Pty Ltd	1991/1998	Gregor C.	Dismissed
Jackson J	Moora Seed Works	2161/1998	Kenner C.	Discontinued
Janotka M	Ormston Holdings Pty Ltd T/A Paddicks Suit Hire	1795/1998	Beech C.	Discontinued
Jay EW	Harnischfeger of Australia Pty Ltd	1620/1998	Scott C.	Dismissed
Jemetz A	Resource Recycling Technologies Pty Ltd	1907/1998	Beech C.	Discontinued
Jewell J	Safety Holdings P/L Trading as Farmer Jacks	1966/1998	Scott C.	Dismissed
Kent M	Dow Digital	1549/1998	Beech C.	Discontinued
Kinsella AS	M & B Sales Pty Ltd	1851/1998	Fielding SC	Withdrawn
Kovacs JJ	Cable Layers WA Pty Ltd	1985/1998	Fielding SC	Discontinued
Landymore-Lim AEN	The Australian Medical Association	1875/1998	Cawley C.	Discontinued
Lanza G	Hatakusi Pty Ltd	1626/1998	Beech C.	Discontinued
Leske WP	Bansu Pty Ltd t/a Electables (WA)	2275/1998	Kenner C.	Discontinued
Lim MJ	Harvey Fresh (1994) Ltd	1914/1998	Beech C.	Discontinued
Limawan W	Australian Cable and Telephony Pty Ltd	1621/1998	Gregor C.	Dismissed
Lowry M	Dealand Holdings Pty Ltd T/A Ray White Sorrento	1771/1998	Gregor C.	Consent Order
Mason G	Shack & Kerr Mtrs Pty Ltd	2008/1998	Scott C.	Dismissed
Marter JL	Nigel Farrier Pty Ltd	1571/1998	Parks C.	Discontinued
McCallum M	The Partners—Healy Edgar	2035/1998	Beech C.	Discontinued
McFlinn GL	Creative Wardrobe Co.	1141/1998	Gregor C.	Dismissed
McKellar G	Baulderstone Clough Joint Venture	2166/1998	Fielding SC	Discontinued
McKeown R	Mandurah Terrace Restaurant	1724/1998	Beech C.	Discontinued
Middlemass C	E Duggan	2095/1998	Fielding SC	Discontinued
Mills M	Melrose Hair Sensation—Allan & Denise Beard	2181/1998	Parks C.	Discontinued
Murray RS	BGC (Australia) Pty Ltd T/As BGC Premix	1000/1998	Scott C.	Dismissed
Napoli RA	Kamel Lebeidi t/a Sugar Gum Restaurant	1778/1998	Beech C.	Consent Order
Nguyen TD	Dr Ananda Krishnan—Kelmscott Medical & Dental Centre	2182/1998	Beech C.	Discontinued
Noetzel LA	Water & Rivers Commission	1863/1998	Scott C.	Dismissed
Panetta A	M & J Metals	1889/1998	Beech C.	Discontinued
Pemberton R	Callum Enterprises Pty Ltd	1965/1998	Parks C.	Discontinued
Plewright A	Kanga Pet Meats	2180/1998	Cawley C.	Discontinued
Price M	Gnanagara Ampol Road House	24/1999	Gregor C.	Consent Order
Prosser LM	Perth Aboriginal Medical Service	1822/1998	Parks C.	Discontinued
Purslow PR	Ivorystone Pty Ltd	5/1999	Gregor C.	Consent Order
Richards J	Hanford Pty Ltd	1877/1998	Beech C.	Discontinued
Ritchie G	Datapoint Nom t/a Non Ferrous	1930/1998	Kenner C.	Discontinued
Rooke AJ	AWL Pty Ltd T/A Perth Weekly	2261/1998	Scott C.	Withdrawn
Sapsford I	Carnarvon Medical Serv Aboriginal Corp	1702/1998	Fielding SC	Discontinued
Schneider KV	Potato Mkting t/a West Potato	2020/1998	Kenner C.	Discontinued
Shofield C	Panel Craft Automotive Supplies Pty Ltd	1578/1998	Scott C.	Dismissed
Smith AP	Kresta Blinds Ltd	2219/1998	Scott C.	Withdrawn
Smith M	CB Richard Ellis (WA) Pty Ltd	51/1999	Beech C.	Withdrawn
Steel AJM	Manpower Employment Agencies	1948/1998	Scott C.	Dismissed
Stuurman S	Commodore Homes (WA) Pty Ltd	1886/1998	Beech C.	Discontinued
Tallowin S	Morgan & Co Pty Ltd	57/1999	Gregor C.	Discontinued
Tasovski N	J Clinique	1967/1998	Kenner C.	Discontinued
Taylor J	Royal College of Nursing Australia	1302/1998	Beech C.	Discontinued

Applicant	Respondent	Number	Commissioner	Result
Therkelsen NP	Blue Star Products Pty Ltd	2208/1998	Fielding SC	Discontinued
Trigwell K	F.C. Couriers	62/1999	Gregor C.	Consent Order
Twigg S	Chestertone Holdings Pty Ltd t/a The Lord Forrest Hotel	2177/1998	Kenner C.	Discontinued
Uncle AJ	The Weekend Examiner	2003/1998	Fielding SC	Discontinued
Vucic N	Wetback Construction Pty Ltd and Another	2115/1998	Beech C.	Discontinued
Wade TR	Kyle's Café	889/1998	Kenner C.	Discontinued
Walmsley FR	Yarwan Pty Ltd	1927/1998	Gregor C.	Consent Order
Willcox N	Traffic Control Services	2159/1998	Cawley C.	Discontinued
Williams RS	Phoenix Holden	1319/1998	Beech C.	Discontinued
Winchester C	Innovation Trading Pty Ltd	1849/1998	Gregor C.	Consent Order
Wodcke JM	ABC 123 Home Services Pty Ltd	2189/1998	Fielding SC	Consent Order
Wragg J	Golden West Mining	14/1999	Parks C.	Dismissed
Wright MA	Silver Security	2162/1998	Cawley C.	Discontinued
Young MT	Gas Drive Systems Pty Ltd (Enerflex)	419/1998	Gregor C.	Discontinued

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

Cape Modern Joint Venture.

No. CR 27 of 1999.

COMMISSIONER S J KENNER.

18 February 1999.

Direction.

HAVING heard Mr G Sturman as agent on behalf of the applicant and Mr D Sproule as agent on behalf of the respondent the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby directs—

(1) THAT the applicant file and serve on the respondent particulars of the herein claim by 4 March 1999;

(2) THAT the respondent file and serve on the applicant its particulars of answer to the herein claim within 14 days of service on it of the applicant's particulars of claim.

(Sgd.) S.J. KENNER,
[L.S.] Commissioner.

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

G&G Steelworks.

No. CR 221 of 1998.

COMMISSIONER S J KENNER.

2 March 1999.

Reasons for Decision.

THE COMMISSIONER: This is a matter referred pursuant to s 44(9) of the Industrial Relations Act, 1979 ("the Act") for hearing and determination, by which the applicant claims that its member, Mr Ray Bonanno was harshly, oppressively or unfairly dismissed by G&G Steelworks ("the respondent") on or about 18 June 1998. The applicant, on behalf of Mr Bonanno, does not seek reinstatement but rather seeks an order of compensation from the Commission.

The respondent contested the applicant's claim and raised as a threshold issue, whether Mr Bonanno was dismissed at all.

Background

The respondent is a company engaged in structural steelwork fabrication primarily in the commercial building sector. Mr Bonanno had two periods of employment with the respondent, the first period being for approximately one week in October 1997 and the second period between on or about 6 February to 18 June 1998.

It is common ground that Mr Bonanno suffers from a medical condition known as obsessive, compulsive disorder ("OCD"). This is accompanied by associated systems of anxiety and depression. The disorder is apparently characterised by obsessional thoughts regarding matters at work and at home and leads in some cases, to compulsive checking behaviour being exhibited. Mr Bonanno is a qualified boilermaker by trade.

A series of events took place in the workplace between 16 and 19 June 1998 involving Mr Bonanno and the respondent's foreman, Mr Bradshaw, a director of the respondent, Mr Iuliano and the respondent's general manager, Mr D'Arrigo. Those events culminated in a letter from the respondent to Mr Bonanno dated 18 June 1998 accepting Mr Bonanno's "verbal resignation". That letter is exhibit A4.

The circumstances surrounding the departure of Mr Bonanno from the respondent's premises are entirely controversial.

Contentions

The applicant submitted that by reason of the respondent's conduct over the course of 16 to 19 June 1998, having regard to Mr Bonanno's medical condition, the respondent effectively forced the termination of the employment relationship, in circumstances such as to render the termination a dismissal and furthermore, a harsh, oppressive and unfair dismissal.

Counsel for the respondent argued that Mr Bonanno's medical condition was known to it and the respondent did have regard to it, both in terms of the work Mr Bonanno was performing with the respondent and the work environment. It was submitted by the respondent that by reason of commercial pressures facing the respondent's business, all employees were notified on or about 9 June 1998 by Mr Bradshaw, of the need for the employees in the workshop to improve production levels to meet customer demand and to generally focus on improvements in performance overall. The respondent argued that subsequent correspondence confirmed these issues. Furthermore, the respondent submitted that the events which

followed, including Mr Bonanno leaving the workplace and making abusive telephone calls to both Mr D'Arrigo and Mr Iuliano, evidenced Mr Bonanno's intention to no longer remain employed by the respondent. In those circumstances, counsel submitted that there was no dismissal to attract the Commission's jurisdiction. Alternatively, if there was a dismissal, by reason of Mr Bonanno's conduct, the dismissal was not harsh, oppressive or unfair.

It is the events of 16 to 19 June 1998 that are primarily in issue in this matter and it is to those events that I now turn.

Events of 16 to 19 June 1998

Mr Bonanno testified that approximately two weeks prior to his employment coming to an end, Mr Bradshaw commenced work as the new foreman for the respondent. He said that shortly after starting, Mr Bradshaw convened a toolbox meeting of the workshop employees. At that meeting, Mr Bradshaw said that there would be some changes in the workshop and the workshop production needed to improve. Other matters were discussed including safety and the general tidiness of the workshop operation. Mr Bonanno said that Mr Bradshaw had told the employees that the company was loosing clients and productivity had to improve to ensure that jobs were maintained.

Sometime later on or about 16 June 1998, Mr Bonanno said that he had a discussion directly with Mr Bradshaw about his work. He also said that Mr Bradshaw, earlier that morning, checked the job that Mr Bonanno was doing that day. During the course of that discussion on 16 June 1998, Mr Bradshaw told Mr Bonanno that whilst the quality of his work was very good, he needed to work at a faster pace and not spend as much time checking the work that he had done, as this was the responsibility of Mr Bradshaw as the foreman. Mr Bradshaw also told Mr Bonanno that he was concerned that Mr Bonanno had previously left the workplace without telling anyone and that he should either let him know or someone else know if he needed to leave work for any reason. Mr Bonanno's evidence was he understood what Mr Bradshaw had said to him in relation to these matters.

Shortly after this conversation, Mr Bonanno testified that he had a conversation with another employee, a Mr Greg Wilson, in the presence of a further employee named "Peter". Whilst neither Mr Wilson nor "Peter" were called to give evidence, Mr Bonanno said that he told them in words to the effect *"do you think it would be alright for me to take some time off to go and look for another job?"* (transcript p 33). Mr Bonanno's evidence was that this was directly as a result of his discussion with Mr Bradshaw immediately prior.

Mr Bonanno then went home that day without telling anyone and returned to work the next day 17 June 1998, at approximately 7.00 am. Shortly after starting work he went to see Mr Iuliano, a director of the respondent with whom Mr Bonanno had it seems, a close working relationship. During the course of that conversation, which on the uncontested evidence lasted some two hours, Mr Bonanno aired his complaints with Mr Iuliano, in particular his perception of his treatment by the new foreman, Mr Bradshaw. In cross-examination, Mr Bonanno conceded that Mr Iuliano raised a number of issues with him that he needed to address including the need to improve his productivity; to leave the work problems that needed to be resolved to Mr Bradshaw and the company as it was their job; and that he had to make an effort to get on with Mr Bradshaw as he was in charge of the workshop.

During the course of that conversation, Mr Bonanno said that he told Mr Iuliano if the company was not happy with his work that the company should dismiss him. When questioned further about this matter in cross-examination, Mr Bonanno conceded that he was unhappy in the workplace, but did not want to resign because he understood that he would lose his holiday entitlements. Mr Bonanno testified that he also told Mr Iuliano that he did not think that he would last more than another week or so with the respondent, because of the way he saw things going. Mr Bonanno said that he could not recall whether Mr Iuliano said to him that he should not make decisions on his own, but did recall that Mr Iuliano said matters should be brought to the attention of the foreman.

At the conclusion of that meeting, Mr Bonanno testified that it was agreed between he and Mr Iuliano that he would go home for the rest of the day as he was feeling stressed and suffering from anxiety as a result of the OCD. Mr Bonanno told Mr Iuliano that he would go home and come back in the morning refreshed and ready to start work again. Mr Bonanno denied that he indicated to Mr Iuliano at any time during this discussion, that he was considering or intended to resign from the respondent.

The next morning, on Thursday, 18 June 1998, Mr Bonanno attended work in the morning as usual. He saw Mr Bradshaw and apologised for what had happened previously to which Mr Bradshaw responded to the effect that they would discuss the matter later that day. Mr Bonanno was then given an urgent job to do, which occupied him for a couple of hours. Later at about 11.00 am, Mr Bradshaw asked Mr Bonanno to accompany him to the office as he had a letter for him. Mr Bonanno did so and was given a letter dated 18 June 1998 from Mr D'Arrigo that was described as a *"letter of warning"*. The letter, which was exhibit A3, made reference to previous discussions between Mr Bonanno, Mr Iuliano and Mr Bradshaw regarding his work performance. Formal parts omitted, that letter provided as follows—

> "CONDITIONS OF EMPLOYMENT WHICH ARE NOT BEING MET"
>
> "**LETTER OF WARNING"**
>
> Over the past few months your performance in your employment has been considered to be substandard, to the extent that this has had to be raised with you on several occasions.
>
> These discussions have taken place with John Iuliano and more recently with Craig Bradshaw.
>
> We require you to make a significant improvement in the following areas—
>
> 1. Improvement of time keeping.
> 2. Appreciate the objectives of this firm and do not replace them with you own objectives.
> 3. Try to be more productive.
> 4. Organise yourself to enable you to be more efficient in your work.
> 5. Make the commitment now to do better and to do as much as you can in a day.
> 6. Do not argue decisions that are made by management. Your responsibility is to carry out the work delegated to you in the best possible manner.
>
> This situation will be reviewed again by the 31 July 1998.
>
> If there has not been a significant improvement there may be no option for us other than to terminate your contract of employment.
>
> We hope that your performance will improve and that we can all work together for the benefit of the company on this matter".

Mr Bonanno said that when he received this letter he was very surprised and extremely upset. Mr Bradshaw asked him what he was going to do, to which Mr Bonanno replied he would take the letter to the union. Mr Bonanno said he was in a very bad temper and walked out of the workshop. He admitted he did so without telling anyone before he left.

After going home and calming down somewhat, Mr Bonanno telephoned Mr D'Arrigo. Mr Bonanno said he was very angry and admitted he was insulting and abusive in the call. He recalls that he told Mr D'Arrigo what he thought of the respondent in profane terms, that he would go and see his union, get some legal advice and take the company to court. Mr Bonanno denied however, using the word *"resignation"* during the course of that telephone conversation.

The next day on Friday 19 June 1998, Mr Bonanno said he received a further letter from Mr D'Arrigo to the following effect, formal parts omitted—

> "**RE: RESIGNATION**
>
> As per your telephone conversation on Thursday 18 June 1998 at 11.30 am with Mr Nunzio D'Arrigo – Manager, we have accepted your verbal resignation.
>
> Enclosed is your annual leave cheque owing to you, which consists of one day only.
>
> As you may well be aware your tools are still here, could you please pick them up personally at the reception."

Mr Bonanno had not gone to work that day and had not advised anyone of this.

A further telephone conversation took place on that day between Mr D'Arrigo and Mr Bonanno. Mr Bonanno said the conversation included the following: Mr D'Arrigo said, *"you resign". I said, "no. I want you to sack me. I'll be most – what you have done to me, I'll be mostly happy if you give me the sack and I want to get back on the track and look for another job as soon as I get back on my track"* (transcript p 45).

There was a further telephone discussion between Mr Bonanno and Mr D'Arrigo on that day and Mr Bonanno went to pick up his tools from the workshop on the following Monday, 22 June 1998.

It is notable that during the course of his evidence Mr Bonanno stated at least on two occasions, that given what he considered had occurred in the workplace, he had no intention of either remaining at or returning to employment with the respondent.

Mr Iuliano gave evidence on behalf of the respondent. He was a director of the respondent and had known Mr Bonanno for some time, from Mr Bonanno's previous period of employment in 1997. He gave evidence generally about what he understood to be Mr Bonanno's medical condition and the steps the respondent took to try and overcome Mr Bonanno's difficulties in the workplace. Mr Iuliano said that in relation to Mr Bonanno's second period of employment, whilst initially things went well, after a period Mr Bonanno started making too many decisions by himself and the level of production started to fall off. A new workshop foreman, Mr Bradshaw was appointed and shortly after he commenced he was told of the problems the business was having and the need for production levels to be improved in the workshop. Mr Bradshaw was directed to meet with the workshop employees and discuss these matters with them and did so.

Mr Iuliano gave evidence about the incidents where Mr Bonanno left the job without authorisation. He said that following Mr Bradshaw's discussion with the employees and the leaving the job incidents, Mr Bonanno came to see him. He said that Mr Bonanno wanted to have a talk and during that discussion said he wanted to "*finish off*". Mr Iuliano took that to mean Mr Bonanno wanted to leave the respondent's employment. During the discussion, it became clear that Mr Bonanno had no difficulty with the respondent, rather it was the new foreman, Mr Bradshaw that was the concern. Mr Iuliano said that during the course of this meeting, he raised with Mr Bonanno some of the problems the respondent saw with Mr Bonanno in the workplace, to which reference has already been made in Mr Bonanno's evidence. In relation to the foreman, Mr Iuliano said that he told Mr Bonanno that he had to try and work with him as he was in charge of the workshop operations. Mr Iuliano said there was no concern about the quality of Mr Bonanno's work, which he said, was perfect. Mr Iuliano appeared to have persuaded Mr Bonanno to stay with the respondent, as a result of this discussion.

Mr Iuliano said he had always told Mr Bonanno that given his medical condition, if he felt unwell he should tell someone and go home. Mr Iuliano gave evidence about the only other conversation he had with Mr Bonanno, which was a telephone discussion some four days later, where Mr Iuliano was abused by Mr Bonanno, following the events that had occurred at the end of the previous week. Mr Iuliano said he tried to get Mr Bonanno to calm down and to come into the respondent's premises to see him and discuss the matter, but because of the continued abuse, he hung up the telephone.

Evidence was also adduced from Mr Bradshaw to the effect that he spoke with the workshop employees and discussed the need to make changes, as the business needed to become more competitive to win work. He said he understood that Mr Bonanno had a medical condition and that he was to avoid placing Mr Bonanno under pressure, as he could not cope with it.

Mr Bradshaw gave evidence about his discussion with Mr Bonanno about checking his work and the need to improve productivity. He said he told Mr Bonanno that it was his job to check the work and that Mr Bonanno should focus on keeping the workflow moving. The next thing Mr Bradshaw knew was that Mr Bonanno had left the job again that day, which was Wednesday 16 June. The next morning, Mr Bradshaw saw Mr Iuliano who told him that he had a lengthy meeting with Mr Bonanno the previous day and that Mr Bonnano had then gone home for the rest of the day. Later that morning, Mr Bradshaw gave Mr Bonanno the letter of warning (exhibit A3). Mr Bradshaw said that he gave Mr Bonanno the letter and then sat down and discussed it with him. He said he went through it with Mr Bonanno point by point. Mr Bradshaw asked Mr Bonanno whether he understood what was being raised with him to whom Mr Bonanno replied that he did, but was going to "*get the matter sorted out*". Mr Bradshaw said the content of exhibit A3 was based upon matters raised by both himself and Mr Iuliano. Mr Bradshaw said he was later told that Mr Bonanno had again left the workshop premises without telling anyone. He did not speak to Mr Bonanno again following that morning.

Mr D'Arrigo was the general manager of the respondent. He said that on Thursday 18 June 1998, he prepared the warning letter (exhibit A3) following the earlier discussions between Mr Iuliano, Mr Bradshaw and Mr Bonanno. He gave the letter to Mr Bradshaw with instructions that it be given to the applicant that morning. He said that it was the respondent's practice to issue written warnings, following a counselling session with an employee.

Later that morning at about 11.30 am, Mr Bonanno rang Mr D'Arrigo and abused him on the telephone. He said that Mr Bonanno used very profane language and said that he was going to take the respondent to court. He also told Mr D'Arrigo that Mr Bonanno would take the matter to the union, seek legal advice and make a complaint to WorkSafe WA regarding alleged unsafe working conditions at the premises. In an affidavit sworn by Mr D'Arrigo, he deposed to the effect that Mr Bonanno told him on the telephone that "*he was going to take the respondent for everything he could get*".

As to the effect of this telephone conversation, Mr D'Arrigo deposed to the effect that he took Mr Bonanno's words, his demeanour and his conduct in leaving the workplace, as a desire to no longer remain employed by the respondent. He said that following the discussion, he wrote the letter dated 18 June 1998 (exhibit A4). Mr D'Arrigo deposed that a further telephone conversation took place later that day, in which Mr Bonanno further abused Mr D'Arrigo and the respondent. The following day, Friday 19 June 1998, Mr D'Arrigo deposed to the effect that Mr Bonanno again contacted him by telephone having received the letter dated 18 June 1998, and again abused both he and the respondent. The effect of these conversations was described by Mr D'Arrigo in his affidavit as *"the applicant seemed to have lost his self control and to have difficulty in controlling his emotions"* (para 15 affidavit). Mr D'Arrigo also referred to the fact that Mr Bonanno had left the workplace without authorisation, despite being told previously not to do so.

When cross-examined as to the content of exhibit A4, that being the letter regarding the *"resignation"* of Mr Bonanno, Mr D'Arrigo conceded that at no time did Mr Bonanno expressly say words to the effect that he resigned. However, he took it clearly from Mr Bonanno's words and conduct that he did not intend to return to the respondent's workplace.

Findings

As I have already noted earlier in these reasons, there is considerable common ground between the parties in this matter. To the extent that there is any conflict in the evidence between Mr Bonanno and witnesses called on behalf of the respondent, I prefer the evidence of the respondent's witnesses to that of Mr Bonanno. At times, Mr Bonanno's recall of events was less than clear. His emotional state at the time, which he himself conceded was highly charged, no doubt influenced his recollection of events in my view, at least to some extent.

On all of the evidence I am satisfied and find that at the material times, Mr Bonanno did suffer from OCD, which condition did influence his behaviour in the workplace. In this regard, whilst not capable of being tested, a letter dated 20 September 1998 from Dr DPC Galhenage, Mr Bonanno's treating psychiatrist, set out symptoms associated with the condition. That letter is exhibit A5 in these proceedings. Whilst Dr Galhenage was not called to give evidence, the thrust of the applicant's evidence in this regard was not seriously challenged by the respondent. I also find that the respondent was broadly aware of Mr Bonanno's medical condition, having

employed him previously for a brief period in late 1997. I am also satisfied on the evidence and find that both at that time and at the material times relevant to these proceedings, the respondent did take Mr Bonanno's condition into account in dealing with him in the workplace.

As to the events leading up to the termination of Mr Bonanno's employment, I am satisfied on the evidence that by reason of the commercial pressures placed upon the respondent's business, Mr Bradshaw as foreman, commenced upon a process of productivity improvement in the workshop operations and in connection with this, meetings were held between Mr Bradshaw and the workshop employees generally and individually, including Mr Bonanno. Also, I am satisfied that there were meetings between both Mr Bradshaw, Mr Iuliano and Mr Bonanno, at which a number of issues regarding Mr Bonanno's work performance were raised and discussed. Those matters culminated in the issuance to Mr Bonanno of the letter of warning, exhibit A3. However, I pause to observe that at no stage in the meeting between Mr Iuliano and Mr Bonanno, was Mr Bonanno told that the subject matter of their discussion would subsequently be recorded in a formal letter of warning. The significance of this matter is an issue to which I return further below.

On the evidence I also find that on at least two occasions in the material period, Mr Bonanno left the workplace without advising the respondent, as he knew that he was required to do. Furthermore, on receipt of the terms of the correspondence in both exhibits A3 and A4, I am satisfied on the evidence and find that on 18 June and 19 June 1998 respectively, the applicant telephoned Mr D'Arrigo and verbally abused both him and the respondent, including the use of profane language. I also find on the evidence, that subsequent telephone contact between Mr Bonanno and Mr Iuliano on or about Monday, 22 June 1998 was to the same general effect.

As to the intentions of Mr Bonanno arising out of the events over 16 to 19 June 1998, it is significant to observe and I find, that at least on two occasions on his own evidence, Mr Bonanno indicated his desire to seek alternative employment. The evidence did not disclose any contrary intention after Mr Bonanno left the workplace on 18 June 1998.

I now turn to consider the principles applicable to the resolution of this matter in view of my findings.

Relevant Principles

The essential preliminary issue to be resolved in this matter is whether, as a jurisdictional fact, the respondent dismissed Mr Bonanno. It is not in contest that whilst exhibit A3 is drawn in terms which refer to Mr Bonanno's "*verbal resignation*", there was in fact no such express statement made by Mr Bonanno to Mr D'Arrigo or anyone else for that matter, in authority at the respondent. The question for resolution is therefore what construction should be placed upon the factual circumstances which unfolded over the days in question, ultimately leading to the applicant's departure from the respondent's premises.

The law in relation to the requirements for a valid notice of termination of employment is reasonably well settled. A number of decisions of the English Employment Appeal Tribunal, adopted by various Australian courts and tribunals, have set out the position in this regard. In *Sovereign House Security Services Ltd v Savage* (1989) IRLR 115 it was said by May LJ at 116—

> "In my opinion, generally speaking, where unambiguous words of resignation are used by an employee to the employer direct or by an intermediary, and are so understood by the employer, the proper conclusion of fact is that the employee has in truth resigned. In my view tribunals should not be astute to find otherwise…"
>
> However, in some cases there may be something in the context of the exchange between the employer and the employee or, in the circumstances of the employee him or himself, to entitle the tribunal a fact to conclude that notwithstanding the appearances there was no real resignation despite what it might appear to be at first sight."

In the instant matter, it is not so much consideration of whether words of resignation are unambiguous or not, but rather the characterisation of the conduct of Mr Bonanno as a whole, arising from his actions in leaving the workplace and the various telephone conversations that took place, and preceding events. In this respect, in my view, whether one is considering whether words or conduct evince an intention of an employee to no longer remain employed by an employer, the principles have equal application. Indeed, this was considered in *Kwik-Fit (GB) Ltd v Lineham* (1992) ICR 183 where Wood J said at 191—

> "If words of resignation are unambiguous then prima facie an employer is entitled to treat them as such, but in the field of employment personalities constitute an important consideration. Words may be spoken or actions expressed in temper or in the heat of the moment or under extreme pressure ("being jostled into a decision") and indeed the intellectual make up of an employee may be relevant: see Barclay v City of Glascow District Council (1983) IRLR 313. These we refer to as "special circumstances". Where "special circumstances" arise it may be unreasonable for an employer to assume a resignation and to accept it forthwith. A reasonable period of time should be allowed to lapse and if circumstances arise during that period which put the employer on notice that further enquiry is desirable to see whether the resignation was really intended and can properly be assumed, then such enquiry is ignored at the employer's risk. He runs the risk that ultimately evidence may be forthcoming which indicates that in the "special circumstances" the intention to resign was not the correct interpretation when the facts are judged objectively."

In *Barclay v City of Glascow District Council* (supra) the Employment Appeal Tribunal allowed an appeal from a majority decision of a Scottish industrial tribunal which dismissed an unfair dismissal application on the basis that the applicant had resigned. The applicant in that matter was acknowledged to be mentally defective and under the care of his sister. Events transpired were an altercation took place between the applicant and the respondent's foreman in the workplace, following which the applicant said "he wanted to collect his books" the next day. On that day, the applicant, when collecting his pay, was asked to and did sign a blank form that was subsequently drafted as his resignation. The applicant reported to work on the following Monday, but was sent home on the grounds that he had resigned. On appeal, the Employment Appeal Tribunal held that there were special circumstances to consider, by reason of the mental capacity of the applicant. Moreover, it was held that given the circumstances, the proper approach for the employer was to have regard not only to what was said on the day in question, but also to what happened the following day when the applicant reported for work. The Tribunal said the employer should have made enquiries as to the true intentions of the applicant.

What then is the position in the instant case, applying these principles on the facts as found?

There is no doubt on the evidence as I have found that the events that transpired between Mr Bonanno and the respondent, in particular on Friday, 19 June 1998 were highly emotionally charged. Having regard to Mr Bonanno's circumstances arising from the OCD condition, in my opinion, it would be appropriate to regard this case as one possessing "special circumstances" of the kind outlined in the authorities referred to above. That is, the conduct of Mr Bonanno, and the characterisation of that conduct, needs to be considered in light of these circumstances.

The first issue for resolution is whether the circumstances of the events were such that the words and/or conduct of Mr Bonanno were ambiguous to the extent that having regard to the special circumstances in terms of Mr Bonanno's medical condition, the employer was under a duty to take steps to clarify Mr Bonanno's intentions with respect to his employment. Taken as a whole, I do not consider that Mr Bonanno's words and conduct were so ambiguous in order to give rise to this further consideration. A number of matters lead me to this conclusion. First the uncontroverted evidence is that at least on two occasions, following his discussion with Mr Bradshaw, Mr Bonanno indicated that he did not want to remain employed by the respondent and may look for other employment. It is in my view important to observe that this intention was made clear prior to the receipt by Mr Bonanno of exhibit A3, that being the letter or warning.

Secondly, whilst there is no doubt that the terms of exhibit A3 greatly upset Mr Bonanno, and should have been in my opinion, foreshadowed with him in Mr Bonanno's meeting with Mr Iuliano, given that the respondent was aware of Mr Bonanno's medical condition, subsequent events in my view confirmed Mr Bonanno's true intention to not remain employed by the respondent. Mr Bonanno's abusive telephone conversations with Mr D'Arrigo on Friday, 19 June 1998 were not on the evidence, a one-off heat of the moment event. On the evidence that I have accepted, there were a number of telephone calls that day from Mr Bonanno of the same tenor. This should also be seen in the light of the fact that Mr Bonanno left the workplace on Thursday 18 June 1998 after receiving exhibit A3, with no indication to the respondent, as he was requested to do, that he was merely returning home for that day because he felt under pressure.

Furthermore, the incidents did not end there. On the evidence which I have accepted, there was a further telephone conversation between Mr Bonanno and Mr Iuliano on or about the following Monday, 22 June 1998. On the evidence, that conversation, notwithstanding the interval of the weekend, appeared to reflect Mr Bonanno's on-going anger and resentment of the respondent. It is of note to observe that on the evidence of Mr Iuliano, which I accept, there was an offer by him to Mr Bonanno to attend the respondent's premises to discuss the matter further. That offer was not taken up it appears, by Mr Bonanno.

Furthermore, the circumstances of this case stand in contrast to the circumstances outlined in, for example, *Barclay* (supra). The employee in that case, attended for duty after the events in question, presuming to continue on in employment. A similar factual situation arose in *Minato v Palmer Corporation Ltd* (1995) 63 IR 357, in which after a heat of the moment altercation, the employee in that case by her conduct, in discussions with management, indicated that she did want to retain her job.

The circumstances when taken as a whole in this matter point in the other direction. There was on the evidence, no indication that Mr Bonanno decided to accept Mr Iuliano's offer to attend the respondent's premises either to discuss the matter further or to attend for duty after the incidents in question. Furthermore, it is important to note that as it appeared on the evidence, as I have already mentioned, Mr Bonanno had formed the intention to not remain employed by the respondent prior to the chain of events commencing on 18 June 1998.

Alternatively and in any event, even if when taken as a whole, the circumstances of this particular case placed a duty upon the respondent to undertake proper further enquiries as to Mr Bonanno's intentions, I am of the view that Mr Iuliano's endeavours to discuss the matter further with Mr Bonanno on or about Monday, 22 June 1998, reasonably satisfied such an obligation. In my opinion, the respondent's conduct was reasonable having regard to all of the circumstances and in particular, when viewed within the practical realities of the workplace.

Whilst I have considerable sympathy for Mr Bonanno's circumstances arising out of the condition from which he suffers, that is not the test which I must apply in determining this matter. I must form a view on the evidence overall, as to whether on balance, the jurisdictional facts exist in order for the Commission's jurisdiction to be attracted. Having regard to all of the matters to which I have referred in this case, I am not so satisfied and accordingly, the application must fail.

The application is therefore dismissed and an order to this effect now issues.

APPEARANCES: Mr C Saunders as agent appeared on behalf of the applicant.

Mr A Randles of counsel appeared on behalf of 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

G&G Steelworks.

No. CR 221 of 1998.

COMMISSIONER S J KENNER.

2 March 1999.

Order.

HAVING heard Mr C Saunders as agent on behalf of the applicant and Mr A Randles 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.) S.J. KENNER,
[L.S.] Commissioner.

UNIONS—
Application for alteration of rules—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

In the matter of an application by The Forest Products, Furnishing Allied Industries Industrial Union of Workers, W.A.

1902 of 1998.

ROBIN COLBERT LOVEGROVE,
DEPUTY REGISTRAR.

11 February 1999.

Decision.

HAVING read the application, there being no person desiring to be heard in opposition thereto, after consulting with the President, and upon being satisfied that the requirements made thereunder have been complied with, I have this day registered an alteration to rule 24 of the registered rules of the applicant organisation in the terms of the application as filed on 20 October 1998.

(Sgd.) R.C. LOVEGROVE,
[L.S.] Deputy Registrar.

Appl No.275 of 1999.

NOTICE is given of an application by the "Western Australian Police Union of Workers" to the Full Bench of the Western Australian Industrial Relations Commission for an alteration to rule 3 – Membership, that relates to the eligibility for membership of the organisation.

The current rule and the proposed rule amendments are set out below—

Existing Rule

RULE 3—MEMBERSHIP

(a) The following classes of employees shall be eligible to be members of the Western Australian Police Union of Workers—

(i) Police Officers;

(ii) Police Cadet (Recruits); and

(iii) Police Cadet (Juniors);

(iv) Aboriginal Police Aides.

(b) The Union shall be constituted of those classes of members specified in paragraph (a) preceding and Life Members, being persons upon whom Life Membership of the Union has been conferred in accordance with the Rules.

(c) Any member of the Western Australian Police Force may apply to the Council for membership of the Union, and the Union shall have the power to accept or reject such applications; provided that any applicant whose application for membership is rejected shall have the right of appeal to the next Annual Conference of Delegates whose decision shall be final.

(d) A register of the names of the Officers and members of the Union shall be kept by the General Secretary at the registered office, the same to be open at all convenient times for inspection by any member or by the Industrial Registrar or any person appointed by him or her.

(e) ~~Any member may discontinue membership by resignation by giving to the General Secretary three months' written notice of the member's intention to do so, or by paying a sum equal to three months' subscriptions in advance in lieu of notice. No resignation shall be accepted by the Council until all subscriptions, fines, levies, fees or other monies then owing by such member to the Union has been paid, or such member has obtained a clearance from the Council remitting the whole or part of any such monies.~~

(Disallowed—See Order No. 450/96 dated 17 April 1996).

(f) (i) Subscriptions for members of the Union, excluding members who are Police Cadet (Juniors), Aboriginal Police Aides or Life Members, shall be equivalent to 1% of the base salary applicable to the rank of a third year constable. Such amount shall be paid fortnightly.

(ii) A member who is a Police Cadet (Junior) shall pay an amount per fortnight equivalent to ten cents (10c) per week.

(iii) A member who is an Aboriginal Police Aide shall pay an amount per fortnight equivalent to 1% of the base salary applicable to the rank of a First Class Police Aide.

(iv) Life Members shall not be required to pay subscriptions, whether or not they are entitled to membership of another classification.

(v) Members proceeding on maternity leave or leave without pay shall not be required to pay subscriptions during such leave and will be still entitled to full privileges of membership.

(g) Any member other than a member not paying subscriptions in accordance with Rule (f)(v) whose subscriptions or other dues are in arrears for three months, shall not be entitled to any privileges of membership.

(h) ~~(i) The Council shall remove from the register the name of any member whose subscription or other dues is in arrears for six months. (Other than a member not paying subscriptions in accordance with Rule (f) (v)).~~ **(Disallowed—See Order No. 450/96 dated 17 April 1996).**

(ii) No person whose name has been so removed shall be readmitted to membership until payment of all such arrears, payment of a penalty of twenty dollars ($20.00) and the approval of the Council.

(iii) Any member whose name is removed in accordance with (i) immediately preceding shall not be free of arrears due, and the General Secretary may, after fourteen days' notice, sue such member in any court of ordinary jurisdiction pursuant to Section 109 of the Industrial Relations Act, 1979.

(i) Any member of the force voluntarily resigning from the Union and wishing to rejoin may only be admitted on the approval of the Council and on payment of a re-entry fee, the amount of which shall be decided upon by the Council, but not to be less that twenty dollars ($20.00).

(j) Any member of this Union who ceases to be a member of the WA Police Force by reason of retirement may remain a member of the Union in so far as the Death Levy Fund is concerned and partake of the benefits to be derived therefrom without any further payments to the Death Levy Fund.

(k) The Council may, by resolution, confer Life Membership on any person, in recognition of long or special services rendered to the Union. Any person on whom Life Membership has been conferred shall enjoy the full benefits of membership of the Union without payment of any subscriptions or levy as from the date of conferring of such Life Membership. For the purposes of these rules, such person shall be deemed to be a financial member of the Union.

(l) The General Secretary, Assistant General Secretary, Industrial Officer and Field Officer shall be honorary members of the Union.

Proposed rule incorporating and showing in distinctive characters the alterations sought

RULE ***4***. MEMBERSHIP

(***1***) The following classes of employees ***of the Western Australia Police Service*** shall be eligible to be members of the Union—

(***a***) ***Sworn*** Police Officers;

(***b***) Police Cadet (Recruits); and

(***c***) Aboriginal Police ***Liaison Officers***.

(***2***) The Union shall be constituted of those classes of members specified ***in sub rule (1) of this Rule*** and persons upon whom Life Membership of the Union has been conferred in accordance with ***these*** Rules.

(***3***) Any ***sworn officer of the Police Service as defined by sub rule (1) of this Rule*** may apply to the ***Board*** for membership of the Union, and the Union shall have the power to accept or reject such applications; provided that any applicant whose application for membership is rejected ***by the Board*** shall have the right of appeal to the next Annual Conference of Delegates whose decision shall be final.

(***4***) A register of the names of the officers and members of the Union shall be kept by the General ***Manager*** at the Registered Office ***and will*** be open at all convenient times for inspection by any member or by the Registrar or any person appointed by him or her.

(5) Subscriptions for members of the Union shall be:

(a) For Sworn Police Officers an amount equivalent to 1% of the base salary applicable to the rank of a third year Constable rounded up to the next nearest 10 cents, with such amount to be paid fortnightly or at other greater intervals as may be determined by the Board.

(b) For Police Cadets (Recruit) an amount determined by the Board, with such amount to be paid fortnightly or at other greater intervals as may be determined by the Board.

(c) For Aboriginal Police Liaison Officers an amount equivalent to 1% of the base salary applicable to the rank of a First Class Aboriginal Police Liaison Officer rounded up to the next nearest 10 cents, with such amount to be paid fortnightly or at other greater intervals as may be determined by the Board.

(d) For a member who converts to part time employment an amount determined by the Board, with such amount to be paid

fortnightly or at other greater intervals as may be determined by the Board.

(e) For a member (who must inform the Union in writing of their intention to do so) proceeding on maternity leave or, other absence from duty without pay, normal subscriptions shall not be required to be paid during such leave but the member shall contribute an amount determined by the Board and will be still entitled to the full privileges of membership. Such amount is to be paid fortnightly or at other greater intervals as may be determined by the Board.

(f) For Life Members, subscriptions shall not be required to be paid, whether or not they are entitled to membership under another classification.

(6) A member may end membership of the Union by giving written notice of the intention to resign. The notice of resignation shall be delivered in person or by certified mail to the Registered Office. The resignation takes effect from the day on which it is received by the Union or on such later date specified in the notice but the member will remain responsible for any subscriptions, levies or fines owing up to and including the date of ceasing to be a member of the Union.

(7) Where a member's subscription has not been paid for a period of three months then that person shall cease to be a member of the Union, but shall be responsible for any subscriptions, fees, levies or fines owing up to and including the date of termination of membership.

(8) (a) The Union shall remove from the register the name of any person who ceases to be a member in accordance with sub rule (7).

(b) The Union shall ensure persons specified in sub rule (7) shall have their names removed by purging the register at least four times each year.

(***c***) The Board ***may*** remove from the register the name of any member whose ***levies or other monies owing, other than subscriptions, is in arrears for six months.***

(***d***) Any member whose name is removed in accordance with ***sub rule (8) (a) or (c)*** shall not be free from arrears due, and the General ***Manager*** may, after ***14*** days notice, sue such member in any court of ordinary jurisdiction pursuant to Section 109 of the ***Act***.

(***9***) Any ***sworn officer*** of the ***Western Australia Police Service eligible to be a member of the Union*** voluntarily resigning from the Union and wishing to rejoin may only be admitted on the approval of the **Board**.

(***10***) Any member of ***the*** Union who ceases to be a member of ***the Western Australia Police Service*** by reason of retirement ***because of age or because of total and permanent incapacity*** may remain a member of the Union insofar as ***those privileges and benefits determined solely by the Board are concerned and will be eligible to receive the benefits to be derived therefrom without any further payments to the Union.***

(***11***) The **Board** may by resolution confer Life Membership on any person, in recognition of long or special services rendered to the Union. Any person on whom Life Membership has been conferred shall enjoy the full benefits of membership of the Union without payment of any subscriptions or levy as from the date of conferring of such Life Membership. For the purposes of these Rules such person shall be deemed to be a financial member of the Union.

(12) The Union shall not credit any moneys from a members subscription fees to a political fund.

The matter has been listed before the Full Bench on 27 April 1999.

A copy of the rules of the organisation and the proposed rule amendments may be inspected at my office, 16th floor, National Mutual Centre, 111 St George's Terrace, Perth.

Any organisation registered under the Industrial Relations Act 1979, or any person who satisfies the Full Bench that he has a sufficient interest or desires to object to the application may do so by filing a notice of objection in accordance with the Industrial Relations Commission Regulations 1985.

5 March 1999

R. C. LOVEGROVE,
Deputy Registrar.

CONFERENCES—Notation of—

PARTIES		NUMBER COMMISSIONER	DATE	MATTER	RESULT
Australian Workers Union	BHP Iron Ore Pty Ltd	Fielding SC C9 of 1999	—	Reduction of Position	Discontinued
Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union	Astra Metals Products Pty Ltd	Kenner C. C11 of 1999	15/2/99	Contractual Entitlements	Discontinued
Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union	Advantage Air	Kenner C. C351 of 1998	17/12/98	Termination	Discontinued
Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union	Argyle Diamonds	Fielding SC	4/3/99	Union Notification of Contractors	Discontinued

PARTIES		NUMBER COMMISSIONER	DATE	MATTER	RESULT
Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union	BHP Iron Ore	Fielding SC	—	Overtime Shifts	Discontinued
Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union	Intico WA Pty Ltd	Kenner C. C12 of 1999	15/2/99	Breach of Contract	Discontinued
Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union	Western Australian Mint	Kenner C. C349 of 1998	16/12/98	Employees to transfer from Government to Private Sector	Discontinued
Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union	McKimmie Jamieson & Partners (Australia) Pty Ltd	Kenner C. C34 of 1999	23/2/99	Uncertainty of Pay Arrangements	Discontinued
Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union	RCR Engineering Ltd	Kenner C. C250 of 1998	30/11/98 22/10/98 6/10/98 22/9/98	Agreement—Redundancy Clause	Discontinued
Builders' Labourers, Painters and Plasterers Union	Italsteel & Others	Kenner C. C365 of 1998	1/2/99 12/2/99	Site Allowance	Discontinued
Builders' Labourers, Painters and Plasterers Union & Another	Main Roads Western Australia	Scott C. C173 of 1997	20/6/97 22/9/97 24/10/97 11/11/97 4/12/97 12/12/97 19/2/98 26/2/98	Quantification of Commuted Special Rates Allowance	Concluded
Civil Service Association Inc	Executive Director Education Department	Scott C. PSAC74 of 1998	8/10/98 20/10/98 18/11/98 19/1/99	Claim that Recent Recommendation is Invalid	Concluded
Civil Service Association Inc	Chief Executive Officer, Dept of Education Services	Beech C. PSAC22 of 1998	9/4/98	Pay and Conditions	Referred
Civil Service Association Inc	Managing Director, South Metropolitan College of TAFE	Scott C. PSAC89 of 1998	20/1/99	JDF Review	Concluded
Independent Schools Salaried Officers' Association of Western Australia Industrial Union	The Anglican Schools Commission Incorporated t/a St Mark's Anglican Community School	Scott C. C354 of 1998	18/1/99	Termination	Concluded
Independent Schools Salaried Officers' Association of Western Australia Industrial Union	Trinity College	Scott C. C24 of 1999	—	Performance Appraisal	Concluded
Independent Schools Salaried Officers' Association of Western Australia Industrial Union	Quinns Baptist College Inc.	Scott C. C346 of 1998	19/1/99 8/2/99	Resolving Issues in Employment	Concluded
Liquor, Hospitality and Miscellaneous Workers' Union	Quirk Corporate Cleaning Australian Pty Ltd	Beech C. C342 of 1998	9/2/99	Dispute re Unfair Dismissal	Concluded

PARTIES		NUMBER COMMISSIONER	DATE	MATTER	RESULT
Liquor, Hospitality and Miscellaneous Workers' Union	Royal Perth Hospital	Fielding SC C4 of 1999	25/1/99	Alleged Unfair Dismissal	Referred
Liquor, Hospitality and Miscellaneous Workers' Union	Augusta Margaret River Districts Football Club (Inc)	Parks C. C372 of 1998	29/1/99	Unfair Dismissal	Referred
Liquor, Hospitality and Miscellaneous Workers' Union	John and Nadine Beniston Franchise and Licensed User Jani-King Commercial Cleaning Service	Parks C. C15 of 1999	3/2/99	Termination	Referred

CORRECTIONS—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Construction, Mining, Energy, Timberyards, Sawmills & Woodworkers' Union of Australia, WA Branch and Others

and

RGC Mineral Sands Limited and Others.

No. 2178 of 1998.

25 February 1999.

Correcting Order.

WHEREAS an omission occurred in the Reasons for Decision and related Order issued on 22 February 1999 (unpublished at the date of this Order) in relation to the abovecited matter; the following correction is made—

The appearance for the respondents should read "Mr R. LeMiere (of Counsel), and with him, Mr B. DiGirolami (of Counsel)"

(Sgd.) C. B. PARKS,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

West Australian Railway Officers' Union

and

Western Australian Government Railways Commission.

No. RCBCR1 of 1998.

RAILWAYS CLASSIFICATION BOARD

COMMISSIONER A.R. BEECH.
MR P. BOTHWELL.
MR R. EASTHOPE.

26 February 1999.

Correcting Order.

PURSUANT to the powers conferred on it under the Industrial Relations Act 1979, the Railways Classification Board, hereby orders—

THAT the order issued by the Railways Classification Board in application RCB CR1 of 1998 on the 4th day of February 1999 is hereby corrected by adding immediately following clause 2, clauses 3 and 4 as follows.

3. Where Westrail and the West Australian Railways Officers' Union are unable to agree on terms for the removal of the travel pass arrangements then the parties shall notify the Railways Classification Board.
4. This Order shall apply until it is replaced or revoked by further order.

(Sgd.) A.R. BEECH,
[L.S.] Railways Classification Board.

PROCEDURAL DIRECTIONS AND ORDERS—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Gregory Oates

and

Sanders Executive Pty Ltd t/a LJ Hooker Morley.

No. 474 of 1998.

COMMISSIONER S J KENNER.

26 February 1999.

Direction.

HAVING heard Mr R Clohessy as agent on behalf of the applicant and Mr D Taylor of counsel on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby directs—

(1) THAT further to the Commission's reasons for decision dated 10 February 1999 in the herein matter the issue of quantum of costs to be awarded in favour of the respondent be dealt with by written submissions;

(2) THAT the respondent file and serve its written submissions as to quantum of costs by 4 March 1999;

(3) THAT the applicant file and serve its written submissions as to the quantum of costs by 9 March 1999.

(Sgd.) S.J. KENNER,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Hilton Fisher

and

Foodland Associated Limited and Another.

No. 1378 of 1998.

COMMISSIONER A.R. BEECH.

10 February 1999.

Reasons for Decision—Discovery of Documents.

ALTHOUGH the parties to this matter have handled any interlocutory matters which have arisen informally, two matters have arisen which require the determination of the Commission. The first matter is the request by the respondent for the production of the written contract of employment between the applicant and his current employer. The second matter is a request by the applicant for discovery of the respondent's "financial documents". It has been agreed that the Commission will determine these matters on the basis of the written submissions received from the parties.

The Commission is not bound by the rules of evidence and it is simply not appropriate to decide the issue now before the Commission on the basis of rules and precedence of courts of law. To that extent, while I acknowledge, with respect, the authorities relied upon by both parties to support their respective positions, where those authorities are based upon the process of discovery and production of documents in civil jurisdictions they are of limited value. I refer to what I said in relation to an earlier matter where documents were requested to be inspected prior to the hearing of a matter. In my view—

> The Commission should decide this application in the same way as it decides the matters which come before it, that is, in accordance with the requirements of the Act and according to equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms. Although s.27(1)(o) authorises the Commission to issue orders in relation to interlocutory matters, the Commission is not an appropriate forum for the legal determination of the finer points of civil procedure in such matters. Rather, it should adopt "a broad approach of common sense and common fairness eschewing all legal or other technicality" (to borrow the words of the National Industrial Relations Court in *Earl v Slater and Wheeler (Airlyne) Ltd* [1973] 1 All ER 145 at 150 as cited by Olsson J in *Trittenheim Pty Ltd v H&H Gill Nominees Pty Ltd* (1994) 63 SASR 434 at 442).
>
> (*James Anderson v Crystal Brook Dental Centre* (1998) 78 WAIG 3888)

I now turn to consider the two matters before me.

The respondent's request for production and inspection of the applicant's current contract of employment is resisted on the ground that it contains a confidentiality clause. Although I am confident that the Commission could order its production and inspection even if it contains a confidentiality provision, in the conclusion which I reach the Commission should only do so if it is just in all of the circumstances for the fair hearing of the matter. In my view it is not. The respondent requests the document because it sees it as relevant to the issue of mitigation and loss in the event that the Commission considers that compensation should be paid by the respondent to the applicant if the dismissal is found to be unfair. The matters which the Commission would take into consideration when dealing with mitigation would include date of commencement and salary. This information has been provided by the applicant to the respondent. Furthermore, the applicant undertakes to give evidence under oath regarding that information. In my view that is sufficient for the Commission's purposes and it is not necessary that an order issue requiring the production and inspection of the document. The respondent's request is refused. I should add that, if events during the hearing cause me to reconsider this conclusion, I would give consideration to its production to the Commission only.

The request by the applicant for the respondent's "financial documents" is able to be approached a little more simply. While the applicant is correct in pointing to the respondent's statement in its Notice of Answer and Counterproposal that the position of Human Resources and Training Manager was created "as a result of operational requirements" there is nothing in the Notice of Answer and Counterproposal which directly relates that decision to any financial consideration at all. Indeed, I have been unable to detect in the grounds stated by the applicant in his Notice of Application why he believes his dismissal was unfair, or in the grounds put forward by the respondent for resisting that claim, any ground which raises the financial position of the respondent at all. Accordingly, the request of the applicant is, in turn, refused. I might add that, even if I did not reach that conclusion, I regard the term "financial documents" as so broad a description as to be meaningless and an order in the applicant's favour in those terms would be quite unlikely for that reason.

The Commission will only issue a formal order to this effect if requested.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Gary Walker

and

Queststyle Pty Ltd.

No. 1473 of 1998.

COMMISSIONER P E SCOTT .

10 February 1999.

Order.

WHEREAS this is an application pursuant to Section 29(1)(b)(i) of the Industrial Relations Act 1979; and

WHEREAS on the 2nd day of October 1998 and the 29th day of January 1999 the Commission convened conferences for the purpose of conciliating between the parties, however, agreement was not reached; and

WHEREAS the application was set down for hearing and determination on the 9th and 10th days of February 1999; and

WHEREAS at the hearing on the 9th day of February 1999 the Applicant made an application to have "Citiworld Investments Pty Ltd" joined as a respondent to the application; and

WHEREAS at that hearing, the Commission dismissed the Application for reasons given during the course of the hearing;

HAVING heard the Applicant on his own behalf and Mr O Moon 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 to join "Citiworld Investments Pty Ltd" as a respondent to the application, be, and is hereby dismissed.

(Sgd.) P.E. SCOTT,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Ian Barrett

and

Fins

No. 1533 of 1998.

COMMISSIONER P E SCOTT.

15 February 1998.

Order.

WHEREAS this is an application pursuant to Section 29(1)(b)(i) of the Industrial Relations Act 1979; and

WHEREAS on the 15th day of February 1999 the Commission convened a conference to deal with applications for discovery;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders—

1. That within 7 days of the date of this order the Respondent provide to the Applicant—
   (a) a copy of the part/s of the Minutes of the Meeting of Fins Seafood Grill dated the 22nd day of July 1998 which relate to the Applicant; and
   (b) any notes or minutes of the meeting held on the 24th day of July 1998 at which the Applicant, Mr Hotham, Mr Sewell and a company employee named "Giselle" were in attendance.
2. That within 7 days of the date of this order the Applicant provide to the Respondent any documents in his possession, custody or control which relate to the terms of his employment with the Respondent, including copies of diary extracts and meeting notes.

(Sgd.) P.E. SCOTT,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Raymond Furfaro

and

Wrigley Company Pty Ltd.

No. 1856 of 1998.

COMMISSIONER S J KENNER.

12 February 1999.

Direction.

HAVING heard Mr C Primerano of counsel on behalf of the applicant and Mr S Woodbury of counsel on behalf of the respondent the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby directs—

(1) THAT each party shall give an informal discovery by serving its list of documents by 25 February 1999;
(2) THAT inspection of documents be completed by 4 March 1999;
(3) THAT the applicant file and serve on the respondent any witness statements upon which it intends to rely no later than 14 days prior to the date of hearing;
(4) THAT the respondent file and serve on the applicant any witness statements upon which it intends to rely no later than seven days prior to the date of hearing;
(5) THAT the applicant and respondent file an agreed statement of facts (if any) no later than three days prior to the date of hearing.

(Sgd.) S.J. KENNER,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Damian Francis Jardine

and

IPF Finance Corporation Pty Ltd.

No. 2099 of 1998.

COMMISSIONER P E SCOTT.

22 February 1999.

Order.

WHEREAS this is an application pursuant to Section 29(1)(b)(i) of the Industrial Relations Act 1979; and

WHEREAS on the 27th day of January 1999 the Applicant filed an amended Notice of Application seeking to amend the name of the Respondent to "Retail Management Australia Pty Ltd"; and

WHEREAS the Commission convened a conference for the purpose of conciliating between the parties on the 22nd day of February 1999; and

WHEREAS at that conference the parties agreed that the name of the Respondent be amended to "Retail Management Australia Pty Ltd";

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, by consent, hereby orders—

THAT the name of the Respondent in the application be amended to "Retail Management Australia Pty Ltd".

(Sgd.) P.E. SCOTT,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Mimma Dagnone

and

Property Plus Real Estate ACN 009 367 613 T/A Property Plus Real Estate.

No. 2140 of 1998.

COMMISSIONER P E SCOTT.

2 March 1999.

Direction.

WHEREAS this is an application pursuant to Section 29(1)(b)(ii) of the Industrial Relations Act 1979; and

WHEREAS on the 2nd day of March 1999 the Commission convened a conference for the purpose of conciliating between the parties; and

WHEREAS the Respondent was not able to attend that conference and has failed to file a Notice of Answer and Counter Proposal;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby directs that—

1. The parties shall have discussions in an effort to resolve the Applicant's claim. To this end the Respondent is directed to contact the Applicant's agent within 7 days of the 2nd day of March 1999 to discuss the claim; and
2. If discussions fail to resolve the matter then the Respondent shall, within 10 days of the 2nd day of March 1999, file a Notice of Answer and Counter Proposal and a Warrant to Appear as Agent.

(Sgd.) P.E. SCOTT,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Maxwell Raymond Healy

and

The King and I Pty Ltd.

No. 2157 of 1998.

25 February 1999.

Order.

WHEREAS on 4 December 1998 the application cited herein was filed in the Commission pursuant to section 29 of the Industrial Relations Act, 1979 (the Act) alleging outstanding contractual benefits; and

WHEREAS on 8 February 1999 a conference related to the aforementioned application was held in conjunction with a conference related to application 2243 of 1998, both pursuant to section 32 of the Act;

AND WHEREAS at the aforementioned conferences the parties agreed that applications 2157 of 1998 and 2243 of 1998 be joined;

NOW THEREFORE the Commission, pursuant to the power conferred on it under the Act, hereby orders—

THAT application 2157 of 1998 be joined with application 2243 of 1998.

(Sgd.) C.B. PARKS,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Jack Anthony Hebblewhite

and

Chantry Haulage Pty Ltd.

No. 2158 of 1998.

9 February 1999.

Order.

WHEREAS on 4 December 1998 the application cited herein was filed in the Commission pursuant to section 29 of the Industrial Relations Act, 1979 (the Act) alleging unfair dismissal and outstanding contractual benefits; and

WHEREAS on 1 February 1999 a conference was held pursuant to section 32 of the Act;

AND WHEREAS at the aforementioned conference, the Commission having heard Mr G. Hocking, of Counsel on behalf of the applicant and Ms E. Mackey, on behalf of the respondent the Commission, pursuant to the power conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the applicant file and serve upon the respondent a list of all discoverable documents relevant to the issues herein in their custody, power or possession; and

THAT the respondent file and serve upon the applicant a list of all discoverable documents relevant to the issues herein in their custody, power or possession; and

THAT there be mutual inspection of all documents so discovered within 21 days of the date of this Order.

(Sgd.) C.B. PARKS,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Maxwell Raymond Healy

and

The King and I Pty Ltd.

No. 2243 of 1998.

25 February 1999.

Order.

WHEREAS on 22 December 1998 the application cited herein was filed in the Commission pursuant to section 29 of the Industrial Relations Act, 1979 (the Act) alleging outstanding contractual benefits; and

WHEREAS on 8 February 1999 a conference related to the aforementioned application was held in conjunction with a conference related to application 2157 of 1998, both pursuant to section 32 of the Act;

AND WHEREAS at the aforementioned conferences the parties agreed that applications 2243 of 1998 and 2157 of 1998 be joined;

NOW THEREFORE the Commission, pursuant to the power conferred on it under the Act, hereby orders—

THAT application 2243 of 1998 be joined with application 2157 of 1998.

(Sgd.) C. B. PARKS,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Eric Madaffari

and

Lynford Farm.

No. 21 of 1999.

COMMISSIONER J F GREGOR.

15 February 1999.

Order.

WHEREAS on 7 January 1999, Eric Madaffari applied to the Commission for an order pursuant to s. 29 of the Industrial Relations Act, 1979; and

WHEREAS on 12 February 1999, the Commission conducted a conference between the parties in the Council Chambers of the City of Bunbury; and

WHEREAS the Applicant claimed he had not received a cash bonus of $1000.00 to which he was entitled at the conclusion of his employment with the Respondent. The Respondent said the bonus had been withheld because its payment had been conditional upon the condition of the house in which the Applicant had lived during his employment. The Respondent said the Applicant had made alterations to the house without his permission; and

WHEREAS the Respondent also demanded the return of a wheelbarrow and 12 female chickens he claimed the Applicant's had improperly removed from the farm when he had completed his employment contract; and

WHEREAS the Applicant advised the Commission that only six female chickens remained alive but that the Applicant was willing to return those female chickens and the wheelbarrow to the Respondent in return for payment of the $1000.00 bonus payment.

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979, the Commissioner hereby orders, by consent—

1. THAT the Applicant shall return to the Respondent property belonging to the Respondent, being six (6) female chickens and a second-hand wheelbarrow.

2. THAT upon delivery of the goods described above the Respondent shall pay forthwith the Applicant the sum of $1000.00 due in accordance with the terms of the contract made between them on 29 December 1997.
3. THAT the above exchange take place within 14 days of the date of this Order.

(Sgd.) J.F. GREGOR,
[L.S.] Commissioner.

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

Wirralie Gold Mines Pty Ltd.

No's C 361 of 1998 and C 3 of 1999.

COMMISSIONER S J KENNER.

4 March 1999.

Order.

HAVING heard Ms S McGurk as agent on behalf of the applicant and Mr A Cameron as agent 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 application C 361 of 1998 between the Automotive, Food, Metals, Engineering, Printing & Kindred Industries Union of Workers, WA Branch as applicant and Wirralie Gold Mines Pty Ltd as respondent be consolidated with application C 3 of 1999 between the Automotive, Food, Metals, Engineering, Printing & Kindred Industries Union of Workers, WA Branch as applicant and Wirralie Gold Mines Pty Ltd as respondent and be carried on as one application.
(2) THAT application C 361 of 1998 be the leading application.
(3) THAT the applicant in applications C 361 of 1998 and C 3 of 1999 be the applicant and the respondent in applications C 361 of 1998 and C 3 of 1999 be the respondent in the consolidated application.

(Sgd.) S. J. KENNER,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Transfield Pty Ltd Transfield Maintenance WA

and

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers, WA Branch.

No. C 38 of 1999.

COMMISSIONER S J KENNER.

9 February 1998.

Recommendation.

WHEREAS on 8 February 1999 the applicant applied to the Commission for an urgent conference pursuant to s 44 of the Industrial Relations Act, 1979;

AND WHEREAS on 9 February 1999 the Commission convened an urgent conference between the parties pursuant to s 44 of the Industrial Relations Act, 1979;

AND WHEREAS at the conference the Commission was informed that the applicant and the respondent are in dispute in relation to "reinstatement" work being performed by employees of the applicant, members of the respondent at the BHP Direct Reduced Iron Pty Ltd HBI plant at Boodarie Port Hedland ("the Site") pursuant to the terms of the Transfield Maintenance HBI Agreement No AG 136 of 1997 ("the Agreement");

AND WHEREAS the respondent regards the work in question as construction work not covered by the Agreement and the applicant regards the work as covered by the Agreement;

AND WHEREAS in support of their demands members of the respondent employed by the applicant withdrew their labour commencing on or about 5 February 1999 with the Commission being advised that the members of the respondent have continued to do so;

AND WHEREAS the Commission will attend the Site for the purposes of inspection of the work in dispute on Wednesday 10 February 1999 and will convene a further conference of the parties to the dispute on the Site;

AND WHEREAS the parties have sought a recommendation from the Commission as to the industrial dispute;

NOW THEREFORE the Commission, having regard to the public interest and the interests of the parties concerned and to prevent any further deterioration of industrial relations in respect of the matters in question and pursuant to the powers vested in it by the Industrial Relations Act, 1979, hereby recommends—

(1) THAT each of the employees of the applicant members of the respondent engaged in work in connection with "reinstatement" work on the Site who are engaged in industrial action concerning matters the subject of these proceedings, cease such industrial action to ensure a return to work on Thursday 11 February 1999 immediately following the employees' usual commencement time of work being 6.30 am;
(2) THAT the respondent and each of its officials do or cause to be done all things necessary to give effect to the terms of paragraph (1) of this recommendation;
(3) THAT there be no further industrial action on the Site in connection with the work the subject of the dispute pending the resolution of the dispute by further conciliation and/or arbitration or other proceedings in the Commission.

(Sgd.) S.J. KENNER,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

A Goninan & Co Limited

and

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers, Western Australian Branch.

C 46 of 1999.

COMMISSIONER S J KENNER.

18 February 1999.

Recommendation.

WHEREAS on 12 February 1999 the applicant applied to the Commission for a conference pursuant to s 44 of the Industrial Relations Act, 1979;

AND WHEREAS on 18 February 1999 the Commission convened a conference between the parties pursuant to s 44of the Industrial Relations Act, 1979;

AND WHEREAS at the conference the Commission was informed that the applicant and the respondent and its members employed by the applicant are in dispute in relation to enterprise bargaining negotiations and in relation thereto employees members of the respondent have taken industrial action in the form of stoppages of work and restrictions on overtime between 5 and 8 February 1999 and 12 and 15 February 1999;

AND WHEREAS the Commission has been informed that in light of the application to the Commission for a conference pursuant to s 44 of the Industrial Relations Act, 1979 all industrial action has ceased pending the convening of the conference;

AND WHEREAS the parties at the conference agreed to resume the enterprise bargaining negotiations in good faith commencing on 24 February 1999 with the parties to report back to the Commission as to the progress of those negotiations by 26 February 1999;

NOW THEREFORE the Commission, having regard to the interests of the parties concerned and to the public interest and to prevent any further deterioration of industrial relations in respect of the matters in dispute and pursuant to the powers conferred on it by the Industrial Relations Act, 1979, hereby recommends—

(1) THAT the parties to the herein application recommence enterprise bargaining negotiations in good faith with a view to reaching an agreement as soon practicable;

(2) THAT during the course of and to facilitate the negotiations referred to in paragraph (1) above that employees of the applicant desist from engaging in any further industrial action including but not limited to any stoppage of, or ban or limitation on the performance of work.

(Sgd.) S.J. KENNER,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Cockburn Cement Limited

and

The Australian Workers' Union, West Australian Branch, Industrial Union of Workers.

C 59 of 1999.

COMMISSIONER S J KENNER.

4 March 1999.

Recommendation.

WHEREAS on 25 February 1999 the applicant applied to the Commission for a compulsory conference pursuant to s 44 of the Industrial Relations Act, 1979;

AND WHEREAS on 4 March 1999 the Commission convened a compulsory conference between the parties pursuant to s 44 of the Industrial Relations Act, 1979;

AND WHEREAS at the conference the Commission was informed that the applicant and the respondent are in dispute in relation to a number of matters including a claim for the reinstatement of Mr C Raffaele; alleged harassment of employees by the applicant's supervisors; terms and conditions of employment at the applicant's Malaga work site, and staffing levels and training arrangements for the applicant's Tosdic control system;

AND WHEREAS at the conference the Commission was further informed that since the herein proceedings were commenced the parties have entered into negotiations with a view to resolving the matters in dispute amicably by negotiation and if necessary, through further conciliation and/or arbitration proceedings in the Commission;

AND WHEREAS the parties are to report back to the Commission by close of business 5 March 1999 as to the further program of discussions between them;

NOW THEREFORE the Commission, having regard to the public interest and the interests of the parties concerned and to prevent any further deterioration of industrial relations in respect of the matters in question and pursuant to the powers vested in it by the Industrial Relations Act, 1979, hereby recommends—

(1) THAT each of the employees of the applicant, members of the respondent desist from taking any industrial action of any form pending the resolution of the matters in dispute between the parties by further negotiation or further conciliation and/or arbitration proceedings in the Commission;

(2) THAT the applicant and the respondent immediately confer in relation to the matters in dispute with a view to resolving all issues in dispute by agreement wherever possible;

(3) THAT the applicant and the respondent and employees of the applicant, members of the respondent, fully comply with their respective obligations pursuant to clause 28 – Disputes Settlement Procedure of the Cockburn Cement Limited Award 1991 (Amended November 1995);

(4) THAT any issues in dispute between the applicant and respondent that are not resolved by negotiations between the parties be referred to the Commission for further conciliation and/or arbitration as the case may be.

(Sgd.) S. J. KENNER,
[L.S.] Commissioner.

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

Rock Engineering (Aust) Pty Ltd.

CR 329 of 1998.

COMMISSIONER S J KENNER.

5 March 1999.

Recommendation.

1. By this application pursuant to s 44 of the Industrial Relations Act, 1979 ("the Act"), the applicant and respondent are in dispute in relation to a number of conditions of employment arising under the terms of the Metal Trades (General) Award No. 13 of 1965 ("the Award"). The parties have been unable to resolve the matters in dispute and have agreed to accept a recommendation of the Commission in order to determine these matters.

2. At the outset, it should be noted that whilst the matters the subject of the dispute arise under the terms of the Award, the respondent does not concede that it is bound by the terms of the Award as a matter of law, but has been and is prepared to adopt and apply its provisions and has adopted this position for the purposes of these proceedings.

3. The issues between the parties to this matter have been agreed as follows—

(a) The appropriate classification level, pursuant to clauses 5 and 31 of the Award, for—
  (i) permanent factory employees;
  (ii) casual factory employees ("Issue One").

(b) The meaning of the term "*ordinary rate*" as contained in the casual employee provision in clause 31(5) of the Award ("Issue Two"); and

(c) The appropriate amount of time, if any, an employee ought to be made permanent from that of casual, pursuant to clauses 6(7) and 5(1) of the Award ("Issue Three").

4. In determining these issues, the Commission was assisted by inspections of the respondent's premises at Welshpool and by submissions and evidence from the respective parties.

5. The respondent company is engaged in the production of cable bolts for the mining industry. Mr Minchin, the general manager of the respondent, described the process by which the cable bolts are produced. As the Commission understands it, that process is as follows. The respondent obtains large coils of steel strands in bulk. That strand is then cut to length by an electronically operated machine. The process then involves the strand being formed into either a bulb or a birdcage, using a dedicated machine for that purpose. Otherwise, it may be used in a plain strand form. The configurations of the cable bolts are generally in either single or multiple strands. Once the cable bolts are cut to length and either bulbed or birdcaged, a process called "swaging" is undertaken whereby a steel ferule is fitted to the end of the strand by means of a metal crimp and press. The cable bolts, once produced, are coiled on a coiling machine, wrapped, wire tied, banded in bundles and transported by forklift from the factory to the yard for dispatch to the respondent's customers.

6. A variety of general and special purpose machines are used in this process and operated by the employees in question. These involve operators of the wire cutting machine; of the bulb and birdcaging machines; the crimping and pressing process; the banding of produced cable bolts and forklift operating where necessary, to transport the product to the respondent's yard. It was not in contest that the employees of the respondent engaged in these processes generally acquire the skills and experience necessary to operate the machines, on the job. Estimates of time taken to train for the various processes range from a matter of hours to, in some cases, several days. It was also not in contest that no prior experience is generally required for employment in these areas.

7. The evidence also indicates that in addition to the production process that I have outlined above, on infrequent occasions, it appears employees have been requested by the respondent's workshop to assist the tradesmen with tasks.

8. The issues to be resolved involve the interpretation of the relevant provisions of the Award. It is well established that the principles to be applied in interpreting awards are those to be applied generally by courts and tribunals for the interpretation of statutes and other legal instruments: *Norwest Beef Industries Ltd v The West Australian Branch, Australasian Meat Industry Employees Union* (1984) 64 WAIG 2124; *Robe River Iron Associates v Amalgamated Metal Workers and Shipwrights Union of Western Australia* (1987) 67 WAIG 1097. That is, the construction of a provision of an award is to be considered within the context of the terms of the award when read as a whole. Furthermore, the construction of relevant provisions of an award should be consistent with the purpose or object of the instrument. I now turn to consider the specific issues, in light of these principles.

Issue One

9. The applicant contends that pursuant to clause 5 – Definitions and Classification Structure of the Award, wage group C14 is an induction level in which an employee should be engaged for no more than one week, thereafter moving to wage group C13. In respect of casual employees, the applicant argued that those employees should be engaged at the C 13 level, with the 20% casual loading payable on that rate.

10. In respect of permanent employees, the applicant argued that depending upon the duties, the employees should be classified as either C13 or C12. Those employees who regularly operate the forklift, should, in the applicant's view, be classified as C12.

11. The respondent on the other hand, submitted that casual employees be classified at the C14 level for the first month of employment, and thereafter be classified at the C13 level. The basis of that proposition being that new casual employees will, in the course of that first month, acquire the full range of skills and experience in order to undertake the required duties. In respect of permanent employees, the respondent submitted that the C13 wage group was the appropriate level from commencement. Mr Gifford argued that there was no justification in the respondent's view, having regard to the nature of the work performed, for further classification to the higher level at wage group C12. The respondent submitted that the bulk of the work performed by the employees is of a semi-skilled nature and is consistent with the indicative tasks set out in the definition for wage group C13 in the Award. It was submitted that by comparison, the only task performed by the respondent's employees that fell within wage group C12, was the operation of a forklift and very occasionally, assisting a tradesperson. Therefore, the respondent said that such tasks were peripheral to the major and substantive duties performed by the employees, which were appropriately classified at wage group C13.

12. Both Mr Hicks and Mr Gifford referred, in support of their respective arguments, to the *"Award Restructuring Metal Industry Implementation Manual"("the Manual*"), as it related to the transition from old classifications to new classifications in the Award, originally prepared by representatives of employers and employees in the metal industry. Mr Gifford tendered an extract of the *Manual*, relating to non-trades employees.

13. The following indicative classifications appear in the *Manual*—

"C14: general labourer;

C13: process worker, assistant furnessman, trades assistant;

C12 machinist 2nd class, tool and material storeman, dogman, annealing stove attendant, crane attendant, welder 2nd class, sheet metal worker 2nd class;

C11: rigger, forklift driver."

14. I have carefully considered the submissions put to me, the materials to which both Mr Hicks and Mr Gifford referred, and the detailed inspections undertaken as a part of the proceedings. In my view, having regard to the nature of the work performed by the employees of the respondent, for permanent employees, wage group C13 is the appropriate classification group. This view has been reached having regard to the totality of the work performed by the respondent's employees. The vast majority of the tasks undertaken, appear to fall within the scope of the indicative tasks of the C13 wage group, including repetitive work on automatic, semi-automatic or single purpose machines or equipment and the use of selected hand tools etc. Whilst it is noted that as a part of the employee's duties, a forklift is used to transport materials in and about the factory premises, in my view, that is an incidental task to the performance of the primary work in the production of the cable bolts themselves. Likewise, the material before me indicates that very infrequently, the workshop employees have been called upon to provide assistance to the respondent's tradespersons. Again, this does not appear to be an integral part of the duties of the employees concerned.

15. In relation to casual employees, I consider that the submissions of Mr Hicks in this regard, have considerable merit. On the evidence before the Commission, none of which was seriously contested, the various process tasks undertaken by the respondent's employees, entail between several hours and a few days training. Mr Minchin said also, that employees working for the respondent in these areas required no prior training or experience, as it was all acquired "on the job". In my opinion, a casual employee engaged at wage group level C14 should be able to adequately acquire within one week, the necessary skills required to enable progression to the wage group C13 level. In reaching this view however, it is not the case that I have concluded that wage group C14 is limited to a maximum of 38 hours induction training, as that is a minimum training requirement only, and does not impose a maximum period of engagement in that classification.

16. Also, it may be relevant to observe that in relation to the wage group C12 level, the qualification requirement prescribes that such an employee has completed eight modules towards an Engineering Production Certificate or equivalent training. There is nothing before the Commission to indicate that the respondent's employees are or would be moving towards such a qualification or its equivalent.

17. I therefore recommend that casual employees of the respondent be engaged at the wage group C14 level for a period not exceeding one week and thereafter engaged at wage group C13. In the case of permanent employees, it is recommended that those employees be engaged at wage group C13.

Issue Two

18. Mr Hicks submitted that the terms of clause 31(5) required the respondent to pay a casual employee the casual loading of 20% on the employees' actual rate of pay, as opposed to the ordinary rate as prescribed by the relevant classification in the Award.

19. Mr Gifford on behalf of the respondent, submitted that the appropriate basis for calculating a casual loading is on the employee's ordinary rate in the Award for the classification in which he or she is engaged. Thus, the respondent submitted that it is not the employees' actual rate that is used for the basis of calculating the total casual rate, including the loading.

20. The terms of clause 31(5) of the Award relevantly provide as follows—

> "(5) A casual employee shall be paid 20% of the ordinary rate in addition to the ordinary rate for the calling in which he/she is employed."

The question for resolution therefore is what do these words mean?

21. In my opinion, applying the ordinary and natural meaning to the words used in clause 31(5), a casual employee is to be paid a loading of 20% on the appropriate classification rate in the Award, not the actual rate received by the employee. This in my opinion, is consistent with the language of the subclause, which expressly refers to "*the calling in which he/she is employed*". These words qualify the earlier words in the subclause, as to the meaning and effect of "*ordinary rate*". Had the terms of clause 31(5) not included reference to the calling in which the employee is engaged, then my conclusion on this matter may well have been entirely different. In my opinion however, the intention of the draftsperson of the Award, was to limit the basis of the casual loading calculation to the Award classification rate.

22. A similar issue arose in *Walter Silberschneider v MRSA Earthmoving Pty Ltd* (1987) 68 WAIG 33. The Full Bench of the Commission, on appeal from a decision of an Industrial Magistrate, considered the meaning of "*ordinary rate*" for the purposes of clause 32(6) of the Award, as it then was. The Full Bench observed as follows at 35—

> "It is accepted that the Appellant was not engaged as a casual employee. However, by virtue of clause 6(6)(b)(ii) of the Award an employee "is deemed for the purposes of the award" to be a "casual worker" if he is dismissed through no fault of his own within one month of commencing employment. The Appellant was dismissed, albeit constructively, through no fault of his own, within that time. He is therefore deemed to be a casual employee. In these circumstances he is clearly entitled to be paid the 20% loading mentioned in clause 32(6) of the Award. Although in some instances, as for example in Crawford Productions Pty Ltd v Film and Television Production Association (1983) 5 IR 413, it has been held that loadings are to be calculated on the basis of the pay one ordinarily received, each entitlement depends on the language of the particular award (cf: Re The Vehicle Industry-Repair, Service and Retail Award 1976 (1979) 38 FLR 267). Clause 32(6) does not speak merely of "ordinary rate" as in the mentioned example, but of "the ordinary rate for the calling" in which the employee is engaged. This can only sensibly refer to the ordinary rate for that particular calling fixed by the Award."

23. Accordingly, my recommendation is that for the purposes of calculating a casual employee's total rate, the 20% casual loading be paid on the appropriate classification rate contained in the Award, and not the actual rate of pay received by the employee.

Issue Three

24. Mr Hicks submitted in relation to this issue, that the combined effects of clauses 5(1) and 6(7) of the Award is such that a casual employee cannot be employed for a period longer than one month. Implicit in this submission, is that thereafter, the employee must be engaged permanently. Mr Gifford submitted on behalf of the respondent, that the clauses concerned do not have the effect contended by the applicant but rather, there is no express limitation upon the period of time which an employee may be engaged as a casual employee under the Award.

25. Clause 5(1) of the Award provides as follows—

> "'Casual Employee' means an employee engaged and paid as such."

26. Clauses 6(6) and (7) further provide that—

> "(6) Notification on Engagement
>
> On the first day of engagement an employee shall be notified by his employer or by the employer's representative whether the duration of his employment is expected to exceed one month and, if hired as a casual employee shall be advised accordingly.
>
> (7) Casual Employees
>
> (a) (i) The period of notice of termination in the case of a casual employee shall be one hour.
>
> (ii) If the required notice of termination is not given one hour's wages shall be paid by the employer or forfeited by the employee.
>
> (b) An employee shall for the purpose of this award be deemed to be a casual employee –
>
> (i) if the expected duration of the employment is less than one month, or
>
> (ii) if the notification referred to in subclause (6) of this clause is not given and the employee is dismissed through no fault of the employee within one month of commencing employment."

27. Mr Hicks submitted that combined effect of these clauses, as I have noted above, is to limit casual employment to one month as a maximum. Mr Gifford submitted however, that the terms of clause 5(1) defining "casual employee" are open ended and is the material definition which prescribes the engagement by an employer of a casual employee. It was further submitted that the combined effect of clauses 6(6) and (7) is to only go to the issue of notice of termination of employment and they do not limit the period over which an employer may engage a casual employee.

28. Having considered the relevant terms of the Award as outlined above, I am of the opinion, for the following reasons, that the respondent's interpretation of these provisions is to be preferred.

29. At common law, it is well established that a casual employee is one who is engaged under a series of separate and intermittent contracts of employment. However, it is also well established, that the terms of a relevant award may alter the common law position. In this case there is an ability under the Award to engage a casual employee on an ongoing basis, without any express limitation on that period. Where clause 6 of the Award refers to "casual employee", it refers to such an employee as defined by clause 5(1) i.e. one engaged and paid as such. The requirement of clause 6(6) is to notify on engagement, whether an employee is engaged on a casual basis, as defined. Clause 6(7)(a) then prescribes the period of notice to be given to a casual employee so engaged, as defined. Furthermore, clause 6(7)(b) is a deeming provision, which only has effect in the event that the preconditions in subparagraphs (i) and (ii) are met. In my view, this provision should not be read as imposing a limit upon the otherwise open-ended definition in clause 5(1) of the Award.

30. I note however, Mr Gifford's submission that it is not the respondent's position to indefinitely engage casual employees rather, I understood the position to be that the respondent required a degree of flexibility in order to meet fluctuations in demand for its product. This is in my view, a sensible application of the casual provisions of the Award.

31. I therefore recommend that the above interpretation of these provisions of the Award be applied and casual employment not be limited to a period of one month.

(Sgd.) S.J. KENNER,
[L.S.] Commissioner.

NOTICES—
Appointments—

Industrial Relations Act 1979.

NOTICE OF APPOINTMENT OF INDUSTRIAL MAGISTRATE

His Excellency the Governor in Executive Council has been pleased to appoint—

PAUL ALLEN NICHOLLS

To be an industrial magistrate under section 81B(2) of the Industrial Relations Act, effective on and from 27 January 1999.

CHERYL EDWARDES,
Minister for Labour Relations.

AWARDS/AGREEMENTS—
Consolidation by Registrar—

QUARRY WORKERS' AWARD 1969.
No. 13 of 1968.

Quarry Workers' Award, 1969—No. 13 of 1968.

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 22 February 1999.

(Sgd.) J. SPURLING,
Registrar.

Quarry Workers' Award, 1969—No. 13 of 1968.

1.—TITLE

This award shall be known as the Quarry Workers' Award, 1969, and replaces Award No. 44 of 1948 as amended and Award No. 43 of 1956 as amended.

1A.—STATEMENT OF PRINCIPLES—JUNE, 1998

It is a condition of this award/industrial agreement that any variation to its terms on or from the 12th day of June, 1998 including the $14, $12 and $10 per week arbitrated safety net adjustments, the increase in the adult minimum wage to $373.40 per week and previous arbitrated safety net adjustments, shall not be made except in compliance with the Statement of Principles—June, 1998 set down by the Commission in Matter No. 757 of 1998.

2.—ARRANGEMENT

2A.—STATE WAGE CASE PRINCIPLES—JUNE 1991

It is a term of this award, arising from the decision of the Western Australian Industrial Relations Commission in the Stage Wage Case on 17th June 1991, that the Unions will not pursue, prior to 14th November 1991, any extra claims, award or over-award, except where consistent with the principles determined by the decision.

3.—AREA AND SCOPE

(1) Area—This award shall operate throughout the State of Western Australia.

(2) Scope—This award shall apply to workers who are eligible for membership in the applicant union and are employed in or in connection with the quarrying industry.

4.—TERM

The term of this award shall be from the beginning of the first pay period commencing on or after the date hereof until the 13th day of February, 1972.

5.—CONTRACT OF SERVICE

(1) (a) A contract of service to which this award applies may be terminated in accordance with the provisions of this clause and not otherwise but this subclause does not operate so as to prevent any party to a contract from giving a greater period of notice than is hereinafter prescribed, nor to affect an employer's right to dismiss an employee without notice for conduct that justifies instant dismissal, including malingering, inefficiency or neglect of duty, and an employee so dismissed shall be paid for the time worked up to the time of dismissal only.

(b) Subject to the provisions of this clause, a party to a contract of service may, on any day give to the other party the appropriate period of notice of termination of the contract prescribed in subclause (2) of this clause and the contract terminates when that period expires.

(2) Notice of Termination by Employer—

(a) In order to terminate the employment of an employee (other than a casual employee) the employer shall give the employee the following notice—

Period of Continuous Service	Period of Notice
During the first three months	1 day
More than three months but less than one year	1 week
One year but less than three years	2 weeks
Three years but less than five years	3 weeks
Five years and over	4 weeks

(b) An employee who at the time of being given notice is over 45 years of age and who at the date of termination has completed two years' continuous service with the employer, shall be entitled to one week's notice in addition to the notice prescribed in paragraph (a) of this subclause.

(c) Payment in lieu of the notice prescribed in paragraphs (a) and (b) of this subclause shall be made if the appropriate notice period is not given. Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.

(d) In calculating any payment in lieu of notice the employer shall pay the employee the ordinary wages for the period of notice had the employment not been terminated.

(e) The period of notice in this subclause shall not apply in the case of casual employees, apprentices or employees engaged for a specific period of time or for a specific task or tasks.

(f) (i) For the purpose of this clause continuity of service shall not be broken on account of—

(aa) any interruption or termination of the employment by the employer if such interruption or termination has been made merely with the intention of avoiding obligations hereunder in respect of leave of absence;

(bb) any absence from work on account of personal sickness or accident for which an employee is entitled to claim sick pay as prescribed by this award or on account of leave lawfully granted by the employer; or

(cc) any absence with reasonable cause, proof whereof shall be upon the employee;

Provided that in the calculation of continuous service under this subclause any time in respect of which an employee is absent from work except time for which an employee is entitled to claim annual leave, sick pay, long service leave and public holidays as prescribed by this award shall not count as time worked.

(ii) Service by the employee with a business which 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 66 of the Western Australian Industrial Gazette at pages 1-4 shall also constitute continuous service for the purpose of this clause.

(3) Notice of Termination by Employee—

(a) The notice of termination required to be given by an employee shall be the same as that required of an employer, save and except that there shall be no additional notice based on the age of the employee concerned.

(b) If an employee fails to give the required notice or having given, or been given, such notice leaves before the notice expires, the employee forfeits the entitlement to any monies owing to the employee under this award except to the extent that those monies exceed the ordinary wages for the required period of notice.

(4) Time Off During Notice Period—

Where an employer has given notice of termination to an employee who has completed three month's continuous service, that employee shall, for the purpose of seeking other employment be entitled to be absent from work up to a maximum of eight ordinary hours without deduction of pay. The time off shall be taken at times that are convenient to the employee after consultation with the employer.

Provided that this subclause shall not apply to a casual employee.

(5) Statement of Employment—

The employer shall, upon receipt of a request from an employee whose employment has been terminated, provide to the employee a written statement specifying the period of employment and the classification or the type of work performed by the employee.

(6) Casual Employees—

(a) (i) A casual employee is one who is engaged and paid as such.

(ii) The period of notice of termination in the case of a casual employee shall be one hour.

(iii) If the required notice of termination is not given one hour's wages shall be paid by the employer or forfeited by the employee.

(7) Absence from Duty—

The employer shall be under no obligation to pay for any day not worked upon which the employee is required to present for duty, except when such absence is due to illness and comes within the provisions of Clause 14.—Absence through Sickness of this award or such absence is on account of holidays to which the employee is entitled under the provisions of this award.

(8) Standing Down of Employees—

(a) The employer is entitled to deduct payment for any day or part of a day upon which an employee cannot be usefully employed because of industrial action by the Union party to this award, or by any other association or Union.

(b) The provisions of paragraph (a) of this subclause also apply where the employee cannot be usefully employed through any cause which the employer could not reasonably have prevented but only if, and to the extent that, the employer and the Union concerned so agree or, in the event of disagreement, the Board of Reference so determines.

(c) Where the stoppage of work has resulted from a breakdown of the employer's machinery the Board of Reference, in determining a dispute under paragraph (b) of this subclause, shall have regard for the duration of the stoppage and the endeavours made by the employer to repair the breakdown.

(9) Part Time Employment—

(a) A part time employee may be engaged to work for a constant number of hours each week which having regard to the various ways of arranging ordinary hours shall average less than 38 per week.

(b) An employee so engaged shall be paid per hour 1/38th of the weekly wage prescribed for the classification in which the employee is engaged.

(c) An employee engaged on a part time basis shall be entitled in respect of annual leave, holidays, sick leave and bereavement leave arising under this award payment on a proportionate basis calculated as follows—

(i) Annual Leave

Where a part time employee is entitled to a payment, either on termination or for the purpose of annual leave or at a close down, for continuous service in any qualifying 12 monthly period then the payment of 2.923 hours' pay prescribed by paragraph (b) of subclause (5) of Clause 16.—Annual Leave shall be in respect of each cumulative period of 38 ordinary hours worked during the qualifying period.

(ii) Holidays

A part time employee shall be allowed the holidays prescribed by Clause 15.—Holidays and Clause 16—Annual Leave without deduction of pay in respect of each holiday which is observed on a day ordinarily worked by the part time employee.

(iii) Absence Through Sickness

Notwithstanding the provisions of paragraph (a) of subclause (1) of Clause 14.—Absence Through Sickness the accrual of 1/6th of a week for each completed month of service shall be calculated on the average number of ordinary hours worked each week for every completed month of service.

(iv) Bereavement Leave

Where a part time employee would normally work on either or both of the two working days following the death of a close relative which would entitle an employee on weekly hiring

to bereavement leave in accordance with Clause 18.—Bereavement Leave of this award the employee shall be entitled to be absent on bereavement leave on either or both of those two working days without loss of pay for the day or days concerned.

(v) Overtime

A part time employee who works in excess of the hours fixed under the contract of employment shall be paid overtime in accordance with Clause 8.—Overtime (other than continuous shift workers) of this award.

(10) Probationary Employment—

All employees engaged on a weekly basis, shall be deemed to have been engaged on a probationary basis during the first month of their employment.

(11) Cadets—

A cadet is an employee who is appointed by an employer solely for the purpose of being trained for an administrative or supervisory position in the employer's business or for qualification as a certified quarry manager.

6.—HIGHER DUTIES

A worker engaged on duties carrying a higher rate than his ordinary classification shall be paid the higher rate for the time he is so engaged but if he is so engaged for more than two hours of one day or shift he shall be paid the higher rate for the whole day or shift.

7.—HOURS (OTHER THAN CONTINUOUS SHIFT WORKERS)

(1) Hours of Work—

(a) Except as provided elsewhere in this award the ordinary working hours shall be thirty-eight (38) per week.

(b) The ordinary hours of work may be worked on any or all days of the week, Monday to Sunday, inclusive, and except in the case of shift employees, shall be worked between the hours of 5.30am and 5.00pm.

(c) The ordinary hours of work shall not exceed ten hours on any day.

Provided that in any arrangement of ordinary working hours, where such ordinary hours are to exceed eight hours on any day, the arrangement of hours shall be subject to agreement between the employer and the majority of employees on the employer's premises or on the site concerned.

(d) All ordinary hours worked on a Saturday shall be paid for at the rate of time and a half for the first two hours and double time thereafter.

(e) All ordinary hours worked on a Sunday shall be paid for at the rate of double time.

(2) Implementation of 38 Hour Week—

(a) Except as provided in paragraph (c) hereof, the method of implementation of the 38 hour week may be any one of the following—

(i) by employees working less than eight ordinary hours each day; or

(ii) by employees working less than eight ordinary hours on one or more days each; or

(iii) by fixing one day of ordinary working hours on which all employees will be off duty during a particular four week cycle; or

(iv) by rostering employees off duty on various days of the week during a particular four week cycle so that each employee has one day of ordinary working hours off duty during that cycle; or

(v) on distant work by employees working eight ordinary hours on each day and accruing one day for each four weekly cycle. Such accrued day or days to be taken in conjunction with and additional to rest and recreation leave as prescribed in subclause (8) of Clause 21.—Distant Work, or at the end of the project, or on termination, whichever comes first.

(vi) Where any rostered day off duty falls on a public holiday as prescribed in Clause 15.—Holidays, the next working day shall be taken in lieu unless an alternate day in that four week cycle or the next is agreed.

(b) An assessment should be made as to which method of implementation best suits each employer and the proposal shall be discussed with the employees concerned.

In the absence of agreement, the method of working the 38 hour week shall be resolved via the procedure outlined in Clause 30.—Settlements of Disputes.

(c) Different methods of implementation of a 38 hour week may apply to various sites or establishments of the one employer.

(d) Notice of Days Off Duty—

Except as provided in paragraph (e) hereof, in cases where, by virtue of the arrangement of his ordinary working hours, an employee, in accordance with subparagraphs (iii) and (iv) of paragraph (a) hereof, is entitled to a day off duty during his four week cycle, such employee shall be advised by the employer at least four weeks in advance of the day he is to take off duty.

(e) (i) An employer, with the agreement of the majority of employees concerned, may substitute the day an employee is to take off in accordance with subparagraphs (iii) and (iv) of paragraph (a) hereof, for another day in the case of a breakdown in machinery or a failure or shortage of electric power or some other emergency situation.

(ii) An employer and employee may by agreement substitute the day the employee is to take off for another day.

(f) Meal Break—

There shall be a cessation of work and of working time for the purpose of a meal on each day of not less than 30 minutes.

(g) Varied Starting Times—

Provided that by agreement between the employer, and his employees the working day may begin at 5.00am or at any other time and the working time shall then begin to run from the time so fixed with a consequential adjustment to the meal cessation period.

(h) (i) Where three shifts are worked the 38 hours as arranged and agreed in accordance with subclauses (1) and (2) of Clause 7—Hours (other than continuous shift workers) shall be inclusive of crib time.

(ii) The crib time to be allowed shall be 20 minutes which, on a three-shift system but not otherwise, shall be counted as time worked.

(i) The provisions of this clause do not apply to cookhouse personnel.

(j) There may be one smoko break of 15 minutes duration taken by the employees during the period between the commencement of work each day and the meal break. The taking of this smoko break may be rostered by management so as to ensure there is no break in production.

8.—OVERTIME (OTHER THAN CONTINUOUS SHIFT WORKERS)

(1) For work done beyond the ordinary hours of duty on any day Monday to Friday inclusive, payment shall be at the rate of time and a half for the first two hours and double time thereafter.

For work done beyond rostered ordinary hours on Saturday and Sunday, payment shall be at the rate of double the ordinary wage as prescribed.

Nothing within this clause shall be read to provide for the payment of greater than double the ordinary rate as prescribed by this award, with the exception of work done on a public holiday as prescribed by Clause 15.—Holidays which shall be paid at the rate of double time and a half.

Nothing within this award shall be read as requiring the payment of a "penalty" on a "penalty".

(2)(a) Work done on Saturdays prior to 12 noon shall be paid for at the rate of time and a half for the first two hours and double time thereafter.

(b) All work done on Saturdays after 12 noon or on Sundays shall be paid for at the rate of double time.

(c) All work done on any day prescribed as a holiday under this award shall be paid for at the rate of double time and a half.

(3) When a worker is recalled to work overtime after leaving his employer's business premises he shall be paid for at least three hours at overtime rates; provided that, except in the case of unforeseen circumstances arising, a worker shall not be required to work the full three hours if the job for which he was recalled is completed within a shorter period but if such worker is subsequently recalled to work within the period of three hours for which payment has been made, an additional payment shall not be made nor shall any extra overtime be paid in respect of any period covered by such minimum payment.

(4) These overtime rates shall not apply to excess time worked due to private arrangement between the workers themselves or owing to a relieving man failing to come on duty at the proper time. The time for which any worker may be paid at ordinary rates instead of overtime due to a relieving man failing to come on duty at the proper time, shall not exceed two hours, after the expiration of which overtime rates shall apply to the whole shift.

(5) Where a day worker or a shift worker (other than a shift worker working a shift inclusive of a paid meal break) is required for duty during his usual meal time and his meal time is postponed for more than half an hour, he shall be paid at overtime rates until he gets a meal break of the customary period.

(6)(a) An employer may require any worker to work reasonable overtime at overtime rates and such worker shall work overtime in accordance with such requirement.

(b) No union 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.

(7) Overtime on shift work shall be based on the rate payable for the shift worked.

(8) The provisions of this clause do not apply to cookhouse personnel.

(9) When a worker is required to hold himself in readiness for a call to work after ordinary hours, he shall be paid at ordinary rates for the time he so holds himself in readiness.

9.—SHIFT WORK

(1) The provisions of this clause apply to shift work whether continuous or otherwise.

(2) A shift employee shall, in addition to his ordinary rate, be paid per shift at the rate of 15% of his ordinary wage when on afternoon or night shift.

(3) Where a shift commences at or after 10.00pm the whole shift shall be paid for at the rate which applies to the major portion of the shift.

(4)(a) 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, then employees employed on such afternoon or night shifts shall be paid at overtime rates.

(b) The sequence of work shall not be deemed to be broken under the preceding paragraph by reason of the fact that work on the process is not carried out on a Saturday or Sunday or on any holiday.

(5) An employee who replaces a regular shift employee on afternoon or on night shift shall be paid the appropriate shift allowance prescribed in subclause (2) of this clause: Provided that where such afternoon or night shift necessitates the working of two ordinary eight hour shifts in a 24 hour period it shall be paid for at the appropriate overtime rate, in lieu of the shift work loading prescribed by subclause (2) hereof.

(6) All work performed during ordinary hours on Saturdays, Sundays or holidays shall be paid for at the rate of time and a half. This rate shall be in lieu of the allowances prescribed in subclause (2) of this clause.

(7) The provisions of this clause do not apply to cookhouse personnel.

(8) An afternoon shift is one that commences its ordinary working hours at or after 3.00pm.

(9) A night shift is one that commences its ordinary working hours at or after 10.00pm.

10.—CONTINUOUS SHIFT WORK

(1)(a) The ordinary hours of continuous shift employee shall average 38 per week (inclusive of crib time) and shall not exceed 152 hours in 28 consecutive days.

Provided that a roster system may operate on the basis that the weekly average of 38 ordinary hours is achieved over a period which exceeds 28 consecutive days.

(b) The ordinary hours of work prescribed herein shall not exceed ten hours on any day. Provided that in any arrangement of ordinary working hours where the ordinary working hours are to exceed eight hours on any day, the arrangement of hours shall be subject to the agreement of the employer and the majority of employees in the quarry or on the site concerned.

(2) Except as hereinafter provided all work done beyond the hours of duty on any day shall be paid for at the rate of double time.

(3) A employee called upon to work a regularly rostered overtime shift in not more than one week in any four weeks, shall be paid for such shift at the rate of time and one half for the first four hours and double time thereafter.

(4) These overtime rates shall not apply to excess time worked due to private arrangement between the employees themselves or owing to a relieving man failing to come on duty at the appointed time or where such time is worked to effect the periodical rotation of shifts. The time for which any employee may be paid at ordinary rates instead of overtime due to a relieving man failing to come on duty at the appointed time shall not exceed two hours after the expiration of which overtime rates shall apply to the whole of the shift.

(5) Overtime on shift work shall be based on the rate payable for the shift worked.

(6) When an employee is recalled to work overtime after leaving his employer's business premises he shall be paid for at least three hours at overtime rates; provided that except in the case of unforeseen circumstances arising, an employee shall not be required to work the full three hours if the job for which he was recalled is completed within a shorter period but if such employee is subsequently recalled to work within the period of three hours for which payment has been made, an additional payment shall not be made nor shall any extra overtime be paid in respect of any period covered by such minimum payment.

11.—REST PERIOD AFTER OVERTIME

(1) 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.

(2) 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 at least eight consecutive hours off duty between those times shall, subject to this clause, 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.

(3) 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 rates 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.

12.—MEAL ALLOWANCES

(1) Subject to the provisions of subclause (2) an employee required to work overtime for more than two hours shall be supplied with a meal by the employer or be paid $5.00 for a meal.

(2) The provisions of subclause (1) do not apply in respect of any period of overtime for which the employee has been notified on the previous day or earlier that he will be required.

(3) An employee working overtime shall be allowed a crib time of 20 minutes without deduction of pay after each four hours of overtime worked if the employee continues work after each crib time.

(4) If an employee to whom subclause (2) of this clause applies has, as a consequence of the notification referred to in that paragraph provided himself with a meal or meals and is not required to work overtime or is required to work less overtime than the period notified, he shall be paid for each meal provided and no required, the appropriate amount prescribed in subclause (1) of this clause.

(5) An employee shall not be compelled to work for more than six hours without a break for a meal.

13.—MATERNITY LEAVE

(1) Eligibility for Maternity Leave—

An employee 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) An employee shall include a part-time employee but shall not include a 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) 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) An employee shall, not less than ten weeks prior to the presumed date of confinement, give notice in writing to her employer stating the presumed date of confinement.

(c) An employee 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) An employee shall not be in breach of this order as a consequence of 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 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 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 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 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 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.

(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 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.

(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 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) 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 a employee 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 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) hereof 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 award absences (excluding annual leave or long service leave), shall not be available to a employee during her absence on maternity leave.

(8) Effect of Maternity Leave on Employment—

Notwithstanding any award, or other provision to the contrary, absence on maternity leave shall not break the continuity of service of a employee but shall not be taken into account in calculating the period of service for any purpose of the award.

(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 award.

(b) An 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 an employer 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 employer 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) 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 (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 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 an employer engages a replacement employee under this subclause, the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.

(c) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee 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 employee who is being replaced.

(d) Provided that nothing in this subclause shall be construed as requiring an employer 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.

14.—ABSENCE THROUGH SICKNESS

(1)(a) An employee who is unable to attend or remain at the 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 provisions of this clause.

Such payment shall provide ten days paid sick leave per year to weekly hired employees, and this entitlements shall be accrued to the employee at the rate of 1/6th of a week for each completed month of service with the employer.

(i) Employee who actually works 38 ordinary hours each week—

An employee whose ordinary hours of work are arranged in accordance with placitum (i) or (ii) of paragraph (a) of subclause (3) of Clause 7.—Hours (other than continuous shift workers) so that the employee actually works 38 ordinary hours each week shall be entitled to payment during such absence for the actual ordinary hours absent.

(ii) Employee who works an average of 38 ordinary hours each week—

An employee whose ordinary hours of work are arranged in accordance with placitum (iii) or (iv) of paragraph (a) of subclause (3) of Clause 7.—Hours (other than continuous shift workers) so that the employee works an average of 38 ordinary hours each week during a particular work cycle shall be entitled to pay during such absence calculated as follows—

$$\frac{\text{duration of absence}}{\text{ordinary hours normally worked that day}} \times \frac{\text{appropriate weekly rate}}{5}$$

An employee shall not be entitled to claim payment for personal ill health or injury nor will the employee's sick leave entitlement be reduced if such ill health or injury occurs on the week day the employee is to take off duty in accordance with placitum (iii) or (iv) of paragraph (a) of subclause (3) of Clause 7.—Hours (other than continuous shift workers) of this award.

(b) Notwithstanding the provisions of paragraph (a) of this subclause an employer may adopt an alternative method of payment of sick leave entitlements where the employer and the majority of the employees so agree.

(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 the employee's 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 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 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 four 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 provided that the employee shall not be required to produce a certificate from a medical practitioner with respect to the first two absences in any calendar 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 an employee who suffers personal ill health or injury during the time

when the employee 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 the place of residence or a hospital as a result of the employee's personal ill health or injury for a period of seven consecutive days or more and the employee produces a certificate from a registered medical practitioner that the employee 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 the employee is unable to attend for work on the working day next following the employee's 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 the employee 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 for in accordance with the provisions of Clause 16.—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 16.—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 66 of the Western Australian Industrial Gazette at pages 1-4, the paid sick leave standing to the credit of the employee at the date of transmission from service with the transmittor 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 shall not apply to casual employees.

15.—HOLIDAYS

(1) The following days or the days observed in lieu shall be allowed as holidays without loss of pay, namely, New Year's Day, Australia Day, Labour Day, Good Friday, Easter Monday, Anzac Day, State 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.

(2) When any of the days mentioned in subclause (1) 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.

(3) 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.

(4) The provisions of this clause shall not apply to casual employees.

16.—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 his employer after a period of 12 months' continuous service with such employer.

(2) Seven-day shift workers, that is shift employees who are rostered to work regularly on Sundays and holidays, shall be allowed one week's leave in addition to the leave prescribed in subclause (1) hereof. Where an employee with 12 months' continuous service is engaged for part of a qualifying 12 monthly period as a seven day shift employee he shall be entitled to have the period of four consecutive weeks' annual leave prescribed in subclause (1) hereof increased by 1/12th of a week for each month he is continuously engaged as aforesaid.

(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) After one month's continuous service in any qualifying 12 monthly period an employee whose employment terminates shall, subject to the provisions of subclause (2) of this clause, be paid 1/3rd of a week's pay at his ordinary rate of wage in respect of each completed month of service in that 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 this award shall not count for the purpose of determining his right to annual leave.

(6)(a) An employee who is justifiably dismissed for misconduct shall not be entitled to the benefit of the provisions of this clause.

(b) By mutual consent of the employer, and the employee annual leave may be taken in not more than two periods.

(7) The provisions of this clause shall not apply to casual employees.

(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) In the event of an employee 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 employees, he shall not be entitled to work or pay whilst the other employees of such employer are on leave on full pay.

(10) During a period of annual leave an employee shall receive a loading of 17½% calculated on the rate of pay as prescribed in Clause 27.—Wages of this award. Provided that his loading shall not apply to annual leave taken before the conclusion of 12 months continuous service nor to pro rata annual leave payments on termination.

(11) All periods of leave prescribed in this clause are inclusive of any rostered day off arranged and agreed in accordance with the provisions of Clause 7.—Hours (other than continuous shift workers).

17.—LONG SERVICE LEAVE

The Long Service Leave provisions published in Volume 63 of the Western Australian Industrial Gazette at pages 1 to 6 inclusive, are hereby incorporated and shall be deemed to be part of this award.

18.—BEREAVEMENT LEAVE

An employee (other than a casual) shall on the death within Australia of a wife, husband, father, mother, brother, sister, mother-in-law, father-in-law, child, step-child, grandparents, foster parent and foster 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 days's work. Proof of such death shall be furnished by the employee to the satisfaction of the employer if he so requests. Provided however that this clause shall have no operation while the period of entitlement to leave under it coincides with any other period of entitlement to leave. For the purposes of this clause the words "wife" and "husband" shall not include a wife or husband from whom the employer is legally separated but shall include a person who lives with the employee as a de facto wife or husband.

19.—LOCATION ALLOWANCES

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	15.20
Argyle	39.50
Balladonia	15.00
Barrow Island	25.70
Boulder	6.20
Broome	24.20
Bullfinch	7.20
Carnarvon	12.30
Cockatoo Island	26.60
Coolgardie	6.20
Cue	15.50
Dampier	20.90
Denham	12.30
Derby	25.10
Esperance	4.60
Eucla	16.90
Exmouth	21.70
Fitzroy Crossing	30.30
Goldsworthy	13.80
Halls Creek	34.60
Kalbarri	5.10
Kalgoorlie	6.20
Kambalda	6.20
Karratha	24.80
Koolan Island	26.60
Koolyanobbing	7.20
Kununurra	39.50
Laverton	15.40
Learmonth	21.70
Leinster	15.20
Leonora	15.40
Madura	16.00
Marble Bar	37.70
Meekatharra	13.30
Mt Magnet	16.50
Mundrabilla	16.50
Newman	14.50
Norseman	12.90
Nullagine	37.60
Onslow	25.70
Pannawonica	19.60
Paraburdoo	19.40
Port Hedland	20.80
Ravensthorpe	8.10
Roeboume	28.50
Sandstone	15.20
Shark Bay	12.30
Shay Gap	13.80
Southern Cross	7.20
Telfer	35.00
Teutonic Bore	15.20
Tom Price	19.40
Whim Creek	24.60
Wickham	24.00
Wiluna	15.50
Wittenoom	33.40
Wyndham	37.30

(2) Except as provided in subclause (3) of this clause, an employee who has—

(a) a dependent shall be paid double the allowance prescribed in subclause (1) of this clause;

(b) a partial dependent shall be paid the allowance prescribed in subclause (1) of this clause plus the difference between that rate and the amount such partial dependent 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) 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.

(5) 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.

(6) 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.

(7) 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 location allowance or who, if in receipt of a salary or wage package, receives no consideration for which the location allowance is payable pursuant to the provisions of this clause.

(b) "Partial Dependant" shall mean a "dependent" as prescribed in paragraph (a) of this subclause who receives a location allowance which is less than the location allowance prescribed in subclause (1) of this clause or who, if in receipt of a salary or wage package, receives less than a full consideration for which the location allowance is payable pursuant to the provisions of this clause.

(8) 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.

(9) 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.

LOCATION ALLOWANCES—July 1998

	PRICES		ISOLATION		CLIMATE		TOTALS	
	Index No.	Prices	Index No.	Isolation	Index No.	Climate	Amount	50.00%
Maximum Allowance Location	100	$64.8	100	$10.00	100	$5.00	$78.78	$39.9
Agnew	35	$ 22.7	68	$6.80	19	$ 0.95	$30.4	$15.2
Argyle	100	$ 64.8	93	$9.30	99	$ 4.95	$79.0	$39.5
Balladonia	40	$ 25.9	40	$4.00	0	$ —	$29.9	$15.0
Barrow Island	65	$ 42.1	62	$6.20	62	$ 3.10	$51.4	$25.7
Boulder	16	$ 10.4	15	$1.50	12	$ 0.60	$12.5	$ 6.2
Broome	58	$ 37.6	71	$7.10	73	$ 3.65	$48.3	$24.2
Bullfinch	16	$ 10.4	33	$3.30	15	$ 0.75	$14.4	$ 7.2
Carnarvon	30	$ 19.4	43	$4.30	18	$ 0.90	$24.6	$12.3
Cockatoo Island	63	$ 40.8	80	$8.00	86	$ 4.30	$53.1	$26.6
Coolgardie	16	$ 10.4	15	$1.50	12	$ 0.60	$12.5	$ 6.2
Cue	37	$ 24.0	55	$5.50	29	$ 1.45	$30.9	$15.5
Dampier	51	$ 33.0	58	$5.80	61	$ 3.05	$41.9	$20.9
Denham	30	$ 19.4	43	$4.30	18	$ 0.90	$24.6	$12.3
Derby	60	$ 38.9	71	$7.10	86	$ 4.30	$50.3	$25.1
Esperance	9	$ 5.8	34	$3.40	0	$ —	$ 9.2	$ 4.6
Eucla	40	$ 25.9	79	$7.90	0	$ —	$33.8	$16.9
Exmouth	55	$ 35.7	53	$5.30	49	$ 2.45	$43.4	$21.7
Fitzroy Crossing	74	$ 47.9	87	$8.70	80	$ 4.00	$60.6	$30.3
Goldsworthy	26	$ 16.8	66	$6.60	83	$ 4.15	$27.6	$13.8
Halls Creek	88	$ 57.0	91	$9.10	61	$ 3.05	$69.2	$34.6
Kalbarri	14	$ 9.1	12	$1.20	0	$ —	$10.3	$ 5.1
Kalgoorlie	16	$ 10.4	15	$1.50	12	$ 0.60	$12.5	$ 6.2
Kambalda	16	$ 10.4	15	$1.50	12	$ 0.60	$12.5	$ 6.2
Karratha	63	$ 40.8	58	$5.80	61	$ 3.05	$49.7	$24.8
Koolan Island	63	$ 40.8	80	$8.00	86	$ 4.30	$53.1	$26.6
Koolyanobbing	16	$ 10.4	33	$3.30	15	$ 0.75	$14.4	$ 7.2
Kununurra	100	$ 64.8	93	$9.30	99	$ 4.95	$79.0	$39.5
Laverton	37	$ 24.0	58	$5.80	19	$ 0.95	$30.7	$15.4
Learmonth	55	$ 35.7	53	$5.30	49	$ 2.45	$43.4	$21.7
Leinster	35	$ 22.7	68	$6.80	19	$ 0.95	$30.4	$15.2
Leonora	37	$ 24.0	58	$5.80	19	$ 0.95	$30.7	$15.4
Madura	40	$ 25.9	60	$6.00	0	$ —	$31.9	$16.0
Marble Bar	100	$ 64.8	70	$7.00	73	$ 3.65	$75.4	$37.7
Meekatharra	32	$ 20.7	44	$4.40	29	$ 1.45	$26.6	$13.3
Mount Magnet	41	$ 26.6	48	$4.80	33	$ 1.65	$33.0	$16.5
Mundrabilla	40	$ 25.9	70	$7.00	0	$ —	$32.9	$16.5
Newman	34	$ 22.10	49	$4.90	42	$ 2.10	$29.0	$14.5
Norseman	34	$ 22.10	34	$3.40	7	$ 0.35	$25.8	$12.9
Nullagine	100	$ 64.8	75	$7.50	58	$ 2.90	$75.2	$37.6
Onslow	65	$ 42.1	62	$6.20	62	$ 3.10	$51.4	$25.7
Pannawonica	47	$ 30.4	60	$6.00	55	$ 2.75	$39.2	$19.6
Paraburdoo	47	$ 30.4	60	$6.00	48	$ 2.40	$38.8	$19.4
Port Hedland	51	$ 33.0	50	$5.00	71	$ 3.55	$41.6	$20.8
Ravensthorpe	18	$ 11.7	45	$4.50	0	$ —	$16.2	$ 8.1
Roebourne	73	$ 47.3	59	$5.90	77	$ 3.85	$57.0	$28.5
Sandstone	35	$ 22.7	68	$6.80	19	$ 0.95	$30.4	$15.2
Shark Bay	30	$ 19.4	43	$4.30	18	$ 0.90	$24.6	$12.3
Shay Gap	26	$ 16.8	66	$6.60	83	$ 4.15	$27.6	$13.8
Southern Cross	16	$ 10.4	33	$3.30	15	$ 0.75	$14.4	$ 7.2
Telfer	90	$ 58.3	81	$8.10	73	$ 3.65	$70.0	$35.0
Teutonic Bore	35	$ 22.7	68	$6.80	19	$ 0.95	$30.4	$15.2
Tom Price	47	$ 30.4	60	$6.00	48	$ 2.40	$38.8	$19.4
Whim Creek	62	$ 40.2	54	$5.40	74	$ 3.70	$49.3	$24.6
Wickham	59	$ 38.2	59	$5.90	77	$ 3.85	$48.0	$24.0
Wiluna	35	$ 22.7	68	$6.80	29	$ 1.45	$30.9	$15.5
Wittenoom	88	$ 57.0	71	$7.10	53	$ 2.65	$66.8	$33.4
Wyndham	92	$ 59.6	100	$10.00	100	$ 5.00	$74.6	$37.3

20.—TRAVELLING

(1) The provisions of this clause apply only in respect of employment north of south latitude 26°.

(2) Subject to the provisions of this clause the fare of a worker from the place of engagement to any place of employment shall be paid by the employer and the worker shall be paid at ordinary rates for not more than eight hours in any day for time spent in travelling to the place of employment including the time occupied in waiting for transport connections, but if a worker uses a mode of travel not approved by the employer, travelling time in excess of eight hours shall not be allowed unless the Board of Reference otherwise determines.

(3) The amount of the fare paid by an employer pursuant to subclause (2) of this clause, may be deducted from the subsequent earnings of the worker concerned in such manner as is agreed in writing between the worker and the employer.

(4) If a worker completes six months' continuous service with an employer or is dismissed before that time through no fault of his own, any amount deducted by that employer from the workers' wages pursuant to subclause (3) of this clause, shall be refunded to the worker.

(5) The employer shall pay the fare of the worker from the place of employment to the place of engagement if the employment terminates and—

(a) the worker has completed twelve months; continuous service with that employer; or

(b) the worker has completed six months' continuous service with that employer and is dismissed through no fault of his own.

(6) Where a worker has completed six months' continuous service and leaves for a reason deemed reasonable by his employer, he shall be paid one-sixth of the fare referred to in subclause (5) of this clause for each completed month of service in excess of six months.

21.—DISTANT WORK

(1) Where an employee is sent by his/her employer or is engaged or selected or advised by an employer to proceed to a job or is told by an employer that a job will be available at such distance that he/she cannot return to his/her home each night, he/she shall, subject to this clause, be paid an allowance of $36.10 per day or part thereof for the first six days and $252.60 per week for seven days thereafter, except where full board and lodging is provided by the employer.

(2) An employee to whom the provisions of subclause (1) of this clause apply shall be paid an allowance of $18.40 for any weekend that he/she returns to his/her home from the job but only if—

(a) he/she advises the employer or his/her agent of his/her intention no later than the Tuesday immediately preceding the weekend in which he/she so returns;

(b) he/she is not required for work during that weekend;

(c) he/she returns to the job on the first working day following the weekend; and

(d) the employer does not provide or offer to provide suitable transport.

(3)(a) Notwithstanding any of the provisions of this clause, where the location of a distant job is in that area of the State of Western Australia north of latitude 26 degrees south, or in any other area of Western Australia where air transport is the only practicable means of travel, an employee may return home after four months' continuous service and shall in such circumstances be entitled to two days' leave with pay in addition to the weekend. Thereafter the employee may return home after each further period of four months' continuous service, and in each case he/she shall be entitled to two days' leave of which one day shall be paid leave. Payment for leave and reimbursement for any economy air fare paid by the employee shall be made at the completion of the first pay period commencing after the date of return to the job.

(b) The employer shall obtain and the applicant shall provide the employer with a statement in writing of his/her usual place of residence at the time the employee is engaged and no subsequent change of address shall entitle an employee to the provisions of this clause unless the employer agrees.

(c) The employee shall inform his/her employer in writing of any subsequent change in his/her usual place of residence.

(d) The provisions of this clause shall apply wherever the employee is engaged.

22.—BREAKDOWNS

(1) The employer is entitled to deduct payment for any day upon which a worker cannot be usefully employed because of a strike by any of the unions party to this award, or by any other association or union.

(2) The provisions of subclause (1) of this clause also apply where the worker cannot be usefully employed through any cause which the employer could not reasonably have prevented but only if, and to the extent that, the employer and the union or unions concerned so agree or, in the event of disagreement, the Board of Reference so determines.

(3) Where the stoppage of work has resulted from a breakdown of the employer's machinery the Board of Reference, in determining a dispute under subclause (2) of this clause, shall have regard for the duration of the stoppage and the endeavours made by the employer to repair the breakdown.

23.—TIME AND WAGES RECORD

(1) Each employer shall keep a time and wages record or records showing the name of each worker, the nature of his work, the hours worked each day and the wages and allowance paid each week. Any system of automatic recording by means of machines shall be deemed to comply with this provision to the extent of the information recorded.

(2) The time and wages record shall be open for inspection by a duly accredited representative of the union party to this award during the usual office hours at the employer's office or other convenient place, and he shall be allowed to take extracts therefrom.

Before exercising a power of inspection the representative shall give reasonable notice of not less than 24 hours to the employer.

24.—REPRESENTATIVE INTERVIEWING WORKERS

Consistent with the terms of the Labour Relations Legislation Amendment Act 1997 and S.23(3)(c)(iii) of the Industrial Relations Act a representative of the Union shall not exercise the rights under this clause with respect to entering any part of the premises of the employer unless the employer is the employer, or former employer of a member of the Union.

(1) On notifying the employer or his representative, an accredited representative of the union, shall be permitted to interview a worker or workers during the recognised meal break on the business premises of the employer at the place at which the meal is taken but this permission shall not be exercised without the consent of the employer more than once in any one week.

(2) An accredited representative of the union, on notifying the employer or his representative, shall be permitted to enter the business premises to view the work but shall not interfere in any way with the carrying out of such work.

25.—POSTING NOTICES

The employer shall keep a copy of this award in a convenient place in the plant and quarry, and he shall also provide a notice board for the posting of union notices.

26.—SPECIAL RATES AND PROVISIONS

(1) Any employee working in wet ground shall be paid $1.03 per day extra. "Wet ground" for the purpose of this subclause shall mean, ground, where the water is over the employee's ankles, or where in performing the work, the splashing of water or mud saturates the employee's clothing. If any dispute arises as to whether or not a place is a "wet place" and failing agreement by the parties, the matter shall be referred to the Board of Reference for determination.

(2) Employees working on plant shall, upon request, be supplied with respirators.

27.—WAGES

(1)(a) The wage rate per week payable to employees under this award shall be as follows—

	$	ASNA	TOTAL
Quarry Employee Level 5	363.70	10.00	373.70
Quarry Employee Level 4	377.70	10.00	387.70
Quarry Employee Level 3	392.90	10.00	402.90
Quarry Employee Level 2	397.80	10.00	407.80
Quarry Employee Level 1	407.10	10.00	417.10

The rates of pay in this award include the arbitrated safety net adjustment of $10.00 per week under General Order No. 940 of 1997 in the State Wage Decision October 1997. This arbitrated safety net adjustment shall be offset against any equivalent amount in rates of pay received by employees since 1 November 1991 whose wages and conditions are regulated by this Award and which are above the wage rates prescribed in it, provided that above award payments include wages payable under an enterprise agreement in which absorption is not contrary to the terms of the enterprise agreement. Increases made under State Wage Principles prior to November 1997 except those resulting from enterprise agreements, are not to be used to offset this arbitrated safety net adjustment of $10.00 per week.

(b) Classification Definition

Each quarry employee shall be classified in one of the levels outlined in subclause (1)(a) hereof, according to the skills used and the work undertaken by the employee in performing the major and substantial portion of their duties.

The definition of each classification is as follows—

(i) Quarry Employee Level 5

Works at "entry level" into the quarry operation, carries out general labouring duties in the quarry, assists quarry employees at higher levels.

(ii) Quarry Employee Level 4

Carries out work such as: plant attendant, gardener, assists quarry employees at higher levels and trains quarry employees at up to Level 4.

(iii) Quarry Employee Level 3

Carries out work such as: crusher feeder operator, train loader operator, pugmill operator, assists quarry employees at higher levels, and trains quarry employees at up to Level 3.

(iv) Quarry Employee Level 2

Carries out work such as: tool sharpener duties, assists quarry employees at higher levels and trains quarry employees at up to Level 2.

(v) Quarry Employee Level 1

Carries out work such as: machine drill operator, powder monkey duties, trains quarry employees at up to Level 1.

(c) General Duties

Quarry employees may be required by the employer, provided that they are competent to do so, to work in a higher level as defined in paragraph (1)(b) of this clause, with a view to enhancing the employment opportunities open to employees under this award.

In addition to the above, quarry employees at all levels may be required by the employer to carry out such duties within the levels of paragraph (1)(b) of this clause that are within the limits of the employee's skill, competence and training.

Such duties shall also include any duties that are incidental or peripheral to their main tasks or functions and shall also include those duties that are within the normal custom and practice of the quarry concerned.

In the event of a dispute as to what the normal custom and practice is, it shall be dealt with under the Dispute Settlement Procedure as provided for in Clause 30 of this award.

(2) Leading Hands: In addition to the appropriate margin prescribed in this subclause, a Leading Hand shall be paid—

	$
(a) If placed in charge of not less than three and not more than ten other employees	16.20
(b) If placed in charge of not less than ten and not more than 20 other employees	6.00
(c) If placed in charge of more then 20 other employees	32.20

(3) A casual employee shall be paid 20 per cent in addition to the ordinary rate.

(4) Cookhouse Personnel:	$	ASNA	TOTAL
(a) Head Cook	392.10	10.00	402.10
Wage rate loading for broken shifts	8.10		
Assistant Cook	378.10	10.00	388.10
Wage rate loading for broken shifts	6.70		

(b) All time worked by employees in the mess outside the ordinary hours as agreed and arranged in accordance with subclauses (1) and (2) of Clause 7—Hours (other than continuous shift workers) and subclause (1) of Clause 10—Continuous Shift Workers of this award shall be deemed overtime and paid for at the rate of time and one half. Provided that overtime in excess of four hours in any one week shall be paid for at the rate of double time.

(c) All time worked during ordinary hours on a Saturday or Sunday, shall be paid for at the rate of time and one half.

(d) All time worked during ordinary hours on a holiday as prescribed in Clause 15—Holidays of this award shall be paid for at the rate of double time.

(5) Quarry Work Allowance—

In addition to the above an allowance of $14.90 per week shall be paid to compensate for dust, general climate conditions and all other disabilities involved in quarry work.

(6) Minimum Wage—

Notwithstanding the terms of this clause (or subclause) no adult employee shall be paid less than the Minimum Adult Award Wage unless otherwise provided in this clause.

(i) The Minimum Adult Award Wage for full time adult employees is $359.40 per week payable from the beginning of the first pay period on or after 14th November 1997.

(ii) The Minimum Adult Award Wage of $359.40 per week is deemed to include all arbitrated safety net adjustments from State Wage Case decisions to November 1997, including the $10.00 per week arbitrated safety net adjustment from Matter No. 940 of 1997.

(iii) Unless otherwise provided in this subclause adults employed as casual or part time employees shall not be paid less than pro rata the Minimum Adult Award Wage according to the hours worked.

(iv) Juniors shall be paid no less than the wage determined by applying the percentage prescribed in the junior rates provision to the Minimum Adult Award Wage of $359.40 per week.

(v) (aa) The Minimum Adult Award Wage shall not apply to apprentices, employees engaged on traineeships, or Jobskills traineeships or to other categories of employees who by prescription are paid less than the minimum award rate.

(bb) Liberty to apply is reserved in relation to employees excluded under (aa) above and any special categories of employees not included here or otherwise in relation to the application of the Minimum Adult Award Wage.

(vi) Subject to this subclause the Minimum Adult Award Wage shall —

(aa) apply to all work in ordinary hours.

(bb) apply to the calculation of overtime and all other penalty rates, superannuation, payments

during sick leave, long service leave and annual leave and for all other purposes of this award.

(vii) Nothing in this clause (or subclause) shall operate to reduce the rate of pay fixed by the award for an adult apprentice in force on 13th November 1997.

(Note: A notation will be made in each relevant award by the Registrar where the adult apprentice rate requires specific mention as at 13th November 1997.)

28.—PAYMENT OF WAGES

(1) Each employee shall be paid the appropriate rate shown in Clause 27.—Wages. Subject to subclause (1) of this clause payment shall be pro rata where less than the full week is worked.

(2) Wages shall be paid as follows—

(a) Actual 38 ordinary hours—

In the case of an employee whose ordinary hours of work are arranged in accordance with subparagraph (i) or (ii) of paragraph (a) of subclause (2)—Implementation of 38 Hour Week so that he works 38 ordinary hours each week, wages shall be paid weekly according to the actual ordinary hours worked each week.

(b) Average of 38 ordinary hours—

Subject to paragraphs (c) and (d) hereof, in the case of an employee whose ordinary hours of work are arranged in accordance with subparagraphs (iii) or (iv) or paragraph (a) of subclause (2)—Implementation of 38 Hour Week so that he works an average of 38 ordinary hours each week during a particular four week cycle, wages shall be paid weekly according to a weekly average of ordinary hours worked even though more or less than 38 ordinary hours may be worked in any particular week of the four week cycle.

SPECIAL NOTE—Explanation of Averaging System—

As provided in subparagraph (ii) of this paragraph an employee whose ordinary hours may be more or less than 38 in any particular week of a four week cycle, is to be paid his wages on the basis of an average of 38 ordinary hours so as to avoid fluctuating wage payments each week. An explanation of the averaging system of paying wages is set out below—

(i) Subclause (2)—Implementation of 38 Hour Week in paragraph (a) subparagraphs (iii) and (iv) provides that in implementing a 38 hour week the ordinary hours of an employee may be arranged so that he is entitled to a day off, on a fixed day or rostered day basis, during each four week cycle. It is in these circumstances that the averaging system would apply.

(ii) If the 38 hour week is to be implemented so as to give an employee a day off in each four week cycle this would be achieved if, during a work cycle of 28 consecutive days the employee's ordinary hours were arranged on the basis that for three of the four weeks he worked 40 ordinary hours each week and in the fourth week he worked 32 ordinary hours. That is, he would work for eight ordinary hours each day, Monday to Friday inclusive for three weeks and eight ordinary hours on four days only in the fourth week—a total of 19 days during the work cycle.

(iii) In such a case the averaging system applies and the weekly wage rates paid for ordinary hours of work applicable to the employee shall be the average 38 hour per week wage rate set out for the employee's classification in Clause 27.—Wages and shall be paid each week even though more or less than 38 ordinary hours are worked that week.

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 is 0.4 hours on 19 days; that is, a total of seven hours and 36 minutes.

(iv) As provided in paragraph (c) of this clause, an employee will not accrue a "credit" for each day he is absent from duty other than on annual leave, long service leave, holidays prescribed under this award, paid sick leave, workers' compensation or bereavement leave.

(c) Absences from Duty—

(i) An employee whose ordinary hours are arranged in accordance with subparagraph (iii) or (iv) of paragraph (a) of subclause (2)—Implementation of 38 Hour Week and who is paid wages in accordance with subparagraph (i) of paragraph (b) hereof and is absent from duty (other than on annual leave, long service leave, holidays prescribed under this award, paid sick leave, workers' compensation or bereavement leave) shall, for each day or part day he is so absent, lose average pay "credit" of 0.4 hours for that day.

(ii) 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 or part day during the work cycle he is absent.

(d) Alternative Method of Payment—

An alternative method of paying wages to that prescribed by paragraphs (b) and (c) of this subclause may be agreed between the employer and the majority of the employees concerned.

(e) Day Off Coinciding with Pay Day—

In the event that an employee, by virtue of the arrangement of his ordinary working hours, is to take a day off duty on a day which coincides with pay day, such employee shall be paid no later than the working day immediately following pay day. Provided that, where the employer is able to make suitable arrangements, wages may be paid on the working day preceding pay day.

(f) Payment Methods—

Payment of wages shall be weekly or fortnightly by electronic fund transfer or by agreement with the majority of employees employed in an establishment operating under this award, monthly wages may be paid by electronic funds transfer.

(g) Termination of Employment

An employee who lawfully leaves his employment or is dismissed for reasons other than misconduct shall be paid all moneys due to him at the termination of his service with the employer.

Provided that in the case of an employee whose ordinary hours are arranged in accordance with

subparagraph (iii) or (iv) of paragraph (a) of subclause (2)—Implementation of 38 Hour Week and who is paid average pay and who has not taken the day off due to him during the work cycle in which his employment is terminated, the wages due to that employee shall include a total of credits accrued during the work cycle as detailed in the Special Note following subparagraph (ii) of paragraph (b) of this subclause.

Provided further, where the employee has taken a day off during the work cycle in which his employment is terminated, the wages due to that employee shall be reduced by the total of credits which have not accrued during the work cycle.

29.—JURY SERVICE

An employee required to attend for jury service shall be entitled to have his pay made up by the employer to equal his ordinary pay as for eight hours per day whilst undertaking this service. The employee shall notify his employer as soon as possible of the date upon which he is required to attend for jury service. He shall give his employer proof of attendance for jury service and the amount he has received in respect of it.

30.—SETTLEMENT OF DISPUTES

Subject to the provisions of the Industrial Relations Act, 1979 as operative from time to time, any dispute or claim shall be dealt with in the undermentioned manner—

(1) The matter shall first be discussed by the employee with his foreman or supervisor.

(2) If not settled the matter shall then be discussed between the accredited shop steward and the other appropriate officer of the employer.

(3) If not settled the matter shall be further discussed between the Union Secretary or other appropriate official of the Union and the appropriate representative of the employer.

(4) If the matter is still not settled it shall be submitted to the Western Australian Industrial Relations Commission.

(5) Where the above procedures are being followed work shall continue normally. No party shall be prejudiced as to final settlement by the continuance of work in accordance with this procedure.

31.—ENTERPRISE AGREEMENTS

(1) Employers and employees at an enterprise, worksite or section thereof may reach agreement to provide for more flexible working arrangements. Such Enterprise Agreements may involve a departure from the Award provisions and to the extent of the inconsistency between the Award and the Enterprise Agreement, the latter shall prevail.

(2) Such Enterprise Agreements shall not reduce the minimum rates of wages payable prescribed in Clause 27.—Wages.

(3) An Enterprise Agreement shall only be made with the genuine consent of the employer and the majority of employees at the individual enterprise, worksite or section thereof and shall be made in writing.

(4) The Enterprise Agreement shall be varied only with the consent of the employer and the majority of employees at the enterprise, worksite or section thereof.

(5) The Enterprise Agreement may be terminated by either the employer or the majority of employees giving three months' notice or sooner by agreement between the employer and the majority of the employees.

(6) A copy of the Enterprise Agreement shall be sent to the Union prior to the implementation of the agreement. In circumstances where the union disagrees with any of the subject matter of an enterprise agreement, the union shall notify a dispute to the Commission and the matter in dispute shall be arbitrated.

(7) Enterprise agreements may cover the following area—

- Taking of meal breaks;
- Sick leave;
- Time of taking annual leave;
- Payment of wages;
- Periods of annual leave;
- Part-time employment;
- Notification of annual leave close;
- Hours of work;
- Ordinary hours for weekend work;
- Shift work hours;
- Productivity arrangements.

(8) No enterprise agreements which are contrary to State Standards recognised by the Commission shall be entered into.

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 (Industrial Relations Legislation Amendment and Repeal Act 1995) and further varied by legislation which came into effect on 23 May 1997 (Labour Relations Legislation Amendment Act 1997).

(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) With effect from 22 November 1997 the dispute or grievance procedures in this award/industrial agreement is hereby varied to include the requirement that persons involved in the question, dispute or difficulty will confer among themselves and make reasonable attempts to resolve questions, disputes or difficulties before taking those matters to the Commission.

SCHEDULE OF RESPONDENTS

Bell Bros. Pty Ltd

Pioneer Quarries (W.A.) Pty Ltd

The Readymix Group (W.A.)

Swan Quarries Ltd

Timor Enterprises Pty Ltd

APPENDIX—S.49B—INSPECTION OF RECORDS REQUIREMENTS

(1) Where this award, order or industrial agreement empowers a representative of an organisation of employees party to this award, order or industrial agreement to inspect the time and wages records of an employee or former employee, that power shall be exercised subject to the Industrial Relations (General) Regulations 1997 (as may be amended from time to time) and the following—

(a) The employer may refuse the representative access to the records if:—

(i) the employer is of the opinion that access to the records by the representative of the organisation would infringe the privacy of persons who are not members of the organisation; and

(ii) the employer undertakes to produce the records to an Industrial Inspector within 48 hours of being notified of the requirement to inspect by the representative.

(b) The power of inspection may only be exercised by a representative of an organisation of employees authorised for the purpose in accordance with the rules of the organisation.

(c) Before exercising a power of inspection, the representative shall give reasonable notice of not less than 24 hours to an employer.

Dated at Perth this 13th day of February, 1969.

PUBLIC SERVICE APPEAL BOARD—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979

Paul David Taylor

and

Director General, Ministry of Justice.

No. PSAB 16 of 1998.

4 March 1999.

PUBLIC SERVICE APPEAL BOARD
PUBLIC SERVICE ARBITRATOR J. F. GREGOR, CHAIRPERSON
MR N PAPANDREOU, BOARD MEMBER
MRS H WEST, BOARD MEMBER.

Reasons for Decision.

On 29 June 1998, Paul David Taylor instituted an appeal to the Public Service Appeal Board (the Board) against a decision to terminate his employment as a Group Worker, Banksia Hill Detention Centre by the Director General of the Ministry of Justice.

Prior to his termination, the applicant was an employee engaged under the terms and conditions of the Institution Officers Allowances and Conditions Award 1977. In March 1998, the applicant was convicted of possession of cannabis with intent to sell and/or supply, and cultivation of cannabis with intent to sell and/or supply. As a result, on 7 April 1998 the respondent sought a written explanation from him. The applicant replied on 13 April 1998 and on 9 June 1998 the respondent terminated his services. The applicant claims that in all the circumstances the decision of the respondent is harsh, oppressive and unfair and seeks orders from the Board that decision be declared harsh, oppressive and unfair and that the applicant be reinstated to his position without loss of rights or, in the alternative, that the Board substitute the decision of the employer to terminate with an alternative disciplinary outcome.

The matter came on for hearing on 10 February 1999. At the beginning of the proceedings, the parties presented an agreed Schedule of Facts (Exhibit A) which is incorporated following—

Date	Event/Details
1. NA	The applicant was an employee of the Attorney General
2. NA	The applicant's employer was the Attorney General.
3. NA	• The A/Director General of the Ministry of Justice has delegated authority to act for and on behalf of the Attorney General
4.	• The applicant was employed as a Group Worker [juvenile custodial officer] at Banksia Hill Detention Centre.
5. NA	• Applicant's terms and conditions of employment were subject to the Institution Officers Allowances and Conditions Award No. 3 of 1977.
6. NA	• Applicant's fortnightly rate of pay at time of termination was $1489.12.
7. 20 July 1992	• Applicant commenced fixed term contract employment with the Department of Community Welfare as a Group Worker [juvenile custodial officer]. • The applicant was employed on a series of fixed term contracts
8. 1 July 1993	• Ministry of Justice was created. • Applicant's employment arrangements transmitted to Ministry of Justice, with Attorney General as the employer.
9. 1994	• Applicant became a permanent public servant.
10. 20 March 1998	• Applicant convicted of possession of cannabis with intent to sell & supply, & cultivation of cannabis with intent to sell & supply. • Fined $1500
11. March 1998	• Ministry became aware of applicant's criminal convictions.
12. 7 April 1998	• A/Director General sent letter to applicant, providing him with an opportunity to indicate why he should not be terminated from the Ministry.
13. 20 April 1998	• Applicant responded to A/Director General's letter: - Applicant's wife suffered post natal depression after the difficult birth of their second child in 1995; - Applicant's wife was prescribed Prozac by her family doctor for the management of this condition; - They suffered financial difficulties as a result of substituting the cannabis for the Prozac; - Financial difficulties continued & therefore started to grow their own cannabis. - The applicant was under stress around the time of the convictions. - Applicant requested that he not be terminated. - Applicant offered to undergo random drug test if he was allowed to continue employment with the Ministry. - Applicant's wife at time of termination was going to counselling sessions in an attempt to overcome her reliance on cannabis.
14. 9 June 1998	• Applicant's employment terminated in writing by A/Director General on behalf of Attorney General, due to the employer believing that the applicant was unfit to continue employment as a Group Worker, and it being in the public interest. • 1 months notice paid. • Accrued leave paid.
15. 29 June 1998	• Application lodged in Commission.
16. 10 February 1999	• Hearing before Public Service Appeal Board.

The applicant gave evidence before the Board. He said that in February 1998, the police had arrived at his house with a search warrant. During the search a quantity of cannabis plants were discovered. These were the property of his wife. Other than knowing of their existence, he had nothing to do with the cultivation of the plants. It seemed to the applicant that it was the intention of the police to charge both he and his wife under the Misuse of Drugs Act. He had a discussion with her and it was decided that there would be less disruption for the family if he alone was charged. He was concerned if both of them were charged the children of the family, who were aged 3 years and 4 years, would be left in the house by themselves.

The applicant had a previous conviction for use of cannabis some 6 years ago but he told the Board as an adult he had not used drugs of any description particularly he had not taken any drugs to work for use either by himself or others. He had never offered to secure contraband for any clients under his control and he ignored any approaches from them of that nature. He argued that the convictions are a result of an attempt to protect his family and arise from the dependency of his wife on cannabis. This arose through a medical condition that she suffered. In helping her deal with this medical condition he had been required to take significant days off work to help his wife and children. This had an adverse effect upon his work and had resulted in his Superintendent raising the issue of his continued absences with him. He had informed the Superintendent about his family difficulties. He says now that his wife has been rehabilitated following counselling and there is no reason that he should not be allowed to continue with his employment as a group worker because the convictions arose outside of the employer's premises and outside of his hours of duty. As they do not relate to his duty or capacity to perform the duty the decision of the employer to terminate his employment was harsh and oppressive.

Mr Newman, who appeared for the applicant, argued that the Board should overturn the decision of the respondent to dismiss because that decision was harsh and unfair given the circumstances of the applicant. He had decided to be charged and accept the punishment which should have been directed to his wife. He did so to protect her and his family. This was a significant act on his behalf to protect his family and the employer should give his conduct weight in deciding his future. Failure to do so could lead to the respondent acting in a harsh and unfair way.

Secondly, Mr Newman argues that the workplace in which the applicant is involved is a place where he has responsibilities to assist young offenders remedy anti-social behaviour and that his convictions may well be an aide to him in that the clients under his care may benefit from his life experience arising from the conviction. This would raise his standing to deal with them as a person who has experienced the same things they are experiencing. In this way, the respondent in effect gets an advantage over the events that have befallen the applicant.

On behalf of the respondent, the Board was told that the officers in charge of juvenile justice and in particular the Director, Mr Keating, became aware from internal investigators that the applicant had been convicted of possession of cannabis with intent to sell and/or supply and the cultivation of cannabis with intent to sell and/or supply and that he had been fined after pleading guilty. This caused the respondent to write to the applicant and express its concern that the convictions would create a fundamental conflict when working with young people in detention and that the convictions effected the fitness of the applicant to hold the position of a group worker within the Ministry of Justice because they strike at the heart of the contract of employment. The applicant was given the opportunity to submit any valid reason as to why the respondent should not terminate his employment (Exhibit E). The applicant responded to that invitation on 13 April 1998 and consideration was given to his response. Mr Keating discussed the matter with Ms Shuard, who is the Superintendent of Banksia Hill institution. Following that discussion and discussions with other officers of the respondent, it was decided by the respondent that while being sympathetic to the personal circumstances of the applicant, his actions and subsequent convictions are not those expected from a group worker dealing with juveniles in a detention environment. The convictions struck at the heart of the contract of employment so that it was untenable for the respondent to continue with the relationship. The applicant was dismissed on notice and was paid 1 month's pay in lieu.

The management philosophy of the centre at which the applicant was employed has been developed around the principle that a critical part of a young person's development towards adulthood is their capacity for responsible citizenship with all its attendant, rights, responsibilities and obligations. That obligation for development of juveniles towards becoming reasonable citizens rests primarily with their parents or extended family networks. However, when the juvenile comes in contact with juvenile justice, the staff are required to ensure that the management of young persons facilitates opportunities for continuing development of responsible citizenship. The respondent has an expectation of staff that they will involve the juvenile's parents in the management, rehabilitation and reintegration of their child into the family and/or community. In particular, that they maximise the opportunities for juveniles to make choices and exercise self-discipline and self-responsibility within the constraints imposed by the Court order that commits the young offender into the care of the respondent, the juvenile's level of maturity and the setting in which the juvenile is located. The staff also have to ensure that where a juvenile is not complying with the minimum standards of responsible citizenship that appropriate action is taken and if the juvenile has difficulties, then assist them in addressing skills deficits and other issues which may impact upon the juvenile's offending behaviour.

The obligations and duties of group workers, of which the applicant was one, are high. The Board finds it extremely difficult to accept the argument that a person who would be well suited to conduct this sort of work is in fact, a person who has been convicted of offences which may well be similar to the offences that have led to the juveniles under that group worker's care being placed in detention. We accept the concern expressed by Mr Keating and Ms Shuard about efficacy of such an approach. Although the respondent made it clear that a person with a conviction of long standing may not be excluded from the work, it was quite a different situation when a group worker has recent convictions particularly for offences against the Misuse of Drugs Act.

We have considered carefully the applicant's family situation. During the hearing, we have had the opportunity of seeing him giving evidence, we observe that there are some conflicts between his evidence in chief and the evidence that he gave in cross examination which give rise for concern about the quality of that evidence. We find it hard to accept that he did not understand the gravity of the situation that he found himself in and ultimately the choices that he made were inimicable with him continuing his work as a group worker. The respondent had no option but to take the action that it did when confronted with all of the evidence. There was a valid reason to effect a dismissal in this case. The conduct of the applicant made the continuation of his employment as a group worker untenable.

We are asked to consider the substitution of a lesser penalty. We have heard of the evidence given by Mr Keating concerning the lack of availability of work in the Ministry that the applicant could perform. In any event, it is our conclusion that the conduct of the applicant is such that it would not be reasonable to require the respondent to provide other work for him in areas for which he is not qualified and if there was any work available in the areas for which he is qualified, his conduct precludes his engagement in the short/medium term at least. For these reasons we do not intend to interfere with the penalty that is been imposed by the applicant and the application will be dismissed.

Appearances: Mr D Newman appeared on behalf of the applicant.

Ms M In De Braekt appeared on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979

Paul David Taylor

and

Director General, Ministry of Justice.

No. PSAB 16 of 1998.

4 March 1999.

PUBLIC SERVICE APPEAL BOARD
PUBLIC SERVICE ARBITRATOR J. F. GREGOR, CHAIRPERSON
MR N PAPANDREOU, BOARD MEMBER
MRS H WEST, BOARD MEMBER.

Reasons for Decision.

HAVING heard Mr D Newman on behalf of the first named party and Ms M In De Braekt on behalf of the second named party, and by consent, the Public Service Appeal Board, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders—

THAT the application be dismissed.

(Sgd.) J. F. GREGOR,
[L.S.] Public Service Arbitrator
Chairperson, Public Service Appeal Board.

RAILWAYS CLASSIFICATION BOARD— Matters dealt with—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Joseph Zlaman

and

Western Australian Government Railways Commission.

No. RCB 2 of 1998.

RAILWAYS CLASSIFICATION BOARD
COMMISSIONER A.R. BEECH.
MR P. BOTHWELL.
MR R. EASTHOPE.

5 March 1999.

Order.

WHEREAS an application was lodged in the Commission pursuant to section 80S of the *Industrial Relations Act, 1979*;

AND WHEREAS the applicant subsequently advised the Commission that he wished to withdraw his application;

NOW THEREFORE, pursuant to the powers conferred on it under the *Industrial Relations Act,1979*, the Railways Classification Board, hereby orders:

THAT the application be withdrawn by leave.

(Sgd.) A.R. BEECH,
[L.S.] Railways Classification Board.

NOTICES— Union matters—

Industrial Relations Act 1979.

PUBLICATION OF APPLICATION PURSUANT TO SECTION 72A

Application Number 151 of 1999 has been lodged pursuant to Section 72A of the Industrial Relations Act 1979 by the Transport Workers' Union of Australia, Industrial Union of Workers, Western Australian Branch and is published hereunder.

The application has been listed before the Full Bench at 10.30am on the 5th May 1999 to 7th May 1999 inclusive.

Any person who wishes to be heard shall file a notice of application to be heard in accordance with Form 1, setting out the grounds upon which the person claims sufficient interest to be heard in relation to the application and serve it on the applicant at least 7 days before the above date of hearing in accordance with Regulation 101A of the Industrial Relations Commission Regulations 1985.

J. A. SPURLING,
Registrar.
26th February 1999.

Form 1

Industrial Relations Act 1979.

IN THE WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

No. 151 OF 1999

NOTICE OF APPLICATION

TAKE NOTICE THAT

The Transport Workers Union of Australia,
Industrial Union of Workers,
Western Australian Branch,
3rd Floor, 82 Beaufort Street
PERTH WA 6000
PH: 9328 7477 FAX: 9227 8320

has this day applied to the Full Bench of the Commission for **a declaration pursuant to section 72A of the Industrial Relations Act 1979 as outlined in schedule A.**

The grounds upon which the application are made are enumerated on the attached schedule.

INDUSTRIAL UNION OF WORKERS
WESTERN AUSTRALIAN BRANCH

Sgd. J. McGiveron
.....
Applicant's Signature

(Affix Stamp of the Commission)

THE APPROPRIATE FEE IS TO BE PAID UPON LODGMENT OF THIS APPLICATION

This notice must be completed by the applicant, signed and, where necessary, sealed and a written statement of claim or other adequate description of the subject matter of the application must be attached.

For endorsements see back hereof.

SCHEDULE A

The grounds upon which this application is made is as follows—

1. The Transport Workers Union of Australia, Industrial Union of Workers, Western Australian Branch **(the union)**, has constitutional coverage for various class' of workers employed by P.B. Foods Limited. The Union currently represents one hundred and seventy seven (177) company employees' of PB Foods Limited, Balcatta operations.

1a The area and scope of the workers as stated in one (1) above is that which is stated in the Transport Workers (General) Award No 10 of 1961.

1aa The Wages and conditions of employment are subject to PB Foods Ltd (Balcatta Operations) Enterprise Agreement 1997 **[AG 261 of 1997]**

2. In recent times the " Transport Workers Union of Australia, Industrial Union of Workers, Western Australian Branch" has been approached by at least seventy five (75) company employees to which the "Food Preservers Union of Western Australia, Industrial Union of Workers, (W.A. Branch) has constitutional coverage. Such workers' are subject to the area and scope of the "Food Industry (Food Manufacturing or Processing) Award 1990", to become members of the Transport Workers Union of Australia, Industrial union of Workers, Western Australian Branch and for the Union to represent their Industrial interests present and future.

2a Approximately 153 Company employees are covered by the Food Industry (Food Manufacturing or Processing) Award 1990, being—

21 operators
42 full time packers
78 part time packers
7 casuals
5 mix floor

2b The wage rates and classifications career structure of the workers in 2 above are attached as follows—

Wage Rates

Wage Rates as per Peters (WA) Ltd (Balcatta Operations) Enterprise Agreement 1993.

Level one	**$ 444.77** per week
Level two	**$ 467. 52**
Level three	**$ 489. 12**
Level four	**$ 526. 87**
Level five	**$ 570.04**

Classifications and Career Structure

(1) Basis of Classification

Employees will be classified within the relevant career structure on the basis of the skills they are required to use in their employment.

Skills held by an employee but not used in the employee's employment may be taken into account in any application for reclassification of the employee but will not be recognised in the employee's classification or rate of pay until the employee is in a position where those skills are required to be used.

(2) Factory Workers

(a) Level 1

Employees who are recruited into the Company at this level perform simple routine duties, work under direct supervision and receive detailed instructions. Level 1 employees exercise minimal judgement and responsible for the quality of their own work within the scope of this level.

Typical Tasks—

Indicative of the tasks an employee at this level may perform are the following—

(1) Undertaking induction training.

(2) Performing a range of general laboring and cleaning duties.

Promotional Criteria—

Employees remain at this level until such as they have satisfactorily completed an induction program which enables them to meet the competency requirements of Level 2, a position becomes available and they are selected to that vacancy.

An induction program covers—

(1) Basic occupational health and safety.

(2) First Aid

(3) Conditions of Employment

(4) Company policies/objectives

(5) Plant layout and material location

(6) Workplace training to meet the requirements of being able to competently perform work within the scope of Level 2.

(b) Level 2

Employees at this level perform utility (general hand) functions and in doing so, perform work above and beyond the skills of an employee at Level 1 and to the level of their training—

- work under direct supervision either individually or in a team environment;
- understand and undertakes basic quality control/assurance procedures including the ability to recognise basic quality deviations and faults;
- exercise minimal decision making;
- exercise discretion within their levels of skills and training.

Typical Tasks—

Indicative of the tasks which an employee at this level may perform are the following—

(1) Undertaking training to enable entry into Level 3.

(2) May be required to perform any of the duties of the lower level.

(3) Stack, prepare for storage raw and finished products and packaging material.

(4) Maintaining simple production records.

(5) Identify machine faults (basic).

(6) Uses hand trolleys, pallet trucks and forklifts.

(7) Yard duties.

(8) Ice-cream cake decorating.

Promotional Criteria—

Employees may be promoted to Level 3 when—

(1) they can competently carry out all tasks of a Level 2 employee;

(2) a position becomes available and they are selected to fill the vacancy.

(c) Level 3

Employees at this level have completed a production certificate or equivalent training to enable employees to perform work within the scope of this level. Employees at this level—

- are responsible for the quality of their own work subject to routine supervision;
- work under routine supervision either individually or in a team environment;
- exercise discretion within their level of skills and training.

Typical Skills—

Indicative of the tasks which an employee at this level may perform are the following—

(1) Undertaking training to enable entry into Level 4

(2) May be required to perform any of the duties of the lower level

(3) Receiving, despatching, distribution, sorting, checking, packaging (other than repetitive packing), order assembly, documenting and recording of goods, materials and components.

(4) Basic inventory control in the content of the production process

(5) Exercising keyboard skills at a basic level

(6) Carrying out different measurements

(7) Undertake minor adjustments to machinery

(8) Conduct some basic testing

(9) Identify product specification problems

(10) Assisting ice-cream freezing machine operating

(11) Assisting cone and wafer machine operating

(12) Freezer hand

(13) Assisting frozen confectionery machine operating

(14) Operating automatic, semi-automatic or single purpose machinery

Promotional Criteria

Employees may be prompted to Level 4 when—

(1) they can competently carry out all tasks of Level 3 employees;

(2) a position becomes available and they are selected to fill the vacancy.

(d) Level 4

Employees at this level have completed a production certificate or equivalent training so as to enable employees to perform work within the scope of this level. Employees at this level—

- work from instructions and procedures
- assist in the provision of on the job training
- coordinate work in a team environment or work individually under general supervision
- write and read reports

Typical Tasks

Indicative of the tasks which an employee at this level may perform are the following—

(1) Undertaking training to enable entry into Level 5

(2) May be required to perform any of the duties of a lower level

(3) Inventory and store control including operations or all appropriate materials handling equipment, VDU and keyboard operation at the level higher than that of Level 3

(4) Using tools and equipment within the scope of basis non-trade maintenance

(5) Exercising intermediate keyboard skills

(6) Supervising the work of all their employees

(7) Allocate tasks to other employees

(8) Cone and wafer machine operating

(9) Frozen confectionery machine operating

(10) Ice-cream freezing machine operating

(11) Assists in the provision of on the job training in conjunction with trainers and trades persons.

Promotional Criteria

Employees may be promoted to Level 5 when—

(1) they can competently carry out all tasks of a Level 5 employee;

(2) a position becomes available and they are selected to fill that vacancy.

(e) Level 5

Employees at this level have completed approved courses in the development of supervisory skills. For example, TAFE supervision certificate or equivalent.

Employees at this level may hold a trade certificate appropriate within the scope of their

position and demonstrate their ability to exercise of that trade.

Employees at this level have completed appropriate Production Certificate or equivalent.

Employees at this level—

- understand and apply quality control techniques;
- exercise good interpersonal communication skills;
- exercise discretion within the scope of the grade;
- exercise keyboard skills at a level higher than level 4
- would be expected to organise and control the work output of a section;
- is able to inspect products and/or materials for conformity with established operation standards.

Typical Tasks

Indicative of the tasks which an employee at this level may perform are the following—

(1) May be required to perform any of the duties of a lower level.

(2) Maintaining quality standards including the approval of first-off samples.

(3) Basic production scheduling and materials handling within the scope of the process or directly related functions within new materials finished/finished goods location in conjunction with technicians.

(4) Exercising advanced keyboard skills

(5) Assists in the provision of the on-the-job training in conjunction with the trainer.

(6) Adjust equipment to meet quality assurance and process requirements of production program.

(3) DRIVERS AND STORE PERSONS

(a) Grade 1

Driver's assistant
Loaders; and
Yard Person

SCHEDULE "B"

The Transport Workers Union of Australia, Industrial Union of Workers, Western Australian Branch seeks the following orders—

1. The Transport Workers Union of Australia, Industrial Union of Workers, Western Australian Branch has the right, and as such the constitutional coverage, to represent the Industrial interests of workers the subject of the area and scope of the " Food Industry (Food Manufacturing or Processing) Award 1990 in as much as that Award applies to employees employed at the Employers Balcatta Operations.

And

2. That the Food Preservers' Union of Western Australia Union of Workers does not have the right to represent the Industrial interests of workers the subject of the area and scope of the Food Industry (Food Manufacturing or Processing) Award 1990 as it applies to the Employers Balcatta Operations.