



Western Australian Industrial Gazette

PUBLISHED BY AUTHORITY

Sub-Part 2

WEDNESDAY, 28TH FEBRUARY, 2001

Vol. 81—Part 1

THE mode of citation of this volume of the *Western Australian Industrial Gazette* will be as follows:—
81 W.A.I.G.

CUMULATIVE CONTENTS AND DIGEST APPEAR AT THE END OF THIS PUBLICATION

FULL BENCH— Appeals against decision of Commission—

2001 WAIRC 01981

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	BRETT CAMPBELL, APPELLANT v. KIMBERLEY BUILDING SUPPLIES, RESPONDENT
CORAM	FULL BENCH HIS HONOUR THE PRESIDENT P J SHARKEY COMMISSIONER A R BEECH COMMISSIONER J H SMITH
DELIVERED	TUESDAY, 6 FEBRUARY 2001
FILE NO/S	FBA 48 OF 2000
CITATION NO.	2001 WAIRC 01981

Decision	Appeal dismissed.
Appearances	
Appellant	Mr A N Mackey (of Counsel), by leave
Respondent	Mr L H Pilgram, as agent

Reasons for Decision.

THE PRESIDENT—

- 1 These are the unanimous reasons for decision of the Full Bench.
- 2 This is an appeal against the whole of the decision of the Commission, constituted by a single Commissioner, contained in an order made on 14 September 2000 in application No 948 of 2000. By that order, the Commission dismissed an application by the abovenamed appellant, Mr Brett Campbell, whereby he alleged that he had been harshly, oppressively or unfairly dismissed from his employment with the respondent.
- 3 The appeal is brought pursuant to s.49 of the *Industrial Relations Act 1979* (as amended) (hereinafter referred to as “the Act”).

GROUND OFS OF APPEAL

- 4 It is against that decision that the appellant appeals on the following grounds—
 1. The learned Commissioner erred in law in dismissing the Appellant’s claim pursuant to section 27 of the Industrial Relations Act 1979 (WA) (“the Act”).
 2. The learned Commissioner erred in law in failing to exercise jurisdiction pursuant to section 26 of the Act.
 3. The learned Commissioner erred in law and in fact in failing to give sufficient weight to the evidence of the Appellant with respect to the conciliation conference held in the Australian Industrial Relations Commission on 7 July 2000.
 4. The learned Commissioner erred in law and in fact in her consideration and application of the equitable doctrine of promissory estoppel”

BACKGROUND

- 5 Mr Campbell made application which was filed on 21 June 2000 pursuant to s.29 of the Act alleging that he had been harshly, oppressively or unfairly dismissed by the respondent, seeking an explanation as to why certain allegations contained in a letter of dismissal were alleged and also seeking two weeks’ pay in lieu of notice with the proviso that “another industrial relations claim is looking into this.” Further and significantly, Mr Campbell sought that the reason for dismissal, expressed by the respondent in the first separation certificate dated 30 May 2000, be changed from “gross misconduct” to something else.
- 6 A Notice of Answer and Counter Proposal was filed on behalf of the respondent at first instance in which it was alleged that there had been a conference in the Australian Industrial Relations Commission (hereinafter referred to as “the AIRC”) on 7 July 2000 which dealt with Mr Campbell’s dismissal.
- 7 At that conference, it was said and not denied that an agreement was reached between the parties that Mr Campbell would discontinue further action in both the AIRC and this Commission on the basis that—
 - (a) The employment separation certificate issued to Mr Campbell be amended to indicate “unsuitability for the type of work”; and
 - (b) The respondent pay to Mr Campbell one week’s wages.

- 8 On the basis of this response, the Commission wrote to Mr Campbell on 10 August 2000 setting out that information and inviting him to respond.
- 9 The solicitor for Mr Campbell responded in a letter dated 16 August 2000, confirming that such an agreement had been reached and stating that Mr Campbell was unrepresented at the conference convened by Mr J Negus, as a Conciliator of the AIRC, on 7 July 2000. It was also asserted in the letter that the conference progressed at a "very fast rate" with Mr Negus emphasising certain matters. Mr Campbell's main consideration at the conference was to ensure that his employment separation certificate was amended to enable him to pursue a claim for mortgage insurance pursuant to a mortgage by Mr Campbell and his mother, it was said.
- 10 It was also stated in the response that Mr Campbell felt intimidated by the presence of Mr Edward Thornborough, a Director of the respondent, and that Mr Campbell had not obtained comprehensive legal advice prior to his attendance at the conference. If so, there was no evidence that that was made known at the conference.
- 11 It was therefore submitted that Mr Campbell should not be estopped from pursuing a claim before the Commission on account of the agreement reached on 7 July 2000.
- 12 The Commissioner convened a hearing so that Mr Campbell could show why the application should not be dismissed and, at that hearing, he was represented by his solicitor. At this hearing, evidence was given of the above events.
- 13 The evidence was that, on 7 July 2000, Mr Negus said to Mr Campbell that, because he, Mr Campbell, had been employed for eighteen months, he was entitled to two weeks' pay in lieu of notice, but Mr Campbell said that he was prepared to "trade a week's in lieu for the separation certificate to be amended and to hopefully clear up the problems that I was having, so I was willing to give up that ... that extra week's ... week in lieu as long as I could get ... it changed to what it should have been."
- 14 Therefore, Mr Campbell sought the amendment of the employment separation certificate and one week's pay.
- 15 Mr Campbell, in evidence, said "as long as the one week's in lieu was paid and the separation certificate was amended", he did agree to "stop all proceedings against" the respondent. He said that he did not obtain legal advice prior to attending the conference but, during the conference, Mr Thornborough interrupted on a number of occasions, and Mr Negus asked him "if he would mind just letting me go on." (Mr Negus, too, according to Mr Campbell and the respondent in evidence, referred to the delays in hearings and the costs associated.)
- 16 Mr Campbell also said that Mr Negus mentioned that he, Mr Campbell, was possibly not in the correct jurisdiction and Mr Campbell had subsequently found out that a State award covered him. Mr Campbell said that his primary consideration in reaching the agreement at the conference was the mortgage and to make sure that he would be covered in that regard. Further, provided the separation certificate was amended, that would satisfy him.
- 17 The following extracts from the transcript clearly express Mr Campbell's state of mind and intention—

"Yeah, he also— sorry. Yeah, he basically said it takes quite a while to get through, sometimes several months. I basically did not have that sort of time limit to— to get— get the whole issue resolved. My main focus was the separation certificate which was the whole cause of my problems that I'm having with— with an insurance company.

MR MACKEY: Just at that point, Mr Campbell, what effect did the separation certificate have on the difficulties you were having with the insurance company?—They won't — they won't cover it."

(See page 12 of the appeal book (hereinafter referred to as "AB").)

"Mr Negus, at one point, asked him to— if he'd mind just letting me go on. Yeah, at that point I basically— all I wanted was that separation certificate changed.

I was willing to sort of give up anything that I was entitled to to—in order to get that. Basically, I had a mortgage that had to be paid and it wasn't getting paid and I just really needed that. Yeah, so once I'd— once we'd agreed that we'd change that, that— yeah, I was— I thought that would alleviate the problems that I'm having.

All right. Was there any other part of the agreement that you can remember that was reached?—There was— and a week in lieu of— which I never received.

A week's pay in lieu of notice?—Yes, that's right. And you say you'd never received that. That was prior to the conference; is that correct?—Yes, that's right, yeah.

MR MACKEY: And you've now received that one week's— ?—Yeah, I have—

—pay in lieu of notice?—Yeah."

(See pages 12-13 (AB).)

- 18 Following the conference, Mr Campbell received the amended separation certificate and one week's pay in lieu of notice, as his evidence reveals. Mr Campbell took no steps to discontinue proceedings at first instance and there is no evidence that he took steps to discontinue the AIRC proceedings. It is clear, too, that he made use of the new separation certificate, as he intended to do, and forwarded it to the mortgage insurer as part of his claim.
- 19 There was no evidence that Mr Campbell had refunded or intended to refund the monies paid for one week's notice.
- 20 The difficulty which has arisen is that, subsequent to the conference in the AIRC, although an amended employment separation certificate has been provided to Mr Campbell, the insurance company has still not paid what Mr Campbell says it ought on the basis that it now has two conflicting separation certificates, one saying that the termination was on account of "misconduct" and the other saying that it was on account of "unsuitability".
- 21 Mr Thornborough gave evidence that the terms of settlement, being a week's pay in lieu of notice and the amendment of the reasons for dismissal on the employment separation certificate were raised by Mr Campbell's initiative and that Mr Negus advised Mr Campbell that "it was not a gross misconduct". Mr Thornborough said that he was receptive to Mr Campbell's requirements, that he accepted Mr Negus' comment about it not being gross misconduct, and that the parties agreed to terms of settlement on the basis that the claims in the AIRC and in this Commission would be resolved. We would also add that Mr Thornborough gave evidence, which was not cross-examined upon, that there was no pressure on the parties at the conciliation conference.
- 22 In cross-examination, Mr Thornborough gave evidence that he suffered no disadvantage in reaching the agreement by paying Mr Campbell one week's pay in lieu of notice and, in amending the terms of the employment separation certificate, he had suffered no disadvantage "not at this point". He also said that he had gone into the conference to discuss their differences and he was not previously aware of some of the questions raised at the conference. (He was not cross-examined.) He also said that he had apologised for interrupting Mr Campbell in the conference.
- 23 The essence of the application, the Commissioner held, was that this lack of detriment or disadvantage created no evidence of promissory estoppel, so as to enable the respondent to rely on the principles of estoppel to have the claim before the Commission disallowed (see *Chin v Miller* (1982) 37 ALR 171 at 185-186, *Legione v Hatley* (1983) 152 CLR 406 and *Walton Stores (Interstate) Limited v Maher and Another* (1988) 62 ALJR 10), the Commissioner held.
- 24 The Commission was bound by s.26 of the Act, as the Commissioner observed, and referred, too, to s.27 of the Act. The Commissioner observed that, up to the date of hearing, the respondent appeared to have suffered no detriment as a result of reaching the agreement with Mr

Campbell. The Commissioner then went on to find as follows—

“Having considered the evidence, I conclude that the applicant’s change of heart following the execution of the agreement reached on 21 July 2000 arose because of the insurance company’s response to the amended employment separation certificate. The terms of the agreement were at the applicant’s initiative and were accepted by the respondent. The respondent has acted in good faith. It should not be obliged to face a further claim about the same matter, having originally resolved the matter to the applicant’s complete satisfaction. I conclude that it would be contrary to the public interest for parties to reach agreements on certain terms, in this case the terms which the applicant established, which satisfied him at the time and yet later, because of the actions of a third party, one party is no longer satisfied with the agreement reached and seeks to proceed. Substantial difficulties would arise if parties reached agreements as part of the conciliation process and then, having received the benefits of the agreement, decide to pursue their original claims. One can foresee situations where parties might refuse to negotiate on the basis that they could not be sure that any agreement reached and executed would resolve the matter in dispute because after an agreement had been reached and executed, the other party would seek to revisit the issue on the basis of changed circumstances.

Notwithstanding the authorities to which Mr Mackey referred, I conclude that the applicant should not be entitled to proceed. This would be contrary to equity and the substantial merits of the case and contrary to the public interest. Accordingly, this application ought be dismissed. Order accordingly.”
(See page 7(AB).)

ISSUES AND CONCLUSIONS

- 25 What is quite clear, from all of the evidence, and indeed it was Mr Campbell’s case on appeal, is that an agreement was reached between the parties at the conciliation conference in the AIRC on 7 July 2000. It is also clear and open to be found that the respondent, through its Director, Mr Thornborough, was seeking to reach an agreement.
- 26 Even more importantly, the evidence was clear and it was open to find as follows—
- (a) That it was the primary and somewhat urgent objective of Mr Campbell in the conference to obtain agreement to the substitution of a new separation certificate which cancelled the earlier reference to “gross misconduct” as the reason for dismissal and replace it with the reason that he was dismissed because he was unsuitable for the job. That was his primary aim and time was somewhat of the essence because he wished to claim the fruits of his mortgage insurance policy.
 - (b) It is clear and it was open to find that the agreement was reached by Mr Campbell willingly and deliberately to achieve his aim (see his evidence quoted supra). That was Mr Campbell’s unequivocal evidence and it was open to so find.
 - (c) Further, Mr Campbell was willing, in order to reach an agreement and obtain the new or amended separation certificate, to forgo one week’s pay in lieu of notice and accept only one week’s pay. It was not denied by him that he had agreed to withdraw or discontinue the applications in both Commissions if this occurred.
 - (d) As to Mr Thornborough, he agreed to issue an amended separation certificate and to pay one week’s pay in lieu of notice. He retreated from his assertion that he was entitled to dismiss Mr Campbell for “gross misconduct”. That is clearly what occurred.
 - (e) There is no written order, document or memorandum to reflect the agreement but its terms, as
- the Commissioner found them and as we have reproduced them above, are clear. It was open to find that the agreement was reached.
- 27 The agreement, on the part of the respondent, was performed by the respondent. Insofar as discontinuance of both applications is concerned, the agreement, on the part of Mr Campbell, was not performed. The performance by the respondent was accepted by Mr Campbell, who has derived and sought to derive benefit from such performance. He has received the monies and used the new separation certificate for the purpose for which he sought it and pursuant to the agreement which he entered.
- 28 It is quite irrelevant to these proceedings that the new or amended separation certificate has not been accepted by the insurer. Further, since it is obvious that no complaint about the agreement was made before the insurer rejected or failed to accept the new or amended certificate of separation, it was open to infer that that is the reason for this application.
- 29 There is no question of estoppel which arose in this matter. The agreement reached was an agreement reached by way of accord and satisfaction which, in its terms, extinguished the “cause of action” and has been performed by the respondent.
- 30 The effect of such an agreement, as it applies here, was properly and appositely expressed in *Bradbury v Van Baren and Others* 75 WAIG 2927 (FB) at 2928 per Sharkey P (Gifford C agreeing) as follows—
- “In this case, the subject matter of the application had been extinguished by the agreement reached which had been performed on its part by the respondent and partially performed by the delivery of a notice of discontinuance by the appellant. In fact, the application had been extinguished by a binding accord and satisfaction (see *Nissho Iwai (Australia) Ltd v Oskar* [1984] WAR 53), and it was not open to Mr Bradbury to seek to have the matter re-opened. It was open to the Commission to so find. Indeed, the respondent could have taken action to enforce the agreement.”
- 31 The “cause of action” of unfair dismissal was extinguished before this Commission heard the matter by the agreement reached and part performed and from which Mr Campbell had already benefited, notwithstanding his own breach or failure to perform.
- 32 Further, insofar as it is relevant, which it is not, there was no evidence of the agreement being entered into on the part of Mr Campbell due to undue pressure. The agreement achieved his clearly stated wishes as his evidence reveals. If he were subjected to undue pressure, and the clear evidence was that he was not, then all that pressure did was to enable him to achieve what he wished to achieve by agreement. In any event, he was not pressured, and it was open to so find. The conciliator’s conduct could not be said to constitute pressure.
- 33 Further, it was submitted at first instance that the agreement was the result of a conciliation conference in the AIRC without jurisdiction. That was not the subject of a ground of appeal. No submissions were therefore made to the Full Bench in relation to that point, the matter not being before the Full Bench. It is quite unnecessary, therefore, to comment.
- 34 It was open to the Commissioner, for those reasons, to find as she did. In particular, as well as it being open to the Commissioner to make the findings to which we have referred, supra, the Commissioner could plainly make the following findings—
- (a) That Mr Campbell’s change of heart following the “execution” of the agreement arose because of the insurance company’s response to the amended separation certificate.
 - (b) That the terms of the agreement were, as the evidence reveals, raised at first by Mr Campbell and accepted, with a variation as to the payment in lieu of notice, by the respondent.

- (c) That the respondent did act in good faith and, indeed, performed its part of the contract.
- (d) That Mr Campbell did not perform his part of the contract.
- (e) That the respondent (even if, as a matter of law, it could face a further claim, which it cannot for the reasons which we have expressed) should not be obliged, having regard to s.27(1) of the Act and for the reasons expressed by the Commissioner and quoted by us above, have to face another claim in relation to a matter which was settled by agreement and primarily to achieve the desires of Mr Campbell.
- 35 There was no error in the exercise of her discretion (see *House v The King* [1936] 55 CLR 499 and *Gromark Packaging v FMWU* 73 WAIG 220 (IAC)).
- 36 The appeal is not made out, in our opinion. For those reasons, the appeal is dismissed.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.	
PARTIES	BRETT CAMPBELL, APPELLANT
	v.
	KIMBERLEY BUILDING SUPPLIES, RESPONDENT
CORAM	FULL BENCH
	HIS HONOUR THE PRESIDENT P J SHARKEY
	COMMISSIONER A R BEECH
	COMMISSIONER J H SMITH
DELIVERED	WEDNESDAY, 31 JANUARY 2001
FILE NO/S	FBA 48 OF 2000
CITATION NO.	2001 WAIRC 01932
Decision	Appeal dismissed.
Appearances	
Appellant	Mr A N Mackey (of Counsel), by leave
Respondent	Mr L H Pilgrim, as agent

Order.

This matter having come on for hearing before the Full Bench on the 30th day of January 2001, and having heard Mr A N Mackey (of Counsel), by leave, on behalf of the appellant and Mr L H Pilgrim, as agent, on behalf of the respondent, and the Full Bench having decided that reasons for decision be delivered at a future date, it is this day, the 31st day of January 2001, ordered that appeal No FBA 48 of 2000 be and is hereby dismissed.

By the Full Bench

[L.S.]

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

2000 WAIRC 01174

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.	
PARTIES	THE HONOURABLE MINISTER OF POLICE
	COMMISSIONER OF POLICE, APPELLANTS
	v.
	WESTERN AUSTRALIAN POLICE UNION OF WORKERS, RESPONDENT
CORAM	FULL BENCH
	HIS HONOUR THE PRESIDENT P J SHARKEY
	SENIOR COMMISSIONER G L FIELDING
	COMMISSIONER P E SCOTT
DELIVERED	TUESDAY, 14 NOVEMBER 2000
FILE NO/S	FBA 38 OF 2000
CITATION NO.	2000 WAIRC 01174

Decision	Appeal upheld and decision at first instance quashed.
Appearances	
Appellants	Mr G T W Tannin (of Counsel), by leave, and with him, Mr R J Andretich (of Counsel), by leave
Respondent	Mr P R Momber (of Counsel), by leave

Reasons for Decision.

THE PRESIDENT—

INTRODUCTION

- 1 This is an appeal, brought pursuant to s.49 of the *Industrial Relations Act 1979* (as amended) (hereinafter referred to as “the Act”), against the decision of the Commission, constituted by a single Commissioner, such decision being itself constituted by a declaration delivered on 14 July 2000 and deposited in the Registry on the same date (see pages 49-50 of the appeal book (hereinafter referred to as “AB”). The appeal is brought against the whole of the decision.
- 2 The first appellant is the Honourable Minister of Police, the second appellant is the Commissioner of Police and the respondent is an organisation, as that is defined in the Act.
- 3 The decision appealed against, formal parts omitted, reads as follows—

“THAT—

- (1) The Commissioner of Police is obliged to observe the agreements entered into with each and every one of the applicants’ (sic) members. That is apply the terms and conditions of all awards, agreements and orders and the provisions of the Police Act 1892 and Regulations.
- (2) Police officers who are subject to disciplinary proceedings are entitled to have those proceedings dealt with under s.23 and s.33E of the Police Act 1892
- (3) The Commissioner of Police is entitled to use the powers of removal vested in him by s.8 of the Police Act 1892 but in doing so he is not acting as the Crown and is obliged to ensure that natural justice is afforded to any police officer subject to the use of such power. Natural justice in this context is the natural justice available to a police officer if he was subject to proceedings under s.23 and s.33E of the Police Act 1892.”

GROUNDS OF APPEAL

- 4 It is against that decision that the appellants appeal on the following grounds (see pages 2-3(AB))—

“1. The Commissioner erred in law and in excess of jurisdiction in purporting to provide purely declaratory relief in terms of the orders made on 14th July 2000 in Application CR 81 of 2000 when there was no power or requirement to do so.

PARTICULARS

- (a) the Commission may only provide declaratory relief in cases where it is specifically provided for in the Industrial Relations Act, the matter at hand not being one of those cases;
 - (b) The Commission may only provide declaratory relief in connection with a matter otherwise within its jurisdiction, there being no such matter before the Commissioner; or
 - (c) no action was contemplated as a result of the making of the declaration.
2. The Commissioner erred in law and in excess of jurisdiction in declaring that in using the power of removal vested in him under section 8 of the Police Act 1892 the Commissioner of Police is obliged to ensure that natural justice afforded to any Police Officer the subject of such power is the natural justice available to a Police Officer if he was the subject of proceedings under section 23 and section 33E of the Police Act 1892.
3. The Commissioner erred in law in finding he had jurisdiction to deal with the application before him when the same was not an industrial matter.

PARTICULARS

- (a) an industrial matter can only arise under the Industrial Relations Act in connection with an employer and employee;
 - (b) in respect of the individuals the subject of the application before the Commission the Appellant's (sic) are not in the relationship of employers, those individuals being in the service of the Crown;
 - (c) the individuals the subject of application before the Commissioner are not employees for the purpose of the Industrial Relations Act, they are public officers in the service of the Crown;
4. The Commissioner erred in law in considering affidavit and other material which was not in evidence in the proceedings.”

BACKGROUND

- 5 On 24 February 2000, there was a dispute between the Western Australian Police Union of Workers (hereinafter referred to as “the WAPU”) and the Honourable Minister of Police and the Commissioner of Police, the appellants, which was referred for hearing and determination. There were, in fact, two applications by the WAPU on behalf of seven police officers, one of whom was a commissioned officer who has since resigned. The applications were taken out because all of the officers, as the Memorandum of Matters for Hearing and Determination under Section 44 (hereinafter referred to as “the Memorandum of Matters”) reveals, were subject to notices given under s.8 of the *Police Act 1892* (as amended) (hereinafter referred to as “the Police Act”).
- 6 The Schedule to the Memorandum of Matters outlined the dispute and was as follows—

“The Western Australian Police Union (the Applicant) represents seven serving police officers each of whom has been served with a notice purportedly issued pursuant to s.8 of the *Police Act 1892* and Amendments. The notice advises the recipient that in the absence of being persuaded otherwise, the Commissioner of Police will recommend to the

Minister for Police or the Governor, that he approve the removal of the recipient from the Police Force of Western Australia.

The Applicant says that each of these officers is a member or entitled to be a member of the union.

The Applicant says that each of its members on joining the Police Force of Western Australia entered into an agreement with the Commissioner of Police, the full force and effect of which will be referred to at hearing, which contain the following terms—

- (a) that each member's employment was subject to the provisions of any industrial award or agreement made pursuant to any Industrial Relations Act in force in Western Australia during the course of the member's engagement;
- (b) that in relation to a member's conduct during his employment as a police officer, it was always subject to the *Police Act 1892* and its Regulations;
- (c) That if an issue arose between the Commissioner of Police and one of the Applicant's members referred to herein, that issue would be decided pursuant to s.23 of the *Police Act 1892*.

The Applicant union says that in relation to the serving police officers referred to in the first paragraph the Commissioner of Police has advised that he has various concerns in relation to the conduct of each officer but has not sought to determine these issues pursuant to Section 23 of the *Police Act 1892* and Regulations and is therefore in breach of his agreement with those officers.

The Applicant union says that as a result of the breach of the agreement referred to herein, the seven serving police officers have been denied recourse in Section 23 of the *Police Act 1892* and cannot respond to the Commissioner of Police's concerns in relation to their conduct as they are entitled, thus leading to their wrongful dismissal.

The Applicant says that the Commissioner of Police, by failing to observe Section 23 of the *Police Act 1892* and its Regulations, has created a situation in which the Applicant union and its members have no confidence in the Commissioner of Police observing the agreement it has entered into with its members in relation to their engagements as police officers within the Western Australian Police Force. The Applicant union seeks an order or a direction that the Commissioner of Police observe the agreements as entered into with each and every one of the Applicant's members, not only in relation to issues of conduct, but all other issues relating to the terms of employment.

Respondent opposes the claim in all respects and says no order or direction should be made and the claim should be dismissed in its entirety.”

(See pages 14-15(AB).)

- 7 Pursuant to application No CR 41 of 2000, the contention was that the Commission was acting contrary to the Police Act in seeking to determine that the officers should be removed pursuant to s.8 of that Act because he was required to do that, pursuant to s.23 of that Act.
- 8 In relation to application No CR 81 of 2000, the contention to the Commissioner was that the Commissioner of Police was in breach of his agreement with the officers involved, because all concerns in relation to their fitness for office should be determined pursuant to s.23 of the Police Act and the Commissioner of Police was acting harshly or oppressively in acting pursuant to s.8 of that Act.
- 9 S.8 of the Police Act reads as follows—

“8. Removal of commissioned and non-commissioned officers

The Governor may, from time to time as he shall see fit, remove any commissioned officer of

police, and upon any vacancy for a commissioned officer, by death, removal, disability, or otherwise, the Governor may appoint some other fit person to fill the same; and the Commissioner of Police may, from time to time, as he shall think fit, suspend and, subject to the approval of the Minister, remove any non-commissioned officer or constable; and in case of any vacancy in the Police Force by reason of the death, removal, disability or otherwise of any non-commissioned officer or constable, the Commissioner of Police may appoint another person to fill such vacancy.”

10 Pursuant to s.8 of the Police Act, the Commissioner asked the eight officers, the subject of the applications, (later to become seven) to show cause why they should not be removed. The notices advised, inter alia, that— “In the absence of being persuaded otherwise, the Commissioner of Police will recommend to the Minister for Police or the Governor that he approve the removal of the recipient from the Police Force of Western Australia” (see page 7(AB)).

11 The WAPU’s contention to the Commission was that, if its members were to be disciplined, which included removal from the Police Force, then the Commissioner was obliged to observe the provisions of the Police Act, and particularly s.23, which reads as follows—

“23. Disciplinary measures

- (1) The Commissioner, or an officer appointed by the Commissioner for the purpose, may examine on oath any member of the Police Force and any police cadet upon a charge of an offence against the discipline of the Police Force being made against any member of the Force or cadet.
- (2) Where the member of the Force against whom the charge is alleged is an officer, an examination under this section shall be conducted by an officer of the rank of Chief Superintendent or above.
- (3) The Commissioner or officer conducting an examination under this section shall have the same power to summon and examine witnesses and to administer oaths as a Justice.
- (4) Where the Commissioner or officer conducting an examination under this section determines as a result of that examination that any other member of the Police Force or any police cadet has committed an offence against the discipline of the Police Force, he shall record that determination in writing and, subject to the provisions of subsection (5), may thereupon caution such member or cadet or by order in writing impose on him one or more of the following punishments —
 - (a) a reprimand;
 - (b) a fine not exceeding \$200;
 - (c) reduction to a lower rank;
 - (d) reduction in salary to a specified rate within the limits of salary fixed in relation to the rank held by him;
 - (e) suspension from duty;
 - (f) discharge or dismissal from the Force.
- (5) An order made under subsection (4) for reduction in rank or salary, suspension from duty, discharge or for dismissal, shall not have effect unless or until—
 - (a) in the case of a member who is not an officer, or of a cadet, it is imposed or confirmed by the Commissioner; or
 - (b) in the case of an officer, it is confirmed by the Governor.
- (6) An order made under subsection (4) which is subject to confirmation by the Governor shall not be submitted to the Governor for such confirmation unless or until —
 - (a) the time within which an appeal to the Board against the punishment, decision or finding to which the order relates may be

made under this Act has elapsed and no such appeal has been instituted; or

- (b) such an appeal to the Board has been instituted and has been determined by the Board in accordance with the provisions of this Act.
- (7) A fine imposed pursuant to this section may be recovered —
- (a) by deduction from the salary of the member or cadet on whom it is imposed; or
 - (b) in like manner to a fine imposed by a Justice under this Act,
- or partly in the one way and partly in the other.”

12 The applications came on for hearing on 23 March 2000 and on 11, 24 and 25 May 2000. On 25 May 2000, Mr P R Momber of Counsel for the WAPU advised the Commission that, “if [it] felt compelled to determine any jurisdictional issue that the parties be notified and the WAPU would withdraw from the jurisdiction”. The Commissioner asked what Counsel’s intentions were by letter dated 12 June 2000, and said that he wished to consider both applications for leave to withdraw.

13 On 15 June 2000 (see pages 21-23(AB)), Mr Momber responded in writing, confirming that the clear instructions of the WAPU were to withdraw application CR 41 of 2000, but in relation to CR 81 of 2000, he made the following comments—

“It was only in their final submission that the issue of whether or not police officers are employees was raised.

It is our client’s submission that the issue of employer/employee status is not relevant to the issues raised in CR81 which the union seeks a determination of, being—

1. Whether it was a term of their engagement that police officers are entitled to s.23 disciplinary hearings should they be accused of misconduct;
2. That the failure to grant s.23 disciplinary hearings to the six police officers mentioned in CR81, was likely to lead to their wrongful dismissal.

My client is not asking the Industrial Commission to make findings that its members are in the relationship of employer/employee or to conclude that any of its members have been wrongfully dismissed.

As we understood the Commissioner of Police and the Minister of Police’s submissions in CR81, neither was saying that as a preliminary issue you had to determine jurisdiction and in the union’s view, it was far too late for them to make that submission in any event, it being not made until the closing address and only for the purpose of emphasizing the point that the terms of the engagement of any police officer do not fit within the employer/employee relationship.

In relation to the submission made by me referred to in the first paragraph of your abovementioned letter, may I reiterate that if you conclude that prior to making any determination in matter CR81 of 2000, you felt obliged to make a finding as to whether the Commissioner of Police/the Minister of Police and their police officers were in the relationship of employer/employee, then my client would advise that it is no longer in dispute with the Commissioner of Police/Minister of Police and would withdraw from the jurisdiction in relation to the issues raised in CR81 of 2000.

In terms of withdrawing from CR41 and CR81 of 2000, my client would not seek to do so without your leave but would submit as I believe I did, that if the union is no longer in an industrial dispute with the Minister of Police and the Commissioner of Police as it is not in CR41, then the basis of your reference for arbitration no longer exists.”

- 14 The Commissioner held that the issue of jurisdiction was squarely raised by the appellants during the hearing. The Commissioner held himself bound on the authority of *Springdale Comfort Pty Ltd v/a Dalfield Homes v BTA* 67 WAIG 325 (IAC) and *FEDFAA v BP Company Ltd* (1911) 12 CLR 398, to determine that question, before exercising any statutory powers.
- 15 Counsel for the WAPU made it clear in the proceedings that the WAPU did not wish to have any of the matters raised in the Schedule to CR 41 of 2000 determined, and leave to withdraw for that reference was granted by the Commissioner.
- 16 As to application CR 81 of 2000, the Commissioner held that leave to withdraw that application could not be granted because the matter had been heard. The Commissioner held that parties should not be able to withdraw a matter to avoid an adverse order because they think, after consideration, that their case may be deficient in some way. The Commissioner, therefore, held that to give leave to withdraw in such circumstances would be contrary to the public interest and leave to withdraw was, accordingly, refused.
- 17 The Commissioner then turned to deal with the question of whether a Police Officer is an “employee” within the meaning of the Act. In s.7 of the Act, I should observe, an “employee” is defined as follows—
- “(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) any person employed as a canvasser whose services are remunerated wholly or partly by commission or percentage reward; or
- (d) any person who is the lessee of any tools or other implements of production or of any vehicle used in the delivery of goods or who is the owner, whether wholly or partly, of any vehicle used in the transport of goods or passengers if he is in all other respects an employee,
- but does not include any person engaged in domestic service in a private home unless —
- (e) more than 6 boarders or lodgers are therein received for pay or reward; or
- (f) the person so engaged is employed by an employer, who is not the owner or occupier of the private home, but who provides that owner or occupier with the services of the person so engaged;”
- 18 In s.7 of the Act, an “employer” is defined as follows—
- “(a) persons, firms, companies and corporations; and
- (b) the Crown and any Minister of the Crown, or any public authority,
- employing one or more employees;”
- 19 The Commissioner found and observed as follows—
- (a) The status of Police Officers has been before the courts for many years.
- (b) An extensive review of many of the authorities was recently undertaken by Senior Deputy President Williams in *Re Australian Federal Police Association (No. 2)* (1993) 51 IR 122.
- (c) The Full Bench of the Australian Industrial Relations Commission in *Re Australian Federal Police Association* (1996) 73 IR 155 (Boulton J, Polites, SDP and Simmonds, C) considered the matter and the Full Bench observed as follows—
- ‘The Deputy President undertook an extensive review of the authorities in respect of the relationship between a police officer and the State which we do not propose to repeat in this decision. His Honour’s conclusions on those authorities are set out conveniently in the following passages—
- “However, it does not necessarily follow from above that a police officer may not at

the same time be an employee for the purposes of the Act. That a police officer may be an employee is at least recognized in *Enever’s case (Enever v The King)* (1906) 3 CLR 969 at 975 per Griffiths CJ, 990 per O’Connor J; *Fisher’s case (Fisher v Oldham Corporation)*[1930] 2 KB 364 at 371 and three members for the High Court in the *Perpetual Trustee case (Attorney-General (NSW) v Perpetual Trustee Company (Ltd))* (1952) 85 CLR 237 at 250-252 per Dixon J, 283 per Fullagar J, 265 per Williams J. It is not, in my view, denied by the Privy Council in its decision [(1955) 92 CLR 113] in the latter case. As indicated above, the Privy Council was concerned, not with whether or not a police officer was an employee but rather with whether the particular cause of action should be extended ‘beyond the limits to which it has been carried by binding authority or at least by authority long recognised as stating the law’ [(1955) 92 CLR 113, 129-30]. It is supported by the observations of Barwick CJ in *Ramsay v Pigram* (1968) 118 CLR 271 and Lee J in *Griffiths v Haines* [1984] 3 NSWLR 653. In *Pense v Hemy* (1973) WAR 40, the Court recognised that a police officer had both duties of office and duties arising under rules and regulations made by a Commissioner.

Nor does there appear to be any justification for the proposition that a police officer cannot be both the holder of a public office and an employee. One is not, in my view, inconsistent with the other. In any event, the question is not whether there is any inconsistency—the real question in this case, as stated earlier, is whether the fact that a police officer exercises independent authorities precludes her/him from being an employee for the purposes of the Act.

I am of the view that it does not. There is no doubt that a police officer performs duties that arise by virtue of the office she/he holds. There is equally no doubt that a police officer performs duties that arise under detailed rules, orders, regulations and instructions formulated by the various Commissioners of Police and that those Commissioners exercise wide powers in directing the work and the manner of the work so performed. I can comprehend no real or significant difference between the relationship of a police officer to the Crown and that of many other employees to their employers where it is either impossible, undesirable or impractical to direct or control the work or particular aspects of the work of the particular employee.

In *Zuijs v Wirth Brothers Pty Ltd* (1955) 93 CLR 561, the High Court, in dealing with the position of a circus acrobat, stated (at 570)—

‘... a false criterion is involved in the view that if, because the work to be done involves the exercise of a particular art or special skill or individual judgment or action, the other party could not in fact control or interfere in its performance, that shows that it is not a contract of service but an independent contract’.

True it is that, in that case, the Court was concerned with whether or not the person in question was an employee or an independent contractor but, if the fact that ‘the work to be done involves the exercise of

individual judgment' does not show that a person performing that work is not an employee, in my view the same test can equally be applied in the case of a person whose work involves the exercise of an independent authority. The Court went on to say (at 571)—

'The duties to be performed may depend so much on special skill or knowledge or they may be so clearly identified or the necessity of the employee acting on his own responsibility may be so evident, that little room for direction or command in detail may exist. But that is not the point. What matters is lawful authority to command *so far as there is scope for it*. And there must always be some room for it, if only in incidental or collateral matters'. (My emphasis)

There seems to be, in the matter before the Commission, considerable evidence of the scope for the exercise of a lawful authority to command. It is clear from the rules, regulations, orders and instructions issued by the various Commissioners that police officers are directed and/or controlled to a significant extent in the performance of their duties notwithstanding the fact that, in respect to a substantial area of their work, they possess an independent authority to act and cannot be so directed. In my view, police officers are employees for the purposes of the Act."

(d) That the Full Bench in *Australian Federal Police Association* (op cit) observed or found as follows—

- (i) That, on the evidence of the material before it as a practical matter, extensive powers are exercised over Australian Police Officers with respect to their work and the execution of their duties.
- (ii) That, in many respects, such officers are subject to direction and control which is characteristic of the employment relationship.
- (iii) That there are aspects of the engagement which are indicative of the employment relationship as well.
- (iv) That it is possible to refer to judgments in cases which would not preclude a police officer from being found to be an employee at common law, merely because the officer may exercise some independent authority as a holder of public office.
- (v) That police officers are employees, for the purposes of the Act, would seem, to use the words of Fullager J in *Attorney-General for New South Wales v Perpetual Trustee Co Ltd* (1952) 85 CLR 237 at 283, to be "more in accord with modern notions and the realities of human relationships today", than a contrary conclusion.

The Full Bench did not decide the matter conclusively, but observed that this Commission had appeared to exercise jurisdiction without challenge for some considerable time.

(e) The Commissioner went on to observe that Senior Deputy President Williams had really found that Police Officers may well be in the situation that, when exercising their police powers, that is independent authority, the common law cases apply. However, he observed that, when Police Officers are not applying police powers exercising independent authority and are performing what might be considered to be their ordinary administration work, that is duties arising from

rules and regulations made by the Commissioner of Police, then they are subject to direction and control as is any other employee and the industrial laws would then apply.

- (f) The Commissioner observed that this concept may well explain the acceptance of jurisdiction in this Commission to provide industrial regulation for Police Officers, since the Commission made the first *Police Award* in 1927 (1928) 8 WAIG 418.
- (g) The Commissioner then went on to deal with the history of industrial matters involving Police Officers and police cadets being dealt with in this Commission and referred to *Minister for Police and Commissioner of Police v Smith* (1993) 73 WAIG 2311.
- (h) The Commissioner then observed that there are provisions in the Police Act in Part IIA—Police Appeal Board which provided for rights of appeal and for the Appeal Board itself.
- (i) The Commissioner also observed that an oath of office, in itself, is not incompatible with an employment relationship.
- (j) The Commissioner then dealt with s.23, s.33E and s.8 of the Police Act and the *Police Regulations* 1972.
- (k) The Commissioner then turned to deal with whether the Commissioner of Police can use s.8 of the Police Act to remove officers or was he barred from doing so by the operation of s.23 of the Police Act, as the only method by which a police officer can be dismissed is through s.23.
- (l) The Commissioner observed that these questions were considered by the Supreme Court in *Menner and Others v Robert Falconer, Commissioner of Police* (Supreme Court Library No 970388) ("Menner's Case") and the Full Court dealt with these matters in *R and Miller; Ex parte Falconer* (WA Supreme Court Library No 980249b) ("Miller's Case").

Anderson J, in *Menner's Case* (op cit), observed that, when a member of the police service enters into an engagement by taking and subscribing to an oath, the engagement involves a concurrence between the officer and the Crown.

The relationship established is that of master to servant, notwithstanding that a constable has specific powers and duties which he must execute as an independent responsibility, but, importantly, the engagement is unilateral in that the officer promises to serve as long as it pleases the Crown to employ him, there being no mutuality or reciprocity of contract or liability. The officer is bound to serve, but the Crown is not obliged to retain him and may dismiss him at will. This power to dismiss may be exercised at any time and for any reason or for no reason or for a mistaken reason. Thus, a Police Officer has no security of employment. His Honour said that, accepting that the power under s.8 of the Police Act authorises dismissal with or without notice and for any reason or for no reason, that he was not persuaded that an officer has the right to be heard before the power is exercised in relation to him.

Such a contention assumes that the right is a right to dismiss for cause. It is not, but to dismiss at pleasure and is therefore not subject to any condition or restriction.

His Honour did, however, say that a decision under s.8 of the Police Act to suspend might be reviewable, if it were not made honestly or in bona fide pursuit of the purpose of the power. S.8 of the Police Act, Anderson J found, confers on the Commissioner of Police the same power of suspension at pleasure as belongs to the Crown. Thus, the intention of the section is to confer on the Commissioner the prerogative power of the

Crown to suspend at pleasure. The power, in that sense, is unqualified.

- (m) In *Miller's Case* (op cit), Malcolm CJ concluded that the Commissioner of Police was not the Crown and his action to discharge could not be equated to termination by the Crown as an act done at will or at the pleasure of the Crown. Ipp J also dealt with these matters, finding that the discretion is an open one of the kind referred to by Dixon J in *Swan Hill Corporation v Bradbury* (1937) 56 CLR 746 and *Water Conservation and Irrigation Commissioner (New South Wales) v Browning* (1947) 74 CLR 492.
- 20 The Commissioner was therefore obliged to ensure that, in dealing with s.8 of the Police Act, he read that section in conjunction with the disciplinary provisions in s.23 of the Police Act and the requirements of natural justice which are clearly imported into the disciplinary proceedings under that section.
- 21 The Commissioner concluded that the Commissioner of Police has the power under s.8 of the Police Act to deal with issues relating to the movement of police officers. He therefore concluded, in the absence of authorities from the Supreme Court, that the Commissioner has the right to use s.8 but, when he does so, he must do so applying the rules of natural justice.
- 22 The Commissioner referred to the dicta of the Chief Justice in relation to s.23 of the Police Act and concluded that His Honour had intended that a review by an independent body on the merits was not available to an officer facing dismissal under s.8 of the Police Act.
- 23 The parties also had agreed to certain arrangements called the "Administrative (Appeal) Arrangements Section 8 of the Police Act 1892 and Industrial Relations Act 1979". This provides for a number of steps to be taken in the form of administrative procedures for application to the exercise of the respective powers of both the Minister of Police and the Commissioner of Police under s.8 of the Police Act. The Commissioner held that he was entitled to express his findings as a declaration.

ISSUES AND CONCLUSIONS

Ground 1

- 24 By Ground 1, the appellants complain that the Commissioner erred in law and acted in "excess of" jurisdiction in that the Commissioner purported to provide purely declaratory relief in terms of the orders made on 14 July 2000 in application No CR 81 of 2000, when there was no power in him nor requirement to do so.
- 25 The decision made consists solely of declarations with no orders. The Commissioner made the decision as part of the purported exercise of his powers pursuant to s.44 of the Act.
- 26 The appellants' complaint is that there was no power to make such declarations because—
- (a) There was no jurisdiction conferred on the Commissioner by the Act to make declarations, as it were, in isolation.
 - (b) S.26(1)(a) of the Act does not confer equitable jurisdiction upon the Commissioner because it is not a source of power or jurisdiction.
 - (c) The Commission has no equitable jurisdiction and therefore can only grant declaratory relief where specifically empowered to do so under the act, or where it is "awarded in adjunct with substantive orders".
- 27 A substantial number of authorities was cited.
- 28 For the WAPU, it was submitted that s.34 of the Act specifically confers a power to make declarations and that this declaration was properly made and within power. There is, indeed, an express empowerment pursuant to s.34 of the Act which, indeed, enables the Commission to make its decision, as defined in s.7 of the Act, inter alia, as a declaration and, indeed, requires the Commission to make its decision in the form of an award, order or declaration. (The power to make a declaration as to the interpretation of an award under s.46 of the Act is a specific and particular power of its own.)
- 29 It is trite to observe that s.26(1)(a) of the Act is not a head of power (see *RRIA v ADSTE* 68 WAIG 11 (IAC)). That head of power, for the Commission's purposes in this case, in relation to declarations, is contained in s.34, read with s.7 of the Act. There is, therefore, on the face of it, a power to and a duty to make a decision in the form of a "declaration" on its own.
- 30 The definition of "decision" in s.7 of the Act is as follows—
- "**"decision"** includes award, order, declaration or finding;"
- 31 S.34(1) of the Act reads as follows—
- "34. Decision to be in form of award, order, or declaration**
- (1) The decision of the Commission shall be in the form of an award, order, or declaration (my emphasis) and shall in every case be signed and delivered by the Commissioner constituting the Commission that heard the matter to which the decision relates or, in the case of a decision of the Commission in Court Session, shall be signed and delivered by the Senior Commissioner among the Commissioners constituting the Commission in Court Session.
 - (2) When the members of the Commission in Court Session are divided in opinion on a question, the question shall be decided according to the decision of the majority of the members.
 - (3) Proceedings before the President, the Full Bench, or the Commission shall not be impeached or held bad for want of form nor shall they be removable to any court by *certiorari* or otherwise.
 - (4) Except as provided by this Act, no award, order, declaration, finding, or proceeding of the President, the Full Bench, or the Commission shall be liable to be challenged, appealed against, reviewed, quashed, or called in question by any court on any account whatsoever."
- 32 In *Metropolitan (Perth) Passenger Transport Trust v Gersdorf* (1981) 61 WAIG 611 (IAC), Brinsden J, with whom Smith J agreed, decided that it was not competent for the Commission to make a declaration on its own, i.e. not complementary to a substantive order.
- 33 In *RRIA v AWU* (1987) 67 WAIG 320 (IAC) ("Acosta's Case"), a declaration that the contemplated action of an employer to dismiss an employee was held, notwithstanding that the declaration stood alone and was not complementary to a substantive order, to be competent. Brinsden J held that such an opinion was not inconsistent with what he had held in *Metropolitan (Perth) Passenger Transport Trust v Gersdorf* (IAC)(op cit) because, in Acosta's Case (op cit), the making of a declaration in the terms sought and in which it was made, was to be the foundation for the consequent act of dismissal. Olney J agreed with Brinsden J. Kennedy J at page 325 held that a general power to make a declaration (as distinct from the particular power conferred by s.46 of the Act) was available, if it served the purpose of resolving a dispute. Such a power, he observed, was to be used with care.
- 34 The Industrial Appeal Court in *Marshall v Management Committee of the Geraldton Sexual Assault Referral Centre* (1995) 75 WAIG 1501 at 1503 (IAC) did not decide the question. In *Coles Myer Ltd trading as K-Mart Discount Stores v SDA* 72 WAIG 696, the Full Bench applied the decision in Acosta's Case (op cit).
- 35 In *Hutchinson v Cable Sands (WA) Pty Ltd* 79 WAIG 951 (FB), the majority of the Full Bench, Sharkey P and Coleman CC, held, applying the authorities, that it was within power to make a declaration in isolation as the decision of the Commission. Further, the law is now in this Commission, for those reasons, that such use of a declaration is competent.

- 36 In this case, the order was made within power because of the ratio in Acosta's Case (op cit), the declaration settled rights and obligations in contemplation (in relation to the WAPU's members) of future acts as well as current situations. Alternatively, as Kennedy J observed, the declarations were used to settle a dispute and were within power, even though the declarations stood alone and were not complementary to other orders or declarations. Further and perhaps more cogently, the declaration as contemplated by the dicta of Kennedy J in Acosta's Case (op cit) were properly used in order to settle an ongoing dispute. It was, in any event, not submitted with any force that the orders were not a valid exercise of discretion or appropriate, having regard to Kennedy J's dicta in Acosta's Case (op cit).
- 37 The declarations made, I am satisfied for those reasons and on those authorities, were clearly made validly and within power. In any event, if they were not, the proper order would be to quash the decision appealed against, and then there would be no obstacle to the matter being determined by competent orders by the Commission at first instance.
- 38 However, all of those observations are subject to whether the Commissioner had the jurisdiction to hear and determine the matter at all, a point raised by Ground 3. Subject to that observation, I do not find Ground 1 made out.

Ground 2

- 39 The complaint in relation to Ground 2 is that the Commissioner erred in law and acted in excess of jurisdiction in declaring that, in using the power of removal vested in him under s.8 of the Police Act, the Commissioner of Police is obliged to ensure that natural justice is afforded to any Police Officer, the subject of such power is the natural justice available to a Police Officer if he was the subject of proceedings under s.23 and s.33E of the Police Act.
- 40 It is necessary, in the course of considering this ground and the submissions relating thereto, to canvass a number of sections of the Police Act. It will be necessary to consider some of those sections further in relation to Ground 3 of the Grounds of Appeal.
- 41 For convenience, I will now refer to those sections and reproduce the same or relevant extracts where appropriate.
- 42 By virtue of s.5 of the Police Act, the Governor may appoint—
 "a fit and proper person to be Commissioner of Police throughout the said State,
 and every Commissioner of Police shall be charged and vested with the general control and management of the Police Force of the said State, and also of any special Constables...."
- 43 S.6 of the Police Act empowers the Governor to appoint (my emphasis) commissioned officers under his hand—
 "... and such commissioned officers shall be subject to the control and discipline of the Commissioner of Police, and shall be respectively charged with the government and superintendence of such portion of the Police Force as such Commissioner may from time to time direct."
- 44 S.7 of the Police Act provides for the appointment (my emphasis) of non-commissioned officers and constables by the Commissioner of Police, subject however to the approval of the Governor—
 "... and such non-commissioned officers and constables shall have all such powers and privileges, and be liable to all such duties and obligations as any constable duly appointed now or hereafter may have, or be liable to, either by the common law, or by virtue of any statute law now or hereafter to be in force in the said State."
- 45 S.9 of the Police Act empowers the Commissioner of Police, with the approval of the Minister, to frame rules, orders and regulations "for the general government of the members of the Police Force and of police cadets", including for their "control, management, and discipline".

- 46 S.10 of the Police Act reads as follows—
 "No person shall be capable of holding any office (my emphasis), or appointment in the Police Force, or of acting in any way therein, until he shall have subscribed the following engagement, namely—
 I, A.B., engage and promise that I will well and truly serve our Sovereign Lady the Queen, in the office of [*Commissioner of Police, inspector, sub-inspector, or other officer, or constable, as the case may be*], without favour or affection, malice, or illwill, until I am legally discharged; that I will see and cause Her Majesty's peace to be kept and preserved, and that I will prevent, to the best of my power, all offences against the same; and that, while I shall continue to hold the said office, I will, to the best of my skill and knowledge, discharge all the duties thereof faithfully according to law.
 And the said engagement shall be subscribed in the presence of and attested by a Justice or commissioned officer of the force."
- All Police Officers are required by the Police Act to subscribe to the above engagement.
- 47 S.11 of the Police Act prescribes as follows—
 "Every person, on subscribing such engagement, shall be thereby bound to serve Her Majesty as a member of the Police Force, at the current rate of pay for such member, and until legally discharged, from the day on which such engagement shall have been subscribed: Provided that no such engagement shall be set aside for the want of reciprocity: Provided further, that such engagement may be cancelled at any time by the lawful discharge, dismissal, or removal from office of any such person, or by the resignation of any such person being accepted by the Commissioner of Police."
- 48 S.12 of the Police Act prescribes as follows—
 "No non-commissioned officer or constable shall be at liberty to resign his office, or to withdraw himself from the duties thereof, notwithstanding the period of his engagement shall have expired, unless expressly authorized in writing to do so by the Commissioner of Police, or unless he shall have given to such Commissioner 3 calendar months' notice of his intention so to resign or withdraw, if stationed north of the 18th parallel of south latitude or one calendar month's notice if stationed elsewhere, and every member who shall so resign or withdraw himself without such leave or notice shall, upon conviction thereof by any 2 or more Justices, be liable to forfeit all arrears of pay then due to him, and to a penalty of not more than \$50, or may be committed to prison for a period not exceeding 14 days."
- 49 Part II of the Police Act, which commences with s.9 and includes s.10 to s.33 inclusive, deals with duties, regulations and discipline of the Police Force. S.8 is in Part I, a different part of that Act. S.23 prescribes the manner in which disciplinary measures are to be taken. S.33E prescribes a right of appeal to a member of the Police Force or a police cadet who has been convicted, upon a summary investigation, by the Commissioner or other officer appointed by the Commissioner, of an offence against the discipline of the Police Force.
- 50 The appeal lies against the decision and punishment, if the person concerned is punished, i.e. discharged or dismissed from the Police Force, suspended from duty, reduced in rank, fined or transferred by way of punishment. The leading authority in this area and one which binds this Commission is the reasons for judgment of the Full Court in *Re an application for Certiorari; Parker & Others v Miller and Others* (Supreme Court Library No 980249) ("Parker's Case") per Malcolm CJ and Ipp J (Franklyn J dissenting). The following can be extracted from those reasons for judgment—
 1. Save for minor amendments by s.3 of the *Police Act Amendment Act 1969*, s.8 of the Police Act

remains in the form in which it was enacted in 1892 (per Malcolm CJ at page 55 of his views).

2. The statutory power of dismissal conferred on the Commissioner of Police by s.8 was distinct from resort to the Crown prerogative and could not be equated with termination by the Commissioner as an act done at the will or pleasure of the Crown. The power is just that, a statutory power.
 3. S.8 must be read in the context of the disciplinary provisions of s.23 of the Police Act and the requirements of natural justice which are clearly imported into disciplinary proceedings under that section.
 4. That exercise of power is reviewable, its width does not render the same power exercisable under a royal prerogative.
 5. S.8 is part of a scheme incorporated in the Police Act.
 6. Since the Commissioner of Police is not the Crown, the discharging (or removal/suspension) of an officer cannot be seen as an act done at the will or at the pleasure of the Crown.
 7. Accordingly, it was wrong to do so without affording natural justice or procedural fairness.
- 51 In my opinion, the Commissioner at first instance was right, subject of course to the question of jurisdiction raised by Ground 3, in finding that there was a right in the officers concerned to be accorded natural justice. (That was the view of all three judges in *Parker's Case* (op cit).)
- 52 In my opinion, the dicta of Gibbs CJ at page 353 and Wilson J at page 361 in *O'Rourke v Miller* (1985) 156 CLR 342 apply and are the correct prescription of what constitutes procedural fairness, for the purposes of the Police Act. I respectfully adopt what Gibbs CJ said, at page 353, or at least s.8 thereof, where suspension and removal, and not the distinctly different act of dismissal or other sanctions is occurring. There is nothing to distinguish the approach in *O'Rourke v Miller* (HC)(op cit) as the proper approach—

“In the present case the Chief Commissioner was not required to hold a formal hearing or to be satisfied beyond reasonable doubt that the appellant had been guilty of the misconduct alleged before he reached a decision to terminate the appellant’s provisional appointment. It would be enough if the Chief Commissioner, having given the appellant a fair opportunity to be heard, considered in good faith that the appellant was not fit to occupy the office of constable or that there was a real doubt about his suitability. If in fact the appellant had been charged before the Police Discipline Board and that Board had given him the benefit of the doubt because it was faced with a conflict of testimony between the two girls and the two policemen, it would still have been open to the Chief Commissioner to terminate the appellant’s appointment. It is of great importance to the public that persons whose conduct or character is doubtful should be kept out of the police force and the system of probationary appointments is one means of achieving that end. The Chief Commissioner, in exercising his power under reg. 212 to terminate the appointment of a probationary constable, has, to use the words of Murphy J. in the Full Court of the Supreme Court, “not only the power but also the responsibility to weed out persons concerning whom he entertains any reasonable doubts””

- 53 I adopt, too, what Wilson J said, at page 360-361, as to the nature of the procedural fairness to be afforded. I think that such an approach is consonant, too, insofar as it needs to be with the well accepted approaches in the industrial law—

“The argument fails at the outset because the premises on which it is based cannot be sustained. First, his appointment was not terminated because he was found to have committed an offence. The relevant question was not whether he was guilty of an offence but whether on all the information

available to the Deputy Commissioner he possessed the qualifications which rendered him suitable for appointment. The appellant had no right to have the judgment of a Police Discipline Board based as it would be on a strict onus of proof in relation to a particular incident substituted for the experienced judgment of his suitability by the Deputy Commissioner. Nor did the mandates of procedural fairness oblige the Deputy Commissioner to subject the civilian complainants to the embarrassment and stress of an inquiry in which they would confront the appellant and submit to cross-examination on his behalf. The argument proceeds on a misconception of the position of a probationary constable. He has no right to confirmation merely because he passes the retention examination and receives a favourable report from his superiors. He has no right beyond the right to expect a bona fide decision by the Chief Commissioner on his suitability to continue as a member of the police force with the proviso that if any material on which that decision might be based is adverse to him then the substance of that material will be made known to him and an opportunity given to him to make his response: see *Chief Constable of the North Wales Police v. Evans* (17). The record here shows that the appellant was interviewed over a period of months by a number of senior police officers. He was fully informed of the conduct complained of and given every opportunity to make his response, which he did. I agree with the conclusion of the Full Court that the procedures followed satisfied the dictates of fairness.”

- 54 (See also the application of those dicta in *R v Commissioner of Police; Ex parte Ramsey* [1992] 2 Qd R 171, applied by Malcolm CJ and Ipp J in *Parker's Case* (op cit).)
- 55 I am of opinion, for those reasons, that, subject to my findings as to Ground 3 and/or Ground 4, that ground of appeal is not made out.

Ground 3

- 56 This is the fundamental ground of appeal. By Ground 3, the appellants complained that the Commissioner erred in law in finding that he had jurisdiction to deal with the application before him because there was no “industrial matter”, as defined in s.7 of the Act.
- 57 It is trite to observe that the Commissioner had no jurisdiction in relation to the matter before him, unless it was an “industrial matter”, as defined. An “industrial matter” is defined in s.7 of the Act as follows—

““**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) and (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)”
- 58 By the ground of appeal, the appellants complain that an industrial matter can only arise under the Act “in connection with an employer and employee”. Further, the appellants go on to assert that the appellants, the subject of the application, are not in the relationship of employer to the Police Officers because they are in the service of the Crown.
- 59 An “employer” and an “employee” are defined by s.7 of the Act.
- 60 It is noteworthy that jurisdiction is not conferred on the Commission with respect to a dispute concerning an industrial matter, but is conferred in respect of an industrial matter (see *RGC Mineral Sands Ltd and Another v CMETSWU* 80 WAIG 2437 at 2443 (IAC) per Parker J, with whom Kennedy J and Scott J agreed).
- 61 There is ample authority in the Commission that an industrial matter is one which affects or relates to the work, privileges, rights or duties of employees or employers (as defined) in an industry.
- 62 It is quite clear, from the plain words of the definition of “employee”, that a person is an employee who is party to a contract of service. Definition (a) makes that clear. It is also clear that an “employee” is a person whose usual status is that of employee, i.e. employee as otherwise defined in s.7 of the Act (see definitions (a), (c) and (d) of “employee”). Thus, a person employed as a canvasser and remunerated by commission is an employee (see definition (c)). Further, an employee, as defined, and the subject of a contract of service, who is the lessee of vehicles, tools, etc. (I paraphrase, is an employee). Obviously, a Police Officer is not a canvasser and not a person who is the lessee of tools or vehicles, but is otherwise an “employee”.
- 63 Quite plainly, a public officer or an officer of the Crown, in the proper sense of that word, who is not an “employee”, as defined; nor does a person so appointed enter into a contract of employment or service; nor does such an officer have an employer.
- 64 An “industry” is defined by s.7 of the Act to mean—
- “**“industry”** includes each of the following—
- (a) any business, trade, manufacture, undertaking, or calling of employers;
 - (b) the exercise and performance of the functions, powers, and duties of the Crown and any Minister of the Crown, or any public authority;
 - (c) any calling, service, employment, handicraft, or occupation or vocation of employees,
- whether or not, apart from this Act, it is, or is considered to be, industry or of an industrial nature, and also includes—
- (d) a branch of an industry or a group of industries”
- 65 The ambit of the definition of “industrial matter” is canvassed in an authoritative manner in *RGC Mineral Sands Ltd and Another v CMETSWU* (IAC)(op cit) The question is whether commissioned officers, non-commissioned officers and constables are employees and the appellants are employers, and whether they are employers and employees in an “industry”. Conditional facts which constitute ingredients of an industrial matter, as defined, depend, to a large extent, on whether a person is an employer and/or employee, as defined.
- 66 First, there is no evidence of any express written or oral contract of service. Commissioned officers are appointed by the Governor, and are subject to the control and discipline of the Commissioner of Police who, himself, is appointed by the Governor. They are appointed by operation of the provisions of the Police Act. There was no submission in support of the proposition that the Minister was an employer and no submission to that effect. There is nothing in the Police Act or otherwise before the Full Bench to establish that the Minister employs Police Officers. In any event, the approval of the appointment of an officer (whether Police Officers or not) or the appointment of an officer by or at the behest of the Minister, does not render that person the Minister’s employee, as Police Officers, at common law.
- 67 Non-commissioned officers are appointed by the Commissioner of Police, the officer vested with the general control and management of the Police Force (see s.5, s.6 and s.7 of the Police Act supra) pursuant to the provisions of the Police Act.
- 68 There is no evidence or even any submission of conviction that they enter into a contract of service, or that it would be competent for them to do so. Ipso facto, if they are “officers”, they cannot competently enter a binding contract of service.
- 69 Thus, all members of the Police Force become members of that force because the Governor, representing the Crown, and the Commissioner, an officer appointed by the Governor, pursuant to the Police Act, appoint them pursuant to the statute.
- 70 Further, no person is capable of holding any office or appointment or acting in any way under the Police Act until he has “subscribed to” the form of engagement reproduced above in s.10 of the Police Act.
- 71 The engagement is an engagement to service the Queen, to keep Her Majesty’s peace, to prevent crime, etc “in the office of (rank of officer)”. The engagement, too, is to well and truly serve the Queen “until I am legally discharged”. That phrase connotes a termination of service which is not in the final ability of the officer to decide.
- 72 Again, s.11 of the Police Act adds to that by prescribing that every person, on subscribing such engagement, shall “be clearly bound to serve Her Majesty” as a member of the Police Force until legally discharged.
- 73 There is no contract to be terminated at the instance of employer or employee. Indeed, no such engagement is permitted to be set aside “by want of reciprocity” (see s.11 of the Police Act). There is no mutuality of reciprocity of contract and obligation (see *Menner’s Case* (op cit)).
- 74 However, more significantly, no non-commissioned officer or constable shall be at liberty to resign his office or to withdraw himself from the duties of that office, even though the period of his engagement has expired, without the leave of the Commissioner of Police or proper notice of resignation. It is to be noted that any resignation must be accepted by the Commissioner of Police.

- 75 The relevant relationship between the Commissioner and Police Officers does not arise by virtue of a contract of service or employment. There is no contract of service. The relationship of a Police Officer is with the Crown. The force of which he is a member and a constable is under the general control and management of an officer appointed by the Governor, for that purpose, the Commissioner of Police. Only the Governor may remove from office commissioned officers (see s.8 of the Police Act) and the Commissioner of Police, subject to the Minister's approval, may remove any non-commissioned officer or constable.
- 76 All of these statutory features indicate the nature of the office of Police Officer. She/he is a member of a force. The Police Force is a regular service of the Crown. It is a disciplined force of the Crown (see *Fletcher v Nott* (1938) 60 CLR 55 at 77; see also *Enever v The King* (1906) 3 CLR 969 at 982; *New South Wales v Perpetual Trustee Company (Limited)* (1956) 92 CLR 113 at 120-121; *Attorney-General (NSW) v Perpetual Trustee Company (Ltd)* (HC)(op cit) at 254-255 and 303; *Pense v Hemy* (FC) [1973] WAR 40 at 42).
- 77 As these authorities say and the terms of the Act provides, and as Mr Tannin, on behalf of the appellants, correctly submitted, a Police Officer's service under the Police Act is not dependent upon a contract but upon an engagement prescribed and having a prescribed statutory effect. I follow those authorities because they apply and, indeed, I am bound by them. The relationship between the Crown and the members of the Police Force is governed by statute and regulation. The statute binds them in their occupation and discharge of office. The words "engagement", "oaths of office", and the word "office" are significantly used throughout the relevant sections.
- 78 To support and illustrate that view, I make the following observations.
- 79 Of course, at common law, a constable or Police Officer was regarded as the holder of a public office and was regarded as exercising an original and not a delegated authority. Her/his acts were and are of a public nature done by a public officer (see *Enever v The King*(HC)(op cit) and *Attorney-General (NSW) v Perpetual Trustee Company (Ltd)*(HC)(op cit) at page 237).
- 80 In *Attorney-General (NSW) v Perpetual Trustee Company (Ltd)*(HC)(op cit) at page 273, Webb J said—
 "A police constable has always been an arm of the law and never a servant employed to do a masters bidding on all occasions and in any circumstances. His authority is original and not derived from a master or exercised on behalf of one, but is exercised on behalf of the public."
 (See also per Kitto J at page 299.)
- 81 See also *Pense v Hemy* (op cit) at page 42, where Burt CJ said—
 "In other words the power presupposes and if exercised the product of its exercise presupposes a body of law, independently existing concerning the powers, privileges, duties and responsibilities of the constable the power given by the section was intended merely to deal with the disciplinary control of constables, leaving the nature of their powers and duties and the responsibility of their actions to be governed by the common law as modified by statutes, if any, dealing with that subject."
- 82 *Konrad v Victoria Police and Another* (1999) 46 AILR 1610 is not authority for the proposition that, at common law and/or the purposes of this Act, a Police Officer is an employee. It is authority for the proposition that, for the purposes of the *Workplace Relations Act 1996* (Cth), a Police Officer is an employee; nor, because the reasoning adopted in that case does not accord with the authorities, my reasoning based on them and the Police Act above, do I, with great respect, agree with the view taken by Williams DP in *Re: Australian Federal Police Association (No. 2)* (op cit) at pages 147-149, where the Deputy President held that State Police Officers, including those in this State, are employees (see also on appeal *Re Australian Federal Police Association* (op cit)).
- 83 In any event, the learned Deputy President was making the finding which he made on the definition of "worker" in the *Workplace Relations Act 1996* (Cth).
- 84 That a Police Officer is not an employee is supported by P W Nichols Esq. in his erudite work "Police Officers of Western Australia" (Butterworths) 1979, on pages 9-10, where he notes, in relation to s.11 of the Police Act, that the engagement preserved in s.11 is an interesting historical survival, recalling the link between the constables appointed in England by Justices of the Peace. He also observes that, because of a constable's status as a Crown officer, he cannot be a "servant".
- 85 Mr Graham F Smith, in his work "Public Employment Law" (Butterworths) at pages 48-49, quotes with approval the view of Mr D C Thompson in his article "Employment and Law in the New South Wales Police Force" (1963) 4 Sydney Law Review, pages 404-415, especially page 409, that, although the common law status of the constable continues to be of prime importance, the modern Police Force is essentially a creature of statute. Nowhere, however, does he suggest that a Police Officer is not an officer of the Crown. Indeed, by recognising the common law status, he recognises that to be the case.
- 86 On a fair reading, the Police Act, its regulations and orders, as I have observed, still enshrine the Police Officer as an officer responsible to the Crown.
- 87 Indeed, as Ipp J observed in Parker's Case (op cit), acting and applying the ratio in *Balog and Another v Independent Commission Against Corruption* (1990) 169 CLR 625 at pages 635-636 by the whole Court that, where two alternative constructions are open, that which is consonant with the common law is to be preferred, found that Police Officers were officers of the Crown.
- 88 In my opinion, that, with respect, is what the Police Act provides and recognises and I follow His Honour's finding.
- 89 Moreover, it cannot be validly argued that a course of conduct over many years where, as submitted, as if Police Officers were employees, awards and later enterprise bargaining agreements were made or entered into in relation to the working conditions of Police Officers, confers jurisdiction on the Commission.
- 90 Police are servants of no-one but the law itself (see Aspects of Public Sector Employment by G J McCarry (The Law Book Co Limited 1988), page 214, citing *R v Commissioner of Police of the Metropolis; Ex parte Blackburn* [1968] 2 QB 118 at 136 per Lord Denning MR and at 138 per Salmon LJ).
- 91 Further, although Mr Momber for the WAPU submitted otherwise, relying on *Walton Stores (Interstate) Ltd v Maher and Another* 164 CLR at 387, estoppel cannot operate in the face of the statute to confer jurisdiction or otherwise. If it can do so, then the Full Bench was taken to no authority to that effect.
- 92 As Isaacs J said, too, in *Meyers v Casey* [1913] 17 CLR 90 at 117—
 "It is true no consent of parties can supplement the law of the land so as to give a tribunal any jurisdiction to dispense the King's justice, which the law does not itself confer. The law provides the exact measure of that jurisdiction, and no private arrangement can add to it or take from it."
- 93 Jurisdiction cannot be conferred by agreement between the parties (see *SGS Australia Pty Ltd v Taylor* 73 WAIG 1760) where it does not exist.
- 94 Accordingly, because Police Officers are officers, they are not employees. Because they are engaged and appointed as officers and not parties to a contract of employment, they are not employees. Because they have no employer, they are not employees. Such, in my opinion, is palpably the position. In any event, the Full Bench is bound to so find by the authority of the High Court and of the Full Court of this State in the authorities to which I have referred in paragraphs 76, 79, 80, 81, 87 and 90 in particular hereof.
- 95 Further, for the same reason, the Commissioner of Police is not the employer of Police Officers. It was, as I have

observed, not contended that the Minister is their employer. They are not, therefore, persons employed by an employer to do work for hire or reward (see definition (a) of “employee” in s.7 of the Act). Further, it was not contended that they came within the definition of employee definitions (b), (c) and (d) in s.7 of the Act, nor is there any evidence that they were. Police Officers are indubitably officers of the Crown and not employees, for those reasons, and I so hold.

96 Further, since Police Officers are not “employees”, as defined in s.7 of the Act, but officers, and the Commissioner of Police and the Minister of Police are not “employers”, as defined in s.7 of the Act and, within the meaning of “employer”, as a person, corporation, etc. who employs employees pursuant to a contract of employment, there was no “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”.

97 Accordingly, there was no “industrial matter”, as defined in s.7 of the Act, and jurisdiction could not be conferred on the Commission by s.23(1) of the Act, which reads as follows—

“Subject to this Act, the Commission has cognizance of and authority to enquire into and deal with any industrial matter.”

98 I should add that I am conscious that an existing contract of employment is not a sine qua non to the existence of an “industrial matter”, as defined, (see *RGC Mineral Sands Ltd and Another v CMETSWU* 80 WAIG 2437 (IAC). This was a case which involved determining whether a class of persons were employees or officers of the Crown.

99 The fact that there is alleged to be dispute between the parties to this appeal, if it be the case, is not sufficient to constitute an industrial matter, it is trite to observe. As I have already observed, jurisdiction depends on the existence of an industrial matter pursuant to s.23 of the Act, not of “an industrial dispute” or a “dispute relating to an industrial matter”.

100 There was no jurisdiction in the Commission to hear and determine the application because it could not have cognizance of and authority to enquire into and deal with a matter which was not an “industrial matter”, as defined (see s.23 of the Act).

Ground 4

101 By this ground, the appellants complain that the Commissioner erred in law considering affidavit and other material which were not in evidence in the proceedings (see pages 43-44(AB)), as the Commissioner referred to affidavits which were not tendered or admitted in evidence in the proceedings.

102 The Commissioner, having canvassed some of the content of the affidavits, observed “No positive findings can be made on these claims”. However, he observed and found that the “investigation process” was seriously flawed, and not based on the Commission’s findings in an unreported case which the Commissioner identified, without providing a citation, as *O’Reilly v Commissioner of Police* (unreported).

103 Certainly, in referring to the evidence, the Commissioner erred in law (see *Swarbrick v Swarbrick* [1964] WAR 106 per Wolff CJ). However, it does not seem to have been material to his decision.

104 Although it was not argued however, the reference to the evidence constitutes a breach of s.26(3) of the Act and, were it a ground of appeal, should, in my opinion, be upheld because a breach of s.26(3) of the Act, in my opinion, renders the proceedings invalid (see, generally, *Como Investments Pty Ltd v FLAIEU and Others* 69 WAIG 1004 (IAC) and *Stamco Pty Ltd and Others v SDA* 72 WAIG 1279). That point was not, however, squarely argued.

105 However, if the appeal were upheld on the ground as framed, the proper course would be to suspend the decision and remit the matter to another Commissioner

to be heard. In the light of my findings as to Ground 3, it is not significant.

FINALLY

106 There was no jurisdiction in the Commission to entertain the application at first instance. Accordingly, the decision was incompetent and was and is a nullity.

107 I have considered all of the material and submissions. I would, for those reasons, quash the decision at first instance, it being a nullity, having been made without jurisdiction.

SENIOR COMMISSIONER G L FIELDING—

108 The background to this appeal is set out in the reasons of the President.

109 The Industrial Relations Commission is a creature of statute. It has no inherent jurisdiction. It therefore has only the jurisdiction and powers given to it by statute. (see: *The Registrar of the Western Australian Industrial Relations Commission v The Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division WA Branch* (1999) 79 WAIG 2975 at 2976).

110 Section 34 of the *Industrial Relations Act 1979*, by which the Commission is established, clearly authorises the Commission in the exercise of its jurisdiction to make a declaration. The extent of that power has been the subject of conflicting authority at least until recent times. (see: *Hutchinson v Cable Sands (WA) Pty Ltd* (1999) 79 WAIG 951 at 953). Accepting for these purposes that in an appropriate case the Commission may make a declaration only as a means of resolving an industrial matter, this is not such a case. The declaration was not so much concerned with the merits of the industrial matter before the Commission, assuming the matter in question to be an industrial matter, but simply a declaration of the existing rights of the parties said to flow directly from the provisions of the *Police Act 1892*. The Commission is not a superior court with supervisory jurisdiction over the laws of Western Australia, and in particular those prescribed under the *Police Act 1892*, nor does it have general equitable jurisdiction enabling it to grant declaratory relief in the form of a declaration of right of the kind made on this occasion. In my view it is one thing to make a declaration regarding the merits or otherwise of some industrial matter but quite another to make what is in effect a bald declaration of right with respect to the provisions of the *Police Act 1892*, or indeed any other legislation in this State.

111 If, contrary to my view, the Commission were empowered to make a declaration of the kind now in question the appeal should still succeed on the ground that the learned Commissioner erred in his interpretation of the *Police Act 1892*. With all respect to the learned Commissioner, there is no warrant to conclude, as he did, that the provisions of s 8 are governed by the provisions of s 23 and s 33E of the Act. Section 8 provides a vehicle for the Governor, and in some cases the Commissioner of Police with the approval of the Minister, to remove members of the Police Force from the Force. That is an act which is quite separate and distinct from the act authorised by s 23. That section authorises the Commissioner to charge a member of the Police Force with “an offence against the discipline of the Police Force”. Where a member has been found guilty of such an offence s 33E of the Act gives the member a right of appeal to the Police Appeal Board. A person convicted of such an offence is liable to be discharged or dismissed from the Force simply by order of the Commissioner of Police. Not only is it self-evident that that action is quite different from the act of removal as envisaged by s 8, but it is evident from the express provisions of the Act. Section 11 provides that membership of the Police Force is to continue until “lawful discharge, dismissal, or removal” from the Police Force. Clearly the legislation envisages a distinction between discharge and dismissal under s 23 and removal under s 8. This is consistent with the fact that s 8 appears in that Part of the Act dealing with the appointment of members of the Police Force, whereas s 23 and s 33E

- appear in that Part of the Act dealing with the regulation, duties and discipline of the Force.
- 112 As counsel for the Appellant contends, in effect, s 8 is a management tool. It is not a disciplinary provision but one designed to ensure that the integrity of the Police Force is not undermined. As was pointed out in *Memner & Ors v Falconer, Commissioner of Police* (1997) 74 IR 472, this section is not a punitive provision. Instead, as mentioned in *Minister for Police and Commissioner for Police v Smith* (1993) 73 WAIG 2311, the provision is designed to maintain proper standards of conduct by members of the Police Force and to protect the reputation of the Force rather than to extract retribution. (see too: *Hardcastle v Commissioner of Australian Federal Police and Another* (1984) 53 ALR 593 at 597.)
- 113 The learned Commissioner suggested that his conclusion was supported by the observations of the Supreme Court in *Parker v Miller and Ors*, unreported; SCt of WA; Library No 980249S; 8 May 1998, and in particular the observations of the Chief Justice, that—
- “s 8 must be read in the context of the disciplinary provisions in s 23 of the Act and the requirements of natural justice which are clearly imported into disciplinary proceedings under that section.”
- 114 In my view it is reading too much into the decision in that case, and in particular the decision of the Chief Justice, to suggest, as did the learned Commissioner, that in utilising the powers vested in him by s 8 of the *Police Act 1892*, the Commissioner of Police is not only obliged to ensure natural justice is applied to members of the Police Force affected by the decision but that
- “natural justice in that sense is the natural justice available to a police officer [as] if he was subject to proceedings under s 23 and s 33E of the *Police Act 1892*.”
- 115 In my opinion, the import of that decision, so far as is relevant for these purposes, is that having regard to the provisions of s 23 and s 33E of the *Police Act 1892* the powers given to the Commissioner of Police by s 8 of the Act cannot be exercised without regard for the principles of natural justice. Were it otherwise the strict regime established by s 23 and s 33E, which is clearly designed to ensure that natural justice is afforded to members of the Police Force as a condition precedent to discharge or dismissal, could be avoided by the Commissioner of Police utilising the power under s 8. As the Chief Justice pointed out, that result is too strange to contemplate. That facet together with consideration of the decided cases in other jurisdictions meant that the exercise of such a power carried with it an obligation to ensure that natural justice was afforded to the members of the Police Force affected by the decision. However, that is not to say that the Commissioner of Police was obliged to go through the same or much the same process as that stipulated in s 23 and s 33E of the *Police Act 1892*. Indeed, that would be impossible. In the case of the power under s 23 it is conditional upon the conviction of a breach of discipline which in turn requires that a formal “charge” must first be laid by the Commissioner of Police. The Commissioner of Police cannot manufacture a charge if none exists. He may nonetheless be concerned enough about the conduct of the member of the Police Force to want him removed from the Force. The decided authorities, including the decisions in *Memner* and in *Parker*, make it clear, if there was ever any doubt, that that would be a legitimate basis for utilising the power under s 8. Moreover, the right of appeal under s 33E is dependent on there being a conviction for a breach of discipline. The right of appeal therefore has no relevance to the exercise of the power under s 8. There is no other appellate process prescribed under the Act. In the circumstances, it might legitimately be inferred that Parliament did not intend there to be an appeal in the case where persons were removed from the Police Force under s 8 of the *Police Act 1892*. It cannot be the case that because there is no right of appeal the Commissioner of Police cannot lawfully exercise the powers given by s 8. To hold otherwise is, in effect, to redraft the Act. Counsel for the Appellant quite properly conceded that the powers vested in the Commissioner of Police under s 8 of the *Police Act 1892* were constrained by the rules of natural justice. Natural justice can take many forms. The right of appeal is not a necessary ingredient of natural justice.
- 116 My view of grounds 1 and 2 of the appeal renders it unnecessary to consider the other grounds of appeal. Much of the argument in support of the appeal concerned ground 3; that is, that the matter was not properly before the Commission, it not being an “industrial matter” by reason of the fact that members of the Police Force could not be considered properly as “employees” for the purposes of the *Industrial Relations Act 1979*. In the circumstances I feel bound to make some observations regarding that issue.
- 117 There is considerable decided authority, which if not binding on this Commission should be taken to be highly persuasive, to the effect that members of the Police Force in this State are not employees, at least at common law. In that event, having regard for the definition of “employee” in the *Industrial Relations Act 1979*, which essentially replicates the common law, a good case can be made that members of the Police Force are not employees for the purposes of that Act.
- 118 The decision of the High Court in *Enever v The King* (1906) 3 CLR 969, the decision of the Privy Council in *Attorney-General for New South Wales v Perpetual Trustee Company (Ltd)* (1955) 92 CLR 113, and the decision of the Supreme Court in this State in *Pense v Hemy* (1973) WALR 40 all support the position that police officers are not employees. There are numerous other cases, many of which are referred to in the decision of the Australian Industrial Relations Commission in *Re Australian Federal Police Association (No 2)* (1993) 51 IR 122, to which the learned Commissioner referred. Although in that case members of the various State Police Forces, including the Western Australia Police Force, were held to be employees for the purposes of the *Industrial Relations Act 1988* (Cth) subsequent decisions of other tribunals have upheld the traditional view that members of a Police Force, not being employees at common law, do not fall within the scope of industrial relations legislation. That was held to be the case in respect of a member of the Western Australia Police Force by the Industrial Relations Court of Australia in *Ferguson v Commissioner of Police* (1997) 72 IR 145). Furthermore, a Full Bench of the Australian Industrial Relations Commission in reviewing the decision of Williams DP in *Re Australian Federal Police Association (No 2)* (supra) acknowledged that “there is nothing in the *Police Act 1892* (WA) which would seem to alter the common law position” that members of the Police Force are not employees, although the Full Bench concluded that because there had been an “apparent acceptance of the jurisdiction of the WAIRC in relation to police” they should be taken as employees for the purposes of that Act. (see: *Re Australian Federal Police Association* (1997) 73 IR 155 at 159 and at 160).
- 119 It is undeniably the case that for many years without question the Western Australian Police Union of Workers, successive Commissioners of Police, and seemingly successive Ministers for Police have been content to act as though the Western Australian Industrial Relations Commission had jurisdiction over what would normally be regarded as industrial matters affecting the Police Force in this State. That reasonably carried with it the implication that members of the Police Force were employees, at least for the purposes of the *Industrial Relations Act 1979*. Any doubt as to that would seem to have been put aside with the registration of the current industrial agreement entitled the *West Australian Police Service Industrial Agreement for Police Act Employees*, covering members of the Police Force in this State. That is a deed of the Commissioner of Police and of the Union rather than the product of a decision of the Commission. Whether this history of itself is sufficient to enable the Commission to interpret the Act as extending to members of the Police Force is a matter which is open to question. Ordinarily, parties cannot give the Commission jurisdiction which it does not have.

- 120 This is apparently the first occasion on which the jurisdiction of the Commission has been challenged. The question was raised but deliberately not taken by the parties in *Minister for Police and Commissioner of Police v Smith* (supra). Likewise, the point was not taken in the subsequent case of *The Minister for Police v Western Australian Police Union of Workers* (1995) 75 WAIG 1504. Indeed, as Franklyn J observed in that case, which concerned the import of definition of “industrial matter” the context of conditions of conditions of “employment” for members of the Police Force in this State—
- “It is not suggested before us that the relationship between the Police Commissioner on the one hand and members of the Police Force and cadets on the other, is not that of employer and employees. It is not suggested and, indeed, is accepted, that they are respectively employer and employees in the industry of law enforcement.”
- 121 It is to be noted that Rowland J agreed with the reasons published by Franklyn J.
- 122 It has to be acknowledged that of recent years various courts and tribunals have adopted the view that police officers do fall within the ambit of industrial relations legislation. Most recently the Federal Court in *Konrad v Victoria Police (State of Victoria) and Another* (1999) 165 ALR 23 has reaffirmed that members of the Victoria Police Force are employees for the purposes of the *Industrial Relations Act 1988* (Cth). The Court accepted that police officers were not employees at common law, but nonetheless held, having regard to the provisions of relevant International Labour Organisation conventions, to which that Act was designed to give effect or further effect, that the Act should be interpreted widely enough to include members of the Victoria Police Force, at least for the purposes of termination of employment. Of course, those considerations have no application to a consideration of the meaning and effect of the *Industrial Relations Act 1979*. However, observations by Anderson J in *Menner* to the effect that the relationship between the Crown and a member of the Police Force “is that of servant to master notwithstanding that the constable has specific powers and duties which he must execute as a matter of independent responsibility. [*Attorney-General for New South Wales v Perpetual Trustee Company Ltd*] (1951) 85 CLR 237 at 248-249, 252”, suggest that members of the Police Force in this State might properly be taken as employees for the purposes of the *Industrial Relations Act 1979*. That would be consistent with the opinions expressed by a Full Bench of the Australian Industrial Relations Commission in *re Australian Federal Police Association (No 2)* (supra), albeit that it was arrived at by a different process of reasoning. The Industrial Relations Court of Australia in *Cook v The Commissioner of Police* (1996) 66 IR 361 has likewise held that members of the Police Force in Western Australia are employees for the purposes of the *Workplace Relations Act 1996* (Cth). A somewhat similar view, albeit in respect of different statutory provisions, was taken by the New South Wales Industrial Commission in *re Police Officers Industrial Agreement* [1981] AR 272 in respect of police officers in New South Wales. Apart from these authorities, it could be said fairly that the basis on which the Police Force in this State is managed gives reason to conclude that members of the Force are both officers and employees of the Crown. [cf. *Oceanic Crest Shipping Co. v Pilbara Harbour Services Pty Ltd* (1986) 160 CLR 626]. Although the authority of police officers is derived from their office, their duties are derived largely from the dictates of the Commissioner of Police. There is thus much to be said for the view that members of the Police Force in this State should be considered as employees for the purpose of the *Industrial Relations Act 1979*. However, that is a matter upon which, for the reasons indicated, I need not express a conclusive opinion on this occasion.
- 123 If members of the Police Force in this State are considered to be employees, it is seriously open to question whether the employment relationship is one with either the Commissioner of Police or the Minister. The better view is as suggested in *Menner*, that the employer-employee relationship exists with the Crown in right of the State. It is not the case, as counsel for the Respondent appeared to suggest, that the *Public Sector Management Act 1993* provides for the Commissioner of Police to be the employer. That Act deems the Commissioner of Police to be the employer of public servants employed in the Police Service. However, by reason of Sch I of the Act, members of the Police Force, as distinct from civilians employed in the Police Service, are excluded from the scope of the *Public Sector Management Act 1993*.
- 124 It follows, in my opinion, that the appeal should be upheld and the decision of the learned Commissioner quashed.
- COMMISSIONER P E SCOTT—
- 125 I have had the benefit of reading the reasons for decision of His Honour, the President and of the Senior Commissioner. There is no need for me to recite the background or the grounds of appeal.
- 126 As to Ground 1, I respectfully agree with the reasons for decision of the Senior Commissioner. I agree that there is no power to make a declaration of existing rights flowing on directly from the provisions of the *Police Act 1892*. The declaration made by the learned Commissioner at first instance is not one regarding the merits or otherwise of an industrial matter but is, in effect, an interpretation of the *Police Act 1892*. The declaration is not one which is appropriately made under the *Industrial Relations Act 1979*, this Commission being a creature of statute and not one with inherent jurisdiction.
- 127 As to Ground 2, I also agree with the Senior Commissioner that this ground is made out. Natural justice does not require a particular process or particular steps to be taken, but is able to be served by a range of processes appropriate to the particular circumstances. There is no one formula to fit all cases where the application of the principles of natural justice is appropriate. The two processes set out in the *Police Act 1892* contemplate quite different circumstances, and had Parliament intended that the processes set out in s.23 and s.33E apply to s.8, one could reasonably assume that it would have so provided.
- 128 As to Ground 3, because the decision of the learned Commissioner is to be quashed on the basis of Grounds 1 and 2 being made out, there is no need, at this point, for this issue to be conclusively determined. However, having said that I tend to the view, based upon the authorities referred to by both His Honour the President and the Senior Commissioner, that the issue of whether members of the Police Force are employees for the purposes of the *Industrial Relations Act 1979* is to be based on the common law approach and the absence of a more detailed and specific definition of employee in that Act. The historical view has been, as described by His Honour, that for the purposes of the *Industrial Relations Act 1979*, members of the Police Force are not employees. However, recent decisions describe a dual capacity for members of the Police Force, which can include them being employees. These recent decisions are mostly based upon Commonwealth industrial legislation which rely on a broader definition of employee, taking account of the requirement for that Commonwealth legislation to give effect to International Labour Organisation conventions. The *Industrial Relations Act 1979* requires no such consideration or broader application of the definition.
- 129 Accordingly, without the necessity of deciding the matter conclusively, I tend to the view that the members of the Police Force in this State are not employees although in light of recent history and developments, this matter requires further consideration. I say this particularly in light of the approach taken by the respondent during the course of the hearing of this matter by the Full Bench, which was one of complaint that the issue had been taken by the appellant in light of decades of history of acceptance of the jurisdiction of this Commission, without dealing with the issue of the legal nature of the relationship in any substantial way.
- 130 Therefore, on the basis that Grounds 1 and 2 are made out, I would uphold the appeal and quash the decision at first instance.

THE PRESIDENT—

131 For those reasons, the appeal is upheld and the decision at first instance quashed.

Order accordingly

2000 WAIRC 01255

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES THE HONOURABLE MINISTER OF POLICE,
COMMISSIONER OF POLICE,
APPELLANTS

v.

WESTERN AUSTRALIAN POLICE UNION OF WORKERS,
RESPONDENT

CORAM

FULL BENCH

HIS HONOUR THE PRESIDENT P J SHARKEY

SENIOR COMMISSIONER G L FIELDING

COMMISSIONER P E SCOTT

DELIVERED TUESDAY, 14 NOVEMBER 2000

FILE NO/S FBA 38 OF 2000

CITATION NO. 2000 WAIRC 01255

Decision Appeal upheld and decision at first instance quashed.

Appearances

Appellants Mr G T W Tannin (of Counsel), by leave, and with him,

Mr R J Andretich (of Counsel), by leave

Respondent Mr P R Momber (of Counsel), by leave

Order.

This matter having come on for hearing before the Full Bench on the 9th day of October 2000, and having heard Mr G T W Tannin (of Counsel), by leave, and with him Mr R J Andretich (of Counsel), by leave, on behalf of the appellants and Mr P R Momber (of Counsel), by leave, on behalf of the respondent, and the Full Bench having reserved its decision on the matter, and reasons for decision being delivered on the 14th day of November 2000, it is this day, the 14th day of November 2000, ordered and declared as follows—

(1) THAT appeal No FBA 38 of 2000 be and is hereby upheld.

(2) THAT the decision of the Commissioner made on the 14th day of July 2000 in matter No CR 81 of 2000 be and is hereby quashed.

By the Full Bench

[L.S.]

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

2001 WAIRC 01973

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES POLLOCK NOMINEES PTY LTD,
APPELLANT

v.

JAMES LESLIE BUTTERFIELD,
RESPONDENT

CORAM

FULL BENCH

HIS HONOUR THE PRESIDENT P J SHARKEY

COMMISSIONER A R BEECH

COMMISSIONER J H SMITH

DELIVERED MONDAY, 5 FEBRUARY 2001

FILE NO/S FBA 50 OF 2000

CITATION NO. 2001 WAIRC 01973

Decision Appeal upheld on the basis of Ground 6 and the order at first instance varied, and otherwise appeal dismissed.

Appearances

Appellant Mr A R Beer, as agent

Respondent Mr B F Stokes, as agent

Reasons for Decision.

THE PRESIDENT—

- 1 This is an appeal against the decision of the Commission, constituted by a single Commissioner, made on 13 October 2000 in matter No 604 of 2000, being against orders 7, 11, 12, 15 and 16 in the decision. That order was delivered on 13 October 2000 and deposited in the office of the Registrar on 16 October 2000.
- 2 The Notice of Appeal was filed on 3 November 2000. The appeal is made pursuant to s.49 of the *Industrial Relations Act 1979* (as amended) (hereinafter referred to as “the Act”).

GROUND OFS OF APPEAL

- 3 The grounds of appeal upon which the decision is appealed against are as follows—

- “1) That the applicant, Mr James Leslie Butterfield, is to be reinstated at the Jackson Road site Goldfields Contracting Pty Ltd owns this site.
- 2) The shortage of work has been misunderstood to be at the Jackson Road site and not the Kalamunda Road work site. The Kalamunda Road work site is where Mr. Butterfield was employed. This site has now closed.
- 3) The amount of \$31,018.43 ordered to repay, being the loss of earnings, should be reduced by the amounts for annual leave and notice in lieu, which was paid in the termination pay. The total amount is \$6,036.10.
- 4) The amount of \$31,018.43 should also be reduced by Mr. James Butterfield’s Centrelink payments he received as unemployment benefits for the corresponding period.
- 5) Reinstatement is not possible due to the fact that Pollock Nominees has ceased to operate; therefore, there are no positions available.”

- 4 At the conclusion of the submissions for the appellant, the appellant sought leave to amend the grounds of appeal to add Ground 6 in the following terms—

“6) That the Commission at first instance erred in that it ordered that amounts said to have been lost or not paid to the respondent between the date of dismissal and the date of the order appealed against be paid.”

Leave was granted and the amendment made.

- 5 There was an application filed on 17 November 2000 to amend the orders sought in the following terms—

“We would like the order to be referred back to the Commissioner as Pollock Nominees has ceased to operate.”

- 6 It is to be emphasised that there was no appeal against the finding that Mr James Butterfield was unfairly dismissed.

BACKGROUND

- 7 The respondent, Mr Butterfield, commenced employment with the appellant on 9 September 1994 as a boilermaker welder. Mr Butterfield made application pursuant to s.29 of the Act seeking reinstatement because, after completion of six years of work as a boilermaker welder, he was able to apply for a trade certificate with the support of his employer and he wished to pursue that course of action.
- 8 Mr Butterfield performed his work on behalf of the appellant both at sites in the metropolitan area and at various mine sites throughout the State.
- 9 Upon Mr Butterfield's arrival at the Jackson Road site late on 13 April 2000, he was told by Mr Terry Nuttall to pack his tools up and go to the Kalamunda Road site and to see Mr Bill Campbell, the appellant's supervisor there, which he did. Mr Campbell told him that there was no work for him and asked him did he want "his missus to come and pick [him] up". Mr Campbell telephoned Mr Archie Beer to arrange for Mr Butterfield's pay to be made up and told Mr Butterfield to go and pick his pay up from the company's Welshpool Road office.
- 10 Mr Butterfield's wife collected him and his tools from the Kalamunda Road site and took him to the Welshpool Road office where he was given a cheque for his final pay. He was paid one week's pay in lieu of notice, rather than the five weeks required by the *Workplace Relations Act 1996* (Cth). The appellant acknowledged that the additional four weeks was due and payable. Mr Butterfield was paid all other entitlements and the appellant provided him with an employment separation certificate and a statement of service, both of which said that his employment was terminated due to "shortage of work". He was, therefore, dismissed by his employer on 13 April 2000.
- 11 Mr Butterfield was never, at any time, advised that his job was in jeopardy nor was he counselled about his performance, his punctuality or his absenteeism. The only occasion upon which any such issue was raised was when Mr Campbell advised him in early 1999 that he should "pull his socks up" regarding his attendance. Mr Butterfield said that there was not a shortage of work and estimated that, at the time of his termination, there was at least three months work available for someone of his classification. He also said that the appellant engaged another boilermaker welder, Mr Fred Shortland, at the Kalamunda Road site on Monday, 10 April 2000, who did the same work as he did.
- 12 That is the background of the matter, based on the findings of the Commission at first instance, which findings were not challenged and were based on uncontradicted evidence at first instance.

FINDINGS

1. The Commissioner accepted Mr Butterfield's evidence, there being no evidence to the contrary.
2. The Commissioner found that Mr Butterfield had been harshly, oppressively and unfairly dismissed from his employment.
3. The Commissioner was satisfied that there was at least three months work for a boilermaker welder and that another boilermaker welder was employed only four days before the termination of employment.
4. The termination, on the basis of an alleged redundancy, was not supported by the material before the Commission and it was not the true reason for termination.
5. Mr Butterfield's employment was terminated on account of his being late on the day of termination and, perhaps, on the previous day.
6. In this case, there was no evidence that Mr Butterfield was counselled beyond being told in early 1999 to "pull his socks up" in relation to his absenteeism.

7. There was no evidence that he was warned that his job was in jeopardy for reasons of punctuality or absenteeism, or for any other reason.
8. In all of the circumstances, for an employee of almost six years' standing who had been working approximately 60 hours per week in the recent past and similar, if not the same hours, over most of his employment, it could not be said that he was given a fair go by the appellant in deciding to terminate his employment.
9. If the reason for dismissal was the absenteeism or the lateness to work, these do not justify an employee simply being told there is no work for him.
10. There is an obligation on the employer to have made Mr Butterfield aware of its intentions and provide him with a reasonable opportunity to meet the standards which the appellant required.
11. It is important to note that, notwithstanding that Mr Butterfield said that he believed that an employee should be entitled to take their birthdays off, employees are obliged to attend work unless they are ill or for other good reason and that, under normal circumstances, they should advise their employer of their absence as soon as they are able.
12. Mr Butterfield was harshly, oppressively and unfairly dismissed.
13. There was no evidence that reinstatement would not be practicable. The appellant did not challenge Mr Butterfield's assertion that he could work together with the appellant to re-establish a working relationship. Although Mr Beer, for the appellant, said that the appellant would not be keen on reinstatement, this did not make reinstatement impracticable.
14. Mr Butterfield should be reinstated.
15. The appellant should be ordered to pay Mr Butterfield for all wages lost during the intervening period.
- 13 Save and except for the findings in paragraphs 14 and 15 supra, there was no challenge to any of those findings on appeal.

Application to Re-open

- 14 After the Minutes of Proposed Order issued and after the order issued on 13 October 2000, pursuant to Order 4 of that order, Mr Butterfield applied to re-open the hearing "to amend respondent's name to include Whitefire Enterprise P/L".
- 15 There was another application by Mr Butterfield to abridge time made on 16 October 2000 which was not pursued.
- 16 The application, filed on 13 October 2000, alleged that "Whitefire Enterprises Pty Ltd" took over and commenced paying, as at 1 July 2000, Boilermaker/Welders previously employed by the respondent. The application was misnamed. It was really an application to substitute Whitefire Enterprises Pty Ltd or add it as a party.
- 17 It is difficult to understand why the agent for Mr Butterfield left the application so late. There seems to have been evidence adduced by statement from the bar table in support of that application. In any event, the application, whatever its nature, was dismissed so that there was no leave to re-open and no other order.
- 18 What is significant is that the application was not made until the Minutes of Proposed Order issued and was not disposed of until the order appealed against was perfected, i.e. formal orders had issued.
- 19 The evidence before the Commission upon the application was not evidence in the substantive proceedings, such evidence not having been adduced or no leave having been given to re-open to adduce that evidence. There was no evidence before the Commission of the existence of Whitefire Enterprises Pty Ltd in the proceedings which led to the order made and now appealed against.
- 20 That evidence was therefore not considered and could not properly be. The evidence before the Commission at

first instance and unchallenged was that the employer was the appellant in these proceedings. In any event, that the decision of the Commission not to permit a re-opening or "a change of the respondent's name" was not appealed against in these proceedings.

THE STATUS OF THE APPELLANT

- 21 It was common ground that the appellant is a company duly incorporated. Because the grounds of appeal alleged that Pollock Nominees Pty Ltd had ceased to operate, it was necessary for the Full Bench to make inquiries as to the status of the company, namely whether it had been wound up, whether a liquidator had been appointed, or whether a receiver or administrator had been appointed. This was necessary in order to ascertain whether the *Corporations Law* would operate to prevent the appeal proceeding until the necessary consent was obtained, or at all.
- 22 It was asserted by the Directors in writing that none of those events had occurred (see exhibit 2). This assertion was accepted by Mr Stokes, as industrial agent for Mr Butterfield. It is, therefore, clear that the company is in existence, and that the Full Bench was not prevented or inhibited from hearing the appeal by the operation of the *Corporations Law* (see *Helm v Hansley Holdings Pty Ltd* 79 WAIG 1860 (IAC)). In any event, there was no contention that it was so prevented or inhibited.
- 23 However, other than for that purpose, that evidence could not, by operation of s.49(4) of the Act, be before the Full Bench upon appeal.

APPEAL

Ground 6

- 24 There is no appeal against the declaration of unfairness at dismissal.
- 25 Ground 6 was conceded on behalf of Mr Butterfield by Mr Stokes. This ground alleged that the Commissioner erred in ordering the payment of monies which the Commissioner ordered to be paid, being wages and other remuneratory items not paid or lost by Mr Butterfield because of unfair dismissal.
- 26 Ground 6 is based on *City of Geraldton v Cooling* 80 WAIG 5341 (IAC) which is authority for the proposition that an order for compensation following a dismissal is not within power if an order for reinstatement was made, as it was here.
- 27 Accordingly, Grounds 3 and 4 become otiose and fall away.
- 28 In this case, Order 3 was made to effect such a payment and is not within power. It was made in error.
- 29 I would uphold the appeal on the basis that Ground 6 is made out and vary the order made at first instance by deleting Order 3.
- 30 It is fair to observe that the decision of the Industrial Appeal Court in *City of Geraldton v Cooling* (IAC) (op cit) was not delivered with its reasons until after the order appealed against issued.

Grounds 1, 2 and 5

- 31 These grounds attack the order for reinstatement on the following bases—
- (a) That the order for the reinstatement of Mr Butterfield was at the Jackson Road work site which is said to be owned by Goldfields Pty Ltd and not the appellant.
 - (b) That Mr Butterfield was employed at the Kalamunda Road work site which has now closed.
 - (c) That reinstatement is not possible due to the fact that Pollock Nominees Pty Ltd has ceased to operate.
- 32 These grounds of appeal were sought to be supported by evidence which was not before the Commission at first instance. It was not contended at first instance that Pollock Nominees Pty Ltd had "ceased to operate" or that it was not, at all material times, Mr Butterfield's employer. There was no evidence, either, before the order appealed against was made that Pollock Nominees Pty Ltd was not Mr Butterfield's employer, and the Commissioner so found.

- 33 It was not contended nor was there evidence before the Commission at first instance that there was any practicable reason why Mr Butterfield should not be reinstated. It was not contended before the order was made at first instance, nor was leave given to re-open to permit any such evidence to be given, that Pollock Nominees Pty Ltd had "ceased to operate". There was no application to vary the order on the basis of any such evidence, if such an application were competent, which is doubtful.
- 34 Further, there was no evidence at first instance that the Kalamunda Road work site had closed. The Commissioner found correctly that Mr Butterfield, as an employee of the appellant, worked at various sites throughout the State. Next, Order 2 is not an order restricting reinstatement to reinstatement in employment at any particular site. The order directs Mr Butterfield to attend for work at the Jackson Road site (where he had been working before he was dismissed) and then requires the appellant to reinstate Mr Butterfield in employment in no less favourable conditions than applied to him during his employment by the appellant. That employment was not employment at a site. The order is one for reinstatement in employment. It does not purport to direct at which site Mr Butterfield will be employed.
- 35 In any event, even if the evidence of Pollock Nominees Pty Ltd's status were permitted to be received, which s.49(4) of the Act prohibits, then it is clear that the evidence would be that Pollock Nominees Pty Ltd is still in existence, albeit "not operating", and reinstatement could occur.
- 36 The appellant called no oral evidence at first instance of what occurred after the order was made or evidence of what occurred before the order was made, which was not adduced. It would not seem to be admissible as fresh evidence (see *FCU v George Moss Limited* 70 WAIG 3040 (FB)). In any event, too, the appellant is bound by the case which it conducted at first instance (see *Metwally v University of Wollongong* (1985) 60 ALR 68 (HC)).
- 37 Further, those grounds rely on questions of fact not determined at first instance and not raised at first instance. They raise grounds raised for the first time in this court, a court of appeal. They raise matters of evidence which should have been adduced and raise issues which should have been determined at first instance.
- 38 These grounds are incompetent and should be struck out because they offend s.49(4) of the Act and because they offend the principles laid down in *Metwally v University of Wollongong* (HC) (op cit); in *Coulton and Others v Holcombe and Others* [1986] 162 CLR 1 at 7 per Gibbs CJ, Wilson, Brennan and Dawson JJ; and *Suttor v Gunowda Pty Ltd* (1950) 81 CLR 418 at 438 per Latham CJ, Williams and Fullager JJ, where Their Honours said—

"The circumstances in which an appellate court will entertain a point not raised in the court below are well established. Where a point is not taken in the court below and evidence could have been given there which by any possibility could have prevented the point from succeeding, it cannot be taken afterwards. In *Connecticut Fire Insurance Co. v Kavanagh* (1), Lord Watson, delivering the judgment of the Privy Council, said, "When a question of law is raised for the first time in a court of last resort, upon the construction of a document, or upon facts either admitted or proved beyond controversy, it is not only competent but expedient in the interests of justice, to entertain the plea. The expediency of adopting that course may be doubted, when the plea cannot be disposed of without deciding nice questions of fact, in considering which the court of ultimate review is placed in a much less advantageous position than the courts below." (2). The present is not a case in which we are able to say that we have before us all the facts bearing on this belated defence as completely as would have been the case had it been raised in the court below."

(See also *Western Australian Land Authority and Others v Simto Pty Ltd and Others* (unreported) [1998] WASC 262 Library No 980560 (delivered 25 September 1998))

Supreme Court of WA (FC) at 25-28 per Malcolm CJ; also *Caltex Australia Petroleum Pty Ltd and Another v Commissioner of State Revenue* (2000) 22 WAR 299 (FC) at 306 per McKechnie J.)

- 39 Insofar as Grounds 1, 2 and 5 are concerned, I would find them not made out and dismiss them, for those reasons.

OTHER MATTERS

- 40 I would also observe that the liberty to apply provision in the order, which is not appealed against, was not a general liberty to apply and that the only application possible under it has been heard and dismissed.
- 41 There was a suggestion that the order for reinstatement was not going to be availed of, later contradicted by Mr Stokes, when I asked whether the appeal was moot. There was no suggestion, on the part of the appellant, that it did not see reinstatement as a live issue. Accordingly, I therefore take the matter no further.
- 42 In the course of proceedings, Mr Stokes made what I understand to be an oral application for leave to make an application pursuant to s.23(3)(b) of the Act. That was withdrawn when the Full Bench pointed out the nature of such an application as one to be made to the Commission at first instance. It is simply not a matter within the jurisdiction of the Full Bench. It is difficult to understand how such an application to the Full Bench should have come about.

FINALLY

- 43 The appeal should be upheld, in my opinion, on the basis of Ground 6, and the order varied as I have proposed above.
- 44 The order for reinstatement was not made as a result of any miscarriage of discretion in the Commission at first instance (see *House v The King* [1936] 55 CLR 499 and *Gromark Packaging v FMWU* 73 WAIG 220 (IAC); see also *Norbis v Norbis* (1986) 161 CLR 513).
- 45 There was no good reason advanced to the Full Bench that the other grounds of appeal have been made out. I would otherwise dismiss the appeal.

COMMISSIONER A R BEECH

- 46 I have had the advantage of reading in advance the Reasons for Decision of His Honour the President and I agree with the Orders to issue.
- 47 There are two matters which I wish to add. The first concerns the initial query raised by Mr Stokes regarding Mr Beer's appearance before the Full Bench representing the appellant. Mr Stokes submitted that Mr Beer could not be an agent for the purposes of the *Industrial Relations Act 1979* unless he is a registered agent pursuant to section 112A of the Act. That submission must be without foundation. Section 31 of the Act provides that any party to proceedings before the Commission may appear in person or by an agent. In some circumstances, they may appear by a legal practitioner. There is no reason in s.31 why Mr Beer could not be an agent for the appellant. The Commission's Regulations provide for the appointment of an agent in writing in a certain form, and this was eventually done to the satisfaction of the Full Bench.
- 48 If a person carries on business as an industrial agent as that is referred to in section 112A, then that person will commit an offence unless he or she is registered under the section, or is a legal practitioner. A simple reading of the words reveals that a person who appears as an agent but who is not carrying on the business of an industrial agent does not require to be registered.
- 49 The second matter that I wish to note is that the grounds of appeal numbered 1, 2 and 5 really concern matters about which the appellant produced no evidence before the Commission at first instance. Although Mr Beer drew the attention of the Full Bench to a note in its Estimate of Applicant's Loss of Earnings (AB 12) tendered to the Commission at first instance that—

"As from the 1st July 2000 Pollock Nominees ceased to exist"

that note was effectively counted by the submission of 13 October 2000 before the Commission at first instance

(transcript pages 5/6) that Pollock Nominees Pty Ltd is still a going concern.

- 50 As the documentation produced to the Full Bench for the purposes of Mr Beer's standing to appear reveals, Pollock Nominees Pty Ltd has not ceased to exist at all. It may have taken a decision that it shall cease to trade. It may even be a fact that it had no employees at the time of the making of the Order at first instance. However, as a matter of law the company was still in existence at the date of the Order at first instance and as a matter of law it was possible for the appellant to reinstate Mr Butterfield. What it might then do with him, including where it might then transfer him, would be a matter for the appellant pursuant to the contract of service between it and Mr Butterfield. For that reason alone, the ground of appeal alleged by Pollock Nominees Pty Ltd that it was not "possible" to reinstate Mr Butterfield is simply not sustainable.

COMMISSIONER J H SMITH

- 51 I have had the benefit of reading in draft the reasons to be published by the President. For the Reasons His Honour gives, I agree the Appeal should be dismissed and I have nothing further to add.

THE PRESIDENT

- 52 For those reasons, the appeal should be upheld on the basis of Ground 6 and the order at first instance varied, and otherwise the appeal is dismissed.

Order accordingly,

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

PARTIES	POLLOCK NOMINEES PTY LTD, APPELLANT
	v.
	JAMES LESLIE BUTTERFIELD, RESPONDENT
CORAM	FULL BENCH HIS HONOUR THE PRESIDENT P J SHARKEY COMMISSIONER A R BEECH COMMISSIONER J H SMITH
DELIVERED	MONDAY, 5 FEBRUARY 2001
FILE NO/S	FBA 50 OF 2000
CITATION NO.	2001 WAIRC 02001

Decision Appeal upheld on the basis of Ground 6 and the order at first instance varied, and otherwise appeal dismissed.

Appearances

Appellant Mr A R Beer, as agent
Respondent Mr B F Stokes, as agent

Order.

This matter having come on for hearing before the Full Bench on the 29th and 30th days of January 2001, and having heard Mr A R Beer, as agent, on behalf of the appellant and Mr B F Stokes, as agent, on behalf of the respondent, and the Full Bench having reserved its decision on the matter, and reasons for decision being delivered on the 5th day of February 2001 wherein it was found that the appeal should be upheld in part, it is this day, the 5th day of February 2001, ordered and declared as follows—

- (1) THAT leave be and is hereby granted to amend the existing grounds of appeal filed herein to add Ground 6 to the grounds of appeal in the following terms—

"That the Commission at first instance erred in that it ordered that amounts said to have been lost or not paid to the respondent between the date of dismissal and the date of the order appealed against be paid."

- (2) THAT appeal No. FBA 50 of 2000 be and is hereby partially upheld in part, Ground 6 having been made out.
- (3) THAT the decision of the Commission in matter No. 604 of 2000 made on the 13th day of October 2000 be and is hereby varied by deleting order 3.
- (4) THAT appeal No. FBA 50 of 2000 otherwise be and is hereby dismissed.

By the Full Bench,

[L.S.]

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

2000 WAIRC 01179

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

PARTIES WA ACCESS PTY LTD, APPELLANT
v.
MARK ROBERT VAUGHAN,
RESPONDENT

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

DELIVERED TUESDAY, 14 NOVEMBER 2000

FILE NO/S FBA 34 OF 2000

CITATION NO. 2000 WAIRC 01179

Decision Appeal upheld and decision at first instance varied.

Appearances

Appellant Mr E P Rea, as agent
Respondent Mr B F Stokes, as agent

Reasons for Decision.

THE PRESIDENT—

INTRODUCTION

- 1 This is an appeal by the abovenamed appellant employer against the decision of the Commission, constituted by a single Commissioner, made on 23 June 2000, whereby the Commission made orders upon an application brought by the respondent to this appeal, alleging that he had been unfairly dismissed by the appellant company.
- 2 The orders made, formal parts omitted, are as follows (see page 18 of the appeal book (hereinafter referred to as "AB"))—
- "THAT (1) The Respondent unfairly dismissed the applicant on or about 12 August 1999;
- (2) Reinstatement would be unavailing and compensation will be fixed;
- (3) The respondent shall pay the applicant the sum of \$9477.00 in compensation for unfair dismissal, within 14 days of the date hereof."

GROUND OF APPEAL

- 3 It is against that decision that the appellant now appeals on the following grounds (see page 3(AB))—

"A. The grounds of this appeal are as follows—

1 The learned Commissioner erred by—

- 1.1 finding that the Appellant unfairly dismissed Mr Vaughan, despite evidence of a genuine redundancy;

- 1.2 finding at page 11 of his reasons that the Appellant's decision to contract out the functions provided by the Applicant was unfair to him, thus interfering with WA Access' right to manage its operations in the manner it best sees fit;
- 1.3 failing to give sufficient consideration to the efforts made by the Appellant to keep the Applicant employed in the face of Worksafe requirements and orders;
- 1.4 exceeding his jurisdiction and interfering with the Appellant's decision to terminate;
- 1.5 failing to state clearly where the unfairness to Mr Vaughan arose from the decision by the Appellant to contract out the Applicant's job function;
- 1.6 determining that the Appellant was obliged to make a compensatory payment to the Applicant for the purposes of redundancy, and failing to define the amount of such payment that should have been made;
- 1.7 determining that the Appellant did not make any efforts to compensate the Applicant, despite evidence from the Appellant that the Applicant was paid annual leave loading prior to achieving twelve (12) months service, and therefore conferring a benefit in excess of his entitlement;
- 1.8 finding that compensation was not discussed with the Applicant when clearly it was;
- 1.9 awarding Mr Vaughan a sum of \$9477.00, being the maximum amount available under the principles guiding compensation, which was in all the circumstances excessive and failed to take into account general principles of redundancy payments as fixed by the Commission via its own Awards, that being employees with less than twelve (12) months service are not entitled to a redundancy payments at all.
2. The appeal is in respect to an order requiring a substantial amount of monies to be paid, in a decision where the Commission exceeded its jurisdiction and interfered with the Appellant's right to manage its business, failed to issue clear reasons as to why the dismissal was unfair, and as such is of sufficient importance that in the public interest leave to appeal should be allowed.
- B. Application is also made for an order that the operation of the whole of the decision be stayed pending the determination of this appeal or until further order of the Commission, on the grounds that the Appellant would have serious difficulty in recovering the amount ordered if the appeal is successful, that in the public interest, leave to appeal should be granted as there is a serious issue to be tried, and that the balance of convenience rests with the Appellant.
- C. The Appellant seeks an order quashing the decision and order at first instance, substituting such decision and order with an order that the

Appellant did not unfairly dismiss the Applicant at first instance.”

BACKGROUND

- 4 The Commission at first instance had before it a quantity of documentary evidence. The only oral evidence for the appellant was given by the appellant's Service Manager, Mr Douglas Kingsley Rawlings. There was reference in evidence to Mr Michael De Jong, General Group Manager of WA Fork Trucks Pty Ltd (hereinafter referred to as "Fork Trucks"), Mr John Jones, General Manager of the appellant, Mr Ronald Collins, the Occupational Health and Safety Manager for both companies, and Mr John Lyons, a supervisor for Fork Trucks.
- 5 The only oral evidence for the respondent was given by the respondent himself, Mr Mark Robert Vaughan.
- 6 On 9 September 1999, Mr Vaughan applied to the Commission for an order pursuant to s.29(1)(b)(i) of the *Industrial Relations Act 1979* (as amended) (hereinafter referred to as "the Act") on the grounds that he had been unfairly dismissed from his employment with the appellant on or about 12 August 1999.
- 7 Mr Vaughan had commenced employment at the appellant's premises on 9 November 1998, having responded to an advertisement in the West Australian newspaper for a full time spray painter. He was engaged by Mr Rawlings and the position was a new position. He had undergone a series of interviews and was first employed on probation for a month.
- 8 At all material times, the appellant operated a business in which it sold and maintained elevating work platforms (hereinafter referred to as "EWP's"). At the appellant's premises, there was a workshop operated by Fork Trucks. Mr Vaughan performed work for both companies. He was employed to use his skills as a spray painter to maintain hire plant, mainly scissor lifts, boom lifts and cherry pickers. He was also required to paint other machines which came into the premises from time to time for repair and resale. On occasion, he also worked on equipment owned by customers.
- 9 One spray painting booth was used by both companies, but it was in Fork Trucks' part of the premises. It was thirty metres in length and it was divided down the centre by a curtain divider. Mr Vaughan worked in one part of the booth, while another spray painter operated on the other side of the curtain.
- 10 The appellant's evidence was that the Fork Trucks side of the business was the major part of the business. This was not contradicted in evidence or on appeal. The appellant had some small scissor lifts in its fleet and was able to paint them in one side of the spray booth, but when boom lifts were painted, which were large, the whole of the spray booth was required. It was the need to paint the large EWP's which led to difficulties in the relationship between the parties. I would also add that it led to operating difficulties.
- 11 The Commissioner at first instance observed that the difficulties were manifested in five major episodes during the course of Mr Vaughan's employment.
- 12 First, on 22 April 1999, when Worksafe, a statutory authority responsible for ensuring workplace safety, placed an improvement notice on the spray booth. The Occupational Health and Safety Manager of the appellant issued an instruction to employees, including Mr Vaughan, that under no circumstances was spray painting to be carried out in a spray booth unless the booth doors were shut. This was because Worksafe had registered concern about the release of flammable overspray and fumes and was to effect compliance with the Worksafe authority's notice. The fumes were required to be contained within the booth and released to atmosphere via a filtering system, which system could not operate with the doors open. There was also a necessity for respirators to be worn. The Occupational Health and Safety Manager directed that white dust masks did not provide suitable protection and were not to be used.
- 13 Second, there was an incident which occurred, arising over a disagreement on or about 20 May 1999. Mr Vaughan was concerned, while working on a scissor lift

- painting job, that he was not supplied with what he said was "a requisite independent air supply with a mask". Instead, he was supplied with a cartridge respirator. In Mr Vaughan's view, this respirator provided insufficient protection because of the chemicals he was using. Ultimately, he insisted upon being supplied with what he considered to be a proper respirator. This, he argued, led to the appellant contracting work out of the shop and so making a respirator with an independent air supply unnecessary.
- 14 Third, in July 1999, Mr Vaughan was the butt of a practical joke, perpetrated by a workmate who locked and chained the spray booth doors while he was inside. This incident left Mr Vaughan exposed to danger, had there been an explosion or fire while he was working. That workmate, Mr Darren Harvey, was verbally reprimanded by Mr De Jong.
 - 15 Fourth, on 10 August 1999, another workmate of Mr Vaughan had some material lodged in his eye. There were no appropriate eye washes available and that person eventually left the premises to go to a chemist.
 - 16 Mr Vaughan then spoke to management the following day, querying, amongst other things, how Mr Vaughan and the other spray painter could properly share the spray booth. Mr Vaughan was involved in ongoing friction with the other spray painter. This friction arose from the problem created by having a curtain divider in the spray booth. When the divider was in position, Mr Vaughan could not bring the EWP booms wholly within the booth and, therefore, meet the requirement to spray with the doors closed. He raised these issues and was told to do the best that he could and spray with the doors partially open.
 - 17 This concerned him because he thought that this work, to be done safely, should only be done within the full spray booth. This, however, was never done and how this work should be done was the subject of ongoing discussions. Mr Vaughan said that he tried to do the best he could with the equipment supplied to him, even though he was only allowed to use half of the spray booth.
 - 18 On one occasion, a large HaulPak scissor lift from Hamersley Iron came into be painted. The machine was stripped down and required a lot of preparation work. The job was large and had to be completed within four to six weeks. The primers to be applied were difficult to use because of the chemicals produced by their mixing which caused smell and fumes. Mr Vaughan had experienced difficulty with the safety masks and asked for an air fed mask, which was not supplied, even though there was a compressor which could have provided an air feed. The compressor was 150 metres away from the workshop. It was a suitable compressor with dryer, filter, well separator and filter separator. Ultimately, the appellant was not prepared to pay the cost of installing an air line to get the clean air 150 metres to the spray booth. As a result, Mr Vaughan, when he was doing the job, suffered dizziness and headaches.
 - 19 There were other problems in the area, according to Mr Vaughan. Other employees were using grinders which produced sparks and were very noisy. Mr Vaughan was upset when he was locked into the spray booth by another worker and, although he reported the incident, there was no effective disciplinary action taken against the person who locked him in, he asserted.
 - 20 After the incident when the other painter in the spray booth had a foreign body lodged in his eye, there was a meeting involving Mr De Jong. Mr De Jong said to Mr Vaughan "What the hell's going on in the spray booth I could close the whole operation down and replace you with a bunch of street kids".
 - 21 Mr De Jong said that he was concerned about the liability of the appellant if there had been an accident when an employee did not have authority to leave the site and was driving to the chemist with a foreign body in his eye. Both Mr Vaughan and his workmate made suggestions as to how the problems in the spray booth could be resolved. They suggested a range of solutions, including shift work.

- 22 Mr Vaughan thought that he was doing well at work and newsletters put out by the appellant supported this view, according to him (exhibits S18 and S19 (see pages 166-168(AB))).
- 23 On 12 August 1999, Mr Vaughan was called on the PA system to Mr De Jong's office. Mr Vaughan took his supervisor, Mr Rawlings, with him. In the office, Mr De Jong told him that a structural change had been made within the appellant's organisation which was going to make Mr Vaughan's position redundant because all of the painting work of the appellant was to be contracted out. This meant that there would be no work left for him.
- 24 Mr Vaughan then asked Mr De Jong if there would be any other position he could fill within the two companies and he was bluntly told that there was not. He asked about his holiday pay and sick leave loading. Mr De Jong responded that he had not thought about loading and decided to recalculate the pay out cheque which he already had in his possession. Thus, these events brought Mr Vaughan's contract of employment to a close.
- 25 The appellant's witnesses gave evidence of a number of measures which they had taken in order to resolve the problems in the spray painting booth. In particular, Mr Rawlings, who gave evidence, said that he had undertaken to resolve the problem with fumes associated with the Hamersley Iron HaulPak scissor lift by certain efforts.
- 26 Mr Vaughan had drawn attention to the suitability of an air compressor on the Fork Trucks side of the building. A quote to run an air line under the carpark was for \$2,100.00 and the management decided that this cost was too much, particularly when it was to be charged against a one-off job such as the Hamersley Iron job. Thus, it was decided not to do that, even though the job was a \$50,000.00 job and the equipment would be in place for future jobs.
- 27 Mr Vaughan was then asked to finish an undercoat, which he did. However, because the machine could not be safely painted in the workshop, it was sent out to a painting contractor. Thus, the appellant lost money on the job, or broke even. When reviewed, it was decided that, if the job had gone straight to a contractor, costs would have been saved. After the review, the appellant reconsidered the use of the spray booth and decided that, because the Fork Trucks side of the business produced 80% of the profit, it was uneconomical to take up the room of the spray booth with the big booms on the EWP's (20% only of profit was generated by the appellant). The appellant's management therefore decided that it was in the best interests of the appellant that the big booms be contracted out, leaving the whole of the spray booth to do work on the fork trucks. It was not possible to work two shifts because of the supervisory costs involved. Accordingly, the appellant's spray painting was contracted out to Kim Riseborough Painting, an outside contracting firm, as had been the case before Mr Vaughan was engaged.
- 28 The appellant's case at first instance was that it had taken every action it could to try and resolve the problem and was unable to do so within reasonable capital cost. One important solution discussed was whether to extend the spray painting booth to accommodate the appellant's work or to construct a new booth. It was decided that the cost was not warranted.
- 29 The difficulties which arose, arose inferentially because the spray booth had not, in the past, been used for two operations but for Fork Trucks' operations only, the appellant's spray painting having been contracted out. The fact was, and it was open to the Commissioner to find, that the spray booth was not really constructed to include two operations. There was obvious difficulty in Mr Alex Cromwell, the Fork Trucks' spray painter, and Mr Vaughan working in the same space, divided only by a curtain or screen, let alone when Mr Vaughan had the large EWP's to work on.
- 30 The appellant therefore decided, since it was not, in future, to paint any big booms within the workshop, that Mr Vaughan did not have enough work to continue to paint what could be fitted into the paint booth and Mr De Jong decided that his services would be terminated.
- 31 Mr Rawlings knew, when he attended the meeting with Mr Vaughan, that Mr Vaughan was to be dismissed, but he did not wish to pre-empt Mr De Jong, so did not mention this fact to Mr Vaughan, even though Mr Vaughan asked him whether he would be finished up. The reason for the termination was explained by Mr De Jong to Mr Vaughan and quite clearly described as redundancy. As a matter of fact, Mr Vaughan's ability was not in question and both Mr De Jong and Mr Rawlings gave him a reference.
- 32 Mr Vaughan has worked in various positions during the time since his dismissal and the date of the hearing at first instance, but work had not been consistent, notwithstanding attempts to gain employment. He had not worked for about 19.6 weeks in all subsequent to the termination of his employment, but had gained employment as a spray painter as at 5 April 2000, in which employment he was paid more than in his employment with the appellant.

COMMISSIONER'S FINDINGS

- 33 The Commissioner made the following findings—
1. Mr Vaughan was a sincere and honest man and told the Commission his story without embellishment or exaggeration.
 2. Mr Rawlings gave his evidence also in a truthful manner.
 3. The Commissioner was required to objectively examine what occurred between the parties and decide, in the context of normal commercial dealings, whether there had been an unfairness to Mr Vaughan in the circumstances.
 4. The appellant was not prepared to spend the money, namely about \$30,000.00, in order to comply with the improvement notice.
 5. The appellant was not prepared to spend the money to supply the correct respiratory gear.
 6. Mr De Jong warned Mr Vaughan about the situation with the foreign body in his fellow employee's eye and Mr Vaughan's part in that episode.
 7. The appellant decided that the work could be done more cheaply by a private contractor.
 8. After deciding that it did not have a job for Mr Vaughan and telling him that he was redundant, the appellant paid Mr Vaughan two weeks' pay and told to leave, having been employed for less than twelve months. There was no question relating to his performance, he being rated by Mr Rawlings as a very good operator. There was no question of his ability.
 9. The appellant had the right to do what it did, but it had to do it in a fair way and industrial justice required that it properly compensate Mr Vaughan when it made changes to his detriment. In that sense, the dismissal was not unfair.
 10. Mr Vaughan was made redundant and he should have been provided with more adequate monetary compensation by the employer for redundancy in those circumstances (see *Rogers v Leighton Contractors Pty Ltd* 79 WAIG 3551 (FB)).
 11. That the employer did not do so was unfair in itself and on two counts, the appellant had not treated Mr Vaughan fairly and the dismissal was unfair.
 12. Reinstatement was not practicable because the appellant no longer does the work in which it was engaged.
 13. Mr Vaughan was required to be compensated to the full extent of his loss.
 14. The evidence was that Mr Vaughan's loss was 17 weeks, taking into account periods in which he worked following his dismissal.
 15. There was no claim for injury.
 16. The loss established by Mr Vaughan was the equivalent of 17 weeks' wages and an order would

issue that the appellant pay Mr Vaughan a sum assessed on the basis of 17 weeks' earnings gross, which amounted to \$9,477.00.

ISSUES AND CONCLUSIONS

- 34 The decision appealed against in this appeal is a discretionary decision, as that term is defined in *Norbis v Norbis* (1986) 161 CLR 513 (see also the discussion of the nature of a discretionary decision in *Coal and Allied Operations Pty Ltd v AIRC* [2000] 74 ALJR 1348 at 1354 per Gleeson CJ, Gaudron and Hayne JJ).
- 35 The Full Bench on appeals may not substitute its decision for that of the Commission at first instance unless it is established, in accordance with the principles in *House v The King* [1936] 55 CLR 499 (see also *Gromark Packaging v FMWU* 73 WAIG 220 (IAC)) that the exercise of the discretion at first instance miscarried.
- 36 The Commissioner found that the dismissal was unfair because, in order to resolve a problem created by its own management decisions, the appellant decided to contract the work out and Mr Vaughan was left with no work to do.
- 37 The Commissioner found that, whilst the appellant had a right to do what it did, it had to do it in a fair way and industrial justice required it to properly compensate Mr Vaughan when it made changes to his detriment.
- 38 The Commissioner went on to find that Mr Vaughan was made redundant and was not paid "adequate monetary compensation" for the redundancy. The Commissioner found that the loss established was an amount equal to 17 weeks' wages, a fair figure to compensate him for his loss.

Grounds of Appeal

Ground 2

- 39 Ground 2 is incompetent since this is not an appeal against a finding, as that is defined in s.7 of the Act. Accordingly, there is no requirement for the leave of the Full Bench to be given to appeal pursuant to s.49(2)(a) of the Act. It is, therefore, only necessary to consider Ground 1.

Ground 1

- 40 The crux of Ground 1 is that the Commissioner erred in finding that the appellant had unfairly dismissed Mr Vaughan when there was a genuine redundancy. A redundancy exists when the work of an employee or group of employees which they were engaged to perform disappears, resulting in termination or the termination of contracts of employment in question. Generally, the laws applicable to dismissal from employment also apply to redundancy. In other words, a redundant employee is generally entitled, in this Commission (and in other tribunals), to seek a remedy pursuant to what I shall conveniently call the unfair dismissal laws. However, special considerations apply to determining whether a redundancy was unfair.
- 41 Specific laws have evolved to deal with redundancies. Further, as was submitted to be the case here, awards make provision for monetary and other entitlements to be provided to employees who are redundant. (The award which applied to Mr Vaughan's employment is an example.)
- 42 In this State, the *Minimum Conditions of Employment Act* 1993 Part 5, makes provision for leave and procedural requirements in respect of redundancy. The definition in s.40(1) of that Act reflects the substance of the definition I have given above.
- 43 It should be noted, too, that, in South Australia, s.108(3) of the *Industrial and Employee Relations Act* 1994 provides that—
 "If a redundancy payment is made on a dismissal in accordance with a relevant industrial instrument, the dismissal cannot be regarded as harsh, unjust or unreasonable solely on the ground that the payment is inadequate."
 That is not a statutory provision in this State.
- 44 Further, it is the law in this Commission that an inadequate or no redundancy payment, when a person is made

redundant, renders a dismissal unfair (see *Rogers v Leighton Contractors Pty Ltd* (FB)(op cit)).

- 45 Further, and alternatively, such an amount is recoverable as a contractual benefit (see *Coles Myer Ltd t/a Coles Supermarkets v Coppin and Ors* 73 WAIG 1754 (IAC)).
- 46 As to whether a dismissal due to redundancy is harsh, unjust and unreasonable, argument will often revolve around whether the dismissal was a genuine redundancy, but the dismissal can still be harsh, oppressive or unfair if the relevant procedures were not adhered to (see the useful general discussion of redundancy in Australian Labour Law Reporter, Volume 3, 40-400 (et seq)).
- 47 In this case, it was conceded by the advocate for the respondent, Mr Stokes, that an award applied to Mr Vaughan's employment and, indeed, also, that such was common ground at first instance. That award is the *Metal Trades (General) Award* 1966 (No 13 of 1965) (hereinafter referred to as "the award"), which makes provision, by Clause 32A, that an employee with less than twelve months' service with an employer is not entitled to any redundancy payment. That proper oral concession to the Full Bench was contrary to the main thrust of paragraphs 1, 2 and 3 of the written submissions for the respondent in answer to the appellant's written submission. The issue was squarely raised at the commencement of proceedings at first instance and the award was conceded to apply (see page 4 of the transcript at first instance).
- 48 In this case, the dismissal by way of redundancy could not be unfair by virtue of the failure to pay the employee a redundancy payment or an adequate redundancy payment when an award which binds the parties does not confer such an entitlement on employees or such an obligation on the employer. Indeed, although I make no judgment on such a proposition, to make such an order might be incompetent, as purporting to vary an award without power.
- 49 Clause 32A of the award reads as follows—
 "32A.—REDUNDANCY
 (1) Discussions Before Terminations
 (a) Where an employer has made a 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 may lead to termination of employment, the employer shall hold discussions with the employees directly affected and with their union or unions.
 (b) The discussion shall take place as soon as is practicable after the employer has made a definite decision which will invoke the provisions of paragraph (a) of this subclause 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.
 (c) For the purpose of such discussion the employer shall provide in writing to the employees concerned and their union or unions, 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 any employer shall not be required to disclose confidential information the disclosure of which would be inimical to the employer's interests.

(2)

(3) Severance Pay

(a) In addition to the period of notice prescribed in paragraph (a) of subclause (2) in Clause 6—Contract of Service, of this award, for ordinary termination, and subject to further order of the Commission, an employee whose employment is terminated for reasons set out in paragraph (a) of subclause (1) of this clause 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
2 years but less than 3 years	6 weeks
3 years but less than 4 years	7 weeks
4 years and over	8 weeks

“Weeks Pay” means the ordinary weekly rate of wage 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.

(b)

(c)

(4) Employee Leaving During Notice

An employee whose employment is to be terminated for reasons set out in paragraph (a) of subclause (1) of this clause may terminate employment during the period of notice and, if so, shall be entitled to the same benefits and payments under this clause had the employee remained with the employer until the expiry of such notice. Provided that in such circumstances the employee shall not be entitled to payment in lieu of notice.

(5) Alternative Employment

An 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 of employment given by an employer, an employee whose employment is to be terminated for reasons set out in paragraph (a) of subclause (1) of this clause that employee shall for the purpose of seeking other employment shall be entitled to be absent from work during each week of notice up to a maximum of eight ordinary hours without deduction of pay.

(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 the employee shall not receive payment for the time absent. For this purpose 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

paragraph (a) of subclause (1) of this clause, the employer shall notify the Commonwealth Employment Service thereof as soon as possible giving relevant information including the number and categories of the employees likely to be affected and the period over which the terminations are intended to be carried out.

(8)

(9) 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 employers 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.

(10) 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.

(11) Employers Exempted

Subject to an order of the Commission, in a particular redundancy case, this clause shall not apply to employers who employ less than 15 employees.

(12) Incapacity to Pay

An employer, in a particular redundancy case may make application to the Commission to have the general severance pay prescription varied on the basis of the employer’s incapacity to pay.

(13) Dispute Settling Procedure

Any dispute under these provisions shall be referred to the Commission.”

50 The fact was that, at the commencement of proceedings at first instance, the Commissioner was informed that it was common ground that the award applied and accordingly that, pursuant to the award, there was no entitlement to a redundancy payment. That is a matter which the Commissioner ought to have considered, for to do so, would have led him to the conclusion which I have just expressed as following a proper consideration of that factor.

51 It remains to be considered whether it was open to the Commissioner to find that the dismissal was unfair, because Mr Vaughan’s job was abolished because the employer, to paraphrase, instituted or allowed to function a system of work which was regarded as unsafe by the Occupational Health and Safety authorities.

52 The result was that it was decided that it was cheaper to contract this work out rather than to spend monies to remedy the defects in the system. As a result of that decision, Mr Vaughan’s position was abolished and no longer required.

53 There was, as Mr Rea, for the appellant, submitted, no evidence that Mr Vaughan was not employed in good faith, nor was there evidence that the defects in the system of work which later caused difficulties were known to the appellant at the time of Mr Vaughan’s engagement by the appellant. The Commissioner accepted, and it was not submitted that he should not have, that the appellant had the right to make the commercial decision to contract the work out. It is not disputed, and the Commissioner found, that Mr Vaughan was then made redundant because there was no position for him.

54 It was not submitted that the Commissioner had not found that Mr Vaughan had been made redundant. It is clear that he had. To make the decision which the appellant did was not submitted or found to have been made in bad

- faith or for the purpose of oppressing the respondent. In any event, attempts had been made in consultation with Mr Vaughan to resolve the problems in the system of work.
- 55 The grounds are that the Commissioner was in error in finding that the dismissal was unfair, because there was a genuine redundancy, because the Commissioner failed to give sufficient consideration to the efforts made by the appellant to keep Mr Vaughan employed, despite the Worksafe requirements and orders, and determining that the appellant was obliged to make a compensatory payment for redundancy without defining the amount.
- 56 Further, it was the appellant's case that it did make efforts to compensate because Mr Vaughan was paid annual leave loading, even though he was not entitled to it, not having served twelve months. It was also submitted that compensation was discussed with the appellant.
- 57 It should be first observed that, for the reasons which I hereinafter express, the failure to pay a redundancy payment at all was, given the obligations expressed in the award (which did not include an obligation to pay severance pay to an employee of less than twelve months duration), not unfair. Further, the payment of a leave loading which the employer was not obliged to pay was some attempt at making compensation.
- 58 What are clear facts, which it was open to the Commissioner to find on the evidence as I have outlined it above, are that the work which was done by Mr Vaughan and which he was engaged in a new position to do was previously done by a contractor. Further, the spray booth was simply inadequate to accommodate two spray painters doing the sort of work Fork Trucks did on the one hand and the appellant did on the other. There was not enough room. Safety factors were a problem.
- 59 Some of the problems arose because of the nature of the spray painting which Mr Vaughan was required to do and the nature of the preparations which he was required to use. The obvious shortcomings of the spray booth were properly correctable, it is a fair inference, by providing more room, not by the mere provision of some safety equipment. That is because safety problems were, it is clear and it was open to the Commissioner to find, only one manifestation of the inadequacy in space and otherwise of the spray booth. The spray booth was, after all, Fork Trucks' spray booth. The latter generated 80% of the profit for spray painting and the appellant was only a cuckoo in the nest in the spray painting booth.
- 60 Management considered the only real remedies available were to extend in size the spray booth or to build a new one. Both remedies involved construction and capital outlay. The management decided that this was not warranted and went back to contracting the appellant's work out. As a result, they decided to terminate Mr Vaughan's employment. Of course, it is quite clear that his position was no longer required and, indeed, would be abolished once the work which he did was contracted out again. I do not think that the force of that fact is dissolved, either, by a decision by the appellant to engage another spray painter eight months after the event.
- 61 There was a genuine redundancy within the framework of the definition of redundancy to which I have referred above. It was open to find and, indeed, there was no evidence to the contrary, that the appellant made a misjudgement that the two companies' spray painting booth could be accommodated in one booth. It became manifestly clear that they could not. Further, the only solution was to extend the booth or build a second one. Given that only 20% of profit was generated by the appellant and Mr Vaughan's work, this was not deemed an economical step. That was a decision which the appellant was entitled to make.
- 62 It was open to the Commissioner to interfere if the termination of employment emanating from that decision was unfair. This was a redundancy caused by a reasonable change in the appellant's operations, based on economics, properly considered.
- 63 As a measure of the fairness of the decision, there was discussion with Mr Vaughan and Mr Cromwell about how to remedy the problems, as Mr Vaughan admitted in evidence. The decision was based on valid factors. It was not found, nor was it submitted that it might have been found, that the motive for the redundancy was unfair. It was not, taken in isolation, unfair to remedy a management decision, which only emerged as a problem in the execution of it, given the evidence of consideration of the remedies and of consultation with Mr Vaughan.
- 64 The Commissioner did give adequate reasons for finding as he did. The employee did do the work well, as was clearly the evidence. He did his work to the best of his ability. His references, given by Mr De Jong and Mr Rawlings, bear that out. He was certainly permitted to work in premises which were inadequate and, to some extent, unsafe. However, the solution to the problem notwithstanding, that was not unreasonable or unfair as a decision.
- 65 There was a decision about what was due, including two weeks' notice. There was, insofar as it was relevant, no discussion of compensation. There was no adequate provision for redundancy in the award, in the circumstances of Mr Vaughan's case, but that does not render the termination unfair.
- 66 However, as Mr Stokes submitted for the respondent, a genuine redundancy can be effected in an unfair manner. In this case, notwithstanding that the decision to abolish Mr Vaughan's position was made for good reasons, it was made following some criticism of the valid complaints of Mr Vaughan by Mr De Jong. Clause 32A of the award applies some similar conditions to s.41 of the *Minimum Conditions of Employment Act* (if no others are applied).
- 67 In any event, no notice was given of the forthcoming redundancy, no extra time was given, despite a request by Mr Vaughan, there was no discussion of measures which might be taken to minimise the effect, no leave for job interviews, no discussion with unions (as Clause 32A of the award requires). All this followed as a consequence of a valid decision, but one which, through no fault of Mr Vaughan, had to be made because the engagement of Mr Vaughan had to be reversed.
- 68 The award which the appellant relied on, and correctly, to absolve itself from the necessity to pay a severance or redundancy pay, was ignored in other respects (see Clause 32A(1)(a), (b) and (c) of the award. Those failures to comply with the award included breaches of Clause 32A.
- 69 Most of those circumstances properly led (and the breach of Clause 32A is supportive of such a finding) to the Commissioner finding, within the principle in *Miles and Others t/a Undercliffe Nursing Home v FMWU* 65 WAIG 385 (IAC), that the dismissal by way of redundancy was harsh, oppressive and unfair. A process of redundancy, unfairly brought about, constitutes an unfair dismissal (see *Kenefick v Australian Submarine Corporation Pty Ltd (No 2)* (1996) 65 IR 366 (IRC of Aust); see also *Gilmore and Another v Cecil Bros and Others* 78 WAIG 1099 (IAC)). It follows that an award of compensation should be made to compensate for the loss established to have been suffered.
- 70 In my opinion, taking into account the leave loading paid (the notice required to be given was required to be given anyway), the loss to be measured was not the loss as found by the Commissioner.
- 71 In the circumstances, the loss was of a sufficient period of notice to the respondent and to his union to enable him and the union, in accordance with the award, to prepare for his dismissal and, given that he had served about twelve months, a further amount of two weeks' pay should be ordered to be paid and to recognise that the dismissal was a redundancy. It is only in that respect that the exercise of discretion miscarried, necessitating the Full Bench substituting the exercise of its discretion for that of the Commissioner at first instance.
- 72 I have carefully considered all of the evidence, the material and the submissions. For those reasons, I am not of opinion that the decision at first instance was, as the grounds of appeal alleged, arrived at by an erroneous exercise of discretion, save and except as to the question of quantum. I would vary the decision and substitute the

figure of \$1,114.92 for the figure of \$9,477.00 in the decision (based on the figures found by the Commissioner and not challenged).

73 I would therefore uphold the appeal and vary the decision for the reasons which I have outlined above.

CHIEF COMMISSIONER W S COLEMAN—

74 I have read the reasons for decision of His Honour the President. I agree with those reasons and have nothing to add.

COMMISSIONER P E SCOTT—

75 I have had the benefit of reading the reasons for decision of His Honour, the President. I agree with those reasons and the outcome which they provide and have nothing to add.

THE PRESIDENT—

76 Therefore, the appeal is upheld and the decision at first instance varied.

Order accordingly

2000 WAIRC 01256

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES WA ACCESS PTY LTD, APPELLANT

v.

MARK ROBERT VAUGHAN,
RESPONDENT

CORAM FULL BENCH

HIS HONOUR THE PRESIDENT P J
SHARKEY

CHIEF COMMISSIONER W S
COLEMAN

COMMISSIONER P E SCOTT

DELIVERED TUESDAY, 14 NOVEMBER 2000

FILE NO/S FBA 34 OF 2000

CITATION NO. 2000 WAIRC 01256

Decision Appeal upheld and decision at first instance varied.

Appearances

Appellant Mr E P Rea, as agent

Respondent Mr B F Stokes, as agent

Order.

This matter having come on for hearing before the Full Bench on the 27th day of September 2000, and having heard Mr E P Rea, as agent, on behalf of the appellant and Mr B F Stokes, as agent, on behalf of the respondent, and the Full Bench having reserved its decision on the matter, and reasons for decision being delivered on the 14th day of November 2000 wherein it was found that the appeal should be upheld, it is this day, the 14th day of November 2000, ordered and declared as follows—

- (1) THAT appeal No FBA 34 of 2000 be and is hereby upheld.
- (2) THAT the decision of the Commission in matter No. 1394 of 1999 made on the 23rd day of June 2000 be and is hereby varied by deleting the figure of "\$9477.00" in order (3), and inserting the figure of "1,114.92".

By the Full Bench

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

[L.S.]

FULL BENCH— Proceedings for enforcement of Act—

2000 WAIRC 01317

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES CAROL EVANS, APPLICANT

v.

GABRIEL EHRENFELD,
RESPONDENT

CORAM FULL BENCH

HIS HONOUR THE PRESIDENT P J
SHARKEY

CHIEF COMMISSIONER W S
COLEMAN

COMMISSIONER P E SCOTT

DELIVERED WEDNESDAY, 22 NOVEMBER 2000

FILE NO/S FBM 5 OF 2000

CITATION NO. 2000 WAIRC 01317

Decision Application adjourned

Appearances

Applicant Mr R Bathurst (of Counsel), by leave

Respondent No appearance by or on behalf of the respondent

Order.

This matter having come on for hearing before the Full Bench on the 20th day of November 2000, and having heard Mr R Bathurst (of Counsel), by leave, on behalf of the applicant and there being no appearance by or on behalf of the respondent, and Counsel for the applicant having made an application to adjourn the hearing and determination of the application, and the applicant having consented to waive the requirements of s.35 of the Industrial Relations Act 1979 (as amended), it is this day, the 22nd day of November 2000, ordered that the hearing and determination of application No FBM 5 of 2000 be adjourned for further hearing and determination to 10.30am on Friday, the 9th day of February 2001.

By the Full Bench

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

[L.S.]

2001 WAIRC 02009

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES CAROL EVANS, APPLICANT

v.

GABRIEL EHRENFELD,
RESPONDENT

CORAM FULL BENCH

HIS HONOUR THE PRESIDENT P J
SHARKEY

CHIEF COMMISSIONER W S
COLEMAN

COMMISSIONER P E SCOTT

DELIVERED FRIDAY, 9 FEBRUARY 2001

FILE NO/S FBM 5 OF 2000

CITATION NO. 2001 WAIRC 02009

Decision Application dismissed by consent.

Appearances

Applicant Mr R Bathurst (of Counsel), by leave

Respondent Mr A J Prentice (of Counsel), by leave

Order.

The application having come on for hearing before the Full Bench on the 9th day of February 2001, and having heard Mr

R Bathurst (of Counsel), by leave on behalf of the applicant, and Mr A J Prentice (of Counsel), by leave, on behalf of the respondent, and the parties herein having applied to the Full Bench for leave to dismiss the abovenamed application by consent, and the parties herein having consented to waive the requirements of s.35 of the Industrial Relations Act 1979 (as amended), it is this day, the 9th day of February 2001, ordered, by consent, as follows—

- (1) THAT there be leave granted and leave is hereby granted for application No. FBM 5 of 2000 to be dismissed.
- (2) THAT there be no order for costs.

By the Full Bench

[L.S.]

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

FULL BENCH— Unions—Application for Orders under Section 72A—

2000 WAIRC 00537

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

APPLICANT	MERCHANT SERVICE GUILD OF AUSTRALIA, WESTERN AUSTRALIAN BRANCH, UNION OF WORKERS
CORAM	FULL BENCH HON PRESIDENT P J SHARKEY COMMISSIONER P E SCOTT COMMISSIONER S J KENNER
DELIVERED FILE NO/S	TUESDAY, 5 SEPTEMBER 2000 FBM 3/2000

Decision Application adjourned and directions made.

Appearances

Applicant Mr A D Gill (of Counsel), by leave
Participants Ms J C Pritchard (of Counsel), by leave,
pursuant to on behalf of The Executive Director,
s.72A(5) of the Fisheries Western Australia
Act

Mr P L Harris (of Counsel), by leave, on behalf of The Civil Service Association of Western Australia (Incorporated)

Orders and Directions.

This matter having come on for hearing before the Full Bench on the 5th day of September 2000, and having heard Mr A D Gill (of Counsel), by leave, on behalf of The Merchant Services Guild of Australia, Western Australian Branch, Union of Workers (hereinafter referred to as the "MSG"), and Ms J C Pritchard (of Counsel), by leave, on behalf of The Executive Director, Fisheries Western Australia, (hereinafter referred to as "Fisheries Department"), and Mr P L Harris (of Counsel), by leave, on behalf of The Civil Service Association of Western Australia (Incorporated) (hereinafter referred to as the "CSA"), and the Full Bench having determined that the following orders and directions were necessary and expedient for the just hearing and determination of the matter, and the applicant and the s.72A(5) participants of the Industrial Relations Act 1979 (as amended) (hereinafter referred to as

"the Act") having waived the requirements of s.35 of the Act, it is this day, the 5th day of September 2000, ordered, directed and declared as follows—

- (1) THAT the Fisheries Department and the CSA have sufficient interest to be heard pursuant to s.72A(5) of the Act.
- (2) THAT the application by the CSA to adjourn the application herein be and is hereby granted.
- (3) THAT the hearing dates for this application, namely the 5th, 6th and 7th days of September 2000 be and are hereby vacated.
- (4) THAT the application herein be and is hereby adjourned to 9.00 am on Tuesday, the 21st day of November 2000, Monday, the 4th, Thursday, the 7th, Friday, the 8th, Monday, the 11th and Monday, the 18th days of December 2000 for hearing and determination.
- (5) THAT the applicant do file and serve Further and Better Particulars of Application within 14 days of the date hereof.
- (6) THAT the applicant provide discovery by list within 7 days of the date hereof.
- (7) THAT the CSA provide discovery by list within 28 days of the date hereof.
- (8) THAT the Fisheries Department provide discovery by list on or before the 25th day of October 2000.
- (9) THAT evidence-in-chief be adduced by way of signed witness statements.
- (10) THAT the applicant file and serve signed witness statements within 7 days of the date hereof.
- (11) THAT the s.72A(5) participants file and serve signed witness statements within 28 days of the date hereof.
- (12) THAT the applicant and the s.72A(5) participants file and serve signed witness statements in reply no later than 7 days prior to the hearing.
- (13) THAT such written statements, if admitted in evidence, shall stand as the evidence-in-chief of such witnesses.
- (14) THAT any documents upon which any party intends to adduce in evidence shall be annexed in copy form to the statement of the witness through whom it is to be tendered.
- (15) THAT no evidence-in-chief may be adduced which is not contained in the said written statements of witnesses without the leave of the Full Bench.
- (16) THAT a witness in respect of whom a written statement as aforesaid has not been filed shall not give evidence without the leave of the Full Bench.
- (17) THAT the applicant and the s.72A(5) participants shall file and serve full opening statements and lists of authorities 7 days before the 21st day of November 2000.
- (18) THAT a list of all witnesses to be called in triplicate shall be filed and served by the applicant and s.72A(5) participants 7 days before the 21st day of November 2000.
- (19) THAT the applicant and the s.72A(5) participants give notice in writing each to the other of the witnesses whom they require to attend at hearing for the purposes of cross-examination no later than 7 days prior to the hearing.
- (20) THAT there be liberty to apply on 24 hours' notice to the Commission to the applicants and the s.72A(5) participants.

By the Full Bench

[L.S.]

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

2000 WAIRC 00857WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	MERCHANT SERVICE GUILD OF AUSTRALIA, WESTERN AUSTRALIAN BRANCH, UNION OF WORKERS, APPLICANT
CORAM	FULL BENCH HIS HONOUR THE PRESIDENT P J SHARKEY COMMISSIONER P E SCOTT COMMISSIONER S J KENNER
DELIVERED	WEDNESDAY, 11 OCTOBER 2000
FILE NO/S	FBM 3 OF 2000
CITATION NO.	2000 WAIRC 00857

Decision Orders and Directions issued on 5 September 2000 be varied.

Order.

This matter having come on for hearing before the Full Bench on the 5th day of September 2000 and the order and directions having issued on the 5th day of September 2000, and the applicant and the s.72A(5) participants having consented, in writing, to a variation of the order and directions issued on the 5th day of September 2000, and the applicant and the s.72A(5) participants herein having consented to waive the requirements of s.35 of the Industrial Relations Act 1979 (as amended), it is this day, the 11th day of October 2000, ordered that the order and directions issued in application FBM 3 of 2000 on the 5th day of September 2000 be and are hereby varied as follows—

- (1) THAT the existing Order and Direction (7) be deleted and that there be substituted therefor a new Order and Direction (7) to read—

“(7) THAT the CSA provide discovery by list no later than 14 October 2000”.

- (2) THAT the existing Order and Direction (11) be varied further by deleting the existing Order and Direction (11) and substituting therefor the following—

“(11) THAT the CSA file and serve signed witness statements no later than 19 October 2000”.

By the Full Bench

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

2000 WAIRC 01314WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	MERCHANT SERVICE GUILD OF AUSTRALIA, WESTERN AUSTRALIAN BRANCH, UNION OF WORKERS, APPLICANT
CORAM	FULL BENCH HIS HONOUR THE PRESIDENT P J SHARKEY COMMISSIONER P E SCOTT COMMISSIONER S J KENNER
DELIVERED	TUESDAY, 21 NOVEMBER 2000
FILE NO/S	FBM 3 OF 2000
CITATION NO.	2000 WAIRC 01314

Decision Hearing adjourned

Appearances

Applicant Mr T J Dixon (of Counsel), by leave

Participants pursuant to s.72A(5) of the Act

Ms J C Pritchard (of Counsel), by leave, on behalf of The Executive Director, Fisheries Western Australia

Mr P L Harris (of Counsel), by leave, on behalf of The Civil Service Association of Western Australia (Incorporated)

Order.

This matter having come on for hearing before the Full Bench on the 21st day of November 2000, and having heard Mr T J Dixon (of Counsel), by leave, on behalf of The Merchant Services Guild of Australia, Western Australian Branch, Union of Workers (hereinafter referred to as the “MSG”), and Ms J C Pritchard (of Counsel), by leave, on behalf of The Executive Director, Fisheries Western Australia, (hereinafter referred to as “Fisheries Department”), and Mr P L Harris (of Counsel), by leave, on behalf of The Civil Service Association of Western Australia (Incorporated) (hereinafter referred to as the “CSA”), and Counsel for the applicant having made an application to adjourn the hearing and determination of application No FBM 3 of 2000, and Counsel for the Fisheries Department and the CSA having consented to the application, it is this day, the 21st day of November 2000, ordered, that the hearing and determination of application No FBM 3 of 2000 be adjourned to 9am on Monday, the 4th day of December 2000.

By the Full Bench

[L.S.]

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

2001 WAIRC 02066WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	MERCHANT SERVICE GUILD OF AUSTRALIA, WESTERN AUSTRALIAN BRANCH, UNION OF WORKERS, APPLICANT
CORAM	FULL BENCH HIS HONOUR THE PRESIDENT P J SHARKEY COMMISSIONER P E SCOTT COMMISSIONER S J KENNER
DELIVERED	THURSDAY, 15 FEBRUARY 2001
FILE NO/S	FBM 3 OF 2000
CITATION NO.	2001 WAIRC 02066

Decision Procedural applications granted.

Appearances

Applicant Mr A D Gill (of Counsel), by leave

Participants pursuant to s.72A(5) of the Act Ms J C Pritchard (of Counsel), by leave, on behalf of The Executive Director, Fisheries Western Australia

Mr P L Harris (of Counsel), by leave, on behalf of The Civil Service Association of Western Australia Incorporated

Order.

This matter having come on for hearing before the Full Bench on the 4th, 7th, 8th, 11th and 18th days of December 2000, and having heard Mr A D Gill (of Counsel), by leave, on behalf of The Merchant Services Guild of Australia, Western Australian Branch, Union of Workers (hereinafter referred to as the “MSG”), and Ms J C Pritchard (of Counsel), by leave, on behalf of The Executive Director, Fisheries Western Australia, (hereinafter referred to as “Fisheries WA”), and Mr P L Harris (of Counsel), by leave, on behalf of The Civil Service Association of Western Australia (Incorporated) (hereinafter referred to as the “CSA”), and the Full Bench having reserved its decision on the matter, and reasons for decision being

delivered on the 15th day of February 2001, it is this day, the 15th day of February 2001, ordered and directed as follows—

- (1) THAT leave be and is hereby granted to the MSG to file “Further and Better Particulars of Claim” out of time.
- (2) THAT leave be and is hereby granted to the MSG to file the witness statements of Lawrence Robert Poole, Natalie Patricia Ettridge and Bruce McLean Webber out of time.
- (3) THAT leave be and is hereby granted to the MSG to file the further statement of Michael Eric Fleming out of time.
- (4) THAT leave be and is hereby granted to amend the application filed herein in the following manner—
 - (a) by deleting the words “both” and “and current” in the first sentence in ground 6.
 - (b) by renumbering the final two grounds of appeal to read “7.” and “8.”

By the Full Bench

[L.S.]

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

2001 WAIRC 02020

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

PARTIES	THE MERCHANT SERVICE GUILD OF AUSTRALIA, WESTERN AUSTRALIAN BRANCH, UNION OF WORKERS, APPLICANT
CORAM	FULL BENCH HIS HONOUR THE PRESIDENT P J SHARKEY COMMISSIONER P E SCOTT COMMISSIONER S J KENNER
DELIVERED	THURSDAY, 15 FEBRUARY 2001
FILE NO/S	FBM 3 OF 2000
CITATION NO.	2001 WAIRC 02020

Result	Application dismissed.
Representation Applicant	Mr A D Gill (of Counsel), by leave
Participants pursuant to s.72A(5) of the Act	Ms J C Pritchard (of Counsel), by leave, on behalf of The Executive Director, Fisheries Western Australia Mr P L Harris (of Counsel), by leave, on behalf of The Civil Service Association of Western Australia Incorporated

Reasons for Decision.

THE PRESIDENT—

- 1 These are the unanimous reasons for decision of the Full Bench.
- 2 This is an application by the abovenamed Merchant Service Guild of Australia, Western Australian Branch, Union of Workers (hereinafter referred to as “the MSG”) for orders pursuant to s.72A of the *Industrial Relations Act 1979* (as amended) (hereinafter referred to as “the Act”).
- 3 The application was filed on 22 June 2000. The schedule to the application, which contains the grounds of the application and the orders sought, reads as follows—

Orders Sought

- “1. That the MSG has the right to represent under the Act, to the exclusion of the Civil Service Association of Western Australia Incorporated (“CSA”), the industrial interests of all Fisheries Officers employed in the Fisheries Department of Western Australia by the Executive Director Fisheries who are eligible for membership of the MSG.

2. To the extent that the MSG does not have the right under the Act to represent the industrial interests of Fisheries Officers employed in the Fisheries Department of Western Australia by the Executive Director Fisheries, the MSG shall have that right.
3. That the CSA does not have the right under the Act to represent the industrial interests of any Fisheries Officers employed in the Fisheries Department of Western Australia by the Executive Director Fisheries who are eligible for membership of the CSA.”

Grounds

- “1. The orders sought are ones to which it is open to the Full Bench to make under s. 72A of the Act.
2. The applicant is best placed to represent the industrial interests of the Fisheries Officers because—
 - (a) In the context of the enterprise, the applicant is the recognised principle union in relation to maritime employees and can commit greater resources and overall industry experience to protect the industrial interests of those employees engaged in the maritime industry;
 - (b) The applicant will be better placed to promote and facilitate successful enterprise bargaining in relation to Fisheries Officers within the Fisheries Department of Western Australia.
3. The orders sought will best facilitate the industrial representation of the employees.
4. The vast majority of Fisheries Officers employed by the Executive Director Fisheries would prefer to have their industrial interests represented by the applicant and not the CSA.
5. The Fisheries Officers have a predominant marine-related employment function and community of interest with the MSG.
6. There exists a preponderance of employee membership with the MSG, historically. The vast majority of Fisheries Officers resigned from the CSA *en masse* in protest at the inadequacy of representation.
7. The orders sought are consistent with the objectives of the Western Australian Industrial Relations Commission’s wage fixing principles.
8. The orders sought are consistent with the objects of the Act.”

- 4 On 5 September 2000, the Full Bench declared that The Executive Director, Fisheries Western Australia (hereinafter referred to as “Fisheries WA”) and The Civil Service Association of Western Australia Incorporated (hereinafter referred to as “the CSA”) had sufficient interest to be heard pursuant to s.72A(5) of the Act and leave was given for that organisation to be heard.

- 5 For convenience, we reproduce hereunder the grounds advanced on which both Fisheries WA and the CSA, respectively, should be given the right to be heard, because these are convenient summaries of their interest in the matter—

Fisheries WA

“The Executive Director, Fisheries Western Australia (“the Executive Director”), has a sufficient interest in the Application for the purposes of s72A(5) of the *Industrial Relations Act 1979* such as to warrant an opportunity to be heard in relation to the Application, on the grounds that—

1. The Executive Director is the employer, under the *Public Sector Management Act 1994*, of the persons described as “Fisheries Officers” in the Application;

2. Fisheries Western Australia is the Western Australian government department which principally assists the Minister in the administration of the *Fish Resources Management Act 1994*, including ensuring compliance with the provisions of that Act;
3. The Executive Director employs persons described in the Application as "Fisheries Officers" to perform functions relating, among other things, to compliance with the provisions of the *Fish Resources Management Act 1994*;
4. The Executive Director is a party to each of the industrial instruments (awards, industrial agreement and workplace agreement) which govern the terms and conditions of employment of some or all of the persons described as "Fisheries Officers" in the Application, namely the *Public Service Award 1992*, the *Public Service Allowances (Fisheries and Wildlife Officers) Award 1990*, the *Fisheries W.A. Enterprise Bargaining Agreement 1999* and the *Fisheries W.A. Individual Workplace Agreement 1998*;
5. The only industrial organization with which the Executive Director currently deals in resolving issues relating to the terms and conditions of employment of its employees in clerical, compliance, research, technical, policy and community education areas is the Civil Service Association of Western Australia (Inc);
6. In these circumstances, the orders sought in the Application would, if made by the Full Bench, directly affect the rights and interests of the Executive Director."

CSA

- "1. The officers to which the application of the Merchant Service Guild of Australia, Western Australian Branch, Union of Workers relates (namely all Fisheries Officers employed in the Fisheries Department of Western Australia by the Executive Director Fisheries) are currently exclusively under the coverage of the Civil Service Association of Western Australia Incorporated.
2. The application of the Merchant Service Guild of Australia, Western Australian Branch, Union of Workers seeks to exclude the Civil Service Association (sic) of Western Australia Incorporated (sic) from representing all Fisheries Officers employed in the Fisheries Department of Western Australian by the Executive Director Fisheries.
3. The Civil Service Association of Western Australia Incorporated is the only named union party to the Public Service Award 1992 and the Public Service Allowances (Fisheries & Wildlife Officers) Award 1990, the only two awards that cover the employees to whom the application relates.
4. The Civil Service Association of Western Australia Incorporated is a named party to the Fisheries WA Enterprise Bargaining Agreement 1999 (No. PSGAG 1 of 1999), the Enterprise Bargaining Agreement that cover the employees to whom the application relates."
- 6 We are satisfied that the MSG is an organisation, as that is defined in s.7 of the Act and duly registered under the Act as an organisation of employees.
- 7 The MSG has no counterpart federal organisation, as that is prescribed in s.71 of the Act. However, there was reference in these proceedings to a federally registered organisation with which the MSG is and was connected or affiliated, called the Australian Maritime Officers Union (hereinafter referred to as "the AMOU"), an organisation registered in accordance with the *Workplace Relations Act 1996* (Cth).

- 8 We are satisfied that the CSA also is and was, at the material times, an organisation of employees, as that is defined in s.7 of the Act and that the Community and Public Sector Union, WA Branch (hereinafter referred to as "the CPSU") is its counterpart Federal body by virtue of an declaration of this Commission made under s.71 of the Act on 4 November 1993 (73 WAIG 2932).
- 9 The Executive Director of Fisheries WA is and was, at the material times, a person described as an employer of Fisheries officers. Fisheries WA, it is common ground, is a department of Government of this State. For the purposes of this application and since it was not otherwise agreed, we accept that a Chief Executive Officer under the *Public Sector Management Act 1994* (as amended) (hereinafter referred to as "the PSM Act") is an employer. However, the question whether such an officer is an employer remains an open one for us.
- 10 The CSA, it was not in dispute, has constitutional coverage pursuant to its rules, of Fisheries officers employed in or by Fisheries WA. The question arose in these proceedings as to whether the MSG has constitutional coverage of Fisheries officers employed in Fisheries WA. (Coverage of those officers is the subject of this application.)

S.72A REQUIREMENTS

- 11 The orders which were sought were orders which it is within the jurisdiction of the Commission, constituted by the Full Bench, to make pursuant to s.72A of the Act. It is not necessary to reproduce that section in full here for a proper understanding of it (the section has now been considered by the Full Bench in a number of cases including *Re an application by CMETSWU 78 WAIG 1585* (FB); *Re an application by AWU and Another 79 WAIG 3012* (FB); *Re applications by HSOA and CSA 76 WAIG 1673* (FB); and *Re an application by the AFMEPKIU 80 WAIG 4613* (FB)).
- 12 We are satisfied that this application relates to a particular class or group of employees employed in an "enterprise", as that word is defined in s.72A(1) of the Act, who are eligible for membership of the CSA. It is quite clear on the evidence to which we will refer later in these reasons, and we so find, that the enterprise, the subject of this application, consists of the activities carried on by a public authority, namely a State Government Department (called "Fisheries WA"), as defined in s.7 of the Act.
- 13 We are satisfied and find that the application was published in the Western Australian Industrial Gazette on 26 July 2000 (80 WAIG 2849) as required by s.72A(3) of the Act, and that thirty days have expired since the date of publication before the Full Bench commenced to hear this application. There was no impediment, therefore, on that ground, to the Full Bench hearing and determining the application.
- 14 The Commission, constituted by the Full Bench, also afforded to those persons who established a sufficient interest to be heard pursuant to s.72A(5) of the Act a more than adequate opportunity to be heard, they having taken part in the whole hearing of this matter which was an extensive hearing.
- 15 The Full Bench was entitled to find jurisdiction and power in the Commission, constituted by the Full Bench, to make the orders sought. Further, it was not contended that there was not.

CONSTITUTIONAL COVERAGE AND THE RELEVANT RULES

- 16 It was not in issue, as we have observed, that the CSA had and has had, for a period of many years, coverage, by virtue of its eligibility rule, of Fisheries officers.
- 17 The eligibility rule of the MSG, which is the subject of submissions and argument in these proceedings, having regard to its interpretation and construction, namely Rule 3, reads as follows—

"Members of the Mercantile Marine and dependent services possessed of certificates of competency issued or recognised by the Commonwealth of Australia, or any State thereof, the Board of Trade,

or by any British possession or dependency, or possessed of any qualifications entitling him to undertake any duty connected with the navigation of vessels, may be elected as members. Marine Engineers (so engaged), including Third Class and Port Engineers and Marine Engine Drivers, may be admitted to membership, provided that this Rule as to Engineers shall only apply in cases where such Engineer is not eligible for membership in or has been rejected by the Australian Institute of Marine and Power Engineers.

This Rule as to eligibility of Engineers shall include Engineers upon vessels owned by the Government, but Engineers who have become Shipowners, Superintendents, or who are otherwise acting in the interest of employers, shall be strictly debarred from membership. Apprentices who are bound by indenture for sea service to a Shipowner or Master (other than Engineer Apprentices) and Cadets may be admitted to membership but shall not be entitled to be nominated for or hold office or cast a vote in connection with the affairs of the Guild during their apprenticeship or cadetship as the case may be. Together with any other persons employed in the industry of Shipping and Marine or not who have been or are hereafter elected as Officers of the Guild and admitted as members thereof."

- 18 It is important to note here that the Full Bench in *Merchant Service Guild of Australia, Western Australian Branch, Union of Workers and Fisheries Department of Western Australia and The Civil Service Association of Western Australia Incorporated (Intervener)* 78 WAIG 3648 (FB) considered in some detail that eligibility rule and construed and interpreted it. We will turn to that case in more detail in these reasons.

STATUTORY PROVISIONS

- 19 It is necessary to consider some of the statutory background relating to the appointment of Fisheries officers, their functions and the administration of the *Fish Resources Management Act 1994* (hereinafter referred to as "the FRM Act"). S.3 of that Act prescribes the objects of the Act and it is necessary and convenient to reproduce that provision hereunder—

"(1) The objects of this Act are to conserve, develop and share the fish resources of the State for the benefit of present and future generations.

(2) In particular, this Act has the following objects—

- (a) to conserve fish and to protect their environment;
- (b) to ensure that the exploitation of fish resources is carried out in a sustainable manner;
- (c) to enable the management of fishing, aquaculture and associated industries and aquatic eco-tourism;
- (d) to foster the development of commercial and recreational fishing and aquaculture;
- (e) to achieve the optimum economic, social and other benefits from the use of fish resources;
- (f) to enable the allocation of fish resources between users of those resources;
- (g) to provide for the control of foreign interests in fishing, aquaculture and associated industries;
- (h) to enable the management of fish habitat protection areas and the Abrolhos Islands reserve."

- 20 There are a number of relevant terms which are defined in s.4 of the FRM Act and they are as follows—

1. "AFMA" means the Australian Fisheries Management Authority established under the *Fisheries Administration Act 1991* of the Commonwealth.
2. "aquaculture" means the keeping, breeding, hatching or culture of fish.

3. "Australian fishing zone" has the same meaning as in the Commonwealth Act.

4. "boat" means a vessel, craft or floating platform of any description which is capable of use in or on water, whether floating or submersible.

5. "commercial fishing" means fishing for a commercial purpose.

6. "commercial fishing licence" means a licence granted under the regulations authorising a person to engage in commercial fishing.

7. "commercial purpose" means the purpose of sale or any other purpose that is directed to gain or reward.

8. "Commonwealth Act" means the *Fisheries Management Act 1991* of the Commonwealth.

9. "Department" means the department of the Public Service principally assisting the Minister in the administration of this Act. (The Executive Director, who is a s.72A(5) participant in these proceedings, is the person appointed under Part 3 of the PSM Act to be the Chief Executive Officer of the Department known as "Fisheries WA".)

10. "fisheries officer" means a Fisheries officer referred to in s.11 of the FRM Act.

11. "honorary fisheries officer" means an honorary Fisheries officer appointed under s.179 of the FRM Act.

12. "licence" means—

- (a) an aquaculture licence;
- (b) a commercial fishing licence;
- (c) a fishing boat licence;
- (d) a fish processor's licence;
- (e) a managed fishery licence;
- (f) a recreational fishing licence; or
- (g) any other licence provided for in the regulations;

13. "recreational fishing" means fishing for a purpose other than a commercial purpose.

21 The Minister is empowered under s.14 of the FRM Act to carry out any research, exploration, experiments, works or operations of any kind for the purposes of the FRM Act.

22 Part 3 provides for the Commonwealth or State management of fisheries and refers to a joint Commonwealth and State authority, namely the Western Australian Fisheries Joint Authority. There is a prescribed arrangement under that Part for management of particular fisheries.

23 There is a provision under Part 4 for the creation of a number of advisory committees such as the Rock Lobster Industry Advisory Committee and the Recreational Fishing Advisory Committee.

24 Part 5 provides for the general regulation of fishing, including matters of prohibited fishing, protected fish, bag and possession limits and has a provision of a penalty for breaches of the FRM Act in Division 4 of that Part.

25 Part 6 prescribes for the management of the fisheries and the Minister's part in providing for management plans, prescribing management plans with reference in that Part, too, to manage fishery licences and interim fishery permits. Again, there is a prescription for offences for breaches of the provisions of that Part.

26 Fish processing establishments may not be established without a permit from the Executive Director of Fisheries WA under Part 7.

27 Part 8 deals with aquaculture and, inter alia, prescribes that the aquaculture may not be carried on without a licence granted by the Executive Director of Fisheries WA. There is also provision for designated fishing zones, for the Abrolhos Reserve, for fish habitat protection areas and for a register of authorisations and exemptions to be kept and made.

- 28 Part 16 is of particular relevance because it enables the Executive Director of Fisheries WA to issue a certificate of appointment to each Fisheries officer (s.177(1) of the FRM Act). Fisheries officers are to be appointed under s.11 of the FRM Act which reads as follows—
- “11. There are to be appointed under Part 3 of the *Public Sector Management Act 1994* such fisheries officers and other staff as are required for the purposes of the administration of this Act.”
- 29 S.179 of the FRM Act enables the Executive Director of Fisheries WA, by instrument in writing, to appoint a person to be an honorary Fisheries officer. It is noteworthy that, under s.180 and s.181, police officers have the powers of Fisheries officers and naval officers have the powers of Fisheries officers in dealing with foreign boats.
- 30 S.182 of the FRM Act gives Fisheries officers powers of inspection. S.183 gives them powers of entry onto land. S.184 and s.185 give them powers of entry and search of non-residential premises or residential premises in connection with an offence, and under s.186, there is a power of entry of tents, camps and unauthorised structures. Various warrants may be obtained by Fisheries officers pursuant to s.187 and s.188.
- 31 A Fisheries officer may require a person to provide, in certain circumstances, certain information, pursuant to s.189 of the FRM Act.
- 32 S.191 of the FRM Act prescribes a number of powers for Fisheries officers, including the right to require the production of documents and to examine them; to board boats and enter and search a boat or vehicle or a train or aircraft; to detain boats etc.; and under s.193, there is power to seize fish and vehicles, inter alia. There are also offences prescribed relating to providing false or misleading information to Fisheries officers or obstructing them.
- 33 Part 17 of the FRM Act prescribes legal proceedings which may be instituted by the Executive Director of Fisheries WA, a police officer, a Fisheries officer, or any other person authorised in writing to do so by the Executive Director.
- 34 Part 18 of the FRM Act makes provision for levying, and the creation of various funds. In particular, pursuant to s.238, the Fisheries Research and Development Fund, which is to be credited with fees and charges paid in respect of authorisations and exemptions, the register and services relating to commercial fishing, aquaculture and the processing of fish, as well as the management of fish habitat, protection areas or the Abrolhos Islands Reserve, rent, fees and royalties paid in respect of aquaculture, leases or executive licences or costs recouped from prosecutions relating to commercial fishing and sales of forfeited property, inter alia, as well as income derived from investment of monies forming part of the Fund as determined by the Treasurer and any other monies lawfully payable to the credit of the Fund, may be applied, inter alia, for a number of things prescribed in s.238(5) including—
- (a) scientific, technological or economic research;
 - (b) the exploration and development of commercial fisheries; or
 - (c) defraying the costs of the administration and management of commercial fisheries, inter alia.
- 35 The FRM Act is nothing but an Act to enable the Government, through these officers, to manage and regulate fish throughout this State and its waters and to assist the Commonwealth in Commonwealth waters to enforce its laws. Fisheries officers are officers who exist only for the purposes of that Act (and for other Acts such as the *Pearling Act 1990* (as amended)).
- 36 The statute, read as a whole, provides a prescription for the Minister and Fisheries WA and its officers, including Fisheries officers, to—
- (a) Conserve, develop and share the fish resources of the State for the benefit of future generations.
 - (b) Foster aquaculture, commercial and recreational fishing, not just commercial fishing.
 - (c) Manage the fisheries to that end.
 - (d) Regulate fisheries and fishing.
 - (e) Assist the Commonwealth in regulation.
 - (f) Prescribe for supervision, enforcement and penalties by Fisheries officers.
 - (g) Conduct research, exploration or development and to defray the cost of the administration and control of commercial fisheries.
- 37 They are, too, if it is needed to be said, “Government officers”, for the purposes of s.80C of the Act. It should also be noted that Fisheries officers are appointable as inspectors with powers of inspection, detention and enforcement under the *Pearling Act* (see s.35 and s.36 of that Act).
- 38 On a fair reading of the statute as a whole and with particular regard to those sections to which we have referred above, it is fair to find as follows—
- (a) That the Minister, the Chief Executive Officer and Fisheries WA have been given duties and obligations to conserve, develop and protect the fish resources of this State.
 - (b) That they have duties in supervisory management of commercial and recreational fishing and aquaculture.
 - (c) That they have duties to control foreign interests, to enforce the law, to monitor and to survey.
- 39 Primarily, in every sense of the word, they are to manage and conserve, share and develop this State’s fish resources for the benefit of the people of this State now and in the future.
- 40 A fair reading of the statute alone is enough to persuade the Full Bench that, in terms of the Full Bench in *Merchant Service Guild of Australia, Western Australian Branch, Union of Workers and Fisheries Department of Western Australia and The Civil Service Association of Western Australia Incorporated (Intervener)* (FB) (op cit), Fisheries officers are officers of the Crown appointed to carry out statutory duties to achieve the objects of the FRM Act and the *Fisheries Management Act 1991* (Cth). They are subject to the PSM Act as public servants. What they do to achieve those objects and discharge their duties would not, in our opinion, detract from the clear nature of their “employment”.

EVIDENCE AND WITNESSES

- 41 A number of witness statements were filed on behalf of the MSG and the s.72A(5) participants. These were filed by consent pursuant to orders and directions made on 5 September 2000 by the Full Bench.
- 42 Evidence of witnesses was adduced on oath or affirmation or by written statement filed and so used by consent and by direction of the Full Bench.
- 43 In the case of the MSG, there was evidence adduced from the following witnesses—
- (a) Mr Lawrence Robert Poole, Senior Fisheries Officer with 28 years service, a leading member of the Fisheries Officers’ Sub Association (hereinafter referred to as “FOSA”) and former President or Vice President of the MSG
 - (b) Ms Natalie Patricia Ettridge, Industrial Relations Officer with MSG
 - (c) Mr Bruce McLean Webber, Senior Fisheries Officer, Master, Patrol Vessel, employed since 1974
 - (d) Mr Robert John Breeden, the Acting Manager, Central Support Service at the Fisheries Department and Secretary/Treasurer of FOSA
 - (e) Mr Michael Eric Fleming, Secretary of the AMOU
- 44 For the CSA, evidence was adduced from the following witnesses—
- (a) Ms Janice Lesley Blake, at all material times, an industrial organiser with the CSA
 - (b) Ms Patricia Mary Summerfield, a Senior Policy Officer with the Ministry of Sport and Recreation, but prior to 19 February 1998 for a period

- of four years, a Senior Policy Officer with Fisheries WA
- (c) Mr John Noel Dasey, an advocate and industrial organiser and then Senior Industrial Officer with the CSA from 1997 to the present
- (d) Mr David Alexander Robinson, the Secretary of the CSA since December 1993, and a member of the Federal Council and Federal Executive, as well as a Federal Vice President, of the CPSU
- (e) Mr Stephen Robert Adams, an inspector in the Department of Transport and member of the CSA
- 45 For the Executive Director of Fisheries WA, evidence was adduced from the following witnesses—
- (a) Mr David Edward Giles, Human Resources Manager, Fisheries WA
- (b) Mr John Grayden Looby, Manager Regional Services, Fisheries WA and an employee for thirty years
- (c) Mr John Charles Nicholls, Director of Strategic Planning and Policy at Fisheries WA
- (d) Mr Samuel Frederick Buick, Human Resources Projects Manager at Fisheries WA
- 46 In addition, a substantial number of documents was adduced in evidence.
- 47 We wish to say that the Full Bench has had substantial opportunity to see and hear important witnesses in the witness box and has carefully considered their demeanour and evidence.
- 48 Whilst we agree with the submission that Mr Poole's efforts on behalf of his fellow Fisheries officers have demonstrated laudable zeal, we are of opinion that his evidence was coloured at times by that zeal. Accordingly, where his evidence is in conflict with that of other witnesses, including Ms Blake and Mr Robinson, we prefer the evidence of the other witnesses. In particular, too, we found Ms Blake to be an impressive and competent witness whose evidence we accept. Mr Breeden, too, was a forthright witness and we prefer his evidence, where it was in conflict with that of Mr Poole.
- 49 There were submissions on behalf of the CSA and Fisheries WA that significant portions of the evidence, by written statement, of some witnesses for the MSG, including Mr Poole's, should be struck out. The Full Bench did not accede to those submissions, being firmly of the view that the evidence was better dealt with as a matter of weight.
- 50 There was, in the written statements and in other evidence, a great deal of evidence concerning constitutional coverage, unqualified legal opinions, some gratuitously offensive statements, some evidence dealing with matters which were questions for the Full Bench and not for the witnesses, some irrelevant evidence, and some argumentative evidence, to all of which, without detailing it, we would attach no weight.
- BACKGROUND**
- 51 Fisheries officers are appointed under the FRM Act and Part 3 of the PSM Act.
- 52 Exhibit 5, which is an employment information document provided to Fisheries officers, notes that Fisheries WA is responsible for managing the use and harvesting of fisheries resources at ecologically sustainable levels and managing the development of aquaculture in order to maximise the economic benefits to the State by conserving and protecting the State's aquatic ecosystems for the benefit of the present and future Western Australian community.
- 53 It asserts that Fisheries officers play a major role in the protection and conservation of Western Australian marine and aquatic resources by ensuring compliance with management rules through law enforcement, community education and "liaison with our clients". It is clear that successful applicants are required to work irregular hours at a range of locations throughout the State and that considerable time away from home may also be required.
- 54 In some instances, this involves living on departmental or other vessels. Fisheries officers are required to wear uniforms provided by Fisheries WA whilst on duty.
- 55 Their duties entail—
1. Law enforcement programmes requiring the apprehension and prosecution of offenders in field situations.
 2. Customer awareness and education programmes requiring the presentation of information to members of the public and community groups.
 3. Liaison with the fishing industry, community groups, members of the public and other Government agencies and advising on fisheries matters.
 4. Adherence to departmental policies, procedures and principles.
 5. Conducting marine and land based patrols.
 6. Operating four wheel drive vehicles and small vessels.
 7. Presenting evidence in a law court and serving summonses.
 8. Preparing and submitting written reports.
 9. Maintaining departmental boats, vehicles and equipment.
 10. Issuing licences and attending administrative duties.
 11. Carrying out surveillance patrols and travelling aboard aircraft from time to time.
- 56 Quite rightly, given the statutory structure as we have outlined above, the document asserts that Fisheries WA is responsible for managing the fish resources of this State for the benefit of the whole community, both past and present. Fisheries WA has a staff of around 300 which includes about 86-88 Fisheries officers presently. The Regional Services Division is staffed by approximately 80 Fisheries officers, eight of whom are funded by the Commonwealth to supervise Commonwealth fisheries management programmes (see the statutory scheme above), including responses to illegal foreign fishing vessel activities.
- 57 As well as the supervision of commercial fishing, it is clear from this exhibit that there is a rapid growth in the popularity of recreational fishing, the supervision of which is also part of the responsibility of Fisheries officers.
- 58 Fisheries officers are stationed at places all over the State, from Albany in the south to Broome in the north and at places such as Carnarvon, Fremantle, Geraldton, Esperance, Exmouth, Mandurah, as well as other places, with a number at the department's head office in Perth. We are satisfied with that evidence and so find.
- 59 There was substantial evidence from Mr Looby who has been a Fisheries WA employee for thirty years. His evidence was not seriously contradicted or shaken. There was some evidence from Mr Breeden and Mr Webber doubting his quantification of sea time worked, but they did not have access to the actual records of employment to which Mr Looby and his staff had access. We accept Mr Looby's evidence (see exhibit 33).
- 60 Key duties of Fisheries officers, as we find, are as follows—
- "Conducting law enforcement activities including surveillance, monitoring, investigation and prosecution of offenders.
- Delivering community and customer awareness programs including the management of volunteers and the presentation of information to client groups, the general public and the media.
- Liaising with the fishing and aquaculture industry, community and regional interest groups, members of the public and other agencies.
- Maintaining District Offices including management of staff and resources."

61 Key activities of Fisheries officers are as follows—

“Monitoring, Control and Surveillance—which covers activities such as air patrols land patrols, sea patrols, inspections of fish dealers, investigation of suspected offenders, prosecution and satellite vessel monitoring.

Advice and Education—which covers the provision of advice to clients and Agency staff, media liaison, assistance with development and delivery of community awareness information and programs, input into regional committees and management of the volunteer fisheries liaison program.

Administration—which includes management of staff, capital items and resources, office support, planning and development functions.”

62 Marine activities by Fisheries officers are as follows—

“8. Marine activities undertaken by Fisheries Officers are essentially for enforcement purposes to ensure compliance with the fisheries legislation. Vessels used by Fisheries WA are basically surveillance platforms required for monitoring and enforcement functions in the marine environment. The key at sea inspection activities are the inspection of fishing gear, monitoring of closed areas and auditing of pearl oyster quota requirements.

9. It is estimated from a total of 171,078 hours delivered by Fisheries Officers for 1999/2000 recorded in the Agency time sheet, 36,435 hours (21.3%) related to on water activities by Fisheries Officers. (See Attachment 2)”

63 The Seagoing Patrol Boat Business Unit carries out the following activities—

“ (i) Seagoing Patrol Boat Business Unit

11. The Agency operates 3 seagoing patrol boats (20m class) which are manned by 3 or 4 crew (total 10 officers) who are permanently appointed to the vessels and who operate and live onboard for periods between 8 and 20 days. Crew on patrol vessels average 150 sea days per year. Full-time seagoing officers constitute approximately 11-12% of the total number of Fisheries Officers and deliver approximately 50% of the total boat days for all Fisheries Officers. (my underlining)

12. Except for the actual crews of the patrol vessels very few Fisheries Officers would be involved at any significant level in watch-keeping or operations on vessels above 10m.

13. Patrol vessels are enforcement platforms which allows Fisheries officers to conduct marine monitoring, control and surveillance activities. All crew on the patrol vessels are Fisheries Officers and are either directly involved in fisheries enforcement operations or providing logistical support to other officers conducting such operations. These vessels are occasionally used for research purposes or servicing other Agencies’ at sea commitments which may include the transport of personnel and equipment.

(ii) Small Boat Operations (<10m)

14. The Agency operates boats which range from small 3m punts to 10m boats which have limited built in accommodation. This class of vessel mainly operates in inshore and protected waters and patrols are usually confined to day operations not involving over night accommodation on the vessel.

15. The key activities conducted from small boats are patrols to ensure compliance with the management legislation made under the FRMA. Limited research and other agency support activities are also undertaken.

16. The utilisation rate of this class of vessel is very low and on average small boats are used approximately 20 days/year with an

average engine hours of 3.5 hours/day. Patrol activity in small boats represents approximately 10% of the total days worked by Fisheries Officers not attached to the Seagoing Patrol Boat Business Unit. (See Attachments 3a and 3b)

(There must be availability, as Mr Poole asserted, to work on small vessels at sea.)

(iii) Accompanying Commercial, Charter, Naval or External Agency Vessels to Sea

17. In this role Fisheries Officers generally proceed to sea on vessels from other Agencies to conduct enforcement, monitoring or surveillance functions but are not responsible for the navigation, safety or operation of the vessel which is under the command of personnel external to the Agency. The use of seagoing vessels by these officers is mainly for the purpose of transport to their place of work. (ie the point where the enforcement activities are carried out).

18. The Australian Fishing Zone Unit, (AFZ Unit) which consists of 11 Fisheries Officers, operates within the 200nm Australian Fishing Zone off WA, Cocos and Christmas Island territories and Australian Sub Antarctic territories and are the only other group of Fisheries Officers with a requirement to conduct significant at sea patrol activity.

19. The AFZ Unit averaged approximately 43 days at sea/officer over the past two years which represents about 21% of the total annual days worked by those officers. (my underlining)

20. In respect to all other Fisheries Officers (excluding the AFZ and Patrol Boat Units) the level of at sea inspection on vessels other than Fisheries WA vessels is very low and is estimated to be less than 2% of total activity by Fisheries Officers. (my underlining)

64 The following Marine Qualifications must be held—

“21. All Fisheries Officers must hold marine qualifications to operate Agency vessels. The majority of the Agency’s vessels can be operated with a Small Boat Proficiency Certificate (SBPC) which permits the use of a vessel up to 10 metres within 5 miles of shore. This qualification does not require previous seagoing experience.

22. Historically the SBPC was not available and the minimum marine qualification was the Certificate of Competency as Coxswain (CCC). Consequently this qualification is held by most Fisheries Officers and reflected in Job Description Forms for Fisheries Officers. Whilst it is not essential that all Fisheries Officers hold marine qualifications above the SBPC, a CCC is either essential or desirable to operate the Agency’s 7-10 m vessels. For Occupational Health and Safety reasons it is desirable that officers hold marine qualifications above the minimum lawful requirement. For the 10m class of vessel the Master Class 5 Certificate is essential for the Master of those vessels in order to maximise the operational capability of those vessels.

23. The 23m PV “Walcott”, which is one of the Agency’s 20m patrol boats, requires the Master to hold a Master Class 4 and Marine Engine Driver Certificate Class 1. The other two 20m class PVs require a Master Class V and Marine Engine Drivers Certificate Class 2.”

65 Future trends in Fisheries Officers’ duties are as follows—

24. It is unlikely that there will be a significant increase in the level of at sea compliance duties undertaken by Fisheries Officers in the near future. This forecast is based on the Agency fleet remaining stable or further reducing through joint servicing arrangements with other marine based Agencies which allows for the sharing of marine assets.

25. The future focus on surveillance and enforcement activities with respect to the commercial industry will be away from expensive at sea patrolling and enforcement activities to the use of remote electronic satellite vessel monitoring of the commercial fishing fleet. National and international management trends are away from traditional input fisheries management (involving field compliance) to output or quota management (involving accounting for and auditing product through paper trails).
26. The development of the land based component aquaculture industry in WA will also result in an increasing demand on Fisheries Officers to ensure compliance with aquaculture license conditions.
27. Any future restructure with improved resourcing may allow an increase in the level of field services provided by Fisheries Officer but this will most likely occur in the recreational fishing area which has a focus on a community awareness and education role rather than dedicated at sea patrolling."
- 66 Provision and cost recovery of Fisheries WA Services are as follows—
- "28. Fisheries WA does not provide or trade goods or services to the fishing industry in a commercial sense. Fisheries WA provides management, research and compliance services on behalf of the State of Western Australia to meet the objectives of the FRMA.
29. The FRMA provides for statutory Ministerial Advisory Committees (MAC's) which are consultative mechanisms for the Minister for Fisheries. Most commercial fisheries have MAC's which provide a range of advice to the Minister including the level of management, research and compliance outputs necessary to sustainably manage the fishery.
30. There is no external contractual arrangement between the MAC's or the fishing industry with the Minister for the provision of Agency services. It is the Minister's prerogative and responsibility to determine the level of services provided to meet the objectives of the FRMA. (my underlining)
31. The cost of some of the services provided by Fisheries WA are directly recovered through licence fees from the authorisation holders of major fisheries. This includes a contribution to the Development and Better Interest Fund through a fee based on 0.65% of the gross value of the particular fishery. Fisheries WA operates under a *funder, purchaser, provider* model but this is an internal Agency model."
- 67 We accept Mr Looby's evidence as follows—
- That 62% of the time spent by Fisheries officers is spent in monitoring, control and surveillance.
 - That 9% of their time is spent in education and advice.
 - That 29% of their time is spent in other activities.
- 68 We would observe that, quite clearly, officers use boats to go to sea to carry out their duties as, no doubt, on land they use motor vehicles or aircraft perhaps.
- Marine Activities—
- That 13% of time is spent in sea patrols.
 - That 78% is spent in other activities.
 - That farm and nursery inspection takes up 2% of time.
 - That sea collection takes 1% of time.
- 63% of the vessels operated by Fisheries officers are 1 to 5 metre vessels, 28% are 5.5 to 10 metre vessels and 9% are 10.5 metre or more vessels.
 - In fact, 20 officers are responsible for putting in over 50% of sea time.
- 69 However, we accept Mr Poole's evidence that, because each officer is subject to transfer, it is more probable than not that the officer cannot avoid carrying out duty at sea. It is not clear that this would involve a great deal of time, however.
- 70 It was asserted by some witnesses that it is necessary that Fisheries officers have a Marine Competency Certificate to enable them to master craft, but that is no longer an indispensable requirement, according to the latest job description form, as we find (see exhibit 21A-21D). There is, however, competence required in small boat handling. There are a number of large patrol vessels owned by Fisheries WA in excess of twenty metres in length, but only twenty-one persons man these, although other officers may, from time to time, be required to work on them. These are ocean going vessels, as well as a large number of small craft which are, of course, used and hence the use of a Small Boat Competence Certificate. It is quite clear that, whilst a Certificate of Competency is required for the operation of large vessels, there is no competency requirement for all officers to hold such certificates.
- 71 It is clear, and Mr Poole admitted it, that for some officers, 100% of their time is spent on land (see page 250 of the transcript (hereinafter referred to as "TR")). Fisheries officers carry out duties at sea and on land.
- 72 As was admitted with commendable honesty by Mr Webber (see page 276(TR)), and as Mr Poole effectively admitted, as the statutory provisions and all of the evidence reveal, the overwhelming flavour (and, indeed, nature) of the duties of Fisheries officers are those of public service officers acting on behalf of the Crown. (The nature of the funding, which is departmental funding, is quite irrelevant to that fact.)
- 73 Accordingly, if, as Mr Webber said in evidence, that his management had said that Fisheries officers are a service industry (one assumes for commercial fisheries) and the service is not provided, they are out of a job (see page 276(TR)). That is an entirely erroneous assertion. The officers' sole role is, according to law and their lawful duties, to carry out their functions as officers. The reason for their existence is two Acts of Parliament.
- 74 As Ms Ettridge admitted, Fisheries officers cannot be considered part of the Mercantile Marine. Their duties are plainly governmental and not carried on for profit (see page 314(TR)).
- Costs Recovery**
- 75 Something was said about the costs recovery concept under which participants in the six major commercial fisheries pay for the full identified recoverable costs of managing these fisheries and the participants of all minor managed commercial fisheries contributed to the costs of managing their respective fisheries, based on a percentage of the gross value of catch for the particular fishery. The cost recovery policy appears in a Fisheries WA statement (see exhibit 4—LP-2).
- 76 The State Government, as part of this arrangement, has agreed to—
- Contribute to the costs of managing minor fisheries, the recreational fishing programme and the fish habitat management programme.
 - Meet the costs not recoverable from the major commercial sector.
 - Underwrite costs recovery during the implementation phase within specified monetary limits.
- 77 It was also said that the Department was moving to provide services on a full cost recovery basis. It is noteworthy that the State Government undertook to underwrite costs of carrying out functions of Fisheries WA which were not met by costs recovery in relation to commercial fisheries, which of course one would expect to happen. That, of course, highlights the obvious, which was also adverted to by Mr Nicholls in evidence.
- 78 The Minister of the day and the department and its officers are charged with duties and obligations and responsibilities under the FRM Act. They are answerable to Parliament ultimately. Thus, if costs recovery funding were not used or was not available, there would have to be other Government funding and/or other means used to raise revenue.
- 79 In addition, the licence registry operates as a separate business unit and, therefore, a separate range of service

fees and charges to meet the estimated transaction costs also applies.

- 80 It is clear from the evidence of Mr Looby and others that only a small amount of time is spent at sea. It is also, however, clear that the regulatory duties of Fisheries officers take them all over the State and into Sub Antarctic waters. The overwhelming evidence was that there was no involvement by Fisheries WA in commercial or trading activities. We so find (see the evidence of Mr Looby, Mr Nicholls, Mr Breeden and Mr Webber).

Industrial Representation—Awards and Agreements Negotiations

- 81 In 1938, a Public Service Agreement was entered into which provided for the payment of overtime and allowances, including camping allowances for all permanent public servants who were remunerated through a succession of public service allowances agreements. There are various agreements which are descendants of that agreement and which have been referred to in this case.
- 82 The *Public Service Award* 1992 covers Fisheries officers. There is also what seems to be the perennial question of commuted overtime allowances and the adequacy or otherwise. The *Public Service Allowances (Fisheries and Wildlife) Award* 1990 also applies.
- 83 The CSA has been a party to these awards for some years. Indeed, it has been a party to the 1938 agreement and its successors since that date. The MSG has never been a party in this Commission to awards or industrial agreements on behalf of Fisheries officers. The CSA has not only been a party to the relevant awards and agreements since 1938, but has played a major part in developing them.
- 84 Fisheries officers have remained eligible to be members of the CSA for many years. Indeed, a large number of them remained members until April/May, 1996 when a large number resigned and purported to join the MSG.
- 85 Whilst they purported to remain members of the CSA, the Fisheries officers, represented by Mr Poole, had a separate organisation which, as we understand it, purported to remain within the CSA until the resignations of 1996, called the “Fisheries Officers’ Sub Association” (FOSA), of which Mr Poole has been an officer for some time and which has continued to represent Fisheries officers on a de facto basis.
- 86 For the Fisheries officers, there have been ongoing issues involving seagoing (victualling) allowances which reflect the actual costs of living away from home and which have not been maintained in relation to camping allowances on which they were originally based, and the “hard lying allowance” which had not been reviewed regularly, in any event, since its inception in 1982.
- 87 The awards are said, at least by Mr Poole in evidence, to have failed to remedy the problem which Fisheries officers say exist in relation to commuted overtime allowances. Thus, as it is alleged, Fisheries WA is “the net benefactor of thousands of hours of unpaid toil which has been regularly supplied by Fisheries officers working under direction supervision. Fisheries WA benefits from the commuted overtime arrangements because it regularly has the advantage of unpaid work hours or work at rates of pay which are at less than ordinary time.”
- 88 There was, as a matter of evidence, a series of increases in the seagoing allowance from 1983 to 1996, totalling a 65% increase, effected by the CSA which we accept as satisfactory, despite Mr Poole’s assertion to the contrary. We should add that it was a complaint of Mr Poole that there were no wage increases before the 1996 EBA for some years. However, we accept Ms Blake’s and Mr Dasey’s uncontroverted evidence that this was so in the early 1990’s because of the operation of the Wage Fixing Principles. Their assertions were not challenged either in cross-examination nor by submission. In any event, we do not accept, on the evidence, that this was due to CSA inaction.
- 89 It is clear that difficulties with the commuted overtime allowance are not readily resolvable. Whether this can be

resolved by variation to the *Public Service Allowances (Fisheries and Wildlife) Award* 1990 or whether such a variation is achievable is not clear to me.

- 90 By virtue of s.26A of the Act, evidence of what is contained in or the existence of any workplace agreement (as defined) cannot be received or admitted in evidence by the Commission.
- 91 It was the evidence, which we accept, that these matters were to be considered in relation to the negotiations for the 1996 EBA.

The 1996 EBA

- 92 During 1995 and early 1996 when there were negotiations for an enterprise bargaining agreement, later entered into, as the “*Fisheries Department of Western Australia Enterprise Bargaining Agreement* 1996” (76 WAIG 1818) with a duration of 18 months (being registered on 14 May 1996) (hereinafter referred to as “the 1996 EBA”), and followed in 1999 by the “*Fisheries WA Enterprise Bargaining Agreement* 1999” No PSG AG 1 of 1999 (79 WAIG 1942) (hereinafter referred to as “the 1999 EBA”) which replaced the 1996 EBA, being registered by order dated 6 July 1999.
- 93 Prior to the entry into the EBA in 1996, there was a single bargaining unit (hereinafter referred to as “the SBU”) put in place in Fisheries WA which consisted of a number of members. Fisheries WA was represented by senior officers of the department. The CSA was represented by Ms Blake who gave evidence in these proceedings, as she was then the industrial officer for Fisheries WA employees. There was a total of five workplace delegates under the CSA rules representing 276 employees of whom 165 were union members, and representing the five divisions within the Department, including Fisheries officers. Mr Poole was one of the delegates, representing Fisheries officers, as was Ms Summerfield, representing policy and management employees. In due course, an EBA was negotiated and approved by the SBU.
- 94 At that time, according to uncontroverted evidence, there were 65 Fisheries officers amongst the CSA members in Fisheries WA. All other Fisheries WA employees were then covered by the *Public Service Award* 1992, as were Fisheries officers and technical officers who were also covered by the *Public Service Allowances (Fisheries and Wildlife) Award* 1990.
- 95 It was asserted by Mr Poole that there was little affinity or empathy between the field staff, namely Fisheries officers and technical officers, and the remainder of the SBU, although, as we observe, all were CSA delegates and, contrary to that view, on the evidence, Fisheries officers’ concerns took up and were permitted to take up a great deal of the time of the SBU deliberations.
- 96 There was strong and uncontroverted evidence, and we are satisfied and find that the concerns of the Fisheries officers and, to some extent, the technical officers to rectify problems which they had with the commuted overtime arrangements were permitted by other delegates to take up a large part of the proceedings of the SBU. Mr Poole asserted that there was no support from management or the CSA, or other delegates, for attempts to remedy what he called the ambiguous nature of the commuted overtime arrangements.
- 97 However, the overwhelming evidence, as we have said, was that the delegates allowed a great deal of time to be spent in the SBU deliberations in the airing and discussion of the Fisheries officers’ concerns. We so find.
- 98 Both the CSA and the employer had said that the EBA process was the appropriate mechanism to make changes before the commencement of negotiations. Mr Breeden said that either a workplace agreement or an EBA were the only vehicles available to resolve the matters which they wished to be resolved.
- 99 There was major disagreement, too, in relation to Clause 22—the seagoing allowance, and according to Mr Poole, management said that these negotiations would be taken off the table if he continued to hold the process up and he was given no support by other delegates in relation to this matter. However, that matter was resolved.

- 100 In the end, a ballot was held of all Fisheries WA CSA members which resulted in the EBA, as negotiated, being agreed to. (We will refer to that ballot in more detail later.)
- 101 According to Mr Poole's evidence, the parties failed to make changes to working conditions by award variation, it was impossible to make changes through the process of the SBU via the EBA, whilst represented by the CSA, because Fisheries officers did not have the numbers, and thus, the only answer was to leave the CSA and have their own autonomy under an award with another union. He said that it was the view of Fisheries officers that, if they did not do this, then it was inevitable that their working conditions would not be protected because they would gradually be eroded by successive trade-offs under the EBA process.
- 102 Mr Poole asserted that the CSA had demonstrated a poor record and lack of accountability in its representation and service to members who are Fisheries officers, that Fisheries officers' working conditions and arrangements are not fair or equitable in comparison to other public sector employees and they are clearly disadvantaged, that parties to the awards and agreements which cover Fisheries officers have demonstrated a track record of eroding working conditions by means of inequitable and unfair wages trade-offs, and that it is not in the "public interests" of the community or Fisheries officers that the working conditions, arrangements and representation are unfair and inequitable. He said that, over the last 25 years, the CSA had failed in its obligation to Fisheries officers to represent and protect their working conditions. Those allegations were denied in evidence by Mr Robinson, Mr Dasey and Ms Blake. There was evidence, too, from Ms Summerfield who said that Ms Blake was very professional.
- 103 It is quite clear, and indeed there was drafted a separate EBA (exhibit 9) which took account, inter alia, of particular Fisheries officers' concerns, that Fisheries officers required a separate EBA which covered them alone. That draft was produced at a SBU meeting. Fisheries WA would not agree to a separate EBA and required an EBA which covered all of its "employees". That is a stance to which Fisheries WA adhered throughout the negotiations and afterwards and to which still adheres.

FOSA Resolution to Resign

- 104 On 8 November 1995, at the Annual General Meeting of FOSA with 48 members present, a secret ballot was conducted. (We are not aware what numbers voted for the resolution.) As a result, a resolution was passed in the following terms—

"We the undersigned Fisheries Officers wish to make it quite clear that our special and unique workplace has decided and resolved between us the following issues which will govern our entry into a "whole of the Dept." Enterprise Bargaining Agreement (EBA).

- (1) Clause 6 of the Fisheries Dept. Draft EBA dated 3-11-95 shall be altered to allow Fisheries Officers to automatically withdraw from the agreement at the term of expiry unless written notice is provided to the employer to WAIRC to continue.
- (2) In the absence of Single Bargaining Representatives (SBU) agreeing to the amendment of Clause 6 in accordance with our workplace vote, Fisheries Officers insist that the CPSU/CSA suspend negotiations to include our workplace in any such agreement. Alternatively, the CPSU/CSA shall pursue a parallel EBA for Fisheries Officers which would treat them as a discreet group under their own EBA.
- (3) If the CPSU/CSA, Fisheries Dept and other SBU representatives decide to ignore the wish of Fisheries Officers in accordance with clause 1 & 2 of this motion, we as a group have decided to resign on mass(sic) from the CPSU/CSA and appoint our own bargaining agent to negotiate a collective workplace agreement with the employer or continue with EBA negotiation on the SBU represented by another

union who will have the coverage of our resigned membership at the negotiating table."

(See exhibit 4—LP12.)

- 105 This resolution was communicated to the CSA. According to the evidence of Mr Robinson, and there is no doubt of this fact, this caused a great deal of concern to the CSA because the resolution, if acted upon, meant a substantial loss of membership.

Meeting—Robinson, Poole and Blake—27 November 1995

- 106 As a result, Ms Blake and Mr Robinson met Mr Poole to discuss this problem on 27 November 1995.

- 107 Mr Poole reported after that meeting, in a memorandum dated 7 December 1995 to FOSA members (see exhibit 15), a report signed by the President of FOSA, Mr Tony Lemmon, that when he met Mr Robinson—

"Dave Robinson was firm in his view and would not renege (sic) his decision and decided arbitrarily to lock Fisheries Officers into the proposed EBA without our consent and contrary to our motion passed on the 8th of November AGM.

In view of this course of action by the CPSU/CSA, who have the added support of the Fisheries Department on the matter arrangements are in progress to seek an alternative union to represent us in the future and so that our working conditions will be protected from future trade-offs. **At the moment you are asked not to resign from the CPSU/CSA.**"

- 108 Since we accept Ms Blake's and Mr Robinson's version, reluctantly agreed to by Mr Poole in cross-examination, it is quite clear and we find that that version of events does not reveal all that occurred or was said and, indeed, misrepresents the position.

- 109 Mr Robinson's evidence, eventually admitted by Mr Poole, was that at that meeting he, Mr Robinson, offered to go to the Department and ask them to agree to a separate EBA for Fisheries officers, notwithstanding that this was against CSA policy, or to a separate schedule in the whole of department EBA to refer to Fisheries officers. He did make that approach to Mr Peter Rogers, the Chief Executive Officer of Fisheries WA, but the Department would not agree to either proposal. Further, as we find, Mr Robinson told Mr Poole that, if the Fisheries officers voted in a block, there was a good chance that the EBA would not be approved. Significantly, that advice was not passed on to Fisheries officers, either.

- 110 Whilst Mr Poole was aware of this, he admitted that he did not advise his colleagues in his circular of these advices or occurrences, or at all, which was, it is clear, a serious and inexplicable omission. It was after that, that Fisheries officers resigned en masse from the CSA and purported to join the MSG. Indeed, the resignations occurred two weeks after the ballot in relation to the 1996 EBA.

- 111 Eventually, the 1996 EBA was approved by the SBU. It was, as Fisheries WA insisted, a whole of Department EBA covering all employees. It was the best they could get, Mr Poole said, and he did not dissent. It did not draw trenchant criticism from Mr Breeden and Mr Webber. Significantly, there were no resignations until after its approval.

Ballot

- 112 On 20 March 1996, a ballot was held so that members of the CSA in Fisheries WA could approve or disapprove the draft EBA which had been negotiated between the employer and the CSA representatives and earlier approved by the SBU.

- 113 The organisation of the ballot was in the hands of Ms Blake.

- 114 The question asked to be answered "yes" or "no" was—
"I accept the provisions of the proposed Enterprise Bargaining Agreement for Fisheries Department of Western Australia including the proposed pay increases."

(See exhibit 26—JB24.)

- 115 We accept Ms Blake's uncontradicted evidence that 175 ballot papers were issued. 56 of the 175 members were

Fisheries officers, namely 31% of the total. 98 ballot papers were returned. None were marked "informal". The total vote cast was by 56% of the membership. Of the votes cast, 80 were "yes", 18 were "no". 82% voted "yes". Only 18% were against the EBA.

- 116 There was a vote of overwhelming approval for the EBA in numbers and percentage. A reasonable inference is that those who did not vote were not opposed or were indifferent to the result. It is quite wrong to say that a high percentage did not approve because they did not vote. A high percentage of those who took the trouble to vote which, after all, determined whether the 1996 EBA was to be entered into, voted to approve the EBA.
- 117 Significantly, there is no evidence that the Fisheries officers wished to oppose the EBA, voted accordingly, or had made any decision to do so.
- 118 On 12 March 1997, when 69 Fisheries officers were members of the MSG, an application was made by the MSG for an award for Fisheries officers which application was dismissed by the Commissioner, constituted by a single Commissioner, on the basis that there was no constitutional coverage in the MSG (see *Merchant Service Guild of Australia, Western Australian Branch, Union of Workers and Fisheries Department* 78 WAIG 2691).
- 119 Subsequently, that decision came before the Full Bench on appeal and, on 18 September 1998, the Full Bench upheld the decision that there was no constitutional coverage by the MSG of Fisheries officers and dismissed the appeal (see 78 WAIG 3648) as we have said above.
- 120 However, Fisheries officers have not remained members of the MSG. (42 members, less than half, voted not to go back to the CSA.) Notwithstanding that, of course, because the CSA has coverage of them, they have benefited from the 1996 and 1999 EBA's.
- 121 In recent times, Fisheries officers have been negotiating workplace agreement coverage.
- 122 Before the Full Bench was a petition (exhibit 25—RJB-1) signed by 84 Fisheries officers seeking to be granted coverage by the MSG collected by Mr Breeden in early 2000.
- 123 According to Mr Poole, there was an alleged threat by Mr Looby that, if they did not come off the award, he would force them onto workplace agreements. We would also add that we are not satisfied, if it is at all relevant, that Mr Looby threatened Mr Poole and Fisheries officers in the course of negotiations. (We prefer Mr Buick's evidence, which contradicted Mr Poole's.)
- 124 The CSA and Fisheries WA negotiated an EBA which was registered in the Commission on 6 July 1999 (79 WAIG 1942), as we have observed, and which attracted no or little criticism in evidence.

Did the CSA achieve all that could reasonably be achieved for Fisheries officers?

- 125 We are satisfied and find that Mr Poole took a prominent part in all SBU discussions and the concerns of Fisheries officers were given a generous amount of time in the deliberations of the SBU. Mr Poole advised the SBU meeting of 12 September 1995 that Fisheries officers wanted to be a separate group under the EBA (see exhibit 26 JB-14). Ms Blake was not of opinion that this was a problem, given that there were separate productivity initiatives for the different divisions.
- 126 We also find, accepting Ms Blake's evidence, that Mr Looby and Mr Poole met and negotiated, for the purposes of the EBA, a hard living allowance for Fisheries officers of \$27.20 which was agreed to by Fisheries officers and included in the EBA when it was approved.
- 127 Mr Poole, on 7 November 1995, sought that the EBA be amended to allow Fisheries officers to withdraw automatically from the EBA at the expiration of its term (see exhibit 26—JB-16), which was not agreed to.
- 128 Not only were Fisheries officers' concerns raised and considered in the SBU, but Mr Robinson, Mr Eddie Rea, Ms Blake's senior at the CSA, met Mr Rogers, Mr Peter Millington and Mr Giles on 20 November 1995 to specifically discuss Fisheries officers' concerns. At that meeting, both Fisheries WA and the CSA confirmed their

views that their preference was for a whole of department EBA.

- 129 Mr Giles expressed the view that, alternatively, Fisheries officers could stay on the award and have no EBA, or enter into workplace agreements. Mr Poole supported at the SBU meetings the 11.35% salary increase (even though he told Mr Robinson on 27 November 1995 that, if they could not get a separate EBA, Fisheries officers would remain on the award).
- 130 The fact of the matter is that at no time did Mr Poole withdraw from the SBU and, further, the resignations of Fisheries officers only occurred after the 1996 EBA, with the increases which it brought, was approved. There is no evidence that Fisheries officers voted against it as Fisheries officers.
- 131 There is also no evidence of any expressed FOSA policy that the EBA should be voted against. There was no FOSA policy amended to forgo the benefits of the 1996 EBA and to remain subject to the award only, nor is there any evidence that anyone took such a course. There was no policy decided upon by FOSA to seek to enter workplace agreements. Mr Poole's own evidence was that the 1996 EBA was the best which could be achieved (see page 110(TR)). He accepted, too, the allowance and negotiated, saying that \$27.20 was a good result for those entitled to a victualling allowance.
- 132 Mr Breeden and Mr Webber's evidence was generally that the trade-offs contained in the EBA were minor, a view supported by Ms Summerfield. We so find.
- 133 Further, the evidence unequivocally was that, since Fisheries WA would not negotiate a separate EBA (Fisheries WA could be said to be adamant about this), and the clear inference from that, therefore, is that Fisheries officers alone or through any other organisation could not have done any better. Further, when they did seek their own award by application of the MSG, the MSG was specifically instructed not to seek an award in different terms from their existing conditions of employment (which were governed by the 1996 EBA), and did not do so.
- 134 We are satisfied that Ms Blake played a competent and satisfactory part in the negotiations. We are also not satisfied that the CSA, at least from the early 1990's, allowed work conditions to be eroded, generally, and for reasons which we express hereinafter.
- 135 The 1996 EBA—
- (a) Achieved an increase in salary of 11.35%, 7% of it not being subject to trade-offs.
 - (b) Was limited to the following trade-offs—
 - (i) Removal of two additional public service holidays for Easter and New Year.
 - (ii) Three days short leave per year removed and replaced with two days bereavement leave per year.
 - (iii) Annualised leave loading.
 - (iv) An increase from a 37½ hour week to a 38 hour week.
- 136 Clause 22 made provision for seagoing staff as follows—
- (a) A hard living allowance increased from 37c to 40c per hour at sea.
 - (b) An Australian Fishing Zone ("AFZ") allowance was applied to AFZ patrols in lieu of the hard living allowance.
 - (c) The Victualling Allowance was increased.
- 137 In any event, as Mr Breeden admitted, only about 20 officers in all would have any great interest in the Victualling Allowance and the hard living allowance (see page 343(TR)). It was admitted in evidence by Mr Breeden that increases of this type could only be achieved by the EBA process.
- 138 The CSA, by Ms Blake's evidence and Mr Robinson's evidence, asserted that it had done all it could to represent Fisheries officers because—
- (a) There had been in operation a seagoing allowance (negotiated by Mr Poole to replace the

victualling allowance) and the CSA obtained parity with the camping allowance, as enjoyed by Marine and Harbour employees at the Department of Transport.

- (b) Dealt with all Fisheries officers' concerns which dominated the issues or concerns of the four other CSA divisional groups in the SBU.
 - (c) Included EBA separate productivity initiatives for specific groups.
- 139 There were complaints in evidence that matters such as merit promotion and other matters raised in the draft EBA were not included in the 1996 EBA. That item and the transfer of staff question were, however, attended to. Fisheries WA undertook to include it in its policy. (See also the justification of the EBA exhibited to Ms Blake's statement (JB-23).) Other matters were already covered by the award.
- 140 Again, there is no evidence of any difficulty since. As to leave payments, we accept Ms Blake's evidence that Mr Poole did not wish to pursue them in the EBA negotiations.
- 141 As to commuted overtime, we accept Ms Blake's evidence that Mr Poole and his colleagues would not depart from the existing award position. Accordingly, that matter, we infer, could not be advanced further at that time.
- 142 There was a complaint that there was no provision in the agreement for increasing allowances. However, the agreement was of 18 months' duration and was replaced by the 1999 agreement, which attracted little or no criticism in evidence or submissions.
- 143 We do not accept that the CSA represented Fisheries officers poorly or at all in the 1996 EBA negotiations. In fact, we are satisfied, for the reasons which we have expressed, that they were strongly and professionally represented, particularly by Ms Blake (and see Ms Summerfield's evidence).
- 144 Further, having regard to Mr Dasey's unchallenged evidence, the 1999 EBA provides increases of certain rates in the 1996 EBA being a total salary increase of 7%, and increases in the seagoing allowance of 8.319% and the general hard living allowance from 40c to 43c, whilst monitoring the AFZ hard living allowance.
- 145 We accept Mr Dasey's evidence that, in the 1990's and into this century, the CSA has, on an individual and group basis, devoted a relatively high level of resources to pursuing the interests of Fisheries officer members (of whom there are few).
- 146 Fisheries officers, by the EBA, are paid at a rate of 9% higher than the current Public Service Award rates. By 30 June 2001, they will have received 18—35% in salary increases, with small trade-offs. The second EBA covers 64 Fisheries officers.
- 147 There is, in the end, much to be said for the submission that it was not entirely reasonable that Fisheries officers should abandon membership of an organisation which had achieved the salary and other increases which the CSA had in 1996 and which was the occasion for Mr Poole, who had not told his members of Mr Robinson's advice and efforts, to obtain office in the MSG. The allowances issue, when boiled down, related to an issue involving 25% of the membership whose allowances in the 1996 EBA had been adequately increased anyway.

CONSTITUTIONAL COVERAGE

- 148 We wish to deal with the question of constitutional coverage.
- 149 As we have observed, the CSA, it is common ground, has and has had constitutional coverage of Fisheries officers for many years pursuant to its rules. What is now contended is that the MSG have constitutional coverage of Fisheries officers pursuant to Rule 3 of its rules, which we have reproduced above.
- 150 This issue has been comprehensively decided in *Merchant Service Guild of Australia, Western Australian Branch, Union of Workers and Fisheries Department of Western Australia and The Civil Service Association of Western Australia Incorporated (Intervener)*(FB)(op cit) by the

Full Bench of this Commission. In that case, the Full Bench held that the eligibility rule of the MSG did not extend to Fisheries officers and that the MSG did not have constitutional coverage of them. That was an appeal by the MSG against a decision by a single Commissioner to dismiss an application by the MSG for an award to cover all Fisheries officers who commanded, were officers of, or who used patrol vessels and other vessels in the course of their employment (with the exception of trainees and Level 1 Fisheries officers). The CSA was heard as an intervener at first instance and on appeal.

- 151 This application does not have those exceptions, but it does not, as we understand it, encompass honorary Fisheries officers.
- 152 At that time, it was common ground that all Fisheries officers held certificates of competence to navigate vessels, such certificates being said to be issued under the *Marine Act* 1982. The Full Bench, as the Commissioner at first instance had, construed the eligibility Rule 3, according to the principles laid down in the authorities listed in its reasons, as a legal document in the context of the whole of the rules and giving a liberal interpretation (see page 3648 of that decision).
- 153 Since it is relevant to the submission that the Fisheries officers are part of a dependent service of the Mercantile Marine and therefore covered by Rule 3, we will summarise what the Full Bench held in that case (see pages 3649-3650)—
- (1) That Fisheries officers held certificates of competency within the meaning of Rule 3.
 - (2) That the Mercantile Marine is the vessels of a nation engaged in commerce, the officers and crews of merchant vessels or the shipping collectively employed in commerce.
 - (3) That commerce is the interchange of goods or commodities especially on a large scale between different countries (foreign countries) or between different parts of the same country.
 - (4) That, as a matter of fact, the employees who are said to be covered by Clause 3, namely Fisheries officers, are employed in a Government department charged by the Parliament by statute to effect, through its officers, the management and conservation of fish in Western Australian waters, and the regulation of fish and fishing to achieve certain objects in eco farming, commercial and recreational fishing and aquaculture.
 - (5) That their functions are in supervision, education, management, inspection, liaison and enforcement.
 - (6) That police officers and naval officers, as well as Fisheries inspectors, have powers of Fisheries officers in certain circumstances (see s.180 and s.181 of the FRM Act).
 - (7) There is no evidence, the Commission held, that they are required to discharge duties in relation to merchant vessels.

(Note that the only definition of merchant ship in *The Germania* [1917] AC 375 at 378-379 PC, as follows—

“A vessel which is described in the claim as a vessel of no value or utility for any commercial purpose, nor adaptable for such purpose, and not any part of the commercial resources of the enemy, is not in any sense a merchant ship.”

does not appear completely apposite.)

- (8) The Full Bench held that the Commissioner found correctly that Fisheries officers were not, on the evidence, at all engaged in using vessels engaged in commerce, or providing officers or crews for vessels engaged in commerce. That there was no evidence that Fisheries WA, officers, crews or the subject employees bought, sold, traded or carried goods for that purpose or profit.

- (9) That this was not the function of Fisheries WA nor, on the evidence, of patrol vessels of which Fisheries officers were officers or crew members.
- (10) That Fisheries WA's activity is and was, on the evidence and the prescription of the FRM Act, plainly governmental and not carried on for profit; nor do they carry on trade or commercial activities.
- (11) That there was no engagement by Fisheries WA and/or Fisheries officers in the interchange of goods or commodities, especially on a large scale between Australia and other countries or different parts of Australia.
- (12) That there was no evidence that Fisheries WA or Fisheries officers, or Fisheries WA vessels or vessels crewed by Fisheries officers, were engaged in commerce.
- (13) That Fisheries officers were not members of a dependent service, as defined (see page 3649), because their service bore and bears no relationship to the Mercantile Marine.
- (14) That Fisheries WA is not a subordinate part, a dependency, an appurtenance of, or subject to the Mercantile Marine.
- (15) That, based on the evidence, the statutory definition and prescription and its prescribed functions and actual operations, the same observation should be made. We also quote from that decision the following—
- “The Fisheries Department plays no part nor does it assist the Mercantile Marine in the transport of goods by way of commerce, nor does it assist, facilitate the role of, form an adjunct to or contribute to the function of the Mercantile Marine or its officers and crews. The function of its employees is prescribed by the FRM Act. Their role is so defined, and includes, as I have observed, no participation in commerce, as I have defined it above. Their role bears no relation to the Mercantile Marine or its function or role, as I have defined it above. They carry out functions prescribed by the Parliament of Western Australia in relation to fish within the waters of that State, and the conservations, administration and supervision of fish and the supervision, etc of those engaged in the fishing industry. (The FRM Act so prescribes and there is undisputed evidence to that effect.)
- That fisheries officers are, as a matter of evidence, required to operate vessels and to have the relevant certificate of competency is and was of no significance, given the evidence and given the plain words of Rule 3. It would be surprising if, in fact, it were not the case that such certificates were required and that the duties involved the operation of vessels and boats, since the work of fisheries officers is performed, in part, upon the sea, as a matter of necessity.”
- (16) That Rule 2(11) of the MSG's rules, if it were to be adverted to, supported this view.
- 154 It was submitted that because the cost of employing Fisheries officers to carry out their statutory functions in relation to some commercial fisheries, is collected to a substantial extent, does not at all render Fisheries WA part of or dependent upon the Mercantile Marine.
- 155 How Fisheries WA collects monies or whether it does at all is a matter for it and for the Minister. In the end, it is a matter for Parliament. Fisheries WA and the Minister are required to carry out the functions and to advance the objects of the FRM Act as Parliament has prescribed.
- 156 The fact that some commercial fisheries refund to Fisheries WA some of its costs does not mean that Fisheries WA is dependent upon commercial fisheries so as to make it part of the Mercantile Marine. That is merely a funding measure as the collection of licensing fees or the imposition of a levy is. It does not mean, as someone is said to have informed Mr Breeden, that Fisheries officers are part of the service industry to private commercial fisheries or any other persons engaged in pearling, aquaculture, recreational fishing or commercial fishing.
- 157 There was no evidence that Fisheries WA or Fisheries officers are engaged in trade or commerce, as defined in *Merchant Service Guild of Australia, Western Australian Branch, Union of Workers and Fisheries Department of Western Australia and The Civil Service Association of Western Australia Incorporated (Intervener)*(FB)(op cit). Indeed, there was a preponderance of evidence, which we accept, to the contrary.
- 158 Fisheries officers are persons who are appointed under the FRM Act to carry out, on behalf of the Crown as prescribed by statute by the Parliament of this State, duties in supervision, enforcement, conservation, prosecution, education and all other duties which, by virtue of the law placed on them, achieve the objects of the FRM Act and its other prescriptions. It is wrong to assert, because Fisheries officers are officers of the Crown, that they provide dependent services to the Western Australian commercial fishing industry. They are appointed for the purposes of the FRM Act and for no commercial purpose. They carry out functions and duties lawfully conferred on them.
- 159 If it were necessary to say so of the evidence of their involvement in land patrols, we would add that the law enforcement duties including coercive powers including arrest, seizure and forfeiture, administration, etc., and the small numbers of officers required to go to sea (which is not surprising, given that fish exist in rivers, lakes and close to the coast) is evidence of how these acts are achieved. Their assistance to the Commonwealth as regulators and inspectors on naval vessels exemplifies this. (It is not insignificant that naval and police officers sometimes carry out some Fisheries officer functions.)
- 160 As was said in evidence and is obvious, naval vessels, larger patrol boats and small boats are not mere platforms (or vehicles) as are four wheel drive vehicles, to enable Fisheries officers to carry out their duties of which there is a plurality. Their duties are not necessarily even marine, although some are performed at sea, but they are performed in courts, on land, in administration, near the coast, in the ocean, at pearl farms, where there is aquaculture (at sea or inland), where there are rivers and lakes.
- 161 If it were necessary, there is now evidence of this fact by the fact that small boat handling certificates are sufficient and certificates of competency are not compulsory.
- 162 If one applies *Parker and Son v Coastal District Committee Amalgamated Society of Engineers' Industrial Association of Workers* 6 WAIG 377 (“Parker's Case”), the common object to be attained is that of the obligations thrust on employer and employee by the FRM Act and that is the “industry” in which they are engaged.
- 163 There is no evidence which enables this case to be distinguished from the decision of the Full Bench in *Merchant Service Guild of Australia, Western Australian Branch, Union of Workers and Fisheries Department of Western Australia and The Civil Service Association of Western Australia Incorporated (Intervener)*(FB)(op cit). Neither Fisheries WA nor Fisheries officers are engaged in the merchant service or any dependent services. There is no constitutional coverage of Fisheries officers conferred by the MSG rules. Insofar as it is necessary to find, the same can be said of the AMOU rules.

ABILITY OF ORGANISATIONS TO SERVICE MEMBERS

- 164 The MSG has represented, according to Mr Fleming's evidence, a number of public sector employees in Western Australia, including pilots, pilot crews and harbour masters. It represents six employees of the Waters and Rivers Commission who are subject to the Waters and Rivers Commission (Enterprise Bargaining) Agreement 1996, but did not attend meetings of the EBA SBU of which it was a member.

- 165 The MSG is a specialist marine industry organisation of employees.
- 166 Neither Mr Breeden, Mr Poole, nor Ms Ettridge, nor Mr Webber was able to give adequate evidence of the finances, membership, the number of industrial officers employed by the MSG, nor was there evidence of the nature of the membership apart from some reference to pilots, harbour masters, divers and some offshore oil industry employees.
- 167 The CSA has a large membership of about 12,000, notwithstanding some decreases in membership due, in part, to public service members decreasing and no direct payroll deductions of subscriptions. Its financial statements reveal a substantial income and assets, there being reserves of several million dollars and subscription income in 2000 of just under 2.5 million dollars. It is, on the face of it, able to provide adequate representation and advice with ample staff resources. It has long represented Government and Governmental employees in this State. There is one organiser to every 1,200 members. We are satisfied that it is able to provide adequate service to its members.
- 168 There is ample evidence of service such as taking up the question of Fisheries officers' stress levels and litigation. Even Mr Poole admitted that there was little difference in services (see page 113(TR)).
- 169 Even if, in the past, the CSA did not properly represent Fisheries officers, it is clear that, since before 1995, they have or, if not, we are not satisfied that that is so. As we have already observed, there is ample evidence, in any event, that Fisheries officers have been competently represented by the CSA. That is borne out, to some extent, by the MSG not seeking an award in different terms to the 1996 EBA. We would find, however, for the reasons advanced above, that the CSA achieved all that could reasonably be achieved in the 1996 EBA, and in the 1999 EBA which built on it.
- 170 We are not able to conclude on the evidence that the MSG can provide adequate services to Fisheries officers or, at least, that they have the ability to provide better service than the CSA.

SUMMARY OF FINDINGS

- 171 We are satisfied on the evidence and find that the CSA overall and, in particular since 1995, has properly represented Fisheries officers and has achieved for them the best results achievable in the circumstances. In particular, this is so in relation to the 1996 EBA and also the 1999 EBA.
- 172 The 1996 EBA, together with the 1999 EBA, achieved a total wage increase of 18%, for example.
- 173 We are satisfied and find that Ms Blake acted competently and professionally in the 1996 negotiations. We would add that there has been no criticism, in evidence, of the 1999 EBA which built on that. Further, the criticisms of the 1996 EBA relate to events which occurred five years ago and this application has taken four years, after those events, to be made.
- 174 We are also of opinion, notwithstanding some evidence of reduction in membership, that the CSA is a large organisation which does and is able to provide a wide variety of services and which has substantially provided resources to enable that to occur. It also has the advantage of having a counterpart Federal body, the CPSU, sharing resources and having the advantages flowing from that organisational relationship.
- 175 It has not been established to our satisfaction, in the absence of evidence of membership numbers or in the absence of formal statements, that the AMOU or the MSG has the capacity or the continuing capacity to represent Fisheries officers. It has certainly not been established that either has the capacity to represent Fisheries officers on a more satisfactory basis than the CSA is capable of doing or, more significantly, has already done, given our finding that the CSA has the expertise in the public sector, is properly aware of Fisheries officers' needs and, particularly in recent times, has adequately represented them.
- 176 The evidence of Mr Breeden that very minor trade offs for wage increase were contained in the 1996 EBA and the amount of the increase is evidence of that. We are satisfied and find that the increases in sea going allowances achieved from 1983 to 1995 of 65% were satisfactory.
- 177 We are satisfied and find that the CSA, at all material times, had and has the capacity to properly and efficiently represent Fisheries officers and has done so. We are satisfied and find that the same observations apply to the 1999 EBA. We are not satisfied that the MSG has the capacity to adequately serve and represent the Fisheries officers, or alternatively, do so better than the CSA has done and is capable of doing.
- 178 We are satisfied that Fisheries officers are ineligible to join the MSG under its eligibility rule or, because they are ineligible to join the MSG, the AMOU.
- 179 We are satisfied and find that the EBA of 1996 satisfactorily accommodated Fisheries officers' requirements insofar as this was capable of being achieved, given that an agreement was being negotiated with an employer, and the employer, it is trite to observe, had some say in the result.
- 180 We are satisfied and find that there was and remains a significant Fisheries officer preference for membership of the MSG, based on the petition (see exhibit 25B—RJB-1) and other evidence. However, we are not convinced that it is an entirely informed preference or that it relates to a real knowledge of events and, indeed, of recent events.
- 181 In particular, there is no evidence that anyone other than Mr Poole knew or knows of Mr Robinson's efforts to achieve a separate EBA or a separate schedule in an EBA to accommodate Fisheries officers. Nor, initially, were they informed of Mr Robinson's suggestion that, if Fisheries officers voted against the EBA in a block, it might well be defeated. There is no satisfactory explanation why Mr Poole did not pass this information onto the membership.
- 182 We are satisfied on the evidence that only a small amount of time is spent by Fisheries officers at sea and that only a small number of them engage, as a rule, in that activity.
- 183 We are satisfied and find that Fisheries officers are not required to hold Competency Certificates.
- 184 We are satisfied and find that the MSG has no constitutional coverage of Fisheries officers and that the CSA, as was accepted, has.
- 185 We are satisfied and find that Fisheries officers are officers appointed under the FRM Act and for the sole purpose of carrying out their functions and their powers, not the least in enforcement and prevention, conferred on them by that Act, the *Pearling Act* and otherwise by the law on behalf of the Crown. They are not engaged in the merchant marine or any dependent service and their only reason for their existence is an Act of the Parliament of this State. They are not engaged in commerce nor do they carry out their duties for profit.
- 186 We are satisfied and find that, if the application were to be granted, the number of organisations for Fisheries WA to deal with would be increased by one, causing increasing and unnecessary complications in employment relations and negotiations.
- 187 We are not persuaded that any substantial extra time and expense would be caused by the entering into of a separate EBA for Fisheries officers. We do not, at this time, criticise Fisheries WA for not entering into one. We are however of the view that it would be prudent and appropriate to recognise the somewhat different activities of Fisheries officers by a separate schedule in any EBA. We express that view in passing only.

RELEVANT FACTORS

- 188 We now turn to deal with the relevant factors in the light of the abovementioned findings.
- 189 In all s.72A applications, the Full Bench must consider the factors relevant to the particular application. Some factors may be relevant to all or most s.72A applications. Some may be relevant to few or none.

190 In this case, the following factors are relevant—

1. Constitutional cover and eligibility.
2. Employer preference.
3. Employee preference.
4. Discouragement of overlapping coverage.
5. The established problem of award and agreement coverage.
6. The interests of the employer.
7. The interests of the employees.
8. The interests of the CSA.
9. The interests of the MSG.
10. The industrial behaviour of the organisation.
11. Community of interest.
12. The opinion of the Australian Council of Trade Unions (hereinafter referred to as “the ACTU”) or the Trades and Labour Council (hereinafter referred to as “the TLC”).
13. The ability to service membership.
14. The effect of the orders sought.
15. Existing undertakings or agreements.
16. The interests of the community.
17. The advancement of the objects of the Act.

1. Constitutional Coverage

191 We have already found that there is no constitutional coverage by the MSG and that there is constitutional coverage of Fisheries officers by the CSA. The Full Bench has held that constitutional coverage in s.72A applications should not be lightly brushed aside (see *Re an application by AWU and Another*(FB)(op cit)). There should be a compelling reason or compelling reasons why this should occur. Further, the CSA is a long existing body which represents State Government and Government body employees, including Fisheries officers.

192 There is no compelling reason or reasons why the constitutional coverage of the CSA should be brushed aside.

2. Employer preference

193 The employer’s preference does not expressly lie with one organisation or the other. The employer’s preference is that one organisation represent its employees, to enable less expense to be incurred, to obviate negotiating new awards and EBA’s, to enable easier less cumbersome negotiation and, in the case of the CSA, to enable it to deal with an organisation which has negotiated with knowledge and experience in the overtime allowance area, for example, since 1938.

194 In fact, that preference is a preference for the CSA because, apart from the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch (hereinafter referred to as “the CEPU”), which represents one employee only, all the rest are represented by the CSA, which is the sole employee organisation which is a party to awards and EBA’s. Thus, if the orders sought were made, another organisation would, apart from the CSA and the CEPU, represent employees of Fisheries WA.

195 It is undesirable, in this case, that this be permitted if there is no good reason, since the disadvantages for the employer and, indeed, employees are manifest on the evidence. We are not persuaded that there is good reason. Indeed, we are persuaded that all of those factors and the objects of the Act are advanced by or lead to the conclusion that the CSA should retain its existing coverage.

3. Employee Preference

196 The employee preference, as evidenced by the petition (exhibit 4—LP-12 and exhibit 25B—RJB-1) and by the resolution passed in 1996 and the subsequent resignation of a large number of Fisheries officers from the CSA in April 1996 after a ballot of employees approving the 1996 EBA.

197 There was no evidence, from what we might call rank and file Fisheries officers. Further, what evidence there is suggests that there has been no justification for the ill will directed to the CSA since what was achievable by it has been achieved. The increases in sea going allowances were, as we have found, negotiated by Mr Poole and included in the 1996 EBA which, even he agreed, was the best achievable at the time.

198 Further, as we have accepted, there was no way in which the CSA could have achieved a separate EBA or even a separate schedule in the concluded EBA to cover Fisheries officers. The employer would not and did not agree. It maintained this stance despite Mr Robinson’s request to change the mind of the Acting Chief Executive Officer. Accordingly, it was wrong to blame the CSA for this state of affairs. Indeed, the resignations might not have occurred had Mr Poole advised the other Fisheries officers, including such influential members as Mr Breeden, of Mr Robinson’s efforts.

199 Further, the passing of the EBA might have been blocked had Mr Poole taken Mr Robinson’s advice, informed his members, and organised a block vote against the EBA. That would have deprived them, of course, of the significant increases which were achieved. However, the preference cannot, in the light of those circumstances, be said to be a properly informed one.

200 Alternatively, the approbation of the EBA or its lack of disapproval through the ballot box by Fisheries officers constitutes sufficient evidence of Fisheries officers’ preference, even if the preference were an informed one, which we are not persuaded that it is. We are not persuaded to the contrary, despite the numbers who signed the petition.

201 There is no evidence of any campaigning by Mr Poole or other Fisheries officers against the EBA which Mr Poole had assisted to negotiate.

202 In any event, the preference of employees is not necessarily a determining factor in an application such as this (see *Re an application by AWU and Another* (FB)(op cit)).

203 In this case, there is nothing to persuade the Full Bench that such a preference, having regard to the other factors and for those reasons, should be a determining factor.

4. Overlapping Coverage

204 There would not be overlapping coverage if orders were made to grant coverage to the MSG, provided that both organisations’ eligibility rules were amended to accommodate the situation.

5. Established Coverage and Industrial Coverage

205 There is established exclusive constitutional and industrial coverage by Fisheries officers which has been interrupted by an unauthorised coverage of Fisheries officers for less than two years by the MSG. That fact plainly militates against the applicant in this case.

206 There is established CSA industrial coverage of Fisheries officers by award and industrial agreements going back many years and achieved through the efforts of the CSA. There has been none by the MSG. The unnecessary disruption in this case, caused by the need to negotiate new awards or EBA’s with an organisation new in the area would not occur if the application were dismissed.

207 It is plain that it is to the benefit of all parties, including the CSA, its members and the employer, that that be maintained. In particular, the CSA would remain, for the benefit of its members and the employer, a party to awards and agreements which it has assisted to develop over a period of years.

6. Interests of the Employer

208 The interests of the employer are, as we find, clearly best served by continuous representation by the long standing representation organisation, the CSA. That continues stability and avoids the disadvantage of having employees represented by three organisations instead of two.

209 In those circumstances, it is also in the interests of a small group of employees in one “enterprise”, Fisheries WA, that their representation not be unnecessarily split.

7. The Interest of the Employees

210 The interests of the employees are plainly served by an employee organisation which is experienced in their representation and knowledgeable about their employment and conditions, which has a satisfactory relationship with the employer, and which ingenuously represents its members' interests, and strives to ensure that the employees have the fairest and best conditions of employment obtainable by fair and lawful means, given that the employer has a right to conduct its enterprise fairly, lawfully, efficiently and for the maximum result achievable by such means.

211 In this case, the CSA has done what, overall, it could achieve and which it was capable of achieving. Further, as we have found, the CSA has the financial and organisational capacity to and has properly represented Fisheries officers.

212 The MSG is, to some extent, an unknown quantity in capacity, expertise, membership numbers and adequate financial resources. There was no evidence that Fisheries officers knew much about this capacity. Accordingly, the preference, while expressed, is not well informed.

213 Further, it is not so sufficient strong a factor, on its own, to persuade the Full Bench to grant the application or brush aside the interests of the employer, established coverage, and constitutional coverage. Indeed, on the evidence of performance, coverage and capacity, we are persuaded that the interests of the employees, both Fisheries officers and others, is best served by the CSA representing Fisheries officers. The CSA is the organisation which best fits the criteria expressed in paragraph 209 hereof.

8. The Interests of the CSA

214 These are served best by not losing members when the CSA has, for a long time, and overall, efficiently, certainly in the 1990's, served Fisheries officers well.

9. The Interests of the MSG

215 These are best served by the acquisition of over 80 new members, but for the reasons which we advance and have already advanced, those interests are cancelled out by the interests of the CSA, the employer and other individuals.

10. Industrial Behaviour

(a) The CSA

There is no evidence of any complaint of industrial behaviour against the CSA by the MSG or the employer. Indeed, all of the evidence is evidence of satisfactory behaviour.

(b) The MSG

The MSG's industrial behaviour, in purporting to cover members who, almost manifestly, are not within its constitutional coverage, although a minor episode, deserves criticism.

(c) Fisheries WA

The industrial behaviour of Fisheries WA is within the limits of an employer properly negotiating matters without intransigence or, if that is not the case, we are not satisfied otherwise on the evidence before me. It might have been more conducive to settlement if a separate schedule for Fisheries officers in the 1996 EBA was agreed to, but we reach no conclusion on that point.

(d) FOSA

As a de facto organisation, FOSA made too much of an issue, namely the seagoing allowances (as we generally call them) which indirectly and correctly affect 21 officers and not the other 67 Fisheries officers, particularly since that part of allowance was not neglected in the 1996 EBA nor from 1983 to 1995.

11. Community of Interest

216 The CSA is a body which specialises and, by its eligibility rules, represents and has done so for many years Government and Government body officers in this State. Fisheries officers, as we have found, are officers employed to carry out regulatory, administrative, educational, advisory and enforcement functions on behalf of the

Crown in relation to fish, fisheries, commercial fishing, recreational fishing and aquaculture. There are not engaged in maritime activity and the bulk of their work is done other than at sea.

217 Because of a lack of evidence, it is not clear what the practical profile of the MSG is. Suffice it to say that it covers persons employed in the mercantile marine which is a defined specific area of endeavour far removed from the work of Government Fisheries officers. We can find no community of interest.

12. ACTU and TLC

218 There is no evidence of opinion as to coverage from the ACTU or TLC.

13. Ability to Service Membership

219 There is insufficient evidence to enable the Full Bench to conclude, on the evidence, that the MSG has the capacity, financially or in staff, to service the Fisheries officers or, at the very least, to serve them better than the CSA does. The attempt to obtain an award by the MSG was confined to an award which sought no better conditions than those already contained in the 1996 EBA.

14. The Effect of the Orders Sought

220 If the orders sought were made, they would deprive the CSA, without good reason and, indeed, when it has done nothing to deserve it, of members, would introduce another employee organisation unnecessarily to the workplace, would not be, in fact, in the best interests of Fisheries officers, be contrary to the employer's preference and, without good reason, disturb long standing industrial and constitutional coverage, with the attendant potentially disadvantageous consequences.

221 It has not been established, in the face of those detrimental results, that the orders should be made.

15. No Existing Undertaking or Agreement

222 There is no existing undertaking, agreement or arrangement as to membership between the MSG and the CSA in relation to the coverage or membership of Fisheries officers.

16. The Interests of the Community

223 These are best served, in our opinion, by the fulfilment of the objects of the Act by this Commission in its orders. We quote what the Full Bench, in its unanimous reasons for decision in *Re an application by the AFMEPKIU (FB)*(op cit) at page 4636 said—

“These are served, in our opinion, by the fulfilment of the objects of the Act, by this Commission in its orders. We have already adverted to the unlawful participation in industrial action by the AMWU and our finding that the probability is that this will not recur. The interests of the community in this case are served if the employer, Inghams, is able to conduct its business efficiently and without unjustified disruption, if the employees achieve just and fair terms and conditions of employment, if there is peace and co-operation in the workplace, if disputes can be readily, fairly and lawfully resolved and if the employees can be represented by an efficient, vigorous organisation which can help the achievement of those ends. It will be clear from our findings that the AMWU, which has the majority of members' preference, will be more likely to be an instrument of achieving that object, despite its misconduct and shortcomings, than the FPU.”

224 In this case, the preponderance of the evidence, for the reasons which we have expressed, is that the interests of the community would best be served if the application were dismissed.

17. The Objects of the Act

(a) S.6(a) of the Act provides as follows—

“To promote goodwill in industry”

In this case, having regard to the CSA's proven record in the area and the fact that there is no evidence that goodwill has not been obtained, there is no reason to find that making the orders would improve the relationship between

organisations and/or the employer. Further, because of some of Mr Poole's views, the granting of this application may not promote goodwill in the industry or encourage the prevention and settlement of industrial disputes in terms of object (b). Indeed, the introduction of an extra organisation might not.

- (b) S.6(b) of the Act provides as follows—

“(b) to encourage, and provide means for, conciliation with a view to amicable agreement, thereby preventing and settling industrial disputes”

Dismissing the application would advance that object by encouraging parties who have a record of good will, given that differences of stance, position or opinion are not necessarily always evidence of bad will.

- (c) S.6(c) of the Act provides as follows—

“(c) to provide means for preventing and settling industrial disputes not resolved by amicable agreement, including threatened, impending and probable industrial disputes, with the maximum of expedition and the minimum of legal form and technicality”

My observations as to s.6(b) of the Act supra apply. Further, there exists a well established set of awards and agreements to which Fisheries WA and the CSA are parties. To disturb this would, in our opinion, be to unnecessarily disturb a history of industrial goodwill insofar, at best, as it is evidenced by the lack of evidence of harmful disputation.

- (d) S.6(d) of the Act provides as follows—

“(d) to provide for the observance and enforcement of agreements and awards made for the prevention or settlement of industrial disputes”

Such means exist already in awards, orders and the relationship between the CSA and Fisheries WA. It has not been established that any change would improve the situation.

- (e) S.6(e) of the Act provides as follows—

“(e) to encourage the formation of representative organizations of employers and employees and their registration under this Act and to discourage, so far as practicable, overlapping of eligibility for membership of such organizations”

The question of overlapping would not arise if the President made the appropriate orders pursuant to s.72A(6) of the Act. However, the encouragement of the formation of representative organizations of employers and employees is negated if, without good reason, the Full Bench permits members to depart from coverage by an organisation without good reason. To so act would be contrary to that object. Obviously, to make such an order renders the CSA less representative. There is no good reason to make such an order in this case.

- (f) S.6(f) of the Act provides as follows—

“(f) to encourage the democratic control of organizations so registered and the full participation by members of such an organization in the affairs of the organization”

Again, to permit the loss of coverage of members from an organisation without good reason is not to encourage their full participation in the organisation but to allow them, sometimes contrary to the will of their fellow members, not to participate because of a disagreement. That is the case here, where there was no oppression of a minority by a majority.

- (g) S.6(g) of the Act provides as follows—

“(g) to encourage persons, organizations and authorities involved in, or performing functions with respect to, the conduct of industrial relations under the laws of the State to communicate, consult and co-operate with persons, organizations and authorities involved

in, or performing functions with respect to, the conduct or regulation of industrial relations under the laws of the Commonwealth.”

This object is not achieved by the making of the orders sought because the CSA has a counterpart Federal body.

225 We are, for those reasons, satisfied that all of the relevant objects of the Act would be achieved by dismissing the application. Alternatively, the applicant has clearly not established that they would be so advanced.

226 We are also satisfied that all of those relevant factors, as we have considered them, direct the Full Bench to a dismissal of the application.

CONCLUSIONS

227 The applicant did not establish that the order should not be made when it carried the onus of so establishing.

228 Each s.72A application must be decided on its individual facts and circumstances and with regard to the factors relevant to such application.

229 We have considered all of the evidence, oral and documentary, and all of the submissions. We are satisfied, for the reasons which we have expressed, that the application should be dismissed, the equity, good conscience and the substantial merits of the case, for those reasons, lying with the CSA and with the employer.

230 Even if that were not so, again for the reasons which we have expressed, they certainly have not been established to lie with the applicant.

231 We would dismiss the application.

Order accordingly

2001 WAIRC 02021

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

PARTIES MERCHANT SERVICE GUILD OF AUSTRALIA, WESTERN AUSTRALIAN BRANCH, UNION OF WORKERS, APPLICANT

CORAM FULL BENCH
HIS HONOUR THE PRESIDENT P J SHARKEY
COMMISSIONER P E SCOTT
COMMISSIONER S J KENNER

DELIVERED THURSDAY, 15 FEBRUARY 2001

FILE NO/S FBM 3 OF 2000

CITATION NO. 2001 WAIRC 02021

Decision Application dismissed.

Appearances

Applicant Mr A D Gill (of Counsel), by leave
Participants pursuant to s.72A(5) of the Act Ms J C Pritchard (of Counsel), by leave, on behalf of The Executive Director, Fisheries Western Australia

Mr P L Harris (of Counsel), by leave, on behalf of The Civil Service Association of Western Australia Incorporated

Order.

This matter having come on for hearing before the Full Bench on the 4th, 7th, 8th, 11th and 18th days of December 2000, and having heard Mr A D Gill (of Counsel), by leave, on behalf of The Merchant Services Guild of Australia, Western Australian Branch, Union of Workers (hereinafter referred to as the “MSG”), and Ms J C Pritchard (of Counsel), by leave, on behalf of The Executive Director, Fisheries Western Australia, (hereinafter referred to as “Fisheries WA”), and Mr P L Harris (of Counsel), by leave, on behalf of The Civil Service Association of Western Australia (Incorporated) (hereinafter referred to as the “CSA”), and the Full Bench having reserved

its decision on the matter, and reasons for decision being delivered on the 15th day of February 2001, it is this day, the 15th day of February 2001, ordered that application No. FBM 3 of 2000 be and is hereby dismissed.

By the Full Bench

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

[L.S.]

FULL BENCH— Unions—Declarations made under Section 71—

2001 WAIRC 01991

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	AUSTRALIAN LIQUOR, HOSPITALITY AND MISCELLANEOUS WORKERS UNION, WESTERN AUSTRALIAN BRANCH, APPLICANT
CORAM	FULL BENCH HIS HONOUR THE PRESIDENT P J SHARKEY CHIEF COMMISSIONER W S COLEMAN SENIOR COMMISSIONER G L FIELDING
DELIVERED	WEDNESDAY, 7 FEBRUARY 2001
FILE NO/S	FBM 6 OF 2000
CITATION NO.	2001 WAIRC 01991

Decision Declaration granted.

Appearances

Applicant Ms S M Jackson, and with her, Ms H M Creed

Reasons for Decision.

THE PRESIDENT—

- 1 These are the unanimous reasons for decision of the Full Bench.
- 2 This is an application brought pursuant to s.71 of the *Industrial Relations Act 1979* (as amended) (hereinafter referred to as “the Act”) by the abovenamed applicant, The Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch, which is an “organisation” as that term is defined in s.7 of the Act. It is, therefore, a “State organisation”, as that is defined in s.71 of the Act.
- 3 The Western Australian Branch of The Australian Liquor, Hospitality and Miscellaneous Workers Union is the branch of a federally registered body, The Australian Liquor, Hospitality and Miscellaneous Workers Union, that is, it is an organisation of employees registered under the *Workplace Relations Act 1996* (Cth) for the purposes of s.71(1) of the Act.
- 4 The branch, therefore, existed and exists and is a “Branch” as is defined in s.71(1) of the Act (see the rules of the abovenamed organisations—exhibit 1).
- 5 The applicant, by its application, seeks a declaration pursuant to s.71(2) of the Act as follows—

“The Full Bench declares, pursuant to Section 71(2) of the Act, that it is of the opinion that the rules relating to the qualifications of persons for membership of the Australian Liquor, Hospitality and Miscellaneous Workers’ Union, Western Australian Branch being an organisation pursuant to the *Industrial Relations Act, 1979* are the same as those of the Western

Australian Branch of the Australian Liquor, Hospitality and Miscellaneous Workers Union being an organisation pursuant to the *Workplace Relations Act, 1996*.”

- 6 There was evidence by the affidavit of Ms Helen Margaret Creed and by documents filed herein as part of exhibit 1. There was also documentary evidence not controverted, there being no objections to the application, either by documents filed or by appearance. In other words, the application was not opposed by any person.
- 7 On a careful examination of all of the evidence in this matter and a consideration of the submissions, with particular emphasis on the Regulation 101 statements and the eligibility rules of the branch of the applicant organisation and of the applicant organisation, we concluded that the Western Australian Branch of the abovenamed Federal organisation is a “Counterpart Federal Body” as defined in s.71(1) of the Act.
- 8 We were able to do so because, having perused those documents and considered that evidence, we were able to find that the rules of the branch prescribing offices which exist in the branch should be deemed to be the same as those which exist pursuant to the rules of the abovenamed applicant State organisation prescribing the offices which exist in the State organisation. All are elected under the rules and occupy an “office” as defined in s.7 of the Act, particularly definitions (a) and (b).
- 9 Further, having carefully considered the eligibility rules of the applicant organisation and of the Federal organisation (and heard submissions in relation to the same), which are not identical but, for the purposes of this application, are substantially the same, as we find, we were therefore satisfied that the eligibility rules in each case were deemed to be the same (see s.71(3) and (4) of the Act).
- 10 For those reasons, we found that the equity, the good conscience and the substantial merits of the case lay with the applicant and agreed to grant the application.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	AUSTRALIAN LIQUOR, HOSPITALITY AND MISCELLANEOUS WORKERS UNION, WESTERN AUSTRALIAN BRANCH, APPLICANT
CORAM	FULL BENCH HIS HONOUR THE PRESIDENT P J SHARKEY CHIEF COMMISSIONER W S COLEMAN SENIOR COMMISSIONER G L FIELDING
DELIVERED	TUESDAY, 6 FEBRUARY 2001
FILE NO/S	FBM 6 OF 2000
CITATION NO.	2001 WAIRC 01983

Decision Declaration granted.

Appearances

Applicant Ms S M Jackson, and with her, Ms H M Creed

Declaration.

This matter having come on for hearing before the Full Bench on the 6th day of February 2001, and having heard Ms S M Jackson and with her Ms H M Creed on behalf of the applicant and there being no other party desiring to be heard in respect of this application, and the Full Bench being of the opinion upon the evidence that the rules of the State organisation, the applicant herein, and the Counterpart Federal Body relating to the qualifications of persons for membership of

each such body are substantially the same, and the Full Bench also being of the opinion that the rules of the Counterpart Federal Body prescribing the offices which exist in the Branch are the same in this respect as the rules which exist in the State organisation, the applicant herein, and the Full Bench having determined that its reasons for decision will issue at a future date, and the applicant herein having consented to waive the requirements of s.35 of the *Industrial Relations Act 1979* (as amended) ("the Act"), it is this day, the 6th day of February 2001, ordered and declared as follows—

- (1) THAT the rules of the applicant, and its Counterpart Federal Body, the Australian Liquor, Hospitality and Miscellaneous Workers Union, relating to the qualifications of persons for membership be and are deemed to be the same in accordance with s.71(2) of the Act.
- (2) THAT the rules of the Counterpart Federal Body prescribing the offices which shall exist in the Branch be and are hereby deemed to be the same as the rules of the applicant herein, prescribing the offices which exist in the applicant organisation, in accordance with s.71(4) of the Act.

By the Full Bench

(Sgd.) P.J. SHARKEY,

President.

[L.S.]

COMMISSION IN COURT SESSION— Matters dealt with—

**BAKERS' (METROPOLITAN) AWARD
No. A 13 OF 1987**

**BAKERS' (COUNTRY) AWARD
No. 18 OF 1977**

**PASTRYCOOKS' AWARD
No. 24 OF 1981**

2001 WAIRC 01847

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	AUSTRALIAN LIQUOR, HOSPITALITY AND MISCELLANEOUS WORKERS UNION, WESTERN AUSTRALIAN BRANCH, APPLICANT v. BAKING INDUSTRY EMPLOYERS' ASSOCIATION OF WESTERN AUSTRALIA, BAKEWELL PIES (1978) PTY LTD AND OTHERS ACME BAKERY AND OTHERS, RESPONDENTS
CORAM	COMMISSION IN COURT SESSION COMMISSIONER P E SCOTT COMMISSIONER S J KENNER COMMISSIONER J H SMITH
DELIVERED	FRIDAY, 19 JANUARY 2001
FILE NOS	146 OF 2000, 147 OF 2000, 148 OF 2000
CITATION NO.	2001 WAIRC 01847

Result	Awards varied
Representation	
Applicant	Mr J Ridley
Respondents	Mr P Robertson

Reasons for Decision.

- 1 THE COMMISSION IN COURT SESSION: These are applications to amend awards in the baking and pastry

cooking industries to remove from the Redundancy clause, the exemption which applies in respect of employers with less than 15 employees. On 31 January 2000, the Commission amended these awards to insert the community standard Termination, Change and Redundancy ("TCR") provisions (80 WAIG 354). At the time of the hearing of those applications, the applicant foreshadowed that it would apply to remove the exemptions, and hence it has made these applications. It should be noted that each of the three awards contains a Contract of Service clause which sets out a range of provisions dealing with notice periods, time off during the notice period, provision of a Statement of Employment and other matters. There is also a Redundancy clause which provides for the employer to discuss with the employees directly affected and their union a decision to no longer have a particular job done; transfer to lower paid duties; severance pay of up to eight weeks dependent on the period of continuous service; the employee leaving during the notice period, and other matters including the ability of the employer to apply to the Commission for relief from the severance pay prescription on the basis of incapacity to pay. It is the removal of the exemption of employers of less than 15 employees from the Redundancy clause only which is sought.

- 2 The history of TCR provisions is set out in a number of decisions of various tribunals and in particular in the decision of the Commission in Court Session in *Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch v Master Builders Association of Western Australia (Union of Employers) and Others (1995) 75 WAIG 2699* and in the decision of the Commission in Court Session of 25 January 2000 (*supra*) where the awards the subject of these applications were amended to insert the standard TCR provision. The decision of the Full Bench of the Australian Industrial Relations Commission in dealing with the *Graphic Arts Award 1997 (Print N7314)* also provides a useful recitation of the history and the approach taken by the federal and state tribunals to the deletion of the exemption up until 1996. Accordingly, there is no need to recite the history of what, in this jurisdiction, is the community standard TCR provision.
- 3 The Commission has heard evidence from Steven Douglas Barrett, an organiser with the applicant and from Anthony Gerard Noonan, who has been involved in the bakery product manufacturing industry since 1948. There was also an affidavit sworn by Simon Tincey, the operator of Baker's Delight (Southlands). There was no objection from the applicant to the tendering of Mr Tincey's affidavit.
- 4 From the evidence of these witnesses and the documentation put forward by the parties, the nature of the bread manufacturing industry covered by these awards can be summarised as follows—
 - (a) There are two large bakeries namely Tip Top Bakeries Pty Ltd and Buttercup Bakeries;
 - (b) There is a small number of medium sized businesses including Mias, Noonans, De Campos and Daily Bake;
 - (c) There are many shop-front or "hot bread" shops which bake bread products on the premises and sell them directly to the public. These are mainly Bakers Delight, Brumbys and Cheesecake Shop businesses which operate on a franchise basis. The many franchisees are the employers of the employees working in the shop-front businesses. There has been a substantial growth in these shop-front businesses since the early 1990s. There are currently approximately 38 Bakers Delight outlets in Western Australia and a similar number of Brumbys outlets. These businesses employ a minimum of 3 or 4 baking staff and also employ a number of shop assistants. It is these smaller businesses which are the subject of these applications. According to Mr Tincey's statement, he employs about 37 staff between two shops, 9 of

- the 37 are production staff, which I take to mean employees covered by these awards; and
- (d) There are in-store bakeries operating in supermarkets, about which there was little evidence.
- 5 It is noted that very little attention was paid to the circumstances of the pastry cooking industry either in evidence or submissions. There is conflict between the applicant's and the respondents' evidence as to the impact of the technological change on the industries. The applicant says that there has been increased automation of dough making and mixing; faster, larger automatic ovens; and the use of pre-mixes. The applicant says that these changes have resulted in less skilled employees being utilised in place of qualified trades persons. It is said that in smaller shop-front businesses, the franchisor provides training to the business owner who, after some short period of time, feels competent to undertake the work without the use of qualified staff and this results in those qualified staff being redundant.
- 6 The respondents say that there is very little labour turnover in the industries but where a redundancy occurs, because there is shortage of qualified tradespeople, any such tradesperson made redundant would have no difficulty in finding employment in a very short period of time.
- 7 There are only two businesses which have TCR policies, and they are businesses which are not covered by these applications on the basis that they employ significantly more than 15 employees.
- 8 The applicant has attempted, at a national level, to negotiate standardised conditions of employment including TCR provisions with Bakers Delight, Brumbys and Cheesecake Shops franchise groups. However, it has been unsuccessful in those negotiations. At a state level, the applicant has made approaches to two individual Brumbys shops and approximately 3 or 4 individual Bakers Delight shops for the purpose of negotiating enterprise agreements which would include TCR provisions. These approaches have, likewise, been unsuccessful.
- 9 The applicant's usual method of being notified of any redundancies is to receive a telephone call from a member who has been advised that he or she is to be made redundant usually due to business closures or to businesses changing hands. The applicant receives a couple of such calls every couple of months. The employers do not consult with the union. On only one occasion has the Union been consulted by an employer regarding impending redundancies. This was by one of the major manufacturers, which would not be covered by the application and it occurred a few years ago. Mr Noonan's evidence was that one of the main reasons for redundancy within the bread manufacturing industry would be the closure of shops, in particular the franchised businesses.
- 10 The applicant and the respondents are in dispute as to the employment statistics in the industries. According to the applicant, the bread manufacturing industry is made up of either approximately 70 per cent of employers employing less than 15 employees or 70 per cent of employees in the industry being employed by employers of less than 15 employees. The respondents, in analysing Australian Bureau of Statistics ("ABS") figures, say that the categories of businesses provided by the ABS make analysis of the components of the industries difficult. This is because it categorises businesses according to size in categories of less than 5 employees, 5 to 9 employees, 10 to 19 employees, and so on. This does not allow categorisation of businesses according to whether they have less than 15 compared with 15 or more employees. However, according to Mr Robertson, who appeared for the respondents, analysis of the ABS data for the category of Bread and Cake Retailing, which is a relevant grouping for businesses such as Brumbys and Bakers Delight, shows that approximately 80 per cent of employers employ less than 15 employees and 40 per cent of employees are employed by employers who employ less than 15 employees.
- 11 In any event, it is clear from the evidence that—
- By any method of accounting for the size of businesses in the industries, a significant proportion of employers employ less than 15 employees, and a significant proportion of employees in the industries are employed by those employers.
 - There has been a significant structural change in the industries in recent years with the advent and growth of shop-front manufacturing/retailing businesses such as Brumbys and Bakers Delight.
 - There have been redundancies associated with the closure or sale of such businesses, in circumstances which do not apply to the larger employers within the industries.
 - The applicant has been unsuccessful in its limited attempts to achieve TCR provisions as part of enterprise bargaining.
- 12 The numerous decisions of the various tribunals throughout Australia have indicated a clear intention that there be provisions for TCR. There is legislation at federal and state levels dealing with the issue. The Workplace Relations Act (ss 170 FA, FB, FC and FD) "provide(s) employees with access to severance payments where they are not available as an award entitlement" (*Harrison C in APESMA v Scott Carver* Print S9143). There is legislation in some states including Western Australia which provides for notice periods and consultation (Minimum Conditions of Employment Act 1993, ss540-43). There are decisions of this Commission which provide that an employee not provided with adequate redundancy pay may be found to have been denied an implied contractual benefit or unfairly dismissed and may be compensated accordingly (*see Rogers v Leighton Contractors* 79 WAIG 3351). It is true, however, that for an employee to make such an application requires that individual to file and pursue an application and, while waiting for the outcome, the employee suffers the difficulties which the notice periods, consultation and redundancy payments are intended to ameliorate. By being required to pursue an application in such circumstances, the employee suffers a disadvantage compared with those employees who have an automatic entitlement in accordance with the award provisions.
- 13 The Commission notes the various decisions of tribunals which have provided, over a period in excess of 15 years, for a standard TCR arrangement which exempts employers of less than 15 employees. In *State Metals Case 1986* (66 WAIG 584 at 585) Collier CC referred to this cut off figure as arising from the New South Wales Employment Protection Act 1982 "and probably its inclusion in the Act had more to do with problems of administration than with intrinsic merit". At page 591 of that decision, Martin C noted that the exemption cut off appeared to be quite arbitrary, and was not supported by either logic or merit. This view has been expressed on a number of other occasions in particular by the Industrial Commission of South Australia in its 1987 Decision in *Re Clerks (SA) Award 1973 and Wine and Spirits Industry (SA) Award 1973 (1987)* 54 SAIR 258. There is a suggestion in some decisions to which we have been referred, including Coldham J in dealing with the *Local Government Award (Print G 1801)* and in the respondents' submissions, that the exemption is provided to protect small businesses, which has a "relative lack of financial resilience" (*NSWIC Re Application for Redundancy Award Re Transport Industry Mixed Enterprises Redundancy (State) Award and others June 1994*).
- 14 It is also noted that the Commission in Court Session of this Commission considered the particular circumstances of the building and construction industry and granted modified TCR provisions for employees of employers of less than 15 employees where the circumstances warranted such provisions (75 WAIG 2699). A number of industries such as the child care industry in Western Australia tend to have TCR provisions which do not exempt employers of less than 15 employers and this would appear to reflect the nature of the industry. The amendments to these child care industry awards and agreements were by consent rather than being arbitrated.

- 15 In other cases the exemptions for less than 15 employees have been removed by arbitration (*the Building Industry Awards Print H7465, the Clothing Trades Award Print K7074, the Timber Industry Award Print M1434, and the Furniture Trades Print L5424, the Family Day Care Service Award 1993 Print L9065*). From these arbitrated cases a number of criteria have been developed, namely—
- (a) any special circumstances of the employment in the industry;
 - (b) whether a significant proportion of employees covered by the award are being denied the benefits of the TCR standards;
 - (c) whether a significant proportion of employers covered by the award employ less than 15 employees and therefore are exempt from the TCR provision;
 - (i) evidence of structural change in the industry such that award entitlements of employees are affected;
 - (e) the industrial relations implications of employees working side-by-side and receiving different redundancy entitlements; and
 - (f) the uncertainty of knowing when the 15 employee threshold is to be applied.
- 16 The criteria for the removal of the exemption, set out in the decisions referred to earlier, were referred to by the Full Bench of the Australian Industrial Relations Commission in the *Graphic Arts Award 1997* (*supra*). The Full Bench concluded that it could not be other than satisfied that the union had made out a case based on those criteria but said it did not consider the characteristics of the industry represented by the awards before it were relevantly distinguishable from other industries where the Commission has decided to make exemption. The Full Bench went on to say—
- “However, we are concerned as to whether in these circumstances it is appropriate to treat the issue of the deletion of the exemption as being one now appropriate to be considered entirely on an industry by industry basis”.*
- 17 The Full Bench noted that there was a logical difficulty in accommodating a sectoral departure from the TCR standard and at the same time accepted that there is a standard TCR provision intended to be applied consistently and across all industries. In the end, the Full Bench was unable to accept that the industry covered by the awards concerned was likely to be sufficiently distinguishable from other industries, to justify it deleting the exemption. It found that “the special circumstances or characteristics relied on by the union were the same or similar to those referred to in other decisions as providing justification for the deletion of the exemption are likely to be found in many industries.” Therefore, it had “difficulty in describing them as special”. In those circumstances, the Full Bench was not persuaded to grant the application “insofar as it had been justifiable on the basis that the circumstances of that industry (were) special”.
- “It is, in our opinion, opportune and more appropriate that this element of TCR test case standard provisions be reconsidered and reviewed against the background of decisions and circumstances to which we have referred, and such other general circumstances as may be thought to be relevant. In that context the relevance of legislative changes that have occurred since the test cases can also be considered.”*
- 18 It refrained from making any final determination on the matter and intended to refer the matter to the President for consideration on whether the issue of the exemption ought be dealt with as a test case standard. There is no record of the situation being resolved in the 4 years since that decision.
- 19 In considering the criteria referred to above, the industries the subject of these applications would appear to warrant consideration. Regardless of whether one relies on the applicant’s or the respondents’ statistical analysis, the structure of the industry in terms of the size of enterprises is one with a significant proportion of businesses employing less than 15 employees and a significant proportion of employees covered by the awards being denied the TCR standard. The small business sector of the industries is one where there is more likely to be change or closures resulting in terminations and redundancies than in the sector of the industries covered by the awards which already has the provisions applicable to it. The structure of the shop-front sector of the industries has changed over the last 6 to 8 years resulting in the larger proportion of such smaller businesses.
- 20 It is true that there would be employees such as shop assistants working side-by-side with the employees the subject of these applications. These shop assistants are covered by the Shop and Warehouse (Wholesale and Retail Establishments) State Award 1977 (No. R 32 of 1976) which does not provide such TCR entitlements to employees of employers with less than 15 employees. This alone does not mean that the employees who seek such an entitlement through their union, being the bakers and pastry cooks, should be denied a benefit which clearly would be of some value to them in the circumstances of redundancy.
- 21 As to the question of determining what constitutes an employer of less than 15 employees, we are of the view that the number of employees employed under the relevant award, in this case the Bakers’ (Country) Award No. 18 of 1977, the Bakers’ (Metropolitan) Award No. 13 of 1987 or the Pastrycooks’ Award No. 24 of 1981, is not the issue. It is the total number of employees employed by the employer who are to be counted and this would include any shop-front employees not covered by those awards. However, the problem is exemplified by the affidavit of Mr Tincey who currently employs about 37 staff, (9 of whom are production staff) between his two shops. If those two shops are to be taken as relating to a single employer, he would exceed the exemption limit. On the other hand, if his shops are to be accounted separately and he employs less than 15 in one and significantly more in the other, then one of those shops may be exempt and the other not. However, each business would need to be examined according to its own circumstances. There is also the issue of fluctuating workforce size, where an employer might one day be exempt and the next day, having employed one more person, may be bound by the provision.
- 22 There appears to be little doubt that the delineation between those businesses which employ 15 or more employees and those which employ less than 15 is arbitrary. This arbitrary delineation results in inequities for the employees concerned in that some have an automatic entitlement to the redundancy provisions which are denied to other employees simply on account of the number of employees employed in the business. It is also inequitable for employers. The larger employers are required to provide a benefit which the smaller businesses are not. The difference in size could be as little as one employee.
- 23 However, it seems that the case here is very similar to that applying in the *Graphic Arts Award decision* (*supra*). The evidence before the Commission does not demonstrate any special circumstances of the employment in the industries which might distinguish them from industry generally. As noted earlier, a significant proportion of employees covered by these awards are denied benefits of the TCR standard and there is a significant proportion of employers covered by the award who employ less than 15 employees and are therefore exempt from the TCR provisions. In this regard, the industries covered by the awards are not unique. There has been structural change within the industries over recent years, however, very few industries have avoided structural change in recent years. There are certainly industrial relations implications of the employees covered by these awards working side-by-side with employees covered by The Shop and Warehouse (Wholesale and Retail Establishments) State Award 1977 who receive different redundancy entitlements. There may be

uncertainty in knowing where the 15 employee threshold is to be applied. The evidence does not demonstrate that these industries have suffered a high degree of change such as to bring about a significant increase in redundancies, particularly in the small business part of the industries, which are not part of the normal pattern for small business. On the contrary, although the evidence indicates that there are business closures which result in employees being made redundant from time to time, this would appear to be no different from that which applies to the small business sector of industry generally. However, this does not overcome the essential arbitrariness of the exemption cut off point, and the inequity which arises for both employees and employers. No test case has been called at federal level to deal with the matters as foreshadowed in then *Graphic Arts Award decision (supra)*, and this Commission in Court Session is being asked to remove the inequity in these awards. In any event, this Commission regards TCR provisions not as test case provisions, but as a community standard. This should mean that less conformity with the standard is required rather than more.

- 24 In considering an application of this nature the Commission is bound to consider the Statement of Principles arising from the most recent State Wage Case (80 WAIG 3380). If granted, these applications would have the effect of varying the award safety net for each of the awards concerned. On this basis, the applications were referred to the Commission in Court Session for hearing and determination. According to Principle 10, the Commission is to consider, amongst other things, each of the matters identified in s.26 of the Industrial Relations Act 1979. In particular, subsection (1) is relevant. It provides—

“(1) In the exercise of its jurisdiction under this Act the Commission —

- (a) shall act according to equity, good conscience, and the substantial merits of the case without regard to technicalities or legal forms;
 - (b) shall not be bound by any rules of evidence, but may inform itself on any matter in such a way as it thinks just;
 - (c) shall have regard for the interests of the persons immediately concerned whether directly affected or not and, where appropriate, for the interests of the community as a whole; and
 - (d) shall take into consideration to the extent that it is relevant —
 - (i) the state of the national economy;
 - (ii) the state of the economy of Western Australia;
 - (iii) the capacity of employers as a whole or of an individual employer to pay wages, salaries, allowances or other remuneration and to bear the cost of improved or additional conditions of employment;
 - (iv) the likely effects of its decision on the economies referred to in subparagraphs (i) and (ii) and, in particular, on the level of employment and on inflation;
 - (v) any changes in productivity that have occurred or are likely to occur.
- 25 As to the matters referred to in s.26 of the Act, the equity and substantial merits of the case justify the applications being granted. The interests of the persons immediately concerned are met in that employees and employers will have an inequity removed and those employers who claim they do not have the capacity to pay the severance pay are able to bring a claim to the Commission. There is nothing to suggest that the interests of the community as a whole are detrimentally affected by the granting of the claim. There has been no suggestion that the state of the national or the Western Australian economies may be adversely affected by the granting of these applications. However, it is true that there is a real prospect of

flow-on, as the industries covered by these awards are like many in this state, in that they have a substantial number of employers and employees in the small business sector. The ABS figures demonstrate this. It is also true that, as noted in the *Graphic Arts Award decision (supra)*, these industries are not special in that regard.

- 26 At the time these applications were heard, the applicant had before the Commission no less than 45 applications to amend awards to which it is party, to insert TCR provisions. All but one of those applications has since been discontinued by the applicant following the Commission calling them on for mention. The prospect of flow-on ought not prevent the granting of an application in an industry where the merits of the situation would otherwise justify it being granted. If other applications are made, the onus rests on the applicants in those applications to prove their cases.
- 27 Although a number of grounds for objection to granting the applications have merit, such as the issue of potential flow-on and that these industries are not unique, on balance, the case in favour of granting the applications is stronger.
- 28 In all of the circumstances of these industries, and in light of the history of TCR provisions, in particular the arbitrary basis for the exemption cut off point, the essential inequity of that situation, the passage of time and the changes which have occurred in legislation and in the approach of industrial tribunals to terminations of employment on account of redundancy, we are of the view that the exemption ought be removed from these awards.

2001 WAIRC 01887

BAKERS' (COUNTRY) AWARD No. 18 OF 1977.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

PARTIES	AUSTRALIAN LIQUOR, HOSPITALITY AND MISCELLANEOUS WORKERS UNION, WESTERN AUSTRALIAN BRANCH, APPLICANT
	v.
	ACME BAKERY AND OTHERS, RESPONDENTS
CORAM	COMMISSION IN COURT SESSION COMMISSIONER P E SCOTT COMMISSIONER S J KENNER COMMISSIONER J H SMITH
DELIVERED	THURSDAY, 25 JANUARY 2001
FILE NO	APPLICATION 148 OF 2000
CITATION NO.	2001 WAIRC 01887

Result	Award varied.
Representation Applicant	Mr J. Ridley appeared on behalf of the applicant.
Respondents	Mr P. Robertson (as agent) appeared on behalf of the respondents.

Order.

HAVING heard Mr J. Ridley on behalf of the applicant and Mr P. Robertson (as agent) on behalf of the respondents, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders—

THAT the *Bakers' (Country) Award No. 18 of 1977* be varied in accordance with the following schedule and that such variation shall have effect on and from the date hereof.

COMMISSION IN COURT SESSION

(Sgd.) P. E. SCOTT,
Commissioner.

[L.S.]

Schedule.

- 1. Clause 28.—Redundancy—
 - A. Delete subclause (12) of this clause.
 - B. Delete subclause (13) of this clause and insert the following in lieu thereof—
 - (12) Dispute Settling Procedures
Any dispute under these provisions must be referred to the Commission.

2001 WAIRC 01887

**BAKERS' (METROPOLITAN) AWARD
No. 13 OF 1987.**

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES AUSTRALIAN LIQUOR,
HOSPITALITY AND
MISCELLANEOUS WORKERS
UNION, WESTERN AUSTRALIAN
BRANCH, APPLICANT

v.
BAKING INDUSTRY EMPLOYERS'
ASSOCIATION OF WESTERN
AUSTRALIA, RESPONDENT

CORAM COMMISSION IN COURT SESSION
COMMISSIONER P E SCOTT
COMMISSIONER S J KENNER
COMMISSIONER J H SMITH

DELIVERED THURSDAY, 25 JANUARY 2001
FILE NO APPLICATION 146 OF 2000
CITATION NO. 2001 WAIRC 01884

Result Award varied.
Representation
Applicant Mr J. Ridley appeared on behalf of the applicant.
Respondents Mr P. Robertson (as agent) appeared on behalf of the respondents.

Order.

HAVING heard Mr J. Ridley on behalf of the applicant and Mr P. Robertson (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 *Bakers' (Metropolitan) Award No. 13 of 1987* be varied in accordance with the following schedule and that such variation shall have effect on and from the date hereof.

COMMISSION IN COURT SESSION
(Sgd.) P. E. SCOTT,
[L.S.] Commissioner.

Schedule.

- 1. Clause 30.—Redundancy—
 - A. Delete subclause (12) of this clause.
 - B. Delete subclause (13) of this clause and insert the following in lieu thereof—
 - (12) Dispute Settling Procedures
Any dispute under these provisions must be referred to the Commission.

2001 WAIRC 01885

**PASTRYCOOKS' AWARD
No. 24 OF 1981.**

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES AUSTRALIAN LIQUOR,
HOSPITALITY AND
MISCELLANEOUS WORKERS
UNION, WESTERN AUSTRALIAN
BRANCH, APPLICANT

v.
BAKEWELL PIES (1978) PTY LTD
AND OTHERS, RESPONDENTS

CORAM COMMISSION IN COURT SESSION
COMMISSIONER P E SCOTT
COMMISSIONER S J KENNER
COMMISSIONER J H SMITH

DELIVERED THURSDAY, 25 JANUARY 2001
FILE NO APPLICATION 147 OF 2000
CITATION NO. 2001 WAIRC 01885

Result Award varied.
Representation
Applicant Mr J. Ridley appeared on behalf of the applicant.
Respondents Mr P. Robertson (as agent) appeared on behalf of the respondents.

Order.

HAVING heard Mr J. Ridley on behalf of the applicant and Mr P. Robertson (as agent) on behalf of the respondents, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders—

THAT the *Pastrycooks' Award No. 24 of 1981* be varied in accordance with the following schedule and that such variation shall have effect on and from the date hereof.

COMMISSION IN COURT SESSION
(Sgd.) P. E. SCOTT,
[L.S.] Commissioner.

Schedule.

- 1. Clause 32.—Redundancy—
 - A. Delete subclause (12) of this clause.
 - B. Delete subclause (13) of this clause and insert the following in lieu thereof—
 - (12) Dispute Settling Procedures
Any dispute under these provisions must be referred to the Commission.

PRESIDENT— Matters dealt with—

2001 WAIRC 01835

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES BARMINCO PTY LTD, APPLICANT
v.
THE AUSTRALIAN WORKERS'
UNION, WEST AUSTRALIAN
BRANCH, INDUSTRIAL UNION OF
WORKERS, RESPONDENT

CORAM HIS HONOUR THE PRESIDENT P J
SHARKEY

DELIVERED THURSDAY, 18 JANUARY 2001

FILE NO/S PRES 1 OF 2001

CITATION NO. 2001 WAIRC 01835

Decision Application dismissed.

Appearances

Applicant Mr R H Gifford, as agent

Respondent Mr M D Llewellyn

Reasons for Decision.

INTRODUCTION

1 This is an application by the abovenamed applicant company (hereinafter referred to as "Barmincó") for a stay of the operation of the order of the Commission, constituted by a single Commissioner, made on 7 December 2000 in application No CR 186 of 1998. The application is made under s.49(11) of the *Industrial Relations Act 1979* (as amended) (hereinafter referred to as "the Act"). Barmincó was the respondent in those proceedings and the abovenamed respondent (hereinafter referred to as "the AWU") was the applicant.

2 The order made at first instance, which was perfected by being deposited in the office of the Registrar on 7 December 2000, is, formal parts omitted, in the following terms—

- "1. DECLARES that the Applicant was unfairly dismissed from his employment with the Respondent on or about 1 June 1998;
2. DECLARES that it is impracticable to reinstate the employee to his former position; and
3. ORDERS that the Respondent pay to the Applicant the sum of \$38,825 by way of compensation for the unfair dismissal."

GROUNDS OF APPEAL

3 A Notice of Appeal was filed on behalf of Barmincó in the Commission on 27 December 2000 and the Grounds of Appeal are as follows—

- "1. By relying upon the principle that an onus existed upon the employer to establish the failure of the employee to mitigate his loss, the learned Senior Commissioner relied upon a principle that is unsound and that operates in a manner inconsistent with the overriding principle that the onus is upon the employee to mitigate his loss.
2. In finding that Mr Davis would have remained in the company's employment, at least for the foreseeable future, the Senior Commissioner failed to adequately weigh the implications of the evidence concerning Mr Davis' likely conduct in the event that a reinstatement had occurred, or of the evidence concerning Mr Davis' conduct in the course of his prior employment with the appellant company.
3. The Senior Commissioner's finding that Mr Davis had made a proper attempt to secure more financially rewarding employment, is one which is not sustainable, particularly in light of the further and specific finding that it would have been improbable for Mr Davis to have found similar

employment in mining. This latter finding was based upon evidence which constituted an entirely unsatisfactory explanation from Mr Davis, which ought to have been afforded little, if any, weight.

4. Whilst the Senior Commissioner indicated that Mr Davis should not be able to benefit by reason of the delay in bringing the proceedings to the stage of the compensation hearing, the Senior Commissioner then effectively allowed that to occur by means of finding that lost income in the order of \$134,000 had arisen. In so finding, the Senior Commissioner therefore failed to give appropriate weight to the reasons for and fault behind the delay. Further, the basis for maintaining that the outcome (as to compensation) would not have been materially different had the matter been dealt with in 1998, is one which is not sustainable, on the evidence.
5. A varied Order of compensation, by a reduction in the amount, is accordingly sought from the Full Bench."

4 The Notice of Appeal, according to the Declaration of Service, was served on 2 January 2001. Appeal books were filed on 10 January 2001.

PRINCIPLES

5 The principles which apply to applications such as this are well known and I quote from the decision of the Commission, constituted by the President, in *CSA v Director General, Department of Transport 80 WAIG 2855* at 2856, which is a recent expression of those principles—

"These principles have been laid down in a number of cases, including *Gawooleng Dawang Inc v Lupton and Others 72 WAIG 1310*, *Director General of the Ministry for Culture and the Arts v CSA and Others 79 WAIG 670* and *City of Geraldton v Cooling 80 WAIG 1751*.

It is for the applicant to establish that the stay should be granted. It is, of course, an underlying principle that the successful party is entitled to the fruits of her/his/its order, award or declaration.

For the applicant to succeed, it must be established that there is a serious issue to be tried, that the balance of convenience favours the applicant and that other factors consistent with the application of s.26(1)(a), s.26(1)(b) and/or s.26(1)(c) of the Act, if they exist, require that the application be granted.

If these ingredients exist, then exceptional circumstances exist which warrant the granting of the application as a matter of equity, good conscience and the substantial merits of the case. (I say that to further explain the principles.)"

THE CASE FOR THE APPLICANT

6 No transcript is yet available in this matter because the requisite request for transcript would seem to have not been made.

7 I am, therefore, a little inhibited in my consideration of this application.

8 It was submitted by Mr Gifford, on behalf of Barmincó, that there is a serious issue to be tried because, whilst the compensation had been assessed in the decision under appeal according to the particular circumstances relating to Mr Raymond Davis, the reasons for decision addressed in detail and its reliance upon authorities for various factors relied upon assessing that compensation and are capable of being applied to circumstances beyond those relating to Mr Davis himself.

9 The Grounds of Appeal attack, it was submitted—

- a) The extent to which there was an onus on both parties in circumstances concerning the mitigation by the former employee of his loss.
- b) The extent to which prior conduct of the former employee is a relevant consideration.
- c) The extent to which there would have been a likelihood of ongoing employment having resulted from a reinstatement of the former employee.

10 It was submitted on behalf of Barmenco that these factors collectively constituted significant challenge for the basis upon which compensation was assessed.

11 It was also submitted that the balance of convenience favoured Barmenco because of the following considerations—

a) There is a genuine concern on Barmenco's part that if it is successful on appeal, Mr Davis may not be in a position to reimburse any money to the company. Thus, that is a basis for a stay being ordered.

b) The decision, the subject of the appeal, was given more than two years later than the original determination by the Commission concerning the fairness of the termination. During that period, according to the evidence, Mr Davis had elected to undertake employment in occupations which provided considerably lower levels of income than he had received in his employment with Barmenco. Thus, it was reasonable to infer that Mr Davis had adapted his personal circumstances to those lower income levels and was likely to continue to do so.

There was no evidence to suggest that he intended to revert to his former circumstances in light of the Commission's determination.

c) The fault for the delay in the appeal against the original order of the Commission rested with Mr Davis' representative. It is therefore to be implied that Mr Davis, who was still using the same representative, had been accepting of that situation. Thus, a further delay to enable the appeal to be determined would not appear to be detrimental to Mr Davis.

That delay ought to weigh against the consideration that Mr Davis be entitled to receive the fruits of his litigation.

12 The application was opposed by the AWU.

BALANCE OF CONVENIENCE NOT IN ISSUE

13 The question of balance of convenience was not in issue, as I was advised by Mr Llewellyn, who appeared for the AWU, which in turn represented Barmenco's former employee, Mr Davis. However, there still remained the question of whether there was or were a serious issue or issues to be tried.

14 Since the submissions for Barmenco purported to go beyond the grounds of appeal in some respects, I should observe that the Commission, constituted by the President, can only determine whether there is a serious issue to be tried on the grounds of appeal, as pleaded.

Ground 1

15 As to Ground 1, that ground alleges that the Commission at first instance applied a wrong principle, namely that "an onus" existed upon the employer to establish the failure of the employee to mitigate his loss. The Senior Commissioner applied the Full Bench's decision in *Growers Market Butchers v Backman* 79 WAIG 1313 (FB), by which he was bound, and which is authority for the proposition that it was not for the employee (in this case through the AWU) to show that he has mitigated his loss, although he/she has a duty to mitigate loss. It was, in this case, for Barmenco to prove that Mr Davis did not mitigate his loss.

16 Accordingly, I am not persuaded, in applying that principle, that the Senior Commissioner erred. The Senior Commissioner seems to have properly stated and applied the binding principle. In any event, I was not persuaded that he had not. There is no serious issue to be tried on that ground (see *Growers Market Butchers v Backman* (FB) (op cit) at page 1316 and *Blakeman ATF The Blakeman Family Trust t/a McBride's Collectables and Giftware v Gudgin* 80 WAIG 457 at 462 per Sharkey P, with whom Kenner C agreed, and at 463 per Fielding SC).

17 In addition, since no evidence was called to establish that the duty to mitigate had not been complied with when

there was clear evidence of mitigation, it would make it very difficult, if not impossible, to establish that the applicant employer had discharged that onus.

Ground 2

18 As to Ground 2, whilst it is difficult without the benefit of transcript to consider this ground properly, it is not submitted that Mr Manning's evidence was not that he, as the Site Manager, had a good relationship with Mr Davis, nor that he was a long term employee. I therefore accept that that was his evidence. Those facts underpinned a finding that there was no real indication that (but for his unfair dismissal) Mr Davis' employment would not have continued indefinitely. That constituted, at least on the material available to me, a finding open to be made upon a proper consideration of the history of Mr Davis' employment. Ground 2 does not, therefore, raise a serious issue to be tried.

Ground 3

19 Ground 3 attacks the finding that Mr Davis had made a proper attempt, after his dismissal, to secure more financially rewarding employment. As I understand Mr Llewellyn's submission, Mr Davis was cross-examined as to why he had not returned to the mining industry to obtain more lucrative work than the work which he had engaged in subsequent to his dismissal and answered.

20 There was no evidence, so far as I am aware, to negative the Senior Commissioner's finding that, whilst the dismissal for misconduct remained on the record, it was improbable that Mr Davis would find similar employment (to that from which he had been dismissed) in the mining industry. There was (and this was not disputed), as the Senior Commissioner found, no evidence that Mr Davis could have found such work, nor was there any cogent argument before me that Mr Davis' explanation was unsatisfactory and should not have been afforded any or any more than little weight.

21 Given that the Senior Commissioner had the advantage of seeing and hearing Mr Davis in the witness box, that is significant (see *Devries and Another v Australian National Railways Commission and Another* [1992-1993] 177 CLR 472).

22 The AWU did have an onus to discharge in that context which the Senior Commissioner found, as it was open to him to do so, undischarged. No serious issue to be tried is raised by that ground.

Ground 4

23 As to Ground 4, the Senior Commissioner was required to find the amount of the loss which the employee suffered as a result of his unfair dismissal. There is ample binding authority in this Commission (see *Bogunovich v Bayside Western Australia Pty Ltd* 79 WAIG 8 (FB) and the cases cited therein). The Senior Commissioner seems to properly observe that Mr Davis should not be able to benefit from the delay in bringing proceedings to this point and he also observed (see page 23 of the appeal book) that, had the question of compensation been considered when the matter first came before the Commission, then the probability of Mr Davis gaining alternative employment in the mining industry would probably be the same.

24 There was no cogent submission before me, on the evidence of what Mr Davis had earned, that the Senior Commissioner was in error in finding that Mr Davis would have been entitled to anything less than the statutory maximum. Ground 4 reveals, for those reasons, no serious issue to be tried.

25 I should observe that Mr Gifford submitted certain principles applying to the assessment of compensation were sought to be raised on appeal, but that is not clear from the Grounds of Appeal. In any event, I apply the law as it presently is, and which is well settled in this Commission.

FINALLY

26 I am satisfied that an appeal has been instituted within the meaning of s.49(11) of the Act and that, as a party to proceedings at first instance, Barmenco has sufficient interest to make this application.

- 27 Since there was not demonstrated to me that the Grounds of Appeal raised any serious issue to be tried, Barmenco has not established that there are any serious issues to be tried upon appeal; nor has Barmenco established that the operation of the decision at first instance should be stayed. Accordingly, the equity, good conscience and the substantial merits of the case lie with the AWU and its member.
- 28 I should also observe that the findings made and conclusions reached by me in this matter are and can only be made or reached for the purposes of determining this application.
- 29 Further, for all of those reasons, the interests of the AWU and its member should be considered ahead of those of Barmenco (see s.26(1)(c) of the Act); nor are there exceptional circumstances requiring the AWU (and its member) being deprived of the fruits of the "judgment".
- 30 For those reasons, I dismiss the application.
- 31 It is not clear, from paragraph 4 of the Answer filed herein, that the costs of this application are sought. Paragraph 4 specifically refers to the appeal as vexatious.
- 32 I therefore will only entertain an application for the costs of this application if notice of such an application is given to the Commission and the applicant.
- Order accordingly,

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.	
PARTIES	BARMINCO PTY LTD, APPLICANT v. THE AUSTRALIAN WORKERS' UNION, WEST AUSTRALIAN BRANCH, INDUSTRIAL UNION OF WORKERS, RESPONDENT
CORAM	HIS HONOUR THE PRESIDENT P J SHARKEY
DELIVERED	THURSDAY, 18 JANUARY 2001
FILE NO/S	PRES 1 OF 2001
CITATION NO.	2001 WAIRC 01833
Decision	Application dismissed.
Appearances	
Applicant	Mr R H Gifford, as agent
Respondent	Mr M D Llewellyn

Order.

This matter having come on for hearing before me on the 18th day of January 2001, and having heard Mr R H Gifford, as agent, on behalf of the applicant and Mr M D Llewellyn, on behalf of the respondent, and I having reserved my decision on the matter, and reasons for decision being delivered on the 18th day of January 2001 wherein I found that the application should be dismissed, it is this day, the 18th day of January 2001, ordered that application No PRES 1 of 2001 be and is hereby dismissed.

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

[L.S.]

2001 WAIRC 01999

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.	
PARTIES	THE AUSTRALIAN WORKERS' UNION, WEST AUSTRALIAN BRANCH, INDUSTRIAL UNION OF WORKERS, APPLICANT v. BHP IRON ORE LTD, RESPONDENT
CORAM	HIS HONOUR THE PRESIDENT P J SHARKEY

DELIVERED TUESDAY, 6 FEBRUARY 2001
FILE NO/S PRES 2 OF 2001
CITATION NO. 2001 WAIRC 01999

Decision Application dismissed.
Appearances
Applicant Mr M D Llewellyn
Respondent Mr A J Power (of Counsel), by leave, and with him, Mr H M Downes

Reasons for Decision.

THE PRESIDENT—

- 1 This is an application by the abovenamed organisation of employees for the stay of operation of the decision of the Commission at first instance, made pursuant to s.49(11) of the *Industrial Relations Act 1979* (as amended) (hereinafter referred to as "the Act").
- 2 On 1 February 2001, the applicant caused to be filed in the Commission an application to stay the whole of the decision of the Commission, constituted by a single Commissioner, given on 29 January 2001 in matter No CR 308 of 2000. The declaration constituting the decision was deposited in the office of the Registrar on 29 January 2001. That declaration, formal parts omitted, was in the following terms—
"THAT the work of the cleaning and maintenance of reflectors and signs at the respondent's Mt Newman mining operations as proposed to be performed by a contractor commencing 22 December 2000 should proceed."
- 3 The applicant appealed against that decision by Notice of Appeal filed on 1 February 2001.
- 4 This application was opposed by the respondent employer who is the employer in the Pilbara region of this State of a number of members of the applicant organisation.
- 5 The grounds of appeal are as follows—
"1. That the Learned Commissioner erred in fact and law with respect to the definition that was applied to "Detrimental".
2. That as a result of this definition the learned Commissioner erred by not placing sufficient weight on the evidence with respect to a reversed overtime ban being placed by BHP Iron Ore.
3. The Learned Commissioner erred in fact and law by failing to determine the question of "available reasonable hours of work".
4. Having found that "available Reasonable Hours of Work" meant something more than normal hours of work. The Commission erred at law by not considering this in the context of a detriment.
5. That the decision of the Commission in matter CR 308 of 2000 be quashed and in lieu thereof a determination that there would be a detrimental effect on the employees and the work should not proceed by way of contractors. Or—
6. That the declaration in matter No CR 308 of 2000 be quashed the appeal up held and the matter be referred to the Commission in the first instance to be determined according to law."

BACKGROUND

- 6 The matter before the Commission at first instance was referred pursuant to s.44(9) of the Act. The matter referred is reproduced in the reasons for decision of the Commissioner at first instance which are dated 29 January 2001.
- 7 The Commissioner made the following findings of fact.
- 8 Reflectors, flashing lights and signs are located in the mining operations area on all roads, ramps, benches and dumps to ensure that there is a safe and productive traffic flow around the mining area. These items need to be maintained and cleaned to ensure that they remain in safe condition.

- 9 The latest work instruction requires, as at March 2000, that the signs and reflectors should be cleaned every "pay Friday" or as required to help provide effective delineation of haul roads.
- 10 This work, which forms only a small part of the work, had, in the past, normally been done by mine workers classification Levels 1 to 4, as part of the general labouring duties required of these classifications.
- 11 In or about mid 1999, discussions between the applicant and respondent took place in relation to a "90 day notice" purported to be issued under the *Iron Ore Production and Processing (Mt Newman Mining Company Pty Ltd) Award No A29 of 1984* (hereinafter referred to as "the award"), proposing that the work of sign and reflector maintenance be contracted out. That proposal did not proceed.
- 12 It was common ground that, in the past, mine workers did this work in ordinary hours and machine operators were brought in on an overtime basis to supplement the production time. This practice was in place for some years.
- 13 In 1998, the respondent introduced a number of changes, one being the total elimination of overtime for mine workers. The Commissioner so found.
- 14 On 22 September 2000 (exhibit A5 at first instance), the respondent notified the various union conveners that, in accordance with Clause 29 of the award, the respondent intended to contract out the maintenance of signs and reflectors in the mine; such contract to commence on 22 December 2000 or earlier by agreement. There were meetings between the applicant and respondent concerning this issue.
- 15 There was evidence that an amount of \$650,000.00 net per annum would be saved by this measure.
- 16 It was common ground that the introduction of contractors for this work would lead to no diminution in normal working hours or earnings for mine worker employees, that is, employees would continue to work 42.5 hours per week and earn the same remuneration as they had done previously. It was the evidence that, in time, there might still be a need for employees to clean signs and reflectors.
- 17 These are the relevant findings of the Commissioner at first instance.
- 18 At the heart of the matter was the effect of Clause 29 of the award, which reads as follows—

- "(1) (a) When it is necessary for the employer to retain the services of a contractor, the employer shall give prior notice to the union or unions concerned through the conveners of the nature of the work to be performed, the name of the contractor, standard hours to operate during the contract and the likely duration of the contract.
- (b) No employee to whom this Award applies shall suffer any detrimental effect in respect of his normal earnings, job security or available reasonable hours of work by reason of the employment of contractors' employees on a "side by side" basis.
- (c) A "side by side" basis shall mean that those employees and employees having similar expertise are working together on the same work in the same work section, location and locale.
- (2) No employee to whom this award applies shall be retrenched because of the employment of contractors.
- (3) The provisions of this clause shall not act in a manner prejudicial to the employer's operations in the event of an emergency circumstance arising e.g. railway wash-away or substantial mechanical failure to plant or equipment beyond the normal and immediate manning resources of the employer.
- (4) Contractors will generally be employed for construction, modification and project work.

Contractors may, however, be necessary to perform in-plant maintenance under warranty arrangements or to meet requirements for specialised equipment or specialised services. Where in particular circumstances it is proposed to utilise contractors to meet requirements for specialised equipment or specialised services, the employer will notify, and if requested discuss the matter with, representatives of the union or unions concerned prior to any commencement of the work by the said contractors.

- (5) Where a particular job is usually performed by employees to whom this award applies, and it is intended that such job will in the future be performed by contractors, the employer shall give to representatives of the union or unions concerned notice of the matter not less than three months prior to the date on which it is intended that contractors commence work on that job. If requested, the employer shall discuss the matter with representatives of the union or unions concerned prior to any commencement of work on that job by the said contractors."
- 19 There was an issue as to whether the employees of the contractor would be working "side by side" with employees of the respondent, which the Commissioner found would be the case and which was not a matter challenged by the grounds of appeal.
- 20 The issue raised by the appeal is whether, on the evidence, any employee of the respondent would suffer any "detrimental effect" in respect of his available hours of work by reason of the engagement of the contractors to perform the sign and reflector cleaning and maintenance. Significantly, the Commissioner found that there was no suggestion, on the evidence, that the respondent's decision to eliminate overtime in this context was for the express purpose of engaging contractors. The Commissioner found, too, that the decision to reduce costs in 1998 was a decision to reduce costs by the effective elimination of regular overtime work; and that this was not a recent phenomenon.
- 21 The Commissioner therefore found that, on the facts as he had found them, he was unable to conclude that the respondent's employees would suffer any "detrimental effect" by reason of the engagement of contractors for sign and reflector cleaning and maintenance. Thus, the Commissioner was unable to find any detrimental effect on employees as a result of the decision.
- 22 I mention now, because it was the subject of a submission by Mr Llewellyn, who appeared for the applicant, that the Commissioner made no finding as to the applicant's submission that the phrase "available reasonable hours of work" means something other than normal hours of work provided by the employer, given that there is reference to normal earnings in Clause 29(1)(b) of the award, "expressed disjunctively to both job security and available reasonable hours of work".
- 23 The Commissioner then emphasized that his conclusions were based on the facts as he found them on this occasion. He therefore concluded that, in the absence of any other reason for work not being performed by a contractor, he was compelled to the conclusion that the work proposed to be contracted out should proceed. He declared accordingly.
- 24 Significantly, as was common ground in this application, subsequent to the decision of the Commission at first instance, the respondent engaged contractors to do the work and they commenced on 30 January 2001.

PRINCIPLES

- 25 The principles which apply to applications made pursuant to s.49(11) of the Act are well settled. I reproduce hereunder the relevant extract from *CSA v Director General, Department of Transport* 80 WAIG 2855 at 2856—

"These principles have been laid down in a number of cases, including *Gawooleng Dawang Inc v Lupton and Others* 72 WAIG 1310, *Director General of the*

Ministry for Culture and the Arts v CSA and Others 79 WAIG 670 and *City of Geraldton v Cooling* 80 WAIG 1751.

It is for the applicant to establish that the stay should be granted. It is, of course, an underlying principle that the successful party is entitled to the fruits of her/his/its order, award or declaration.

For the applicant to succeed, it must be established that there is a serious issue to be tried, that the balance of convenience favours the applicant and that other factors consistent with the application of s.26(1)(a), s.26(1)(b) and/or s.26(1)(c) of the Act, if they exist, require that the application be granted.

If these ingredients exist, then exceptional circumstances exist which warrant the granting of the application as a matter of equity, good conscience and the substantial merits of the case. (I say that to further explain the principles.)”

- 26 Mr Power, for the respondent, submitted that the dicta of Anderson J in *Re Peter John Sharkey & Others; Ex parte The Food Preservers Union of Western Australia, Union of Workers* [2000] WASC 259 (unreported) delivered 28 September 2000 (IAC 7 of 2000) at pages 5-6 applied. There, His Honour said—

“In my opinion, an order for a stay of proceedings should only be made in special or exceptional circumstances. It is a power which this Court undoubtedly has, but it is a power which should be sparingly and cautiously used. This is essentially because the party in whose favour the proceedings have gone below, the party in whose favour the orders have been made by the tribunal authorised to make them, is entitled to the fruits of the proceedings and the fruits of the orders. The judgment below, the determination below, cannot be treated as a provisional determination; it is a final determination.

If the failure to order a stay pending appeal will or may result in the right of appeal itself being rendered nugatory, that will usually be regarded as a special or exceptional circumstance sufficient to sustain an order for stay. It will be a powerful factor in support of the exercise of the discretion to stay the proceedings pending the appeal, but I am not persuaded that those circumstances exist in this case. It is true that, as Mr Viner has pointed out, the grant of a stay would maintain the *status quo* pending appeal but that cannot be the test. If the test was whether or not the refusal to grant a stay would disturb the *status quo*, then I think a stay must always be granted.

In this case, if the appeal is successful presumably the appellant, that is, The Food Preservers Union, will regain the coverage that it has lost by reason of the decision below, everything will be back to where it was and no irreparable loss or harm will have occurred. It certainly is not a case, therefore, in which, without a stay, the right of appeal will be rendered illusory or nugatory.

I am also of the view that a stay pending appeal should not be granted in industrial matters unless there is a strong appeal case. I put it no higher than that, recognising as I do that there may be controversy as to exactly how far that test goes. In my view, there must at least be a strong appeal case before the Court will entertain an application to exercise its discretion to order a stay. Now, this will be so whether the appeal is an appeal under s 90 of the *Industrial Relations Act* or whether it is an appeal by way of prerogative writ. In this case I do not say that the appellant in the appeal or the applicant in the prerogative writ proceedings has no arguable case, I do not say that at all, but I am not persuaded that the case is strong.”

- 27 His Honour was expressing a view with which I, generally, respectfully agree. Particularly, do I adopt with respect what His Honour said in relation to the necessary strength of case in industrial matters, subject to what I say hereinafter.

- 28 The High Court, per Dawson J, said something of a kindred nature in *Re Moore; Ex parte Pillar* 65 ALJR 683 at 685, when he said—

“As Mason J observed in *Re Marks* (at 212) the grant of a stay of an order in the exercise of the inherent jurisdiction of the Court is an exceptional course. Ultimately the power to grant a stay is to be found only where it is necessary to preserve the subject matter of the litigation or, perhaps, where the refusal of the stay would make it difficult in the determination of the proceedings in this Court to grant the relief sought: see *Jennings Constructions Ltd v Burgundy Royale Investments Pty Ltd* (1986) 69 ALR 265 at 266; *Manfal Pty Ltd (In liq) v Trade Practices Commission* (1990) 65 ALJR 256 at 257. I think too that in these proceedings it is permissible in the exercise of the discretion to grant or withhold a stay to have regard to the fact that it is not possible to be entirely confident, given the relevant provisions of the Act, of the precise effect which a stay may have. But, as was observed by Toohey J in *Manfal Pty Ltd (In liq) v Trade Practices Commission* (at 257) such a consideration is truly peripheral to the central issue. Nevertheless, it is undesirable, particularly in the area of industrial relations, that there should be any more uncertainty than is necessary concerning the position of the parties pending the determination of proceedings by this Court: see *Re Merriman; Ex parte Australian Building Construction Employees' and Builders' Labourers' Federation* (1984) 53 ALR 440 at 443.”

- 29 However, there may be necessarily some difference in the required strength of case when the Commission, constituted by the President, considers an application for a stay. When a decision is the subject of an appeal to an intermediate tribunal such as the Full Bench, then, whilst the President may not be required to apply the principle that the case must be strong, the strength of the case may not be required to be equal to that required to be established in the Industrial Appeal Court which is the final court of appeal. However, in the context of the strength of the case, the case must raise a serious issue to be tried. In any event, there is the fact that exceptional circumstances must be established by the applicant for a stay to be granted.

SERIOUS ISSUE TO BE TRIED

- 30 The evidence given at first instance takes the availability of work no further. Even in the past, for example, additional work in the maintenance department was being done by either contractors or employees on overtime.
- 31 It was submitted to me by Mr Power that there is no prohibition upon the company using contractors provided that the elements of Clause 29 are satisfied; and that the declaration sought (and given) was that the company could do what it wanted to do, namely “to engage contractors to do cleaning” and maintenance work on signs.
- 32 He also submitted that, if the effect was merely to affirm what the respondent could do under the award, then there was nothing to stay. I do not understand that submission. At first instance, what was determined was whether the elements of Clause 29 of the award were satisfied. Whether they could be was what was in dispute. The declaration electing that the elements enabling the respondent to bring in contractors was complied with were what was decided. There was no sufficient evidence of lost opportunity to work overtime.
- 33 I am not persuaded, for the purposes of this application, that the definition applied to “detrimental” was applied in error.
- 34 That the decision not to make overtime work available occurred at least two years ago was sufficient to raise a strong argument that there was no detriment, in terms of overtime which was submitted at first instance to be included in the available reasonable hours of work, given that the available reasonable hours of work, as a fact, were not available for two years.

- 35 Significant, too, was the finding that the decision in 1998 not to use employees on overtime work was not a decision made so as to enable the use of contractors. That finding is not challenged in the grounds of appeal. Whether it is susceptible to such challenge is another matter.
- 36 Further, put another way, there was a finding of fact open to be made, i.e., that there was not a detriment, because overtime had not existed for over two years. That is the case, given that it was open to find that "available reasonable hours of work" means more than mere normal hours of work, in my opinion. It was, however, arguably not necessary to so find.
- 37 In any event, as Mr Power submitted, that crucial finding of fact does not seem to be attacked in the grounds of appeal.
- 38 I am not, for those reasons, persuaded that there is a serious issue to be tried.

BALANCE OF CONVENIENCE

- 39 There was evidence before the Commission of an agreement (bearing the date on the front cover of 16 July 1999) (exhibit 1), which was asserted to be and as was accepted, for the purpose of the argument in these proceedings, to govern the relations between the applicant and the respondent. In particular, it was raised by the applicant as an element that the balance of convenience favoured the applicant.
- 40 This, as I understood the submission, was because Clause 3 required "Industrial Grievances/Claims/Disputes" to be dealt with in a certain manner which, inter alia, obliged them to maintain the status quo when "matters are being progressed".
- 41 It is necessary to read Clause 3 in the context of the whole agreement, and to construe the clause, ascribing to the words their natural meaning, unless to do so would lead to ambiguity, absurdity or give the clause or any part thereof a meaning inconsonant with the evinced intention and meaning of the agreement.
- 42 Put shortly, the clause prescribes a method of short term reconciliation of disputes within 48 hours or a mutually agreed extension of time by the raising of problems with supervisors. If the matter is unresolved, the employee or his union representative progresses the matter with the convener and the matter is the subject of stages of discussions between union and company representatives. That is the prescribed manner of resolution within seven days or a mutually agreed extension of that time.
- 43 If the matter is still unresolved, then it is to be referred to this Commission or to the Site Working Committee or both. It is clear to me that the provision that the "status quo will continue" applies only when the matter is before the Site Working Committee. I say that because, once a matter is within the jurisdiction of the Commission, then the Commission has the provision to make s.32 and s.44 orders to deal with the matter or to require undertakings. If that is not right, then such an agreement is not binding on the President or the Full Bench in a case such as this.
- 44 I say that because the Commission has heard and determined the dispute, making its decision. There is, therefore, an order or declaration which binds the parties. The order will not and cannot be effected in its operation by an agreement to maintain the status quo. The parties may agree that the status quo will be preserved because the order will, for the time being, not be enforced, but that is a different matter.
- 45 There was a submission that an undertaking given by the respondent before Kenner C at first instance to preserve the status quo was of some relevance. I have difficulty with that proposition because, on my reading of the transcript (see page 124a of the transcript at first instance), such undertaking was given only until the matter was heard and determined.
- 46 The President is bound to consider whether he will, according to the established principles I have referred to above, order a stay. The agreement, for those reasons, is not relevant to the question of the balance of convenience.
- 47 Next, Mr Llewellyn submitted that, unless an order were made staying the operation of the decision at first instance, then the appeal would be rendered nugatory. That submission, as I understand it, was based on the fact that contractors had now been engaged and, therefore, the use of them would remain an indefinite obstacle to the applicant establishing and maintaining its members' rights under the award. I do not see any substance in that submission.
- 48 It is quite clear that, if the appeal proceeds, then the use of contractors in this case will be held contrary to the award. If that is found, then there would be no basis pursuant to Clause 29 on which the contractors could continue to be used. The appeal is not rendered nugatory, therefore, if the application is dismissed, given that that question remains open and there is no foreclosure by the circumstances on the applicant's position.
- 49 Next, it was submitted by Mr Power that there was actual evidence that the balance of convenience favoured the respondent, in that there was evidence that the use of contractors saved the respondent \$650,000.00 net per annum. Mr Llewellyn said that no finding was made to the Commission to that effect.
- 50 I make no finding on that point because it is not necessary. It has not been established that, to allow contractors to continue for the present in a situation where for two years no overtime has been performed by the respondent's employees, is such as to establish that the balance of convenience lies with the applicant.
- 51 The applicant, of course, can proceed with all dispatch to bring on its appeal.

FINALLY

- 52 I am not satisfied, for the purposes of this application, that the employees have lost an opportunity. If this continued in the long term, that might arguably be a different matter, but I make no finding on that point.
- 53 It has not been established to my satisfaction that there is a serious issue to be tried or that the balance of convenience lies with the applicant, for those reasons. It follows that the interests of the applicant staying the operation of the declaration which permits the use of contractors is overcome by the interests of the employer in availing itself of the benefit of the declaration.
- 54 For those reasons, I would find that there are no exceptional circumstances requiring that the respondent be deprived of the fruits of its order.
- 55 The equity, good conscience and the substantial merits of the case lie with a dismissal of this application, for those reasons.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

PARTIES THE AUSTRALIAN WORKERS' UNION, WEST AUSTRALIAN BRANCH, INDUSTRIAL UNION OF WORKERS, APPLICANT

v.

CORAM BHP IRON ORE LTD, RESPONDENT
HIS HONOUR THE PRESIDENT P J SHARKEY

DELIVERED FRIDAY, 2 FEBRUARY 2001

FILE NO/S PRES 2 OF 2001

CITATION NO. 2001 WAIRC 01967

Decision Application dismissed.

Appearances

Applicant Mr M D Llewellyn

Respondent Mr A J Power (of Counsel), by leave, and with him Mr H M Downes

Order.

This matter having come on for hearing before me on the 2nd day of February 2001, and having heard Mr M D

Llewellyn on behalf of the applicant and Mr A J Power (of Counsel), by leave, and with him Mr H M Downes on behalf of the respondent, and having determined that the application should be dismissed and that my reasons for decision will issue at a future date, it is this day, the 2nd day of February 2001, ordered that application No PRES 2 of 2001 be and is hereby dismissed.

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

[L.S.]

2000 WAIRC 01677

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES YMCA OF PERTH, APPLICANT
v.
MICHAEL COUSINS, RESPONDENT
CORAM HIS HONOUR THE PRESIDENT P J SHARKEY
DELIVERED THURSDAY, 21 DECEMBER 2000
FILE NO/S PRES 3 OF 2000
CITATION NO. 2000 WAIRC 01677

Decision Application granted.
Appearances
Applicant Mr A J Randles, (of Counsel), by leave
Respondent Mr M Richardson, as agent

Reasons for Decision.

- 1 This was an application by the abovenamed respondent that I revoke the order made by the Commission, constituted by the President, on 26 April 2000, in application No PRES 3 of 2000, by which the Commission wholly stayed the operation of the order made by the Commission at first instance, constituted by a single Commissioner, on 3 March 2000 in application No 473 of 1999.
- 2 The order of the President dated 26 April 2000 was an order conditional upon, inter alia, the applicant, YMCA of Perth, paying on or before 28 April 2000 the total amount of \$7,561.00 into an interest bearing bank account to be opened in the joint names of and to be jointly administered by the applicant and respondent.
- 3 It was common ground that this had been done and that the monies had been paid into an account at the Midland branch of Bankwest.
- 4 Mr Cousins' appeal, No FBA 21 of 2000, against the decision of the Commission at first instance, was heard and dismissed by the Full Bench on 8 August 2000. Mr Cousins appealed against that decision to the Industrial Appeal Court, it was common ground, and that appeal was heard on 1 December 2000. I was informed that the decision is currently reserved.
- 5 In the meantime, an appeal against the decision directed to findings as to merit and to quantum of compensation is the subject of appeal No FBA 18 of 2000 to the Full Bench by the applicant. That Notice of Appeal was lodged on 24 March 2000. No appeal books have been lodged in the matter, even though they are required by Regulation 29(10) of the *Industrial Relations Commission Regulations 1985* (as amended) to be lodged within 14 days of 24 March 2000, and nothing has been done to expedite the matter or, in any way, advance the proceedings since that date.
- 6 It is now, therefore, almost nine months since YMCA of Perth filed its Notice of Appeal to the Full Bench and it has not been pursued. Indeed, no step but the lodging has taken place.
- 7 It was, of course, intended and this Commission was informed by Counsel for the YMCA of Perth that both appeals would be heard together. Of course, they were not so heard and were not able to be so heard.

- 8 It is not entirely clear from exhibit 3, the copy bank statement, that the account opened was not an interest bearing account, although certainly no interest appears to have been credited to it. Further, Mr Randles, on behalf of the applicant, to his credit, admitted that it was not known that this was not an interest bearing account. I am therefore not disposed to place any weight on that fact, although Mr Richardson, the agent for Mr Cousins, asserted that the omission was evidence of contempt.
- 9 It was also asserted by Mr Randles that he had assumed that the appeal by his client could await the hearing and determination of the appeal in the Industrial Appeal Court and that nothing was indicated to the contrary to him by Mr Richardson. Certainly, there was no correspondence giving notice of this application by or from Mr Richardson, which one normally would have expected.
- 10 Further, this matter has clearly not advanced by way of an application to strike out the appeal for want of prosecution or by any other action while Mr Cousins has been overseas for the last few months.
- 11 Nonetheless, the delay in this matter is such that it would have enabled a successful application for want of prosecution to have occurred, in my judgment, to have the appeal by YMCA of Perth dismissed.
- 12 In addition, it was a material part of my findings in this matter when I made the order staying the operation of the order at first instance that there should not be an inordinate delay in listing the appeal for hearing and determination. The last paragraph of my reasons for decision in the matter, *YMCA of Perth v Cousins* 80 WAIG 1759, reads as follows—

“For those reasons, I ordered that there be a stay, but that the monies be paid into and held on trust on the terms and conditions expressed in the order. Obviously, the order is made, in part, on the basis that there will be no inordinate delay in listing the appeal for hearing and determination.”

- 13 I should also add that the dismissal which resulted in the order made on 3 March 2000 by the Commission at first instance was effected on 11 March 1999, some 21 months ago.
- 14 It is now an inordinate length of time since the appeal was filed and since the dismissal occurred. I am not satisfied that there are satisfactory explanations for the YMCA of Perth appeal not being expedited at least up until 8 August 2000 and, indeed, after that notwithstanding the existence of the appeal to the Industrial Appeal Court by Mr Cousins. Further, no step has been taken since the lodging of the Notice of Appeal and its filing on 24 March 2000.
- 15 Those reasons, overween reasons such as that the balance of convenience favoured the applicant (which it patently does not now) and that there is a serious issue to be tried, which I found when I made the order sought to be revoked.
- 16 Because of the inadequate explanation for the delay, the length of the delay and the period of Mr Cousins' deprivation of the fruits of his “judgment”, I am of opinion that, having regard to the interests of the parties, pursuant to s.26(1)(c) of the *Industrial Relations Act 1979* (as amended) and having regard to s.26(1)(a) of the Act, the equity, good conscience and the substantial merits of the case reside with the respondent and I therefore will revoke the order for a stay made on 26 April 2000 and order that the monies be paid forthwith to Mr Cousins.
- 17 I am not persuaded that I have power to order that interest on the monies be paid to the respondent. Certainly, no authority was cited to that end. Further, I would require more substantial and unequivocal evidence that interest was not paid or payable on the account than the somewhat equivocal statement of the bank (exhibit 3). In addition, there is no cogent evidence of the quantum of interest which should have been payable.
- 18 For those reasons, I made the order which I have made.

2000 WAIRC 01676

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.	
PARTIES	YMCA OF PERTH, APPLICANT v. MICHAEL COUSINS, RESPONDENT
CORAM	HIS HONOUR THE PRESIDENT P J SHARKEY
DELIVERED	THURSDAY, 21 DECEMBER 2000
FILE NO/S	PRES 3 OF 2000
CITATION NO.	2000 WAIRC 01676
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Decision	Application granted.
Appearances	
Applicant	Mr A J Randles, (of Counsel), by leave
Respondent	Mr M Richardson, as agent

Order.

The application filed on the 15th day of December 2000 by the respondent having come on for hearing before me on the 21st day of December 2000 pursuant to the Order made on the 26th day of April 2000, and having heard Mr A J Randles (of Counsel), by leave, on behalf of the applicant and Mr M Richardson, as agent, on behalf of the respondent, and I having found that the application made by the respondent be and is hereby granted, and reasons for decision having been delivered on the 21st day of December 2000, and the parties herein having consented to waive the requirements of s.35 of the Industrial Relations Act 1979 (as amended), it is this day, the 21st day of December 2000, ordered as follows—

- (1) THAT the order made by the Commission constituted by the President in application No. PRES 3 of 2000 on the 26th day of April 2000 be and is hereby revoked.
- (2) THAT the sum of \$7,561.00 ordered therein to be paid by the abovenamed applicant into an account at Bankwest Midland, Account No. 0890433532, Account Name YMCA/Cousins be paid forthwith to the abovenamed respondent.
- (3) THAT the parties and each of them forthwith do all such acts and things are as necessary to effect such payment.

[L.S.]

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

AWARDS/AGREEMENTS— Application for—

BRIDGE HOUSE—SALVATION ARMY AGREEMENT 2000. No. AG 242 of 2000.

2001 WAIRC 01980

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.	
PARTIES	AUSTRALIAN LIQUOR, HOSPITALITY AND MISCELLANEOUS WORKERS UNION, WESTERN AUSTRALIAN BRANCH, APPLICANT v. SALVATION ARMY (WA) PROPERTY TRUST, RESPONDENT
CORAM	COMMISSIONER P E SCOTT
DELIVERED	TUESDAY, 6 FEBRUARY 2001
FILE NO	AG 242 OF 2000
CITATION NO.	2001 WAIRC 01980
<hr/>	
Result	Agreement registered

Order.

HAVING heard Mr J Walker on behalf of the Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch and Mr M A O'Connor on behalf of The Salvation Army (Western Australian) Property Trust, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Bridge House—Salvation Army Agreement 2000 in the terms of the following schedule be registered on the 23rd day of January 2001 and shall replace the Bridge House—Salvation Army Agreement 1999 (AG 144 of 1999).

[L.S.] (Sgd.) P.E. SCOTT,
Commissioner.

Schedule.

1.—TITLE

This Agreement shall be known as the “Bridge House—Salvation Army Agreement” 2000.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Scope
4. Wages
5. Hours
6. Additional Payments
7. Contract of Service
8. Overtime
9. Annual Leave
10. Sick Leave
11. Long Service Leave
12. Bereavement Leave
13. Public Holidays
14. Parental Leave
15. Payment of Wages
16. Occupational Superannuation
17. Casual Employees
18. Part-Time Employees
19. Dispute Settlement Procedure
20. Interviews
21. Clarity
22. Remuneration Packaging
23. Term
24. Number of Employees
25. Parties to Agreement

Appendix—Remuneration Packaging Arrangements

3.—SCOPE

This Agreement shall apply to all employees employed in the classifications in Clause 4.—Wages at Bridge House, to the Salvation Army and to the Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch and replaces Agreement AG 144 of 1999.

4.—WAGES

(1) The following shall be the minimum rates of wages payable to employees covered by this Agreement—

	Per Week \$
(a) Qualified Cook	535.90
(b) Cook	476.00
(c) Supervisor, Detoxification	478.60
(d) Domestic	453.30

(2) By application of one of the parties to the Western Australian Industrial Relations Commission, these rates shall be adjusted in accordance with State Wage Decisions.

(3) The hourly rate shall be calculated by dividing the weekly rate by 38.

(4) Notwithstanding the wage for Supervisor, Detoxification in this clause, a new employee who has not previously been trained in the work of such position, shall only be entitled to a rate equivalent to 85% of the wage for this position

while being trained during the first 38 hours or 5 shifts of training time, whichever is the longer.

5.—HOURS

(1) The ordinary hours of work shall be 38 per week, not exceeding 10 per day, to be worked over not more than five days of the week.

(2) Each employee shall be entitled to two clear days off duty per week or four clear days off duty per fortnight.

(3) Notwithstanding subclauses (1) and (2) of this clause, by agreement between the employer, the employees and the Union, any other arrangement of hours may be worked.

6.—ADDITIONAL PAYMENTS

(1) All hours worked on Saturdays shall be paid at time and one half. Work performed on Sundays will be at time and three quarters.

(2) All hours worked on any public holiday or day observed in lieu thereof referred to in Clause 13.—Public Holidays shall be paid at time and one half.

(3) Except as provided in subclauses (1) and (2), the loading on the ordinary rates of pay for an afternoon or night shift worked in ordinary hours shall be 15%.

For the purposes of this Agreement, an afternoon shift shall be one which commences between 12.00 noon and 6.00 pm and a night shift shall be one which commences between 6.00 pm and 4.00 am.

7.—CONTRACT OF SERVICE

(1) Except for probationary employees, the contract of service period shall be—

- (a) one hour for casual employees;
- (b) two weeks for all other employees.

(2) (a) An employee may be engaged on a probationary period of not longer than three months, during which time it will be possible for either the employer or employee to terminate the contract of service with one day's written notice.

(b) During probation the employer shall conduct at least one appraisal of the employee's performance and bring to the employee's attention any areas of performance or conduct which require improvement.

(c) Where the employer has some concerns regarding the employee's performance or conduct during the probationary period, by agreement between the employer and the employee, the probationary period can be extended for a further period of up to 3 months. The notice period referred to in (a) above shall continue to apply to the extended probation.

(4) Except for probationary employees, the contract of service may be terminated by either the employer or employee giving—

- (a) notice of one hour for casual employees;
- (b) written notice of two weeks for all other employees.

(5) Where an employee does not give the required period of notice of termination of services the wages payable for the contract of service period may be forfeited at the discretion of the employer.

8.—OVERTIME

(1) Overtime shall mean all time required and authorised to be worked beyond or in excess of the ordinary rostered hours of duty prescribed in Clause 5.—Hours. Overtime shall be paid at time and one half for the first two hours and double time thereafter.

In lieu of payment for overtime and by the agreement between the employees and the employer, time off equivalent to the time worked may be granted.

(2) By agreement, a part-time employee may work shifts additional to the rostered shifts at ordinary rates, subject only to the normal rostering parameters of a full-time employee.

9.—ANNUAL LEAVE

(1) Except as hereinafter provided, a period of six consecutive weeks' leave shall be allowed to an employee by his/her employer after each period of 12 months' continuous employment with such employer.

(2) (a) Payment for leave shall be paid prior to commencing leave and be on the basis of either what the employee would have earned had he/she not gone on leave or 17.5% loading, that is, whichever is greater. In the case of employees referred to in sub clause (5) hereunder, the 17.5% shall apply on 5/7 of the period of annual leave.

(b) Pro rata annual leave loading shall not be paid on termination.

(3) Employees who are not rostered to work shift work or on public holidays shall be entitled to four weeks' annual leave with 17.5% loading and payment for public holidays in accordance with Clause 13.—Public Holidays of this Agreement, in lieu of the provisions of subclause (2) hereof.

(4) Annual leave may be split into more than one portion and will be taken by agreement between the employer and employee.

(5) Shift employees who work a regular rotating roster that incorporates day, afternoon and night shift, shall be entitled to an additional weeks leave per year. Providing that for employees whose shifts are not subject to regular rotation, one day's additional leave (up to a maximum of 5 days) shall be granted for each 35 shifts actually worked on an afternoon or night shift.

(6) (a) (i) Except as provided hereunder or in paragraph (b) of this subclause, if an employee lawfully terminates his/her employment or his/her employment is terminated by the employer through no fault of the employee, the employee shall be paid 4.38 hours pay at the rate prescribed by subclause(2) of this clause in respect of each completed week of continuous service for which annual leave has not already been taken.

(ii) Further provided that employees to whom subclause (5) of this clause applies shall be paid for such additional days' leave as have accrued due under that subclause at the date of such termination.

(iii) Employees entitled to annual leave under subclause (3) of this Clause shall be entitled to pro rata leave under this subclause at the rate of 2.92 hours in respect of each completed week of continuous service.

(b) Employee Dismissed for Misconduct

(i) An employee who is dismissed for misconduct which occurred after the completion of a 12 month qualifying period shall be paid in full for any leave which accrued in that period but which has not yet been taken.

(ii) An employee dismissed for misconduct which occurred—

- * during a completed 12 month qualifying period; or
- * in an incomplete 12 month qualifying period; but before the employee has taken leave in respect of that qualifying period, shall be paid an amount equal to one thirteenth of a week's pay (exclusive of penalty rates, overtime or allowances) for each week of service in that qualifying period in respect of which leave has not been taken.

(7) The provisions of this clause shall not apply to casual employees

10.—SICK LEAVE

(1) (a) An employee who is unable to attend or remain at his/her place of employment during the ordinary hours of work by reason of personal ill health or injury shall be entitled to payment during such absence in accordance with the following provisions.

(b) Entitlement to payment shall accrue at the rate of one sixth of a week for each completed month of service with the employer.

(c) If in the first or successive years of service with the employer an employee is absent on the grounds of personal ill health or injury for a period longer than the entitlement to paid sick leave, payment may be adjusted at the end of that year of service, or at the time the employee's services terminate, if before the end of that year of service, to the extent that the employee has become entitled to further paid sick leave during that year of service.

(2) The unused portions of the entitlement to paid sick leave in any one year shall accumulate from year to year and subject to this clause may be claimed by the employee if the absence by reason of personal ill health or injury exceeds the period for which entitlement has accrued during the year at the time of the absence. Provided that an employee shall not be entitled to claim payment for any period exceeding ten weeks in any one year of service.

(3) To be entitled to payment in accordance with this clause the employee shall as soon as reasonably practicable advise the employer of the 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 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. Provided that where an employee has had two absences on paid sick leave adjacent to other days off duty within a period of 12 months the employer may request in writing that any further absences adjacent to days off be accompanied by such certificate.

Provided that this request shall remain in force until the employee has completed a continuous period of 12 months without such absence.

(5) (a) Subject to the provisions of this subclause, an employee who suffers personal ill health or injury during the time when the employee is absent on annual leave 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 employee's place of residence or a hospital as a result of 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 to that effect. Provided that this paragraph does not relieve the employee of the obligation to advise the employer in accordance with subclause (3) of this clause if 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 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 9.—Annual Leave of this Agreement.

(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 9.—Annual Leave of this Agreement 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 Assistance Act, 1981, nor to employees whose injury or illness is the result of the employee's own misconduct.

(7) The provisions of this clause shall not apply to casual employees.

(8) Family Leave

- (a) An employee with responsibilities in relation to either members of their immediate family or person living with the employee as a member of the employee's immediate family who need their care and support shall be entitled to use up to 5 days per year sick leave entitlement to provide care and support for such persons when they are ill or incapacitated.
- (b) The employee shall, if required, establish by production of a medical certificate or statutory declaration, the illness or incapacitation of the person concerned.
- (c) The entitlement to sick leave in accordance with this subclause is subject to—
 - (i) the employee being responsible for the care of the person concerned; and
 - (ii) the person concerned being either:
 - (a) a member of the employee's immediate family; or
 - (b) a person who is living with the employee as a member of the employee's immediate family.
 - (iii) the term "immediate family" includes a spouse, de facto spouse, child, step child, parent, brother, sister, grandparent or grandchild of the employee or spouse of the employee.
- (d) The employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and their relationship to the employee, the reasons for taking such leave and 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) Family leave is not cumulative from year to year.

11.—LONG SERVICE LEAVE

The Long Service Leave Provisions published in Volume 73 of the Western Australian Industrial Gazette at pages 1 to 4, both inclusive, are hereby incorporated in and shall be deemed part of his Agreement.

12.—BEREAVEMENT LEAVE

Reasonable leave from work shall be available on the death of a family member or immediate relative, as is necessary.

13.—PUBLIC HOLIDAYS

(1) For the purposes of this Agreement "Public Holiday" means any of the following days or days observed in lieu thereof—

New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, Foundation Day, Sovereign's Birthday, Christmas Day and Boxing Day.

(2) Where any public holiday prescribed by this Agreement falls on a Saturday or a Sunday, such holiday shall be observed on the next succeeding Monday and where Boxing Day falls on a Sunday or Monday, such holiday shall be observed on the next succeeding Tuesday. Provided that—

- (a) day observed in lieu of the holiday may be appointed by proclamation under the Public and Bank Holidays Act 1972;
- (b) another day may be observed in lieu of the holiday by agreement between the employee and the employer.

(3) An entitlement to public holidays without deduction of pay shall only apply to those employees referred to in subclause (3) of Clause 9.—Annual Leave.

14.—PARENTAL LEAVE

Interpretation

(1) "adoption", in relation to a child, is a reference to a child who—

- (a) is not the natural child or the stepchild of the employee or the employee's spouse;
- (b) is less than 5 years of age; and

- (c) has not lived continuously with the employee for 6 months or longer;

“**continuous service**” means service under an unbroken contract of employment and includes—

- (a) any period of parental leave; and
(b) any period of leave or absence authorised by the employer or by this workplace agreement;

“**expected date of birth**” means the day certified by a medical practitioner to be the day on which the medical practitioner expects the employee or the employee’s spouse, as the case may be, to give birth to a child;

“**parental leave**” means leave provided for by subclause 2(a);

“**spouse**” includes a de facto spouse.

Entitlement to parental leave

(2) (a) Subject to clauses 4, 5(1) and 6(1), an employee, other than a casual employee, is entitled to take up to 52 consecutive weeks of unpaid leave in respect of—

- (i) the birth of a child to the employee or the employee’s spouse; or
(ii) the placement of a child with the employee with a view to the adoption of the child by the employee.

(b) An employee is not entitled to take parental leave unless he or she—

- (i) has, before the expected date of birth or placement, completed at least 12 months’ continuous service with the employer; and
(ii) has given the employer at least 10 weeks written notice of his or her intention to take the leave.

(c) An employee is not entitled to take parental leave at the same time as the employee’s spouse but this paragraph does not apply to one week’s parental leave—

- (i) taken by the male parent immediately after the birth of the child; or
(ii) taken by the employee and the employee’s spouse immediately after a child has been placed with them with a view to their adoption of the child.

(d) The entitlement to parental leave is reduced by any period of parental leave taken by the employee’s spouse in relation to the same child, except the period of one week’s leave referred to in paragraph (c).

Maternity leave to start 6 weeks before birth

(3) A female employee who has given notice of her intention to take parental leave, other than for an adoption, is to start the leave 6 weeks before the expected date of birth unless in respect of any period closer to the expected date of birth a medical practitioner has certified that the employee is fit to work.

Medical certificate

(4) An employee who has given notice of his or her intention to take parental leave, other than for adoption, is to provide to the employer a certificate from a medical practitioner stating that the employee or the employee’s spouse, as the case may be, is pregnant and the expected date of birth.

Notice of spouse’s parental leave

(5) (a) An employee who has given notice of his or her intention to take parental leave or who is actually taking parental leave is to notify the employer of particulars of any period of parental leave taken or to be taken by the employee’s spouse in relation to the same child.

(b) Any notice given under paragraph (a) is to be supported by a statutory declaration by the employee as to the truth of the particulars notified.

Notice of parental leave details

(6) (a) An employee who has given notice of his or her intention to take parental leave is to notify the employer of the dates on which the employee wishes to start and finish the leave.

(b) An employee who is taking parental leave is to notify the employer of any change to the date on which the employee wishes to finish the leave.

(c) The starting and finishing dates of a period of parental leave are to be agreed between the employee and employer.

Return to work after parental leave

(7) (a) On finishing parental leave, an employee is entitled to the position he or she held immediately before starting parental leave.

(b) If the position referred to in paragraph (a) is not available, the employee is entitled to an available position—

- (i) for which the employee is qualified; and
(ii) that the employee is capable of performing, most comparable in status and pay to that of his or her former position.

(c) Where, immediately before starting parental leave, an employee was acting in, or performing on a temporary basis the duties of, the position referred to in paragraph (a), that paragraph applies only in respect of the position held by the employee immediately before taking the acting or temporary position.

Effect of parental leave on employment

(8) Absence on parental leave—

- (a) does not break the continuity of service of an employee; and
(b) is not to be taken into account when calculating the period of service for the purpose of this workplace agreement.

15.—PAYMENT OF WAGES

(1) The existing arrangement of fortnightly pays into bank accounts shall apply.

(2) If, for reasons within the control of the employer, wages are not available at a nominated time and the employee is kept waiting for a period exceeding 24 hours, overtime rates shall apply.

(3) No deduction shall be made from an employee’s wages unless the employee has agreed to such deduction in writing, or the deduction is authorised by this Agreement.

(4) Each employee shall be provided with a pay advice slip on each day that wages are paid. The pay advice slip shall detail—

- (a) The rate of wages.
(b) The hours worked, including overtime.
(c) The gross wage.
(d) The net wage.
(e) Any allowances paid.
(f) Any deductions made.
(g) The composition of any annual leave payment.
(h) The composition of any termination payment.
(i) Remuneration Packaging benefits allowed under Clause 22 and the Appendix.—Remuneration Packaging Arrangements

(5) Wages shall be paid fortnightly, provided that by agreement between the employer and the Union, wages may be paid to other intervals.

(6) Subject to subclause (7) hereof, upon termination of employment, the employer shall pay to the employee all monies earned by or payable to the employee within 48 hours of termination of employment.

(7) Subject to Clause 7.—Contract of Service, subclause (4) where the employee terminates his or her employment without notice as required by Clause 7.—Contract of Service of this Agreement the employer shall forward as soon as reasonably possible all monies earned by or payable to such employee to that employee.

16.—OCCUPATIONAL SUPERANNUATION

The superannuation provisions contained herein operate subject to the requirements of the hereinafter prescribed provision titled—Compliance, Nomination and Transition.

The employer shall pay an amount equivalent to 7% of an employee’s ordinary time earnings into the Australian Retirement Fund on the employee’s behalf in accordance with the requirements of the Fund.

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 an 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.

17.—CASUAL EMPLOYEES

(1) A casual employee shall mean an employee engaged on an hourly contract of service.

(2) Casual employees shall not be engaged for less than three consecutive hours per engagement.

(3) A casual employee shall be paid 20% over the rates specified herein for his/her class of work.

(4) "Casual employee" means an employee engaged for a period of less than one month.

18.—PART-TIME EMPLOYEES

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 hours per day but less than 38 hours per week.

Part-time employees shall receive payment for wages, annual leave, long service leave, sick leave and bereavement leave on a pro-rata basis according to the same proportion as the number of hours worked each week bears to 38. In the case of payment for any of the leave entitlements and in circumstances where the number of hours worked each week varies, such payment shall be calculated according to the arithmetical average, over the period from the last anniversary date, or date of commencement, as the case may be.

Part time employees who are entitled to annual leave in accordance with subclause (3) of Clause 9.—Annual Leave shall be entitled to paid public holidays which fall on a day they would otherwise work but for the public holiday or day observed in lieu, as provided in Clause 13.—Public Holidays.

19.—DISPUTE SETTLEMENT PROCEDURE

(1) The parties to this Agreement will endeavour to provide effective and speedy resolution of questions, disputes or difficulties which may arise. The Union recognises the right and responsibility of Bridge House to provide uninterrupted and efficient services to the community. The employer recognises the rights and responsibilities of the Union to represent its members in compliance with its rules.

(2) Where a question, dispute or difficulty arises, emphasis shall be placed on a negotiated settlement. However, if the negotiation process is exhausted without the dispute being resolved the parties, having conferred among themselves and having made reasonable attempts to resolve the question, dispute or difficulty, may jointly or individually refer the matter to the Western Australian Industrial Relations Commission for assistance in resolving the dispute.

(3) The status quo (ie. the conditions applying prior to the issue arising) will remain until the issue is resolved in accordance with the procedure outlined above.

(4) Where the employer seeks to discipline an employee, or terminate an employee the following steps shall be observed—

- (a) In the event that an employee commits a misdemeanour, the employee's immediate supervisory or any other staff member so authorised, may exercise the employer's right to reprimand the employee so that the employee understands the nature and implications of their conduct.
- (b) The first two reprimands shall take the form of warnings and, if given verbally, shall be confirmed in writing as soon as practicable after the giving of the reprimand.
- (c) Should it be necessary, for any reason, to reprimand an employee three times in a period not exceeding twelve months continuous service, the contract of service shall, upon the giving of that third reprimand, be terminable in accordance with the provisions of this Agreement.

20.—INTERVIEWS

(1) This clause is subject to the provisions of Section 49AB of the Act.

(2) An accredited representative of the Union shall be entitled to enter the business premises of the employer and interview an employee subject to the following—

- (a) On arrival at the workplace the Union representative shall seek permission to enter the premises from the employer or its senior representative.
- (b) Agreement between the Union representative and the employer shall be sought as to where and subject to what conditions the employee may be interviewed or work inspected.

21.—CLARITY

The employer agrees that the following clauses from the Aged and Disabled Persons Hostels Award No. 6 of 1987 shall apply mutatis mutandis, to this Agreement.

Clause 23.—Record

Clause 24.—Posting of Award and Union Notices

Clause 26.—Breakdowns

Clause 38.—Introduction to Change

22.—REMUNERATION PACKAGING

Remuneration packaging in accordance with the terms and conditions of this clause and the packaging arrangements appended to this Agreement shall be optional for all employees covered by this Agreement.

(1) Where agreed between the employer and the employee, the employer shall offer and the employee accept remuneration packaging in respect of wages and benefits and the terms and conditions of such a package shall not, when viewed objectively, be less favourable than the entitlements otherwise

available under this Agreement in terms of wages, penalties and allowances, and shall be subject to the following provisions—

- (a) A maximum of 30% salary sacrifice on the employee's averaged wage and penalty payments, where applicable, is available;
- (b) Part time employees have packaging based on their pro-rata wage;
- (c) The employer shall confirm in writing to the employee the wage payable as applicable to that employee under Clause 4 of this Agreement;
- (d) The employer shall advise the employee in writing, of his/her right to choose payment of the wage referred to in Clause 4 of this Agreement instead of a remuneration package;

(2) The packaging agreement, the terms and conditions which shall be in writing and signed by both the employer and employee, shall detail the components of the total remuneration package for the purpose of this Agreement and for the purpose of complying with time and wages records under the Act and Regulations.

(3) A copy of the packaging agreement shall be made available to the employee.

(4) The employee shall be entitled to inspect details of payments and transactions made under the terms of the agreement.

(5) The configuration of the remuneration package shall remain in force for the period agreed between the employee and the employer. Provided that an employee may withdraw from the remuneration packaging arrangement by giving the employer reasonable notice of intention to withdraw from the end of the next quarter of the calendar year.

(6) An employee who has previously declined to take up packaging, may, by giving the employer reasonable notice, take up the benefit at any time.

(7) Where at the end of the financial year the full amount allocated to a specific benefit has not been utilised, by agreement between the employer and employee, any unused amount may be carried forward to the next financial year to be utilised by 30 September, or be paid as wages as at the end of the financial year, which will be subject to usual taxation requirements.

(8) In the event that changes in legislation, Income Tax Assessment Act determinations or Rulings, particularly in respect of the Employer's fringe benefits tax exempt status, remove the employer's capacity to maintain the salary packaging arrangements offered to employees under this Agreement, the employer shall be entitled to withdraw from the salary packaging arrangements by giving notice to each affected employee either three months prior to the withdrawal taking place, or notice to have effect from the date that the relevant legislation is to take effect, whichever is the earlier.

(9) Subject to subclause (11), in the event of the employer withdrawing from the salary packaging arrangements, the employees will revert to a wage not less than that applicable to the employees classification under this Agreement.

(10) The employer shall as soon as practicable after being advised of the legislative change referred to in subclause (8) hereof, advise the Union and employees and shall convene a meeting of the parties with a view to reaching an alternative agreement on wages and benefits.

(11) In the event that consensus on the terms of a replacement agreement cannot be reached it shall be open to the parties to seek cancellation of this clause and/or refer the matter to the Western Australian Industrial Relations Commission for conciliation or arbitration.

23.—TERM

The term of this Agreement shall be for one year from the date of registration.

24.—NUMBER OF EMPLOYEES

There are an estimated 20 employees covered by the provisions of this Agreement as at the date of registration.

25.—PARTIES TO AGREEMENT

The following parties are bound by the terms of this Agreement.

Salvation Army (WA) Property Trust
333 William Street, Northbridge WA 6003
Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch
61 Thomas Street, Subiaco

SIGNATURES OF THE PARTIES

Australian Liquor, Hospitality and Miscellaneous Workers Union Western Australian Branch
61 Thomas Street, Subiaco. 6008

DATE: 15/1/01

(signed by) Signed

WITNESS: Signed

DATE: 15/1/01

Salvation Army (WA) Property Trust
333 William Street, Northbridge.WA 6003

DATE: 10/1/2001

(signed by) Signed Brad Halse, Captain

WITNESS: Signed

DATE: 10/1/2001

APPENDIX

REMUNERATION PACKAGING ARRANGEMENTS

(1) Packaging Details

- (a) Wage packaging to a maximum of 30% of wages will be available to staff.
- (b) Staff may elect to take the maximum rate of packaging available to them or a lesser amount by increments of 5% to a minimum of 10%.
- (c) Staff wishing to alter their level of packaging may only do so at the end of each quarter.

(2) Administration Charge

- (a) The Salvation Army will charge an administration fee of up to 3% of the amount packaged. This fee will automatically be deducted from the packaged amount. The fee will be utilised only for the administration of the salary packaging scheme.

(3) Pay Advice Slips and Group Certificates

- (a) Pay advice slips will indicate the wages and allowances and the amount that has been credited to the individual staff member's 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 paid out by the packaging arrangement and the figure appearing under the "Tax" column will be the tax payable on the reduced "Taxable Income".
- (c) Group Certificates will indicate the reduced taxable income and tax deducted for the year. The amount packaged will not be shown on Group Certificates unless required by law.

(4) Proposed Operation of the System

- (a) Each fortnight the payroll system will calculate each staff member's non cash benefit in accordance with the agreed sacrifice percentage. Such amount will be credited to that staff member's wage packaging account.
- (b) At the end of each month each staff member will receive a statement of account indicating all transactions for the previous month and the end of month balance or such shorter period as determined by the Employer.
- (c) To pay a bill through their wage packaging account staff members will be required to complete a Salary Package Payment Authority and forward this to the Salary Packaging Clerk together with the original account. In normal circumstances payment will be made by the due date of the account but not less

than 3 days following receipt of the account by the salary packaging clerk.

- (d) When a staff member terminates employment with the Salvation Army they may elect to either use their remaining wage package balance prior to termination or to have the balance paid out as wages. Where the balance is paid out as wages, income tax instalment deductions will be deducted from the wages by the Employer.

(5) Superannuation Guarantee charge

- (a) Superannuation Guarantee payments will be based upon the wage rate as applicable under the Superannuation Guarantee Charge Act 1992 as at the date of registration of the Agreement.

(6) Components of Packaging

The following items will be those for which packaging amounts may be utilised;

Telephone Accounts—bills from telephone service providers for the personal telephone expenses of the employee at their residence.

Rent—personal rental expenses of the employee, such as the rent they pay for their present accommodation.

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 Corporation Accounts, personal employee expenses payable to the WA Water Corporation 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 employees as part of an educational activity, undertaken by themselves or dependent child.

Child Care Fees—expenses incurred by the employee for the care of their child/children.

Maintenance Payments—any fixed payment incurred by an employee in respect of private or court/law enforced agreements for maintenance payments.

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.

Domestic Support—expenses incurred by the employee in respect of a cleaner or ironing service where an invoice is produced.

Travel and Accommodation Costs—payments to travel agents, airlines, hotels and the like would be included under this category.

Membership Subscription—payment of expenses of membership of any organisation to which the employee belongs.

Medical, Dental and Pharmaceutical Accounts—doctor, dentist and chemist bills (and bills from other medical service providers) incurred in respect of self, spouse or dependant.

Veterinary Accounts.

Credit Card Accounts—any of the above expenses incurred by an employee and charged to them via a credit card (for example, Visa, Bankcard). The employee must have documentation to support the expenses charged to the credit card. It is important to note under no circumstances will there be payment for any cash advances. Payments made from any packaged amount will only be made in respect of expenses incurred as a result of a purchase of the eligible goods and services and will be made to the credit card provider.

Fleetcard is a system provided by Shell/Custom Credit whereby a credit card is issued which may be used to purchase fuel and other services for a nominated motor vehicle. Fleetcard issue a monthly bill detailing all expenses incurred.

This will be payable through the employee's packaging account.

Superannuation Contributions. Employee contributions payable to a superannuation fund.

**BROUNBUILT PTY LIMITED, OSBORNE PARK,
WA AGREEMENT 2000.**

No. AG 291 of 2000.

2001 WAIRC 02012

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES BROUNBUILT METALUX
INDUSTRIES, APPLICANT

v.

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, THE SHOP,
DISTRIBUTIVE AND ALLIED
EMPLOYEES' ASSOCIATION OF
WESTERN AUSTRALIA,
RESPONDENT

CORAM COMMISSIONER J F GREGOR

DELIVERED FRIDAY, 9 FEBRUARY 2001

FILE NO/S AG 291 OF 2000

CITATION NO. 2001 WAIRC 02012

Result Register Agreement

Order.

HAVING heard Mr W. Wild on behalf of the Applicant and Ms S. McGurk and with her Mr G. Ferguson 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 two parties lodged in the Commission on 21 December 2000 entitled Brownbuilt Pty Limited, Osborne Park, WA Agreement 2000 be registered as an Industrial Agreement.

(Sgd.) J.F. GREGOR,

[L.S.]

Commissioner.

BROUNBUILT PTY LIMITED
OSBORNE PARK, WA
AGREEMENT
2000

Schedule.

1.—TITLE

This Agreement shall be referred to as the Brownbuilt Pty Limited, Osborne Park, WA Agreement 2000.

2.—ARRANGEMENT

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TITLE

ARRANGEMENT

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3.—APPLICATION OF AGREEMENT

This Agreement shall apply at Brownbuilt Pty Limited, 25 Guthrie Street, Osborne Park, WA to all employees who are bound by the terms of the *Metal Trades (General) Award 1966*, *Transport Workers (General) Award No. 10 of 1961* and the *Shop and Warehouse (Wholesale and Retail Establishments) Award 1977 No R32 of 1976*, insofar as those provisions relate to the parties referred to in Clause 4.—Parties Bound of this Agreement.

4.—AREA AND SCOPE AND PARTIES BOUND

4.1 This Agreement shall apply to employees of Brownbuilt Metalux Industries ("the Company") who are members or who are eligible to be members of the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers', Western Australian Branch ("AFMEPKIU"), the Transport Workers' Union of Australia, Industrial Union of Workers', Western Australian Branch ("TWU") and the Shop Distributive and Allied Employees' Association of Western Australia ("SDA").

4.2 This Agreement applies to approximately 35 employees.

4.3 The parties to this Agreement shall be—

- Brownbuilt Metalux Industries, 25 Guthrie Street, OSBORNE PARK, WA, 6017
- The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers', Western Australian Branch, 1111 Hay Street, WEST PERTH, WA, 6005
- Transport Workers' Union of Australia, Industrial Union of Workers', Western Australian Branch, 3rd Floor, Labour Centre, 82 Beaufort Street, PERTH, WA, 6000
- The Shop, Distributive & Allied Employees Association of WA, 2nd Floor, 256 Adelaide Terrace, PERTH, WA, 6000

5.—DATE AND PERIOD OF OPERATION

This Agreement shall operate from 20 November 2000 and shall remain in force until 20 November 2001.

6.—RELATIONSHIP TO OTHER AWARDS

6.1 This Agreement shall be read wholly in conjunction with the *Metal Trades (General) Award 1966 No. 13 of 1965*, the *Shop and Warehouse (Wholesale and Retail Establishments) State Award 1977 No. R32 of 1976* and the *Transport Workers' (General) Award No. 10 of 1961* with respect to those employees bound by those awards.

6.2 Where there is any inconsistency between this Agreement and the aforementioned awards this Agreement shall prevail to the extent of such inconsistency.

7.—OBJECTIVE OF THE AGREEMENT

The objective of the Agreement is to implement the initiatives required to achieve gains in productivity as measured by the amount of cost reduction that can be achieved through efficiency, flexibility and quality improvements which will ensure the ongoing viability of Brownbuilt Pty Limited, WA.

8.—NO EXTRA CLAIMS

It is a term of this Agreement that the union and employees bound by this Agreement will not pursue any extra claims, award or over award, for the life of this Agreement other than increases that are consistent with Clause 12 of this Agreement.

9.—AVOIDANCE OF INDUSTRIAL DISPUTES

The procedure for settlement of disputes is detailed in the *Metal Trades (General) Award 1966* and all parties agree to abide by its detail and intent.

The purpose of this procedure is to provide all parties with a system to discuss and resolve all matters of grievance and dispute. All parties agree to undertake all necessary steps to ensure that all issues receive prompt attention and are resolved preferably internally.

An objective of this Agreement is to create an environment of mutual trust and respect between workers and management.

10.—NOT TO BE USED AS A PRECEDENT

This Agreement shall not be used in any manner whatsoever to obtain similar arrangements or benefits in any other plant or enterprise.

11.—LONG SERVICE LEAVE

- Long service will accrue at 1.3 weeks per year of service
- Long service 13 weeks—10 years
- Pro-rata after 8 years
- Introduction of long service leave, specified in paragraph (ii) and (iii) will commence at 1 April 1998
- The remaining conditions of long service leave provisions set out in volume 66 of the WA Industrial Gazette pays a 1 to 4 will continue to apply

12.—WAGES

12.1 The wage increase will be paid to the schedule below.

	CURRENT	4% INCREASE
		\$
C13	\$ 471.00	489.84
C12	\$ 501.97	522.05
C11	\$ 530.77	552.00
C10	\$ 574.22	597.17
C9	\$ 603.37	627.50
C8	\$ 632.07	657.35
Warehouse	\$ 503.54	523.68
Transport		
(Drivers)	\$ 514.35	534.92

13.—JOURNEY COVER

The company will take out an insurance policy with MMI to cover employees for journey cover for their most direct route to and from work for the duration of this Agreement.

14.—BEREAVEMENT LEAVE

14.1 An employee, other than a casual employee, shall, on the death within Australia of a wife, husband, father, mother, brother, sister, child or step-child, grandparents and grandparents-in-law be entitled, on notice, to leave up to and including the day of the funeral of such relation and such leave shall be without deduction of pay for a period not exceeding the number of hours worked by the employee in two ordinary working days. Proof of such death shall be furnished by the employee to the satisfaction of the employer.

14.2 Payment in respect of compassionate leave is to be made only where the employee otherwise would have been on duty and shall not be granted in any case where the employee concerned would have been off duty in accordance with any shift roster or on long service leave, annual leave, sick leave, workers' compensation, leave without pay or a public holiday.

14.3 For the purposes of this clause, the pay of an employee employed on shift work shall be deemed to include any usual shift allowance.

SIGNATURES TO THIS AGREEMENT

PART A: EMPLOYER'S SIGNATURE & ADDRESS

"My Company understands its rights and obligations under this Agreement, has freely entered into it and wishes to have this Agreement registered."

..... Robert William Briggs Date: 6/12/2000

Signature on behalf of
 BROWN BUILT METALUX
 INDUSTRIES
 (A.C.N.)
 Name of person
 Authorised to sign

Address: 25 Guthrie Street OSBORNE PARK, WA

Telephone Number: (08) 9446 5033 Facsimile Number: (08) 9446 4137

PART B: UNIONS SIGNATURES & ADDRESSES

For and on behalf of the AUTOMOTIVE, FOOD, METALS, ENGINEERING, PRINTING AND KINDRED INDUSTRIES UNION, WESTERN AUSTRALIAN BRANCH

..... J Ferguson Date: 20/12/2000
 Signature of Authorised Person Name of person Authorised to sign COMMON SEAL
 20/12/2000
 Witness Signature Date
 Simone France McGurk
 Witness Name (Print Name)
 37 Wray Ave Fremantle 6160
 Witness Address

For and on behalf of the SHOP, DISTRIBUTIVE AND ALLIED EMPLOYEES' ASSOCIATION OF WESTERN AUSTRALIA

..... Mark Bishop & Joseph Bullock Date: 19/12/2000
 Signature of Authorised Person Name of person Authorised to sign COMMON SEAL
 19/12/2000
 Witness Signature Date
 Graham Giffard
 Witness Name (Print Name)
 19 Hillsden Rd, Darlington
 Witness Address

For and on behalf of the TRANSPORT WORKERS' UNION OF AUSTRALIA, INDUSTRIAL UNION OF WORKERS', WESTERN AUSTRALIAN BRANCH

..... James McGiveron Date: 15/12/2000
 Signature of Authorised Person Name of person Authorised to sign COMMON SEAL
 15/12/2000
 Witness Signature Date
 Alison Owens
 Witness Name (Print Name)
 3rd floor 82 Beaufort Street Perth WA 6000
 Witness Address

APPENDIX 'A'**1. DEFINITIONS**

"Employees" means any person who is employed full time or permanent part time according to weekly contract of employment but excluding any person engaged on a casual or specific task, temporary or fixed term basis to meet seasonal or other unusual circumstances, or any person employed under the conditions of a specific contract of employment other than permanent hire.

"Redundancy" means **termination** of employment by the company of employees—

- 1.1 brought about directly by the total closure of the plant or section of a plant or the removal of a process or products or other causes resulting from company decisions that no longer require an employee to perform those duties;
- 1.2 brought about by external causes outside the direct control of the company, eg. adverse business conditions;
- 1.3 but excludes the ordinary and customary turnover of labour.

"Rate of Pay" means the all purpose ordinary time rate of pay including any leading hand allowance but excluding shift allowance and all other loadings and allowances.

"Continuous Service" means continuous with the company as defined in the *Metal, Engineering and Associated Industries Award 1998*.

"Accrued Sick Pay" means the balance of untaken sick pay at the date of termination and includes sick pay, which accrued prior to the date of this Agreement to a maximum of 8 days per year.

2. NOTICE OF INTENTION TO IMPLEMENT REDUNDANCIES

The Company will advise employees and the unions as early as possible of the intention to implement redundancies.

The company shall hold discussions with the employees directly affected and their unions as soon as practicable before redundancy occurs.

For the purpose of the discussion the company shall provide in writing to the employees concerned and the unions all relevant information about the proposed terminations:

including the reasons, the number and categories of employees likely to be affected and the period over which the terminations are likely to occur.

3. NOTICE OF TERMINATION

All employees who are to be made redundant will receive four weeks notice or pay in lieu of notice. At the discretion of the employer, such notice will be worked or paid in lieu, or part worked and part paid in lieu. Employees under notice who leave by mutual agreement during the period of notice, will be entitled to all other redundancy payments set out in this Agreement.

In addition to the four weeks notice period, employees who are aged 45 years and over, with more than two (2) years permanent service with the company, will be paid an additional two (2) weeks pay in lieu of an additional 2 weeks notice.

4. SELECTION OF REDUNDANT EMPLOYEES

The following factors will be considered when selecting employees for redundancy—

- skills required for the ongoing viability of the Osborne Park plant

Skill assessment and length of service criteria will be discussed by the parties of this Agreement prior to redundancies occurring.

Where a reduction of labour requirements is required the company will consider voluntary redundancy applications in the first instance.

5. REDUNDANCY PAYMENTS

Employees who have completed at least one year's service, as a permanent employee, with the company at the date on which they are made redundant will receive the following—

- service related payments amounting to 3.0 weeks pay for each completed year of service up to a maximum of 52 weeks pay
- accrued sick pay at current rate of pay based on a maximum of 8 days per year
- annual leave loading of 17.5% will be paid on pro-rata annual leave entitlements
- pro-rata long service leave will be paid after five (5) years service

All employees will be paid all statutory entitlements, and shall be given an itemised statement of monies due to them at least thirty-eight (38) hours before termination.

6. SUPERANNUATION FUND

Redundant employees will receive their superannuation benefits in accordance with the trust deed and rules.

7. INTERVIEWS

Time off during the notice period for the purpose of seeking other employment and attending job interviews, will be by prior arrangement with the company. This will be paid leave.

8. CERTIFICATE OF SERVICE

Employees shall be given a Certificate of Service indicating that termination was due to redundancy.

The Certificate of Service shall list the employee's classification at the time of termination, as well as credits toward training modules completed toward the next classification.

9. AGREEMENT NOT TO APPLY

This Agreement does not apply to any termination of employment by—

- Resignation for any reason
- Dismissal
- Termination of casual workers, and other employees as outlined in Clause 7—Definitions of this Agreement
- Retirement
- Early retirement due to ill health
- Termination due to time limited contract of employment
- Death of an employee, except for an employee who has been issued with a notice to terminate by the company and subsequently dies within the prescribed notice period

**CATALANO & KURTH/BLPPU AND THE CMETU
COLLECTIVE AGREEMENT 2000.**

No. AG 284 of 2000.

2001 WAIRC 01827

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES THE WESTERN AUSTRALIAN BUILDERS' LABOURERS, PAINTERS & PLASTERERS UNION OF WORKERS, CONSTRUCTION, MINING, ENERGY, TIMBERYARDS, SAWMILLS AND WOODWORKERS UNION OF AUSTRALIA—WESTERN AUSTRALIAN BRANCH, APPLICANT

v.

CATALANO KURTH PTY LTD,
RESPONDENT

CORAM COMMISSIONER J F GREGOR
DELIVERED WEDNESDAY, 17 JANUARY 2001
FILE NO AG 284 OF 2000
CITATION NO. 2001 WAIRC 01827

Result Register Agreement

Order.

HAVING heard Ms L. Dowden on behalf of the Applicants and there being no appearance on behalf of the Respondent, and by consent, the Commission pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the agreement made between the two parties lodged in the Commission on 7 December 2000 entitled Catalano and Kurth Pty Ltd/BLPPU and the CMETU Collective Agreement 2000 be registered as an Industrial Agreement.

(Sgd.) J. F. GREGOR,
Commissioner.

[L.S.]

Schedule.

1.—TITLE

This agreement shall be known as the Catalano & Kurth / BLPPU and the CMETU Collective Agreement 2000.

2.—ARRANGEMENT

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3.—PARTIES AND PERSONS BOUND

This agreement shall be binding on Catalano & Kurth Pty Ltd (hereinafter referred to as "the company"), the Western Australian Builders' Labourers, Painters and Plasterers Union of Workers and the Construction Mining Energy Timberyards Sawmills and Woodworkers Union of Australia—WA Branch (hereinafter referred to as "the unions") and all employees of the company eligible to be members of the unions.

4.—APPLICATION

This agreement shall apply to all employees of the company engaged on work in or in connection with construction, alteration, maintenance, repair or demolition work.

This agreement shall apply to the Ocean Keys Shopping Centre. There are approximately 9 employees covered by this agreement.

5.—RELATIONSHIP TO PARENT AWARD

1. This agreement is supplementary to, and shall be read and interpreted wholly in conjunction with, the Building Trades (Construction) Award 1987, Award No. R14 of 1978 (hereinafter referred to as "the award").

2. In the event of any inconsistency between the award and an express provision of this agreement, the terms of this agreement shall prevail to the extent of such inconsistency, unless the express provision of the agreement provides otherwise.

6.—PERIOD OF OPERATION

This agreement shall come into force from the first pay period commencing on or after the date of signing and shall remain in force until the 1st of November, 2002.

7.—CLASSIFICATION STRUCTURE & RATES OF PAY

1. All employees working under this agreement shall be paid according to the wage rates set out below.

2. Wage Rates (per hour at ordinary time)

	Current EBA Rate Hourly Rate \$	1 November 2001 Hourly Rate \$
Labourer Group 1	18.91	19.86
Labourer Group 2	18.26	19.17
Labourer Group 3	17.78	18.67
Plaster, Fixer	19.65	20.63
Painter, Glazier	19.20	20.16
Signwriter	19.62	20.63
Carpenter/Roofer	19.79	20.78
Bricklayer	19.61	20.59
Refractory Bricklayer	22.47	25.59
Stonemason	19.76	20.75
Rooftiler	19.43	20.40
Marker/Setter Out	20.35	21.37
Special Class T	20.61	21.64

APPRENTICE RATES

	Current EBA Rate Hourly Rate \$	1 November 2001 Hourly Rate \$
Plasterer, Fixer		
Year 1	8.25	8.66
Year 2 (1/3)	10.81	11.35
Year 3 (2/3)	14.74	15.47
Year 4 (3/3)	17.29	18.15
Painter, Glazier		
Year 1 (.5/3.5)	8.06	8.47
Year 2 (1/3), (1.5/3.5)	10.56	11.09
Year 3 (2/3), (2.5/3.5)	14.40	15.12
Year 4 (3/3), (3.5/3.5)	16.90	17.74

	Current EBA Rate Hourly Rate \$	1 November 2001 Hourly Rate \$
Signwriter		
Year 1 (.5/3.5)	8.24	8.66
Year 2 (1/3, 1.5/3.5)	10.79	11.35
Year 3 (2/3, 2.5/3.5)	14.72	15.47
Year 4 (3/3, 3/5/3.5)	17.27	18.15
Carpenter/Roofer		
Year 1	8.31	8.73
Year 2 (1/3)	10.88	11.43
Year 3 (2/3)	14.84	15.59
Year 4 (3/3)	17.42	18.29
Bricklayer		
Year 1	8.24	8.65
Year 2 (1/3)	10.79	11.32
Year 3 (2/3)	14.71	15.44
Year 4 (3/3)	17.26	18.12
Stonemason		
Year 1	8.31	8.73
Year 2 (1/3)	10.88	11.43
Year 3 (2/3)	14.84	15.59
Year 4 (3/3)	17.42	18.29
Roofiler		
6 months	11.07	11.62
2nd 6 months	12.17	12.78
Year 2	14.23	14.94
Year 3	16.70	17.54

3. All expense related allowances not specifically mentioned in this agreement will be paid as per the award as varied from time to time.

4. Site allowances relating to particular sites shall be paid in accordance with Appendix B of this Agreement.

5. An additional payment will be made to compensate for the impact of the Goods and Services Tax on the Consumer Price Index. In the circumstance that the CPI limit below is exceeded the appropriate additional payment will be made to the wage rates. The CPI figure for the applicable dates will be the official figure released by the ABS for the preceding year.

Date	CPI Limit	Additional Payment
June 2001	5%	1% (paid 1/9/2001)
June 2001	6%	2% (paid 1/9/2001)
June 2002	5%	1% (paid 1/9/2002)
June 2002	6%	2% (paid 1/9/2002)

8.—INDUSTRY STANDARDS

Redundancy

The company shall increase the contributions on behalf of each employee into the Western Australian Construction Industry Redundancy Fund to the following sums on a weekly basis—

Rate on signing	\$50
Rate as of 1/05/2001	\$60

Superannuation

(i) The Company will make a payment of \$60 per week per employee or the percentage rate that is prescribed under the Superannuation Guarantee Charge, whichever is the greater.

The Company will advise all employees subject to the Agreement of their right to have payments made to a complying superannuation fund of their choice. The Company is bound by the employee's election. The aforementioned payment will then be made to that fund.

Until each employee nominates the fund of their choice the Company will make payments into the Construction + Building Unions Superannuation Scheme (the "C+BUSS").

In the event that any employee chooses a fund other than the C+BUSS the Company will, within seven days of the employee advising the Company of the fund of their choice, advise the Union in writing of the employee's decision.

In the event that the employee and the Company reach an agreement pursuant to section 49C(2)(d) of the Act to change the complying superannuation fund or scheme the Company

will, within seven days of the employee and the Company reaching such an agreement, advise the Union in writing of the agreement. The employer shall not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by the employee.

(ii) "Ordinary Time Earnings" (which for the purposes of the Superannuation Guarantee (Administration) Act 1992 will operate to provide a notional earnings base) shall mean the actual ordinary rate of pay the employee receives for ordinary hours of work including tool allowance, industry allowance, trade allowances, shift loading, special rates, qualification allowances (eg. first aid, laser safety officer), multi-storey allowance, site allowance, asbestos eradication allowance, leading hand allowances, in charge of plant allowance and supervisory allowances where applicable. The term includes any regular over-award pay as well as casual rates received and any additional rates and allowances paid for work undertaken during ordinary hours of work, including fares and travel.

9.—SICK LEAVE

For sick leave accrued after the date of signing this agreement the following will apply—

- The Company's employees shall have the option of converting 100% of accrued sick leave entitlement to a cash payment on termination
- If an employee who has been terminated by the Company without exercising the above option is re-engaged within a period of six months, the unpaid balance of sick leave shall continue from the date of re-engagement.
- Where the Company has signed a previous Agreement with the Union that also allowed for the conversion to cash payment on termination for accrued sick leave, that accrued sick leave will be treated as if it accrued under this agreement.
- Sick leave shall accrue, for the purposes of this clause, at the rate of one day at the beginning of each of the first ten calendar months of each year.

10.—NEGOTIATION OF A SUBSEQUENT AGREEMENT

The parties agree to commence negotiations for a new collective agreement to succeed this agreement at least 3 months before the nominal expiry date. The parties intend to conclude these negotiations prior to the nominal expiry date. These negotiations shall be conducted on a collective basis between all of the parties with the negotiated outcome being subject to approval of a vote of the employees collectively.

11.—APPLICATION OF PROJECT AGREEMENTS

1. This agreement shall apply to all persons employed in the employer's business and every part thereof throughout Western Australia until **1st November 2002** except where the company commences work on a project where a site agreement to which the union is a party exists that provides for higher rates of pay and conditions.

2. The conditions contained in any such site agreement will take precedence over this agreement for the duration of the project.

12.—FARES AND TRAVELLING ALLOWANCE

In addition to Clause 12A of the award a travel payment shall be made in the form of a daily payment (on days worked) of \$6.15 per day per employee.

13.—SENIORITY

1. The parties agree the continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

2. When applying the "first on last off" principle it is agreed subject to the caveat of "all things being equal", it is intended to apply on a Company basis rather than a site by site basis.

3. It is recognised that from time to time instances may arise where the employee's individual skills may be subject to this caveat. Where there is any disagreement as to the application of this the matter will be processed in accordance with Clause 16—Dispute Settlement Procedure.

4. An employee who has been retrenched by the Company shall have absolute preference and priority for re-employment/re-engagement by the Company. Where an employee is

re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

14.—ALL IN PAYMENTS

1. All-in payments to employees will not be made. All-in payments are defined as an hourly rate or piece work rate which is meant to cover wages and all allowances, such as annual leave, sick leave, etc., on which tax is being paid using the Prescribed Payments System.

2. It is agreed that where a breach of this clause is discovered, the employer shall continue paying the "all-in" rate as the employees hourly rate, but shall pay all award and other entitlements on top of this amount, back-dated to the commencement of the all-in rate arrangement. The company shall not be entitled to offset any amount in excess of the ordinary hourly rate against any other entitlement in this agreement.

3. This clause shall not be applied to prevent the employer subletting specialised work outside of the normal scope of work which the employer performs. The union shall be notified when specialist sub-contractors are to be engaged.

15.—PYRAMID SUB-CONTRACTING

1. "Pyramid Sub-Contracting" is defined as the practice of a sub-contractor, to whom a sub-contract is originally awarded, sub-letting that contract or part thereof to another sub-contractor.

2. Provided that where a sub-contractor does not have the technical capacity to handle a specialist section of the contract and intends to engage a specialist sub-contractor to perform that work, that section may be re-let to a specialist sub-contractor.

3. Further provided that when a sub-contract is let for labour and material, a labour-only sub-contract may be let by the sub-contractor, but it is unacceptable as a principle for further labour-only sub-contracts to be re-let.

4. A bona fide sub-contractor is generally an employer of labour, save for a machine owner-operator.

5. Where a disagreement arises in relation to the definition or application of the term "Pyramid Sub-Contracting" the parties shall discuss and determine the issue in accordance with the agreement dispute resolution procedure. In any event of a disagreement, the matter shall be negotiated further between the parties or referred to the Western Australian Industrial Relations Commission. Whilst these procedures are undertaken no industrial action shall occur.

16.—DISPUTE SETTLEMENT PROCEDURE

1. Disputes over any work related or industrial question, dispute or difficulty should be dealt with as close to its source as possible.

2. An employee or the union delegate should initially submit any work related and/or industrial matter referred to in (1), to the site foreperson, supervisor or other appropriate site representative of the company.

3. If the matter remains unresolved the union delegate may then submit the matter to the appropriate senior management person.

4. If still not resolved the delegate shall refer the matter to an appropriate official of the union, who shall discuss the matter with the nominated representative of the employer.

5. Whilst the above procedures are being followed work should continue as normal.

6. This procedure is to be followed in good faith and without unreasonable delay by any party.

7. Should the matter remain unresolved it shall be dealt with in one of the following ways as agreed to between the parties:

- referred to the Western Australian Industrial Relations Commission for conciliation and if required arbitration provided that the parties involved in the matter will confer among themselves and make reasonable attempts to resolve the matter before taking those matters to the Commission. The Commission's decision will be accepted by all parties subject to legal rights of appeal; or
- referred to a disputes board for determination; or

- referred to a private arbitrator agreed to between the parties, for determination.

8. This dispute settlement procedure does not apply to health and safety issues.

17.—SAFETY DISPUTE RESOLUTION

1. The parties to this agreement are committed to the safe operation of plant and equipment, to the observance of safe working practices, and the provision by the employer and correct use of all personal protective equipment. The company recognises its responsibilities to provide a safe and healthy workplace.

2. In the event of any disagreements on the necessity to carry out any safety measure or modify, reinforce or reinstate any safety device whatsoever, the procedures set out in this clause will be adopted.

3. No person shall dismiss a safety complaint. Any complaint should be referred to the company safety officer or workers' safety representative to be dealt with in accordance with the following procedures—

- (i) Where any employee becomes aware of an unsafe situation, that employee will immediately notify the company safety officer or the workers' safety representative.
- (ii) The company safety officer and the workers' safety representative will take immediate action to have the unsafe situation rectified.
- (iii) Should the company safety officer consider that no safety precautions are necessary, he/she will notify the workers' safety representative accordingly as soon as possible.
- (iv) While there is disagreement on the ruling of the company safety officer, the company safety officer will arrange for the immediate transfer of all employees from the disputed area.
- (v) Should the company safety officer be of the opinion that no action is necessary and the worker's safety representative disagrees, an appropriate inspector from Worksafe/Workcover will be requested to undertake an inspection of the disputed area for the purpose of resolving any such matter.
- (vi) If disagreement still exists the chief inspector or his/her nominee will be called in to assist in the resolution of the dispute.
- (vii) If no agreement can be reached between the parties the matter will be dealt with in accordance with the dispute resolution procedure of this agreement.
- (viii) Whilst the above procedure is being followed there will be no stoppage of work in respect of the matter being considered, except in the area alleged to be unsafe.
- (ix) It is accepted that safety considerations override normal work practices and depending on the degree of potential risk to persons on the job, or the general public, can override normal demarcation practices.

18.—AMENITIES

1. The parties agree that it is the responsibility of the company to ensure that the amenities prescribed by the Award are provided as a minimum. Where, however, that standard is not maintained due to an action or event beyond the control of the company, the union agrees that the company should be allowed reasonable time in which to rectify the problem. If the company acts promptly to rectify the problem, there should be no interruption to work from industrial stoppages, bans and limitations.

2. In all instances, the following procedure shall be observed—

3. A uniformly high standard of amenities and facilities such as ablution blocks, change rooms, crib sheds, etc. shall be provided.

4. All Sheds shall be weatherproof and soundly constructed to an approved standard with sufficient windows and doors, adequate ventilation and lighting. They must have a floor above ground level and be lined on ceilings and walls.

5. Mess Shed/s fitted with fly screens are provided for exclusive use of workers and not for the storage of employers' equipment, tools and materials.

6. Shed/s shall provide not less than 0.75 square metres of floor space per person employed at any one time, provided that the area be not less than 4.65 square metres. Fixtures, other than tables and chairs, shall not be included when calculating floor space.

7. Where 5 or more persons are employed at one time, the floor area shall not be less than 9 square metres.

8. Adequate facilities are to be provided for warmth and for drying clothes eg. strip heaters.

9. Provided that 20 or more persons are employed on the site at any one time, the employer shall provide a separate shed or sheds for messing, which shall be of such dimension as to provide not less than 0.75 square metres of floor space per person.

10. Where less than 20 persons are employed on site, Regulation 3.20—Workplace Facilities of the Occupational Safety and Health Regulations 1996 shall apply to provisions of messing and changing facilities.

11. In the changing facilities, separate clothes-hanging facilities for each person employed are to be provided (coat hooks only to be used).

12. In the changing facilities, sufficient seating accommodation for the changing of work apparel is to be provided.

13. In the messing facilities, sufficient tables with fixed washable laminated or vinyl surface, and seating for the taking of meals, are to be provided.

14. Food warming facilities to be supplied, together with a supply of cool, clean water conveniently accessible, as well as boiling water at meal/rest breaks.

15. Receptacle for garbage with bin liner and rat and fly proof is to be supplied in mess area, and emptied regularly.

16. A washable vinyl floor surface in all facilities is to be provided.

17. Shelving is to be supplied in the mess shed for storage (cups, lunch bags, etc).

18. All facilities are to be cleaned and disinfected on a regular basis.

19. All mess sheds shall be supplied with reverse cycle air-conditioning.

20. Toilet blocks shall be soundly constructed and roofed with weatherproof material. The floor of each toilet shall be well-drained and constructed of concrete, bricks and cement, or other approved materials which shall be impervious to water. Every toilet shall be well lighted by natural or artificial light and shall be ventilated. Each toilet shall have a hinged door, capable of being fastened on the inside, lift seats/flaps and toilet paper.

21. Where practicable, toilets to be connected to sewerage before commencement of the job.

22. Toilet/urinal location to be conveniently accessible to employees, but not so close as to cause a nuisance to those persons.

23. Where necessary, portable water seal toilets of an approved standard are to be provided and regularly serviced.

24. Conveniently accessible toilets and urinals are to be distributed every 5th floor on multi-storey constructions.

25. Toilets and urinals are to be washed daily with disinfectant and kept in clean, hygienic condition.

26. Adequate washing facilities, suitably drained, and was basins/troughs are to be supplied with running water.

27. Soap and towels are to be supplied.

28. The following toilet/urinal ratio shall be applied in respect to all employees—

Employees	Toilets	Urinals
1-5	1	Nil
6-10	1	1
11-20	2	2
21-35	3	4
36-50	4	6
51-75	5	7
76-100	6	8

NB. For each additional 20 persons or part thereof up to 200 persons or part thereof up to 200 persons, one additional urinal and one additional toilet is required. For each additional 35 persons or part thereof in excess of 200 persons, one additional urinal and one additional toilet is required. If a slab urinal is provided, each 600mm shall be regarded as one urinal.

19.—TRAINING AND RELATED MATTERS

1. A training allowance of \$14.00 per week per worker shall be paid by the employer to the Union Education and Training Fund. This shall increase to \$15.00 per week on 1 November 2001.

2. Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calendar year pro-rata to attend courses conducted or approved by the NBCITC. The employers approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an inability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

3. The employer will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per (2) above for such purposes including but not limited to securing Tradesmen's Rights Certificates.

20.—DRUG & ALCOHOL, SAFETY & REHABILITATION PROGRAM

The parties are committed to the Drug and Alcohol, Safety and Rehabilitation program as outlined in Appendix A—Drug and Alcohol, Safety and Rehabilitation Program.

21.—CLOTHING AND SAFETY FOOTWEAR

1. The following items will be supplied to each employee by the Company, upon the completion of five working days.

- 1 pair safety boots, and will be replaced on a fair wear and tear basis.
- 2 T-shirts with collars, and will be replaced on a fair wear and tear basis.
- 1 bluey jacket for each employee employed during the period 1 April to 31 October. (One issued per year)

2. The Company will also make available to each employee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

22.—INCOME PROTECTION

The Company agrees to insure employees covered by this Agreement for injury and sickness. The scheme is to be negotiated between the parties

23.—ACCIDENT PAY

1. The Company agrees to pay each employee accident pay where the employee receives an injury for which weekly payments or compensation are payable by or on behalf of the Company pursuant to the provisions of the Workers' Compensation and Rehabilitation Act 1981, as amended.

2. "Accident Pay" means a weekly payment of an amount being the difference between the weekly amount of compensation paid to the employee pursuant to the Workers Compensation and Rehabilitation Act and the employee's ordinary wage under this Agreement.

3. The Company shall pay accident pay during the incapacity of the employee arising from any one injury for a total of 39 weeks whether the incapacity is in one continuous period or not.

24.—UNION MEMBERSHIP

The employer will encourage, as far as possible, all employees covered by the agreement, to be financial members of the Unions.

26.—SIGNATORIES

BLPPU

K. Reynolds **common seal**

Date: 5/12/00

CMETU

J. McDonald **common seal**

Date: 5/12/00

The Company:

.....

Signature

Date: 4/12/00

.....Charlie Catalano..... **Company Seal**

Print Name

APPENDIX A—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PROGRAM

1. PRINCIPLE

People dangerously affected by alcohol, and/or drugs are a safety hazard to themselves and all other persons in the workplace.

2. FOCUS

- Site safety and the involvement of the site safety committee
- Peer intervention and support
- Rehabilitation

3. WORKPLACE POLICY

a) A person who is dangerously affected by drugs or alcohol will not be allowed to work until that person can work in a safe manner.

b) The decision on a person's ability to work in a safe manner will be made by the safety committee, or on projects with no safety committee, by a body of at least equal numbers of employee/employer representatives.

c) There will be no payment of lost time to a person unable to work in a safe manner.

d) If this happens 3 times the worker shall be given a written warning and made aware of the availability of treatment/counselling. If the worker refuses help he/she may be transferred/dismissed the next time he/she is dangerously affected.

e) For the purposes of disciplinary action a warning shall be effective for a period of 12 months from the date of issue.

f) A worker having problems with alcohol and/or other drugs—

- Will not be sacked if he/she is willing to get help.
- Must undertake and continue with the recommended treatment to maintain the protection of this program.
- Will be entitled to sick leave or leave without pay while attending treatment.

4. IMPLEMENTATION

To assist with the adoption and implementation with this policy the company will—

- a) Clearly state its endorsement of the BTG Drug and Alcohol program and comply with it.
- b) Provide access at an agreed time and venue for a representative of the BTG Drug and Alcohol Program to address a meeting of employees to discuss and endorse the program.
- c) Authorise the attendance of appropriate company personnel eg. Safety delegate/officer, safety committee members, union delegate, consultative committee members(s) at the two hour BTG Drug and Safety in the Workplace training course.

APPENDIX B—SITE ALLOWANCE

1. This agreement shall apply to construction work undertaken in the commercial/industrial sector of the building

industry in the state of Western Australia within a 50km radius of the Perth General Post Office.

2. This agreement provides for a site allowance to be paid to employees engaged on particular building projects, and for such site allowance to be paid in addition to the wage rates and allowances prescribed by the relevant building construction awards as well as any industrial or certified agreements made in conjunction with those awards which do not prescribe a site allowance.

3. The site allowance payable under this agreement is to be paid at a flat rate per hour for all hours worked to compensate for all special factors/disabilities on the project and in lieu of all award special rates, with the exception of rates relating to the lifting of heavy blocks, cleaning down brickwork and the use of explosive powered tools which will be payable to an employee when he/she encounters that particular disability.

4. Site Allowance Formula

At the commencement of a project the particular site allowance to apply shall be determined in accordance with the following formula—

4.1 Projects Located Within Perth C.B.D. (as defined)

New Work

Project Contractual Value	Site Allowance
Up to \$520,000	NIL
Above \$520,000 to \$2.17 m	\$1.95
Above \$2.17m to \$4.55m	\$2.30
Over \$4.55m	\$2.90

Renovations, Restorations and/or Refurbishment Work

Project Contractual Value	Site Allowance
Up to \$520,000	NIL
Above \$520,000 to \$2.17m	\$1.75
Above \$2.17m to \$4.55m	\$1.95
Over \$4.55m	\$2.50

4.2 Projects Located Within West Perth (as defined)

New Work

Project Contractual Value	Site Allowance
Up to \$520,000	NIL
Above \$520,000 to \$2.17 m	\$1.75
Above \$2.17m to \$4.55m	\$1.95
Over \$4.55m	\$2.50

Renovations, Restorations and/or Refurbishment Work

Project Contractual Value	Site Allowance
Up to \$520,000	NIL
Above \$520,000 to \$2.17m	\$1.65
Above \$2.17 m to \$4.55m	\$1.85
Over \$4.55m	\$2.10

The site allowance on projects which are a combination of new and renovation work shall be governed by the majority of work involved. For example, where the majority of work is new work, then the site allowance appropriate to new work shall be paid for all employees on the project.

4.3 Projects within 50 km radius of Perth G.P.O. but not including the C.B.D. or West Perth (as defined)

Project Contractual Value	Site Allowance
Up to \$1 m	NIL
Above \$1 m to \$2.17 m	\$1.35
Above \$2.17m to 6m	\$1.65
Above \$6m to \$11.98m	\$1.90
Above \$11.98m to \$24.43m	\$2.10
Above \$24.43m to \$60.5m	\$2.40
Over \$60.5m	\$2.60

“C.B.D.”—Central Business District shall mean the area bounded by the Swan River South, Swan River East to Nile Street running into Wittenoom Street, Hill Street to Royal Street, Royal Street to Lord Street, Lord Street to Newcastle Street, along Newcastle Street to the Freeway, the Freeway South to the Perth-Fremantle railway line, along the Perth-Fremantle railway line to Dyer Street, Dyer Street through to Havelock Street, Havelock Street to Kings Park Road, Kings Park Road to Fraser Avenue, Fraser Avenue projected through to the Swan River. (Refer attached Map 1).

“West Perth”—shall mean the area contained within the boundaries formed by Thomas Street, Kings Park Road, Havelock Street, Dyer Street and the Perth-Fremantle railway line back to Thomas Street. (Refer attached Map 2).

Boundary roads: If a road borders between two regions in which site allowances are to be paid as per this agreement, the parties confirm that one side of such a boundary road will be deemed to fall in one region and the other side of the boundary road will be deemed to fall in the other region. For example, the eastern side of Havelock Street will be in the “CBD” and the western side of Havelock Street shall be in “West Perth”.

“Project Contractual Value”—shall be deemed to mean the value of all tendered work which falls under the scope of the principal contractor’s contract.

5. The site/project allowance and project contractual value detailed in this agreement shall be adjusted on 1 January each year by the total C.P.I. movements for Perth during the preceding four quarters ending 30 September and accordingly, the site allowance amounts shall be adjusted up or down to the nearest five cents. Provided that where adjustment equates to less than two cents, existing allowance levels shall be maintained.

6. Project contractual values shall be subject to review at any renewal of this agreement, but in any event shall not be adjusted by a percentage less than the total CPI movements for Perth during the preceding four quarters ending 30 September. Such adjustment being to the nearest \$10,000.

7. The agreed site allowance once set pursuant to this agreement shall be recorded in a site agreement to which the applicable principal contractor and the BTA will be signatories. The level of allowance once nominated at the commencement of the project will continue without change until completion of the project.

8. It is acknowledged that on certain projects a site agreement may be entered into between the principal contractor and the building trades group of unions for that project that may include matters regularly addressed within the industry, such as, but not limited to, the following—

- Disputes Procedures
- Occupational Health and Safety Procedures
- Demarcation Procedures
- First Aid Provisions and On-Site Amenities

and the unions will not unreasonably refuse to continue to discuss such matters if raised by the principal contractor.

9. This agreement does not apply to resource development projects or civil and engineering projects.

10. Where a dispute arises as to the application of the terms of this agreement, if the issue cannot be resolved in discussions between the parties, it is agreed that the matter will be referred to the appropriate industrial tribunal for resolution without recourse to industrial action.

11. It is a term of this agreement that all site allowance agreements entered into prior to this date will be honored by all parties and will continue to operate for the life of the particular project.

12. Where because of a condition of contract the principal contractor is required not to allow for a site allowance, before final application of this agreement, discussions will be held between the parties with a view to resolving any problems that may arise as a result of this situation.

13. This agreement shall only apply to building contracts entered into on or tendered for on or after 1 January 2000.

14. Productivity Allowance

In return for increased productivity and/or timely completion of projects it is agreed that a productivity allowance of \$1.00 per hour worked shall be paid to all employees engaged upon projects in excess of \$10 million, or such other sum as agreed. The productivity allowance may be accumulated and paid at the end of the project.

15. Structural Frame Allowance

It is agreed that a structural frame allowance of \$1.00 per hour all purpose shall be paid to all employees engaged upon projects (new construction only) which exceed two stories in height or on buildings or structures where the structure exceeds 10 metres in height (excluding spires, flagpoles and the like).

16. Application to Apprentices

a) The rates prescribed in clause 4 of this agreement shall apply to all apprentices commencing on-site (whether as direct employees or under a group training scheme) after 31 December 1998 in the same proportion as the percentage of a tradesperson’s wage rate as prescribed by the appropriate award or Enterprise Bargaining Agreement, being

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

b) Fares and Travel Allowances—Apprentices shall receive 100% of all fares and travel allowances paid under this agreement and or the award.

17. Provision of Canteen

It is agreed that a staffed canteen shall be provided where a project exceeds \$35 million in value and where the operation of the canteen is financially self supporting in respect of consumables. The Canteen shall come into operation when on site worker levels exceed 50 and to cease when the worker levels reduce to below 50.

18. Provision of Nurse

It is agreed that a qualified nurse shall be engaged where the forecast long term staffing levels for a project exceed 100 (one hundred) or when actual numbers exceed 100 notwithstanding that forecasts may have been below that level. The nurse shall commence duties when staffing levels reach 50 (fifty) and shall terminate when levels reduce to 50 (fifty). The requirement for the provision of a nurse shall be waived if the project is adjacent to a hospital with a public emergency department.

19. Apprentice Ratio to Tradespersons

There shall be at least one apprentice employed on site to every 6 tradespersons employed on site.

CENTRAL TAFE PUBLIC SERVICE AND GOVERNMENT OFFICERS’ ENTERPRISE AGREEMENT 2000.

No. PSAAG 79 of 2000.

2001 WAIRC 01808

	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
PARTIES	GOVERNING COUNCIL, CENTRAL TAFE AND THE CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA INCORPORATED
CORAM	COMMISSIONER P E SCOTT
DELIVERED	TUESDAY, 16 JANUARY 2001
FILE NO	PSAAG 79 OF 2000
CITATION NO.	2001 WAIRC 01808

Result	Agreement registered
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Order.

HAVING heard Ms J Caiacob on behalf of the Governing Council, Central TAFE and Ms J van den Herik on behalf of the Civil Service Association of Western Australia (Incorporated), and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Central TAFE Public Service and Government Officers’ Enterprise Agreement 2000 in the terms of the following schedule be registered on the 21st day of December 2000 and shall replace the Central Metropolitan College of TAFE Public Service and Government Officers’ Enterprise Agreement 1998 (No. PSA AG 5 of 1998).

[L.S.] (Sgd.) P. E. SCOTT,
Commissioner,
Public Service Arbitrator.

Schedule.

PART 1—APPLICATION AND OPERATION OF AGREEMENT

1.—TITLE

This Agreement will be called the Central TAFE Public Service and Government Officers' Enterprise Agreement 2000 and will replace the Central TAFE Public Service and Government Officers' Enterprise Agreement 1998.

2.—ARRANGEMENT

PART 1—APPLICATION AND OPERATION OF AGREEMENT

1. TITLE
2. ARRANGEMENT
3. SCOPE
4. PARTIES BOUND
5. DEFINITIONS
6. NUMBER OF EMPLOYEES COVERED
7. NO FURTHER CLAIMS
8. TERM OF AGREEMENT AND RENEGOTIATION
9. RELATIONSHIP TO AWARDS
10. AVAILABILITY OF AGREEMENT
11. OBJECTIVES OF THE AGREEMENT
12. PAST PRODUCTIVITY

PART 2—DISPUTE RESOLUTION

13. CONSULTATION PROVISIONS
14. DISPUTE RESOLUTION PROCEDURE
15. SUBSTANDARD PERFORMANCE
16. BREACHES OF DISCIPLINE

PART 3—EMPLOYER AND EMPLOYEES' DUTIES, EMPLOYMENT RELATIONSHIP AND RELATED ARRANGEMENTS

17. HIGHER DUTIES
18. CASUAL EMPLOYMENT

PART 4—WAGES AND RELATED MATTERS

19. SALARIES
20. SALARY PACKAGING
21. PAYMENT ARRANGEMENTS
22. REPAYMENTS OF OVERPAYMENTS
23. VARIATION OF ALLOWANCES

PART 5—HOUR OF WORK, BREAKS, OVERTIME, SHIFT WORK AND WEEKEND WORK

24. HOURS OF WORK
25. FLEXITIME

PART 6—LEAVE OF ABSENCE AND PUBLIC HOLIDAYS

26. ANNUAL LEAVE
27. LONG SERVICE LEAVE
28. SICK LEAVE
29. FAMILY/CARER'S LEAVE
30. COMPASSIONATE LEAVE
31. SHORT LEAVE
32. CEREMONIAL/CULTURAL LEAVE
33. PUBLIC HOLIDAYS
34. CHRISTMAS CLOSDOWN
35. PARENTAL LEAVE
36. EMERGENCY AND COMMUNITY SERVICE LEAVE
37. ANNUAL LEAVE LOADING
38. SELF-FUNDED WORK BREAKS

PART 7—TRANSFERS, TRAVELLING AND WORKING AWAY FROM USUAL PLACE OF WORK

39. HOME BASED WORK
40. TRAVELLING ALLOWANCE
41. TRANSFER

SCHEDULE A: SALARIES

SCHEDULE B: PRODUCTIVITY IMPROVEMENTS

SCHEDULE C: SIGNATORIES OF PARTIES TO THE AGREEMENT

SCHEDULE D: ALPHABETICAL LISTING OF PROVISIONS

3.—SCOPE

This Agreement will apply throughout the state of Western Australia to Officers employed in the Central TAFE. This Agreement will also apply to Officers on secondment to or in the College.

4.—PARTIES BOUND

The parties to this Agreement will be the Governing Council of the Central TAFE, and the Civil Service Association of Western Australia (Inc).

5.—DEFINITIONS

The following terms will have the following meanings—

"Agreement": means the Central TAFE Public Service and Government Officers' Enterprise Agreement 2000.

"Award": means the Government Officers' Salaries, Allowances and Conditions Award 1989.

"College" means the Central TAFE.

"Continuous service": Any period of service between the employee and employer under an unbroken contract of employment, and includes any authorised unpaid or paid absences.

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

"Department": means the Western Australian Department of Training and Employment.

"Employee": for the purpose of this Agreement means, someone who is referred to at Clause 3—Scope.

"Employer": means the Governing Council of the Central TAFE.

"Full-Time Officer": A person employed to work 37 1/2 ordinary hours per week.

"Government": means the Government of Western Australia.

"GOSAC Award": means the Government Officers' Salaries Allowances & Conditions Award 1989.

"Managing Director" means the Managing Director of the Central TAFE, pursuant to section 46 of the Vocational Education and Training Act 1996.

"Minister": is the Minister of the Crown who is responsible for the administration of the employing agency.

"Officer": means a Public Service Officer as defined in the Public Sector Management Act 1994 or Government Officer as defined in the Industrial Relations Act 1979.

"Part-Time": means regular and continuing employment for less than the ordinary hours for a "Full-Time Officer".

"Spouse": means a husband or wife of an employee, and includes a de facto spouse. For the purposes of Bereavement leave it includes a former spouse.

"Union": means the Civil Service Association of Western Australia (Inc).

"WAIRC": means the Western Australian Industrial Relations Commission.

6.—NUMBER OF EMPLOYEES COVERED

At the date of registration of this Agreement the approximate number of employees covered by this Agreement is 184.

7.—NO FURTHER CLAIMS

7.1 There will be no extra claims for salary adjustments other than that which is provided by this Agreement for the duration of its term.

7.2 There will be no further claims on matters contained in this Agreement for the duration of its term.

8.—TERM OF AGREEMENT AND RENEGOTIATION

8.1 This Agreement will operate on and from the date of registration and will remain in force for two years.

8.2 Six (6) months prior to the date of expiration of this Agreement, the parties will commence negotiation for its renewal or replacement.

8.3 The pay rates attained under this Agreement will form the new base rates for any future Agreement, provided that

the productivity targets attained under this Agreement continue and previous productivity improvements in the last agreement are sustained, and changes to Award conditions maintained, or changed by agreement.

9.—RELATIONSHIP TO AWARDS

This Agreement will be read and interpreted wholly in conjunction with the Government Officers' Salaries, Allowances and Conditions Award 1989. This Agreement will have precedence to the extent of any inconsistency. Where the agreement is silent the relevant award will apply.

10.—AVAILABILITY OF AGREEMENT

Employees will have access to an electronic copy of this agreement. Where electronic copies are unavailable, hard copies of the agreement will be provided.

11.—OBJECTIVES OF THE AGREEMENT

It is the shared objectives of the parties to—

Work towards alignment of conditions for all TAFE employees.

Meet the requirements of clients and students through the provision of reliable, efficient and competitive services.

Achieve the Department's mission and improve productivity and efficiency through identified improvements.

Achieve improvement and greater flexibility of working patterns and arrangements.

Promote and facilitate enhanced employee relations and increased job satisfaction.

To facilitate a continued cooperative approach to the introduction of change.

This Agreement will operate as a contributive mechanism to deliver a cost efficient Vocational Education and Training service.

12.—PAST PRODUCTIVITY

This Agreement incorporates past productivity to the date of registration.

PART 2—DISPUTE RESOLUTION

13.—CONSULTATION PROVISIONS

13.1 The parties acknowledge the need for a satisfactory College consultative procedure. Staff participation and consultation is encouraged. The form of participation and consultation may vary at each workplace depending on individual circumstances. The College will establish its own structure and processes. However, the non-establishment of a structure or process will not be used as a means to avoid requirement to consult.

13.2 Employees will be involved in broadly based representative consultative committees with structure and functions determined by the College.

13.3 Consultative committees will provide a forum for staff and management to, where appropriate, seek the views of the other and enter into meaningful discussions that may contribute towards outcomes, in relation to operational matters.

13.4 Representatives from the Union, where it has members at the workplace, will be invited to participate on consultative committees.

13.5 The parties to this Agreement acknowledge that decision making continues to rest with the College, which is accountable to Government, through legislation, for the operation of its business.

14.—DISPUTE RESOLUTION PROCEDURE

14.1 In the event of a dispute arising in the workplace the procedure to be followed to resolve the matter will be as follows—

14.1.1 The employee and their supervisor will meet and confer on the matter; and

14.1.2 If the matter is not resolved at such a meeting, the parties will arrange for further discussions between the employee and his or her nominated representative, if any, and more senior levels of management.

14.1.3 If the matter is still unresolved a discussion will be held between representatives of the College or other representative of the employer and the Union or other employee representative.

14.1.4 If the matter cannot be resolved it may be referred to the WAIRC.

14.2 While the parties attempt to resolve the matter work will continue as normal unless an employee has a reasonable concern about an imminent risk to his or her health and safety.

15.—SUBSTANDARD PERFORMANCE

For the purposes of this clause the following definition will apply:

Substandard performance: The performance of an employee is substandard if the employee does not, in the performance of the functions that he or she is required to perform, attain or sustain a standard that a person may reasonably be expected to attain or sustain in the performance of his or her duties.

15.1 No employee shall be subject to the penalties of clause 15.2 unless a fair procedure is applied and decisions and processes incorporate the principles of natural justice and are free from bias.

15.2 If, in accordance with the College's substandard performance management policy, an employee is found by the College to be performing at a substandard level, the College may:

15.2.1 withhold an increment of remuneration otherwise payable to that employee;

15.2.2 reduce the classification of that employee; or

15.2.3 terminate the employment of that employee.

15.3 If an employee who has been subject to substandard performance management is aggrieved by any resulting decision, he/she may appeal against that decision in the WAIRC.

16.—BREACHES OF DISCIPLINE

16.1 No employee shall be subject to the penalties of clause 16.2 unless a fair procedure is applied and decisions and processes incorporate the principles of natural justice and are free from bias.

16.2 If, in accordance with the College's disciplinary policy, an employee is found by the College to have committed a breach of discipline, the College may:

16.2.1 reprimand the employee;

16.2.2 transfer the employee to another public sector agency or authority, with the consent of that agency or transfer the employee to another position at the College at which the employee is currently employed;

16.2.3 impose on the employee a fine not exceeding the equivalent of five days pay that the employee would have received immediately prior to the breach of discipline finding;

16.2.4 reduce the monetary remuneration of the employee within the employee's existing classification;

16.2.5 reduce the level of classification of the employee;

16.2.6 dismiss the employee;

or, except where the employee is dismissed under subclause 16.2.6, take action under any two or more of the above subclauses.

16.3 If an employee who has been subject to disciplinary action is aggrieved by a decision resulting from such action, he/she may appeal against that decision to the WAIRC.

PART 3—EMPLOYER AND EMPLOYEES' DUTIES, EMPLOYMENT RELATIONSHIP AND RELATED ARRANGEMENTS

17.—HIGHER DUTIES

17.1 An officer who undertakes duties of a higher classification for a period of 10 consecutive working days or more, inclusive of public holidays, will be paid at the salary applicable to the higher level proportionate to the level of duties and responsibilities assigned for the entire period of the higher duties.

17.2 The higher rate of payment will apply to an officer who proceeds on normal annual leave or any other approved

leave of absence of not more than four weeks provided that the officer was in receipt of the additional payment for a continuous period of 12 months or more.

18.—CASUAL EMPLOYMENT

18.1 Casual employees may be employed for up to three months in any period of engagement, provided that where operationally necessary and in compliance with subclause 18.2 of this clause the period of engagement may be extended for up to a period of a further three months.

18.2 All casual engagements shall be in accordance with the following guidelines.

1. The type of employment involves specific workload demands of a short term nature;
2. The job is a short term project of a finite nature;
3. To replace an employee during a short term approved leave of absence.

PART 4—WAGES AND RELATED MATTERS

19.—SALARIES

19.1 Increases have been applied to the rates paid pursuant to the Central TAFE Public Service and Government Officers' Enterprise Agreement 1998 as expressed in column A.

19.2 The rates in Column B will be paid effective from the date of registration of the Agreement. The rates in column B reflect a 1.5% increase for changes to award/employment conditions contained in this Agreement.

19.3 The rates in Column C will be paid from the first pay period on or after 15 March 2001. The rates in Column C reflect a 1.5% increase for changes to award/employment conditions contained in this Agreement.

19.4 The rates in Column D will be paid from the first pay period on or after 15 March 2002. The rates in Column D reflect a 3% increase, subject to Cabinet Standing Committee on Labour Relations endorsement that the Productivity Improvement Plan targets have been achieved.

19.5 The pay rates attained under this Agreement will form the new base rates for any future Agreement, provided that the productivity targets attained under this Agreement continue and previous productivity improvements in the last agreement are sustained and changes to Award conditions maintained, or changed by agreement.

20.—SALARY PACKAGING

20.1 An employee may, by agreement with the employer, enter into a salary packaging arrangement in accordance with the Central TAFE Flexible Remuneration Packaging Scheme or any similar salary packaging arrangement offered by the employer.

20.2 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.

20.3 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.

20.4 The TEC for the purposes of salary packaging, is calculated by adding:

- 20.4.1 The base salary;
- 20.4.2 Other cash allowances, eg. Annual leave loading;
- 20.4.3 Non-cash benefits, eg superannuation, motor vehicles etc;
- 20.4.4 Any Fringe Benefit Tax liabilities currently paid; and
- 20.4.5 Any shift or commuted allowance or variable components, eg performance based incentives (where they exist).

20.5 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 agreement.

20.6 The salary packaging arrangement must be cost neutral in relation to the total cost to the employer.

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

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

20.9 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.

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

20.11 An employer will not unreasonably withhold agreement to salary packaging on request from an employee.

20.12 The Dispute Settlement Procedure contained in this Agreement will 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 to the WAIRC.

21.—PAYMENT ARRANGEMENTS

Salaries will be paid on a fortnightly basis directly into an approved bank, building society or credit union nominated by the employee.

22.—REPAYMENTS OF OVERPAYMENTS

22.1 Any salary overpayments will be repaid to the employer within a reasonable period of time.

22.2 If agreement cannot be reached, the employer may deduct the amount of overpayment over the same length of time that the overpayments occurred, or up to 6 months, whichever period is less.

22.3 The employer may not deduct or require an employee to repay an amount exceeding 20% of the employees' net pay in any one pay period.

22.4 On compassionate grounds, the Managing Director may allow an extended period for the repayment of overpayments.

23.—VARIATION OF ALLOWANCES

23.1 Wherever an award allowance is calculated by reference to a classification salary point, the parties agree that all such allowances will be so varied by reference to the salary provided by this agreement.

23.2 All such allowances will be applicable from the same date as provided for any salary variation under this agreement.

PART 5—HOUR OF WORK, BREAKS, OVERTIME, SHIFT WORK AND WEEKEND WORK

24.—HOURS OF WORK

Notwithstanding the prescribed hours of duty in clause 16 of the Award, the employer and an employee may agree to vary the spread of hours during which the employee's ordinary hours of work may be worked. Any agreement must be voluntarily and genuinely made and an employee may not be forced, coerced or intimidated into any such variation to the spread of ordinary hours during which the hours of work may be worked.

25.—FLEXITIME

25.1 For the purpose of this clause, a settlement period will—

- 25.1.1 consist of 12 weeks;
- 25.1.2 have the required hours of duty of 450 hours; and
- 25.1.3 commence at the beginning of a pay period.

25.2 Credit hours at any point within the settlement period will not exceed 60 hours.

25.3 An officer may be allowed to clear flexi leave of a maximum of 6 full days, or any combination of half days and full days that does not exceed 6 full days in any settlement period.

25.4 Full days of flexi leave may be taken in accordance with College policy.

25.5 Flexi-leave days may be taken consecutively during a Christmas Closedown.

25.6 Notwithstanding subclause 25.3, in the case of a Christmas Closedown of 12 working days, where sufficient credit hours are accrued, an employee may take seven consecutive flexi-leave days. This subclause does not apply in the case of a Christmas Closedown of less than 12 working days.

25.7 Credit hours to a maximum of thirty seven hours thirty minutes will be allowed at the end of each settlement period and will be carried forward to the next settlement period.

25.8 In the case of credit hours greater than thirty seven hours thirty minutes gained in one settlement period, the hours in excess of thirty seven hours thirty minutes will be lost.

PART 6—LEAVE OF ABSENCE AND PUBLIC HOLIDAYS

26.—ANNUAL LEAVE

26.1 By written approval of the employer, accrued annual leave may be paid out (equivalent benefit) instead of taken.

26.2 The paying out of accrued annual leave is not obligatory and is subject to agreement of both the employer and employee.

26.3 Annual Leave Travel Concessions—Officers Stationed in Remote Areas

26.3.1 Where an officer's headquarters is situated in District Allowance Areas 3,5,6 and in that portion of area 4 located north of 30° South Latitude, as defined in Schedule D—District Allowance of the PSA/ Schedule G—District Allowance of the GOSAC Award, a travel concession to the value of return economy airfares to Perth or Geraldton will be provided for the officer and his/her dependants when the officer travels from his/her normal place of employment on Annual Leave.

26.3.2 The officer will only be entitled to the actual cost of the travel, up to the value of return economy airfares for the officer and his/her dependants to Perth or Geraldton, whichever is the higher. The employer will not reimburse the officer unless the officer supplies evidence acceptable to the employer of the actual cost of travel.

26.3.3 An officer is required to serve 12 months in these areas before qualifying for travel concessions.

27.—LONG SERVICE LEAVE

27.1 Accrued long service leave may be taken in periods of not less than one day.

27.2 By written approval of the employer, accrued long service leave may be paid out (equivalent benefit) instead of taken.

27.3 The paying out of accrued Long Service Leave is not obligatory and is subject to agreement of both the employer and employee.

28.—SICK LEAVE

28.1 Sick leave entitlement

28.2 The sick leave provisions of the GOSAC Awards will continue to apply, except that the Managing Director may approve further paid leave in exceptional circumstances.

29.—FAMILY/CARER'S LEAVE

29.1 An employee with responsibilities in relation to either members of their family or members of their household who need their care and support, is entitled to paid leave of up to 5 days per annum, to provide care and support for such persons when they are ill.

29.2 Family/carer's leave taken will be deducted from an employee's sick leave entitlements, provided that 10 days of the employee's sick leave entitlement credited in the current year cannot be used for family/carer's leave. Family/carer's leave is not cumulative from year to year.

29.3 Where family/carer's leave is exhausted, an employee may take unpaid carer's leave by agreement with the employer.

29.4 The employee will if required by the employer establish, by production of medical evidence or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another.

29.5 The employee will, wherever possible, give the employer notice prior to the absence of the intention to take such leave.

29.6 For the purposes of this clause, a family member or member of the employee's household is one who is wholly or partially dependent on the employee.

30.—COMPASSIONATE LEAVE

30.1 Subject to paragraph 30.2 hereof, an officer will be entitled to paid compassionate leave of up to 2 days on the death of a family member.

30.2 The Managing Director may grant compassionate leave on the death of a person other than a family member in personal and compassionate circumstances.

30.3 Compassionate leave will not be granted during a period of any other leave.

30.4 Payment for compassionate leave is to be made only where the officer otherwise would have been on duty.

31.—SHORT LEAVE

The Award entitlement to short leave will no longer apply.

32.—CEREMONIAL/CULTURAL LEAVE

32.1 Ceremonial/Cultural Leave may be granted, to employees who have a ritual obligation to participate in ceremonial activity which requires absence from work. Such leave will also include leave to meet the employee's custom and traditional laws.

32.2 An employee granted leave to participate in ceremonial, cultural or traditional law activities will have such leave deducted from accrued annual leave or long service leave.

32.3 Leave without pay to participate in ceremonial, cultural or traditional law activities may be granted by the employer.

33.—PUBLIC HOLIDAYS

33.1 The following days are paid public holidays; New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Foundation Day, Labour Day, Sovereign's Birthday, Christmas Day and Boxing Day.

33.2 Whenever any of these days falls on a Saturday or a Sunday, the holiday is observed on the next succeeding Monday, or in the case of Boxing Day falling on a Sunday or Monday, on the next succeeding Tuesday.

33.3 There is no entitlement to any additional Public Service holidays in addition to those prescribed in this agreement.

34.—CHRISTMAS CLOSEDOWN

34.1 The College may observe a closedown over the Christmas/New Year period.

34.2 The duration of the closedown will be at the discretion of the Managing Director but will not exceed 12 working days.

34.3 Employees will be required to take annual leave, long service leave, rostered days off, time in lieu of overtime or flexitime credit hours on the working days that the College is closed down. The employee may elect which form of leave is to be taken.

34.4 The Managing Director will as soon as possible, in each calendar year but not later than 30 June, advise employees of the period of closedown and the number of working days involved.

34.5 When taking leave during the year employees must be aware of the requirement to retain credits to cover the required number of days over the compulsory close down period.

34.6 New employees, employees who have exhausted their annual leave credits at the commencement of this Agreement, or employees who have been granted approval to utilise all leave credits will be entitled to take leave without pay or go into debit to cover the amount of leave involved, provided a refund is made by the employee, on termination, if credits to the value of the leave taken in advance have not been accrued.

35.—PARENTAL LEAVE

Definitions

For the purpose of this clause, the following terms have the following meanings:

“**Adoption**”: is the placement (including any initial temporary placement with a view to a permanent placement) of a child who is less than 5 years of age, who is not the natural or step-child of the employee or employee's spouse and who has not lived with the employee for longer than 6 months.

“Adoption leave”: Unpaid parental leave of up to 12 months taken by either parent in connection with the adoption or placement of a child under the age of 5 years.

“Certification”—

- (a) 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 birth.
- (b) For the purpose of maternity leave means a certificate from a registered medical practitioner stating that the employee is pregnant and the expected date of birth.
- (c) For the purpose of adoption leave and special adoption leave means the requirements that an employee must comply with before being eligible for the entitlement.

The employer must produce to the employer—

a statement from an adoption agency or other appropriate body of the placement of the child for adoption purposes; or

presumed date confirming that the employee or employee’s spouse is to have custody of the child pending application for an adoption order.

“Child”: A person to whom an employee or employee’s spouse has given birth, or 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 stepchild of the employee or employee’s spouse who has previously lived with the employee for a period of 6 months or more.

“Expected date of birth”: The day certified by a medical practitioner, to be the day on which the birth of the child of the employee, or employee’s spouse is expected.

“Maternity leave”: Unpaid parental leave of up to 12 months taken by a female employee in connection with her pregnancy, and the subsequent birth of a child.

“Parental leave”: Any period of maternity leave, paternity leave and/or adoption leave of up to 12 months taken in connection with the birth or adoption of a child.

“Paternity leave”: Unpaid parental leave of up to 12 months which is taken by a male employee in connection with the birth or adoption of a child. Such an employee is permitted to take one week of unpaid paternity leave immediately after the birth or adoption of a child, in conjunction with any leave taken by his spouse.

35.1 Entitlement to parental leave

- 35.1.1 Employees are entitled to parental leave in connection with the birth or adoption of a child, in accordance with this clause.
- 35.1.2 Parental leave only applies to part-time or full time employees. Temporary full time or part-time employees on fixed term contracts are only eligible for parental leave for the duration of their fixed term contract of employment.
- 35.1.3 For female employees parental leave may, at the employee’s discretion, commence prior to 6 weeks before the expected date of birth of the child.
- 35.1.4 The minimum period of absence on maternity leave will commence six weeks before the expected date of birth and end six weeks after the day on which the birth has taken place, however an employee may apply to the Managing

Director to vary this period provided her application is supported by a certificate from a registered medical practitioner indicating that the employee is fit to continue or resume duty within this minimum period.

35.2 Eligibility for parental leave

- 35.2.1 An employee must comply with the certification and notice requirements to be entitled to parental leave, unless these requirements are waived by the employer.
- 35.2.2 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 during one week of paternity leave taken immediately after the birth or adoption of a child.

35.3 Notice requirements

An employee is to give the employer at least 10 weeks written notice of the intention to take parental leave other than for the purposes of adoption and of the expected duration of the leave.

35.4 Transfer to a safe job

Where in the opinion of a registered medical practitioner illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue her present work, she may be transferred to a safe job, at the rate and on the conditions attached to that job or at the employee’s substantive level, whichever is the higher, until the employee commences parental leave.

35.5 Variation and/or cancellation of parental leave period

- 35.5.1 The period of parental leave may be lengthened or shortened by Agreement between the employer and the employee, provided that the amount of leave does not exceed the maximum allowed.
- 35.5.2 The employee must where practicable give the employer 14 days written notice of any request to vary the period of leave.
- 35.5.3 Parental leave applied for, but not commenced, by an employee for any reason is cancelled. Reasons for cancellation include, but are not limited to—
 - (a) where a pregnancy terminates, other than by the birth of a living child;
 - (b) or where a planned adoption or placement of a child does not proceed.
 - (c) An employee must notify the employer of any change in certification details.

35.6 Parental leave and sick leave

- 35.6.1 Where the pregnancy of an employee terminates after 28 weeks, other than by the birth of a living child, and the employee is not on parental leave, she is entitled to sick leave in accordance with Award entitlements.
- 35.6.2 An employee who suffers any illness or injury related to her pregnancy and/or the birth whilst on parental leave cannot utilise sick leave entitlements.
- 35.6.3 An employee may utilise sick leave entitlements in accordance with clause 27.1—Sick Leave when not on parental leave.

35.7 Special adoption leave

An employee is entitled to special unpaid adoption leave of up to 2 days to attend any compulsory interviews, examinations or the like which are required by the adoption procedure.

35.8 Effect of parental leave on leave entitlements and employment

- 35.8.1 Any absence on parental leave will not break the continuity of service.
- 35.8.2 However, absence on parental leave will not be taken into account for the purpose of salary increment progression. Paid leave entitlements such as annual leave, long service leave and public holidays will not accrue during any period of parental leave.
- 35.8.3 An employee may, instead of or in conjunction with parental leave, take annual leave or long service leave entitlements to which he or she is entitled.

An employee proceeding on parental leave may elect to utilise—

- 35.8.3 (a) accrued annual leave
- 35.8.3 (b) accrued long service leave

for the whole or part of the period referred to in subclause 35.1 of this clause. The periods of leave referred to in paragraphs 35.8.3(a) and 35.8.3(b) of this subclause, which are utilised, will be paid leave.

35.9 Replacement employees

- 35.9.1 Before the employer engages a replacement employee (including a temporarily promoted or transferred employee), the employer must inform that person of the temporary nature of the employment, and of the rights of the person on parental leave who is being replaced.
- 35.9.2 The employer does not have to engage a replacement employee if one is not required.

35.10 Return to work after parental leave

- 35.10.1 An employee must confirm to the employer an intention of returning to work prior to re-commencing work.
- 35.10.2 An employee returning to work from parental leave is entitled to the position held immediately before beginning 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.
- 35.10.3 Where the position no longer exists, the employee is entitled to the same classification and pay to that of the employee's former position, and for which the employee is qualified and capable of performing.
- 35.10.4 Where immediately before commencing parental leave, an employee was acting in a higher position, or performing additional duties on a temporary basis, this subclause only applies in respect of the position held by the employee immediately before taking the acting or temporary position.

35.11 Termination of employment and parental leave

- 35.11.1 An employee may terminate his or her employment at any time during a period of parental leave, by giving the employer the appropriate period of notice detailed in the relevant award.
- 35.11.2 The employer must not terminate an employee or transfer them from their existing position on the grounds of the employee's parental leave application and/or absence on parental leave.

36.—EMERGENCY AND COMMUNITY SERVICE LEAVE

36.1 Emergency Service Leave may be granted to an Employee who is an active volunteer member of the—

- Western Australian State Emergency Service;
- Western Australian Bush Fire Brigade;
- St John Ambulance Brigade;
- Defence Force Reserves;

- Sea and rescue associations; or
- Other similar Authorities or bodies, recognised by the College.

to attend emergencies as declared by the recognised Authority or body provided that it does not interfere with essential customer service and work requirements.

36.2 If an employee is an active member of a recognised Authority or body they are to advise the College of membership in writing at the commencement of employment or membership in order to seek leave to attend emergencies.

36.3 The employer will be advised as soon as possible by the employee, the emergency service or such other persons as to the absence and, where possible, the expected duration of the absence. Such advice will be provided within 24 hours of the event or activity requiring the person's absence.

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

36.5 The application form must be accompanied by a certificate from the emergency organisation certifying that the employee was required for the specified period. If a certificate of attendance is not provided from the emergency service organisation absence may be considered to be leave without pay. If the absence is deemed to be leave without pay, any adjustment in entitlements arising as a result of not proving a certificate of service will be processed in the next scheduled pay period.

36.6 An employee, who during the course of the emergency volunteers their services to an emergency service organisation, will comply with subclauses 36.2 to 36.5 inclusive.

36.7 Such leave will not affect any continuity of service for the purpose of higher duties arrangements or eligibility for allowances.

36.8 An employee may be granted reasonable Community Service Leave, subject to proof, to donate blood products to the Red Cross Blood Bank.

37.—ANNUAL LEAVE LOADING

Annual leave loading provisions in the GOSAC Award have been absorbed and no longer apply.

38.—SELF-FUNDED WORK BREAKS

38.1 Employees may receive 4 years salary over a period of five years, with no attendance at work required in the fifth year, in accordance with the College's Policy and Guidelines.

38.2 The employer and an employee may agree to enter into any other similar arrangements involving different periods of time, in accordance with the Policy and Guidelines.

PART 7: TRANSFERS, TRAVELLING AND WORKING AWAY FROM USUAL PLACE OF WORK

39.—HOME BASED WORK

An employee may make application to the College to engage in home based work subject to the College's Home Based Work policy.

40.—TRAVELLING ALLOWANCE

40.1 This clause replaces Clause 42.—Travelling Allowance of the Government Officers' Salaries, Allowances and Conditions Award in its entirety.

40.2 An employee who travels on official business will be reimbursed reasonable expenses on the basis of the production of receipts for reasonable expenses. Reasonable expenses will include but not be limited to accommodation costs, purchase of meals as necessary, and cost of transport to destination.

40.3 In addition to clause 40.2—Travelling Allowance above, an employee will be reimbursed reasonable incidental expenses such as train, bus and taxi fares, official telephone calls, laundry and dry cleaning expenses, on production of receipts.

40.4 If on account of lack of suitable transport facilities, an employee necessarily engages reasonable accommodation for the night prior to commencing travelling on early morning transport the employee will be reimbursed the actual cost of such accommodation.

40.5 Reimbursement of expenses will not be suspended should an employee become ill whilst travelling, provided leave for the period of such illness is approved in accordance with provisions of Clause 28.1—Sick Leave of this Agreement, and the employee continues to incur accommodation, meal and incidental expenses.

40.6 Reimbursement claims for travelling in excess of 14 days in one month will not be passed for payment by a certifying employee unless the Managing Director has endorsed the account.

40.7 An employee who is relieving at or temporarily transferred to any place within a radius of fifty (50) kilometres measured from the employee's headquarters will not be reimbursed the cost of midday meals purchased, but an employee travelling on duty within that area which requires absence from the employee's headquarters over the usual midday meal period will be, on the production of receipts, for each meal necessarily purchased, provided that:—

40.7.1 such travelling is not a normal feature in the performance of the employee's duties; and

40.7.2 such travelling is not within the suburb in which the employee resides.

41.—TRANSFER

41.1 The College may transfer, at the same level of classification, an officer from one office, post or position within the College to another such office, post or position, for which that officer possesses the appropriate qualifications and skills, provided the College considers it to be in its interests to do so. Such transfers include the transfer of an employee from one campus of the College to another campus of the College.

41.2 The decision to transfer will be equitable and free from bias.

41.3 If the College transfers an employee in accordance with subclause 41.1 of this Clause it will comply with the following—

41.3.1 The transfer will be at the employee's current classification level;

41.3.2 The transfer will not result in a loss of the employee's continuity of service;

41.3.3 The transfer will not change the tenure of the employee;

41.3.4 The College's and employee's needs will be taken into account in the transfer decision. The employee's needs include distance of new work site from place of residence, skills, qualification and experience of the employee, requirement to undertake training to perform the duties of the new position.

41.3.5 The employee will be notified of the transfer decision and arrangements. The College will give the employee at least four weeks notice of intention to transfer.

41.3.6 Policies relating to transfer will be documented, equitable, free from bias, applied consistently and accessible to College employees.

41.3.7 The decisions and processes relating to transfer will embody the principles of natural justice including access to documentation specifically relating to the particular employee's transfer, explanation as to the reasons for the transfer and consultation with the employee where their input is taken into consideration;

41.3.8 The transfer decision will be capable of review; and

41.3.9 The appropriate confidentiality will be observed.

41.4 The College must adhere to the Public Sector Standards in Human Resource Management standard regarding transfer.

41.5 The College will act in accordance with the report and implement any recommendations of a reviewer selected by the Commissioner for Public Sector Standards to investigate any suspected breach of standard in accordance with s.15 of the Public Sector Management (Review Procedures) Regulations 1995.

41.6 If the College does not act in accordance with and implement the recommendations of the reviewer selected by the Commissioner for Public Sector Standards, the College will be in breach of the Agreement.

41.7 Should an application for a breach of the Public Sector Standard relating to Transfer be lodged with the Managing Director within 15 days of an employee being notified of a decision to transfer and a review of the transfer be carried out, the status quo will remain until such time as the reviewer has made recommendations.

SCHEDULE A: SALARIES

ENTERPRISE BARGAINING AGREEMENT 2000									
SCHEDULE A									
LEVEL	Column A - Current Annual Salary Rates	Column B - Date Of Registration 1.5%	New Fortnightly Rate	Column C - Annual Salary as at First Pay Period on or After March 15, 2001 1.5%	New Fortnightly Rate	Column D - Annual Salary as at First Pay Period on or After March 15, 2002 3%*	New Fortnightly Rate		
LEVEL 1									
Age 16	12,900	13,094	501.99	13,290	509.52	13,689	524.80		
Age 17	15,075	15,301	586.62	15,531	595.42	15,997	613.29		
Age 18	17,585	17,849	684.30	18,117	694.56	18,660	715.40		
Age 19	20,355	20,660	792.09	20,970	803.97	21,599	828.09		
Age 20	22,858	23,201	889.49	23,549	902.83	24,255	929.92		
YEAR 1	25,110	25,487	977.12	25,869	991.78	26,645	1021.53		
YEAR 2	25,883	26,271	1,007.20	26,665	1022.31	27,465	1052.98		
YEAR 3	26,656	27,056	1,037.28	27,462	1052.84	28,286	1084.43		
YEAR 4	27,423	27,834	1,067.13	28,252	1083.14	29,099	1115.63		
YEAR 5	28,196	28,619	1,097.21	29,048	1113.67	29,920	1147.08		
YEAR 6	28,968	29,403	1,127.25	29,844	1144.16	30,739	1178.49		
YEAR 7	29,857	30,305	1,161.85	30,759	1179.28	31,682	1214.65		
YEAR 8	30,471	30,928	1,185.74	31,392	1203.53	32,334	1239.63		
YEAR 9	31,380	31,851	1,221.11	32,328	1239.43	33,298	1276.61		
LEVEL 2									
YEAR 1	32,468	32,955	1,263.45	33,449	1282.40	34,453	1320.88		
YEAR 2	33,302	33,802	1,295.91	34,309	1315.34	35,338	1354.80		
YEAR 3	34,179	34,692	1,330.03	35,212	1349.98	36,268	1390.48		
YEAR 4	35,105	35,632	1,366.07	36,166	1386.56	37,251	1428.15		

LEVEL	Column A - Current Annual Salary Rates	Column B - Date Of Registration 1.5%	New Fortnightly Rate	Column C - Annual Salary as at First Pay Period on or After March 15, 2001 1.5%	New Fortnightly Rate	Column D - Annual Salary as at First Pay Period on or After March 15, 2002 3%*	New Fortnightly Rate
YEAR 5	36,074	36,615	1,403.77	37,164	1424.83	38,279	1467.58
LEVEL 3							
YEAR 1	37,407	37,968	1,455.65	38,538	1477.48	39,694	1521.81
YEAR 2	38,445	39,022	1,496.04	39,607	1518.48	40,795	1564.03
YEAR 3	39,515	40,108	1,537.68	40,709	1560.74	41,931	1607.56
YEAR 4	40,614	41,223	1,580.44	41,842	1604.15	43,097	1652.27
LEVEL 4							
YEAR 1	42,120	42,752	1,639.05	43,393	1663.63	44,695	1713.54
YEAR 2	43,301	43,951	1,685.00	44,610	1710.28	45,948	1761.59
YEAR 3	44,516	45,184	1,732.28	45,861	1758.27	47,237	1811.02
LEVEL 5							
YEAR 1	46,855	47,558	1,823.30	48,271	1850.65	49,719	1906.17
YEAR 2	48,437	49,164	1,884.86	49,901	1913.14	51,398	1970.53
YEAR 3	50,080	50,831	1,948.80	51,594	1978.03	53,141	2037.37
YEAR 4	51,785	52,562	2,015.15	53,350	2045.38	54,951	2106.74
* The payment of this increase is subject to the approval of the Cabinet Standing Committee on Labour Relations							
LEVEL 6							
YEAR 1	54,526	55,344	2,121.81	56,174	2153.64	57,859	2218.25
YEAR 2	56,390	57,236	2,194.35	58,094	2227.26	59,837	2294.08
YEAR 3	58,305	59,180	2,268.87	60,067	2302.90	61,869	2371.99
YEAR 4	60,338	61,243	2,347.98	62,162	2383.20	64,027	2454.69
LEVEL 7							
YEAR 1	63,454	64,406	2,469.23	65,372	2506.27	67,333	2581.46
YEAR 2	65,610	66,594	2,553.13	67,593	2591.43	69,621	2669.17
YEAR 3	67,956	68,975	2,644.42	70,010	2684.09	72,110	2764.61
LEVEL 8							
YEAR 1	71,769	72,846	2,792.80	73,938	2834.69	76,156	2919.73
YEAR 2	74,500	75,618	2,899.07	76,752	2942.56	79,054	3030.84
YEAR 3	77,887	79,055	3,030.87	80,241	3076.34	82,648	3168.63
LEVEL 9							
YEAR 1	82,117	83,349	3,195.48	84,599	3243.41	87,137	3340.71
YEAR 2	84,975	86,250	3,306.69	87,543	3356.30	90,170	3456.98
YEAR 3	88,234	89,558	3,433.51	90,901	3485.02	93,628	3589.57
CLASS 1							
CLASS 1	93,162	94,559	3,625.28	95,978	3679.66	98,857	3790.05
CLASS 2							
CLASS 2	98,090	99,561	3,817.05	101,055	3874.30	104,086	3990.53
CLASS 3							
CLASS 3	103,016	104,561	4,008.74	106,130	4068.87	109,314	4190.93
CLASS 4							
CLASS 4	107,945	109,564	4,200.54	111,208	4263.55	114,544	4391.46
LEVEL 2/4							
YEAR 1 (2.1)	32,468	32,955	1,263.45	33,449	1282.40	34,453	1320.88
YEAR 2 (2.3)	34,179	34,692	1,330.03	35,212	1349.98	36,268	1390.48

SCHEDULE B: PRODUCTIVITY IMPROVEMENTS

PRODUCTIVITY IMPROVEMENT PLAN

Staff will actively participate in the development and implementation of a Productivity Improvement Plan/s (PIP/s) as determined by the Managing Director.

PIPs may be developed at the College or Campus level, or any combination as determined by the Managing Director.

The PIP/s may involve changes to work practices, but will not involve changes to award/agreement/enterprise bargaining agreement employment conditions.

Subject to the approval of the Cabinet Standing Committee on Labour Relations, a 3% pay increase will be paid to employees from the first pay period on or after 15 March 2002 for productivity improvements.

SCHEDULE C: SIGNATORIES OF PARTIES TO THE AGREEMENT

The following signatories are authorised to sign this Agreement.

Signatories

____ Signed _____ Date __20/12/2000__

Employer—

Brian Paterson, Managing Director of Central TAFE, on behalf of the Governing Council

Signed for and on behalf of the Civil Service Association of Western Australia (Inc) by

____ Signed _____ Date __20.12.2000__

Common Seal

Mr Dave Robinson, Branch Secretary, Civil Service Association WA Inc

SCHEDULE D: ALPHABETICAL LISTING OF PROVISIONS

Annual Leave
 Annual Leave Loading
 Annual Leave Travel Concessions
 Arrangement
 Availability of Agreements
 Breaches of Discipline
 Casual Employment
 Ceremonial/Cultural Leave
 Christmas Closedown
 Compassionate Leave
 Consultation Provisions
 Definitions
 Dispute Resolution Procedure
 Emergency and Community Service Leave
 Flexitime
 Higher Duties
 Home Based Work
 Hours of Work
 Long Service Leave
 No Further Claims
 Number of Employees Covered
 Objectives of the Agreement
 Parental Leave
 Parties Bound
 Past Productivity
 Payment Arrangements
 Productivity Improvements
 Public Holidays
 Relationship to Awards/Agreements
 Repayments of Overpayments
 Salaries
 Salary Packaging
 Scope
 Self Funded Work Breaks
 Short Leave
 Sick Leave and Family/Carer's Leave
 Signatories of Parties to the Agreement
 Substandard Performance
 Term of Agreement and Renegotiation
 Title
 Transfer
 Travelling Allowance
 Variation of Allowances

CENTRAL WEST COLLEGE OF TAFE PUBLIC SERVICE AND GOVERNMENT OFFICERS ENTERPRISE AGREEMENT 2000.

No. PSAAG 69 of 2000.

2001 WAIRC 01794

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

PARTIES GOVERNING COUNCIL, CENTRAL WEST COLLEGE OF TAFE AND THE CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA INCORPORATED

CORAM COMMISSIONER P E SCOTT

DELIVERED TUESDAY, 16 JANUARY 2001

FILE NO PSAAG 69 OF 2000

CITATION NO. 2001 WAIRC 01794

Result Agreement registered

Order.

HAVING heard Ms J Caiacob on behalf of the Governing Council, Central West College of TAFE and Ms J van den Herik on behalf of the Civil Service Association of Western

Australia (Incorporated), and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Central West College of TAFE Public Service and Government Officers' Enterprise Agreement 2000 in the terms of the following schedule be registered on the 21st day of December 2000 and shall replace the Central West College of TAFE Public Service and Government Officers' Enterprise Agreement 1998 (No. PSA AG 11 of 1998).

[L.S.] (Sgd.) P. E. SCOTT,
 Commissioner,
 Public Service Arbitrator.

Schedule.

PART 1—APPLICATION AND OPERATION OF AGREEMENT

1.—TITLE

This Agreement will be called the Central West College of TAFE Public Service Officers' and Government Officers' Enterprise Agreement 2000 and will replace the Central West College of TAFE Public Service and Government Officers' Enterprise Agreement 1998.

2.—ARRANGEMENT

PART 1—APPLICATION AND OPERATION OF AGREEMENT

1. TITLE
2. ARRANGEMENT
3. SCOPE
4. PARTIES BOUND
5. DEFINITIONS
6. NUMBER OF EMPLOYEES COVERED
7. NO FURTHER CLAIMS
8. TERM OF AGREEMENT AND RENEGOTIATION
9. RELATIONSHIP TO AWARDS
10. AVAILABILITY OF AGREEMENT
11. OBJECTIVES OF THE AGREEMENT
12. PAST PRODUCTIVITY

PART 2—DISPUTE RESOLUTION

13. CONSULTATION PROVISIONS
14. DISPUTE RESOLUTION PROCEDURE
15. SUBSTANDARD PERFORMANCE
16. BREACHES OF DISCIPLINE

PART 3—EMPLOYER AND EMPLOYEES' DUTIES, EMPLOYMENT RELATIONSHIP AND RELATED ARRANGEMENTS

17. HIGHER DUTIES
18. CASUAL EMPLOYMENT

PART 4—WAGES AND RELATED MATTERS

19. SALARIES
20. SALARY PACKAGING
21. PAYMENT ARRANGEMENTS
22. REPAYMENTS OF OVERPAYMENTS
23. VARIATION OF ALLOWANCES

PART 5—HOUR OF WORK, BREAKS, OVERTIME, SHIFT WORK AND WEEKEND WORK

24. HOURS OF WORK
25. FLEXITIME

PART 6—LEAVE OF ABSENCE AND PUBLIC HOLIDAYS

26. ANNUAL LEAVE
27. LONG SERVICE LEAVE
28. SICK LEAVE
29. FAMILY/CARER'S LEAVE
30. COMPASSIONATE LEAVE
31. SHORT LEAVE
32. CEREMONIAL/CULTURAL LEAVE
33. PUBLIC HOLIDAYS
34. CHRISTMAS CLOSEDOWN
35. PARENTAL LEAVE

36. EMERGENCY AND COMMUNITY SERVICE LEAVE
 37. ANNUAL LEAVE LOADING
 38. SELF-FUNDED WORK BREAKS

PART 7: TRANSFERS, TRAVELLING AND WORKING AWAY FROM USUAL PLACE OF WORK

39. HOME BASED WORK
 40. TRAVELLING ALLOWANCE
 41. TRANSFER

SCHEDULE A: SALARIES

SCHEDULE B: PRODUCTIVITY IMPROVEMENTS

SCHEDULE C: SIGNATORIES OF PARTIES TO THE AGREEMENT

SCHEDULE D: ALPHABETICAL LISTING OF PROVISIONS

3.—SCOPE

This Agreement will apply throughout the state of Western Australia to Officers employed in the Central West College of TAFE. This Agreement will also apply to Officers on secondment to or in the College.

4.—PARTIES BOUND

The parties to this Agreement will be the Governing Council of the Central West College of TAFE, and the Civil Service Association of Western Australia (Inc).

5.—DEFINITIONS

The following terms will have the following meanings—

- “**Agreement**”: means the Central West College of TAFE Public Service and Government Officers’ Enterprise Agreement 2000.
 “**Award**”: means the Government Officers’ Salaries, Allowances and Conditions Award 1989.
 “**College**”: means the Central West College of TAFE.
 “**Continuous service**”: Any period of service between the employee and employer under an unbroken contract of employment, and includes any authorised unpaid or paid absences.
 “**CSA**”: means the Civil Service Association of Western Australia (Inc).
 “**Department**”: means the Western Australian Department of Training and Employment.
 “**Employee**”: for the purpose of this Agreement means, someone who is referred to at Clause 3—Scope.
 “**Employer**”: means the Governing Council of the Central West College of TAFE.
 “**Full-Time Officer**”: A person employed to work 37 1/2 ordinary hours per week.
 “**Government**”: means the Government of Western Australia.
 “**GOSAC Award**”: means the Government Officers’ Salaries Allowances & Conditions Award 1989.
 “**Managing Director**”: means the Managing Director of the Central West College of TAFE, pursuant to section 46 of the Vocational Education and Training Act 1996.
 “**Minister**”: is the Minister of the Crown who is responsible for the administration of the employing agency.
 “**Officer**”: means a Public Service Officer as defined in the Public Sector Management Act 1994 or Government Officer as defined in the Industrial Relations Act 1979.
 “**Part-Time**”: means regular and continuing employment for less than the ordinary hours for a “Full-Time Officer”.
 “**Spouse**”: means a husband or wife of an employee, and includes a de facto spouse. For the purposes of Bereavement leave it includes a former spouse.
 “**Union**”: means the Civil Service Association of Western Australia (Inc).
 “**WAIRC**”: means the Western Australian Industrial Relations Commission.

6.—NUMBER OF EMPLOYEES COVERED

At the date of registration of this Agreement the approximate number of employees covered by this Agreement is 7.

7.—NO FURTHER CLAIMS

7.1 There will be no extra claims for salary adjustments other than that which is provided by this Agreement for the duration of its term.

7.2 There will be no further claims on matters contained in this Agreement for the duration of its term.

8.—TERM OF AGREEMENT AND RENEGOTIATION

8.1 This Agreement will operate on and from the date of registration and will remain in force for two years.

8.2 Six (6) months prior to the date of expiration of this Agreement, the parties will commence negotiation for its renewal or replacement.

8.3 The pay rates attained under this Agreement will form the new base rates for any future Agreement, provided that the productivity targets attained under this Agreement continue and previous productivity improvements in the last agreement are sustained, and changes to Award conditions maintained, or changed by agreement.

9.—RELATIONSHIP TO AWARDS

This Agreement will be read and interpreted wholly in conjunction with the Government Officers’ Salaries, Allowances and Conditions Award 1989. This Agreement will have precedence to the extent of any inconsistency. Where the agreement is silent the relevant award will apply.

10.—AVAILABILITY OF AGREEMENT

Employees will have access to an electronic copy of this agreement. Where electronic copies are unavailable, hard copies of the agreement will be provided.

11.—OBJECTIVES OF THE AGREEMENT

It is the shared objectives of the parties to—

Work towards alignment of conditions for all TAFE employees.

Meet the requirements of clients and students through the provision of reliable, efficient and competitive services.

Achieve the Department’s mission and improve productivity and efficiency through identified improvements.

Achieve improvement and greater flexibility of working patterns and arrangements.

Promote and facilitate enhanced employee relations and increased job satisfaction.

To facilitate a continued cooperative approach to the introduction of change.

This Agreement will operate as a contributive mechanism to deliver a cost efficient Vocational Education and Training service.

12.—PAST PRODUCTIVITY

This Agreement incorporates past productivity to the date of registration.

PART 2—DISPUTE RESOLUTION

13.—CONSULTATION PROVISIONS

13.1 The parties acknowledge the need for a satisfactory College consultative procedure. Staff participation and consultation is encouraged. The form of participation and consultation may vary at each workplace depending on individual circumstances. The College will establish its own structure and processes. However, the non-establishment of a structure or process will not be used as a means to avoid requirement to consult.

13.2 Employees will be involved in broadly based representative consultative committees with structure and functions determined by the College.

13.3 Consultative committees will provide a forum for staff and management to, where appropriate, seek the views of the other and enter into meaningful discussions that may contribute towards outcomes, in relation to operational matters.

13.4 Representatives from the Union, where it has members at the workplace, will be invited to participate on consultative committees.

13.5 The parties to this Agreement acknowledge that decision making continues to rest with the College, which is accountable to Government, through legislation, for the operation of its business.

14.—DISPUTE RESOLUTION PROCEDURE

14.1 In the event of a dispute arising in the workplace the procedure to be followed to resolve the matter will be as follows:

- 14.1.1 The employee and their supervisor will meet and confer on the matter; and
- 14.1.2 If the matter is not resolved at such a meeting, the parties will arrange for further discussions between the employee and his or her nominated representative, if any, and more senior levels of management.
- 14.1.3 If the matter is still unresolved a discussion will be held between representatives of the College or other representative of the employer and the Union or other employee representative.
- 14.1.4 If the matter cannot be resolved it may be referred to the WAIRC.

14.2 While the parties attempt to resolve the matter work will continue as normal unless an employee has a reasonable concern about an imminent risk to his or her health and safety.

15.—SUBSTANDARD PERFORMANCE

For the purposes of this clause the following definition will apply—

Substandard performance: The performance of an employee is substandard if the employee does not, in the performance of the functions that he or she is required to perform, attain or sustain a standard that a person may reasonably be expected to attain or sustain in the performance of his or her duties.

15.1 No employee shall be subject to the penalties of clause 15.2 unless a fair procedure is applied and decisions and processes incorporate the principles of natural justice and are free from bias.

15.2 If, in accordance with the College's substandard performance management policy, an employee is found by the College to be performing at a substandard level, the College may—

- 15.2.1 withhold an increment of remuneration otherwise payable to that employee;
- 15.2.2 reduce the classification of that employee; or
- 15.2.3 terminate the employment of that employee.

15.3 If an employee who has been subject to substandard performance management is aggrieved by any resulting decision, he/she may appeal against that decision in the WAIRC.

16.—BREACHES OF DISCIPLINE

16.1 No employee shall be subject to the penalties of clause 16.2 unless a fair procedure is applied and decisions and processes incorporate the principles of natural justice and are free from bias.

16.2 If, in accordance with the College's disciplinary policy, an employee is found by the College to have committed a breach of discipline, the College may:

- 16.2.1 reprimand the employee;
- 16.2.2 transfer the employee to another public sector agency or authority, with the consent of that agency or transfer the employee to another position at the College at which the employee is currently employed;
- 16.2.3 impose on the employee a fine not exceeding the equivalent of five days pay that the employee would have received immediately prior to the breach of discipline finding;
- 16.2.4 reduce the monetary remuneration of the employee within the employee's existing classification;
- 16.2.5 reduce the level of classification of the employee;
- 16.2.6 dismiss the employee;

or, except where the employee is dismissed under subclause 16.2.6, take action under any two or more of the above sub-clauses.

16.3 If an employee who has been subject to disciplinary action is aggrieved by a decision resulting from such action, he/she may appeal against that decision to the WAIRC.

PART 3—EMPLOYER AND EMPLOYEES' DUTIES, EMPLOYMENT RELATIONSHIP AND RELATED ARRANGEMENTS

17.—HIGHER DUTIES

17.1 An officer who undertakes duties of a higher classification for a period of 10 consecutive working days or more, inclusive of public holidays, will be paid at the salary applicable to the higher level proportionate to the level of duties and responsibilities assigned for the entire period of the higher duties.

17.2 The higher rate of payment will apply to an officer who proceeds on normal annual leave or any other approved leave of absence of not more than four weeks provided that the officer was in receipt of the additional payment for a continuous period of 12 months or more.

18.—CASUAL EMPLOYMENT

18.1 Casual employees may be employed for up to three months in any period of engagement, provided that where operationally necessary and in compliance with subclause 18.2 of this clause the period of engagement may be extended for up to a period of a further three months.

18.2 All casual engagements shall be in accordance with the following guidelines.

1. The type of employment involves specific workload demands of a short term nature;
2. The job is a short term project of a finite nature;
3. To replace an employee during a short term approved leave of absence.

PART 4—WAGES AND RELATED MATTERS

19.—SALARIES

19.1 Increases have been applied to the rates paid pursuant to the Central West College of TAFE Public Service and Government Officers' Enterprise Agreement 1998 as expressed in column A.

19.2 The rates in Column B will be paid effective from the date of registration of the Agreement. The rates in column B reflect a 1.5% increase for changes to award/employment conditions contained in this Agreement.

19.3 The rates in Column C will be paid from the first pay period on or after 15 March 2001. The rates in Column C reflect a 1.5% increase for changes to award/employment conditions contained in this Agreement.

19.4 The rates in Column D will be paid from the first pay period on or after 15 March 2002. The rates in Column D reflect a 3% increase, subject to Cabinet Standing Committee on Labour Relations endorsement that the Productivity Improvement Plan targets have been achieved.

19.5 The pay rates attained under this Agreement will form the new base rates for any future Agreement, provided that the productivity targets attained under this Agreement continue and previous productivity improvements in the last agreement are sustained and changes to Award conditions maintained, or changed by agreement.

20.—SALARY PACKAGING

20.1 An employee may, by agreement with the employer, enter into a salary packaging arrangement in accordance with the Central West College of TAFE Flexible Remuneration Packaging Scheme or any similar salary packaging arrangement offered by the employer.

20.2 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.

20.3 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.

20.4 The TEC for the purposes of salary packaging, is calculated by adding:

- 20.4.1 The base salary;
- 20.4.2 Other cash allowances, eg. Annual leave loading;
- 20.4.3 Non-cash benefits, eg superannuation, motor vehicles etc;
- 20.4.4 Any Fringe Benefit Tax liabilities currently paid; and
- 20.4.5 Any shift or commuted allowance or variable components, eg performance based incentives (where they exist).

20.5 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 agreement.

20.6 The salary packaging arrangement must be cost neutral in relation to the total cost to the employer.

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

20.8 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 will be borne by the employee.

20.9 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.

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

20.11 An employer will not unreasonably withhold agreement to salary packaging on request from an employee.

20.12 The Dispute Settlement Procedure contained in this Agreement will 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 to the WAIRC.

21.—PAYMENT ARRANGEMENTS

Salaries will be paid on a fortnightly basis directly into an approved bank, building society or credit union nominated by the employee.

22.—REPAYMENTS OF OVERPAYMENTS

22.1 Any salary overpayments will be repaid to the employer within a reasonable period of time.

22.2 If agreement cannot be reached, the employer may deduct the amount of overpayment over the same length of time that the overpayments occurred, or up to 6 months, whichever period is less.

22.3 The employer may not deduct or require an employee to repay an amount exceeding 20% of the employees' net pay in any one pay period.

22.4 On compassionate grounds, the Managing Director may allow an extended period for the repayment of overpayments.

23.—VARIATION OF ALLOWANCES

23.1 Wherever an award allowance is calculated by reference to a classification salary point, the parties agree that all such allowances will be so varied by reference to the salary provided by this agreement.

23.2 All such allowances will be applicable from the same date as provided for any salary variation under this agreement.

PART 5—HOUR OF WORK, BREAKS, OVERTIME, SHIFT WORK AND WEEKEND WORK

24.—HOURS OF WORK

Notwithstanding the prescribed hours of duty in clause 16 of the Award, the employer and an employee may agree to vary the spread of hours during which the employee's ordinary hours of work may be worked. Any agreement must be voluntarily and genuinely made and an employee may not be forced, coerced or intimidated into any such variation to the spread of ordinary hours during which the hours of work may be worked.

25.—FLEXITIME

25.1 For the purpose of this clause, a settlement period will—

- 25.1.1 consist of 12 weeks;
- 25.1.2 have the required hours of duty of 450 hours; and
- 25.1.3 commence at the beginning of a pay period.

25.2 Credit hours at any point within the settlement period will not exceed 60 hours.

25.3 An officer may be allowed to clear flexi leave of a maximum of 6 full days, or any combination of half days and full days that does not exceed 6 full days in any settlement period.

25.4 Full days of flexi leave may be taken in accordance with College policy.

25.5 Flexi-leave days may be taken consecutively during a Christmas Closedown.

25.6 Notwithstanding subclause 25.3, in the case of a Christmas Closedown of 12 working days, where sufficient credit hours are accrued, an employee may take seven consecutive flexi-leave days. This subclause does not apply in the case of a Christmas Closedown of less than 12 working days.

25.7 Credit hours to a maximum of thirty seven hours thirty minutes will be allowed at the end of each settlement period and will be carried forward to the next settlement period.

25.8 In the case of credit hours greater than thirty seven hours thirty minutes gained in one settlement period, the hours in excess of thirty seven hours thirty minutes will be lost.

PART 6—LEAVE OF ABSENCE AND PUBLIC HOLIDAYS

26.—ANNUAL LEAVE

26.1 By written approval of the employer, accrued annual leave may be paid out (equivalent benefit) instead of taken.

26.2 The paying out of accrued annual leave is not obligatory and is subject to agreement of both the employer and employee.

26.3 Annual Leave Travel Concessions—Officers Stationed in Remote Areas

26.3.1 Where an officer's headquarters is situated in District Allowance Areas 3,5,6 and in that portion of area 4 located north of 30° South Latitude, as defined in Schedule D—District Allowance of the PSA/ Schedule G—District Allowance of the GOSAC Award, a travel concession to the value of return economy airfares to Perth or Geraldton will be provided for the officer and his/her dependants when the officer travels from his/her normal place of employment on Annual Leave.

26.3.2 The officer will only be entitled to the actual cost of the travel, up to the value of return economy airfares for the officer and his/her dependants to Perth or Geraldton, whichever is the higher. The employer will not reimburse the officer unless the officer supplies evidence acceptable to the employer of the actual cost of travel.

26.3.3 An officer is required to serve 12 months in these areas before qualifying for travel concessions.

27.—LONG SERVICE LEAVE

27.1 Accrued long service leave may be taken in periods of not less than one day.

27.2 By written approval of the employer, accrued long service leave may be paid out (equivalent benefit) instead of taken.

27.3 The paying out of accrued Long Service Leave is not obligatory and is subject to agreement of both the employer and employee.

28.—SICK LEAVE

28.1 Sick leave entitlement

28.2 The sick leave provisions of the GOSAC Awards will continue to apply, except that the Managing Director may approve further paid leave in exceptional circumstances.

29.—FAMILY/CARER'S LEAVE

29.1 An employee with responsibilities in relation to either members of their family or members of their household who need their care and support, is entitled to paid leave of up to 5 days per annum, to provide care and support for such persons when they are ill.

29.2 Family/carer's leave taken will be deducted from an employee's sick leave entitlements, provided that 10 days of the employee's sick leave entitlement credited in the current year cannot be used for family/carer's leave. Family/carer's leave is not cumulative from year to year.

29.3 Where family/carer's leave is exhausted, an employee may take unpaid carer's leave by agreement with the employer.

29.4 The employee will if required by the employer establish, by production of medical evidence or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another.

29.5 The employee will, wherever possible, give the employer notice prior to the absence of the intention to take such leave.

29.6 For the purposes of this clause, a family member or member of the employee's household is one who is wholly or partially dependent on the employee.

30.—COMPASSIONATE LEAVE

30.1 Subject to paragraph 30.2 hereof, an officer will be entitled to paid compassionate leave of up to 2 days on the death of a family member.

30.2 The Managing Director may grant compassionate leave on the death of a person other than a family member in personal and compassionate circumstances.

30.3 Compassionate leave will not be granted during a period of any other leave.

30.4 Payment for compassionate leave is to be made only where the officer otherwise would have been on duty.

31.—SHORT LEAVE

The Award entitlement to short leave will no longer apply.

32.—CEREMONIAL/CULTURAL LEAVE

32.1 Ceremonial/Cultural Leave may be granted, to employees who have a ritual obligation to participate in ceremonial activity which requires absence from work. Such leave will also include leave to meet the employee's custom and traditional laws.

32.2 An employee granted leave to participate in ceremonial, cultural or traditional law activities will have such leave deducted from accrued annual leave or long service leave.

32.3 Leave without pay to participate in ceremonial, cultural or traditional law activities may be granted by the employer.

33.—PUBLIC HOLIDAYS

33.1 The following days are paid public holidays; New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Foundation Day, Labour Day, Sovereign's Birthday, Christmas Day and Boxing Day.

33.2 Whenever any of these days falls on a Saturday or a Sunday, the holiday is observed on the next succeeding Monday, or in the case of Boxing Day falling on a Sunday or Monday, on the next succeeding Tuesday.

33.3 There is no entitlement to any additional Public Service holidays in addition to those prescribed in this agreement.

34.—CHRISTMAS CLOSEDOWN

34.1 The College may observe a closedown over the Christmas/New Year period.

34.2 The duration of the closedown will be at the discretion of the Managing Director but will not exceed 12 working days.

34.3 Employees will be required to take annual leave, long service leave, rostered days off, time in lieu of overtime or flexitime credit hours on the working days that the College is closed down. The employee may elect which form of leave is to be taken.

34.4 The Managing Director will as soon as possible, in each calendar year but not later than 30 June, advise employees of the period of closedown and the number of working days involved.

34.5 When taking leave during the year employees must be aware of the requirement to retain credits to cover the required number of days over the compulsory close down period.

34.6 New employees, employees who have exhausted their annual leave credits at the commencement of this Agreement, or employees who have been granted approval to utilise all

leave credits will be entitled to take leave without pay or go into debit to cover the amount of leave involved, provided a refund is made by the employee, on termination, if credits to the value of the leave taken in advance have not been accrued.

35.—PARENTAL LEAVE

Definitions

For the purpose of this clause, the following terms have the following meanings:

"Adoption": is the placement (including any initial temporary placement with a view to a permanent placement) of a child who is less than 5 years of age, who is not the natural or step-child of the employee or employee's spouse and who has not lived with the employee for longer than 6 months.

"Adoption leave": Unpaid parental leave of up to 12 months taken by either parent in connection with the adoption or placement of a child under the age of 5 years.

"Certification"—

- (a) 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 birth.
- (b) For the purpose of maternity leave means a certificate from a registered medical practitioner stating that the employee is pregnant and the expected date of birth.
- (c) For the purpose of adoption leave and special adoption leave means the requirements that an employee must comply with before being eligible for the entitlement.

The employee must produce to the employer—

a statement from an adoption agency or other appropriate body of the placement of the child for adoption purposes; or

presumed date confirming that the employee or employee's spouse is to have custody of the child pending application for an adoption order.

"Child": A person to whom an employee or employee's spouse has given birth, or 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 stepchild of the employee or employee's spouse who has previously lived with the employee for a period of 6 months or more.

"Expected date of birth": The day certified by a medical practitioner, to be the day on which the birth of the child of the employee, or employee's spouse is expected.

"Maternity leave": Unpaid parental leave of up to 12 months taken by a female employee in connection with her pregnancy, and the subsequent birth of a child.

"Parental leave": Any period of maternity leave, paternity leave and/or adoption leave of up to 12 months taken in connection with the birth or adoption of a child.

"Paternity leave": Unpaid parental leave of up to 12 months which is taken by a male employee in connection with the birth or adoption of a child. Such an employee is permitted to take one week of unpaid paternity leave immediately after the birth or adoption of a child, in conjunction with any leave taken by his spouse.

35.1 Entitlement to parental leave

35.1.1 Employees are entitled to parental leave in connection with the birth or adoption of a child, in accordance with this clause.

35.1.2 Parental leave only applies to part-time or full time employees. Temporary full time or part-time employees on fixed term contracts are only eligible for parental leave for the duration of their fixed term contract of employment.

35.1.3 For female employees parental leave may, at the employee's discretion, commence prior to 6 weeks before the expected date of birth of the child.

35.1.4 The minimum period of absence on maternity leave will commence six weeks before the expected date of birth and end six weeks after the day on which the birth has taken place, however an employee may apply to the Managing Director to vary this period provided her application is supported by a certificate from a registered medical practitioner indicating that the employee is fit to continue or resume duty within this minimum period.

35.2 Eligibility for parental leave

35.2.1 An employee must comply with the certification and notice requirements to be entitled to parental leave, unless these requirements are waived by the employer.

35.2.2 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 during one week of paternity leave taken immediately after the birth or adoption of a child.

35.3 Notice requirements

An employee is to give the employer at least 10 weeks written notice of the intention to take parental leave other than for the purposes of adoption and of the expected duration of the leave.

35.4 Transfer to a safe job

Where in the opinion of a registered medical practitioner illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue her present work, she may be transferred to a safe job, at the rate and on the conditions attached to that job or at the employee's substantive level, whichever is the higher, until the employee commences parental leave.

35.5 Variation and/or cancellation of parental leave period

35.5.1 The period of parental leave may be lengthened or shortened by Agreement between the employer and the employee, provided that the amount of leave does not exceed the maximum allowed.

35.5.2 The employee must where practicable give the employer 14 days written notice of any request to vary the period of leave.

35.5.3 Parental leave applied for, but not commenced, by an employee for any reason is cancelled. Reasons for cancellation include, but are not limited to—

35.5.3 (a) where a pregnancy terminates, other than by the birth of a living child;

35.5.3 (b) or where a planned adoption or placement of a child does not proceed.

35.5.3 (c) An employee must notify the employer of any change in certification details.

35.6 Parental leave and sick leave

35.6.1 Where the pregnancy of an employee terminates after 28 weeks, other than by the birth of a living child, and the employee is not on parental leave, she is entitled to sick leave in accordance with Award entitlements.

35.6.2 An employee who suffers any illness or injury related to her pregnancy and/or the birth whilst on parental leave cannot utilise sick leave entitlements.

35.6.3 An employee may utilise sick leave entitlements in accordance with clause 27.1—Sick Leave when not on parental leave.

35.7 Special adoption leave

An employee is entitled to special unpaid adoption leave of up to 2 days to attend any compulsory interviews, examinations or the like which are required by the adoption procedure.

35.8 Effect of parental leave on leave entitlements and employment

35.8.1 Any absence on parental leave will not break the continuity of service.

35.8.2 However, absence on parental leave will not be taken into account for the purpose of salary increment progression. Paid leave entitlements such as annual leave, long service leave and public holidays will not accrue during any period of parental leave.

35.8.3 An employee may, instead of or in conjunction with parental leave, take annual leave or long service leave entitlements to which he or she is entitled.

An employee proceeding on parental leave may elect to utilise—

35.8.3 (a) accrued annual leave

35.8.3 (b) accrued long service leave

for the whole or part of the period referred to in subclause 35.1 of this clause. The periods of leave referred to in paragraphs 35.8.3(a) and 35.8.3(b) of this subclause, which are utilised, will be paid leave.

35.9 Replacement employees

35.9.1 Before the employer engages a replacement employee (including a temporarily promoted or transferred employee), the employer must inform that person of the temporary nature of the employment, and of the rights of the person on parental leave who is being replaced.

35.9.2 The employer does not have to engage a replacement employee if one is not required.

35.10 Return to work after parental leave

35.10.1 An employee must confirm to the employer an intention of returning to work prior to re-commencing work.

35.10.2 An employee returning to work from parental leave is entitled to the position held immediately before beginning 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.

35.10.3 Where the position no longer exists, the employee is entitled to the same classification and pay to that of the employee's former position, and for which the employee is qualified and capable of performing.

35.10.4 Where immediately before commencing parental leave, an employee was acting in a higher position, or performing additional duties on a temporary basis, this subclause only applies in respect of the position held by the employee immediately before taking the acting or temporary position.

35.11 Termination of employment and parental leave

35.11.1 An employee may terminate his or her employment at any time during a period of parental leave, by giving the employer the appropriate period of notice detailed in the relevant award.

35.11.2 The employer must not terminate an employee or transfer them from their existing position on the grounds of the employee's parental leave application and/or absence on parental leave.

36.—EMERGENCY AND COMMUNITY SERVICE LEAVE

36.1 Emergency Service Leave may be granted to an Employee who is an active volunteer member of the—

- Western Australian State Emergency Service;
- Western Australian Bush Fire Brigade;
- St John Ambulance Brigade;
- Defence Force Reserves;
- Sea and rescue associations; or
- Other similar Authorities or bodies, recognised by the College.

to attend emergencies as declared by the recognised Authority or body provided that it does not interfere with essential customer service and work requirements.

36.2 If an employee is an active member of a recognised Authority or body they are to advise the College of membership in writing at the commencement of employment or membership in order to seek leave to attend emergencies.

36.3 The employer will be advised as soon as possible by the employee, the emergency service or such other persons as to the absence and, where possible, the expected duration of the absence. Such advice will be provided within 24 hours of the event or activity requiring the person's absence.

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

36.5 The application form must be accompanied by a certificate from the emergency organisation certifying that the employee was required for the specified period. If a certificate of attendance is not provided from the emergency service organisation absence may be considered to be leave without pay. If the absence is deemed to be leave without pay, any adjustment in entitlements arising as a result of not proving a certificate of service will be processed in the next scheduled pay period.

36.6 An employee, who during the course of the emergency volunteers their services to an emergency service organisation, will comply with subclauses 36.2 to 36.5 inclusive.

36.7 Such leave will not affect any continuity of service for the purpose of higher duties arrangements or eligibility for allowances.

36.8 An employee may be granted reasonable Community Service Leave, subject to proof, to donate blood products to the Red Cross Blood Bank.

37.—ANNUAL LEAVE LOADING

Annual leave loading provisions in the GOSAC Award have been absorbed and no longer apply.

38.—SELF-FUNDED WORK BREAKS

38.1 Employees may receive 4 years salary over a period of five years, with no attendance at work required in the fifth year, in accordance with the College's Policy and Guidelines.

38.2 The employer and an employee may agree to enter into any other similar arrangements involving different periods of time, in accordance with the Policy and Guidelines.

PART 7: TRANSFERS, TRAVELLING AND WORKING AWAY FROM USUAL PLACE OF WORK

39.—HOME BASED WORK

An employee may make application to the College to engage in home based work subject to the College's Home Based Work policy.

40.—TRAVELLING ALLOWANCE

40.1 This clause replaces Clause 42. —Travelling Allowance of the Government Officers' Salaries, Allowances and Conditions Award in its entirety.

40.2 An employee who travels on official business will be reimbursed reasonable expenses on the basis of the production of receipts for reasonable expenses. Reasonable expenses will include but not be limited to accommodation costs, purchase of meals as necessary, and cost of transport to destination.

40.3 In addition to clause 40.2—Travelling Allowance above, an employee will be reimbursed reasonable incidental expenses such as train, bus and taxi fares, official telephone calls, laundry and dry cleaning expenses, on production of receipts.

40.4 If on account of lack of suitable transport facilities, an employee necessarily engages reasonable accommodation for the night prior to commencing travelling on early morning transport the employee will be reimbursed the actual cost of such accommodation.

40.5 Reimbursement of expenses will not be suspended should an employee become ill whilst travelling, provided leave for the period of such illness is approved in accordance with provisions of Clause 28.1—Sick Leave of this Agreement, and the employee continues to incur accommodation, meal and incidental expenses.

40.6 Reimbursement claims for travelling in excess of 14 days in one month will not be passed for payment by a certifying employee unless the Managing Director has endorsed the account.

40.7 An employee who is relieving at or temporarily transferred to any place within a radius of fifty (50) kilometres measured from the employee's headquarters will not be reimbursed the cost of midday meals purchased, but an employee travelling on duty within that area which requires absence from the employee's headquarters over the usual midday meal period will be, on the production of receipts, for each meal necessarily purchased, provided that—

40.7.1 such travelling is not a normal feature in the performance of the employee's duties; and

40.7.2 such travelling is not within the suburb in which the employee resides.

41.—TRANSFER

41.1 The College may transfer, at the same level of classification, an officer from one office, post or position within the College to another such office, post or position, for which that officer possesses the appropriate qualifications and skills, provided the College considers it to be in its interests to do so. Such transfers include the transfer of an employee from one campus of the College to another campus of the College.

41.2 The decision to transfer will be equitable and free from bias.

41.3 If the College transfers an employee in accordance with subclause 41.1 of this Clause it will comply with the following—

41.3.1 The transfer will be at the employee's current classification level;

41.3.2 The transfer will not result in a loss of the employee's continuity of service;

41.3.3 The transfer will not change the tenure of the employee;

41.3.4 The College's and employee's needs will be taken into account in the transfer decision. The employee's needs include distance of new work site from place of residence, skills, qualification and experience of the employee, requirement to undertake training to perform the duties of the new position.

41.3.5 The employee will be notified of the transfer decision and arrangements. The College will give the employee at least four weeks notice of intention to transfer.

41.3.6 Policies relating to transfer will be documented, equitable, free from bias, applied consistently and accessible to College employees.

41.3.7 The decisions and processes relating to transfer will embody the principles of natural justice including access to documentation specifically relating to the particular employee's transfer, explanation as to the reasons for the transfer and consultation with the employee where their input is taken into consideration;

41.3.8 The transfer decision will be capable of review; and

41.3.9 The appropriate confidentiality will be observed.

41.4 The College must adhere to the Public Sector Standards in Human Resource Management standard regarding transfer.

41.5 The College will act in accordance with the report and implement any recommendations of a reviewer selected by the Commissioner for Public Sector Standards to investigate any suspected breach of standard in accordance with s.15 of the Public Sector Management (Review Procedures) Regulations 1995.

41.6 If the College does not act in accordance with and implement the recommendations of the reviewer selected by the Commissioner for Public Sector Standards, the College will be in breach of the Agreement.

41.7 Should an application for a breach of the Public Sector Standard relating to Transfer be lodged with the Managing Director within 15 days of an employee being notified of a decision to transfer and a review of the transfer be carried out, the status quo will remain until such time as the reviewer has made recommendations.

SCHEDULE A: SALARIES

ENTERPRISE BARGAINING AGREEMENT 2000									
SCHEDULE A									
LEVEL	Column A - Current Annual Salary Rates	Column B - Date Of Registration 1.5%	New Fortnightly Rate	Column C - Annual Salary as at First Pay Period on or After March 15, 2001 1.5%	New Fortnightly Rate	Column D - Annual Salary as at First Pay Period on or After March 15, 2002 3%*	New Fortnightly Rate	Column E - Annual Salary as at First Pay Period on or After March 15, 2003 3%*	New Fortnightly Rate
LEVEL 1									
Age 16	12,900	13,094	501.99	13,290	509.52	13,689	524.80		
Age 17	15,075	15,301	586.62	15,531	595.42	15,997	613.29		
Age 18	17,585	17,849	684.30	18,117	694.56	18,660	715.40		
Age 19	20,355	20,660	792.09	20,970	803.97	21,599	828.09		
Age 20	22,858	23,201	889.49	23,549	902.83	24,255	929.92		
YEAR 1	25,110	25,487	977.12	25,869	991.78	26,645	1021.53		
YEAR 2	25,883	26,271	1,007.20	26,665	1022.31	27,465	1052.98		
YEAR 3	26,656	27,056	1,037.28	27,462	1052.84	28,286	1084.43		
YEAR 4	27,423	27,834	1,067.13	28,252	1083.14	29,099	1115.63		
YEAR 5	28,196	28,619	1,097.21	29,048	1113.67	29,920	1147.08		
YEAR 6	28,968	29,403	1,127.25	29,844	1144.16	30,739	1178.49		
YEAR 7	29,857	30,305	1,161.85	30,759	1179.28	31,682	1214.65		
YEAR 8	30,471	30,928	1,185.74	31,392	1203.53	32,334	1239.63		
YEAR 9	31,380	31,851	1,221.11	32,328	1239.43	33,298	1276.61		
LEVEL 2									
YEAR 1	32,468	32,955	1,263.45	33,449	1282.40	34,453	1320.88		
YEAR 2	33,302	33,802	1,295.91	34,309	1315.34	35,338	1354.80		
YEAR 3	34,179	34,692	1,330.03	35,212	1349.98	36,268	1390.48		
YEAR 4	35,105	35,632	1,366.07	36,166	1386.56	37,251	1428.15		
YEAR 5	36,074	36,615	1,403.77	37,164	1424.83	38,279	1467.58		
LEVEL 3									
YEAR 1	37,407	37,968	1,455.65	38,538	1477.48	39,694	1521.81		
YEAR 2	38,445	39,022	1,496.04	39,607	1518.48	40,795	1564.03		
YEAR 3	39,515	40,108	1,537.68	40,709	1560.74	41,931	1607.56		
YEAR 4	40,614	41,223	1,580.44	41,842	1604.15	43,097	1652.27		
LEVEL 4									
YEAR 1	42,120	42,752	1,639.05	43,393	1663.63	44,695	1713.54		
YEAR 2	43,301	43,951	1,685.00	44,610	1710.28	45,948	1761.59		
YEAR 3	44,516	45,184	1,732.28	45,861	1758.27	47,237	1811.02		
LEVEL 5									
YEAR 1	46,855	47,558	1,823.30	48,271	1850.65	49,719	1906.17		
YEAR 2	48,437	49,164	1,884.86	49,901	1913.14	51,398	1970.53		
YEAR 3	50,080	50,831	1,948.80	51,594	1978.03	53,141	2037.37		
YEAR 4	51,785	52,562	2,015.15	53,350	2045.38	54,951	2106.74		
* The payment of this increase is subject to the approval of the Cabinet Standing Committee on Labour Relations									
LEVEL 6									
YEAR 1	54,526	55,344	2,121.81	56,174	2153.64	57,859	2218.25		
YEAR 2	56,390	57,236	2,194.35	58,094	2227.26	59,837	2294.08		
YEAR 3	58,305	59,180	2,268.87	60,067	2302.90	61,869	2371.99		
YEAR 4	60,338	61,243	2,347.98	62,162	2383.20	64,027	2454.69		
LEVEL 7									
YEAR 1	63,454	64,406	2,469.23	65,372	2506.27	67,333	2581.46		
YEAR 2	65,610	66,594	2,553.13	67,593	2591.43	69,621	2669.17		
YEAR 3	67,956	68,975	2,644.42	70,010	2684.09	72,110	2764.61		
LEVEL 8									
YEAR 1	71,769	72,846	2,792.80	73,938	2834.69	76,156	2919.73		
YEAR 2	74,500	75,618	2,899.07	76,752	2942.56	79,054	3030.84		
YEAR 3	77,887	79,055	3,030.87	80,241	3076.34	82,648	3168.63		
LEVEL 9									
YEAR 1	82,117	83,349	3,195.48	84,599	3243.41	87,137	3340.71		
YEAR 2	84,975	86,250	3,306.69	87,543	3356.30	90,170	3456.98		
YEAR 3	88,234	89,558	3,433.51	90,901	3485.02	93,628	3589.57		
CLASS 1									
	93,162	94,559	3,625.28	95,978	3679.66	98,857	3790.05		
CLASS 2									
	98,090	99,561	3,817.05	101,055	3874.30	104,086	3990.53		
CLASS 3									
	103,016	104,561	4,008.74	106,130	4068.87	109,314	4190.93		
CLASS 4									
	107,945	109,564	4,200.54	111,208	4263.55	114,544	4391.46		
LEVEL 2/4									
YEAR 1 (2.1)	32,468	32,955	1,263.45	33,449	1282.40	34,453	1320.88		
YEAR 2 (2.3)	34,179	34,692	1,330.03	35,212	1349.98	36,268	1390.48		

SCHEDULE B: PRODUCTIVITY IMPROVEMENTS

PRODUCTIVITY IMPROVEMENT PLAN

Staff will actively participate in the development and implementation of a Productivity Improvement Plan/s (PIP/s) as determined by the Managing Director.

PIPs may be developed at the College or Campus level, or any combination as determined by the Managing Director.

The PIP/s may involve changes to work practices, but will not involve changes to award/agreement/enterprise bargaining agreement employment conditions.

Subject to the approval of the Cabinet Standing Committee on Labour Relations, a 3% pay increase will be paid to employees from the first pay period on or after 15 March 2002 for productivity improvements.

SCHEDULE C: SIGNATORIES OF PARTIES TO THE AGREEMENT

The following signatories are authorised to sign this Agreement.

Signatories

Signed _____ Date 20/12/00

Employer—

Wayne Collyer, Managing Director of Central West College of TAFE, on behalf of the Governing Council

Signed for and on behalf of the *Civil Service Association of Western Australia (Inc)* by

Signed _____ Date 20.12.2000

Common Seal

Mr Dave Robinson, Branch Secretary, Civil Service Association WA Inc

SCHEDULE D: ALPHABETICAL LISTING OF PROVISIONS

- Annual Leave
- Annual Leave Loading
- Annual Leave Travel Concessions
- Arrangement
- Availability of Agreements
- Breaches of Discipline
- Casual Employment
- Ceremonial/Cultural Leave
- Christmas Closedown
- Compassionate Leave
- Consultation Provisions
- Definitions
- Dispute Resolution Procedure
- Emergency and Community Service Leave
- Flexitime
- Higher Duties
- Home Based Work
- Hours of Work
- Long Service Leave
- No Further Claims
- Number of Employees Covered
- Objectives of the Agreement
- Parental Leave
- Parties Bound
- Past Productivity
- Payment Arrangements
- Productivity Improvements
- Public Holidays
- Relationship to Awards/Agreements
- Repayments of Overpayments
- Salaries
- Salary Packaging
- Scope
- Self Funded Work Breaks
- Short Leave
- Sick Leave and Family/Carer's Leave
- Signatories of Parties to the Agreement
- Substandard Performance
- Term of Agreement and Renegotiation
- Title
- Transfer
- Travelling Allowance
- Variation of Allowances

CEPU COMMUNICATIONS DIVISION
(TELECOMMUNICATIONS AND SERVICES
BRANCH) CLERICAL STAFF AGREEMENT 1999.

No. AG102 of 2000.

2001WAIRC 01793

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES AUSTRALIAN MUNICIPAL,
ADMINISTRATIVE, CLERICAL AND
SERVICES UNION OF EMPLOYEES,
W.A. CLERICAL AND
ADMINISTRATIVE BRANCH,
APPLICANT

v.

CEPU COMMUNICATIONS
DIVISION (TELECOMMUN-
ICATIONS AND SERVICES
BRANCH), RESPONDENT

CORAM COMMISSIONER J H SMITH
DELIVERED TUESDAY, 16 JANUARY 2001
FILE NO AG 102 OF 2000
CITATION NO. 2001 WAIRC 01793

Result Discontinued by leave
Representation
Applicant Mr S Bibby
Respondent Mr G Carson

Order:

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.

[L.S.]

(Sgd.) J. H. SMITH,
Commissioner.

2001 WAIRC 01905

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES AUSTRALIAN MUNICIPAL,
ADMINISTRATIVE, CLERICAL AND
SERVICES UNION OF EMPLOYEES,
W.A. CLERICAL AND
ADMINISTRATIVE BRANCH,
APPLICANT

v.

CEPU COMMUNICATIONS
DIVISION (TELECOMMUN-
ICATIONS AND SERVICES
BRANCH), RESPONDENT

CORAM COMMISSIONER J H SMITH
DELIVERED MONDAY, 29 JANUARY 2001
FILE NO AG 102 OF 2000
CITATION NO. 2001 WAIRC 01905

Result Discontinued by leave
Representation
Applicant Mr S Bibby
Respondent Mr G Carson

Amending Order.

WHEREAS errors occurred in the Order issued in this matter, the Commission, in order to correct these errors and pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the heading to Order [2001] WAIRC 01793 titled CEPU Communications Division (Telecommunications and Services, be amended to CEPU

Communications Division (Telecommunications and Services Branch) Clerical Staff Agreement 1999.

[L.S.] (Sgd.) J. H. SMITH,
Commissioner.

CEREBRAL PALSY ASSOCIATION OF WESTERN AUSTRALIA LTD. SALARIED STAFF ENTERPRISE AGREEMENT 2001.

No. AG289 of 2000.

2001 WAIRC 01792

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

PARTIES CEREBRAL PALSY ASSOCIATION OF WESTERN AUSTRALIA LTD, APPLICANT
v.
HOSPITAL SALARIED OFFICERS ASSOCIATION OF WESTERN AUSTRALIA (UNION OF WORKERS), RESPONDENT

CORAM COMMISSIONER P E SCOTT

DELIVERED TUESDAY, 16 JANUARY 2001

FILE NO AG 289 OF 2000

CITATION NO. 2001 WAIRC 01792

Result Agreement registered

Order.

HAVING heard Mr M O'Connor on behalf of the Cerebral Palsy Association of Western Australia Ltd and Ms C Thomas on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers), and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Cerebral Palsy Association of Western Australia Ltd. Salaried Staff Enterprise Agreement 2001 in the terms of the following schedule be registered on the 12th day of January 2001 and shall replace the Cerebral Palsy Association of Western Australia Ltd. Salaried Staff Enterprise Agreement 1999 (AG 143 of 1999) and the Cerebral Palsy Association of Western Australia Ltd. Professional Staff Enterprise Agreement 1999 (AG 124 of 1999).

[L.S.] (Sgd.) P. E. SCOTT,
Commissioner.

Schedule.

CEREBRAL PALSY ASSOCIATION OF WESTERN AUSTRALIA LTD
SALARIED STAFF
ENTERPRISE AGREEMENT 2001

1.—TITLE

This Agreement shall be referred to as the Cerebral Palsy Association of Western Australia Ltd. Salaried Staff Enterprise Agreement 2001 and replaces the Cerebral Palsy Association of Western Australia Ltd. Salaried Staff Enterprise Agreement 1999 and the Cerebral Palsy Association of Western Australia Ltd. Professional Salaried Staff Enterprise Agreement 1999.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Application of Agreement
4. Relationship To Parent Awards
5. Objective
6. Productivity and Efficiency measures

7. Parental Leave
8. Bereavement Leave
9. Avoidance and Resolution of Industrial Disputes, Questions and Difficulties
10. Redundancy
11. Remuneration
12. Salary/Remuneration Packaging
13. No Precedent
14. Period of Operation and Renewal
15. No Extra Claims
16. Number of Employees

Signatories To Agreement

Appendix—Salary Packaging Arrangements

SCHEDULE 1.—PROFESSIONAL / THERAPY SALARY RATES

SCHEDULE 2.—SALARIES—ADMINISTRATIVE / CLERICAL STAFF/ NON THERAPY PROFESSIONAL STAFF

3.—APPLICATION OF AGREEMENT

This Agreement shall apply to Cerebral Palsy Association of Western Australia Ltd, to all Salaried Staff who are engaged in any of the occupations or callings specified in Schedule 1 and 2 hereof, and to the Hospital Salaried Officers Association of Western Australia Union of Workers.

4.—RELATIONSHIP TO PARENT AWARD

This Agreement shall be read and interpreted in conjunction with the Hospital Salaried Officers (Cerebral Palsy Association of Western Australia) Award 1978, hereinafter referred to as the Award, but where the terms of this Agreement are inconsistent with the Award, the terms of this Agreement shall prevail.

5.—OBJECTIVE

This Agreement is designed to provide an appropriate pay increase for employees in recognition of their continuing contribution and agreement to the productivity efficiency measures outlined in the Agreement.

6.—PRODUCTIVITY AND EFFICIENCY MEASURES

(1) Sick Leave

The following provisions will apply in lieu of subclause (3) of Clause 16 of the award—

- (a) An application for leave of absence on the grounds of illness exceeding two consecutive working days shall be supported by the certificate of a registered medical practitioner or, where the nature of illness consists of a dental condition and the period of absence does not exceed five consecutive working days, by a certificate of a registered dentist.
- (b) The number of days' leave of absence which may be granted without the production of the certificate required by paragraph (a) of this subclause shall not exceed, in the aggregate, five working days in any one accruing year.
- (c) Subject to the provisions of this clause no leave of absence on the grounds of illness shall be granted with pay without the production of a medical certificate.
- (d) An employee who is unable to resume duty on the expiration of the period shown on the first certificate shall thereupon furnish a further certificate and shall continue to do so upon the expiration of the period respectively covered by such certificates.

(2) Public Holidays

The entitlement to the Easter and Christmas Public Service holidays to cease. To replace these days, 2 additional days of leave will be granted by the Chief Executive Officer on an annual basis. These days are to be taken on days nominated by the Chief Executive officer. This arrangement will continue in line with the State Public Service arrangement whereby the Premier allows State Public Servants 2 additional days leave per annum by Administrative Order. Should the State Public Service arrangement cease and public service employees no longer be allowed the extra 2 days leave, then the Employer reserves the right to cancel the arrangement.

(3) Family Leave**(a) Use of Sick Leave**

- (i) An employee with responsibilities in relation to either members of their immediate family or members of their household who need their care and support shall be entitled to use, in accordance with this subclause, up to 5 days per year sick leave entitlement which accrues after the date of this Agreement for absences to provide care and support for such persons when they are ill.
- (ii) The employee shall, if required, establish by production of a medical certificate or statutory declaration, the illness of the person concerned.
- (iii) The entitlement to use sick leave in accordance with this subclause is subject to—
 - (1) the employee being responsible for the care of the person concerned; and
 - (2) the person concerned being either—
 - (A) a member of the employee's immediate family; or
 - (B) a member of the employee's household.
 - (3) the term "immediate family" includes—
 - (A) a spouse (including a former spouse, a de facto spouse and a former de facto spouse) of the employee. A de facto spouse, in relation to a person, means a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; and
 - (B) 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.
- (iv) The employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and their relationship to the employee, the reasons for taking such leave and 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.
- (v) Sick leave provided for family leave purposes is not cumulative.

(4) 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.

(5) Annual Leave

(a) Notwithstanding the provision of this clause, an employee may elect, with the consent of the employer, to take annual leave in single day periods not exceeding five days in any calendar year at a time or times agreed between them.

(b) An employee and employer may agree to defer payment of the annual leave loading in respect of single day absences, until at least five consecutive annual leave days are taken.

(6) Long Service Leave

Notwithstanding the long service leave provisions under the Award, the following provisions shall apply to employees covered by this Agreement—

- (a) A period of long service leave taken shall count as service for the purposes of calculating further long service leave entitlements.
- (b) Employees engaged by the Employer in the callings listed in Schedule 1 hereof, on or after 1 July 1999, shall accrue their initial period of long service leave at the rate of three months leave in respect of 10 years of continuous service. Subsequent entitlements shall be accrued in accordance with the provisions of the Award.

- (c) At the request of the employee and with the agreement of the employer, an employee faced with pressing financial needs may be paid in lieu of taking a portion of long service leave.

(7) Hours (Staff listed under Schedule 1)

The following provisions will apply in lieu of subclauses (1), (2) and (3) in Clause 11.—Hours of the Award—

- (a) The ordinary working hours (exclusive of meal intervals) shall not exceed 37.1/2 in any week nor 10 in any day. Such hours shall be worked consecutively on Monday to Friday inclusive between the hours of 7.00am and 6.30pm, by arrangement with the relevant supervisor.
- (b) Each meal interval shall not be less than one half hours duration unless the employer and the employee agree that a lesser period may be taken.
- (d) The flexibility available to the parties within the provisions of this Clause shall be subject at all times to the needs of the clients and the relevant programme.

(8) Hours (Staff listed in Schedule 2)

The following provisions will apply in lieu of subclauses (1), (2) and (3) in Clause 11.—Hours of the Award—

- (a) The ordinary working hours (exclusive of meal intervals) shall not exceed 37.5 in any week. Such hours shall be worked consecutively on Monday to Friday inclusive between the hours of 7.00am and 6.00pm, by arrangement with the relevant supervisor.
- (b) The lunch interval shall not be less than one half hour or more than one hour to be taken between 11.30am and 2.30pm at a time agreed between the employer and the employee, unless the employer and the employee agree that a lesser period may be taken.
- (c) The flexibility available to the parties within the provisions of this Clause shall be subject at all times to the needs of the clients and the relevant programme.

(9) Make Up Time (Staff listed in Schedule 2)

An employee may elect, with the consent of the 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 prescribed in this Agreement.

(10) Commitments.

- (1) Employees under this Agreement give an ongoing commitment to maintaining and promoting the culture and ethos of the Cerebral Palsy Association, and to pursuing the maintenance and continuous improvement of a high quality service to its clients customers and members.
- (2) Commitment to Professional Development (Staff listed in Schedule 1)
Staff will be expected to maintain, during their employment, all registration or eligibility to practice requirements appropriate to their respective professions. Staff shall also complete the CPWA induction modules in their own time.

(11) Jury Service**(1) Reimbursement for jury service**

- (a) An employee required to attend for jury service during his/her ordinary working hours shall be reimbursed by the employer an amount equal to the difference between the amount paid in respect of his/her attendance for such jury service and the amount of wages he/she would have received in respect of the ordinary time he/she would have worked had he/she not been on jury service.

(2) Notification of jury service

- (a) An employee shall notify his/her employer as soon as possible of the date upon which he/she is required to attend for jury service.

(3) Proof of attendance at jury service

- (a) Further, the employee shall give his/her employer documentary proof of his/her

attendance, the duration of such attendance and the amount received in respect of such jury service.

(9) Self Funded Career Break

- (1) By agreement with the Employer an employee may request that a percentage of his / her salary be placed in a trust fund to be established by the Cerebral Palsy Association Ltd.
- (2) The employee may request that a percentage of salary be held in trust for a maximum period of 4 years, after which the employee may request payment of the money held in trust in a lump sum or as "salary" on a normal fortnightly basis.
- (3) The employee may apply for an unpaid career break which shall be regarded for all purposes as leave without pay. Such leave may be for study, family reasons or to support other leave such as parenting leave.
- (4) Participation in the self funded career break scheme and approval to take leave in the 5th year is subject to approval of the Employer having regard to the needs of the organisation and its clients, but having approved an employee's participation in the scheme, approval to take the leave shall not unreasonably be withheld.
- (5) The conditions for participating in this scheme shall be agreed in writing between the respective parties. This shall include conditions whereby the parties can withdraw and an understanding as to the obligations in respect of the costs of administering the scheme.

7.—PARENTAL LEAVE

Interpretation

(1) In this clause—

"adoption", in relation to a child, is a reference to a child who—

- (i) is not the natural child or the step-child of the employee or the employee's spouse;
- (ii) is less than 5 years of age; and
- (iii) has not lived continuously with the employee for 6 months or longer;

"continuous service" means service under an unbroken contract of employment and includes—

- (i) any period of parental leave; and
- (ii) any period of leave or absence authorised by the employer or by this workplace agreement;

"expected date of birth" means the day certified by a medical practitioner to be the day on which the medical practitioner expects the employee or the employee's spouse, as the case may be, to give birth to a child;

"parental leave" means leave provided for by subclause (2).(a);

"spouse" includes a *de facto* spouse.

Entitlement to parental leave

(2) (a) Subject to subclauses (4), (5).(a) and (6).(a), an employee, other than a casual employee, is entitled to take up to 52 consecutive weeks of unpaid leave in respect of—

- (i) the birth of a child to the employee or the employee's spouse; or
 - (ii) the placement of a child with the employee with a view to the adoption of the child by the employee.
- (b) An employee is not entitled to take parental leave unless he or she—
- (i) has, before the expected date of birth or placement, completed at least 12 months' continuous service with the employer; and
 - (ii) has given the employer at least 10 weeks written notice of his or her intention to take the leave.

(c) An employee is not entitled to take parental leave at the same time as the employee's spouse but this paragraph does not apply to one week's parental leave—

- (i) taken by the male parent immediately after the birth of the child; or

- (ii) taken by the employee and the employee's spouse immediately after a child has been placed with them with a view to their adoption of the child.

(d) The entitlement to parental leave is reduced by any period of parental leave taken by the employee's spouse in relation to the same child, except the period of one week's leave referred to in paragraph (b).

Maternity leave to start 6 weeks before birth

(3) A female employee who has given notice of her intention to take parental leave, other than for an adoption, is to start the leave 6 weeks before the expected date of birth unless in respect of any period closer to the expected date of birth a medical practitioner has certified that the employee is fit to work.

Medical certificate

(4) An employee who has given notice of his or her intention to take parental leave, other than for adoption, is to provide to the employer a certificate from a medical practitioner stating that the employee or the employee's spouse, as the case may be, is pregnant and the expected date of birth.

Notice of spouse's parental leave

(5) (a) An employee who has given notice of his or her intention to take parental leave or who is actually taking parental leave is to notify the employer of particulars of any period of parental leave taken or to be taken by the employee's spouse in relation to the same child.

(b) Any notice given under paragraph (a) is to be supported by a statutory declaration by the employee as to the truth of the particulars notified.

Notice of parental leave details

(6) (a) An employee who has given notice of his or her intention to take parental leave is to notify the employer of the dates on which the employee wishes to start and finish the leave.

(b) An employee who is taking parental leave is to notify the employer of any change to the date on which the employee wishes to finish the leave.

(c) The starting and finishing dates of a period of parental leave are to be agreed between the employee and employer.

Return to work after parental leave

(7) (a) On finishing parental leave, an employee is entitled to the position he or she held immediately before starting parental leave.

(b) If the position referred to in paragraph (a) is not available, the employee is entitled to an available position—

- (i) for which the employee is qualified; and
- (ii) that the employee is capable of performing, most comparable in status and pay to that of his or her former position without loss of income within any area of CPAWA.

(c) Where, immediately before starting parental leave, an employee was acting in, or performing on a temporary basis the duties of, the position referred to in paragraph (a), that paragraph applies only in respect of the position held by the employee immediately before taking the acting or temporary position.

Effect of parental leave on employment

(8) Absence on parental leave—

- (a) does not break the continuity of service of an employee; and
- (b) is not to be taken into account when calculating the period of service for the purpose of this Agreement.

(9) Accrued Leave

An employee going on parental leave, will be paid out in lieu of any accrued or pro rata annual leave or accrued long service leave owing to the employee at the time of taking parental leave

(10) Any absence from duty during a pregnancy for medical reasons relating to that pregnancy and certified by a suitably qualified medical practitioner will not be debited against the 52 week maternity leave entitlement.

8.—BEAVEMENT LEAVE

- (1) On the death of—
- (a) the spouse or *de facto* spouse of an employee;
 - (b) brother or sister
 - (c) the child, including a grand child or step-child of an employee;
 - (d) the parent, including a grand parent, step-parent or in-law relative of an employee; or
 - (e) any other person, 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 2 working days.

- (2) The two days need not to be consecutive.
- (3) Bereavement leave is not available while the Employee is on any other period of leave.
- (4) An employee who claims to be entitled to paid leave under subclause (1) 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.

9.—AVOIDANCE AND RESOLUTION OF INDUSTRIAL DISPUTES, QUESTIONS AND DIFFICULTIES

(1) Preamble

Subject to the provisions of the Industrial Relations Act 1979 (as amended) any question, dispute or difficulty, including any matter arising under this Agreement, or any matter raised by the Union, the employer or an employee / employees, shall be settled in accordance with the procedures set out herein.

The parties agree that no bans, stoppages or limitations will be imposed prior to, or during the time this procedure is being followed.

This clause in no way limits the rights of employers, employees and the Union under the Occupational Health, Safety and Welfare Act 1984 or other related legislation.

(2) Procedure

Where the matter 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 immediate supervisor. If the matter cannot be resolved at this level the supervisor shall, within two working days, refer the matter to a more senior officer nominated by the employer and the employee(s) shall be advised accordingly.
- (b) The senior officer shall, if able, answer the matter raised within five working days of it being referred and if the senior officer is not so able, refer the matter to the employer for his/her attention, and the employee(s) shall be advised accordingly.
- (c)
 - (i) If the matter has been referred in accordance with paragraph (b) above the employee(s) or the shop steward shall notify the Union Secretary or nominee, to enable the opportunity of discussing the matter with the employer.
 - (ii) The employer shall, as soon as practicable after considering the matter before it, advise the employee(s) or, where necessary the Union of its decision. Provided that such advice shall be given within 21 calendar days of the matter being referred to the employer.
- (e) Should the matter remain in dispute after the above processes have been exhausted either party may refer the matter to the Western Australian Industrial Relations Commission.

Provided that persons involved in the question, dispute or difficulty will confer among themselves and make attempts to resolve questions, disputes or difficulties before taking those matters to the Commission.
- (f) Nothing in this procedure shall preclude the parties reaching agreement to shorten or extend the period specified in subclauses (2)(a), (b) or (c)(ii).

10.—REDUNDANCY

Discussions Before Terminations

(1) Where the employer for any reason, including the cessation or reduction of grant funding, has made a definite decision that the employer no longer wishes the job the employee has been doing to be undertaken and that decision may lead to termination of employment, the employer shall hold discussion with the employees directly affected and their Union representative, where applicable.

(2) The discussions shall take place as soon as is practicable after the employer has made a definite decision which will invoke the provisions of subclause (1) hereof and shall cover, among other issues, all reasonable alternatives to redundancy, eg. reduced hours, appointment to a lower position, transfer to another type of position, any reasons for the proposed terminations, measures to avoid or minimise the terminations and measures to mitigate any adverse effects of any terminations on the employees concerned.

(3) For the purpose of the discussion the employer shall, as soon as practicable, provide in writing to the employees concerned all relevant information about the proposed terminations including the reasons for the proposed terminations, the number of 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 not be in the employer's interests.

(4) Notice

In the event of redundancy an employee shall be given the following notice of termination of employment—

- (i) Up to the completion of 3 years continuous service 2 weeks
- (ii) 3 years and up to the completion of 5 years continuous service 3 weeks
- (iii) 5 years and over continuous service 4 weeks
- (iv) In addition, employees over forty-five years of age at the time of the giving of the notice, with no less than two years continuous service, shall be entitled to an additional week's notice.
- (v) Provided that in no case shall the notice under this sub clause be less than notice of termination under the Award.

(5) Severance Pay

In addition to the period of notice prescribed in subclause (4), an employee whose employment is terminated for reasons set out in subclause (1) shall be entitled to the following amounts—

- (a) Two weeks pay for each completed year of service;
- (b) Payment for all accrued and pro rata annual leave and leave loading, including pro rata leave loading;
- (c) Payment of accrued and all pro rata long service leave based on completed years of service

“Weeks' pay” means the employee's current ordinary time hourly rate of pay multiplied by the average number of weekly hours (excluding overtime) worked over the past 52 weeks.

(6) 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 remainder of the period of notice.

(7) 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 he or she shall not receive payment for the time absent.

For this purpose a statutory declaration will be sufficient.

(8) Exemption

This clause shall not apply where employment is terminated as a consequence of conduct which justifies instant dismissal; to casual employees, or to employees engaged for a specific period of time or for a specified task or tasks.

11.—REMUNERATION

(1) Employees under this Agreement are entitled to a salary/remuneration benefit based on the employee's gross annual salary as at date of registration of this Agreement, or as subsequently amended by this Agreement, subject to the following provisions—

- (a) the employee agrees to take up the salary / remuneration packaging arrangement offered;
- (b) the maximum amount shall be that allowed under the Fringe Benefits Tax legislation where the employer incurs no liability for the payment of Fringe Benefit Tax.
- (c) part time employees shall be entitled to salary / remuneration packaging on a proportionate basis in the ratio which their permanent part time ordinary hours relates to a full time equivalent position.
- (d) the employee agrees to the salary / remuneration packaging in accordance with the Salary/Remuneration Packaging clause below and the salary packaging arrangements appended to this Agreement;
- (d) **Award Safety Net Adjustments**

Award safety net pay adjustments made to the award during the life of this Agreement shall not be available to employees in receipt of the salary packaging option under this Agreement. Award rates of pay are available to staff if such award rates provide a superior total remuneration benefit than the remuneration benefits provided under the terms of this Agreement.

(2) Gross Annual Salary

(a) Gross Annual Salary will include the following components—

- The total of all basic salary/wages amounts
- Shift and penalty allowances
- Leave loading
- On call allowances
- Higher duties allowances
- Overtime Payments

(b) Gross annual salary will not include—

- Meal allowances
- Motor vehicle allowances

(3) Salary Rates

Professional/Therapy Staff (Packaging and Non packaging)

- (a) The salary rates for professional / therapy staff covered by this Agreement shall be as set out in Schedule 1 of this Agreement. Such rates shall include a \$15.00 per week (\$782 per annum) increase from the first pay period commencing on or after 1 January 2001.
- (b) These salary rates shall be further adjusted by \$10.00 per week (\$522 per annum) from the first pay period commencing on or after 1 July 2001.

Administrative/Clerical staff (Packaging and Non Packaging)

- (c) The salary rates for administrative / clerical staff shall be set out in Schedule 2 of this Agreement. Such rates shall include a \$15.00 per week (\$782 per annum) increase from the first pay period commencing on or after 1 January 2001.
- (d) These salary rates shall be further adjusted by a minimum of \$10.00 per week (\$522 per annum) from the first pay period commencing on or after 1 July 2001. This adjustment may be increased if the average level of indexation of variation to the Purchasing Agreement with the Disability Services Commission

for the year commencing 1 July 2001 is greater than 2%. A further increase of \$5.00 per week (\$261 per annum) shall apply from the first pay period commencing on or after 1 January 2002.

(4) Award Rates.

As a matter of principle, CPAWA undertakes to continue to work to move salaries toward award rates of pay and shall take initiatives during the term of this Agreement pursuant to this principle.

12.—SALARY/REMUNERATION PACKAGING

(1) This clause shall be read in conjunction with the other provisions of the award but the provisions of this clause, to the extent that they deal with entitlements under the award will prevail over and apply in lieu of the relevant provisions of the award.

(2) Where agreed between the employer and an employee, the employer may introduce remuneration packaging in respect of salary and benefits (including any negotiated salary allowable) and the terms and conditions of such a package shall not, when viewed objectively, be less favourable than the entitlements otherwise available under this award and shall be subject to the following provisions—

- (a) The employer shall ensure the structure of any agreed package complies with taxation and other relevant laws.
- (b) The employer shall confirm in writing to the employee the classification level and current salary payable as applicable to that employee under Schedule 1 of this Agreement.
- (c) The employer shall advise the employee in writing, of his/her right to choose payment of the non salary packaged salary rate referred to in Schedule 2 of this Agreement instead of a salary / remuneration package.
- (d) The employer shall advise the employee, in writing, that award conditions, other than the salary and benefits (including any negotiated salary allowable), or those varied by this Agreement, shall continue to apply.
- (e) The employee shall advise the employer, in writing, that the agreed cash component is adequate for his/her ongoing living expenses.
- (f) Where undue pressure or duress is placed on a party to enter into such a package it will be open to either party to seek relief in accordance with Clause 9 of this Agreement.

(3) The packaging agreement, the terms and conditions of which shall be in writing and signed by both the employer and employee, shall detail the components of the total remuneration package for the purpose of this agreement and for the purpose of complying with time and wages records under the Act and Regulations.

(4) A copy of the Agreement shall be made available to the employee.

(5) The employee shall be entitled to inspect details of payments and transactions made under the terms of this agreement and for this purpose where such details are maintained electronically, shall be provided with access to a computer terminal.

(6) (a) The configuration of the remuneration package shall remain in force for the period agreed between the employee and the employer. Provided that an employee may withdraw from a remuneration packaging arrangement by giving the employer reasonable notice of intention to withdraw from the end of the next quarter of the calendar year.

(b) An employee, on withdrawing from the packaging arrangement, shall revert to the appropriate non packaging or award rate as the case may be.

(c) An employee, who wishes to take up packaging, having previously taken up that benefit and withdrawn from it, may only be entitled to do so on giving satisfactory reasons to the employer, and if approved, the package shall be based on the rate of pay applicable to the employee when originally placed on the packaging arrangement, or as amended in accordance with this Agreement.

(d) An employee, who has previously declined to take up packaging, may, by giving the employer reasonable notice, take up the benefit at any time. The rate of pay used in calculating such benefit shall be the rate referred to in Schedule 1 or Schedule 2 of this Agreement applicable at the date of this Agreement, unless amended in accordance with this Agreement, in which case the amended rate will apply.

(7) Where at the end of the financial year the full amount allocated to a specific benefit has not been utilised, by agreement between the employer and the employee, any unused amount may be carried forward to the next financial year to be utilised by 30 September, or be paid as salary as at the end of the financial year, which will be subject to usual taxation requirements.

(8) (a) In the event that changes in legislation, Income Tax Assessment Act determinations or Rulings, particularly in respect of the Employer's fringe benefits tax exempt status, remove the Employer's capacity to maintain the salary packaging arrangements offered to employees under this Agreement, the employer shall be entitled to withdraw from the salary packaging arrangements by giving notice to each affected employee three months prior to the withdrawal taking place or notice to have effect from a date not later than the date any change in the legislation is to have effect.

(b) In the event of the Employer withdrawing from the salary packaging arrangements, the employees will revert to a salary not less than that applicable to the employee's classification under Schedule 1 or Schedule 2 as the case may be.

(9) The employer shall as soon as practicable after being advised of the legislative change referred to in paragraph (8) hereof, advise the Union and employees and shall convene a meeting of the parties with a view to reaching an alternative agreement on salaries and salary benefits.

13.—NO PRECEDENT

This Agreement is applicable only to the parties named herein and it shall not be used in any manner whatsoever to obtain similar arrangements or benefits in any other site or enterprise.

14.—PERIOD OF OPERATION AND RENEWAL

(1) This Agreement shall apply for 21 months from the first pay period on or after 1st January, 2001.

(2) The parties agree that negotiations for a further Agreement shall commence at least three months prior to its expiry.

(3) The Parties to this Agreement acknowledge that on the expiry of this Agreement, if a subsequent Agreement has not been reached or finalised at that date, the conditions herein shall remain in force subject to either party's right to retire from this Agreement in accordance with the provisions of the Industrial relations Act 1979.

15.—NO EXTRA CLAIMS

Subject to the provisions of Clause 11, herein, there shall be no extra salary claims for the life of this Agreement, except where consistent with decisions of the Western Australian Industrial Relations Commission that reflect State Wage Decisions requiring general application.

16.—NUMBER OF EMPLOYEES

There are an estimated 129 employees covered by the provisions of this Agreement as at the date of registration.

SIGNATORIES TO AGREEMENT

For and on Behalf of—

Cerebral Palsy Association of Western Australia Ltd	<i>Common Seal</i>
.....Signed.....	12/12/2000
Executive Director	Date
.....Signed.....	12/12/2000
Secretary	Date
Hospital Salaried Officers Association (Union of Workers)	<i>Common Seal</i>
.....Signed.....	14/12/2000
President	Date
.....Signed.....	15/12/2000
Secretary	Date

Seal

APPENDIX

THE CEREBRAL PALSY ASSOCIATION OF WESTERN AUSTRALIA

SALARY PACKAGING ARRANGEMENT HSO STAFF JANUARY 2001

(1) Packaging

(a) Staff under this agreement shall be entitled to package up to the maximum referred to in Clause 11 of this Agreement.

(b) Staff may elect to take the maximum rate of packaging available to them or a lesser amount by agreement with the Employer.

(2) Administration Charge

(a) The Association will charge an administration fee of up to 3% of the amount packaged. This fee will automatically be deducted from the packaged amount. The fee will be utilised only for the administration of the salary packaging scheme.

(3) 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 individual staff member'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 be shown on Group Certificates as required by law.

(4) Operation of the System

(a) Each fortnight the payroll system will calculate each staff member's non cash benefit in accordance with the agreed sacrifice amount. Such amount will be credited to that staff member's salary packaging account.

(b) At the end of each month each staff member will receive a statement of account indicating all transactions for the previous month and the end of month balance.

(c) 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 Salary Packaging Clerk together with the original account. In normal circumstances payment will be made within two working days of receipt by the Salary Packaging Clerk.

(d) At the end of the financial year it will be necessary for staff to utilise any unused amount in their salary packaging account as at the 30 June, within the next 3 months. (by 30 September).

(e) When a staff member terminates employment with CPAWA 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 CPAWA.

(5) Superannuation guarantee charge

(a) Superannuation Guarantee payments will be based upon gross salary (see Schedule 1 and Schedule 2 hereof), as defined under the Superannuation Guarantee Charge Act 1992 as at the date of registration of the Agreement.

(6) 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 residence.
- Rent—personal rental expenses of the employee, such as the rent they pay for their present accommodation.
- 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 employees as part of an educational activity, undertaken by themselves or dependent child.
- Child Care Fees—expenses incurred by the employee for the care of their child/children.
- Maintenance Payments—any fixed payment incurred by an employee in respect of private or court/law enforced agreements for maintenance payments.
- 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.
- Domestic Support—expenses incurred by the employee in respect of a cleaner or ironing service where an invoice is produced.
- Travel and Accommodation Costs—payments to travel agents, airlines, hotels and the like would be included under this category.
- Membership Subscription—payment of expenses of membership of any organisation to which the employee belongs.
- Medical, Dental and Pharmaceutical Accounts—doctor, dentist and chemist bills (and bills from other medical service providers) incurred in respect of self, spouse or dependant.
- Veterinary Accounts.
- Credit Card Accounts—any expenses incurred by an employee and charged to them via a credit card (for example, Visa, Bankcard). The employee must have documentation to support the expenses charged to the credit card. It is important to note under no circumstances will there be payment for any cash advances. Payments made from any packaged amount will only be made in respect of expenses incurred as a the result of a purchase of goods and services and will be made to the credit card provider.
- Fleetcard is a system provided by Shell/Custom Credit whereby a credit card is issued which may be used to purchase fuel and other services for a nominated motor vehicle. Fleetcard issue a monthly bill detailing all expenses incurred. This will be payable through the employee’s packaging account.
- 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 principal place of residence, payment may be made through their salary packaging account.

Please note that under no circumstances will a payment from a packaged amount be made directly to an employee. All payments will be made by cheque (or direct deposit) to a third party in payment of an expense incurred by that employee.

SCHEDULE 1.— PROFESSIONAL/THERAPY SALARY RATES

(Salary Packaging)

	Point	Annual	Fortnightly
Level 1	2	\$31,608	
	3	\$33,317	
	4	\$35,455	
	5	\$38,770	
	6	\$40,931	

	Point	Annual	Fortnightly
Level 2	1	\$43,041	
	2	\$44,467	
	3	\$45,949	
	4	\$47,486	
(non packaging)			
Level 1	2	\$31,679	
	3	\$33,475	
	4	\$35,455	
	5	\$38,770	
	6	\$40,931	
	Level 2	1	\$43,041
2		\$44,467	
3		\$45,949	
4		\$47,486	

Occupations included:

Level 1—Physiotherapist, Speech Pathologist, Occupational Therapist, Social Worker and Education Officer.

Level 2—Physiotherapist, Speech Pathologist, Occupational Therapist, Social Worker and Psychologist.

SCHEDULE 2.— SALARIES—ADMINISTRATIVE / CLERICAL STAFF/ NON THERAPY PROFESSIONAL STAFF

(1) The minimum salaries to be paid to employees covered by this Agreement shall be set out hereunder.

(2) **Minimum Salaries—Salary Packaging**

		Salary per annum Employee taking up Salary Packaging \$
Level 1	1st year of service	21,892
	2nd year of service	22,282
	3rd year of service	22,899
Level 2	1st year of service	23,003
	2nd year of service	23,657
	3rd year of service	24,307
	4th year of service	24,955
Level 3		25,606
		26,257
		27,006
Level 4		27,524
		28,185
Level 5		29,089
		29,792
Level 6		30,531
		31,710
Level 7		32,327
		33,252
Level 8		34,203
		35,554
Level 9		36,258
		37,225
Level 10		38,220
		39,244
Level 11		41,216
		42,680
Level 12		44,760
		46,683
Level 13		47,283
		48,744
Level 14		50,879
		52,629
A	1	54,809
	2	56,984
	3	59,136
	4	61,312
		64,971
	6	67,621
	7	70,276
	8	73,275
	9	76,457

(3) Minimum Salaries	Non Salary Packaging \$
Level 1	
1st year of service	23,926
2nd year of service	24,316
3rd year of service	24,715
Level 2	
1st year of service	25,037
2nd year of service	25,691
3rd year of service	26,341
4th year of service	26,989
Level 3	
	27,640
	28,291
	28,936
Level 4	
	29,454
	30,219
Level 5	
	31,123
	31,722
Level 6	
	32,461
	33,640
Level 7	
	34,257
	35,182
Level 8	
	36,133
	37,484
Level 9	
	38,188
	39,155
Level 10	
	40,046
	41,070
Level 11	
	43,042
	44,506
Level 12	
	46,586
Level 13	
	46,979
	49,109
Level 14	
	50,570
Level 15	
	52,705
	54,455
A 1	56,635
2	58,812
3	60,965
4	63,142
5	66,802
6	69,453
7	72,109
8	75,109
9	78,292

(a) An employee, who is 21 years of age or older on appointment to a classification equivalent to Level 1, may be appointed to the minimum rate of pay based on years of service, not on age.

(b) Annual increments shall be subject to the employee's satisfactory performance over the preceding twelve months.

(c) Any dispute in relation to the payment of an annual increment shall be referred to the WA Industrial Relations Commission for determination.

(d) Employees who are appointed to Level 1, Level 2 or Level 3, and are under 21 years of age, salaries shall be calculated using the following percentages of the first year of service rate for the Level the employee is appointed to—

	%
Under 17 years of age	54
17 years of age	64
18 years of age	74
19 years of age	86
20 years of age	97

Notwithstanding this provision, the employer can appoint an employee to the first year of service rate or higher.

CHALLENGER TAFE PUBLIC SERVICE AND GOVERNMENT OFFICERS' ENTERPRISE AGREEMENT 2000.

No. PSAAG 78 of 2000.

2001 WAIRC 01811

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

PARTIES GOVERNING COUNCIL, CHALLENGER TAFE -and-

THE CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA INCORPORATED, RESPONDENT

CORAM COMMISSIONER P E SCOTT
DELIVERED TUESDAY, 16 JANUARY 2001

FILE NO/S PSAAG 78 OF 2000

CITATION NO. 2001 WAIRC 01811

Result Agreement registered

Order.

HAVING heard Ms J Caiacob on behalf of the Governing Council, Challenger TAFE and Ms J van den Herik on behalf of the Civil Service Association of Western Australia (Incorporated), and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Challenger TAFE Public Service and Government Officers' Enterprise Agreement 2000 in the terms of the following schedule be registered on the 21st day of December 2000 and shall replace the South Metropolitan College of TAFE Public Service and Government Officers' Enterprise Agreement 1998 (No. PSA AG 7 of 1998).

[L.S.] (Sgd.) P. E. SCOTT,
Commissioner,
Public Service Arbitrator.

Schedule.

PART 1—APPLICATION AND OPERATION OF AGREEMENT

1.—TITLE

This Agreement will be called the Challenger TAFE Public Service and Government Officers' Enterprise Agreement 2000 and will replace the Challenger TAFE Public Service and Government Officers' Enterprise Agreement 1998.

2.—ARRANGEMENT

PART 1—APPLICATION AND OPERATION OF AGREEMENT

1. TITLE
2. ARRANGEMENT
3. SCOPE
4. PARTIES BOUND
5. DEFINITIONS
6. NUMBER OF EMPLOYEES COVERED
7. NO FURTHER CLAIMS
8. TERM OF AGREEMENT AND RENEGOTIATION
9. RELATIONSHIP TO AWARDS
10. AVAILABILITY OF AGREEMENT
11. OBJECTIVES OF THE AGREEMENT
12. PAST PRODUCTIVITY

PART 2—DISPUTE RESOLUTION

13. CONSULTATION PROVISIONS
14. DISPUTE RESOLUTION PROCEDURE
15. SUBSTANDARD PERFORMANCE
16. BREACHES OF DISCIPLINE

PART 3—EMPLOYER AND EMPLOYEES' DUTIES, EMPLOYMENT RELATIONSHIP AND RELATED ARRANGEMENTS

17. HIGHER DUTIES
18. CASUAL EMPLOYMENT

PART 4—WAGES AND RELATED MATTERS

19. SALARIES
20. SALARY PACKAGING
21. PAYMENT ARRANGEMENTS
22. REPAYMENTS OF OVERPAYMENTS
23. VARIATION OF ALLOWANCES

PART 5—HOUR OF WORK, BREAKS, OVERTIME, SHIFT WORK AND WEEKEND WORK

24. HOURS OF WORK
25. FLEXTIME

PART 6—LEAVE OF ABSENCE AND PUBLIC HOLIDAYS

26. ANNUAL LEAVE
27. LONG SERVICE LEAVE
28. SICK LEAVE
29. FAMILY/CARER'S LEAVE
30. COMPASSIONATE LEAVE
31. SHORT LEAVE
32. CEREMONIAL/CULTURAL LEAVE
33. PUBLIC HOLIDAYS
34. CHRISTMAS CLOSEDOWN
35. PARENTAL LEAVE
36. EMERGENCY AND COMMUNITY SERVICE LEAVE
37. ANNUAL LEAVE LOADING
38. SELF-FUNDED WORK BREAKS

PART 7: TRANSFERS, TRAVELLING AND WORKING AWAY FROM USUAL PLACE OF WORK

39. HOME BASED WORK
40. TRAVELLING ALLOWANCE
41. TRANSFER

SCHEDULE A: SALARIES

SCHEDULE B: PRODUCTIVITY IMPROVEMENTS

SCHEDULE C: SIGNATORIES OF PARTIES TO THE AGREEMENT

SCHEDULE D: ALPHABETICAL LISTING OF PROVISIONS

3.—SCOPE

This Agreement will apply throughout the state of Western Australia to Officers employed in the Challenger TAFE. This Agreement will also apply to Officers on secondment to or in the College.

4.—PARTIES BOUND

The parties to this Agreement will be the Governing Council of the Challenger TAFE, and the Civil Service Association of Western Australia (Inc).

5.—DEFINITIONS

The following terms will have the following meanings—

“**Agreement**”: means the Challenger TAFE Public Service and Government Officers' Enterprise Agreement 2000.

“**Award**”: means the Government Officers' Salaries, Allowances and Conditions Award 1989.

“**College**” means the Challenger TAFE.

“**Continuous service**”: Any period of service between the employee and employer under an unbroken contract of employment, and includes any authorised unpaid or paid absences.

“**CSA**”: means the Civil Service Association of Western Australia (Inc).

“**Department**”: means the Western Australian Department of Training and Employment.

“**Employee**”: for the purpose of this Agreement means, someone who is referred to at Clause 3—Scope.

“**Employer**”: means the Governing Council of the Challenger TAFE.

“**Full-Time Officer**”: A person employed to work 37 1/2 ordinary hours per week.

“**Government**”: means the Government of Western Australia.

“**GOSAC Award**”: means the Government Officers' Salaries Allowances & Conditions Award 1989.

“**Managing Director**” means the Managing Director of the Challenger TAFE, pursuant to section 46 of the Vocational Education and Training Act 1996.

“**Minister**”: is the Minister of the Crown who is responsible for the administration of the employing agency.

“**Officer**”: means a Public Service Officer as defined in the Public Sector Management Act 1994 or Government Officer as defined in the Industrial Relations Act 1979.

“**Part-Time**”: means regular and continuing employment for less than the ordinary hours for a “Full-Time Officer”.

“**Spouse**”: means a husband or wife of an employee, and includes a de facto spouse. For the purposes of Bereavement leave it includes a former spouse.

“**Union**”: means the Civil Service Association of Western Australia (Inc).

“**WAIRC**”: means the Western Australian Industrial Relations Commission.

6.—NUMBER OF EMPLOYEES COVERED

At the date of registration of this Agreement the approximate number of employees covered by this Agreement is 130.

7.—NO FURTHER CLAIMS

7.1 There will be no extra claims for salary adjustments other than that which is provided by this Agreement for the duration of its term.

7.2 There will be no further claims on matters contained in this Agreement for the duration of its term.

8.—TERM OF AGREEMENT AND RENEGOTIATION

8.1 This Agreement will operate on and from the date of registration and will remain in force for two years.

8.2 Six (6) months prior to the date of expiration of this Agreement, the parties will commence negotiation for its renewal or replacement.

8.3 The pay rates attained under this Agreement will form the new base rates for any future Agreement, provided that the productivity targets attained under this Agreement continue and previous productivity improvements in the last agreement are sustained, and changes to Award conditions maintained, or changed by agreement.

9.—RELATIONSHIP TO AWARDS

This Agreement will be read and interpreted wholly in conjunction with the Government Officers' Salaries, Allowances and Conditions Award 1989. This Agreement will have precedence to the extent of any inconsistency. Where the agreement is silent the relevant award will apply.

10.—AVAILABILITY OF AGREEMENT

Employees will have access to an electronic copy of this agreement. Where electronic copies are unavailable, hard copies of the agreement will be provided.

11.—OBJECTIVES OF THE AGREEMENT

It is the shared objectives of the parties to—

Work towards alignment of conditions for all TAFE employees.

Meet the requirements of clients and students through the provision of reliable, efficient and competitive services.

Achieve the Department's mission and improve productivity and efficiency through identified improvements.

Achieve improvement and greater flexibility of working patterns and arrangements.

Promote and facilitate enhanced employee relations and increased job satisfaction.

To facilitate a continued cooperative approach to the introduction of change.

This Agreement will operate as a contributive mechanism to deliver a cost efficient Vocational Education and Training service.

12.—PAST PRODUCTIVITY

This Agreement incorporates past productivity to the date of registration.

PART 2—DISPUTE RESOLUTION

13.—CONSULTATION PROVISIONS

13.1 The parties acknowledge the need for a satisfactory College consultative procedure. Staff participation and consultation is encouraged. The form of participation and consultation may vary at each workplace depending on individual circumstances. The College will establish its own structure and processes. However, the non-establishment of a structure or process will not be used as a means to avoid requirement to consult.

13.2 Employees will be involved in broadly based representative consultative committees with structure and functions determined by the College.

13.3 Consultative committees will provide a forum for staff and management to, where appropriate, seek the views of the other and enter into meaningful discussions that may contribute towards outcomes, in relation to operational matters.

13.4 Representatives from the Union, where it has members at the workplace, will be invited to participate on consultative committees.

13.5 The parties to this Agreement acknowledge that decision making continues to rest with the College, which is accountable to Government, through legislation, for the operation of its business.

14.—DISPUTE RESOLUTION PROCEDURE

14.1 In the event of a dispute arising in the workplace the procedure to be followed to resolve the matter will be as follows—

- 14.1.1 The employee and their supervisor will meet and confer on the matter; and
- 14.1.2 If the matter is not resolved at such a meeting, the parties will arrange for further discussions between the employee and his or her nominated representative, if any, and more senior levels of management.
- 14.1.3 If the matter is still unresolved a discussion will be held between representatives of the College or other representative of the employer and the Union or other employee representative.
- 14.1.4 If the matter cannot be resolved it may be referred to the WAIRC.

14.2 While the parties attempt to resolve the matter work will continue as normal unless an employee has a reasonable concern about an imminent risk to his or her health and safety.

15.—SUBSTANDARD PERFORMANCE

For the purposes of this clause the following definition will apply—

Substandard performance: The performance of an employee is substandard if the employee does not, in the performance of the functions that he or she is required to perform, attain or sustain a standard that a person may reasonably be expected to attain or sustain in the performance of his or her duties.

15.1 No employee shall be subject to the penalties of clause 15.2 unless a fair procedure is applied and decisions and processes incorporate the principles of natural justice and are free from bias.

15.2 If, in accordance with the College's substandard performance management policy, an employee is found by the College to be performing at a substandard level, the College may—

- 15.2.1 withhold an increment of remuneration otherwise payable to that employee;
- 15.2.2 reduce the classification of that employee; or
- 15.2.3 terminate the employment of that employee.

15.3 If an employee who has been subject to substandard performance management is aggrieved by any resulting decision, he/she may appeal against that decision in the WAIRC.

16.—BREACHES OF DISCIPLINE

16.1 No employee shall be subject to the penalties of clause 16.2 unless a fair procedure is applied and decisions and processes incorporate the principles of natural justice and are free from bias.

16.2 If, in accordance with the College's disciplinary policy, an employee is found by the College to have committed a breach of discipline, the College may—

- 16.2.1 reprimand the employee;
- 16.2.2 transfer the employee to another public sector agency or authority, with the consent of that agency or transfer the employee to another position at the College at which the employee is currently employed;
- 16.2.3 impose on the employee a fine not exceeding the equivalent of five days pay that the employee would have received immediately prior to the breach of discipline finding;
- 16.2.4 reduce the monetary remuneration of the employee within the employee's existing classification;
- 16.2.5 reduce the level of classification of the employee;
- 16.2.6 dismiss the employee;

or, except where the employee is dismissed under subclause 16.2.6, take action under any two or more of the above subclauses.

16.3 If an employee who has been subject to disciplinary action is aggrieved by a decision resulting from such action, he/she may appeal against that decision to the WAIRC.

PART 3—EMPLOYER AND EMPLOYEES' DUTIES, EMPLOYMENT RELATIONSHIP AND RELATED ARRANGEMENTS

17.—HIGHER DUTIES

17.1 An officer who undertakes duties of a higher classification for a period of 10 consecutive working days or more, inclusive of public holidays, will be paid at the salary applicable to the higher level proportionate to the level of duties and responsibilities assigned for the entire period of the higher duties.

17.2 The higher rate of payment will apply to an officer who proceeds on normal annual leave or any other approved leave of absence of not more than four weeks provided that the officer was in receipt of the additional payment for a continuous period of 12 months or more.

18.—CASUAL EMPLOYMENT

18.1 Casual employees may be employed for up to three months in any period of engagement, provided that where operationally necessary and in compliance with subclause 18.2 of this clause the period of engagement may be extended for up to a period of a further three months.

18.2 All casual engagements shall be in accordance with the following guidelines.

- 1 The type of employment involves specific workload demands of a short term nature;
- 2 The job is a short term project of a finite nature;
- 3 To replace an employee during a short term approved leave of absence.

PART 4—WAGES AND RELATED MATTERS

19.—SALARIES

19.1 Increases have been applied to the rates paid pursuant to the Challenger TAFE Public Service and Government Officers' Enterprise Agreement 1998 as expressed in column A.

19.2 The rates in Column B will be paid effective from the date of registration of the Agreement. The rates in column B reflect a 1.5% increase for changes to award/employment conditions contained in this Agreement.

19.3 The rates in Column C will be paid from the first pay period on or after 15 March 2001. The rates in Column C

reflect a 1.5% increase for changes to award/employment conditions contained in this Agreement.

19.4 The rates in Column D will be paid from the first pay period on or after 15 March 2002. The rates in Column D reflect a 3% increase, subject to Cabinet Standing Committee on Labour Relations endorsement that the Productivity Improvement Plan targets have been achieved.

19.5 The pay rates attained under this Agreement will form the new base rates for any future Agreement, provided that the productivity targets attained under this Agreement continue and previous productivity improvements in the last agreement are sustained and changes to Award conditions maintained, or changed by agreement.

20.—SALARY PACKAGING

20.1 An employee may, by agreement with the employer, enter into a salary packaging arrangement in accordance with the Challenger TAFE Flexible Remuneration Packaging Scheme or any similar salary packaging arrangement offered by the employer.

20.2 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.

20.3 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.

20.4 The TEC for the purposes of salary packaging, is calculated by adding—

- 20.4.1 The base salary;
- 20.4.2 Other cash allowances, eg. Annual leave loading;
- 20.4.3 Non-cash benefits, eg superannuation, motor vehicles etc;
- 20.4.4 Any Fringe Benefit Tax liabilities currently paid; and
- 20.4.5 Any shift or commuted allowance or variable components, eg performance based incentives (where they exist).

20.5 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 agreement.

20.6 The salary packaging arrangement must be cost neutral in relation to the total cost to the employer.

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

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

20.9 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.

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

20.11 An employer will not unreasonably withhold agreement to salary packaging on request from an employee.

20.12 The Dispute Settlement Procedure contained in this Agreement will 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 to the WAIRC.

21.—PAYMENT ARRANGEMENTS

Salaries will be paid on a fortnightly basis directly into an approved bank, building society or credit union nominated by the employee.

22.—REPAYMENTS OF OVERPAYMENTS

22.1 Any salary overpayments will be repaid to the employer within a reasonable period of time.

22.2 If agreement cannot be reached, the employer may deduct the amount of overpayment over the same length of time that the overpayments occurred, or up to 6 months, whichever period is less.

22.3 The employer may not deduct or require an employee to repay an amount exceeding 20% of the employees' net pay in any one pay period.

22.4 On compassionate grounds, the Managing Director may allow an extended period for the repayment of overpayments.

23.—VARIATION OF ALLOWANCES

23.1 Wherever an award allowance is calculated by reference to a classification salary point, the parties agree that all such allowances will be so varied by reference to the salary provided by this agreement.

23.2 All such allowances will be applicable from the same date as provided for any salary variation under this agreement.

PART 5—HOUR OF WORK, BREAKS, OVERTIME, SHIFT WORK AND WEEKEND WORK

24.—HOURS OF WORK

Notwithstanding the prescribed hours of duty in clause 16 of the Award, the employer and an employee may agree to vary the spread of hours during which the employee's ordinary hours of work may be worked. Any agreement must be voluntarily and genuinely made and an employee may not be forced, coerced or intimidated into any such variation to the spread of ordinary hours during which the hours of work may be worked.

25.—FLEXITIME

25.1 For the purpose of this clause, a settlement period will—

- 25.1.1 consist of 12 weeks;
- 25.1.2 have the required hours of duty of 450 hours; and
- 25.1.3 commence at the beginning of a pay period.

25.2 Credit hours at any point within the settlement period will not exceed 60 hours.

25.3 An officer may be allowed to clear flexi leave of a maximum of 6 full days, or any combination of half days and full days that does not exceed 6 full days in any settlement period.

25.4 Full days of flexi leave may be taken in accordance with College policy.

25.5 Flexi-leave days may be taken consecutively during a Christmas Closedown.

25.6 Notwithstanding subclause 25.3, in the case of a Christmas Closedown of 12 working days, where sufficient credit hours are accrued, an employee may take seven consecutive flexi-leave days. This subclause does not apply in the case of a Christmas Closedown of less than 12 working days.

25.7 Credit hours to a maximum of thirty seven hours thirty minutes will be allowed at the end of each settlement period and will be carried forward to the next settlement period.

25.8 In the case of credit hours greater than thirty seven hours thirty minutes gained in one settlement period, the hours in excess of thirty seven hours thirty minutes will be lost.

PART 6—LEAVE OF ABSENCE AND PUBLIC HOLIDAYS

26.—ANNUAL LEAVE

26.1 By written approval of the employer, accrued annual leave may be paid out (equivalent benefit) instead of taken.

26.2 The paying out of accrued annual leave is not obligatory and is subject to agreement of both the employer and employee.

26.3 Annual Leave Travel Concessions—Officers Stationed in Remote Areas

- 26.3.1 Where an officer's headquarters is situated in District Allowance Areas 3,5,6 and in that portion of area 4 located north of 30° South Latitude, as defined in Schedule D—District Allowance of the PSA/ Schedule G—District Allowance of the GOSAC Award, a travel concession to the value of return economy airfares to Perth or Geraldton will be provided for the officer and his/her dependants when the officer travels from his/her normal place of employment on Annual Leave.

- 26.3.2 The officer will only be entitled to the actual cost of the travel, up to the value of return economy airfares for the officer and his/her dependents to Perth or Geraldton, whichever is the higher. The employer will not reimburse the officer unless the officer supplies evidence acceptable to the employer of the actual cost of travel.
- 26.3.3 An officer is required to serve 12 months in these areas before qualifying for travel concessions.

27.—LONG SERVICE LEAVE

27.1 Accrued long service leave may be taken in periods of not less than one day.

27.2 By written approval of the employer, accrued long service leave may be paid out (equivalent benefit) instead of taken.

27.3 The paying out of accrued Long Service Leave is not obligatory and is subject to agreement of both the employer and employee.

28.—SICK LEAVE

28.1 Sick leave entitlement

28.2 The sick leave provisions of the GOSAC Awards will continue to apply, except that the Managing Director may approve further paid leave in exceptional circumstances.

29.—FAMILY/CARER'S LEAVE

29.1 An employee with responsibilities in relation to either members of their family or members of their household who need their care and support, is entitled to paid leave of up to 5 days per annum, to provide care and support for such persons when they are ill.

29.2 Family/carer's leave taken will be deducted from an employee's sick leave entitlements, provided that 10 days of the employee's sick leave entitlement credited in the current year cannot be used for family/carer's leave. Family/carer's leave is not cumulative from year to year.

29.3 Where family/carer's leave is exhausted, an employee may take unpaid carer's leave by agreement with the employer.

29.4 The employee will if required by the employer establish, by production of medical evidence or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another.

29.5 The employee will, wherever possible, give the employer notice prior to the absence of the intention to take such leave.

29.6 For the purposes of this clause, a family member or member of the employee's household is one who is wholly or partially dependent on the employee.

30.—COMPASSIONATE LEAVE

30.1 Subject to paragraph 30.2 hereof, an officer will be entitled to paid compassionate leave of up to 2 days on the death of a family member.

30.2 The Managing Director may grant compassionate leave on the death of a person other than a family member in personal and compassionate circumstances.

30.3 Compassionate leave will not be granted during a period of any other leave.

30.4 Payment for compassionate leave is to be made only where the officer otherwise would have been on duty.

31.—SHORT LEAVE

The Award entitlement to short leave will no longer apply.

32.—CEREMONIAL/CULTURAL LEAVE

32.1 Ceremonial/Cultural Leave may be granted, to employees who have a ritual obligation to participate in ceremonial activity which requires absence from work. Such leave will also include leave to meet the employee's custom and traditional laws.

32.2 An employee granted leave to participate in ceremonial, cultural or traditional law activities will have such leave deducted from accrued annual leave or long service leave.

32.3 Leave without pay to participate in ceremonial, cultural or traditional law activities may be granted by the employer.

33.—PUBLIC HOLIDAYS

33.1 The following days are paid public holidays; New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Foundation Day, Labour Day, Sovereign's Birthday, Christmas Day and Boxing Day.

33.2 Whenever any of these days falls on a Saturday or a Sunday, the holiday is observed on the next succeeding Monday, or in the case of Boxing Day falling on a Sunday or Monday, on the next succeeding Tuesday.

33.3 There is no entitlement to any additional Public Service holidays in addition to those prescribed in this agreement.

34.—CHRISTMAS CLOSEDOWN

34.1 The College may observe a closedown over the Christmas/New Year period.

34.2 The duration of the closedown will be at the discretion of the Managing Director but will not exceed 12 working days.

34.3 Employees will be required to take annual leave, long service leave, rostered days off, time in lieu of overtime or flexitime credit hours on the working days that the College is closed down. The employee may elect which form of leave is to be taken.

34.4 The Managing Director will as soon as possible, in each calendar year but not later than 30 June, advise employees of the period of closedown and the number of working days involved.

34.5 When taking leave during the year employees must be aware of the requirement to retain credits to cover the required number of days over the compulsory close down period.

34.6 New employees, employees who have exhausted their annual leave credits at the commencement of this Agreement, or employees who have been granted approval to utilise all leave credits will be entitled to take leave without pay or go into debit to cover the amount of leave involved, provided a refund is made by the employee, on termination, if credits to the value of the leave taken in advance have not been accrued.

35.—PARENTAL LEAVE

Definitions

For the purpose of this clause, the following terms have the following meanings—

"Adoption": is the placement (including any initial temporary placement with a view to a permanent placement) of a child who is less than 5 years of age, who is not the natural or step-child of the employee or employee's spouse and who has not lived with the employee for longer than 6 months.

"Adoption leave": Unpaid parental leave of up to 12 months taken by either parent in connection with the adoption or placement of a child under the age of 5 years.

"Certification"—

(a) 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 birth.

(b) For the purpose of maternity leave means a certificate from a registered medical practitioner stating that the employee is pregnant and the expected date of birth.

(c) For the purpose of adoption leave and special adoption leave means the requirements that an employee must comply with before being eligible for the entitlement.

The employee must produce to the employer—

a statement from an adoption agency or other appropriate body of the placement of the child for adoption purposes; or

presumed date confirming that the employee or employee's spouse is to have custody of the child pending application for an adoption order.

"Child": A person to whom an employee or employee's spouse has given birth, or 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 stepchild

of the employee or employee's spouse who has previously lived with the employee for a period of 6 months or more.

"Expected date of birth": The day certified by a medical practitioner, to be the day on which the birth of the child of the employee, or employee's spouse is expected.

"Maternity leave": Unpaid parental leave of up to 12 months taken by a female employee in connection with her pregnancy, and the subsequent birth of a child.

"Parental leave": Any period of maternity leave, paternity leave and/or adoption leave of up to 12 months taken in connection with the birth or adoption of a child.

"Paternity leave": Unpaid parental leave of up to 12 months which is taken by a male employee in connection with the birth or adoption of a child. Such an employee is permitted to take one week of unpaid paternity leave immediately after the birth or adoption of a child, in conjunction with any leave taken by his spouse.

35.1 Entitlement to parental leave

35.1.1 Employees are entitled to parental leave in connection with the birth or adoption of a child, in accordance with this clause.

35.1.2 Parental leave only applies to part-time or full time employees. Temporary full time or part-time employees on fixed term contracts are only eligible for parental leave for the duration of their fixed term contract of employment.

35.1.3 For female employees parental leave may, at the employee's discretion, commence prior to 6 weeks before the expected date of birth of the child.

35.1.4 The minimum period of absence on maternity leave will commence six weeks before the expected date of birth and end six weeks after the day on which the birth has taken place, however an employee may apply to the Managing Director to vary this period provided her application is supported by a certificate from a registered medical practitioner indicating that the employee is fit to continue or resume duty within this minimum period.

35.2 Eligibility for parental leave

35.2.1 An employee must comply with the certification and notice requirements to be entitled to parental leave, unless these requirements are waived by the employer.

35.2.2 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 during one week of paternity leave taken immediately after the birth or adoption of a child.

35.3 Notice requirements

An employee is to give the employer at least 10 weeks written notice of the intention to take parental leave other than for the purposes of adoption and of the expected duration of the leave.

35.4 Transfer to a safe job

Where in the opinion of a registered medical practitioner illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue her present work, she may be transferred to a safe job, at the rate and on the conditions attached to that job or at the employee's substantive level, whichever is the higher, until the employee commences parental leave.

35.5 Variation and/or cancellation of parental leave period

35.5.1 The period of parental leave may be lengthened or shortened by Agreement between the employer and the employee, provided that the amount of leave does not exceed the maximum allowed.

35.5.2 The employee must where practicable give the employer 14 days written notice of any request to vary the period of leave.

35.5.3 Parental leave applied for, but not commenced, by an employee for any reason is cancelled. Reasons for cancellation include, but are not limited to—

35.5.3(a) where a pregnancy terminates, other than by the birth of a living child;

35.5.3(b) or where a planned adoption or placement of a child does not proceed.

35.5.3(c) An employee must notify the employer of any change in certification details.

35.6 Parental leave and sick leave

35.6.1 Where the pregnancy of an employee terminates after 28 weeks, other than by the birth of a living child, and the employee is not on parental leave, she is entitled to sick leave in accordance with Award entitlements.

35.6.2 An employee who suffers any illness or injury related to her pregnancy and/or the birth whilst on parental leave cannot utilise sick leave entitlements.

35.6.3 An employee may utilise sick leave entitlements in accordance with clause 27.1—Sick Leave when not on parental leave.

35.7 Special adoption leave

An employee is entitled to special unpaid adoption leave of up to 2 days to attend any compulsory interviews, examinations or the like which are required by the adoption procedure.

35.8 Effect of parental leave on leave entitlements and employment

35.8.1 Any absence on parental leave will not break the continuity of service.

35.8.2 However, absence on parental leave will not be taken into account for the purpose of salary increment progression. Paid leave entitlements such as annual leave, long service leave and public holidays will not accrue during any period of parental leave.

35.8.3 An employee may, instead of or in conjunction with parental leave, take annual leave or long service leave entitlements to which he or she is entitled.

An employee proceeding on parental leave may elect to utilise—

35.8.3(a) accrued annual leave

35.8.3(b) accrued long service leave

for the whole or part of the period referred to in subclause 35.1 of this clause. The periods of leave referred to in paragraphs 35.8.3(a) and 35.8.3(b) of this subclause, which are utilised, will be paid leave.

35.9 Replacement employees

35.9.1 Before the employer engages a replacement employee (including a temporarily promoted or transferred employee), the employer must inform that person of the temporary nature of the employment, and of the rights of the person on parental leave who is being replaced.

35.9.2 The employer does not have to engage a replacement employee if one is not required.

35.10 Return to work after parental leave

35.10.1 An employee must confirm to the employer an intention of returning to work prior to re-commencing work.

35.10.2 An employee returning to work from parental leave is entitled to the position held immediately before beginning 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.

35.10.3 Where the position no longer exists, the employee is entitled to the same classification and pay to that of the employee's former position, and for which the employee is qualified and capable of performing.

35.10.4 Where immediately before commencing parental leave, an employee was acting in a higher position, or performing additional duties on a temporary basis, this subclause only applies in respect of the position held by the employee immediately before taking the acting or temporary position.

35.11 Termination of employment and parental leave

35.11.1 An employee may terminate his or her employment at any time during a period of parental leave, by giving the employer the appropriate period of notice detailed in the relevant award.

35.11.2 The employer must not terminate an employee or transfer them from their existing position on the grounds of the employee's parental leave application and/or absence on parental leave.

36.—EMERGENCY AND COMMUNITY SERVICE LEAVE

36.1 Emergency Service Leave may be granted to an Employee who is an active volunteer member of the—

- * Western Australian State Emergency Service;
- * Western Australian Bush Fire Brigade;
- * St John Ambulance Brigade;
- * Defence Force Reserves;
- * Sea and rescue associations; or
- * Other similar Authorities or bodies, recognised by the College.

to attend emergencies as declared by the recognised Authority or body provided that it does not interfere with essential customer service and work requirements.

36.2 If an employee is an active member of a recognised Authority or body they are to advise the College of membership in writing at the commencement of employment or membership in order to seek leave to attend emergencies.

36.3 The employer will be advised as soon as possible by the employee, the emergency service or such other persons as to the absence and, where possible, the expected duration of the absence. Such advice will be provided within 24 hours of the event or activity requiring the person's absence.

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

36.5 The application form must be accompanied by a certificate from the emergency organisation certifying that the employee was required for the specified period. If a certificate of attendance is not provided from the emergency service organisation absence may be considered to be leave without pay. If the absence is deemed to be leave without pay, any adjustment in entitlements arising as a result of not proving a certificate of service will be processed in the next scheduled pay period.

36.6 An employee, who during the course of the emergency volunteers their services to an emergency service organisation, will comply with subclauses 36.2 to 36.5 inclusive.

36.7 Such leave will not affect any continuity of service for the purpose of higher duties arrangements or eligibility for allowances.

36.8 An employee may be granted reasonable Community Service Leave, subject to proof, to donate blood products to the Red Cross Blood Bank.

37.—ANNUAL LEAVE LOADING

Annual leave loading provisions in the GOSAC Award have been absorbed and no longer apply.

38.—SELF-FUNDED WORK BREAKS

38.1 Employees may receive 4 years salary over a period of five years, with no attendance at work required in the fifth year, in accordance with the College's Policy and Guidelines.

38.2 The employer and an employee may agree to enter into any other similar arrangements involving different periods of time, in accordance with the Policy and Guidelines.

PART 7: TRANSFERS, TRAVELLING AND WORKING AWAY FROM USUAL PLACE OF WORK

39.—HOME BASED WORK

An employee may make application to the College to engage in home based work subject to the College's Home Based Work policy.

40.—TRAVELLING ALLOWANCE

40.1 This clause replaces Clause 42. —Travelling Allowance of the Government Officers' Salaries, Allowances and Conditions Award in its entirety.

40.2 An employee who travels on official business will be reimbursed reasonable expenses on the basis of the production of receipts for reasonable expenses. Reasonable expenses will include but not be limited to accommodation costs, purchase of meals as necessary, and cost of transport to destination.

40.3 In addition to clause 40.2—Travelling Allowance above, an employee will be reimbursed reasonable incidental expenses such as train, bus and taxi fares, official telephone calls, laundry and dry cleaning expenses, on production of receipts.

40.4 If on account of lack of suitable transport facilities, an employee necessarily engages reasonable accommodation for the night prior to commencing travelling on early morning transport the employee will be reimbursed the actual cost of such accommodation.

40.5 Reimbursement of expenses will not be suspended should an employee become ill whilst travelling, provided leave for the period of such illness is approved in accordance with provisions of Clause 28.1—Sick Leave of this Agreement, and the employee continues to incur accommodation, meal and incidental expenses.

40.6 Reimbursement claims for travelling in excess of 14 days in one month will not be passed for payment by a certifying employee unless the Managing Director has endorsed the account.

40.7 An employee who is relieving at or temporarily transferred to any place within a radius of fifty (50) kilometres measured from the employee's headquarters will not be reimbursed the cost of midday meals purchased, but an employee travelling on duty within that area which requires absence from the employee's headquarters over the usual midday meal period will be, on the production of receipts, for each meal necessarily purchased, provided that—

- 40.7.1 such travelling is not a normal feature in the performance of the employee's duties; and
- 40.7.2 such travelling is not within the suburb in which the employee resides.

41.—TRANSFER

41.1 The College may transfer, at the same level of classification, an officer from one office, post or position within the College to another such office, post or position, for which that officer possesses the appropriate qualifications and skills, provided the College considers it to be in its interests to do so. Such transfers include the transfer of an employee from one campus of the College to another campus of the College.

41.2 The decision to transfer will be equitable and free from bias.

41.3 If the College transfers an employee in accordance with subclause 41.1 of this Clause it will comply with the following—

- 41.3.1 The transfer will be at the employee's current classification level;
- 41.3.2 The transfer will not result in a loss of the employee's continuity of service;
- 41.3.3 The transfer will not change the tenure of the employee;
- 41.3.4 The College's and employee's needs will be taken into account in the transfer decision. The employee's needs include distance of new work site from place of residence, skills, qualification and experience of the employee, requirement to undertake training to perform the duties of the new position.
- 41.3.5 The employee will be notified of the transfer decision and arrangements. The College will give the employee at least four weeks notice of intention to transfer.
- 41.3.6 Policies relating to transfer will be documented, equitable, free from bias, applied consistently and accessible to College employees.

- 41.3.7 The decisions and processes relating to transfer will embody the principles of natural justice including access to documentation specifically relating to the particular employee's transfer, explanation as to the reasons for the transfer and consultation with the employee where their input is taken into consideration;
- 41.3.8 The transfer decision will be capable of review; and
- 41.3.9 The appropriate confidentiality will be observed.
- 41.4 The College must adhere to the Public Sector Standards in Human Resource Management standard regarding transfer.
- 41.5 The College will act in accordance with the report and implement any recommendations of a reviewer selected by

the Commissioner for Public Sector Standards to investigate any suspected breach of standard in accordance with s.15 of the Public Sector Management (Review Procedures) Regulations 1995.

41.6 If the College does not act in accordance with and implement the recommendations of the reviewer selected by the Commissioner for Public Sector Standards, the College will be in breach of the Agreement.

41.7 Should an application for a breach of the Public Sector Standard relating to Transfer be lodged with the Managing Director within 15 days of an employee being notified of a decision to transfer and a review of the transfer be carried out, the status quo will remain until such time as the reviewer has made recommendations.

SCHEDULE A: SALARIES
ENTERPRISE BARGAINING AGREEMENT 2000
SCHEDULE A

LEVEL	Column A— Current Annual Salary Rates	Column B— Date of Registration 1.5%	New Fortnightly Rate	Column C— Annual Salary as at First Pay Period on or After March 15, 2001 1.5%	New Fortnightly Rate	Column D— Annual Salary as at First Pay Period on or After March 15, 2002 3%*	New Fortnightly Rate
LEVEL 1							
Age 16	12,900	13,094	501.99	13,290	509.52	13,689	524.80
Age 17	15,075	15,301	586.62	15,531	595.42	15,997	613.29
Age 18	17,585	17,849	684.30	18,117	694.56	18,660	715.40
Age 19	20,355	20,660	792.09	20,970	803.97	21,599	828.09
Age 20	22,858	23,201	889.49	23,549	902.83	24,255	929.92
YEAR 1	25,110	25,487	977.12	25,869	991.78	26,645	1021.53
YEAR 2	25,883	26,271	1,007.20	26,665	1022.31	27,465	1052.98
YEAR 3	26,656	27,056	1,037.28	27,462	1052.84	28,286	1084.43
YEAR 4	27,423	27,834	1,067.13	28,252	1083.14	29,099	1115.63
YEAR 5	28,196	28,619	1,097.21	29,048	1113.67	29,920	1147.08
YEAR 6	28,968	29,403	1,127.25	29,844	1144.16	30,739	1178.49
YEAR 7	29,857	30,305	1,161.85	30,759	1179.28	31,682	1214.65
YEAR 8	30,471	30,928	1,185.74	31,392	1203.53	32,334	1239.63
YEAR 9	31,380	31,851	1,221.11	32,328	1239.43	33,298	1276.61
LEVEL 2							
YEAR 1	32,468	32,955	1,263.45	33,449	1282.40	34,453	1320.88
YEAR 2	33,302	33,802	1,295.91	34,309	1315.34	35,338	1354.80
YEAR 3	34,179	34,692	1,330.03	35,212	1349.98	36,268	1390.48
YEAR 4	35,105	35,632	1,366.07	36,166	1386.56	37,251	1428.15
YEAR 5	36,074	36,615	1,403.77	37,164	1424.83	38,279	1467.58
LEVEL 3							
YEAR 1	37,407	37,968	1,455.65	38,538	1477.48	39,694	1521.81
YEAR 2	38,445	39,022	1,496.04	39,607	1518.48	40,795	1564.03
YEAR 3	39,515	40,108	1,537.68	40,709	1560.74	41,931	1607.56
YEAR 4	40,614	41,223	1,580.44	41,842	1604.15	43,097	1652.27
LEVEL 4							
YEAR 1	42,120	42,752	1,639.05	43,393	1663.63	44,695	1713.54
YEAR 2	43,301	43,951	1,685.00	44,610	1710.28	45,948	1761.59
YEAR 3	44,516	45,184	1,732.28	45,861	1758.27	47,237	1811.02
LEVEL 5							
YEAR 1	46,855	47,558	1,823.30	48,271	1850.65	49,719	1906.17
YEAR 2	48,437	49,164	1,884.86	49,901	1913.14	51,398	1970.53
YEAR 3	50,080	50,831	1,948.80	51,594	1978.03	53,141	2037.37
YEAR 4	51,785	52,562	2,015.15	53,350	2045.38	54,951	2106.74
LEVEL 6							
YEAR 1	54,526	55,344	2,121.81	56,174	2153.64	57,859	2218.25
YEAR 2	56,390	57,236	2,194.35	58,094	2227.26	59,837	2294.08
YEAR 3	58,305	59,180	2,268.87	60,067	2302.90	61,869	2371.99
YEAR 4	60,338	61,243	2,347.98	62,162	2383.20	64,027	2454.69
LEVEL 7							
YEAR 1	63,454	64,406	2,469.23	65,372	2506.27	67,333	2581.46
YEAR 2	65,610	66,594	2,553.13	67,593	2591.43	69,621	2669.17
YEAR 3	67,956	68,975	2,644.42	70,010	2684.09	72,110	2764.61

LEVEL	Column A— Current Annual Salary Rates	Column B— Date of Registration 1.5%	New Fortnightly Rate	Column C— Annual Salary as at First Pay Period on or After March 15, 2001 1.5%	New Fortnightly Rate	Column D— Annual Salary as at First Pay Period on or After March 15, 2002 3%*	New Fortnightly Rate
LEVEL 8							
YEAR 1	71,769	72,846	2,792.80	73,938	2834.69	76,156	2919.73
YEAR 2	74,500	75,618	2,899.07	76,752	2942.56	79,054	3030.84
YEAR 3	77,887	79,055	3,030.87	80,241	3076.34	82,648	3168.63
LEVEL 9							
YEAR 1	82,117	83,349	3,195.48	84,599	3243.41	87,137	3340.71
YEAR 2	84,975	86,250	3,306.69	87,543	3356.30	90,170	3456.98
YEAR 3	88,234	89,558	3,433.51	90,901	3485.02	93,628	3589.57
CLASS 1	93,162	94,559	3,625.28	95,978	3679.66	98,857	3790.05
CLASS 2	98,090	99,561	3,817.05	101,055	3874.30	104,086	3990.53
CLASS 3	103,016	104,561	4,008.74	106,130	4068.87	109,314	4190.93
CLASS 4	107,945	109,564	4,200.54	111,208	4263.55	114,544	4391.46
LEVEL 2/4							
YEAR 1 (2.1)	32,468	32,955	1,263.45	33,449	1282.40	34,453	1320.88
YEAR 2 (2.3)	34,179	34,692	1,330.03	35,212	1349.98	36,268	1390.48
YEAR 3 (2.5)	36,074	36,615	1,403.77	37,164	1424.83	38,279	1467.58
YEAR 4 (3.2)	38,445	39,022	1,496.04	39,607	1518.48	40,795	1564.03
YEAR 5 (4.1)	42,120	42,752	1,639.05	43,393	1663.63	44,695	1713.54
YEAR 6 (4.3)	44,516	45,184	1,732.28	45,861	1758.27	47,237	1811.02
OTHER							
Job Skills Trainees	19,625	19,919	763.68	20,218	775.14	20,825	798.39
Under 21	16,593	16,842	645.70	17,095	655.38	17,607	675.04

* The payment of this increase is subject to the approval of the Cabinet Standing Committee on Labour Relations

SCHEDULE B: PRODUCTIVITY IMPROVEMENTS PRODUCTIVITY IMPROVEMENT PLAN

Staff will actively participate in the development and implementation of a Productivity Improvement Plan/s (PIP/s) as determined by the Managing Director.

PIPs may be developed at the College or Campus level, or any combination as determined by the Managing Director.

The PIP/s may involve changes to work practices, but will not involve changes to award/agreement/enterprise bargaining agreement employment conditions.

Subject to the approval of the Cabinet Standing Committee on Labour Relations, a 3% pay increase will be paid to employees from the first pay period on or after 15 March 2002 for productivity improvements.

SCHEDULE C: SIGNATORIES OF PARTIES TO THE AGREEMENT

The following signatories are authorised to sign this Agreement.

Signatories

.....Signed..... Date 20/12/2000

Employer—

Malcolm Goff, Managing Director of Challenger TAFE,
on behalf of the Governing Council

Signed for and on behalf of the *Civil Service Association of
Western Australia (Inc)* by

.....Signed..... Date 20/12/2000

Common Seal

Mr Dave Robinson, Branch Secretary,
Civil Service Association WA Inc

SCHEDULE D: ALPHABETICAL LISTING OF PROVISIONS

Annual Leave
Annual Leave Loading
Annual Leave Travel Concessions
Arrangement
Availability of Agreements
Breaches of Discipline
Casual Employment
Ceremonial/Cultural Leave
Christmas Closedown

Compassionate Leave
Consultation Provisions
Definitions
Dispute Resolution Procedure
Emergency and Community Service Leave
Flexitime
Higher Duties
Home Based Work
Hours of Work
Long Service Leave
No Further Claims
Number of Employees Covered
Objectives of the Agreement
Parental Leave
Parties Bound
Past Productivity
Payment Arrangements
Productivity Improvements
Public Holidays
Relationship to Awards/Agreements
Repayments of Overpayments
Salaries
Salary Packaging
Scope
Self Funded Work Breaks
Short Leave
Sick Leave and Family/Carer's Leave
Signatories of Parties to the Agreement
Substandard Performance
Term of Agreement and Renegotiation
Title
Transfer
Travelling Allowance
Variation of Allowances

**COMBINED ROOFING/BLPPU AND THE CMETU
COLLECTIVE AGREEMENT 2000.**

No. AG151 of 2000.

2000 WAIRC 00026

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES THE WESTERN AUSTRALIAN BUILDERS' LABOURERS, PAINTERS & PLASTERERS UNION OF WORKERS, CONSTRUCTION, MINING, ENERGY, TIMBERYARDS, SAWMILLS AND WOODWORKERS UNION OF AUSTRALIA—WESTERN AUSTRALIAN BRANCH V KARO HOLDINGS PTY LTD TRADING AS COMBINED ROOFING INDUSTRIES

CORAM COMMISSIONER J F GREGOR

DELIVERED TUESDAY, 11 JULY 2000

FILE NO/S APPLICATION AG 151 OF 2000

Result

Registered Agreement by consent

Representation

Applicant/

Appellant Mr P Joyce for the applicant

Respondent No appearance for the respondent

Combined Roofing/BLPPU and the CMETU Collective Agreement 2000

Order.

HAVING heard Mr P Joyce on behalf of the (the applicant) and there being no appearance on behalf of (the respondent) and by consent, the Commission pursuant to the powers conferred on it under the *Industrial Relations Act, 1979* hereby orders—

THAT the agreement made between Combined Roofing/BLPPU and the CMETU Collective Agreement 2000 to be registered in terms of the following schedule as an Industrial Agreement and replaces Combined Roofing/BLPPU and the CMETU Collective Agreement 1999 No. AG 222 of 1998.

(Sgd.) J. F. GREGOR,
Commissioner.

[L.S.]

Schedule.

1.—TITLE

This agreement shall be known as the *Combined Roofing/BLPPU and the CMETU Collective Agreement 2000*.

2.—ARRANGEMENT

	Clause No.
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3.—PARTIES AND PERSONS BOUND

This agreement shall be binding on *Karo Holdings Pty Ltd Trading As Combined Roofing Industries* (hereinafter referred to as "the company"), the Western Australian Builders' Labourers, Painters and Plasterers Union of Workers and the Construction Mining Energy Timberyards Sawmills and Woodworkers Union of Australia—WA Branch (hereinafter referred to as "the unions") and all employees of the company eligible to be members of the unions.

4.—APPLICATION

This agreement shall apply to all employees of the company engaged on work with a minimum contract value of \$200,000, or where the Principal Contractor has a current Industrial Agreement with the BLPPU or CMETU.

This agreement shall apply in Western Australia only. There are approximately 3 employees covered by this agreement.

5.—RELATIONSHIP TO PARENT AWARD

1. This agreement is supplementary to, and shall be read and interpreted wholly in conjunction with, the Building Trades (Construction) Award 1987, Award No. R14 of 1978 (hereinafter referred to as "the award").

2. In the event of any inconsistency between the award and an express provision of this agreement, the terms of this agreement shall prevail to the extent of such inconsistency, unless the express provision of the agreement provides otherwise.

6.—PERIOD OF OPERATION

This agreement shall come into force from the first pay period commencing on or after November 1st 1999 and shall remain in force until the 1st of November, 2002.

7.—CLASSIFICATION STRUCTURE & RATES OF PAY

1. All employees working under this agreement shall be paid according to the wage rates set out below.

2. Wage Rates (per hour at ordinary time)

	Previous EBA Rate Hourly Rate \$	1st November 1999 Hourly Rate \$	1st November 2000 Hourly Rate \$	1st November 2001 Hourly Rate \$
Labourer Group 1	17.15	18.01	18.91	19.86
Labourer Group 2	16.56	17.39	18.26	19.17
Labourer Group 3	16.12	16.93	17.78	18.67
Plaster, Fixer	17.82	18.71	19.65	20.63
Painter, Glazier	17.42	18.29	19.20	20.16
Signwriter	17.80	18.69	19.62	20.63
Carpenter/Roofier	17.93	18.85	19.79	20.78
Bricklayer	17.75	18.63	19.61	20.59
Refractory				
Bricklayer	20.38	21.40	22.47	25.59
Stonemason	17.93	18.82	19.76	20.75
Rooftiler	17.62	18.50	19.43	20.40
Marker/Setter Out	18.46	19.38	20.35	21.37
Special Class T	18.69	19.62	20.61	21.64

APPRENTICE RATES

	Previous EBA Rate Hourly Rate \$	1st November 1999 Hourly Rate \$	1st November 2000 Hourly Rate \$	1st November 2001 Hourly Rate \$
Plasterer, Fixer				
Year 1	7.48	7.86	8.25	8.66
Year 2 (1/3)	9.81	10.29	10.81	11.35
Year 3 (2/3)	13.37	14.03	14.74	15.47
Year 4 (3/3)	15.69	16.46	17.29	18.15
Painter, Glazier				
Year 1 (.5/3/5)	7.32	7.68	8.06	8.47
Year 2 (1/3), (1.5/3.5)	9.58	10.06	10.56	11.09
Year 3 (2/3), (2.5/3.5)	13.06	13.72	14.40	15.12
Year 4 (3/3), (3.5/3.5)	15.33	16.10	16.90	17.74

	Previous EBA Rate Hourly Rate \$	1st November 1999 Hourly Rate \$	1st November 2000 Hourly Rate \$	1st November 2001 Hourly Rate \$
Signwriter				
Year 1 (.5/3.5)	7.48	7.85	8.24	8.66
Year 2 (1/3, 1.5/3.5)	9.78	10.28	10.79	11.35
Year 3 (2/3, 2.5/3.5)	13.35	14.02	14.72	15.47
Year 4 (3/3, 3/5/3.5)	15.66	16.45	17.27	18.15
Carpenter/Roofer				
Year 1	7.54	7.92	8.31	8.73
Year 2 (1/3)	9.86	10.37	10.88	11.43
Year 3 (2/3)	13.45	14.14	14.84	15.59
Year 4 (3/3)	15.78	16.59	17.42	18.29
Bricklayer				
Year 1	7.46	7.82	8.24	8.65
Year 2 (1/3)	9.76	10.25	10.79	11.32
Year 3 (2/3)	13.31	13.97	14.71	15.44
Year 4 (3/3)	15.62	16.39	17.26	18.12
Stonemason				
Year 1	7.54	7.92	8.31	8.73
Year 2 (1/3)	9.86	10.37	10.88	11.43
Year 3 (2/3)	13.45	14.14	14.84	15.59
Year 4 (3/3)	15.78	16.59	17.42	18.29
Rooftiler				
6 months	10.04	10.54	11.07	11.62
2nd 6 months	11.04	11.59	12.17	12.78
Year 2	12.90	13.55	14.23	14.94
Year 3	15.14	15.90	16.70	17.54

3. All expense related allowances not specifically mentioned in this agreement will be paid as per the award as varied from time to time.

4. Site allowances relating to particular sites shall be paid in accordance with Appendix B of this Agreement.

5. An additional payment will be made to compensate for the impact of the Goods and Services Tax on the Consumer Price Index. In the circumstance that the CPI limit below is exceeded the appropriate additional payment will be made to the wage rates. The CPI figure for the applicable dates will be the official figure released by the ABS for the preceding year.

Date	CPI Limit	Additional Payment
June 2001	5%	1% (paid 1/9/2001)
June 2001	6%	2% (paid 1/9/2001)
June 2002	5%	1% (paid 1/9/2002)
June 2002	6%	2% (paid 1/9/2002)

8.—INDUSTRY STANDARDS

Redundancy

In addition to the current payment, the company shall increase the contributions on behalf of each employee into the Western Australian Construction Industry Redundancy Fund to the following sums on a weekly basis—

Rate on signing	\$50
Rate as of 1/05/2001	\$60

Superannuation

(i) The Company will make a payment of \$60 per week per employee or the percentage rate that is prescribed under the Superannuation Guarantee Charge, whichever is the greater.

The Company will advise all employees subject to the Agreement of their right to have payments made to a complying superannuation fund of their choice. The Company is bound by the employee's election. The aforementioned payment will then be made to that fund.

Until each employee nominates the fund of their choice the Company will make payments into the Construction + Building Unions Superannuation Scheme (the "C+BUSS").

In the event that any employee chooses a fund other than the C+BUSS the Company will, within seven days of the employee advising the Company of the fund of their choice, advise the Union in writing of the employee's decision.

In the event that the employee and the Company reach an agreement pursuant to section 49C(2)(d) of the Act to change the complying superannuation fund or scheme the Company

will, within seven days of the employee and the Company reaching such an agreement, advise the Union in writing of the agreement. The employer shall not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by the employee.

(ii) "Ordinary Time Earnings" (which for the purposes of the Superannuation Guarantee (Administration) Act 1992 will operate to provide a notional earnings base) shall mean the actual ordinary rate of pay the employee receives for ordinary hours of work including tool allowance, industry allowance, trade allowances, shift loading, special rates, qualification allowances (eg. first aid, laser safety officer), multi-storey allowance, site allowance, asbestos eradication allowance, leading hand allowances, in charge of plant allowance and supervisory allowances where applicable. The term includes any regular over-award pay as well as casual rates received and any additional rates and allowances paid for work undertaken during ordinary hours of work, including fares and travel.

9.—SICK LEAVE

For sick leave accrued after the date of signing this agreement the following will apply—

- The Company's employees shall have the option of converting 100% of accrued sick leave entitlement to a cash payment on termination
- If an employee who has been terminated by the Company without exercising the above option is re-engaged within a period of six months, the unpaid balance of sick leave shall continue from the date of re-engagement.
- Where the Company has signed a previous Agreement with the Union that also allowed for the conversion to cash payment on termination for accrued sick leave, that accrued sick leave will be treated as if it is accrued under this agreement.
- Sick leave shall accrue, for the purposes of this clause, at the rate of one day at the beginning of each of the first ten calendar months of each year.

10.—NEGOTIATION OF A SUBSEQUENT AGREEMENT

The parties agree to commence negotiations for a new collective agreement to succeed this agreement at least 3 months before the nominal expiry date. The parties intend to conclude these negotiations prior to the nominal expiry date. These negotiations shall be conducted on a collective basis between all of the parties with the negotiated outcome being subject to approval of a vote of the employees collectively.

11.—APPLICATION OF PROJECT AGREEMENTS

1. This agreement shall apply to all persons employed in the employer's business and every part thereof throughout Western Australia until 1st November 2002 except where the company commences work on a project where a site agreement to which the union is a party exists that provides for higher rates of pay and conditions.

2. The conditions contained in any such site agreement will take precedence over this agreement for the duration of the project.

12.—FARES AND TRAVELLING ALLOWANCE

In addition to Clause 12A of the award a travel payment shall be made in the form of a daily payment (on days worked) of \$6.15 per day per employee.

13.—SENIORITY

1. The parties agree the continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

2. When applying the "first on last off" principle it is agreed subject to the caveat of "all things being equal", it is intended to apply on a Company basis rather than a site by site basis.

3. It is recognised that from time to time instances may arise where the employee's individual skills may be subject to this caveat. Where there is any disagreement as to the application of this the matter will be processed in accordance with Clause 16—Dispute Settlement Procedure.

4. An employee who has been retrenched by the Company shall have absolute preference and priority for re-employment/

re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

14.—ALL IN PAYMENTS

1. All-in payments to employees will not be made. All-in payments are defined as an hourly rate or piece work rate which is meant to cover wages and all allowances, such as annual leave, sick leave, etc., on which tax is being paid using the Prescribed Payments System.

2. It is agreed that where a breach of this clause is discovered, the employer shall continue paying the "all-in" rate as the employees hourly rate, but shall pay all award and other entitlements on top of this amount, back-dated to the commencement of the all-in rate arrangement. The company shall not be entitled to offset any amount in excess of the ordinary hourly rate against any other entitlement in this agreement.

3. This clause shall not be applied to prevent the employer subcontracting specialised work outside of the normal scope of work which the employer performs. The union shall be notified when specialist sub-contractors are to be engaged.

15.—PYRAMID SUB-CONTRACTING

1. "Pyramid Sub-Contracting" is defined as the practice of a sub-contractor, to whom a sub-contract is originally awarded, sub-letting that contract or part thereof to another sub-contractor.

2. Provided that where a sub-contractor does not have the technical capacity to handle a specialist section of the contract and intends to engage a specialist sub-contractor to perform that work, that section may be re-let to a specialist sub-contractor.

3. Further provided that when a sub-contract is let for labour and material, a labour-only sub-contract may be let by the sub-contractor, but it is unacceptable as a principle for further labour-only sub-contracts to be re-let.

4. A bona fide sub-contractor is generally an employer of labour, save for a machine owner-operator.

5. Where a disagreement arises in relation to the definition or application of the term "Pyramid Sub-Contracting" the parties shall discuss and determine the issue in accordance with the agreement dispute resolution procedure. In any event of a disagreement, the matter shall be negotiated further between the parties or referred to the Western Australian Industrial Relations Commission. Whilst these procedures are undertaken no industrial action shall occur.

16.—DISPUTE SETTLEMENT PROCEDURE

1. Disputes over any work related or industrial matter should be dealt with as close to its source as possible.

2. An employee or the union delegate should initially submit any work related grievance and/or industrial matter to the site foreperson, supervisor or other appropriate site representative of the company.

3. If the matter remains unresolved the union delegate may then submit the matter to the appropriate senior management person.

4. If still not resolved the delegate shall refer the matter to an appropriate official of the union, who shall discuss the matter with the nominated representative of the employer.

5. Whilst the above procedures are being followed work should continue as normal.

6. This procedure is to be followed in good faith and without unreasonable delay by any party.

7. Should the matter remain unresolved it shall be dealt with in one of the following ways as agreed to between the parties—

- referred to the Western Australian Industrial Relations Commission for conciliation and if required arbitration. The Commissions decision will be accepted by all parties subject to legal rights of appeal; or
- referred to a disputes board for determination; or
- referred to a private arbitrator agreed to between the parties, for determination.

8. This dispute settlement procedure does not apply to health and safety issues.

9. Nothing in the above procedure or this agreement shall prevent employees taking industrial action on issues of industry, state or national significance.

17.—SAFETY DISPUTE RESOLUTION

1. The parties to this agreement are committed to the safe operation of plant and equipment, to the observance of safe working practices, and the provision by the employer and correct use of all personal protective equipment. The company recognises its responsibilities to provide a safe and healthy workplace.

2. In the event of any disagreements on the necessity to carry out any safety measure or modify, reinforce or reinstate any safety device whatsoever, the procedures set out in this clause will be adopted.

3. No person shall dismiss a safety complaint. Any complaint should be referred to the company safety officer or workers' safety representative to be dealt with in accordance with the following procedures—

- (i) Where any employee becomes aware of an unsafe situation, that employee will immediately notify the company safety officer or the workers' safety representative.
- (ii) The company safety officer and the workers' safety representative will take immediate action to have the unsafe situation rectified.
- (iii) Should the company safety officer consider that no safety precautions are necessary, he/she will notify the workers' safety representative accordingly as soon as possible.
- (iv) While there is disagreement on the ruling of the company safety officer, the company safety officer will arrange for the immediate transfer of all employees from the disputed area.
- (v) Should the company safety officer be of the opinion that no action is necessary and the worker's safety representative disagrees, an appropriate inspector from Worksafe/Workcover will be requested to undertake an inspection of the disputed area for the purpose of resolving any such matter.
- (vi) If disagreement still exists the chief inspector or his/her nominee will be called in to assist in the resolution of the dispute.
- (vii) If no agreement can be reached between the parties the matter will be dealt with in accordance with the dispute resolution procedure of this agreement.
- (viii) Whilst the above procedure is being followed there will be no stoppage of work in respect of the matter being considered, except in the area alleged to be unsafe.
- (ix) It is accepted that safety considerations override normal work practices and depending on the degree of potential risk to persons on the job, or the general public, can override normal demarcation practices.

18.—AMENITIES

1. The parties agree that it is the responsibility of the company to ensure that the amenities prescribed by the Award are provided as a minimum. Where, however, that standard is not maintained due to an action or event beyond the control of the company, the union agrees that the company should be allowed reasonable time in which to rectify the problem. If the company acts promptly to rectify the problem, there should be no interruption to work from industrial stoppages, bans and limitations.

2. In all instances, the following procedure shall be observed.

3. A uniformly high standard of amenities and facilities such as ablation blocks, change rooms, crib sheds, etc. shall be provided.

4. All Sheds shall be weatherproof and soundly constructed to an approved standard with sufficient windows and doors, adequate ventilation and lighting. They must have a floor above ground level and be lined on ceilings and walls.

5. Mess Shed/s fitted with fly screens are provided for exclusive use of workers and not for the storage of employers' equipment, tools and materials.

6. Shed/s shall provide not less than 0.75 square metres of floor space per person employed at any one time, provided that the area be not less than 4.65 square metres. Fixtures, other than tables and chairs, shall not be included when calculating floor space.

7. Where 5 or more persons are employed at one time, the floor area shall not be less than 9 square metres.

8. Adequate facilities are to be provided for warmth and for drying clothes eg. strip heaters.

9. Provided that 20 or more persons are employed on the site at any one time, the employer shall provide a separate shed or sheds for messing, which shall be of such dimension as to provide not less than 0.75 square metres of floor space per person.

10. Where less than 20 persons are employed on site, Regulation 3.20—Workplace Facilities of the Occupational Safety and Health Regulations 1996 shall apply to provisions of messing and changing facilities.

11. In the changing facilities, separate clothes-hanging facilities for each person employed are to be provided (coat hooks only to be used).

12. In the changing facilities, sufficient seating accommodation for the changing of work apparel is to be provided.

13. In the messing facilities, sufficient tables with fixed washable laminated or vinyl surface, and seating for the taking of meals, are to be provided.

14. Food warming facilities to be supplied, together with a supply of cool, clean water conveniently accessible, as well as boiling water at meal/rest breaks.

15. Receptacle for garbage with bin liner and rat and fly proof is to be supplied in mess area, and emptied regularly.

16. A washable vinyl floor surface in all facilities is to be provided.

17. Shelving is to be supplied in the mess shed for storage (cups, lunch bags, etc).

18. All facilities are to be cleaned and disinfected on a regular basis.

19. All mess sheds shall be supplied with reverse cycle air-conditioning.

20. Toilet blocks shall be soundly constructed and roofed with weatherproof material. The floor of each toilet shall be well-drained and constructed of concrete, bricks and cement, or other approved materials which shall be impervious to water. Every toilet shall be well lighted by natural or artificial light and shall be ventilated. Each toilet shall have a hinged door, capable of being fastened on the inside, lift seats/flaps and toilet paper.

21. Where practicable, toilets to be connected to sewerage before commencement of the job.

22. Toilet/urinal location to be conveniently accessible to employees, but not so close as to cause a nuisance to those persons.

23. Where necessary, portable water seal toilets of an approved standard are to be provided and regularly serviced.

24. Conveniently accessible toilets and urinals are to be distributed every 5th floor on multi-storey constructions.

25. Toilets and urinals are to be washed daily with disinfectant and kept in clean, hygienic condition.

26. Adequate washing facilities, suitably drained, and wash basins/troughs are to be supplied with running water.

27. Soap and towels are to be supplied.

28. The following toilet/urinal ratio shall be applied in respect to all employees—

Employees	Toilets	Urinals
1—5	1	Nil
6—10	1	1
11—20	2	2
21—35	3	4
36—50	4	6
51—75	5	7
76—100	6	8

NB. For each additional 20 persons or part thereof up to 200 persons or part thereof up to 200 persons, one additional urinal and one additional toilet is required. For each additional 35 persons or part thereof in excess of 200 persons, one

additional urinal and one additional toilet is required. If a slab urinal is provided, each 600mm shall be regarded as one urinal.

19.—TRAINING AND RELATED MATTERS

1. A training allowance of \$13.00 per week per worker shall be paid by the employer to the Union Education and Training Fund. This shall increase to \$14.00 per week on 1 November 2000 and a further increase to \$15.00 per week on 1 November 2001.

2. Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calendar year pro-rata to attend courses conducted or approved by the NBCITC. The employers approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an inability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

3. The Company will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per (2) above for such purposes including but not limited to securing Tradesmen's Rights Certificates.

20.—DRUG & ALCOHOL, SAFETY & REHABILITATION PROGRAM

The parties are committed to the Drug and Alcohol, Safety and Rehabilitation program as outlined in Appendix A—Drug and Alcohol, Safety and Rehabilitation Program.

21.—CLOTHING AND SAFETY FOOTWEAR

1. The following items will be supplied to each employee by the Company, upon the completion of five working days.

- 1 pair safety boots, to be replaced on a fair wear and tear basis.
- 2 T-shirts with collars, and will be replaced on a fair wear and tear basis.
- 1 bluey jacket for each employee employed during the period 1 April to 31 October. (One issued per year)

2. The Company will also make available to each employee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

22.—INCOME PROTECTION

The Company agrees to insure employees covered by this Agreement for injury and sickness. The scheme is to be negotiated between the parties

23.—ACCIDENT PAY

1. The Company agrees to pay each employee accident pay where the employee receives an injury for which weekly payments or compensation are payable by or on behalf of the Company pursuant to the provisions of the Workers' Compensation and Rehabilitation Act 1981, as amended.

2. "Accident Pay" means a weekly payment of an amount being the difference between the weekly amount of compensation paid to the employee pursuant to the Workers' Compensation and Rehabilitation Act and the employee's ordinary wage under this Agreement.

3. The Company shall pay accident pay during the incapacity of the employee arising from any one injury for a total of 39 weeks whether the incapacity is in one continuous period or not.

24.—UNION MEMBERSHIP

The employer will encourage, as far as possible, all employees covered by the agreement, to be financial members of the Unions.

25.—Y2K

On the following key dates the Company will issue written records of accrued entitlements to each employee. The accrued entitlements will include annual leave, sick leave, any accruing productivity bonuses, redundancy payments and Superannuation payments and also on each employees anniversary date—

- 31 December 1999
- 28 February 2000
- 31 December 2000
- 28 February 2001

26.—SIGNATORIES

BLPPU	Mr K Reynolds	<i>Common seal over name.</i>
	Date: 12/06/00	
CMETU	Mr J McDonald	<i>Common seal over name</i>
	Date: 13/06/00	
The Company:	Mr M Muller	<i>Common Seal</i>
	Date: 02/06/00	

APPENDIX A—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PROGRAM

1. PRINCIPLE

People dangerously affected by alcohol, and/or drugs are a safety hazard to themselves and all other persons in the workplace.

2. FOCUS

- * Site safety and the involvement of the site safety committee
- * Peer intervention and support
- * Rehabilitation

3. WORKPLACE POLICY

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

4. IMPLEMENTATION

To assist with the adoption and implementation with this policy the company will—

- (a) Clearly state its endorsement of the BTG Drug and Alcohol program and comply with it.
- (b) Provide access at an agreed time and venue for a representative of the BTG Drug and Alcohol Program to address a meeting of employees to discuss and endorse the program.
- (c) Authorise the attendance of appropriate company personnel eg. Safety delegate/officer, safety committee members, union delegate, consultative committee members(s) at the two hour BTG Drug and Safety in the Workplace training course.

APPENDIX B—SITE ALLOWANCE

1. This agreement is between the parties to this agreement and shall apply to construction work undertaken by principal contractors who are engaged in the commercial/industrial sector of the building industry in the state of Western Australia within a 50km radius of the Perth General Post Office.

2. This agreement provides for a site allowance to be paid to employees engaged on particular building projects, and for such site allowance to be paid in addition to the wage rates and allowances prescribed by the award as well as any industrial or certified agreements made in conjunction with the award which does not prescribe a site allowance.

3. The site allowance payable under this agreement is to be paid at a flat rate per hour for all hours worked to compensate for all special factors/disabilities on the project and in lieu of all award special rates, with the exception of rates relating to the lifting of heavy blocks, cleaning down brickwork and the use of explosive powered tools which will be payable to an employee when he/she encounters that particular disability.

4. Site Allowance Formula

At the commencement of a project the particular site allowance to apply shall be determined in accordance with the following formula—

4.1 Projects Located Within Perth C.B.D. (as defined)

New Work

<u>Project Contractual Value</u>	<u>Site Allowance</u>
Up to \$520,000	NIL
Above \$520,000 to \$2.17m	\$1.90
Above \$2.17m to \$4.55m	\$2.25
Over \$4.55m	\$2.85

Renovations, Restorations and/or Refurbishment Work

<u>Project Contractual Value</u>	<u>Site Allowance</u>
Up to \$520,000	NIL
Above \$520,000 to \$2.17m	\$1.70
Above \$2.17m to \$4.55m	\$1.90
Over \$4.55m	\$2.45

4.2 Projects Located Within West Perth (as defined)

New Work

<u>Project Contractual Value</u>	<u>Site Allowance</u>
Up to \$520,000	NIL
Above \$520,000 to \$2.17m	\$1.70
Above \$2.17m to \$4.55m	\$1.90
Over \$4.55m	\$2.45

Renovations, Restorations and/or Refurbishment Work

<u>Project Contractual Value</u>	<u>Site Allowance</u>
Up to \$520,000	NIL
Above \$520,000 to \$2.17m	\$1.60
Above \$2.17 m to \$4.55m	\$1.80
Over \$4.55m	\$2.05

The site allowance on projects which are a combination of new and renovation work shall be governed by the majority of work involved. For example, where the majority of work is new work, then the site allowance appropriate to new work shall be paid for all employees on the project.

4.3 Projects within 50 km radius of Perth G.P.O.

but not including the C.B.D. or West Perth (as defined)

<u>Project Contractual Value</u>	<u>Site Allowance</u>
Up to \$1 m	NIL
Above \$1 m to \$2.17m	\$1.30
Above \$2.17m to 6m	\$1.60
Above \$6m to \$11.98m	\$1.85
Above \$11.98m to \$24.43m	\$2.05
Above \$24.43m to \$60.5m	\$2.35
Over \$60.5m	\$2.55

“C.B.D.”—Central Business District shall mean the area bounded by the Swan River South, Swan River East to Nile Street running into Wittenoom Street, Hill Street to Royal Street, Royal Street to Lord Street, Lord Street to Newcastle Street, along Newcastle Street to the Freeway, the Freeway South to the Perth-Fremantle railway line, along the Perth-

Fremantle railway line to Dyer Street, Dyer Street through to Havelock Street, Havelock Street to Kings Park Road, Kings Park Road to Fraser Avenue, Fraser Avenue projected through to the Swan River.

“West Perth”—shall mean the area contained within the boundaries formed by Thomas Street, Kings Park Road, Havelock Street, Dyer Street and the Perth-Fremantle railway line back to Thomas Street.

Boundary roads: If a road borders between two regions in which site allowances are to be paid as per this agreement, the parties confirm that one side of such a boundary road will be deemed to fall in one region and the other side of the boundary road will be deemed to fall in the other region. For example, the eastern side of Havelock Street will be in the “CBD” and the western side of Havelock Street shall be in “West Perth”.

“Project Contractual Value”—shall be deemed to mean the value of all tendered work which falls under the scope of the principal contractor’s contract.

5. The site/project allowance and project contractual value detailed in this agreement shall be adjusted on 1 October each year by the total C.P.I. movements for Perth during the preceding four quarters ending 30 June and accordingly, the site allowance amounts shall be adjusted up or down to the nearest five cents.

6. Project contractual values shall be subject to review at any renewal of this agreement, but in any event shall not be adjusted by a percentage less than the total CPI movements for Perth during the preceding four quarters ending 30 June. Such adjustment being to the nearest \$10,000.

7. The agreed site allowance once set pursuant to this agreement shall be recorded in a site agreement to which the applicable principal contractor and the Union will be signatories. The level of allowance once nominated at the commencement of the project will continue without change until completion of the project.

8. It is acknowledged that on certain projects a site agreement may be entered into between the principal contractor and the building trades group of unions for that project that may include matters regularly addressed within the industry, such as, but not limited to, the following—

- Disputes Procedures
- Occupational Health and Safety Procedures
- Demarcation Procedures
- First Aid Provisions and On-Site Amenities

and the union will not unreasonably refuse to continue to discuss such matters if raised by the principal contractor.

9. This agreement does not apply to resource development projects or civil and engineering projects.

10. Where a dispute arises as to the application of the terms of this agreement, if the issue cannot be resolved in discussions between the parties, it is agreed that the matter will be referred to the appropriate industrial tribunal for resolution without recourse to industrial action.

11. It is a term of this agreement that all site allowance agreements entered into prior to this date will be honored by all parties and will continue to apply for the life of the particular project.

12. Where because of a condition of contract the principal contractor is required not to allow for a site allowance, before final application of this agreement, discussions will be held between the parties with a view to resolving any problems that may arise as a result of this situation.

13. Productivity Allowance

In return to increase productivity and/or timely completion of projects it is agreed that a productivity allowance of \$1.00 per hour worked shall be paid to employees engaged upon projects in excess of \$10 million, or such other sum as agreed. The productivity allowance may be accumulated and paid at the end of the project.

14. Structural Frame Allowance

It is agreed that a structural frame allowance of \$1.00 per hour all purpose shall be paid to all employees engaged upon projects (new construction only) which exceed two stories in

height or building where the structure exceeds 10 metres in height (excluding spires, flagpoles and the like).

15. Provision of Canteen

It is agreed that canteen accommodation shall be provided where a project exceeds \$35 million in values and where the operation of the canteen is financially self supporting in respect of consumables. Canteen to come into operation when on site manning levels exceed 50 and to cease when manning levels reduce to below 50.

16. Provision of Nurse

It is agreed that a qualified nurse shall be engaged where the forecast long term staffing levels for a project exceed 100 (one hundred) or when actual numbers exceed 100 notwithstanding that forecasts may have been below that level. The nurse shall commence duties when staffing levels reach (fifty) and shall terminate when levels reduce to 50 (fifty). The requirement for a provision of a nurse shall be waived if the project is adjacent to a hospital with a public emergency department.

17. This agreement shall only apply to building contracts entered into on or tendered for on or after 1 January 1999.

18. Application to Apprentices

The rates prescribed in this agreement shall apply to all apprentices commencing employment after 31 December 1997 in the same proportion as the percentage of a tradesperson’s wage rate as prescribed by the appropriate award or Enterprise Bargaining Agreement, being—

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

CRANE ALUMINIUM SYSTEMS BALCATT ENTERPRISE AGREEMENT 2000.

No. AG3 of 2001.

2001 WAIRC 01911

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES

THE AUTOMOTIVE, FOOD,
METALS, ENGINEERING, PRINTING
AND KINDRED INDUSTRIES UNION
OF WORKERS—WESTERN
AUSTRALIAN BRANCH,
APPLICANT

v.

CRANE ENFIELD PTY LTD T/A
CRANE ALUMINIUM SYSTEMS,
RESPONDENT

CORAM

COMMISSIONER J F GREGOR

DELIVERED

MONDAY, 29 JANUARY 2001

FILE NO

AG 3 OF 2001

CITATION NO.

2001 WAIRC 01911

Result

Registered Agreement

Order.

HAVING heard Mr T Kucera (of Counsel) and with him Mr J Craig on behalf of the Applicant and Mr J Aguino 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 two parties lodged in the Commission on 4 January 2001 entitled Crane Aluminium Systems Balcatta Enterprise Agreement 2000 be registered as an Industrial Agreement.

(Sgd.) J. F. GREGOR,

[L.S.]

Commissioner.

CRANE ALUMINIUM SYSTEMS BALCATT
ENTERPRISE BARGAINING AGREEMENT 2000

Schedule.

1.—PREAMBLE

The parties to this Agreement recognise the need—

- (a) to remunerate employees fairly for their contribution to the Company and to improve the quality of working life and to reward employees for productivity gains; and
- (b) to improve the productivity, efficiency and flexibility of the business to provide excellent customer service.

2.—APPLICATION

The Agreement applies to Crane Enfield Pty Ltd trading as Crane Aluminium Systems at 12 Cressall Road, Balcatta, WA 6021 and to all current and future employees who are employed under the terms of the Metal Trades (General) Award No 13 of 1965, who are or are eligible to become members of the Automotive, Food, Metals, Engineering, Printing and Kindred Union. At the time of the making of the Agreement there are an estimated 11 employees to be covered by the Agreement.

3.—PARTIES BOUND

Crane Enfield Pty Ltd trading as Crane Aluminium Systems at 12 Cressall Road, Balcatta, WA 6021.

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch (the Union).

Employees of Crane ALUMINIUM Systems currently employed in manufacturing and distribution occupations that are covered by the Metal Trades (General) Award No 13 of 1965.

Its terms and conditions apply only to employees of Crane Aluminium Systems, Balcatta and have no necessary relevance to similar operations in the same industry or operations in any other industry.

4.—PERIOD OF OPERATION

This Agreement shall operate for a period of 18 months from 1 November, 2000.

5.—RENEWAL OF AGREEMENT

The parties agree to commence discussions for a subsequent agreement at a time no less than 3 months prior to the expiry date of this Agreement.

6.—RELATIONSHIP TO PARENT AWARD

(a) This Agreement should be read in conjunction with the Metal Trades (General) Award No 13 of 1965.

(b) Where there is any inconsistency between the Agreement and the Award this Agreement shall prevail to the extent of such inconsistency.

7.—WAGE INCREASES DURING THIS AGREEMENT

The following wage increases will apply during this Agreement—

- A 4% base wage increase from 1 November, 2000
- A 2% base wage increase from 1 November, 2001

8.—NO EXTRA CLAIMS

It is a term of this Agreement that the Company, the Union, and all employees bound by this Agreement will not pursue any extra claims, Award or over Award for the life of this Agreement except where consistent with a National Wage determination.

9.—WPA'S, AWA'S

The Company agrees not to introduce any form of individual contracts or collective WPA's to existing or new employees during the course of this Agreement.

10.—COMMITMENT TO PERMANENT EMPLOYEES

The Company affirms its commitment to a permanent workforce. Both parties acknowledge that casual labour may be required during peak work periods or in the event of illnesses within the Company's permanent workforce. In meeting this requirement, the Company affirms that—

- No existing employee will lose their job due to the use of casual labour

- Casuals will be paid the proper rate as per this Agreement, plus the appropriate loading if applicable

11.—DISPUTE RESOLUTION PROCEDURE

(a) Where a question, dispute or difficulty arises the matter shall be initially discussed and resolved between the immediate supervisor, the employee and, if so desired, his/her Union delegate.

(b) If the matter remains unresolved after the process described in sub-clause (a) hereof has been followed, the Union delegate shall discuss and attempt to resolve the dispute with the Operations Manager.

(c) If still unresolved, the matter shall be referred to a Senior Management Representative and the full-time Union Official. The parties shall then initiate steps to resolve the grievance as soon as possible.

(d) While the steps outlined in sub-clauses (a), (b) and (c) hereof are being followed, industrial action shall not be taken. A minimum of seven (7) days is allowed to undertake discussion as outlined in (a), (b) and (c) to solve the dispute.

(e) If, after step (c), the matter is not resolved, either party may refer the matter to the Western Australian Industrial Relations Commission.

(f) The parties will give each other earliest possible notice of any issue or problem which has the potential of giving rise to a question, dispute or difficulty. All relevant facts will be recorded and clearly identified throughout these procedures.

(g) Bans or limitations will not be placed on the performance of work while procedures outlined in this Clause are being followed and all actions shall be in accordance with Safe Working Practice and consistent with established custom and practices of the Enterprise.

(h) Before referring the question, difficulty or dispute to the Commission the parties are to confer amongst themselves in an attempt to resolve the matter.

12.—HOURS OF WORK

It is agreed that employees will work a 38 hour week and that the application of these hours may be changed only by agreement. The current spread of hours is 6.00 a.m. to 6.00 p.m. and it is acknowledged that the current hours of work are eight (8) hours per day, Monday to Thursday, and six (6) hours on Friday (1.00 p.m. finish).

It is recognised by all parties that the current six (6) hour day on Friday can have a detrimental impact on customer service. Consequently, the employees agree to more flexible working hours, which will include some employees working up to 5.00 p.m. on Friday on a rostered basis. To facilitate this a weekly schedule will be prepared by the Distribution Manager or his deputy.

In addition and subject to demand, the employees commit to working a reasonable amount of overtime, i.e. 4 to 5 hours per week.

13.—INCOME PROTECTION INSURANCE

The Company agrees to implement a process of payroll deduction to facilitate payment for employees wishing to avail themselves of IUS Income Protection insurance.

14.—PRODUCTIVITY MEASURES

The parties to this Agreement recognise the need for an ongoing commitment to skill development, efficiency, productivity and the competitiveness of the business.

To this end the parties agree to the establishment of Key Performance indicators to be measured during the course of this Agreement and used as the basis for a productivity matrix that may be incorporated into the next EBA. A consultative committee comprising two (2) members of the management team and two (2) members elected by the employees will meet to establish, monitor, and review these measures.

15.—REDUNDANCY

Notwithstanding Clause 32A of the Award, in the event an employee's employment is terminated as a result of redundancy, and in addition to any other redundancy provisions

that might be agreed, he/she will be entitled to receive severance pay in accordance with the following schedule—

<i>Period of Continuous Service</i>	<i>Severance Pay</i>
Less than 1 year	Nil
1 year but less than 2 years	4 weeks' pay at ordinary time earnings
2 years but less than 3 years	6 weeks' pay at ordinary time earnings
3 years but less than 4 years	7 weeks' pay at ordinary time earnings
4 years and over	2 weeks' pay at ordinary time earnings for each completed year of service

This payment would be capped at a maximum payment of twenty (20) weeks' ordinary time earnings.

In addition to the above payment, it is agreed that, in the event of redundancy, Long Service Leave eligibility will be calculated on the basis of pro rata after 5 years of continuous service.

16.—UNION TRAINING LEAVE

The Company agrees to provide the appointed union delegate, or deputy, paid leave to attend training on union related matters subject to the following conditions—

- (a) Training will be limited to five (5) days per annum, for the appointed delegate or deputy only.
- (b) A minimum of one (1) week's written notice will be given to the Company.
- (c) The union will consult with management to ensure that such training does not occur during peak operational periods.

17.—RECLASSIFICATION

The Company agrees to review the classification of workers performing duties outside of their defined category. This review will commence at a mutually agreeable date commencing no earlier than 1 August, 2001.

SIGNATORIES TO AGREEMENT

.....Signed.....
 Signed for and on behalf of Crane Enfield Pty Ltd
 t/a Crane Aluminium Systems
 Date: 5/12/00

.....Signed..... *Common Seal*
 Signed for and on behalf of The Automotive, Food, Metals,
 Engineering, Printing and Kindred Industries Union of
 Workers—Western Australian Branch
 Date: 02/01/01

EDUCATION DEPARTMENT OF WESTERN AUSTRALIA MISCELLANEOUS EMPLOYEES ENTERPRISE BARGAINING AGREEMENT 2000.

No. AG 1 of 2001.

2001 WAIRC 01989

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

PARTIES	MINISTER FOR EDUCATION & OTHER, APPLICANT
	v.
	(NOT APPLICABLE), RESPONDENT
CORAM	COMMISSIONER S J KENNER
DELIVERED	FRIDAY, 19 JANUARY 2001
FILE NO/S	AG 1 OF 2001
CITATION NO.	2001 WAIRC 01989

Result	Registration of Agreement.
Representation Applicant	Ms L O'Brien
	Ms S Jackson on behalf of ALHMWU
Respondent	

Order.

HAVING heard Ms L O'Brien on behalf of the applicant and Ms S Jackson on behalf of the Australian Liquor, Hospitality and Miscellaneous Workers' Union, Western Australian Branch and by consent the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

- (1) THAT the Education Department of Western Australia Miscellaneous Employees Enterprise Bargaining Agreement 2000 as filed in the Commission on 2 January 2001 in the terms of the following schedule be and is hereby registered as an industrial agreement.
- (2) THAT the Education Department of Western Australia (Education Assistants—ALHMWU) Enterprise Bargaining Agreement 1998, AG 296 of 1996 be and is hereby cancelled.

[L.S.] (Sgd.) S. J. KENNER,
 Commissioner.

Schedule.

PART 1.—APPLICATION OF AGREEMENT

1.—TITLE

This agreement shall be known as the Education Department of Western Australia Miscellaneous Employees Enterprise Bargaining Agreement 2000.

2.—ARRANGEMENT/INDEX

PART 1.—APPLICATION OF AGREEMENT

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64 SIGNATURE OF PARTIES TO AGREEMENT

3.—PARTIES BOUND

The parties to this Agreement are the Minister for Education and the Australian Liquor, Hospitality and Miscellaneous Workers' Union, Western Australian Branch.

4.—SINGLE BARGAINING UNIT

4.1 This Agreement has been negotiated through a Single Bargaining Unit (SBU).

4.2 The SBU comprises representatives from the Education Department of Western Australian and the Union.

5.—DURATION

5.1 This Agreement takes effect from the date upon which it is registered and shall remain in force for 12 months after the date of registration.

5.2 Upon expiry, the Agreement will continue until replaced. The parties shall meet at least 3 months prior to its expiry to negotiate a replacement Agreement. The parties aim to complete a replacement Agreement 1 month prior to the expiry of this Agreement.

6.—RELATIONSHIP TO AWARD AND PREVIOUS AGREEMENTS

6.1 This Agreement shall replace the following Agreement, which had application to the parties to this Agreement prior to the registration of this Agreement—

- Education Department of Western Australia (Education Assistants—ALHMWU) Enterprise Bargaining Agreement 1998.

6.2 This Agreement shall be read in conjunction with the—

- Miscellaneous Government Conditions and Allowances Award No A4 of 1992;
- Teachers' Aides Award No R4 of 1979;
- Cleaners and Caretakers (Government) Award No 32 of 1975;

- Child Care Workers (Education Department) Award No A20 of 1984;

- Children Services (Government) Award 1989—Award No. A29 of 1985;

- Catering Employees and Tea Attendants (Government) Award 1982;

- Gardeners (Government) Award No A16 of 1983, and;

- Cleaners and Caretakers (Government) Award, 1975 No. 32 of 1975 and Gardeners (Government) Award No. A16 of 1983—Commission in Court Session Order, 20 April 1998 (No. CR 168 of 1996).

6.3 The conditions prescribed in this Agreement shall, to the extent of any inconsistency, prevail over the terms prescribed in the above listed Awards and Order.

7.—SCOPE OF AGREEMENT

7.1 This agreement shall apply to the Australian Liquor, Hospitality and Miscellaneous Workers' Union, Western Australian Branch, its members and those eligible to be members, who are employed in the Education Department of Western Australia.

7.2 It is estimated that 6,600 employees will be covered by this Agreement.

8.—NO FURTHER CLAIMS

This Agreement incorporates past productivity to the date of registration. Except by agreement between the parties, no further claims shall be made during the term of this Agreement.

9.—ALIGNMENT OF INDUSTRIAL AGREEMENTS

It is the intention of the parties to this Agreement to work towards an Enterprise Bargaining Agreement that has broader application to the Department. In particular, the Union will participate in a Single Bargaining Unit with the Civil Service Association Inc.

10.—AUDIT 4% SECOND TIER AND 1989 SEP

The parties agree that matters arising from previous industrial agreements or award changes emanating from the "Restructuring and Efficiency Principle" of 1987, and the Structural Efficiency Principles of the 1988 and 1989 National and State Wage Cases shall not be counted when considering the productivity benefits and salary improvements arising from this Agreement.

11.—PREVENTION OF DISCRIMINATION

11.1 It is the intention of the parties to this Agreement to achieve the principles of the Equal Opportunity Act 1984 by helping to prevent and eliminate discrimination and harassment on the basis of race, sex, marital status, pregnancy, impairment, religious or political conviction, age, and family responsibility or family status. The parties recognise that achieving these principles may require differential treatment of specific individuals and/or groups in circumstances provided for under the Act.

11.2 Accordingly, in fulfilling their obligations the parties will make every endeavor to ensure that neither the award and this Agreement's provisions nor their operation are directly or indirectly discriminating in their effects.

11.3 All employees have an obligation not to engage in or condone any behaviour, which could be deemed to be discriminatory, including in the provision of educational services.

11.4 Employees engaging in discrimination or harassment on the grounds of gender, sexuality, impairment or race will be subject to disciplinary action.

12.—DEFINITIONS

12.1 In this Agreement unless otherwise specified—

"Agreement" means the Education Department of Western Australia Miscellaneous Employees Enterprise Bargaining Agreement 2000.

"Department" means the Education Department of Western Australia.

"Employee" means, for the purpose of this Agreement, those employees referred to in Clause 7—Scope.

"Employer" means the Minister for Education, or successor.

“Government” means the State Government of Western Australia.

“Minister” means the Minister or Ministers of the Crown responsible for the administration of the Department.

“Union” means the Australian Liquor, Hospitality and Miscellaneous Workers’ Union, Western Australian Branch.

“WAIRC” means the Western Australian Industrial Relations Commission.

PART 2.—AWARD CONSOLIDATION

13.—CONSOLIDATION OF AWARDS

13.1 The parties agree that it is desirable for all employees covered by this Agreement to be employed pursuant to one award and industrial agreement with, where possible, common conditions of employment.

13.2 The parties aim to complete the common award/agreement within 12 months of the registration date of this Agreement. Notwithstanding, it is the intention of the parties to aim to complete the classification structure by 31 July 2001.

13.3 The parties seek to have a common classification structure, wherever possible, aligned to the *Government Officers, Salaries’ Allowances and Conditions Award (1989)* and *Education Department Ministerial Officers’ Salaries Allowances and Conditions Award 1983*. The parties agree that a common classification structure is premised upon employees working a 32.50/37.50 hour week, examination of the absorption of skill and disability based allowances currently paid to employees, and common accrual of leave entitlements for all employees.

13.4 The parties agree to develop a timetable to ensure the process is concluded by a suitable date for implementation in a replacement industrial agreement. To ensure agreed timelines are adhered to, the parties will seek the assistance of the Commission to oversee the process. In particular the parties shall report to the Commission each quarter on, or around the following dates—

- 31 January 2001
- 30 April 2001
- 31 July 2001
- 31 October 2001

13.5 Where the parties are unable to reach agreement on issues pertaining to the development of the consolidated Award/Agreement the assistance of the Commission shall be sought in accordance with the following—

- Three months prior to the expiry of this Agreement the parties agree to embark upon a process of conciliation to attempt to resolve issues in dispute only.
- Issues that are unable to be resolved via conciliation will be referred to arbitration for final determination. It is the intention of the parties to have any arbitration process completed prior to the expiry of the Agreement.
- The parties agree to cooperate in a process which minimizes the “content of any arbitration”. Arbitration shall be restricted to issues which are in dispute.
- Nothing in this clause prevents the parties from appointing a facilitator to assist in the development of a common award/agreement at any time throughout the duration of this Agreement.

13.6 The parties agree that the implementation of the all initiatives associated with the development of a consolidated award and industrial agreement shall occur upon the registration of a replacement enterprise agreement. The implementation of a new classification structure shall not precede the finalisation of all the terms and conditions of employment for these employees.

PART 3.—PRODUCTIVITY IMPROVEMENTS & REFORM INITIATIVES

14.—OBJECTIVES OF PRODUCTIVITY IMPROVEMENT

14.1 The Education Department’s mission is to ensure that students develop the understandings, skills and attitudes relevant to individual needs, thereby enabling them to fulfil their potential and contribute to the development of our society.

14.2 All staff strive for excellence in learning and teaching and are committed to maximizing the educational achievements of all students and the maintenance of an appropriate learning and teaching environment.

15.—STRATEGIES & INITIATIVES DEVELOPED TO ACHIEVE OBJECTIVES

15.1 The parties are committed to the development and implementation of a broad agenda of initiatives designed to increase efficiency and effectiveness of program and service delivery of the Education Department.

15.2 The parties are committed to the development and implementation of productivity improvements which include, but are not limited to—

- Customer focus;
- Changes to work practices;
- Continuous improvement;
- Review of, and implementation of, flexible application of employment conditions;
- Improvement of the management of staff performance;
- Current staffing practices; and
- Application of new technology.

16.—REFORM INITIATIVES

16.1 The parties agree that change will be implemented through a gradual process which ensures that individual employees are not disadvantaged and is consistent with merit and equity principles.

16.2 The parties acknowledge that consultation with employees will occur with respect to school based decisions which directly affect them.

16.3 The parties agree to progress these workplace reforms in accordance with the terms of this Agreement, which is expected to deliver significant enhancement to the efficiency and effectiveness of school operations in the medium to long term.

16.4 The major initiatives are outlined below in clauses 17-22.

17.—FLEXIBLE WORKING HOURS INITIATIVE

17.1 Employees covered by this Agreement may agree to work flexible hours where these are implemented at the school site, and where;

- (a) an improved curriculum can be offered as a result; or more effective and efficient use of resources occurs;
- (b) consultation has occurred at a school level involving all stakeholders, including the Union, school decision making groups, parents, students and whole of school staff;
- (c) issues such as duty of care, health, safety and welfare, equity and other legislative requirements have been allowed for;
- (d) workload, career aspirations and family circumstances have been allowed for;
- (e) individual circumstances have been fully and reasonably considered; and
- (f) the distribution of hours is equitable.

17.2 Specifically excluded from these arrangements are longer working hours, overtime and split shifts except where provided for in the relevant award.

17.3 Arrangements for working of flexible hours as provided for in this clause shall be subject to the agreement of an employee. No employee shall be coerced into working flexible hours.

17.4 Notwithstanding the above, where it is considered necessary to provide more economic operations, the Director-General may authorize the operation of alternative working arrangements in a school. The continuing operation of any alternative working arrangements, so approved, will depend on the Director-General being satisfied that the efficient functioning of the school is being enhanced by its operation.

17.5 The parties agree that employees may, by agreement with all parties, to meet the needs of individual Remote Teaching Service schools, vary the school year and hours per day to

take into account educational, cultural, climate and local factors. The Principal will negotiate school hours and days of attendance and the employees will be consulted and have a choice of undertaking these changes without being coerced into taking the changes. The total hours worked in any one year will still equal the total hours that would have been worked if the school year had not been varied by this agreement.

18.—MULTISKILLING INITIATIVE

18.1 The parties are committed to allowing employees to be deployed in a way that will best address the needs of the worksite. Employees agree to carry out such duties as are within the limits of the employee's skills, competencies and training. This could include the allocation of specific duties and/or temporary secondment to other positions in the worksite.

18.2 The parties to this Agreement will develop worksite multiskilling for employees and such development will include the following—

- (a) objective(s) and guidelines for the multiskilled position;
- (b) boundaries of the position;
- (c) rosters of work
- (d) lines of accountability;
- (e) adjustment, if any, to normal work; and

18.3 The multiskilling proposal should not compromise any duty of care or occupational health and safety standards or requirements.

19.—PROFESSIONAL AND CAREER DEVELOPMENT INITIATIVE

19.1 Professional and Career Development will be based on a focus on both current and future job needs, career path planning, recognition of each employee's prior learning and building on this through the acquisition of new skills. It is agreed that accredited training is important to the development of employee skills and that relevant training shall be accessible wherever practicable.

19.2 Employees will be provided with opportunities for appropriate training and development during school hours (where applicable).

19.3 Each employee's prior learning will be recognized and built upon through the acquisition of new skills. Accredited training shall be used wherever possible.

19.4 Principals will ensure that all employees party to this Agreement have equitable access to Professional Development through the provisions of the School Grant in any school year.

20.—PERFORMANCE MANAGEMENT INITIATIVE

20.1 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.

20.2 Performance Management 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.

20.3 The objective of the Performance Management Agreement is to—

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

20.4 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.

20.5 Each worksite will undertake the following procedures in regard to the operation of Performance Management—

- (a) That each worksite will be required to establish a plan to show the process and time line to implement Performance Management for all employees.
- (b) That worksites will be required to provide adequate resourcing to ensure all employees have appropriate training to undertake performance management.
- (c) Worksites will ensure ongoing support for the professional growth and development of employees
- (d) All staff will need to take part in school decision making and be part of the performance management and professional development process.
- (e) Initial contact between the Worksite Manager and the employee will be on a one-to-one basis with the option of bringing in an independent representative when and if the need arises at any stage hereafter of the performance management process.
- (f) Information regarding individual performance management should be current for a two year period only with the information being non-transferable upon commencement of a new position either internally or externally. The Education Assistant has the option to continue current performance management or undertake new performance management with the commencement of a new Worksite Manager.
- (g) It is the responsibility of the Worksite Manager to provide accurate and concise written feedback to the employees after each meeting within five (5) working days.

20.6 The parties agree that this clause shall only be applicable to Education Assistants.

21.—STAFF MEETINGS INITIATIVE

21.1 Employees shall, if required, attend whole of staff meetings outside of student instructional time.

21.2 Such meetings shall be held on the following basis—

- (a) there will be no suspension of the instructional program for the purpose of conducting whole of staff meetings;
- (b) a minimum of two whole of staff meetings per term will be held, the length of these meetings will be on a needs basis;
- (c) the agenda, venue and timing of meetings will be determined in full and proper consultation with all staff of a school. Equity considerations such as family responsibility, professional and personal development commitments and flexible hours arrangements shall be considered in the decision making process. The final responsibility to ensure meetings occur rests with the Principal;
- (d) whole of staff meetings may include discussion groups, workshops and sub-committee meetings;
- (e) meetings that do not involve the whole of staff may be accommodated during instructional time, where they can be timetabled, and subject to a school's capacity to enable staff to attend, as long as the meeting does not infringe on the school's instructional program, and;
- (f) staff who do not work on the day of or the time of the staff meeting cannot be required to attend but may choose to do so.

21.3 The parties agree that this clause shall only be applicable to Education Assistants.

22.—GARDENING REFORM INITIATIVES

22.1 The Department and the Union have developed and agreed to the following reform initiatives to achieve efficiencies in the provision of gardening services by allowing greater flexibility and productivity in the delivery of these services.

22.2 Gardening efficiencies will be achieved by—

- (a) continuing the implementation of the automatic irrigation program and the associated system maintenance;
- (b) providing a conservation focus to the gardening service through the implementation of utilities management strategies, and;
- (c) undertaking a review of the gardening formula.

PART 4.—TYPES OF EMPLOYMENT

23.—GENERAL EMPLOYMENT

23.1 The employer may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training, including work, which is incidental or peripheral to the employee's main tasks or functions.

23.2 A person may be appointed full time or part time—

- (a) on a fixed term, or
- (b) permanent basis.

23.3 A person may be appointed on a casual basis.

24.—PERIOD OF PROBATION

24.1 All employees appointed by the employer shall initially be employed on a probationary period not exceeding 3 months, unless otherwise determined by the Chief Executive Officer.

24.2 At any time during the period of probation the employer may annul the appointment and terminate the services of the employee by the giving of one week's notice or payment in lieu thereof.

24.3 Prior to the expiry of a probationary period of employment,

- (a) the appointment shall be confirmed, or
- (b) the employee shall remain on probation for a further period as determined by the employer, but shall not exceed a further 3 months, or
- (c) the appointment shall be terminated for unsatisfactory performance.

25.—CASUAL EMPLOYMENT

25.1 Definition

A casual employee shall mean an employee engaged by the hour for a period not exceeding 4 weeks in any period of engagement, as determined by the employer.

25.2 Conditions of Employment

Casual employees shall receive a 20% loading in lieu of all leave, allowances and other entitlements.

25.3 Termination of Casual Employees

The employment of a casual employee may be terminated at any time by the casual employee or the employer giving to the other, one hour's prior notice. In the event of an employer or casual employee failing to give the required notice, one hour's wages shall be paid or forfeited.

26.—FIXED TERM EMPLOYMENT

26.1 The employer may employ persons on a fixed term contract.

26.2 Employees appointed for a fixed term shall be advised in writing of the terms of the appointment and such advice shall, wherever possible, specify the dates of commencement and cessation of employment.

27.—PART TIME EMPLOYMENT

27.1 Part time work is defined as work that is regularly undertaken for less than the designated full time hours.

27.2 Part time employees shall be entitled to the same entitlements as a full time employee on a pro rata basis in accordance with hours worked.

27.3 At the time of engagement the employer and the regular part time employee will agree in writing, on a regular pattern of work, specifying at least the hours worked each day, which days of the week the employee will work and the actual starting and finishing times each day.

28.—PERMANENCY AND TENURE

28.1 The Education Department is committed to the engagement of employees on a permanent basis. Fixed term and casual contracts will only be used to the extent that the position is unable to be filled on an ongoing basis due to it being—

- For a defined and limited program of work, or
- A vacancy due to leave of absence.

28.2 Fixed term contracts, subject to the above caveat, will be for the maximum possible duration.

28.3 The parties agree to explore the extent to which access to permanency can and should be extended and applied, and the tenure of fixed term contracts increased.

28.4 A joint committee shall be formed for this purpose, and to examine the mechanisms for monitoring compliance with relevant policies and shall commence meeting within a month of the date of registration of this Agreement. Agreed outcomes will be implemented.

PART 5.—CATERING AND TEA ATTENDANTS

In addition to the terms and conditions of employment contained within this Agreement, the provisions provided in this Part shall apply to persons governed by the *Catering Employees and Tea Attendants (Government) Award 1982*.

29.—HOURS

29.1 Effective from the registration date of this Agreement the ordinary hours of work shall continue to be an average of 38 per week provided that ordinary hours are worked within a daily spread of 12 hours. Any daily spread of ordinary hours beyond 12 shall only be by agreement of the employee.

29.2 This provision shall render subclause 8(1)(d) of the *Catering Employees and Tea Attendants (Government) Award 1982 No. A34 of 1981* obsolete.

30.—UNIFORMS AND LAUNDERING

Effective from the registration date of this Agreement, employees shall no longer be paid an allowance, as outlined in clause 27—Uniforms and Laundering of the parent Award, for laundering.

31.—PROTECTIVE CLOTHING

Effective from the registration date of this Agreement, employees shall no longer be paid an allowance, as outlined in clause 28(1)—Protective Clothing of the parent Award, for washing dishes, or otherwise handling detergents, acids, soaps or any other injurious substances.

32.—EMPLOYEES EQUIPMENT

Effective from the registration date of this Agreement, employees shall no longer be paid an allowance, as outlined in clause 29—Employee's Equipment of the parent Award, for the supply of knives.

33.—TRAVELLING FACILITIES

Effective from the registration date of this Agreement, employees shall no longer be paid an allowance, as outlined in clause 30—Travelling facilities of the parent Award, for conveyance to and/or from work.

34.—PART TIME EMPLOYEES

Effective from the registration date of this Agreement, employees shall no longer be paid an allowance, as outlined in clause 12—Part Time Employees of the parent Award, for part time work. Part time employment shall be in accordance with clause 27—Part time Employment of this Agreement.

35.—SALARIES

All employees governed by this award shall receive an additional 15% wage increase upon the registration of this Agreement.

36.—SERVICE PAY

36.1 Effective from the registration date of this Agreement employees shall no longer receive an allowance premised upon years of service as provided for in clause 22 (2) of the parent Award.

36.2 Allowances provided for in clause 22(2) of the parent Award shall be included within the classification structure for employees as outlined in clause 43—Wage Increases, and form part of the employees base salary upon which future wage increases shall be based.

PART 6.—EDUCATION ASSISTANTS

37.—HOURS OF WORK

37.1 The minimum period of engagement on any one day shall be 2 hours and the employee shall receive a minimum payment for two hours whether the two hours are worked or not.

37.2 For the term of this Agreement, 32.5 hours per week shall be considered as the hours for a full time position for an employee employed under the *Teachers' Aides' Award, 1979*.

37.3 Any variations to the hours of work for Education Assistants shall be in accordance with the joint policy developed by the parties "Education Assistants Variation of Employment Levels".

38.—PROGRESSION

38.1 Education Assistants shall initially be employed at Level 1.1 of the Classification Structure.

38.2 Where an Education Assistant resumes in the same role after a break in service of less than 182 days, the employee will commence on their previous rate.

38.3 Education Assistants shall progress through Level One and Level Two of the classification structure by annual increments subject to satisfactory performance. That is an Education Assistant, having completed 12 months at Level One, 4th year of service, shall progress to Level Two, 1st year of service and subsequently, 2nd, 3rd and 4th years of service, subject to satisfactory performance.

38.4 The mechanism to be applied to progression from 1 January, 2000 shall be

- (a) An Education Assistant will make an application to their relevant school principal for progression in the school year in which they will complete 12 months service at Level One, 4th year. Such application should be made no later than 22 November in any year.
- (b) The relevant school principal shall confirm that the Education Assistants work performance is satisfactory and he/she is capable of exercising the responsibilities and carrying out the duties of a Level Two Education Assistant.
- (c) The principal shall forward the appropriate information to the Department's Staffing Directorate for implementation.
- (d) Nothing in this procedure shall prevent an Education Assistant from utilising the grievance procedure as outlined in the Enterprise Agreement where the Principal's assessment is disputed.

The process as outlined above shall be the only mechanism by which an Education Assistant may progress from Level One to Level Two classification.

38.5 An Education Assistant who obtains a recognised qualification by the parties to this Agreement shall progress an increment point. This provision shall only be applicable upon the completion of one qualification.

38.6 Education Assistants who obtain a recognised qualification shall move to the next increment point in that level from the first pay period on or after presenting that qualification to the employer. Progression shall not occur any earlier from the date of presentation of the qualification.

38.7 Where an Education Assistant has obtained a recognised qualification and has moved to the next increment point, the employee shall continue to be required to complete four years service within Level One before progressing to Level Two.

38.8 Education Assistants who progress to Level Two will carry out the functions and duties as prescribed by the Role Statement for Level 2.

38.9 Effective from the registration date of this agreement all new employees will have an increment date in accordance with their anniversary dates. Employees who currently have an increment date of 1 January will retain that date. Notwithstanding, all anniversary increment dates shall be changed to reflect periods that are not considered to be good service.

PART 7.—WAGES & ASSOCIATED ALLOWANCES

39.—ANNUAL LEAVE LOADING

39.1 Employees entitled to annual leave shall receive an annual leave loading.

39.2 The annual leave loading shall be paid as a lump sum amount in the first pay period of December. This will be an amount equivalent to the loading which would have been paid had the employee taken all the leave accruing for that calendar year.

39.3 The parties will negotiate arrangements for the payment of all accrued annual leave loading (where applicable)

prior to 1 January 2001, to enable this payment to be made within six months of the commencement of this agreement.

40.—DEFERRED SALARY SCHEME

40.1 Employees may apply to elect to receive over a four-year period, 80% of the salary they would otherwise be entitled to receive in accordance with Clause 43—Wage Increases of this Agreement.

40.2 On completion of the 4th year, the employee will not be required to attend for the next year and will receive an amount equal to 80% of the salary entitled to in the fourth year of deferment.

40.3 The four years of deferred salary need not be consecutive and an employee may withdraw from deferring their salary at any time.

40.4 Where employee's complete four years of deferred salary and are not required to attend duty in the following year, the period of non-attendance shall not constitute a break in service but not count as service for purposes of this Agreement.

41.—HIGHER DUTIES ALLOWANCE

41.1 An employee who is directed by the Chief Executive Officer to act in an office which is classified higher than the employee's own substantive office and who performs the full duties and accepts the full responsibility of the higher office for a continuous period of five (5) consecutive working days or more, shall, subject to the provisions of this clause, be paid an allowance equal to the difference between the employee's own salary and the salary the employee would receive if the employee was permanently appointed to the office in which the employee is so directed to act.

41.2 Where the full duties of a higher office are temporarily performed by two (2) or more employees they shall each be paid an allowance as determined by the Chief Executive Officer.

41.3 An employee who is directed to act in a higher classified office but who is not required to carry out the full duties of the position and/or accept the full responsibilities, shall be paid such proportion of the allowance provided for in subclause 41.1 of this clause as the duties and responsibilities performed bear to the full duties and responsibilities of the higher office. Provided that the employee shall be informed, prior to the commencement of acting in the higher classified office, of the duties to be carried out, the responsibilities to be accepted and the allowance to be paid.

41.4 The allowance paid may be adjusted during the period of higher duties.

41.5 Where an employee who has qualified for payment of higher duties allowance under this clause is required to act in another office or other offices classified higher than the employee's own for periods less than twenty consecutive working days without any break in acting service, such employee shall be paid a higher duties allowance for such periods: provided that payment shall be made at the highest rate the employee has been paid during the term of continuous acting or at the rate applicable to the office in which the employee is currently acting—whichever is the lesser.

41.6 Where an employee is directed to act in an office which has an incremental range of salaries such an employee shall be entitled to receive an increase in the higher duties allowance equivalent to the annual increment the employee would have received had the employee been permanently appointed to such office; provided that acting service with allowances for acting in offices for the same classification or higher than the office during the eighteen (18) months preceding the commencement of such acting shall aggregate as qualifying service towards such an increase in the allowance.

41.7 Where an employee who is in receipt of an allowance granted under this clause and has been so for a continuous period of twelve (12) months or more, proceeds on a period of approved leave; of not more than four (4) weeks, the employee shall continue to receive the allowance for the period of leave: This subclause shall also apply to an employee who has been in receipt of an allowance for less than twelve (12) months if during the employee's absence no other employee acts in the office in which the employee was acting immediately prior to proceeding on leave and the employee resumes in the office immediately on return from leave.

41.8 Where an employee who is in receipt of an allowance granted under this clause proceeds on a period of leave in excess of four (4) weeks, such employee shall not be entitled to receive payment of such allowance for the whole or any part of the period of such leave.

42.—SALARY PACKAGING

42.1 An employee may, by agreement with the employer, enter into a salary packaging arrangement in accordance with the Flexible Remuneration Packaging Scheme and Government Guidelines for Salary Packaging in the WA Public Sector as amended from time to time.

42.2 Salary Packaging is an arrangement whereby the entitlement under this Agreement, contributing towards the Total Employment Cost (as defined) of an employee, can be reduced by and substituted with another, or total benefit.

42.3 For the purposes 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—

- (a) The base salary;
- (b) Other cash allowances,
- (c) Non-cash benefits, e.g., superannuation, motor vehicle, etc;
- (d) Fringe Benefits Tax liabilities currently paid; and
- (e) Any variable components, performance based incentives (where they exist).

42.4 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.

42.5 The salary packaging arrangement must be cost neutral in relation to the total cost to the employer.

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

42.7 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.

42.8 In the event of significant increases in Fringe Benefits Tax liability or administrative costs relating to the arrangement under clause, the employee may vary or cancel a salary packaging arrangement.

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

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

42.11 The Disputes Settlement Procedure contained in this agreement shall be used as to resolve a dispute arising from the operation of this clause. Where such a dispute is not resolved, the matter by be referred by either party to the Industrial Relations Commission

43.—WAGE INCREASES

43.1 Employees will receive a 3% wage increase effective from the first pay period on or after the registration date of this Agreement.

43.2 Salaries shall be paid in accordance with the following tables—

CLEANERS AND CARETAKERS (GOVERNMENT) AWARD No. 32 of 1975

Classification	Current Weekly	Weekly + 3%
Level 1.1	452.21	465.78
Level 2.1	456.71	470.41
Level 2.2	460.51	474.32
Level 2.3	464.11	478.03
Level 3.1	464.51	478.45
Level 3.2	469.01	483.18
Level 3.3	473.81	488.02
Level 4.1	474.91	489.16
Level 4.2	479.01	493.38
Level 4.3	483.71	498.22

Classification	Current Weekly	Weekly + 3%
Level 5.1	488.51	503.17
Level 5.2	492.81	507.59
Level 5.3	497.21	512.13

The salary step within the classification level shall mean all service, irrespective of classification with the employer.

GARDENERS (GOVERNMENT) AWARD No. A16 of 1983

Classification	Current Weekly	Weekly + 3%
Level 2.1	463.71	477.62
Level 2.2	467.51	481.54
Level 2.3	471.01	485.14
Level 3.1	471.41	485.55
Level 3.2	475.91	490.19
Level 3.3	480.71	495.13
Level 4.1	481.91	496.37
Level 4.2	486.01	500.59
Level 4.3	490.71	505.43
Level 5.1	495.51	510.38
Level 5.2	499.81	514.80
Level 5.3	504.11	519.23
Level 6.1	530.51	546.43
Level 6.2	536.51	552.60
Level 6.3	541.51	557.76

The salary step within the classification level shall mean all service, irrespective of classification with the employer.

CATERING EMPLOYEES AND TEA ATTENDANTS (GOVERNMENT) AWARD 1982

Classification	Current Weekly	Weekly Rate Date of Registration
Tea Att Year 1	433.00	510.94
Year 2	438.57	517.51
Year 3	443.50	523.33
Kitchen Staff Year 1	433.00	510.94
Year 2	438.57	517.51
Year 3	443.50	523.33
Cook (other) Year 1	440.40	519.67
Year 2	445.97	526.24
Year 3	450.90	532.06
Cook (alone) Year 1	443.70	523.57
Year 2	449.27	530.14
Year 3	454.20	535.96
Cook (qualified) Year 1	461.20	544.22
Year 2	466.77	550.79
Year 3	471.70	556.60

The salary step within the classification level shall mean all service, irrespective of classification with the employer.

TEACHERS' AIDES AWARD No. R4 of 1979 (EDUCATION ASSISTANTS)

Classification	Current Weekly	Hourly (32.50)	Weekly + 3%	Hourly + 3%
Level 1.1	398.45	12.26	410.40	12.62
Level 1.2	410.15	12.62	422.45	12.99
Level 1.3	422.17	12.99	434.84	13.37
Level 1.4	433.87	13.35	446.89	13.75
Level 2.1	446.22	13.73	459.61	14.14
Level 2.2	459.55	14.14	473.34	14.56
Level 2.3	468.97	14.43	483.04	14.86
Level 2.4	482.95	14.86	497.44	15.30
Level 3.1	499.85	15.38	514.85	15.84
Level 3.2	512.52	15.77	527.90	16.24
Level 3.3	525.85	16.18	541.63	16.66
Level 3.4	540.15	16.62	556.35	17.11
Classification	Current Weekly	Hourly (38)	Weekly + 3%	Hourly + 3%
Level 1.1	498.94	13.13	513.91	13.52
Level 1.2	513.38	13.51	528.78	13.91
Level 1.3	528.20	13.90	544.05	14.31
Level 1.4	542.64	14.28	558.92	14.70
Level 2.1	559.36	14.72	576.14	15.16
Level 2.2	570.76	15.02	587.88	15.47
Level 2.3	587.86	15.47	605.49	15.93
Level 2.4	604.96	15.92	623.11	16.39
Level 3.1	623.20	16.40	641.90	16.89
Level 3.2	639.54	16.83	658.72	17.33
Level 3.3	657.02	17.29	676.73	17.80
Level 3.4	675.64	17.78	695.90	18.31

CHILD CARE WORKERS (EDUCATION DEPARTMENT) AWARD No. A20 of 1984

The rates of pay for Child Care Workers shall be maintained at \$17.10 per hour.

PART 8.—PUBLIC HOLIDAYS & LEAVE OF ABSENCE

44.—DEFENCE FORCE TRAINING

44.1 Subject to departmental convenience, leave of absence may be granted by the Chief Executive Officer to an employee who is a volunteer member of the Defence Force Reserves or the Cadet Force for the purpose of attending a training camp, school, class or course of instruction subject to the conditions set out hereunder.

- (a) Application for leave of absence for the above reasons, shall, in all cases, be accompanied by evidence of the necessity for attendance. At the expiration of the leave of absence granted, the employee shall furnish a certificate of attendance to the Chief Executive Officer.
- (b) An employee who is a member of the Defence Force Reserves and the Cadet Force may only be granted leave for attendance at one camp of continuous training and one additional special school, class or course of instruction in the 12 month period.
- (c) On written application, an employee shall be paid salary in advance when proceeding on such leave.

44.2 Attendance at a Camp for Annual Continuous Obligatory Training

- (a) An employee may be granted leave for a period not exceeding 75 hours (10 days for teaching staffing) in full pay in any period of twelve months commencing on July 1, in each year.
- (b) If the Employee-in-Charge of a military unit certifies that it is essential for an employee to be at the camp in an advance or rear party, a maximum of 30 extra hours on full pay may be granted in the twelve-month period.

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

- (a) In addition to the leave granted under subclause 44.2 of this clause a period not to exceed sixteen calendar days in any period of twelve months commencing on July 1, in each year may be granted by the Chief Executive Officer, provided the Chief Executive Officer is satisfied that the leave required is for a special purpose, and not for a further routine camp.
- (b) In this circumstance, an employee may elect to utilise, where applicable, leave entitlements. However, if the leave is not taken from other leave, salary during the period shall be at the rate of the difference between the normal remuneration of the employee and the defence force payments to which the employee is entitled if such payments do not exceed normal salary. In calculating the pay differential, pay for Saturdays, Sundays, Public Holidays and special rostered days off is to be excluded, and no account is to be taken of the value of any board or lodging provided for the employee.
- (c) Leave without pay shall be granted if the defence force payments exceed the normal pay of the employee.

44.4 The provisions of this clause do not apply to casual employees.

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

45.—CANDIDATES FOR PARLIAMENT

45.1 State Parliament—

- (a) An employee who nominates as a candidate for election as a member of either House of Parliament of the State shall apply for leave to commence no later than the date on which nominations of candidates close and which shall end no earlier than the date on which the election is conducted.

(b) The employer shall approve leave for the employee and the leave shall be deducted from accrued annual leave or long service leave or be granted without pay.

(c) An employee who is not elected to the Parliament shall resume duty with the employer on the next working day following the date on which the approved leave expires.

(d) An employee who is elected to Parliament shall resign from his/her position with effect no later than the close of business on the last working day preceding the date on which the employee becomes entitled to receive the salary payable as a Member of Parliament.

45.1.1 Commonwealth Parliament—

(a) An employee who intends to nominate as a candidate for election as a member of either House of Parliament of the Commonwealth shall resign from his/her position before nomination.

(b) Where the employer is satisfied that an employee who—

- (i) resigned pursuant to (a) hereof;
- (ii) was a candidate in that election for Parliament, and
- (iii) was not elected at that election,

the employer may, on application by that person within one week of the declaration of the result of the election, re-appoint that person.

(c) A person re-appointed pursuant to (b) hereof shall be appointed on the same classification and at the same salary level that was paid immediately before the resignation took effect and shall be deemed to have continued in employment on leave without pay during the period from the day on which the resignation took effect, to and including the day immediately preceding the day the person was re-appointed.

46.—CLEARANCE OF ACCRUED ANNUAL LEAVE

46.1 The parties agree that the clearance of annual leave is an important element of effective workforce planning.

46.2 The parties agree that annual leave accrued prior to 1 January 2000 will be acquitted prior to 1 July 2002.

46.3 Managers shall not unreasonably refuse leave applications. Employees unable to take accrued leave before 1 July 2002 must negotiate an alternative date with their immediate supervisor.

47.—COMPASSIONATE/BEREAVEMENT LEAVE

47.1 Entitlement to bereavement

On the death of—

- (a) the spouse or defacto spouse of an employee;
- (b) the child or step-child of an employee
- (c) parent, parent-in-law or step parent of an employee; or
- (d) 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.

47.2 The days need not be consecutive.

47.3 Bereavement leave is not to be taken during a period of any other kind of leave.

47.4 An employees shall not be entitled to claim payment for compassionate leave on a day when that employee is absent on an Accrued Day Off.

47.5 An employee whilst on compassionate leave shall continue to accrue an entitlement to an Accrued Day Off.

48.—CULTURAL/CEREMONIAL LEAVE

48.1 An employee who is legitimately required to be absent from work for their tribal/ceremonial/cultural purposes shall be entitled to take long service leave, annual leave (where applicable) or leave without pay entitlements.

48.2 Ceremonial leave shall include leave to meet the employee's customs and traditional law and to participate in tribal/ceremonial/cultural activities.

48.3 The employee shall give the employer reasonable notice prior to the absence of the intention to take such leave and the length of the leave required

48.4 Ceremonial leave shall be available to but not limited to Aborigines and Torres Strait Islanders.

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

49.—EFFECT OF WORKERS' COMPENSATION ON LEAVE

49.1 Leave Accrual

Subject to the provisions of the State Government Wages Employees Long Service Leave Order, any period which exceeds 26 weeks in one continuous period during which an employee is absent on workers' compensation, shall not count as "service" for the purposes of accruing any form of leave entitlements.

49.2 Annual Increments

Except where a salary increment is payable according to age, any period of absence which exceeds 26 weeks in one continuous period during which an employee is absent on workers' compensation shall not count as service for the purpose of salary progression.

49.3 Sick Leave Credits

Where an employee suffers a disability within the meaning of Section 5 of the Workers' Compensation and Rehabilitation Act 1981 which necessitates that the employee be absent from duty, sick leave with pay shall be granted to the extent of sick leave credits held by the employee. In accordance with section 80(2) of the Workers' Compensation and Rehabilitation Act 1981 where the claim for Workers' Compensation is decided in favour of the employee sick leave credits are to be reinstated and the period of absence granted as sick leave without pay.

50.—EMERGENCY SERVICES

50.1 Leave for Emergency Services—

- (a) Subject to (b) hereof employees who are volunteer members of the State Emergency Services, the St John Ambulance Brigade or Bush Fire Association may be granted special leave with pay for absence from duty to attend an emergency.
- (b) The granting of such paid leave shall be subject to—
 - (i) The employee is not needed for the employer's own essential operations and/or emergency services, and;
 - (ii) The voluntary organisation requiring the employee's services certifies that the person is or was required for the period of paid leave.
- (c) The employer may approve leave to attend emergency service training or practice sessions on a leave without pay basis but any application for paid leave for this purpose will be considered on its merits.

51.—EMPLOYEE FUNDED EXTRA LEAVE

51.1 Subject to the approval of the Manager and relevant Director, an employee (excluding Education Assistants) may be entitled to an additional 4 weeks leave per annum in accordance with sub-clauses 2, 3, 4 and 5 below.

51.2 An employee may receive 48 weeks pay spread over the full 52 weeks of the year.

51.3 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.

51.4 The Department will ensure that superannuation arrangements and taxation effects are fully explained to the employee by the relevant agency.

52.—INTERNATIONAL SPORTING EVENTS LEAVE

52.1 Special leave with pay may be granted by the Chief Executive Officer to an employee chosen to represent Australia as a competitor or official, at a sporting event, which meets the following criteria—

- (a) it is a recognised international amateur sport of national significance; or

- (b) it is a world or international regional competition; and
- (c) no contribution is made by the sporting organisation towards the normal salary of the employee.

52.2 The Chief Executive Officer shall make enquiries with the Ministry of Sport and Recreation—

- (a) whether the application meets the above criteria;
- (b) the period of leave to be granted.

53.—FAMILY CARERS LEAVE

53.1 Use of sick leave

- (a) Employees covered by this agreement may, with the consent of the Department, use up to the equivalent of 5 days per year of accrued sick leave in accordance with this clause, to provide care for another person, subject to—
 - (i) the employee being responsible for the care of the person concerned; and
 - (ii) the person concerned being a member of their family.
- (b) The definition of family shall be as provided for in the WA Equal Opportunity Act 1984.
- (c) The employee shall, wherever practicable, notify the employer of the intention to take leave prior to the absence. This notification shall include the reasons for taking such leave and the estimated length of the leave. If it is not practicable for the employee to give prior notice of absence, the employee shall notify the employer by telephone of such absence.
- (d) The employee shall, if required, establish by production of a medical certificate or statutory declaration, the nature of the illness of the person concerned.

53.2 Other Leave for Family Purposes

An employee may elect, with the consent of the Department, to take unpaid leave, for the purpose of providing care to a family member who is ill or to take annual leave (where applicable) or long service leave in single day periods not exceeding five days in any calendar year at a time or times agreed between the employee and immediate supervisor.

54.—LEAVE WITHOUT PAY

54.1 Subject to the provisions of subclause 54.2 of this clause, the employer may grant an employee leave without pay for any period.

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

- (a) The work of the department is not inconvenienced; and
- (b) All other leave credits of the employee are exhausted.

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

54.4 All leave without pay granted under this clause;

- (a) does not count as good service; however
- (b) does not constitute a break in continuous service

55.—LOCAL GOVERNMENT LEAVE

55.1 Leave to attend Local Government Meetings—

An employee who is a local government councillor may be granted paid leave to attend regular council meetings and standing committee meetings held during working hours provided that in considering such an application the employer shall have regard for the convenience of such absence and shall not approve any such leave if any additional cost to the employer is or may be incurred.

56.—PARENTAL LEAVE

56.1 Definitions

"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 who is placed with the employee for the purposes of adoption, other than a natural child, step-child of the

employee or employee's spouse, or a child who has previously lived continuously with the employee for a period of six months or more.

"Employee" includes full time, part time, permanent and fixed term contract employees but does not include casual employees.

"Spouse" includes a defacto or former spouse, except in relation to the adoption of a child, which includes a defacto spouse but does not include a former spouse.

"Defacto Spouse" means a person who is co-habiting with another person as that person's spouse, although not actually married to that person.

"Replacement employee" is an employee specifically engaged to replace an employee proceeding on parental leave.

56.2 Eligibility for Parental Leave

- (a) An employee is entitled to a period of up to 52 consecutive weeks of unpaid parental leave in respect of:
 - (i) the birth of a child to the employee or the employee's spouse/partner; or
 - (ii) the placement of a child with the employee with a view to the adoption of the child by the employee.
- (b) An application for parental leave in respect of:
 - (i) The birth of a child shall be in the form approved by the employer and supported by a certificate of a registered medical practitioner stating the expected date of the birth of the child; or
 - (ii) with respect to adoption, the employee must produce to the employer either a statement from an adoption agency or other appropriate body of the presumed date of placement of the child with the employee for adoption purposes or a statement from the appropriate government authority confirming that the employee is to have custody of the child pending application for an adoption order.
- (c) Parental leave is to be available to only one employee (partner) at a time in a single unbroken period, except—
 - (i) where the employee applying for the leave is not giving birth to a child, then they may take one weeks leave at the birth of the child concurrently with parental leave taken by the pregnant employee; or
 - (ii) one weeks leave immediately after a child has been placed with them with a view to their adoption of the child.
 - (iii) Where both partners are employed by the employer, leave shall not be taken concurrently except under special circumstances and with the approval of the employer.
- (d) The entitlement to parental leave is reduced by any period of parental leave taken by the employee's spouse in relation to the same child where both partners are employed by the employer, except the period of one week's leave referred to in subsection 2(c).
- (e) An employee adopting a child under the age of five years shall be entitled to an unbroken period of up to three weeks parental leave at the time of placement of the child and a further period of parental leave up to a maximum of 52 weeks.
- (f) An employee seeking to adopt a child shall be entitled to take two days unpaid leave for the purpose of attending interviews or examinations 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. Where paid leave is available to the employee, the employer may require the employee to take such leave instead.
- (g) An employee proceeding on parental leave may in lieu of or in conjunction with parental leave, access

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, subject to the total amount of leave not exceeding 52 weeks.

- (h) Subject to subclause 2(g) and 3(a) of this clause, an employee on parental leave is not entitled to paid sick leave and other paid award absences.

56.3 Special Parental Leave

- (a) Where the pregnancy of an employee terminates after 28 weeks 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;
- (b) Parental leave applied for but not commenced, shall be cancelled where the pregnancy terminates other than by the birth of a living child
- (c) Where an employee is suffering from an illness not related to the direct consequences of the pregnancy, an employee may take paid sick leave to which she is entitled in lieu of or in addition to special parental leave.
- (d) Where a pregnant employee not then on parental leave suffers an illness related to her pregnancy, or is required to undergo a pregnancy related medical procedure, the employee may take any paid sick leave to which she is entitled, or such further unpaid leave for a period certified as necessary by a registered medical practitioner. The aggregate of all parental leave entitlements, including parental leave taken by a spouse, may not exceed 52 weeks.

56.4 Notice and Variation

- (a) The employee shall give not less than ten week's notice in writing to the employer of the date the employee proposes to commence parental leave, and stating the period of leave to be taken.
- (b) The employee will not be in breach of clause 4(a) if the failure to give the required period of notice is because of the birth occurring earlier than expected, the death of the mother of the child or spouse, other compelling circumstances or by the requirement of an adoption agency to accept earlier to later placement of a child.
- (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 that four weeks written notice is provided.
- (d) Where a female employee has given notice of her intention to take parental leave, other than for adoption, the minimum period of absence on parental leave shall commence six weeks before the expected date of birth and end six weeks after the day on which the birth has taken place. Where the employee provides a certificate of a registered medical practitioner certifying that she is fit to continue or resume work, the employer may approve of the employee taking parental leave for a period that is less than the prescribed minimum period.

56.5 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 employer may require the employee to take leave without pay for such period as is certified necessary by a registered medical practitioner.

56.6 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 the return to work of the employee on parental leave.

56.7 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 substantive position that the employee occupied immediately prior to proceeding on parental leave. Where an employee was transferred to a safe job pursuant to sub-clause (5) of this Clause, the employee is entitled to return to the substantive position occupied immediately prior to the transfer.
- (c) Where immediately before starting parental leave, an employee was acting in a position or performing duties on a temporary basis, subsection 7(b) of this clause applies only in respect of the position held by the employee immediately before taking the acting or temporary position.
- (d) Where the substantive 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.

56.8 Effect of Parental Leave on the Employment Contract

(a) Fixed Term Contract

An employee employed on 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. However, it shall not be taken into account in calculating the period of service for any purpose under the relevant award or this agreement.

(c) Conduct

For the period of Parental Leave the employee will not engage in any conduct inconsistent with his or her contract of employment

56.9 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.

56.10 Extended Parental Leave

- (a) Subject to all other leave entitlements being exhausted, employees will be entitled to apply for leave without pay following parental leave. This leave will be referred to as "leave without pay following parental leave".
- (b) Any period of leave without pay must be applied for and approved in advance and will be granted on a year by year basis for a maximum of two years. Where both parents are employees of the Department, the total period of leave without pay following parental leave will not exceed two years.
- (c) Where an employee has leave without pay following parental leave, the employee will return to employment to the same level but not necessarily to the same position.

57.—PORTABILITY OF ENTITLEMENTS

57.1 Definitions

"employer" is defined as the Minister for Education

"previous employer" is defined as an employer in the Public Service, as constituted pursuant to Section 34 of the *Public Sector Management Act 1994*, statutory authorities listed in Schedule 1 of the *Financial Administration and Audit Act 1985*, Houses of the Parliament of the State under the separate control of the President or Speaker or under their joint control, Health Education Council, Nurses Board of Western Australia and any Commonwealth instrumentality with whom the employee was employed immediately prior to becoming an employee of the employer.

"Commonwealth instrumentality" is defined as—

- (a) any department of the Australian public service;

- (b) any body constituted under an Act of the Parliament of the Commonwealth; or

- (c) any body subject to the administration of a Minister of the Crown in the right of the Commonwealth;

as the Minister for Education declares by notice in the Government Gazette to be a Commonwealth instrumentality for the purposes of this subclause.

57.2 Portability of entitlements from previous employer to the Education Department

The employer shall approve portability of pro rata long service leave held at the date the employee ceased employment with their previous employer, provided that—

- (a) the employee commences their employment with the employer no later than one week after ceasing their previous employment;
- (b) the employee was not paid out all or part of the accrued leave entitlements held at the time of ceasing that previous employment; and
- (c) the employee was not terminated by the previous employer for reasons, which did not require the previous employer to dismiss the employee without notice.

57.3 Credits

- (a) For the purpose of this subclause, service with the previous employer shall be converted into service by calculating the proportion that the service with the previous employer bears to a full qualifying period in the accordance with the provisions that applied in the previous employment and applying that proportion to a full qualifying period in accordance with the provisions of this subclause.
- (b) The employer may direct an employee to take the leave, accrued while working for their previous employer, and may determine the date on which such leave shall commence.

58.—WITNESS AND JURY SERVICE

58.1 Witness

- (a) An employee subpoenaed or called as a witness to give evidence in any proceeding shall as soon as practicable notify the manager/supervisor who shall notify the Chief Executive Officer.
- (b) Where an employee is subpoenaed or called as a witness to give evidence in an official capacity that employee shall be granted by the Chief Executive Officer leave of absence with pay, but only for such period as is required to enable the employee to carry out duties related to being a witness. If the employee is on any form of paid leave, the leave involved in being a witness will be reinstated, subject to the satisfaction of the Chief Executive Officer. The employee is not entitled to retain any witness fee but shall pay all fees received into Consolidated Revenue Fund. The receipt for such payment with a voucher showing the amount of fees received shall be forwarded to the Chief Executive Officer.
- (c) An employee subpoenaed or called as a witness to give evidence in an official capacity shall, in the event of non-payment of the proper witness fees or travelling expenses as soon as practicable after the default, notify the Chief Executive Officer.
- (d) An employee subpoenaed or called as a witness on behalf of the Crown, not in an official capacity shall be granted leave with full pay entitlements. If the employee is on any form of paid leave, this leave shall not be reinstated as such witness service is deemed to be part of the employee's civic duty. The employee is not entitled to retain any witness fees but shall pay all fees received into Consolidated Revenue Fund.
- (e) An employee subpoenaed or called as a witness under any other circumstances other than specified in subclauses 0 and 0 of this clause shall be granted leave of absence without pay except when the employee makes an application to clear accrued leave in accordance with award provisions.

58.2 Jury

- (a) An employee required to serve on a jury shall as soon as practicable after being summoned to serve, notify the supervisor/manager who shall notify the Chief Executive Officer.
- (b) An employee required to serve on a jury shall be granted by the Chief Executive Officer employee leave of absence on full pay, but only for such period as is required to enable the employee to carry out duties as a juror.
- (c) An employee granted leave of absence on full pay as prescribed in subclause 0 of this clause is not entitled to retain any juror's fees but shall pay all fees received into Consolidated Revenue Fund. The receipt for such payment shall be forwarded with a voucher showing the amount of juror's fees received to the Chief Executive Officer.

PART 9.—IMPROVING THE WORKING ENVIRONMENT

59.—IMPROVING THE WORKING ENVIRONMENT

59.1 The employer and Union acknowledge that a preventative approach to occupational health issues is critical to the maintenance of healthy workplaces.

59.2 During the life of this Agreement, the employer and Union will continue to develop programs and strategies to address the following areas—

- (a) reduction in the incidence and duration of workplace injury;
- (b) reduction in the incidence of workplace stress; and
- (c) improved data management and reporting systems.

59.3 At all workplaces covered by this Agreement, the employer shall, whenever practicable, ensure compliance with the Occupational Safety and Health Act, including Regulations and Codes of Practice made under that Act and will work towards implementation of the best achievable level of safety and health.

59.4 The employer shall so far as practicable ensure that employee's workload, work conditions, job content and organisation do not lead to a deterioration of the physical or mental health of that employee.

59.5 Where the need is identified, the Department will provide professional development for staff on the management of stress in the workplace, identification of stressors and conflict resolution.

59.6 When a need is identified, the Department will provide access for staff to professional development on conflict resolutions skills and strategies.

59.7 The employer and Union agree that whenever necessary, occupational safety and health representatives will be provided with time to carry out the functions laid down in the relevant legislation. Arrangements to allow this to occur are to be negotiated between the Occupational Safety and Health Representative and the Principal.

59.8 Newly elected occupational safety and health representatives will be entitled to paid time off work and reimbursement of reasonable actual expenses to attend a 5 day accredited introductory training course within their first twelve months of office.

59.9 Elected occupational safety and health representatives will be entitled to take leave from work, with pay and reimbursement of reasonable actual expenses, for up to 3 days, as is required to attend approved occupational safety and health training in each subsequent 2 year term of office.

59.10 All new employees will be provided with appropriate occupational safety and health induction training within the first six weeks of their employment, as part of their school level induction. This induction training will outline Departmental policies and procedures relating to occupational safety and health representative, particular hazards to which they may be exposed, control measures applicable to each hazard, and how to instigate preventative and remedial action. Ongoing provision of occupational safety and health training will be facilitated through the use of School Development Days.

59.11 Employees with managerial responsibility will, whenever necessary, be provided with introductory occupational safety and health management training.

59.12 The employer and Union agree that all new schools are to be provided with separate toilet facilities for staff and students. The employer and Union also agree that whenever the administration and staff facilities and toilet facilities at existing schools are upgraded separate staff toilets are to be provided.

59.13 The employer and Union agree that all new schools will be provided with staff shower facilities at the time of construction. It is also agreed that when administration and staff facilities are upgraded at existing schools staff shower facilities will be provided.

59.14 The Department commits to the installation of air cooling in schools (evaporative airconditioning) in the zone where schools are required to be air cooled. Air-cooling will also be provided in at least one area of all education support centres and units.

PART 10.—CHANGE MANAGEMENT & CONSULTATION

60.—CHANGE MANAGEMENT

60.1 The parties agree and acknowledge that change and reform is an ongoing feature of education and of the Government school education system. The direction and nature of these changes will be determined largely by the Department's strategic planning process, the outcomes of which are currently reflected in the *Plan for Government School Education 2001-2003*.

60.2 The parties affirm their commitment to a process of collaboration and partnership in relation to the development, implementation and monitoring of key policies, procedures and reforms in education.

60.3 A change management process has been agreed, and is operational to ensure that all key initiatives and reforms that are to be implemented by schools are subject to a full analysis in terms of their impact on employees and schools. This process ensures that the workload, resourcing and timing of all initiatives and procedures are given due consideration in order to enable schools to plan, implement and manage these effectively. This consideration includes the need for the Department to have a cumulative, comprehensive picture of the initiatives, procedures and improvements that significantly impact at a school level.

60.4 The collaboration referred to in clause 60.2 above shall include consideration of all issues relevant to the implementation of reforms or initiatives in order that risks are identified and managed, and issues particularly relevant to schools are able to be raised and fully considered.

60.5 It is recognised that many reforms and initiatives relate to matters that are routine in nature, and have little or no impact on school workload. Others are system-wide and entail major change, with consequent impacts on schools and employees. System wide initiatives shall be subject to analysis as to their impact as part of the process of development and implementation.

60.6 The Change Management Reference Group will continue to monitor and review the process to ensure that the objectives of all parties are being met.

60.7 The parties acknowledge that the final responsibility and authority for making decisions to ensure the provision of a quality public sector education system rests with the Director-General.

61.—NOTIFICATION OF CHANGE

61.1 Where the employer has made a definite decision to introduce major changes that are likely to have significant effects on employees' conditions of employment or employment, the employer shall notify the employees who may be affected by the proposed changes and the Union.

61.2 For the purpose of this clause "significant effects" include termination of employment; major changes in the composition, operation or size of the employer's work force or in the skills required; elimination or diminution of the job opportunities, promotion opportunities or job tenure; the need for retraining or transfer of employees to other work or locations and restructuring of jobs.

61.3 The employer shall discuss with the employees affected and the Union, inter alia, the introduction of the changes referred to in subclause 61.1 of this clause; the effects the changes are likely to have on employees, measures to avert or mitigate the adverse effects of such changes on employees and shall give prompt consideration to matters raised by the employees and/or the Union in relation to the changes.

61.4 The discussion shall commence as early as practicable after a firm decision has been made by the employer to make the changes referred to in subclause 61.1 of this clause, unless by prior arrangement, the Union is represented on the body formulating recommendations for change to be considered by the employer.

61.5 For the purposes of such discussion an employer shall provide 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 inimical to the employer's interests

PART 11.—GRIEVANCES & DISPUTE SETTLEMENT

62.—GRIEVANCE RESOLUTION PROCEDURE

62.1 The Department and Union recognise that they have different roles and responsibilities. In doing so they also accept the need for a grievance resolution procedure and commit themselves to following this procedure in order that grievances can be settled through consultation and negotiation whenever possible.

62.2 The grievance resolution procedures set out in this clause cover grievances over decisions taken at a workplace and which affect one or more employees at that workplace. The resolution of a grievance under these procedures should be capable of being implemented by action at the workplace.

62.3 The grievance resolution procedures set out in this clause does not apply to—

- (a) Disputes related to conditions of employment (including entitlements to salary, leave and the like), as well as disputes related to equal employment opportunity, occupational health and safety, sexual harassment, workers' compensation or alleged breaches of Public Sector Standards in Human Resource Management. Separate procedures are provided for such grievances;
- (b) Disputes which cannot be resolved at a workplace level because they are due to the application of system-wide policies or are the result of decisions by the central office of the Department;
- (c) Issues which arise through staff disagreements and/or interpersonal conflict, and which do not have their basis in a workplace decision or process.

62.4 Principles

- (a) The objective of this procedure is to ensure that grievances raised by employees are resolved in a fair, equitable and prompt manner. The principles of natural justice will apply at all stages of the procedure. Confidentiality will be maintained. This procedure will be followed in accordance with legislative requirements that might otherwise apply.
- (b) The grievance should be reported as soon as is practicable after the grievance has arisen so that a resolution can be obtained as close to the worksite and as soon as possible.
- (c) The employee/s may request the presence or assistance of recognized union representatives or other person of their choice at any stage of the grievance resolution process.
- (d) An employee will not be subject to any form of discrimination or retaliation because they have raised a grievance.
- (e) Where the Union/employee believes that the grievance has system wide ramifications, the grievance may be referred directly to the Secretary of the Union and the Director-General of the Department in accordance with subclause 62.7 of this Agreement.

62.4 Worksite/Work Area Grievances Procedure

- (a) Level One (Direct Work Site/Work Area Level, i.e. School Level)
 - (i) The employee(s) concerned shall raise the matter with the person or persons who are the source of the complaint. If the matter cannot be resolved at this level then it is to be raised with the employee's line manager. If unable to resolve the matter the line manager shall, within two working days, refer the matter in writing to the most senior workplace officer and the employee(s) shall be advised accordingly in writing.
 - (ii) The senior workplace officer shall provide a written response within five working days of the matter being referred. If the senior officer is unable to answer the matter they will refer the matter to the second level of resolution and advise the affected employee(s) in writing.
 - (iii) Where a grievance directly concerns the manager that would normally respond to the grievance the matter will immediately be referred to the next level supervisor.
- (c) Level Two (Out of Direct Worksite)

The employer shall, as soon as practicable after consulting the matter before it, advise the employee(s) or, where necessary the Union of its decision. Provided that such advice shall be given within five days of the matter being originally referred out of the worksite.

62.6 Nothing in this procedure shall preclude the parties reaching agreement to shorten or extend the period specified in clause 62.5.

62.7 If the matter remains in dispute after the above processes have been exhausted either party may refer the matter to Central Office Workplace Relations Directorate for direct resolution with the Union. If the matter remains unresolved either party may refer the matter to the Western Australian Industrial Relations Commission. Provided that all reasonable attempts to resolve questions, disputes or difficulties have been made before taking those matters to the Commission.

63.—DISPUTE SETTLEMENT PROCEDURE

63.1 Where a dispute or potential dispute concerning the true interpretation of this Agreement arises, it shall be dealt with jointly by the employer or his/her nominee and the Secretary of the Union or his/her nominee who shall attempt to resolve the issue.

63.2 If agreement is not reached in settling the dispute as to the interpretation of the agreement, the matter may be referred by either party to the Industrial Relations Commission for determination.

PART 12.—SIGNATURES

64.—SIGNATURE OF PARTIES TO AGREEMENT

MINISTER FOR EDUCATION

[Minister] C.J. BARNETT

[Signature of Witness] (Sgd.)

[Date] 28/2/2000

AUSTRALIAN LIQUOR, HOSPITALITY AND MISCELLANEOUS WORKERS' UNION, WESTERN AUSTRALIAN BRANCH

[Signature] S.M. JACKSON

[Signature of Witness] (Sgd.)

[Date] 22/12/2000.

**EMAIL MAJOR APPLIANCES—BELMONT
SERVICE CLERICAL AND SHOP ASSISTANTS
ENTERPRISE AGREEMENT 2000.**

No. AG286 of 2000.

2001 WAIRC 01764

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	EMAIL LIMITED MAJOR APPLIANCES, APPLICANT
	v.
	AUSTRALIAN MUNICIPAL, ADMINISTRATIVE, CLERICAL AND SERVICES UNION OF EMPLOYEES, W.A. CLERICAL AND ADMINISTRATIVE BRANCH, AND THE SHOP, DISTRIBUTIVE AND ALLIED EMPLOYEES' ASSOCIATION OF WESTERN AUSTRALIA, RESPONDENTS
CORAM	CHIEF COMMISSIONER W S COLEMAN
DELIVERED	
FILE NO/S	AG 286 OF 2000
CITATION NO.	2001 WAIRC 01764

Result	Agreement Registered
Representation	
Applicant	Mr M Borlase
Respondents	Ms E Cole Mr M Pritchard

Order.

HAVING heard Mr M Borlase for the applicant and Ms E Cole and Mr M Pritchard for the respondents; NOW THEREFORE, I the undersigned, pursuant to the powers conferred under the Industrial Relations Act, 1979 do hereby order:

THAT the agreement entitled Email Major Appliances—Belmont Service Clerical and Shop Assistants Enterprise Agreement 2000 in the terms of the following schedule be registered as an industrial agreement as of 4 January 2001. This agreement replaces AG 60 of 1998 entitled Email Limited Major Appliance Group (Osborne Park) Shop Assistants and Clerks Enterprise Agreement 1997, and AG 148 of 1996 entitled Email Limited (Major Appliance Consumer Service Division—WA) Enterprise Agreement 1996 which are hereby cancelled.

(Sgd.) W.S. COLEMAN,
Chief Commissioner.

[L.S.]

Schedule.

1.—TITLE

This Agreement shall be known as the Email Major Appliances—Belmont Service Clerical and Shop Assistants Enterprise Agreement 2000.

2.—ARRANGEMENT

The Agreement is arranged as follows—

Clause	Subject Matter
1.	Title
2.	Arrangement
3.	Application
4.	Parties Bound
5.	Date and Period of Operation
6.	Relationship to Parent Award
7.	Prevailing Business Environment
8.	Strategic Intent
9.	Objectives
10.	Global Competition and Business Improvement
11.	Enterprise Development
12.	Consultative Committee

13. Service and Spares Operation
 14. Full Utilisation of Skills
 15. Wages
 16. Long Service Leave
 17. Redundancy
 18. Superannuation
 19. Statement of Employment
 20. Security of Employee Entitlements
 21. Introduction of Change
 22. No Extra Claims
 23. Dispute Settlement Procedure
 24. Not to be used as a Precedent
 25. Renewal of Agreement
 26. Bereavement Leave
 27. First Aid
 28. Occupational Health & Safety
- Appendix Signatures

3.—APPLICATION

This Agreement shall apply at the establishment of Email Limited Major Appliances, 1 Frederick Street, Belmont to all employees being, Clerks and Shop Assistants who are bound by the terms of the Clerk (Wholesale and Retail Establishments) Award No 38 of 1947 and the Shop and Warehouse (Wholesale and Retail Establishments) Award No 32 of 1976, employed in the Service Division of the business.

4.—PARTIES BOUND

The parties to this Agreement are—

- 4.1 Email Limited Major Appliances of 1 Frederick Street, Belmont, Western Australia referred to in this Agreement as “the employer” or “the company”;
- 4.2 The Australian Services Union West Australian Clerical and Services Branch of 102 East Parade, EAST PERTH WA 6004 and the Shop, Distributive and Allied Employees Association of Western Australia of Level 5, 25 Barrack Street, PERTH WA 6000 referred to in this Agreement as “the unions”.
- 4.3 An estimated nine (9) employees are covered by the provisions of this agreement as at the date of registration.

5.—DATE AND PERIOD OF OPERATION

This Agreement shall operate from the date of registration and shall remain in force until 30 September, 2001.

6.—RELATIONSHIP TO PARENT AWARD

6.1 This Agreement shall be read and interpreted wholly in conjunction with the Clerk (Wholesale and Retail Establishments) Award No 38 of 1947 and the Shop and Warehouse (Wholesale and Retail Establishments) Award No 32 of 1976 as they exist at the date of registration of this Agreement provided that where there is any inconsistency between the Agreement and the Clerk (Wholesale and Retail Establishments) Award No 38 of 1947 and the Shop and Warehouse (Wholesale and Retail Establishments) Award No 32 of 1976, this Agreement shall take precedence to the extent of the inconsistency.

6.2 An employee commencing his or her employment with the employer after the date on which this Agreement comes into operation shall be employed on conditions not less favourable than the terms of this Agreement.

7.—PREVAILING BUSINESS ENVIRONMENT

7.1 The prevailing Australian economy has a significant bearing on the Service activity.

7.2 Over the life of the Agreement, business conditions will continue to be competitive which will mean there will be ongoing pressure for the Service area to achieve best practice activities.

7.3 The benefits of productivity improvements must be directed to meeting the business challenges, which will contribute to the long term interests of the Service Division of the Company.

7.4 Significant areas of change impacting on the division include;

7.4.1 Product Design

The Company continues to design and develop products which have performance and features which

meet and exceed customer expectations. These new products are technically advanced, more reliable and environmentally responsible.

7.4.2 Information System

The Company has not yet implemented many of the modern communication systems to improve information availability. A development program of new systems will be progressively implemented.

Key elements include provision of technical data such as Quicktrak II and route planning software for field staff.

Employees involved will perform the duties involved in utilising these systems as they are implemented.

8.—STRATEGIC INTENT

The strategic intent of this Agreement is to commit the Company to pursue its business interests in a stable environment over the period of the Agreement. In addition, the Agreement aims to provide our employees with competitive wages and employment conditions.

9.—OBJECTIVES

The objectives of this Agreement are—

- 9.1 The establishment of an environment involving management and employees that contributes to the business development within the Company;
- 9.2 To provide a focus and understanding of the essential need for global growth of the Company;
- 9.3 To enhance the co-operation between the employer and its employees through more effective communication that allows understanding of each business unit's strengths, challenges and potential for growth;
- 9.4 To develop a working environment that adds to the competitiveness of the Company's position in the markets, not only through continuous improvements to efficiency and effectiveness of work methods but also in relation to promoting innovation and creative solutions to work problems thereby enhancing job security;
- 9.5 To create a work culture that emphasises reward and recognition; and
- 9.6 A commitment to avoid redundancies wherever possible.

10.—GLOBAL COMPETITION AND BUSINESS IMPROVEMENT

10.1 The parties recognise that the Company needs to achieve standards of excellence and flexibility to be competitive in both domestic and overseas markets as a result of the globalisation of world trade.

10.2 A process of continuous improvement is an essential component of achieving international competitiveness and maximising job security. Additionally, the following excellence and flexibility factors also apply;

- 10.2.1 World-class operating practices and procedures (standardised and documented) so as to meet the challenge of global competition;
- 10.2.2 Achieve optimum employment levels and work practices to achieve world class performance standards and to create flexible team-based organisational design.

11.—ENTERPRISE DEVELOPMENT

11.1 In addition to the core business improvement initiatives and objectives that are summarised in Clauses 9 and 10 of this Agreement, the employer and the employees will pursue an ongoing agenda of continuous improvement by addressing those issues which are specific to the Company to enhance commercial viability and job security.

11.2 To implement improvements in a strategically advantageous manner, it is agreed that the appropriate timing of a positive initiative is linked to its relevance to the business environment and not necessarily to the cycle of Enterprise bargaining. It is further agreed that the Company will continue to develop in an environment that embraces effective communication, consultation, negotiation, learning culture and regular direct dialogue to keep employees informed on the state of the business.

12.—CONSULTATIVE COMMITTEE

12.1 A Site Consultative Committee will be established to assist the parties to improve productivity, efficiency and to provide for the effective involvement of employees and Union members in the decision-making processes. This committee will consist of up to an equal number of employer and rank and file Union and employee representatives from each Union with members at the site. The Site Consultative Committee will liaise with the Email National Consultative Committee on issues consistent with this clause, where relevant.

12.2 This committee will meet at least every three (3) months.

12.3 The objectives of the committee are to investigate, determine and make recommendations on matters including but not limited to—

- 12.3.1 Introduction of new technology;
- 12.3.2 Changes to work organisation;
- 12.3.3 Quality;
- 12.3.4 Productivity improvement;
- 12.3.5 New management practices; and
- 12.3.6 Removing demarcation and other restrictive work practices subject to regulatory requirements.

12.4 The business will develop, consistent with the mechanisms of the Email National Consultative Committee, specific proposals for discussion, and where agreed, implementation at site level.

13.—SERVICE AND SPARES OPERATION

13.1 Service Operation

The employer, its employees and the Unions will continue to be committed to developing and implementing all processes and methods which provide long term productivity and customer satisfaction. This will be achieved by improvements through the elimination of all kinds of waste.

The employer, employees and the Unions are committed to the implementation in the workplace of continuous improvement activities to achieve the objectives of this Agreement. Those activities may include, but are not limited to, the following examples:

- 13.1.1 Commitment to extending hours of operation to meet changing customer needs;
- 13.1.2 Multi-skilling and upskilling for employees with the ability to take on upskilling activities. Training to be provided by the employer;
- 13.1.3 Elimination of waste and rework activities;
- 13.1.4 Work with contractors and consultants who are engaged by the Company;
- 13.1.5 Problem solving on a joint basis;
- 13.1.6 Adoption of business performance monitoring systems;
- 13.1.7 Customer relations improvement techniques;
- 13.1.8 Perform any work as the employer may from time to time reasonably require within the limits of the employee's competency and safe work practices.

13.2 Spare Parts Office and Store

- 13.2.1 Employees commit to added value service by providing all customers with service of a high quality.
- 13.2.2 Employees will provide services to all customers for counter or phone enquires and sales.
- 13.2.3 To achieve this competency, employees will perform all duties that will ensure that the orders received from the counter or phone, are delivered to meet our customers' expectations.
- 13.2.4 Employees will make themselves available for training as required by management.
- 13.2.5 Employees will make themselves available for Saturday Rosters as required.
- 13.2.6 The job functions require the person to be required by management to—
 - i. Serve on the counter
 - ii. Process data
 - iii. Use E.L.F. system

- iv. Use Quicktrak II system
 - v. Be fully conversed with back order system
 - vi. Assist in the stock management system
- 13.2.7 Subject to alternative arrangements agreed to by the employer Annual leave and R.D.O.'s will be taken between the 1st March and 24th December of each year.
- 13.2.8 Casual or part-time ordinary hours will apply without penalty payments between 7.00am and 6.00pm Monday to Saturday inclusive until 38 hours is completed, then penalty hours shall apply in accordance with Award provisions.
- 13.2.9 Rostered hours shall be between 7.00am and 6.00pm.
- 13.2.10 The employees shall accrue twelve (12) rostered days off per year. Four (4) of the twelve (12) rostered days shall not be taken in each twelve month period. In exchange for the four (4) rostered days off, providing these days have accrued, the employees shall receive a payment of the thirty-two (32) hours at their hourly rate of pay on the first period of December in the year the rostered days accrue.

14.—FULL UTILISATION OF SKILLS

14.1 The parties recognise that despite improved co-operation that now exists from previous Agreements, that further reductions in demarcation are required to bring about more flexibility in order to meet demands imposed by variables such as competition, economic constraints and legislative requirements. Ability to respond to such demands is imperative to the viability of the Service Division and therefore the parties accept that resultant change is an integral part of our culture.

14.2 Employees will follow all lawful and reasonable directives by the employer and will utilise all their skills in the performance of allocated work where it is safe for them to do so.

14.3 Such change will be realised through greater team involvement and management will be dedicated to implementing change in a consultative and co-operative manner.

15.—WAGES

15.1 The following schedule sets out the timing and amount for wage increases within the Agreement period—

- 15.1.1 Employees' ordinary rate of pay as at 8th January, 2000 will increase from the beginning of the first pay period commencing on or after 8th January, 2000 by 2.67%.
- 15.1.2 Employees' ordinary rate of pay as at 1st September, 2000 will increase from the beginning of the first pay period commencing on or after 1st September, 2000 by 4%.

16.—LONG SERVICE LEAVE

16.1 Employees will accrue Long Service Leave at the rate of thirteen (13) weeks' leave for each ten (10) years' service with the effective date being 1st April, 1998, that is, 1.3 weeks' per year of continuous service. Pro-rata Long Service Leave will be phased in from the above date. The effective date for accruals for former Southcorp employees will be 1st April, 1999.

16.2 Long Service Leave is defined in Clauses 1, 2, 4 and 5 of the Long Service Leave General Order in Volume 66 of the Western Australian Industrial Gazette.

16.3 Long Service Leave shall be available on the accumulation of 9.1 weeks' leave. This provision applies on a pro-rata basis to part-time employees. Only that leave which has accrued will be able to be taken.

16.4 The terms of the Long Service Leave General Order (Vol. 66 of the WAIG) shall apply except for the quantum and accumulation rate of leave as prescribed above.

17.—REDUNDANCY

- 17.1 Consultation and provision of information
 - 17.1.1 Where the employer has made a decision that it 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 may lead to termination of employment, the employer shall hold discussions with the employees directly affected and with their Union.

- 17.1.2 The discussions shall take place as soon as is practicable after the employer has made a definite decision, which will invoke the provisions of paragraph 17.1.1 hereof and shall cover, inter alia, any reasons for the proposed terminations, measures to avoid or minimise the terminations and measures to mitigate any adverse effects of any terminations on the employees concerned.
- 17.1.3 For the purposes of the discussion the employer shall, as soon as practicable after making a decision but before any terminations, communicate to the employees concerned and their Union (in writing), 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 workers normally employed and the period over which, or the time when 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 harmful to the interests of the business.
- 17.1.4 If redundancies are still necessary after following the procedures set out above the arrangements to apply are as set out in sub clause 17.2.

17.2 In the event of unavoidable redundancies during the life of this agreement the agreed redundancy payment shall be calculated as follows—

- 3.25 weeks' pay per year of service to a maximum of seventy (70) weeks' pay.

18.—SUPERANNUATION

18.1 The provisions of the *Email Limited (Superannuation) Award 1996* as at 1st July, 1999 shall apply as a term of this Agreement inclusive of amendments to Schedule E of the *Email Limited (Superannuation) Award* as varied from time to time.

18.2 In the event that legislation comes into force which has the effect of overriding, changing or suppressing the *Email Limited (Superannuation) Award 1996* as at 1st June, 1997, then the terms of this Award prior to the legislation coming into force shall continue to apply as terms of this Agreement.

19.—STATEMENT OF EMPLOYMENT

The employer shall, upon receipt of a request from an employee whose employment has been terminated other than for misconduct, provide to an employee a written statement specifying the period of his or her employment and the classification of or the type of work performed by the employee.

20.—SECURITY OF EMPLOYEE ENTITLEMENTS

The Company agrees to meet its obligations to the payment of statutory employee entitlements.

21.—INTRODUCTION OF CHANGE

21.1 The parties agree that effective early consultation on technological and work organisation change will take place to maximise the benefits of change accruing to the Company and its employees.

21.2 The parties recognise that commitment to the implementation of major change is enhanced by the involvement of affected employees in the process of developing change proposals. To this end the Company will provide opportunities for employees to influence the decision-making process through early advice to affected employees.

21.3 Where the Company has made a formal proposal to introduce change/s in organisational structure/s, work methods/practices and/or technology (including computer hardware and software) that are likely to have significant effects on employees, the Company will notify the affected employees and the Union to initiate discussions before implementation of the proposed change/s.

21.4 Significant effects includes the termination of employment, major changes in the composition, operation or size of the Company's workforce or the skills required, the elimination or diminution of job opportunities, promotion opportunities or job tenure, the alteration of hours of work (excluding regular rostered changes), the need for retraining or the transfer of employees to other work locations, the restructuring of jobs or where there are occupational health or safety implications.

21.5 Consultation and communication will include but may not necessarily be limited to—

- 21.5.1 Reason/s for the change from the existing technology, system/s, practice or organisation;
 - 21.5.2 The measures taken (or to be taken) by the Company to avert or mitigate the possible adverse effects and matters raised by the employee and the Union;
 - 21.5.3 Training, retraining, skill or qualification requirements; and
 - 21.5.4 Assessment of the availability of required skills.
- 21.6 Employer's duty to discuss change—
- 21.6.1 The discussions with employees affected shall commence as early as practicable after the activities referred to in paragraph 21.1.
 - 21.6.2 For the purposes of such discussion, the employer shall communicate to the employees concerned and their Union, all relevant information about the changes including the nature of the changes proposed; the expected effects of the changes on employees and any other matters likely to effect employees, provided that the employer shall not be required to disclose confidential information the disclosure of which would be harmful to the interests of the business.

22.—NO EXTRA CLAIMS

The Unions and employees will not, for the duration of this Agreement pursue any extra claims except where consistent with this Agreement.

23.—DISPUTE SETTLEMENT PROCEDURE

The following provisions shall apply to questions or disputes arising about the meaning or effect of this Agreement and employment conditions implied into this Agreement.

23.1 Where a question or dispute arises—

- 23.1.1 In the first instance, the employee and his/her Manager/Supervisor shall make every endeavour to resolve the question or dispute;
- 23.1.2 If the matter is not resolved within five (5) working days, the employee and the State Manager shall make every endeavour to resolve the question or dispute;
- 23.1.3 If the matter is not resolved within two (2) weeks, the aggrieved party shall give the other party a written statement of the question or dispute and the other party shall give a written response;
- 23.1.4 If the matter remains unresolved, the parties may agree to refer the matter to an agreed mediator to assist in resolving the question or dispute;
- 23.1.5 Finally, if the question or dispute is not resolved, the parties, having conferred amongst themselves and made reasonable attempts to resolve questions and disputes before taking those matters to the Commission, either the Union(s) on behalf of the employee or the State Manager may refer all or any of the matters to the Western Australian Industrial Relations Commission.

23.2 If there is a dispute that your co-workers are also concerned about, nothing in this clause prevents you from dealing with that dispute at the same time as your co-workers in a team approach.

23.3 At any stage of this procedure you are entitled to representation by another employee that you may choose to appoint or an official of your union. Such appointment must be in writing and provided to the Company.

23.4 At all times whilst a question or dispute is being resolved in accordance with this clause, normal work will continue without any stoppage, interruption or disruption to work.

23.5 You and the Company shall undertake to accept the decision as final and binding.

24.—NOT TO BE USED AS A PRECEDENT

This Agreement shall not be used in any manner whatsoever to obtain similar arrangements or benefits in any other plant or Enterprise.

25.—RENEWAL OF AGREEMENT

Discussions will take place no later than three (3) months prior to the expiry of the Agreement to discuss the nature of changes, if any, for any future Agreement.

26.—BEREAVEMENT LEAVE

An employee, including part-time employees, shall be entitled to a maximum of two (2) days without loss of pay on each occasion and on the production of satisfactory evidence of the death of the employee's spouse (including de-facto/partner, same sex partners, spouse), father, mother, (including foster father or mother or stepmother or stepfather) sister, brother, step-sister, step-brother, child, step-child, grandparent, parent-in-law, brother-in-law, or sister-in-law, or a member of the employee's household.

27.—FIRST AID

In each work area there shall be at least one employee paid the appropriate first aid allowance who is trained and qualified to render first aid, unless otherwise agreed at the site.

28.—OCCUPATIONAL HEALTH & SAFETY

28.1 There will be co-operation between the employer and employees in the implementation of all necessary measures to safeguard health and prevent accidents and occupational disease. Provision will be made for employees and employee representatives to be informed and consulted on matters relating to health protection.

28.2 The parties to this Agreement abhor the loss of life, sickness and disability caused at work. The parties agree to the establishment of a health and safety committee in every workplace and the recognition of rights and training for health and safety representatives.

28.3 The parties are committed to pursuing the means of safeguarding and improving the working life and health of employees.

APPENDIX SIGNATURES

The Australian Services Union West Australian Clerical and Services Branch of 102 East Parade, EAST PERTH WA 6004

(Signature)
Dated this day of 2000

The Shop, Distributive and Allied Employees Association of Level 5, 25 Barrack Street, PERTH WA 6000

(Signature)
Dated this day of 2000

Email Limited Major Appliances, Service and Spare Parts Division Western Australia

(Signature)
Dated this day of 2000

**GREAT SOUTHERN REGIONAL COLLEGE OF
TAFE PUBLIC SERVICE AND GOVERNMENT
OFFICERS' ENTERPRISE AGREEMENT 2000.**

No. PSAAG 75 of 2000.

2001 WAIRC 01803

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	GOVERNING COUNCIL, GREAT SOUTHERN REGIONAL COLLEGE OF TAFE -and- THE CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA INCORPORATED
CORAM	COMMISSIONER P E SCOTT
DELIVERED	TUESDAY, 16 JANUARY 2001
FILE NO	PSAAG 75 OF 2000
CITATION NO.	2001 WAIRC 01803

Result Agreement registered

Order.

HAVING heard Ms J Caiacob on behalf of the Governing Council, Great Southern Regional College of TAFE and Ms J van den Herik on behalf of the Civil Service Association of Western Australia (Incorporated), and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Great Southern Regional College of TAFE Public Service and Government Officers' Enterprise Agreement 2000 in the terms of the following schedule be registered on the 21st day of December 2000 and shall replace the Great Southern Regional College of TAFE Public Service and Government Officers' Enterprise Agreement 1998 (No. PSA AG 13 of 1998).

[L.S.] (Sgd.) P. E. SCOTT,
Commissioner,
Public Service Arbitrator.

Schedule.

PART 1—APPLICATION AND OPERATION OF AGREEMENT

1.—TITLE

This Agreement will be called the Great Southern Regional College of TAFE Public Service and Government Officers' Enterprise Agreement 2000 and will replace the Great Southern Regional College of TAFE Public Service and Government Officers' Enterprise Agreement 1998.

2.—ARRANGEMENT

PART 1—APPLICATION AND OPERATION OF AGREEMENT

- TITLE
- ARRANGEMENT
- SCOPE
- PARTIES BOUND
- DEFINITIONS
- NUMBER OF EMPLOYEES COVERED
- NO FURTHER CLAIMS
- TERM OF AGREEMENT AND RENEGOTIATION
- RELATIONSHIP TO AWARDS
- AVAILABILITY OF AGREEMENT
- OBJECTIVES OF THE AGREEMENT
- PAST PRODUCTIVITY

PART 2—DISPUTE RESOLUTION

- CONSULTATION PROVISIONS
- DISPUTE RESOLUTION PROCEDURE
- SUBSTANDARD PERFORMANCE
- BREACHES OF DISCIPLINE

PART 3—EMPLOYER AND EMPLOYEES' DUTIES, EMPLOYMENT RELATIONSHIP AND RELATED ARRANGEMENTS

- HIGHER DUTIES
- CASUAL EMPLOYMENT

PART 4—WAGES AND RELATED MATTERS

- SALARIES
- SALARY PACKAGING
- PAYMENT ARRANGEMENTS
- REPAYMENTS OF OVERPAYMENTS
- VARIATION OF ALLOWANCES

PART 5—HOUR OF WORK, BREAKS, OVERTIME, SHIFT WORK AND WEEKEND WORK

- HOURS OF WORK
- FLEXITIME

PART 6—LEAVE OF ABSENCE AND PUBLIC HOLIDAYS

- ANNUAL LEAVE
- LONG SERVICE LEAVE
- SICK LEAVE
- FAMILY/CARER'S LEAVE
- COMPASSIONATE LEAVE
- SHORT LEAVE
- CEREMONIAL/CULTURAL LEAVE
- PUBLIC HOLIDAYS
- CHRISTMAS CLOSEDOWN
- PARENTAL LEAVE
- EMERGENCY AND COMMUNITY SERVICE LEAVE
- ANNUAL LEAVE LOADING
- SELF-FUNDED WORK BREAKS

PART 7: TRANSFERS, TRAVELLING AND WORKING AWAY FROM USUAL PLACE OF WORK

- HOME BASED WORK
- TRAVELLING ALLOWANCE
- TRANSFER

SCHEDULE A: SALARIES

SCHEDULE B: PRODUCTIVITY IMPROVEMENTS

SCHEDULE C: SIGNATORIES OF PARTIES TO THE AGREEMENT

SCHEDULE D: ALPHABETICAL LISTING OF PROVISIONS

3.—SCOPE

This Agreement will apply throughout the state of Western Australia to Officers employed in the Great Southern Regional College of TAFE. This Agreement will also apply to Officers on secondment to or in the College.

4.—PARTIES BOUND

The parties to this Agreement will be the Governing Council of the Great Southern Regional College of TAFE, and the Civil Service Association of Western Australia (Inc).

5.—DEFINITIONS

The following terms will have the following meanings—

“**Agreement**”: means the Great Southern Regional College of TAFE Public Service and Government Officers' Enterprise Agreement 2000.

“**Award**”: means the Government Officers' Salaries, Allowances and Conditions Award 1989.

“**College**” means the Great Southern Regional College of TAFE.

“**Continuous service**”: Any period of service between the employee and employer under an unbroken contract of employment, and includes any authorised unpaid or paid absences.

“**CSA**”: means the Civil Service Association of Western Australia (Inc).

“**Department**”: means the Western Australian Department of Training and Employment.

“**Employee**”: for the purpose of this Agreement means, someone who is referred to at Clause 3—Scope.

“Employer”: means the Governing Council of the Great Southern Regional College of TAFE.

“Full-Time Officer”: A person employed to work 37 1/2 ordinary hours per week.

“Government”: means the Government of Western Australia.

“GOSAC Award”: means the Government Officers’ Salaries Allowances & Conditions Award 1989.

“Managing Director” means the Managing Director of the Great Southern Regional College of TAFE, pursuant to section 46 of the Vocational Education and Training Act 1996.

“Minister”: is the Minister of the Crown who is responsible for the administration of the employing agency.

“Officer”: means a Public Service Officer as defined in the Public Sector Management Act 1994 or Government Officer as defined in the Industrial Relations Act 1979.

“Part-Time”: means regular and continuing employment for less than the ordinary hours for a “Full-Time Officer”.

“Spouse”: means a husband or wife of an employee, and includes a de facto spouse. For the purposes of Bereavement leave it includes a former spouse.

“Union”: means the Civil Service Association of Western Australia (Inc).

“WAIRC”: means the Western Australian Industrial Relations Commission.

6.—NUMBER OF EMPLOYEES COVERED

At the date of registration of this Agreement the approximate number of employees covered by this Agreement is 11.

7.—NO FURTHER CLAIMS

7.1 There will be no extra claims for salary adjustments other than that which is provided by this Agreement for the duration of its term.

7.2 There will be no further claims on matters contained in this Agreement for the duration of its term.

8.—TERM OF AGREEMENT AND RENEGOTIATION

8.1 This Agreement will operate on and from the date of registration and will remain in force for two years.

8.2 Six (6) months prior to the date of expiration of this Agreement, the parties will commence negotiation for its renewal or replacement.

8.3 The pay rates attained under this Agreement will form the new base rates for any future Agreement, provided that the productivity targets attained under this Agreement continue and previous productivity improvements in the last agreement are sustained, and changes to Award conditions maintained, or changed by agreement.

9.—RELATIONSHIP TO AWARDS

This Agreement will be read and interpreted wholly in conjunction with the Government Officers’ Salaries, Allowances and Conditions Award 1989. This Agreement will have precedence to the extent of any inconsistency. Where the agreement is silent the relevant award will apply.

10.—AVAILABILITY OF AGREEMENT

Employees will have access to an electronic copy of this agreement. Where electronic copies are unavailable, hard copies of the agreement will be provided.

11.—OBJECTIVES OF THE AGREEMENT

It is the shared objectives of the parties to—

Work towards alignment of conditions for all TAFE employees.

Meet the requirements of clients and students through the provision of reliable, efficient and competitive services.

Achieve the Department’s mission and improve productivity and efficiency through identified improvements.

Achieve improvement and greater flexibility of working patterns and arrangements.

Promote and facilitate enhanced employee relations and increased job satisfaction.

To facilitate a continued cooperative approach to the introduction of change.

This Agreement will operate as a contributive mechanism to deliver a cost efficient Vocational Education and Training service.

12.—PAST PRODUCTIVITY

This Agreement incorporates past productivity to the date of registration.

PART 2—DISPUTE RESOLUTION

13.—CONSULTATION PROVISIONS

13.1 The parties acknowledge the need for a satisfactory College consultative procedure. Staff participation and consultation is encouraged. The form of participation and consultation may vary at each workplace depending on individual circumstances. The College will establish its own structure and processes. However, the non-establishment of a structure or process will not be used as a means to avoid requirement to consult.

13.2 Employees will be involved in broadly based representative consultative committees with structure and functions determined by the College.

13.3 Consultative committees will provide a forum for staff and management to, where appropriate, seek the views of the other and enter into meaningful discussions that may contribute towards outcomes, in relation to operational matters.

13.4 Representatives from the Union, where it has members at the workplace, will be invited to participate on consultative committees.

13.5 The parties to this Agreement acknowledge that decision making continues to rest with the College, which is accountable to Government, through legislation, for the operation of its business.

14.—DISPUTE RESOLUTION PROCEDURE

14.1 In the event of a dispute arising in the workplace the procedure to be followed to resolve the matter will be as follows—

14.1.1 The employee and their supervisor will meet and confer on the matter; and

14.1.2 If the matter is not resolved at such a meeting, the parties will arrange for further discussions between the employee and his or her nominated representative, if any, and more senior levels of management.

14.1.3 If the matter is still unresolved a discussion will be held between representatives of the College or other representative of the employer and the Union or other employee representative.

14.1.4 If the matter cannot be resolved it may be referred to the WAIRC.

14.2 While the parties attempt to resolve the matter work will continue as normal unless an employee has a reasonable concern about an imminent risk to his or her health and safety.

15.—SUBSTANDARD PERFORMANCE

For the purposes of this clause the following definition will apply—

Substandard performance: The performance of an employee is substandard if the employee does not, in the performance of the functions that he or she is required to perform, attain or sustain a standard that a person may reasonably be expected to attain or sustain in the performance of his or her duties.

15.1 No employee shall be subject to the penalties of clause 15.2 unless a fair procedure is applied and decisions and processes incorporate the principles of natural justice and are free from bias.

15.2 If, in accordance with the College’s substandard performance management policy, an employee is found by the College to be performing at a substandard level, the College may—

15.2.1 withhold an increment of remuneration otherwise payable to that employee;

15.2.2 reduce the classification of that employee; or

15.2.3 terminate the employment of that employee.

15.3 If an employee who has been subject to substandard performance management is aggrieved by any resulting decision, he/she may appeal against that decision in the WAIRC.

16.—BREACHES OF DISCIPLINE

16.1 No employee shall be subject to the penalties of clause 16.2 unless a fair procedure is applied and decisions and processes incorporate the principles of natural justice and are free from bias.

16.2 If, in accordance with the College's disciplinary policy, an employee is found by the College to have committed a breach of discipline, the College may—

- 16.2.1 reprimand the employee;
- 16.2.2 transfer the employee to another public sector agency or authority, with the consent of that agency or transfer the employee to another position at the College at which the employee is currently employed;
- 16.2.3 impose on the employee a fine not exceeding the equivalent of five days pay that the employee would have received immediately prior to the breach of discipline finding;
- 16.2.4 reduce the monetary remuneration of the employee within the employee's existing classification;
- 16.2.5 reduce the level of classification of the employee;
- 16.2.6 dismiss the employee;

or, except where the employee is dismissed under subclause 16.2.6, take action under any two or more of the above subclauses.

16.3 If an employee who has been subject to disciplinary action is aggrieved by a decision resulting from such action, he/she may appeal against that decision to the WAIRC.

PART 3—EMPLOYER AND EMPLOYEES' DUTIES, EMPLOYMENT RELATIONSHIP AND RELATED ARRANGEMENTS

17.—HIGHER DUTIES

17.1 An officer who undertakes duties of a higher classification for a period of 10 consecutive working days or more, inclusive of public holidays, will be paid at the salary applicable to the higher level proportionate to the level of duties and responsibilities assigned for the entire period of the higher duties.

17.2 The higher rate of payment will apply to an officer who proceeds on normal annual leave or any other approved leave of absence of not more than four weeks provided that the officer was in receipt of the additional payment for a continuous period of 12 months or more.

18.—CASUAL EMPLOYMENT

18.1 Casual employees may be employed for up to three months in any period of engagement, provided that where operationally necessary and in compliance with subclause 18.2 of this clause the period of engagement may be extended for up to a period of a further three months.

18.2 All casual engagements shall be in accordance with the following guidelines.

- 1 The type of employment involves specific workload demands of a short term nature;
- 2 The job is a short term project of a finite nature;
- 3 To replace an employee during a short term approved leave of absence.

PART 4—WAGES AND RELATED MATTERS

19.—SALARIES

19.1 Increases have been applied to the rates paid pursuant to the Great Southern Regional College of TAFE Public Service and Government Officers' Enterprise Agreement 1998 as expressed in column A.

19.2 The rates in Column B will be paid effective from the date of registration of the Agreement. The rates in column B reflect a 1.5% increase for changes to award/employment conditions contained in this Agreement.

19.3 The rates in Column C will be paid from the first pay period on or after 15 March 2001. The rates in Column C

reflect a 1.5% increase for changes to award/employment conditions contained in this Agreement.

19.4 The rates in Column D will be paid from the first pay period on or after 15 March 2002. The rates in Column D reflect a 3% increase, subject to Cabinet Standing Committee on Labour Relations endorsement that the Productivity Improvement Plan targets have been achieved.

19.5 The pay rates attained under this Agreement will form the new base rates for any future Agreement, provided that the productivity targets attained under this Agreement continue and previous productivity improvements in the last agreement are sustained and changes to Award conditions maintained, or changed by agreement.

20.—SALARY PACKAGING

20.1 An employee may, by agreement with the employer, enter into a salary packaging arrangement in accordance with the Great Southern Regional College of TAFE Flexible Remuneration Packaging Scheme or any similar salary packaging arrangement offered by the employer.

20.2 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.

20.3 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.

20.4 The TEC for the purposes of salary packaging, is calculated by adding—

- 20.4.1 The base salary;
- 20.4.2 Other cash allowances, eg. Annual leave loading;
- 20.4.3 Non-cash benefits, eg superannuation, motor vehicles etc;
- 20.4.4 Any Fringe Benefit Tax liabilities currently paid; and
- 20.4.5 Any shift or commuted allowance or variable components, eg performance based incentives (where they exist).

20.5 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 agreement.

20.6 The salary packaging arrangement must be cost neutral in relation to the total cost to the employer.

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

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

20.9 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.

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

20.11 An employer will not unreasonably withhold agreement to salary packaging on request from an employee.

20.12 The Dispute Settlement Procedure contained in this Agreement will 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 to the WAIRC.

21.—PAYMENT ARRANGEMENTS

Salaries will be paid on a fortnightly basis directly into an approved bank, building society or credit union nominated by the employee.

22.—REPAYMENTS OF OVERPAYMENTS

22.1 Any salary overpayments will be repaid to the employer within a reasonable period of time.

22.2 If agreement cannot be reached, the employer may deduct the amount of overpayment over the same length of

time that the overpayments occurred, or up to 6 months, whichever period is less.

22.3 The employer may not deduct or require an employee to repay an amount exceeding 20% of the employees' net pay in any one pay period.

22.4 On compassionate grounds, the Managing Director may allow an extended period for the repayment of overpayments.

23.—VARIATION OF ALLOWANCES

23.1 Wherever an award allowance is calculated by reference to a classification salary point, the parties agree that all such allowances will be so varied by reference to the salary provided by this agreement.

23.2 All such allowances will be applicable from the same date as provided for any salary variation under this agreement.

PART 5—HOUR OF WORK, BREAKS, OVERTIME, SHIFT WORK AND WEEKEND WORK

24.—HOURS OF WORK

Notwithstanding the prescribed hours of duty in clause 16 of the Award, the employer and an employee may agree to vary the spread of hours during which the employee's ordinary hours of work may be worked. Any agreement must be voluntarily and genuinely made and an employee may not be forced, coerced or intimidated into any such variation to the spread of ordinary hours during which the hours of work may be worked.

25.—FLEXITIME

25.1 For the purpose of this clause, a settlement period will—

25.1.1 consist of 12 weeks;

25.1.2 have the required hours of duty of 450 hours; and

25.1.3 commence at the beginning of a pay period.

25.2 Credit hours at any point within the settlement period will not exceed 60 hours.

25.3 An officer may be allowed to clear flexi leave of a maximum of 6 full days, or any combination of half days and full days that does not exceed 6 full days in any settlement period.

25.4 Full days of flexi leave may be taken in accordance with College policy.

25.5 Flexi-leave days may be taken consecutively during a Christmas Closedown.

25.6 Notwithstanding subclause 25.3, in the case of a Christmas Closedown of 12 working days, where sufficient credit hours are accrued, an employee may take seven consecutive flexi-leave days. This subclause does not apply in the case of a Christmas Closedown of less than 12 working days.

25.7 Credit hours to a maximum of thirty seven hours thirty minutes will be allowed at the end of each settlement period and will be carried forward to the next settlement period.

25.8 In the case of credit hours greater than thirty seven hours thirty minutes gained in one settlement period, the hours in excess of thirty seven hours thirty minutes will be lost.

PART 6—LEAVE OF ABSENCE AND PUBLIC HOLIDAYS

26.—ANNUAL LEAVE

26.1 By written approval of the employer, accrued annual leave may be paid out (equivalent benefit) instead of taken.

26.2 The paying out of accrued annual leave is not obligatory and is subject to agreement of both the employer and employee.

26.3 Annual Leave Travel Concessions—Officers Stationed in Remote Areas

26.3.1 Where an officer's headquarters is situated in District Allowance Areas 3,5,6 and in that portion of area 4 located north of 30° South Latitude, as defined in Schedule D—District Allowance of the PSA/ Schedule G—District Allowance of the GOSAC Award, a travel concession to the value of return economy airfares to Perth or Geraldton will be provided for the officer and his/her dependants when the officer travels from his/her normal place of employment on Annual Leave.

26.3.2 The officer will only be entitled to the actual cost of the travel, up to the value of return economy airfares for the officer and his/her dependants to Perth or Geraldton, whichever is the higher. The employer will not reimburse the officer unless the officer supplies evidence acceptable to the employer of the actual cost of travel.

26.3.3 An officer is required to serve 12 months in these areas before qualifying for travel concessions.

27.—LONG SERVICE LEAVE

27.1 Accrued long service leave may be taken in periods of not less than one day.

27.2 By written approval of the employer, accrued long service leave may be paid out (equivalent benefit) instead of taken.

27.3 The paying out of accrued Long Service Leave is not obligatory and is subject to agreement of both the employer and employee.

28.—SICK LEAVE

28.1 Sick leave entitlement

28.2 The sick leave provisions of the GOSAC Awards will continue to apply, except that the Managing Director may approve further paid leave in exceptional circumstances.

29.—FAMILY/CARER'S LEAVE

29.1 An employee with responsibilities in relation to either members of their family or members of their household who need their care and support, is entitled to paid leave of up to 5 days per annum, to provide care and support for such persons when they are ill.

29.2 Family/carer's leave taken will be deducted from an employee's sick leave entitlements, provided that 10 days of the employee's sick leave entitlement credited in the current year cannot be used for family/carer's leave. Family/carer's leave is not cumulative from year to year.

29.3 Where family/carer's leave is exhausted, an employee may take unpaid carer's leave by agreement with the employer.

29.4 The employee will if required by the employer establish, by production of medical evidence or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another.

29.5 The employee will, wherever possible, give the employer notice prior to the absence of the intention to take such leave.

29.6 For the purposes of this clause, a family member or member of the employee's household is one who is wholly or partially dependent on the employee.

30.—COMPASSIONATE LEAVE

30.1 Subject to paragraph 30.2 hereof, an officer will be entitled to paid compassionate leave of up to 2 days on the death of a family member.

30.2 The Managing Director may grant compassionate leave on the death of a person other than a family member in personal and compassionate circumstances.

30.3 Compassionate leave will not be granted during a period of any other leave.

30.4 Payment for compassionate leave is to be made only where the officer otherwise would have been on duty.

31.—SHORT LEAVE

The Award entitlement to short leave will no longer apply.

32.—CEREMONIAL/CULTURAL LEAVE

32.1 Ceremonial/Cultural Leave may be granted, to employees who have a ritual obligation to participate in ceremonial activity which requires absence from work. Such leave will also include leave to meet the employee's custom and traditional laws.

32.2 An employee granted leave to participate in ceremonial, cultural or traditional law activities will have such leave deducted from accrued annual leave or long service leave.

32.3 Leave without pay to participate in ceremonial, cultural or traditional law activities may be granted by the employer.

33.—PUBLIC HOLIDAYS

33.1 The following days are paid public holidays; New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Foundation Day, Labour Day, Sovereign's Birthday, Christmas Day and Boxing Day.

33.2 Whenever any of these days falls on a Saturday or a Sunday, the holiday is observed on the next succeeding Monday, or in the case of Boxing Day falling on a Sunday or Monday, on the next succeeding Tuesday.

33.3 There is no entitlement to any additional Public Service holidays in addition to those prescribed in this agreement.

34.—CHRISTMAS CLOSEDOWN

34.1 The College may observe a closedown over the Christmas/New Year period.

34.2 The duration of the closedown will be at the discretion of the Managing Director but will not exceed 12 working days.

34.3 Employees will be required to take annual leave, long service leave, rostered days off, time in lieu of overtime or flexitime credit hours on the working days that the College is closed down. The employee may elect which form of leave is to be taken.

34.4 The Managing Director will as soon as possible, in each calendar year but not later than 30 June, advise employees of the period of closedown and the number of working days involved.

34.5 When taking leave during the year employees must be aware of the requirement to retain credits to cover the required number of days over the compulsory close down period.

34.6 New employees, employees who have exhausted their annual leave credits at the commencement of this Agreement, or employees who have been granted approval to utilise all leave credits will be entitled to take leave without pay or go into debit to cover the amount of leave involved, provided a refund is made by the employee, on termination, if credits to the value of the leave taken in advance have not been accrued.

35.—PARENTAL LEAVE

Definitions

For the purpose of this clause, the following terms have the following meanings—

“Adoption”: is the placement (including any initial temporary placement with a view to a permanent placement) of a child who is less than 5 years of age, who is not the natural or step-child of the employee or employee's spouse and who has not lived with the employee for longer than 6 months.

“Adoption leave”: Unpaid parental leave of up to 12 months taken by either parent in connection with the adoption or placement of a child under the age of 5 years.

“Certification”—

- (a) 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 birth.
- (b) For the purpose of maternity leave means a certificate from a registered medical practitioner stating that the employee is pregnant and the expected date of birth.
- (c) For the purpose of adoption leave and special adoption leave means the requirements that an employee must comply with before being eligible for the entitlement.

The employee must produce to the employer—

a statement from an adoption agency or other appropriate body of the placement of the child for adoption purposes; or

presumed date confirming that the employee or employee's spouse is to have custody of the child pending application for an adoption order.

“Child”: A person to whom an employee or employee's spouse has given birth, or 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 stepchild

of the employee or employee's spouse who has previously lived with the employee for a period of 6 months or more.

“Expected date of birth”: The day certified by a medical practitioner, to be the day on which the birth of the child of the employee, or employee's spouse is expected.

“Maternity leave”: Unpaid parental leave of up to 12 months taken by a female employee in connection with her pregnancy, and the subsequent birth of a child.

“Parental leave”: Any period of maternity leave, paternity leave and/or adoption leave of up to 12 months taken in connection with the birth or adoption of a child.

“Paternity leave”: Unpaid parental leave of up to 12 months which is taken by a male employee in connection with the birth or adoption of a child. Such an employee is permitted to take one week of unpaid paternity leave immediately after the birth or adoption of a child, in conjunction with any leave taken by his spouse.

35.1 Entitlement to parental leave

35.1.1 Employees are entitled to parental leave in connection with the birth or adoption of a child, in accordance with this clause.

35.1.2 Parental leave only applies to part-time or full time employees. Temporary full time or part-time employees on fixed term contracts are only eligible for parental leave for the duration of their fixed term contract of employment.

35.1.3 For female employees parental leave may, at the employee's discretion, commence prior to 6 weeks before the expected date of birth of the child.

35.1.4 The minimum period of absence on maternity leave will commence six weeks before the expected date of birth and end six weeks after the day on which the birth has taken place, however an employee may apply to the Managing Director to vary this period provided her application is supported by a certificate from a registered medical practitioner indicating that the employee is fit to continue or resume duty within this minimum period.

35.2 Eligibility for parental leave

35.2.1 An employee must comply with the certification and notice requirements to be entitled to parental leave, unless these requirements are waived by the employer.

35.2.2 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 during one week of paternity leave taken immediately after the birth or adoption of a child.

35.3 Notice requirements

An employee is to give the employer at least 10 weeks written notice of the intention to take parental leave other than for the purposes of adoption and of the expected duration of the leave.

35.4 Transfer to a safe job

Where in the opinion of a registered medical practitioner illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue her present work, she may be transferred to a safe job, at the rate and on the conditions attached to that job or at the employee's substantive level, whichever is the higher, until the employee commences parental leave.

35.5 Variation and/or cancellation of parental leave period

35.5.1 The period of parental leave may be lengthened or shortened by Agreement between the employer and the employee, provided that the amount of leave does not exceed the maximum allowed.

35.5.2 The employee must where practicable give the employer 14 days written notice of any request to vary the period of leave.

- 35.5.3 Parental leave applied for, but not commenced, by an employee for any reason is cancelled. Reasons for cancellation include, but are not limited to—
- 35.5.3(a) where a pregnancy terminates, other than by the birth of a living child;
- 35.5.3(b) or where a planned adoption or placement of a child does not proceed.
- 35.5.3(c) An employee must notify the employer of any change in certification details.
- 35.6 Parental leave and sick leave
- 35.6.1 Where the pregnancy of an employee terminates after 28 weeks, other than by the birth of a living child, and the employee is not on parental leave, she is entitled to sick leave in accordance with Award entitlements.
- 35.6.2 An employee who suffers any illness or injury related to her pregnancy and/or the birth whilst on parental leave cannot utilise sick leave entitlements.
- 35.6.3 An employee may utilise sick leave entitlements in accordance with clause 27.1—Sick Leave when not on parental leave.
- 35.7 Special adoption leave
- An employee is entitled to special unpaid adoption leave of up to 2 days to attend any compulsory interviews, examinations or the like which are required by the adoption procedure.
- 35.8 Effect of parental leave on leave entitlements and employment
- 35.8.1 Any absence on parental leave will not break the continuity of service.
- 35.8.2 However, absence on parental leave will not be taken into account for the purpose of salary increment progression. Paid leave entitlements such as annual leave, long service leave and public holidays will not accrue during any period of parental leave.
- 35.8.3 An employee may, instead of or in conjunction with parental leave, take annual leave or long service leave entitlements to which he or she is entitled.
- An employee proceeding on parental leave may elect to utilise—
- 35.8.3(a) accrued annual leave
- 35.8.3(b) accrued long service leave for the whole or part of the period referred to in subclause 35.1 of this clause. The periods of leave referred to in paragraphs 35.8.3(a) and 35.8.3(b) of this subclause, which are utilised, will be paid leave.
- 35.9 Replacement employees
- 35.9.1 Before the employer engages a replacement employee (including a temporarily promoted or transferred employee), the employer must inform that person of the temporary nature of the employment, and of the rights of the person on parental leave who is being replaced.
- 35.9.2 The employer does not have to engage a replacement employee if one is not required.
- 35.10 Return to work after parental leave
- 35.10.1 An employee must confirm to the employer an intention of returning to work prior to re-commencing work.
- 35.10.2 An employee returning to work from parental leave is entitled to the position held immediately before beginning 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.
- 35.10.3 Where the position no longer exists, the employee is entitled to the same classification and pay to that of the employee's former position, and for which the employee is qualified and capable of performing.
- 35.10.4 Where immediately before commencing parental leave, an employee was acting in a higher

position, or performing additional duties on a temporary basis, this subclause only applies in respect of the position held by the employee immediately before taking the acting or temporary position.

35.11 Termination of employment and parental leave

35.11.1 An employee may terminate his or her employment at any time during a period of parental leave, by giving the employer the appropriate period of notice detailed in the relevant award.

35.11.2 The employer must not terminate an employee or transfer them from their existing position on the grounds of the employee's parental leave application and/or absence on parental leave.

36.—EMERGENCY AND COMMUNITY SERVICE LEAVE

36.1 Emergency Service Leave may be granted to an Employee who is an active volunteer member of the—

- * Western Australian State Emergency Service;
- * Western Australian Bush Fire Brigade;
- * St John Ambulance Brigade;
- * Defence Force Reserves;
- * Sea and rescue associations; or
- * Other similar Authorities or bodies, recognised by the College.

to attend emergencies as declared by the recognised Authority or body provided that it does not interfere with essential customer service and work requirements.

36.2 If an employee is an active member of a recognised Authority or body they are to advise the College of membership in writing at the commencement of employment or membership in order to seek leave to attend emergencies.

36.3 The employer will be advised as soon as possible by the employee, the emergency service or such other persons as to the absence and, where possible, the expected duration of the absence. Such advice will be provided within 24 hours of the event or activity requiring the person's absence.

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

36.5 The application form must be accompanied by a certificate from the emergency organisation certifying that the employee was required for the specified period. If a certificate of attendance is not provided from the emergency service organisation absence may be considered to be leave without pay. If the absence is deemed to be leave without pay, any adjustment in entitlements arising as a result of not proving a certificate of service will be processed in the next scheduled pay period.

36.6 An employee, who during the course of the emergency volunteers their services to an emergency service organisation, will comply with subclauses 36.2 to 36.5 inclusive.

36.7 Such leave will not affect any continuity of service for the purpose of higher duties arrangements or eligibility for allowances.

36.8 An employee may be granted reasonable Community Service Leave, subject to proof, to donate blood products to the Red Cross Blood Bank.

37.—ANNUAL LEAVE LOADING

Annual leave loading provisions in the GOSAC Award have been absorbed and no longer apply.

38.—SELF-FUNDED WORK BREAKS

38.1 Employees may receive 4 years salary over a period of five years, with no attendance at work required in the fifth year, in accordance with the College's Policy and Guidelines.

38.2 The employer and an employee may agree to enter into any other similar arrangements involving different periods of time, in accordance with the Policy and Guidelines.

PART 7: TRANSFERS, TRAVELLING AND WORKING AWAY FROM USUAL PLACE OF WORK

39.—HOME BASED WORK

An employee may make application to the College to engage in home based work subject to the College's Home Based Work policy.

40.—TRAVELLING ALLOWANCE

40.1 This clause replaces Clause 42. —Travelling Allowance of the Government Officers' Salaries, Allowances and Conditions Award in its entirety.

40.2 An employee who travels on official business will be reimbursed reasonable expenses on the basis of the production of receipts for reasonable expenses. Reasonable expenses will include but not be limited to accommodation costs, purchase of meals as necessary, and cost of transport to destination.

40.3 In addition to clause 40.2—Travelling Allowance above, an employee will be reimbursed reasonable incidental expenses such as train, bus and taxi fares, official telephone calls, laundry and dry cleaning expenses, on production of receipts.

40.4 If on account of lack of suitable transport facilities, an employee necessarily engages reasonable accommodation for the night prior to commencing travelling on early morning transport the employee will be reimbursed the actual cost of such accommodation.

40.5 Reimbursement of expenses will not be suspended should an employee become ill whilst travelling, provided leave for the period of such illness is approved in accordance with provisions of Clause 28.1—Sick Leave of this Agreement, and the employee continues to incur accommodation, meal and incidental expenses.

40.6 Reimbursement claims for travelling in excess of 14 days in one month will not be passed for payment by a certifying employee unless the Managing Director has endorsed the account.

40.7 An employee who is relieving at or temporarily transferred to any place within a radius of fifty (50) kilometres measured from the employee's headquarters will not be reimbursed the cost of midday meals purchased, but an employee travelling on duty within that area which requires absence from the employee's headquarters over the usual midday meal period will be, on the production of receipts, for each meal necessarily purchased, provided that—

40.7.1 such travelling is not a normal feature in the performance of the employee's duties; and

40.7.2 such travelling is not within the suburb in which the employee resides.

41.—TRANSFER

41.1 The College may transfer, at the same level of classification, an officer from one office, post or position within the College to another such office, post or position, for which that officer possesses the appropriate qualifications and skills, provided the College considers it to be in its interests to do so. Such transfers include the transfer of an employee from one campus of the College to another campus of the College.

41.2 The decision to transfer will be equitable and free from bias.

41.3 If the College transfers an employee in accordance with subclause 41.1 of this Clause it will comply with the following—

41.3.1 The transfer will be at the employee's current classification level;

41.3.2 The transfer will not result in a loss of the employee's continuity of service;

41.3.3 The transfer will not change the tenure of the employee;

41.3.4 The College's and employee's needs will be taken into account in the transfer decision. The employee's needs include distance of new work site from place of residence, skills, qualification and experience of the employee, requirement to undertake training to perform the duties of the new position.

41.3.5 The employee will be notified of the transfer decision and arrangements. The College will give the employee at least four weeks notice of intention to transfer.

41.3.6 Policies relating to transfer will be documented, equitable, free from bias, applied consistently and accessible to College employees.

41.3.7 The decisions and processes relating to transfer will embody the principles of natural justice including access to documentation specifically relating to the particular employee's transfer, explanation as to the reasons for the transfer and consultation with the employee where their input is taken into consideration;

41.3.8 The transfer decision will be capable of review; and

41.3.9 The appropriate confidentiality will be observed.

41.4 The College must adhere to the Public Sector Standards in Human Resource Management standard regarding transfer.

41.5 The College will act in accordance with the report and implement any recommendations of a reviewer selected by the Commissioner for Public Sector Standards to investigate any suspected breach of standard in accordance with s.15 of the Public Sector Management (Review Procedures) Regulations 1995.

41.6 If the College does not act in accordance with and implement the recommendations of the reviewer selected by the Commissioner for Public Sector Standards, the College will be in breach of the Agreement.

41.7 Should an application for a breach of the Public Sector Standard relating to Transfer be lodged with the Managing Director within 15 days of an employee being notified of a decision to transfer and a review of the transfer be carried out, the status quo will remain until such time as the reviewer has made recommendations.

SCHEDULE A: SALARIES
ENTERPRISE BARGAINING AGREEMENT 2000
SCHEDULE A

LEVEL	Column A— Current Annual Salary Rates	Column B— Date of Registration 1.5%	New Fortnightly Rate	Column C—	New Fortnightly Rate	Column D—	New Fortnightly Rate
				Annual Salary as at First Pay Period on or After March 15, 2001 1.5%		Annual Salary as at First Pay Period on or After March 15, 2002 3%*	
LEVEL 1							
Age 16	12,900	13,094	501.99	13,290	509.52	13,689	524.80
Age 17	15,075	15,301	586.62	15,531	595.42	15,997	613.29
Age 18	17,585	17,849	684.30	18,117	694.56	18,660	715.40
Age 19	20,355	20,660	792.09	20,970	803.97	21,599	828.09
Age 20	22,858	23,201	889.49	23,549	902.83	24,255	929.92
YEAR 1	25,110	25,487	977.12	25,869	991.78	26,645	1021.53
YEAR 2	25,883	26,271	1,007.20	26,665	1022.31	27,465	1052.98
YEAR 3	26,656	27,056	1,037.28	27,462	1052.84	28,286	1084.43
YEAR 4	27,423	27,834	1,067.13	28,252	1083.14	29,099	1115.63
YEAR 5	28,196	28,619	1,097.21	29,048	1113.67	29,920	1147.08
YEAR 6	28,968	29,403	1,127.25	29,844	1144.16	30,739	1178.49
YEAR 7	29,857	30,305	1,161.85	30,759	1179.28	31,682	1214.65
YEAR 8	30,471	30,928	1,185.74	31,392	1203.53	32,334	1239.63
YEAR 9	31,380	31,851	1,221.11	32,328	1239.43	33,298	1276.61

LEVEL	Column A— Current Annual Salary Rates	Column B— Date of Registration 1.5%	New Fortnightly Rate	Column C— Annual Salary as at First Pay Period on or After March 15, 2001 1.5%	New Fortnightly Rate	Column D— Annual Salary as at First Pay Period on or After March 15, 2002 3%*	New Fortnightly Rate
LEVEL 2							
YEAR 1	32,468	32,955	1,263.45	33,449	1282.40	34,453	1320.88
YEAR 2	33,302	33,802	1,295.91	34,309	1315.34	35,338	1354.80
YEAR 3	34,179	34,692	1,330.03	35,212	1349.98	36,268	1390.48
YEAR 4	35,105	35,632	1,366.07	36,166	1386.56	37,251	1428.15
YEAR 5	36,074	36,615	1,403.77	37,164	1424.83	38,279	1467.58
LEVEL 3							
YEAR 1	37,407	37,968	1,455.65	38,538	1477.48	39,694	1521.81
YEAR 2	38,445	39,022	1,496.04	39,607	1518.48	40,795	1564.03
YEAR 3	39,515	40,108	1,537.68	40,709	1560.74	41,931	1607.56
YEAR 4	40,614	41,223	1,580.44	41,842	1604.15	43,097	1652.27
LEVEL 4							
YEAR 1	42,120	42,752	1,639.05	43,393	1663.63	44,695	1713.54
YEAR 2	43,301	43,951	1,685.00	44,610	1710.28	45,948	1761.59
YEAR 3	44,516	45,184	1,732.28	45,861	1758.27	47,237	1811.02
LEVEL 5							
YEAR 1	46,855	47,558	1,823.30	48,271	1850.65	49,719	1906.17
YEAR 2	48,437	49,164	1,884.86	49,901	1913.14	51,398	1970.53
YEAR 3	50,080	50,831	1,948.80	51,594	1978.03	53,141	2037.37
YEAR 4	51,785	52,562	2,015.15	53,350	2045.38	54,951	2106.74
LEVEL 6							
YEAR 1	54,526	55,344	2,121.81	56,174	2153.64	57,859	2218.25
YEAR 2	56,390	57,236	2,194.35	58,094	2227.26	59,837	2294.08
YEAR 3	58,305	59,180	2,268.87	60,067	2302.90	61,869	2371.99
YEAR 4	60,338	61,243	2,347.98	62,162	2383.20	64,027	2454.69
LEVEL 7							
YEAR 1	63,454	64,406	2,469.23	65,372	2506.27	67,333	2581.46
YEAR 2	65,610	66,594	2,553.13	67,593	2591.43	69,621	2669.17
YEAR 3	67,956	68,975	2,644.42	70,010	2684.09	72,110	2764.61
LEVEL 8							
YEAR 1	71,769	72,846	2,792.80	73,938	2834.69	76,156	2919.73
YEAR 2	74,500	75,618	2,899.07	76,752	2942.56	79,054	3030.84
YEAR 3	77,887	79,055	3,030.87	80,241	3076.34	82,648	3168.63
LEVEL 9							
YEAR 1	82,117	83,349	3,195.48	84,599	3243.41	87,137	3340.71
YEAR 2	84,975	86,250	3,306.69	87,543	3356.30	90,170	3456.98
YEAR 3	88,234	89,558	3,433.51	90,901	3485.02	93,628	3589.57
CLASS 1	93,162	94,559	3,625.28	95,978	3679.66	98,857	3790.05
CLASS 2	98,090	99,561	3,817.05	101,055	3874.30	104,086	3990.53
CLASS 3	103,016	104,561	4,008.74	106,130	4068.87	109,314	4190.93
CLASS 4	107,945	109,564	4,200.54	111,208	4263.55	114,544	4391.46
LEVEL 2/4							
YEAR 1 (2.1)	32,468	32,955	1,263.45	33,449	1282.40	34,453	1320.88
YEAR 2 (2.3)	34,179	34,692	1,330.03	35,212	1349.98	36,268	1390.48
YEAR 3 (2.5)	36,074	36,615	1,403.77	37,164	1424.83	38,279	1467.58
YEAR 4 (3.2)	38,445	39,022	1,496.04	39,607	1518.48	40,795	1564.03
YEAR 5 (4.1)	42,120	42,752	1,639.05	43,393	1663.63	44,695	1713.54
YEAR 6 (4.3)	44,516	45,184	1,732.28	45,861	1758.27	47,237	1811.02
OTHER							
Job Skills Trainees Under 21	19,625 16,593	19,919 16,842	763.68 645.70	20,218 17,095	775.14 655.38	20,825 17,607	798.39 675.04

* The payment of this increase is subject to the approval of the Cabinet Standing Committee on Labour Relations

SCHEDULE B: PRODUCTIVITY IMPROVEMENTS PRODUCTIVITY IMPROVEMENT PLAN

Staff will actively participate in the development and implementation of a Productivity Improvement Plan/s (PIP/s) as determined by the Managing Director.

PIPs may be developed at the College or Campus level, or any combination as determined by the Managing Director.

The PIP/s may involve changes to work practices, but will not involve changes to award/agreement/enterprise bargaining agreement employment conditions.

Subject to the approval of the Cabinet Standing Committee on Labour Relations, a 3% pay increase will be paid to

employees from the first pay period on or after 15 March 2002 for productivity improvements.

SCHEDULE C: SIGNATORIES OF PARTIES TO THE AGREEMENT

The following signatories are authorised to sign this Agreement.

Signatories

.....Signed..... Date 20/12/2000

Employer—

Lidia Rozlapa, Managing Director of Great Southern Regional College of TAFE, on behalf of the Governing Council

Signed for and on behalf of the *Civil Service Association of Western Australia (Inc)* by

.....Signed..... Date 20/12/2000

Common Seal

Mr Dave Robinson, Branch Secretary,
Civil Service Association WA Inc

SCHEDULE D: ALPHABETICAL LISTING OF PROVISIONS

Annual Leave
Annual Leave Loading
Annual Leave Travel Concessions
Arrangement
Availability of Agreements
Breaches of Discipline
Casual Employment
Ceremonial/Cultural Leave
Christmas Closedown
Compassionate Leave
Consultation Provisions
Definitions
Dispute Resolution Procedure
Emergency and Community Service Leave
Flexitime
Higher Duties
Home Based Work
Hours of Work
Long Service Leave
No Further Claims
Number of Employees Covered
Objectives of the Agreement
Parental Leave
Parties Bound
Past Productivity
Payment Arrangements
Productivity Improvements
Public Holidays
Relationship to Awards/Agreements
Repayments of Overpayments
Salaries
Salary Packaging
Scope
Self Funded Work Breaks
Short Leave
Sick Leave and Family/Carer's Leave
Signatories of Parties to the Agreement
Substandard Performance
Term of Agreement and Renegotiation
Title
Transfer
Travelling Allowance
Variation of Allowances

HOSPITALITY INDUSTRY—AUSTRALIAN HOTELS ASSOCIATION (WA BRANCH—ACCOMMODATION DIVISION) INDUSTRIAL AGREEMENT 2000.

No. AG231 of 2000.

2001 WAIRC 01970

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES WESTERN AUSTRALIAN HOTELS AND HOSPITALITY ASSOCIATION INCORPORATED (UNION OF EMPLOYERS) AND OTHERS, APPLICANTS

v.

AUSTRALIAN LIQUOR, HOSPITALITY AND MISCELLANEOUS WORKERS UNION, WESTERN AUSTRALIAN BRANCH, RESPONDENT

CORAM COMMISSIONER S WOOD

DELIVERED MONDAY, 5 FEBRUARY 2001

FILE NO AG 231 OF 2000
CITATION NO. 2001 WAIRC 01970

Representation

Applicants Ms N Lilley
Respondent Mr J Ridley

Order.

HAVING heard Ms N Lilley on behalf of the applicants and Mr J Ridley 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 21st day of September 2000, entitled the Hospitality Industry—Australian Hotels Association (WA Branch—Accommodation Division) Industrial Agreement 2000 is hereby registered.

AND replaces the Hospitality Industry—Australian Hotels Association (WA Branch—Accommodation Division) Industrial Agreement 1998 (AG 257 of 1998) which is hereby cancelled.

(Sgd.) S. WOOD,

[L.S.]

Commissioner.

Schedule.

1.—TITLE

This Agreement shall be known as the *Hospitality Industry—Australian Hotels Association (WA Branch—Accommodation Division) Industrial Agreement 2000.*

2.—AREA

This Agreement shall have effect throughout the State of Western Australia.

3.—SCOPE & EFFECT

(1) This Agreement shall apply to all employees employed in the callings described in Schedule B of this Agreement (previously clause 21.—Wages of the *Hospitality Industry—Australian Hotels Association (WA Branch—Accommodation Division) Industrial Agreement 1998*) in any establishment, or part thereof, by—

- (a) a member in the Accommodation and Restaurant Division of the Western Australian Hotels and Hospitality Association Incorporated (Union of Employers); or
- (b) an employer listed in Schedule A—Employer Party to Agreement

(2) This Agreement is binding on—

- (a) the Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch, its officials, employees and members or persons eligible to be members;
- (b) the Western Australian Hotels and Hospitality Association Incorporated (Union of Employers) its officials, employees;
- (c) members of the Accommodation and Restaurant Division of the Western Australian Hotels and Hospitality Association Incorporated (Union of Employers); and
- (d) the employers listed in Schedule A—Employer Party to Agreement.

(3) This Agreement shall cancel in its entirety the *Hospitality Industry—Australian Hotels Association (WA Branch—Accommodation Division) Industrial Agreement 1998.*

(4) It is estimated the number of employees who will be bound by this Agreement upon its registration is 7 500 employees.

4.—TERM

The term of this Agreement shall be for a period of 1 year as from the beginning of the first pay period commencing on or after the date of registration.

5.—RESOLUTION OF DISPUTES

Questions, disputes or difficulties arising under this Agreement shall be resolved between the employee(s) and the employer in accordance with the following procedure—

Step 1—Should a question, dispute or difficulty arise, the employee first refers the grievance to the supervisor

Step 2—If the matter is not resolved satisfactorily, the parties shall arrange for further discussion between the employer and the employee and his or her nominated representative, if any, and more senior levels of management.

Step 3—If the matter is still not resolved a discussion shall be held between the employer’s representatives and the employee’s representatives or Union.

Step 4—If the matter cannot be resolved it may be referred to the Western Australian Industrial Relations Commission.

Step 5—While the parties attempt to resolve the matter work will continue as normal unless an employee has a reasonable concern about an imminent risk to his or her health and safety.

Executed as an agreement.

Dated this day of 2000.

SIGNED FOR AND ON BEHALF OF—

The seal of the— Common Seal
Australian Liquor, Hospitality and Miscellaneous Workers Union of Australia, Western Australian Branch, was affixed in the presence of President
.....(President) (Signed D Kelly)
and David Kelly (Acting Secretary) Secretary

and the—
The Western Australian Hotels and Hospitality Association Incorporated (Signed M Monaghan)
(Union of Employers) was affixed in the presence of Michael Monaghan (Signed B Wood) and Bradley Wood Common Seal

SCHEDULE A

EMPLOYER PARTY TO AGREEMENT

Executed as an agreement.

Dated this day of 2000.

SIGNED FOR AND ON BEHALF OF—

The seal of the—
RENAISSANCE AUSTRALIA) Common Seal
PTY LTD is affixed in)
accordance with its)
constitution in the) (Signed) Director
presence of:)
)
ACN 075 329 234) (Signed)
Director/Company
Secretary

SCHEDULE A

EMPLOYER PARTY TO AGREEMENT

Executed as an agreement.

Dated this 22nd day of June 2000.

SIGNED FOR AND ON BEHALF OF—

The seal of the—
BROADWATER HOSPITALITY) Common Seal
was here unto affixed)
by order of its Directors)
in accordance with its) (Signed) Director
Constitution)
)
ACN 009 470 688) (Signed)
Director/Company
Secretary

SCHEDULE A

EMPLOYER PARTY TO AGREEMENT

Executed as an agreement.

Dated this 16 day of June 2000.

SIGNED FOR AND ON BEHALF OF—

The seal of the—
ATRIUM BODY) Common Seal
CORPORATE)
STRATA PLAN)
11104) (Signed—Brandon)
) Chairman
)
ACN)
Director/Company
Secretary

SCHEDULE A

EMPLOYER PARTY TO AGREEMENT

Executed as an agreement.

Dated this day of 2000.

SIGNED FOR AND ON BEHALF OF—

The seal of the— Common Seal
SUCCESS VENTURE PTY)
LIMITED)
) (Signed) Director
)
ACN 060 569 539) (Signed)
Director/Company
Secretary

SCHEDULE A

EMPLOYER PARTY TO AGREEMENT

Executed as an agreement.

Dated this day of 2000.

SIGNED FOR AND ON BEHALF OF—

The seal of the—
WALTER DEVELOPMENTS) Common Seal
PTY LTD)
)
) (Signed) Director
)
ACN 008 703 044) (Signed)
Director/Company
Secretary

SCHEDULE A

EMPLOYER PARTY TO AGREEMENT

Executed as an agreement.

Dated this day of 2000.

SIGNED FOR AND ON BEHALF OF—

The seal of the—
GATEWAY MOTEL)
)
)
) (Signed) Director
)
ACN)
Director/Company
Secretary

SCHEDULE A

EMPLOYER PARTY TO AGREEMENT

Executed as an agreement.

Dated this day of 2000.

SIGNED FOR AND ON BEHALF OF—

The seal of the—
HILTON HOTELS OF) Common Seal
AUSTRALIA PTY LIMITED)
)
) (Signed) Director

ACN 008 419 485)
) (Signed)
 Director/Company
 Secretary

SCHEDULE A

EMPLOYER PARTY TO AGREEMENT

Executed as an agreement.

Dated this 9th day of June 2000.

SIGNED FOR AND ON BEHALF OF—

The seal of the—

JARRAH PARK PTY LTD) *Common Seal*
)
) (Signed) Director

ACN 064 887 574) (Signed)
 Director/Company
 Secretary

SCHEDULE A

EMPLOYER PARTY TO AGREEMENT

Executed as an agreement.

Dated this 23 day of May 2000.

SIGNED FOR AND ON BEHALF OF—

The seal of the—

THE KIMBERLEY) *Common Seal*
CONNECTION PTY LTD)
) (Signed) Director

ACN 061 181 637) (Signed)
 Director/Company
 Secretary

SCHEDULE A

EMPLOYER PARTY TO AGREEMENT

Executed as an agreement.

Dated this ... day of ... 2000.

SIGNED FOR AND ON BEHALF OF—

The seal of the—

FASCINE DEVELOPMENTS) *Common Seal*
PTY LTD)
) (Signed) Director

ACN 009 114 461) (Signed)
 Director/Company
 Secretary

SCHEDULE A

EMPLOYER PARTY TO AGREEMENT

Executed as an agreement.

Dated this 16 day of May 2000.

SIGNED FOR AND ON BEHALF OF—

The seal of the—

JOONDALUP HOTEL) *Common Seal*
INVESTMENTS PTE LTD)
) (Signed) Director

ARBN 061 026 944) (Signed)
 Authorised signatory

SCHEDULE A

EMPLOYER PARTY TO AGREEMENT

Executed as an agreement.

Dated this 17th day of May 2000.

SIGNED FOR AND ON BEHALF OF—

The seal of the—

TOTAL DESIGNS &) *Common Seal*
DEVELOPMENT PTY LTD)
T/A INTER CITY MOTEL)
 was affixed in the presence) (Signed) Director
 Of Lianty Sunerman)

ACN 073 281 259)
) (Signed)
 Director/Company
 Secretary

SCHEDULE A

EMPLOYER PARTY TO AGREEMENT

Executed as an agreement.

Dated this 17 day of May 2000.

SIGNED FOR AND ON BEHALF OF—

The seal of the—

Ambassador Golf & Hotel) *Common Seal*
Management Services Pty Ltd)
) (Signed) Director

ACN 009 055 494) (Signed)
 Director/Company
 Secretary

SCHEDULE A

EMPLOYER PARTY TO AGREEMENT

Executed as an agreement.

Dated this 19th day of May 2000.

SIGNED FOR AND ON BEHALF OF—

The seal of the—

CAMELLIA HOLDINGS) *Common Seal*
PTY LTD)
) (Signed) Director

ACN 009 462 962) (Signed)
 Company Secretary

SCHEDULE A

EMPLOYER PARTY TO AGREEMENT

Executed as an agreement.

Dated this 23 day of May 2000.

SIGNED FOR AND ON BEHALF OF—

The seal of the—

HYDE PARK MANAGEMENT) *Common Seal*
LIMITED)
) (Signed) Director

ABN 63 008 698 708) (Signed)
 Director/Company
 Secretary

SCHEDULE A

EMPLOYER PARTY TO AGREEMENT

Executed as an agreement.

Dated this 1st day of June 2000.

SIGNED FOR AND ON BEHALF OF—

The seal of the—

HR OPERATIONS PTY LTD) *Common Seal*
)
) (Signed) Director

ACN 073 552 164) (Signed)
 Director/Company
 Secretary

SCHEDULE A

EMPLOYER PARTY TO AGREEMENT

Executed as an agreement.

Dated this 17 day of May 2000.

SIGNED FOR AND ON BEHALF OF—

The seal of the—

HOTEL GRAND) *Common Seal*
CHANCELLOR)

ACN) (Signed—Tim Johns)
) General Manager
) Authorised Signatory
)
) (Signed)
) Director/Company
) Secretary

SCHEDULE A

EMPLOYER PARTY TO AGREEMENT

Executed as an agreement.

Dated this 9th day of August 2000.

SIGNED FOR AND ON BEHALF OF—

The seal of the—

Burswood Hotel Pty Ltd) *Common Seal*

)
)
) (Signed—Donald
) Michael Watt
) Director

ACN 078 805 017) (Signed—Yew Seng
) Kwa Company Sec-
) retary

SCHEDULE A

EMPLOYER PARTY TO AGREEMENT

Executed as an agreement.

Dated this day of 2000.

SIGNED FOR AND ON BEHALF OF—

The common seal of—

AAPC Properties Pty Ltd) *Common Seal*
ACN 065 560 885 has been)
hereunto affixed by authority)
of the Board of Directors)
in the presence of:)

(Signed—John Knowles)) (Signed—Michael
 Company Secretary) Issenberg
 Director

SCHEDULE A

EMPLOYER PARTY TO AGREEMENT

Executed as an agreement.

Dated this day of 2000.

SIGNED FOR AND ON BEHALF OF—

The common seal of—

QP Management Pty Limited) *Common Seal*
ACN 001 092 842 has been)
hereunto affixed by authority)
of the Board of Directors)
in the presence of:)

(Signed—John Knowles)) (Signed—Michael
 Company Secretary) Issenberg
 Director

SCHEDULE A

EMPLOYER PARTY TO AGREEMENT

Executed as an agreement.

Dated this day of 2000.

SIGNED FOR AND ON BEHALF OF—

The common seal of—

TAHL Holdings Pty Limited) *Common Seal*
ACN 073 034 689 has been)
hereunto affixed by authority)
of the Board of Directors)
in the presence of:)

(Signed—John Knowles)) (Signed—Ronald
 Company Secretary) John Hickey
 Director

SCHEDULE B

21.—WAGES

The following shall be the minimum fortnightly rates of wages payable to employees covered by this Agreement—

- (1) (a) Classifications
- (1) Chef
 - (2) Qualified Cook
 - (3) Cook Employed Alone
 - (4) Breakfast and/or Other Cooks
 - (5) Bar Attendant—Category 1
 - (6) Bar Attendant—Category 2
 - (7) Cellarman
 - (8) Head Waiter/Waitress
 - (9) Head Steward/Stewardess
 - (10) Hostess
 - (11) Waiter/Waitress
 - (12) Steward/Stewardess
 - (13) Housekeeper/Supervisor
 - (14) Night Porter
 - (15) Hall Porter
 - (16) Lift Attendant
 - (17) Cashier
 - (18) Snack Bar Attendant
 - (19) Butcher
 - (20) Kitchenhand
 - (21) Commissionaire and/or Car Parking Attendant
 - (22) Security Officer
 - (23) Timekeeper
 - (24) Storeman
 - (25) Housemaid
 - (26) Laundress
 - (27) Cleaner
 - (28) Maintenance Man
 - (29) Gardener
 - (30) Yardman
 - (31) General Hand

INGHAMS ENTERPRISES PTY LTD DISTRIBUTION ENTERPRISE BARGAINING AGREEMENT 2000.

No. AG 268 of 2000.

2001 WAIRC 01776

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

PARTIES THE SHOP, DISTRIBUTIVE AND ALLIED EMPLOYEES' ASSOCIATION OF WESTERN AUSTRALIA, APPLICANT
 v.
 INGHAMS ENTERPRISES PTY LIMITED, RESPONDENT

CORAM COMMISSIONER S WOOD

DELIVERED MONDAY, 15 JANUARY 2001

FILE NO AG 268 OF 2000

CITATION NO. 2001 WAIRC 01776

Result Agreement registered

Representation

Applicant Mr TJ Pope

Respondent Mr R Bragg

Order.

HAVING heard Mr TJ Pope on behalf of the applicant and Mr R Bragg on behalf of the respondent, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the agreement made between the parties as lodged in the Commission on the 22nd day of November 2000, amended by consent at hearing on the 15th day of January 2001, entitled the Inghams Enterprises Pty Ltd

Distribution Enterprise Bargaining Agreement 2000 is hereby registered;

AND replaces the Inghams Enterprises Pty Ltd Distribution Enterprise Bargaining Agreement 1999 (AG 29 of 2000) which is hereby cancelled.

[L.S.] (Sgd.) S. WOOD,
Commissioner.

Schedule.

1.—TITLE

This Agreement shall be known as the "Inghams Enterprises Pty Ltd Distribution Enterprise Bargaining Agreement 2000 and replaces the "Inghams Enterprises Pty Ltd Distribution Enterprise Bargaining Agreement 1999 No AG 29 of 2000.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Scope
4. Parties Bound
5. Term of Agreement
6. Relationship to Award
7. Objectives of Agreement
8. Wages
9. Classifications
10. No Further Claims
11. Rest Breaks
12. Public Holiday Work
13. Grievance Procedure
14. Conditions for Employment changes with significant effect and Redundancy
15. Leave Provisions
16. Consultative Committee
17. Abandonment of Employment
18. Signatories

3.—AREA AND SCOPE

The Area and Scope of this Agreement shall be that prescribed in the *Shop and Warehouse (Wholesale and Retail Establishments) State Award 1977* (No R32 of 1976), as amended from time to time, ("the Award"), insofar as it applies to employees of Inghams Enterprises Pty Ltd, employed at the distribution centre at 9 Baden Street Osborne Park, Western Australia.

4.—PARTIES BOUND

This Agreement shall apply to and be binding on Inghams Enterprises Pty Ltd ("the Company") and the Shop, Distributive and Allied Employees; Association of Western Australia ("the Union") and shall apply to all employees employed at the Company's operation in Osborne Park, who are members or are eligible to be members of the Union and who are covered by the Award or any successor thereto. There are approximately 30 distribution employees whose conditions of employment will be regulated by the terms of this Agreement.

5.—TERM OF AGREEMENT

1. This Agreement shall operate from 20/10/2000 and shall expire on 20/01/2003 (27 months).
2. The parties to this Agreement shall begin negotiations for a new Agreement at least 3 months prior to the expiration of this Agreement.
3. Following its expiry, the Agreement shall continue to operate until varied by the parties or replaced by another Agreement.

6.—RELATIONSHIP TO AWARD

1. This Agreement shall be read and interpreted wholly in conjunction with the Award, as identified in Clause 3—Area and Scope, of this Agreement.
2. Where there is any inconsistency between this Agreement and the Award, this Agreement shall prevail to the extent of that inconsistency. Where this Agreement is silent, Award provisions shall apply.

7.—OBJECTIVES OF AGREEMENT

The principal objective of this Agreement is the delivery of a wage increase as described in Clause 8 of the Agreement in recognition of the issues negotiated in this Agreement and of past cooperation of employees in achieving a good standard of work and continuing to display the ability to apply a flexible attitude in the handling of the changing nature of the business.

8.—WAGES

1. Full Time Employees

- a. The following wage rates are for 38 ordinary hours per week.
- b. The wage increase shall come into effect on the first full pay period on or after the dates listed below.

Classification	20/10/2000—6%	20/10/2001—4%
Level 1	\$564.67	\$587.26
Level 2	\$594.58	\$618.36
Level 3	\$611.20	\$635.64
Level 4	\$638.05	\$663.57
Level 5	\$664.90	\$691.49
Level 6	\$691.73	\$719.40

2. Part Time Employees

Part time employees shall receive payment for ordinary hours of work at an hourly rate of one thirty eight of the appropriate rate prescribed by subclause (1) hereof.

3. Casual Employees

A casual employee shall be paid one thirty eight of the appropriate rate prescribed in subclause (1) of this clause, and in addition a loading in accordance with the following scale—

- a. Where the casual engagement on any day is for a full day's work, a loading of 20%;
- b. Where the casual engagement on any day is for less than a full day's work, a loading of 25%.

4. This Agreement shall not operate to cause any employee to suffer a reduction in an overaward payment.

9.—CLASSIFICATIONS

Employees are graded in accordance with the following six level skills based classification structure—

1. **Level 1 New starter/probationer**

This level is only applicable to new employees in the first nine weeks of service.

2. **Level 2**

This level applies to employees who have completed nine weeks' service.

3. **Level 3**

This level applies to employees who have completed nine weeks' service and who operate forklifts.

4. **Level 4**

This level applies to employees who have completed nine weeks' service and who are nominated B-class drivers and who are forklift operators.

5. **Level 5**

This level applies to leading hands.

6. **Level 6**

This level applies to leading hands who are nominated B-class licence holders.

10.—NO FURTHER CLAIMS

1. It is agreed that the Union will undertake that no further claims will be made upon the Company for the term of this Agreement.

2. In the event that the award is varied to include any future "Safety Net Adjustments" awarded by the Western Australian Industrial Relations Commission then such increases shall be offset against the increases in this Agreement.

11.—REST BREAKS

1. The parties agree that in recognition for wage increases contained in this Agreement the total rest breaks taken per day by employees shall be reduced by 15 minutes per day when the second wage increase under this Agreement is effective. The time at which the extra 15 minutes shall be worked

shall be as mutually agreed between each individual employee and his/her manager.

2. Employees will then retain the right to a one hour unpaid meal break, plus either—

- a. three, 15 minute paid rest breaks during the working day, or
- b. one 15 minute paid rest break and a paid half hour rest break during the working day,

as mutually agreed between each individual employee and his or her manager.

3. Employees directed to work in the areas of frozen and fresh lines will not have their rest breaks reduced.

12.—PUBLIC HOLIDAY WORK

Due to the nature of the business, the Company may elect to operate on public holidays, in particular on Easter Monday and Boxing Day, depending on what day Boxing Day falls. The Company may request employees make themselves available to work overtime on those days on the following basis—

- a. Employees will not be required to work on Good Friday or Christmas Day.
- b. Award penalty rates will apply to work performed on Public holidays.
- c. Employees will be given not less than 14 days notice of the Company's intention to operate on a Public Holiday.
- d. Staffing for these occasions will be arranged through the consultative committee, taking account of individual employees special circumstances

13.—GRIEVANCE PROCEDURE

1. Any question, dispute or difficulty arising from this Agreement shall be dealt with in accordance with the following procedure—

- a. The matter shall first be discussed between the employee affected and the appropriate supervisor. The employee may choose to be represented by the Union delegate.
- b. If not settled, the matter shall be discussed between the employee, an accredited representative of the Union and the appropriate representative of the Company.
- c. If not settled the matter shall be discussed between an official of the Union and an appropriate representative of the Company.

2. A reasonable time frame shall apply to each step of the procedure as prescribed in subclause (1) hereof.

3. While the matter in dispute is being discussed in accordance with the procedure, as prescribed in subclause (1) hereof, work shall continue and the status quo as applying before the dispute shall be maintained. No party shall be prejudiced in relation to the final settlement by the continuance of work in accordance with this clause.

4. It will be open to either party at any time to seek the assistance of the Western Australian Industrial Relations Commission in resolving any dispute provided the persons involved in the question, dispute or difficulty have conferred amongst themselves and made reasonable attempts to resolve the question, dispute or difficulty before taking the matter to the Commission.

14.—CONDITIONS FOR EMPLOYMENT CHANGES WITH SIGNIFICANT EFFECT, AND REDUNDANCY

Interpretation—

14. (1) In this section,

“**employee**” does not include a casual employee or an apprentice or industrial trainee within the meaning of the *Industrial Training Act 1975*;

“**redundant**” means being no longer required by the company to continue doing a job because, for a reason that is not a usual reason for change in the company's work-force, the company has decided that the job will not be done by any person.

(2) For the purposes of this Part, an action of the company has a significant effect on an employee if:

- (a) there is to be a major change in the—
 - (i) composition, operation, or size of ; or
 - (ii) skills required in, the company's work-force that will affect the employee;
- (b) there is to be elimination or reduction of—
 - (i) a job opportunity
 - (ii) a promotion opportunity; or
 - (iii) job tenure, for the employee;
- (c) the hours of the employee's work are to significantly increase or decrease;
- (d) the employee is required to be retrained;
- (e) the employee is required to transfer to another job or work location; or
- (f) the employee's job is to be restructured.

Employee to be informed;

(3) Where the company has decided to—

- (a) take action that is likely to have significant effect on an employee or,
 - (b) make an employee redundant,
- the employee is entitled to be informed by the company, as soon as reasonable practicable after the decision has been made, of the action or the redundancy, as the case may be, and discuss with the company the matters mentioned in subsection (4).

(4) The matters to be discussed are—

- (a) the likely effects of the action or redundancy in respect of the employee; and
- (b) measures that may be taken by the employee or the employer to avoid or minimise a significant effect, as the case requires.

Company not bound to disclose prejudicial information

(5) Nothing in this Agreement requires the company, when providing information or holding a discussion under subsection 3 to disclose information that may seriously harm—

- (a) the company's business undertaking; or
- (b) the company's interest in the carrying on, or disposition, of the business undertaking.

Leave for job interviews

(6) An employee who has been informed that he or she has been, or will be, made redundant is entitled to paid leave of up to 8 hours for the purpose of being interviewed for further employment.

(7) The 8 hours need not be consecutive.

(8) An employee who claims to be entitled to paid leave under subsection (6) is to provide to the company evidence that would satisfy a reasonable person of the entitlement.

(9) Payment for leave under subsection (6) is to be made at the employees ordinary rate of pay for ordinary hours.

(10) The following scale of payments shall be made by the company in circumstances to which those provisions apply.

Period of Continuous Service	Severance Pay
Less than 1 Year	Nil
1 year but less than 2 years	4 weeks
2 years but less than 3 years	6 weeks
3 years but less than 4 years	7 weeks
4 years but less than 5 years	8 weeks
5 years but less than 6 years	10 weeks
6 years but less than 7 years	12 weeks
7 years but less than 8 years	14 weeks
8 years but less than 9 years	16 weeks
9 years but less than 10 years	18 weeks
10 years but less than 11 years	20 weeks
11 years but less than 12 years	22 weeks
12 years but less than 13 years	24 weeks
13 years and over	26 weeks

15.—LEAVE PROVISIONS

Public Holidays

An employee who is absent on the working day before or on the working day after a public holiday/s shall not be entitled to payment for the public holiday unless the employee provides proof acceptable to the Company, that there was a valid reason for the absence.

16.—CONSULTATIVE COMMITTEE

(1) A consultative committee shall be established comprising the Distribution Manager, one supervisor and two employees, the latter being elected from the distribution operations on an annual basis.

(2) (a) Subject to agenda items the committee shall meet on a monthly basis.

(b) (i) Agenda items may be submitted by any employee through the employee committee member and must be forwarded to the Distribution Manager five days prior to the meeting and an agenda circulated for committee members two days before the meeting. Additional agenda items may be added once the need for a meeting has been established.

(ii) If there are no agenda items the meeting will not occur.

(3) The committee is responsible for considering issues raised and making recommendations to the company management for consideration on those issues.

(4) At the request of a committee member other persons, including a union organiser, may be invited to attend the Consultative Committee meeting on a relevant issue.

17.—ABANDONMENT OF EMPLOYMENT

Where an employee is absent from work for a period of three working days without contacting the Company in regard to the reasons for the absence, it shall be assumed that the employee has abandoned their employment. If within 14 days from the commencement of the absence the employee has not proved to the Distribution Manager that there was a satisfactory reason for the absence, then the employee shall be deemed to have abandoned their employment.

18.—SIGNATORIES

For and on behalf of the Shop, Distributive and Allied Employees' Association of Western Australia—

(Signed Mark Bishop)

Common Seal

Signature

MARK BISHOP

Name of Signatory

GENERAL PRESIDENT

Position of Signatory

13/11/2000

Date

(signed Joseph Bullock)

Common Seal

Signature

JOSEPH BULLOCK

Name of Signatory

GENERAL SECRETARY

Position of Signatory

17/11/2000

Date

For and on behalf of Inghams Enterprises Pty Ltd—

(Signed PJ Manning)

Signature

PJ MANNING

Name of Signatory

GENERAL MANAGER

Position of Signatory

1/11/2000

Date

KIMBERLEY COLLEGE OF TAFE PUBLIC SERVICE AND GOVERNMENT OFFICERS' ENTERPRISE AGREEMENT 2000.

No. PSAAG 74 of 2000.

2001 WAIRC 01797

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

PARTIES	GOVERNING COUNCIL, KIMBERLEY COLLEGE OF TAFE -and- THE CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA INCORPORATED
CORAM	COMMISSIONER P E SCOTT
DELIVERED	TUESDAY, 16 JANUARY 2001
FILE NO	PSAAG 74 OF 2000
CITATION NO.	2001 WAIRC 01797

Result	Agreement registered
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Order.

HAVING heard Ms J Caiacob on behalf of the Governing Council, Kimberley College of TAFE and Ms J van den Herik on behalf of the Civil Service Association of Western Australia (Incorporated), and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Kimberley College of TAFE Public Service and Government Officers' Enterprise Agreement 2000 in the terms of the following schedule be registered on the 21st day of December 2000 and shall replace the Western Australian Department of Training Public Service and Government Officers' Enterprise Agreement 1998 (No. PSA AG 12 of 1998), in respect of Government Officers employed at Kimberley College of TAFE.

[L.S.] (Sgd.) P. E. SCOTT,
Commissioner,
Public Service Arbitrator.

Schedule.

PART 1—APPLICATION AND OPERATION OF AGREEMENT

1.—TITLE

This Agreement will be called the Kimberley College of TAFE Public Service and Government Officers' Enterprise Agreement 2000 and will replace the Kimberley College of TAFE Public Service and Government Officers' Enterprise Agreement 1998.

2.—ARRANGEMENT

PART 1—APPLICATION AND OPERATION OF AGREEMENT

- TITLE
- ARRANGEMENT
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- DEFINITIONS
- NUMBER OF EMPLOYEES COVERED
- NO FURTHER CLAIMS
- TERM OF AGREEMENT AND RENEGOTIATION
- RELATIONSHIP TO AWARDS
- AVAILABILITY OF AGREEMENT
- OBJECTIVES OF THE AGREEMENT
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PART 2—DISPUTE RESOLUTION

- CONSULTATION PROVISIONS
- DISPUTE RESOLUTION PROCEDURE
- SUBSTANDARD PERFORMANCE
- BREACHES OF DISCIPLINE

PART 3—EMPLOYER AND EMPLOYEES' DUTIES, EMPLOYMENT RELATIONSHIP AND RELATED ARRANGEMENTS

17. HIGHER DUTIES
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20. SALARY PACKAGING
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24. HOURS OF WORK
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26. ANNUAL LEAVE
27. LONG SERVICE LEAVE
28. SICK LEAVE
29. FAMILY/CARER'S LEAVE
30. COMPASSIONATE LEAVE
31. SHORT LEAVE
32. CEREMONIAL/CULTURAL LEAVE
33. PUBLIC HOLIDAYS
34. CHRISTMAS CLOSEDOWN
35. PARENTAL LEAVE
36. EMERGENCY AND COMMUNITY SERVICE LEAVE
37. ANNUAL LEAVE LOADING
38. SELF-FUNDED WORK BREAKS

PART 7: TRANSFERS, TRAVELLING AND WORKING AWAY FROM USUAL PLACE OF WORK

39. HOME BASED WORK
40. TRAVELLING ALLOWANCE
41. TRANSFER

SCHEDULE A: SALARIES

SCHEDULE B: PRODUCTIVITY IMPROVEMENTS

SCHEDULE C: SIGNATORIES OF PARTIES TO THE AGREEMENT

SCHEDULE D: ALPHABETICAL LISTING OF PROVISIONS

3.—SCOPE

This Agreement will apply throughout the state of Western Australia to Officers employed in the Kimberley College of TAFE. This Agreement will also apply to Officers on secondment to or in the College.

4.—PARTIES BOUND

The parties to this Agreement will be the Governing Council of the Kimberley College of TAFE, and the Civil Service Association of Western Australia (Inc).

5.—DEFINITIONS

The following terms will have the following meanings—

“**Agreement**”: means the Kimberley College of TAFE Public Service and Government Officers' Enterprise Agreement 2000.

“**Award**”: means the Government Officers' Salaries, Allowances and Conditions Award 1989.

“**College**” means the Kimberley College of TAFE.

“**Continuous service**”: Any period of service between the employee and employer under an unbroken contract of employment, and includes any authorised unpaid or paid absences.

“**CSA**”: means the Civil Service Association of Western Australia (Inc).

“**Department**”: means the Western Australian Department of Training and Employment.

“**Employee**”: for the purpose of this Agreement means, someone who is referred to at Clause 3—Scope.

“**Employer**”: means the Governing Council of the Kimberley College of TAFE.

“**Full-Time Officer**”: A person employed to work 37 1/2 ordinary hours per week.

“**Government**”: means the Government of Western Australia.

“**GOSAC Award**”: means the Government Officers' Salaries Allowances & Conditions Award 1989.

“**Managing Director**” means the Managing Director of the Kimberley College of TAFE, pursuant to section 46 of the Vocational Education and Training Act 1996.

“**Minister**”: is the Minister of the Crown who is responsible for the administration of the employing agency.

“**Officer**”: means a Public Service Officer as defined in the Public Sector Management Act 1994 or Government Officer as defined in the Industrial Relations Act 1979.

“**Part-Time**”: means regular and continuing employment for less than the ordinary hours for a “Full-Time Officer”.

“**Spouse**”: means a husband or wife of an employee, and includes a de facto spouse. For the purposes of Bereavement leave it includes a former spouse.

“**Union**”: means the Civil Service Association of Western Australia (Inc).

“**WAIRC**”: means the Western Australian Industrial Relations Commission.

6.—NUMBER OF EMPLOYEES COVERED

At the date of registration of this Agreement the approximate number of employees covered by this Agreement is 4.

7.—NO FURTHER CLAIMS

7.1 There will be no extra claims for salary adjustments other than that which is provided by this Agreement for the duration of its term.

7.2 There will be no further claims on matters contained in this Agreement for the duration of its term.

8.—TERM OF AGREEMENT AND RENEGOTIATION

8.1 This Agreement will operate on and from the date of registration and will remain in force for two years.

8.2 Six (6) months prior to the date of expiration of this Agreement, the parties will commence negotiation for its renewal or replacement.

8.3 The pay rates attained under this Agreement will form the new base rates for any future Agreement, provided that the productivity targets attained under this Agreement continue and previous productivity improvements in the last agreement are sustained, and changes to Award conditions maintained, or changed by agreement.

9.—RELATIONSHIP TO AWARDS

This Agreement will be read and interpreted wholly in conjunction with the Government Officers' Salaries, Allowances and Conditions Award 1989. This Agreement will have precedence to the extent of any inconsistency. Where the agreement is silent the relevant award will apply.

10.—AVAILABILITY OF AGREEMENT

Employees will have access to an electronic copy of this agreement. Where electronic copies are unavailable, hard copies of the agreement will be provided.

11.—OBJECTIVES OF THE AGREEMENT

It is the shared objectives of the parties to—

Work towards alignment of conditions for all TAFE employees.

Meet the requirements of clients and students through the provision of reliable, efficient and competitive services.

Achieve the Department's mission and improve productivity and efficiency through identified improvements.

Achieve improvement and greater flexibility of working patterns and arrangements.

Promote and facilitate enhanced employee relations and increased job satisfaction.

To facilitate a continued cooperative approach to the introduction of change.

This Agreement will operate as a contributive mechanism to deliver a cost efficient Vocational Education and Training service.

12.—PAST PRODUCTIVITY

This Agreement incorporates past productivity to the date of registration.

PART 2—DISPUTE RESOLUTION

13.—CONSULTATION PROVISIONS

13.1 The parties acknowledge the need for a satisfactory College consultative procedure. Staff participation and consultation is encouraged. The form of participation and consultation may vary at each workplace depending on individual circumstances. The College will establish its own structure and processes. However, the non-establishment of a structure or process will not be used as a means to avoid requirement to consult.

13.2 Employees will be involved in broadly based representative consultative committees with structure and functions determined by the College.

13.3 Consultative committees will provide a forum for staff and management to, where appropriate, seek the views of the other and enter into meaningful discussions that may contribute towards outcomes, in relation to operational matters.

13.4 Representatives from the Union, where it has members at the workplace, will be invited to participate on consultative committees.

13.5 The parties to this Agreement acknowledge that decision making continues to rest with the College, which is accountable to Government, through legislation, for the operation of its business.

14.—DISPUTE RESOLUTION PROCEDURE

14.1 In the event of a dispute arising in the workplace the procedure to be followed to resolve the matter will be as follows—

- 14.1.1 The employee and their supervisor will meet and confer on the matter; and
- 14.1.2 If the matter is not resolved at such a meeting, the parties will arrange for further discussions between the employee and his or her nominated representative, if any, and more senior levels of management.
- 14.1.3 If the matter is still unresolved a discussion will be held between representatives of the College or other representative of the employer and the Union or other employee representative.
- 14.1.4 If the matter cannot be resolved it may be referred to the WAIRC.

14.2 While the parties attempt to resolve the matter work will continue as normal unless an employee has a reasonable concern about an imminent risk to his or her health and safety.

15.—SUBSTANDARD PERFORMANCE

For the purposes of this clause the following definition will apply—

Substandard performance: The performance of an employee is substandard if the employee does not, in the performance of the functions that he or she is required to perform, attain or sustain a standard that a person may reasonably be expected to attain or sustain in the performance of his or her duties.

15.1 No employee shall be subject to the penalties of clause 15.2 unless a fair procedure is applied and decisions and processes incorporate the principles of natural justice and are free from bias.

15.2 If, in accordance with the College's substandard performance management policy, an employee is found by the College to be performing at a substandard level, the College may—

- 15.2.1 withhold an increment of remuneration otherwise payable to that employee;
- 15.2.2 reduce the classification of that employee; or

15.2.3 terminate the employment of that employee.

15.3 If an employee who has been subject to substandard performance management is aggrieved by any resulting decision, he/she may appeal against that decision in the WAIRC.

16.—BREACHES OF DISCIPLINE

16.1 No employee shall be subject to the penalties of clause 16.2 unless a fair procedure is applied and decisions and processes incorporate the principles of natural justice and are free from bias.

16.2 If, in accordance with the College's disciplinary policy, an employee is found by the College to have committed a breach of discipline, the College may—

- 16.2.1 reprimand the employee;
- 16.2.2 transfer the employee to another public sector agency or authority, with the consent of that agency or transfer the employee to another position at the College at which the employee is currently employed;
- 16.2.3 impose on the employee a fine not exceeding the equivalent of five days pay that the employee would have received immediately prior to the breach of discipline finding;
- 16.2.4 reduce the monetary remuneration of the employee within the employee's existing classification;
- 16.2.5 reduce the level of classification of the employee;
- 16.2.6 dismiss the employee;

or, except where the employee is dismissed under subclause 16.2.6, take action under any two or more of the above subclauses.

16.3 If an employee who has been subject to disciplinary action is aggrieved by a decision resulting from such action, he/she may appeal against that decision to the WAIRC.

PART 3—EMPLOYER AND EMPLOYEES' DUTIES, EMPLOYMENT RELATIONSHIP AND RELATED ARRANGEMENTS

17.—HIGHER DUTIES

17.1 An officer who undertakes duties of a higher classification for a period of 10 consecutive working days or more, inclusive of public holidays, will be paid at the salary applicable to the higher level proportionate to the level of duties and responsibilities assigned for the entire period of the higher duties.

17.2 The higher rate of payment will apply to an officer who proceeds on normal annual leave or any other approved leave of absence of not more than four weeks provided that the officer was in receipt of the additional payment for a continuous period of 12 months or more.

18.—CASUAL EMPLOYMENT

18.1 Casual employees may be employed for up to three months in any period of engagement, provided that where operationally necessary and in compliance with subclause 18.2 of this clause the period of engagement may be extended for up to a period of a further three months.

18.2 All casual engagements shall be in accordance with the following guidelines.

- 1 The type of employment involves specific workload demands of a short term nature;
- 2 The job is a short term project of a finite nature;
- 3 To replace an employee during a short term approved leave of absence.

PART 4—WAGES AND RELATED MATTERS

19.—SALARIES

19.1 Increases have been applied to the rates paid pursuant to the Kimberley College of TAFE Public Service and Government Officers' Enterprise Agreement 1998 as expressed in column A.

19.2 The rates in Column B will be paid effective from the date of registration of the Agreement. The rates in column B reflect a 1.5% increase for changes to award/employment conditions contained in this Agreement.

19.3 The rates in Column C will be paid from the first pay period on or after 15 March 2001. The rates in Column C reflect a 1.5% increase for changes to award/employment conditions contained in this Agreement.

19.4 The rates in Column D will be paid from the first pay period on or after 15 March 2002. The rates in Column D reflect a 3% increase, subject to Cabinet Standing Committee on Labour Relations endorsement that the Productivity Improvement Plan targets have been achieved.

19.5 The pay rates attained under this Agreement will form the new base rates for any future Agreement, provided that the productivity targets attained under this Agreement continue and previous productivity improvements in the last agreement are sustained and changes to Award conditions maintained, or changed by agreement.

20.—SALARY PACKAGING

20.1 An employee may, by agreement with the employer, enter into a salary packaging arrangement in accordance with the Kimberley College of TAFE Flexible Remuneration Packaging Scheme or any similar salary packaging arrangement offered by the employer.

20.2 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.

20.3 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.

20.4 The TEC for the purposes of salary packaging, is calculated by adding—

- 20.4.1 The base salary;
- 20.4.2 Other cash allowances, eg. Annual leave loading;
- 20.4.3 Non-cash benefits, eg superannuation, motor vehicles etc;
- 20.4.4 Any Fringe Benefit Tax liabilities currently paid; and
- 20.4.5 Any shift or commuted allowance or variable components, eg performance based incentives (where they exist).

20.5 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 agreement.

20.6 The salary packaging arrangement must be cost neutral in relation to the total cost to the employer.

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

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

20.9 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.

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

20.11 An employer will not unreasonably withhold agreement to salary packaging on request from an employee.

20.12 The Dispute Settlement Procedure contained in this Agreement will 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 to the WAIRC.

21.—PAYMENT ARRANGEMENTS

Salaries will be paid on a fortnightly basis directly into an approved bank, building society or credit union nominated by the employee.

22.—REPAYMENTS OF OVERPAYMENTS

22.1 Any salary overpayments will be repaid to the employer within a reasonable period of time.

22.2 If agreement cannot be reached, the employer may deduct the amount of overpayment over the same length of time that the overpayments occurred, or up to 6 months, whichever period is less.

22.3 The employer may not deduct or require an employee to repay an amount exceeding 20% of the employees' net pay in any one pay period.

22.4 On compassionate grounds, the Managing Director may allow an extended period for the repayment of overpayments.

23.—VARIATION OF ALLOWANCES

23.1 Wherever an award allowance is calculated by reference to a classification salary point, the parties agree that all such allowances will be so varied by reference to the salary provided by this agreement.

23.2 All such allowances will be applicable from the same date as provided for any salary variation under this agreement.

PART 5—HOUR OF WORK, BREAKS, OVERTIME, SHIFT WORK AND WEEKEND WORK

24.—HOURS OF WORK

Notwithstanding the prescribed hours of duty in clause 16 of the Award, the employer and an employee may agree to vary the spread of hours during which the employee's ordinary hours of work may be worked. Any agreement must be voluntarily and genuinely made and an employee may not be forced, coerced or intimidated into any such variation to the spread of ordinary hours during which the hours of work may be worked.

25.—FLEXITIME

25.1 For the purpose of this clause, a settlement period will—

- 25.1.1 consist of 12 weeks;
- 25.1.2 have the required hours of duty of 450 hours; and
- 25.1.3 commence at the beginning of a pay period.

25.2 Credit hours at any point within the settlement period will not exceed 60 hours.

25.3 An officer may be allowed to clear flexi leave of a maximum of 6 full days, or any combination of half days and full days that does not exceed 6 full days in any settlement period.

25.4 Full days of flexi leave may be taken in accordance with College policy.

25.5 Flexi-leave days may be taken consecutively during a Christmas Closedown.

25.6 Notwithstanding subclause 25.3, in the case of a Christmas Closedown of 12 working days, where sufficient credit hours are accrued, an employee may take seven consecutive flexi-leave days. This subclause does not apply in the case of a Christmas Closedown of less than 12 working days.

25.7 Credit hours to a maximum of thirty seven hours thirty minutes will be allowed at the end of each settlement period and will be carried forward to the next settlement period.

25.8 In the case of credit hours greater than thirty seven hours thirty minutes gained in one settlement period, the hours in excess of thirty seven hours thirty minutes will be lost.

PART 6—LEAVE OF ABSENCE AND PUBLIC HOLIDAYS

26.—ANNUAL LEAVE

26.1 By written approval of the employer, accrued annual leave may be paid out (equivalent benefit) instead of taken.

26.2 The paying out of accrued annual leave is not obligatory and is subject to agreement of both the employer and employee.

26.3 Annual Leave Travel Concessions—Officers Stationed in Remote Areas

- 26.3.1 Where an officer's headquarters is situated in District Allowance Areas 3,5,6 and in that portion of area 4 located north of 30° South Latitude, as defined in Schedule D—District Allowance of the PSA/ Schedule G—District Allowance of the GOSAC Award, a travel concession to the value of return economy airfares to Perth or Geraldton

will be provided for the officer and his/her dependants when the officer travels from his/her normal place of employment on Annual Leave.

26.3.2 The officer will only be entitled to the actual cost of the travel, up to the value of return economy airfares for the officer and his/her dependents to Perth or Geraldton, whichever is the higher. The employer will not reimburse the officer unless the officer supplies evidence acceptable to the employer of the actual cost of travel.

26.3.3 An officer is required to serve 12 months in these areas before qualifying for travel concessions.

27.—LONG SERVICE LEAVE

27.1 Accrued long service leave may be taken in periods of not less than one day.

27.2 By written approval of the employer, accrued long service leave may be paid out (equivalent benefit) instead of taken.

27.3 The paying out of accrued Long Service Leave is not obligatory and is subject to agreement of both the employer and employee.

28.—SICK LEAVE

28.1 Sick leave entitlement

28.2 The sick leave provisions of the GOSAC Awards will continue to apply, except that the Managing Director may approve further paid leave in exceptional circumstances.

29.—FAMILY/CARER'S LEAVE

29.1 An employee with responsibilities in relation to either members of their family or members of their household who need their care and support, is entitled to paid leave of up to 5 days per annum, to provide care and support for such persons when they are ill.

29.2 Family/carer's leave taken will be deducted from an employee's sick leave entitlements, provided that 10 days of the employee's sick leave entitlement credited in the current year cannot be used for family/carer's leave. Family/carer's leave is not cumulative from year to year.

29.3 Where family/carer's leave is exhausted, an employee may take unpaid carer's leave by agreement with the employer.

29.4 The employee will if required by the employer establish, by production of medical evidence or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another.

29.5 The employee will, wherever possible, give the employer notice prior to the absence of the intention to take such leave.

29.6 For the purposes of this clause, a family member or member of the employee's household is one who is wholly or partially dependent on the employee.

30.—COMPASSIONATE LEAVE

30.1 Subject to paragraph 30.2 hereof, an officer will be entitled to paid compassionate leave of up to 2 days on the death of a family member.

30.2 The Managing Director may grant compassionate leave on the death of a person other than a family member in personal and compassionate circumstances.

30.3 Compassionate leave will not be granted during a period of any other leave.

30.4 Payment for compassionate leave is to be made only where the officer otherwise would have been on duty.

31.—SHORT LEAVE

The Award entitlement to short leave will no longer apply.

32.—CEREMONIAL/CULTURAL LEAVE

32.1 Ceremonial/Cultural Leave may be granted, to employees who have a ritual obligation to participate in ceremonial activity which requires absence from work. Such leave will also include leave to meet the employee's custom and traditional laws.

32.2 An employee granted leave to participate in ceremonial, cultural or traditional law activities will have such leave deducted from accrued annual leave or long service leave.

32.3 Leave without pay to participate in ceremonial, cultural or traditional law activities may be granted by the employer.

33.—PUBLIC HOLIDAYS

33.1 The following days are paid public holidays; New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Foundation Day, Labour Day, Sovereign's Birthday, Christmas Day and Boxing Day.

33.2 Whenever any of these days falls on a Saturday or a Sunday, the holiday is observed on the next succeeding Monday, or in the case of Boxing Day falling on a Sunday or Monday, on the next succeeding Tuesday.

33.3 There is no entitlement to any additional Public Service holidays in addition to those prescribed in this agreement.

34.—CHRISTMAS CLOSEDOWN

34.1 The College may observe a closedown over the Christmas/New Year period.

34.2 The duration of the closedown will be at the discretion of the Managing Director but will not exceed 12 working days.

34.3 Employees will be required to take annual leave, long service leave, rostered days off, time in lieu of overtime or flexitime credit hours on the working days that the College is closed down. The employee may elect which form of leave is to be taken.

34.4 The Managing Director will as soon as possible, in each calendar year but not later than 30 June, advise employees of the period of closedown and the number of working days involved.

34.5 When taking leave during the year employees must be aware of the requirement to retain credits to cover the required number of days over the compulsory close down period.

34.6 New employees, employees who have exhausted their annual leave credits at the commencement of this Agreement, or employees who have been granted approval to utilise all leave credits will be entitled to take leave without pay or go into debit to cover the amount of leave involved, provided a refund is made by the employee, on termination, if credits to the value of the leave taken in advance have not been accrued.

35.—PARENTAL LEAVE

Definitions

For the purpose of this clause, the following terms have the following meanings—

“Adoption”: is the placement (including any initial temporary placement with a view to a permanent placement) of a child who is less than 5 years of age, who is not the natural or step-child of the employee or employee's spouse and who has not lived with the employee for longer than 6 months.

“Adoption leave”: Unpaid parental leave of up to 12 months taken by either parent in connection with the adoption or placement of a child under the age of 5 years.

“Certification”—

- (a) 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 birth.
- (b) For the purpose of maternity leave means a certificate from a registered medical practitioner stating that the employee is pregnant and the expected date of birth.
- (c) For the purpose of adoption leave and special adoption leave means the requirements that an employee must comply with before being eligible for the entitlement.

The employee must produce to the employer—

a statement from an adoption agency or other appropriate body of the placement of the child for adoption purposes; or

presumed date confirming that the employee or employee's spouse is to have custody of the child pending application for an adoption order.

“Child”: A person to whom an employee or employee’s spouse has given birth, or 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 stepchild of the employee or employee’s spouse who has previously lived with the employee for a period of 6 months or more.

“Expected date of birth”: The day certified by a medical practitioner, to be the day on which the birth of the child of the employee, or employee’s spouse is expected.

“Maternity leave”: Unpaid parental leave of up to 12 months taken by a female employee in connection with her pregnancy, and the subsequent birth of a child.

“Parental leave”: Any period of maternity leave, paternity leave and/or adoption leave of up to 12 months taken in connection with the birth or adoption of a child.

“Paternity leave”: Unpaid parental leave of up to 12 months which is taken by a male employee in connection with the birth or adoption of a child. Such an employee is permitted to take one week of unpaid paternity leave immediately after the birth or adoption of a child, in conjunction with any leave taken by his spouse.

35.1 Entitlement to parental leave

35.1.1 Employees are entitled to parental leave in connection with the birth or adoption of a child, in accordance with this clause.

35.1.2 Parental leave only applies to part-time or full time employees. Temporary full time or part-time employees on fixed term contracts are only eligible for parental leave for the duration of their fixed term contract of employment.

35.1.3 For female employees parental leave may, at the employee’s discretion, commence prior to 6 weeks before the expected date of birth of the child.

35.1.4 The minimum period of absence on maternity leave will commence six weeks before the expected date of birth and end six weeks after the day on which the birth has taken place, however an employee may apply to the Managing Director to vary this period provided her application is supported by a certificate from a registered medical practitioner indicating that the employee is fit to continue or resume duty within this minimum period.

35.2 Eligibility for parental leave

35.2.1 An employee must comply with the certification and notice requirements to be entitled to parental leave, unless these requirements are waived by the employer.

35.2.2 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 during one week of paternity leave taken immediately after the birth or adoption of a child.

35.3 Notice requirements

An employee is to give the employer at least 10 weeks written notice of the intention to take parental leave other than for the purposes of adoption and of the expected duration of the leave.

35.4 Transfer to a safe job

Where in the opinion of a registered medical practitioner illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue her present work, she may be transferred to a safe job, at the rate and on the conditions attached to that job or at the employee’s substantive level, whichever is the higher, until the employee commences parental leave.

35.5 Variation and/or cancellation of parental leave period

35.5.1 The period of parental leave may be lengthened or shortened by Agreement between the employer

and the employee, provided that the amount of leave does not exceed the maximum allowed.

35.5.2 The employee must where practicable give the employer 14 days written notice of any request to vary the period of leave.

35.5.3 Parental leave applied for, but not commenced, by an employee for any reason is cancelled. Reasons for cancellation include, but are not limited to—

35.5.3(a) where a pregnancy terminates, other than by the birth of a living child;

35.5.3(b) or where a planned adoption or placement of a child does not proceed.

35.5.3(c) An employee must notify the employer of any change in certification details.

35.6 Parental leave and sick leave

35.6.1 Where the pregnancy of an employee terminates after 28 weeks, other than by the birth of a living child, and the employee is not on parental leave, she is entitled to sick leave in accordance with Award entitlements.

35.6.2 An employee who suffers any illness or injury related to her pregnancy and/or the birth whilst on parental leave cannot utilise sick leave entitlements.

35.6.3 An employee may utilise sick leave entitlements in accordance with clause 27.1—Sick Leave when not on parental leave.

35.7 Special adoption leave

An employee is entitled to special unpaid adoption leave of up to 2 days to attend any compulsory interviews, examinations or the like which are required by the adoption procedure.

35.8 Effect of parental leave on leave entitlements and employment

35.8.1 Any absence on parental leave will not break the continuity of service.

35.8.2 However, absence on parental leave will not be taken into account for the purpose of salary increment progression. Paid leave entitlements such as annual leave, long service leave and public holidays will not accrue during any period of parental leave.

35.8.3 An employee may, instead of or in conjunction with parental leave, take annual leave or long service leave entitlements to which he or she is entitled.

An employee proceeding on parental leave may elect to utilise—

35.8.3(a) accrued annual leave

35.8.3(b) accrued long service leave

for the whole or part of the period referred to in subclause 35.1 of this clause. The periods of leave referred to in paragraphs 35.8.3(a) and 35.8.3(b) of this subclause, which are utilised, will be paid leave.

35.9 Replacement employees

35.9.1 Before the employer engages a replacement employee (including a temporarily promoted or transferred employee), the employer must inform that person of the temporary nature of the employment, and of the rights of the person on parental leave who is being replaced.

35.9.2 The employer does not have to engage a replacement employee if one is not required.

35.10 Return to work after parental leave

35.10.1 An employee must confirm to the employer an intention of returning to work prior to re-commencing work.

35.10.2 An employee returning to work from parental leave is entitled to the position held immediately before beginning 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.

35.10.3 Where the position no longer exists, the employee is entitled to the same classification and pay to that of the employee's former position, and for which the employee is qualified and capable of performing.

35.10.4 Where immediately before commencing parental leave, an employee was acting in a higher position, or performing additional duties on a temporary basis, this subclause only applies in respect of the position held by the employee immediately before taking the acting or temporary position.

35.11 Termination of employment and parental leave

35.11.1 An employee may terminate his or her employment at any time during a period of parental leave, by giving the employer the appropriate period of notice detailed in the relevant award.

35.11.2 The employer must not terminate an employee or transfer them from their existing position on the grounds of the employee's parental leave application and/or absence on parental leave.

36.—EMERGENCY AND COMMUNITY SERVICE LEAVE

36.1 Emergency Service Leave may be granted to an Employee who is an active volunteer member of the—

- * Western Australian State Emergency Service;
- * Western Australian Bush Fire Brigade;
- * St John Ambulance Brigade;
- * Defence Force Reserves;
- * Sea and rescue associations; or
- * Other similar Authorities or bodies, recognised by the College.

to attend emergencies as declared by the recognised Authority or body provided that it does not interfere with essential customer service and work requirements.

36.2 If an employee is an active member of a recognised Authority or body they are to advise the College of membership in writing at the commencement of employment or membership in order to seek leave to attend emergencies.

36.3 The employer will be advised as soon as possible by the employee, the emergency service or such other persons as to the absence and, where possible, the expected duration of the absence. Such advice will be provided within 24 hours of the event or activity requiring the person's absence.

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

36.5 The application form must be accompanied by a certificate from the emergency organisation certifying that the employee was required for the specified period. If a certificate of attendance is not provided from the emergency service organisation absence may be considered to be leave without pay. If the absence is deemed to be leave without pay, any adjustment in entitlements arising as a result of not providing a certificate of service will be processed in the next scheduled pay period.

36.6 An employee, who during the course of the emergency volunteers their services to an emergency service organisation, will comply with subclauses 36.2 to 36.5 inclusive.

36.7 Such leave will not affect any continuity of service for the purpose of higher duties arrangements or eligibility for allowances.

36.8 An employee may be granted reasonable Community Service Leave, subject to proof, to donate blood products to the Red Cross Blood Bank.

37.—ANNUAL LEAVE LOADING

Annual leave loading provisions in the GOSAC Award have been absorbed and no longer apply.

38.—SELF-FUNDED WORK BREAKS

38.1 Employees may receive 4 years salary over a period of five years, with no attendance at work required in the fifth year, in accordance with the College's Policy and Guidelines.

38.2 The employer and an employee may agree to enter into any other similar arrangements involving different periods of time, in accordance with the Policy and Guidelines.

PART 7: TRANSFERS, TRAVELLING AND WORKING AWAY FROM USUAL PLACE OF WORK

39.—HOME BASED WORK

An employee may make application to the College to engage in home based work subject to the College's Home Based Work policy.

40.—TRAVELLING ALLOWANCE

40.1 This clause replaces Clause 42. —Travelling Allowance of the Government Officers' Salaries, Allowances and Conditions Award in its entirety.

40.2 An employee who travels on official business will be reimbursed reasonable expenses on the basis of the production of receipts for reasonable expenses. Reasonable expenses will include but not be limited to accommodation costs, purchase of meals as necessary, and cost of transport to destination.

40.3 In addition to clause 40.2—Travelling Allowance above, an employee will be reimbursed reasonable incidental expenses such as train, bus and taxi fares, official telephone calls, laundry and dry cleaning expenses, on production of receipts.

40.4 If on account of lack of suitable transport facilities, an employee necessarily engages reasonable accommodation for the night prior to commencing travelling on early morning transport the employee will be reimbursed the actual cost of such accommodation.

40.5 Reimbursement of expenses will not be suspended should an employee become ill whilst travelling, provided leave for the period of such illness is approved in accordance with provisions of Clause 28.1—Sick Leave of this Agreement, and the employee continues to incur accommodation, meal and incidental expenses.

40.6 Reimbursement claims for travelling in excess of 14 days in one month will not be passed for payment by a certifying employee unless the Managing Director has endorsed the account.

40.7 An employee who is relieving at or temporarily transferred to any place within a radius of fifty (50) kilometres measured from the employee's headquarters will not be reimbursed the cost of midday meals purchased, but an employee travelling on duty within that area which requires absence from the employee's headquarters over the usual midday meal period will be, on the production of receipts, for each meal necessarily purchased, provided that—

40.7.1 such travelling is not a normal feature in the performance of the employee's duties; and

40.7.2 such travelling is not within the suburb in which the employee resides.

41.—TRANSFER

41.1 The College may transfer, at the same level of classification, an officer from one office, post or position within the College to another such office, post or position, for which that officer possesses the appropriate qualifications and skills, provided the College considers it to be in its interests to do so. Such transfers include the transfer of an employee from one campus of the College to another campus of the College.

41.2 The decision to transfer will be equitable and free from bias.

41.3 If the College transfers an employee in accordance with subclause 41.1 of this Clause it will comply with the following—

41.3.1 The transfer will be at the employee's current classification level;

41.3.2 The transfer will not result in a loss of the employee's continuity of service;

41.3.3 The transfer will not change the tenure of the employee;

41.3.4 The College's and employee's needs will be taken into account in the transfer decision. The employee's needs include distance of new work site from place of residence, skills, qualification and experience of the employee, requirement to undertake training to perform the duties of the new position.

- 41.3.5 The employee will be notified of the transfer decision and arrangements. The College will give the employee at least four weeks notice of intention to transfer.
- 41.3.6 Policies relating to transfer will be documented, equitable, free from bias, applied consistently and accessible to College employees.
- 41.3.7 The decisions and processes relating to transfer will embody the principles of natural justice including access to documentation specifically relating to the particular employee's transfer, explanation as to the reasons for the transfer and consultation with the employee where their input is taken into consideration;
- 41.3.8 The transfer decision will be capable of review; and
- 41.3.9 The appropriate confidentiality will be observed.
- 41.4 The College must adhere to the Public Sector Standards in Human Resource Management standard regarding transfer.
- 41.5 The College will act in accordance with the report and implement any recommendations of a reviewer selected by the Commissioner for Public Sector Standards to investigate any suspected breach of standard in accordance with s.15 of the Public Sector Management (Review Procedures) Regulations 1995.
- 41.6 If the College does not act in accordance with and implement the recommendations of the reviewer selected by the Commissioner for Public Sector Standards, the College will be in breach of the Agreement.
- 41.7 Should an application for a breach of the Public Sector Standard relating to Transfer be lodged with the Managing Director within 15 days of an employee being notified of a decision to transfer and a review of the transfer be carried out, the status quo will remain until such time as the reviewer has made recommendations.

SCHEDULE A: SALARIES
ENTERPRISE BARGAINING AGREEMENT 2000

SCHEDULE A

LEVEL	Column A— Current Annual Salary Rates	Column B— Date of Registration 1.5%	New Fortnightly Rate	Column C— Annual Salary as at First Pay Period on or After March 15, 2001 1.5%	New Fortnightly Rate	Column D— Annual Salary as at First Pay Period on or After March 15, 2002 3%*	New Fortnightly Rate
LEVEL 1							
Age 16	12,900	13,094	501.99	13,290	509.52	13,689	524.80
Age 17	15,075	15,301	586.62	15,531	595.42	15,997	613.29
Age 18	17,585	17,849	684.30	18,117	694.56	18,660	715.40
Age 19	20,355	20,660	792.09	20,970	803.97	21,599	828.09
Age 20	22,858	23,201	889.49	23,549	902.83	24,255	929.92
YEAR 1	25,110	25,487	977.12	25,869	991.78	26,645	1021.53
YEAR 2	25,883	26,271	1,007.20	26,665	1022.31	27,465	1052.98
YEAR 3	26,656	27,056	1,037.28	27,462	1052.84	28,286	1084.43
YEAR 4	27,423	27,834	1,067.13	28,252	1083.14	29,099	1115.63
YEAR 5	28,196	28,619	1,097.21	29,048	1113.67	29,920	1147.08
YEAR 6	28,968	29,403	1,127.25	29,844	1144.16	30,739	1178.49
YEAR 7	29,857	30,305	1,161.85	30,759	1179.28	31,682	1214.65
YEAR 8	30,471	30,928	1,185.74	31,392	1203.53	32,334	1239.63
YEAR 9	31,380	31,851	1,221.11	32,328	1239.43	33,298	1276.61
LEVEL 2							
YEAR 1	32,468	32,955	1,263.45	33,449	1282.40	34,453	1320.88
YEAR 2	33,302	33,802	1,295.91	34,309	1315.34	35,338	1354.80
YEAR 3	34,179	34,692	1330.03	35,212	1349.98	36,268	1390.48
YEAR 4	35,105	35,632	1,366.07	36,166	1386.56	37,251	1428.15
YEAR 5	36,074	36,615	1,403.77	37,164	1424.83	38,279	1467.58
LEVEL 3							
YEAR 1	37,407	37,968	1,455.65	38,538	1477.48	39,694	1521.81
YEAR 2	38,445	39,022	1,496.04	39,607	1518.48	40,795	1564.03
YEAR 3	39,515	40,108	1,537.68	40,709	1560.74	41,931	1607.56
YEAR 4	40,614	41,223	1,580.44	41,842	1604.15	43,097	1652.27
LEVEL 4							
YEAR 1	42,120	42,752	1,639.05	43,393	1663.63	44,695	1713.54
YEAR 2	43,301	43,951	1,685.00	44,610	1710.28	45,948	1761.59
YEAR 3	44,516	45,184	1,732.28	45,861	1758.27	47,237	1811.02
LEVEL 5							
YEAR 1	46,855	47,558	1,823.30	48,271	1850.65	49,719	1906.17
YEAR 2	48,437	49,164	1,884.86	49,901	1913.14	51,398	1970.53
YEAR 3	50,080	50,831	1,948.80	51,594	1978.03	53,141	2037.37
YEAR 4	51,785	52,562	2,015.15	53,350	2045.38	54,951	2106.74
LEVEL 6							
YEAR 1	54,526	55,344	2,121.81	56,174	2153.64	57,859	2218.25
YEAR 2	56,390	57,236	2,194.35	58,094	2227.26	59,837	2294.08
YEAR 3	58,305	59,180	2,268.87	60,067	2302.90	61,869	2371.99
YEAR 4	60,338	61,243	2,347.98	62,162	2383.20	64,027	2454.69

LEVEL	Column A— Current Annual Salary Rates	Column B— Date of Registration 1.5%	New Fortnightly Rate	Column C— Annual Salary as at First Pay Period on or After March 15, 2001 1.5%	New Fortnightly Rate	Column D— Annual Salary as at First Pay Period on or After March 15, 2002 3%*	New Fortnightly Rate
LEVEL 7							
YEAR 1	63,454	64,406	2,469.23	65,372	2506.27	67,333	2581.46
YEAR 2	65,610	66,594	2,553.13	67,593	2591.43	69,621	2669.17
YEAR 3	67,956	68,975	2,644.42	70,010	2684.09	72,110	2764.61
LEVEL 8							
YEAR 1	71,769	72,846	2,792.80	73,938	2834.69	76,156	2919.73
YEAR 2	74,500	75,618	2,899.07	76,752	2942.56	79,054	3030.84
YEAR 3	77,887	79,055	3,030.87	80,241	3076.34	82,648	3168.63
LEVEL 9							
YEAR 1	82,117	83,349	3,195.48	84,599	3243.41	87,137	3340.71
YEAR 2	84,975	86,250	3,306.69	87,543	3356.30	90,170	3456.98
YEAR 3	88,234	89,558	3,433.51	90,901	3485.02	93,628	3589.57
CLASS 1							
CLASS 1	93,162	94,559	3,625.28	95,978	3679.66	98,857	3790.05
CLASS 2							
CLASS 2	98,090	99,561	3,817.05	101,055	3874.30	104,086	3990.53
CLASS 3							
CLASS 3	103,016	104,561	4,008.74	106,130	4068.87	109,314	4190.93
CLASS 4							
CLASS 4	107,945	109,564	4,200.54	111,208	4263.55	114,544	4391.46
LEVEL 2/4							
YEAR 1 (2.1)	32,468	32,955	1,263.45	33,449	1282.40	34,453	1320.88
YEAR 2 (2.3)	34,179	34,692	1,330.03	35,212	1349.98	36,268	1390.48
YEAR 3 (2.5)	36,074	36,615	1,403.77	37,164	1424.83	38,279	1467.58
YEAR 4 (3.2)	38,445	39,022	1,496.04	39,607	1518.48	40,795	1564.03
YEAR 5 (4.1)	42,120	42,752	1,639.05	43,393	1663.63	44,695	1713.54
YEAR 6 (4.3)	44,516	45,184	1,732.28	45,861	1758.27	47,237	1811.02
OTHER							
Job Skills Trainees	19,625	19,919	763.68	20,218	775.14	20,825	798.39
Under 21	16,593	16,842	645.70	17,095	655.38	17,607	675.04

* The payment of this increase is subject to the approval of the Cabinet Standing Committee on Labour Relations

SCHEDULE B: PRODUCTIVITY IMPROVEMENTS

PRODUCTIVITY IMPROVEMENT PLAN

Staff will actively participate in the development and implementation of a Productivity Improvement Plan/s (PIP/s) as determined by the Managing Director.

PIPs may be developed at the College or Campus level, or any combination as determined by the Managing Director.

The PIP/s may involve changes to work practices, but will not involve changes to award/agreement/enterprise bargaining agreement employment conditions.

Subject to the approval of the Cabinet Standing Committee on Labour Relations, a 3% pay increase will be paid to employees from the first pay period on or after 15 March 2002 for productivity improvements.

SCHEDULE C: SIGNATORIES OF PARTIES TO THE AGREEMENT

The following signatories are authorised to sign this Agreement.

Signatories

.....Signed..... Date 20/12/2000

Employer—

Ralph Clark, Managing Director of Kimberley College of TAFE, on behalf of the Governing Council

Signed for and on behalf of the *Civil Service Association of Western Australia (Inc)* by

.....Signed..... Date 20/12/2000

Common Seal

Mr Dave Robinson, Branch Secretary,
Civil Service Association WA Inc

SCHEDULE D: ALPHABETICAL LISTING OF PROVISIONS

- Annual Leave
- Annual Leave Loading
- Annual Leave Travel Concessions Arrangement
- Availability of Agreements

- Breaches of Discipline
- Casual Employment
- Ceremonial/Cultural Leave
- Christmas Closedown
- Compassionate Leave
- Consultation Provisions
- Definitions
- Dispute Resolution Procedure
- Emergency and Community Service Leave
- Flexitime
- Higher Duties
- Home Based Work
- Hours of Work
- Long Service Leave
- No Further Claims
- Number of Employees Covered
- Objectives of the Agreement
- Parental Leave
- Parties Bound
- Past Productivity
- Payment Arrangements
- Productivity Improvements
- Public Holidays
- Relationship to Awards/Agreements
- Repayments of Overpayments
- Salaries
- Salary Packaging
- Scope
- Self Funded Work Breaks
- Short Leave
- Sick Leave and Family/Carer's Leave
- Signatories of Parties to the Agreement
- Substandard Performance
- Term of Agreement and Renegotiation
- Title
- Transfer
- Travelling Allowance
- Variation of Allowances

**MIDLAND COLLEGE OF TAFE PUBLIC SERVICE
AND GOVERNMENT OFFICERS' ENTERPRISE
AGREEMENT 2000.**

No. PSAAG 77 of 2000.

2001 WAIRC 01805

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	GOVERNING COUNCIL, MIDLAND COLLEGE OF TAFE -and- THE CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA INCORPORATED
CORAM	COMMISSIONER P E SCOTT
DELIVERED	TUESDAY, 16 JANUARY 2001
FILE NO	PSAAG 77 OF 2000
CITATION NO.	2001 WAIRC 01805

Result Agreement registered

Order.

HAVING heard Ms J Caiacob on behalf of the Governing Council, Midland College of TAFE and Ms J van den Herik on behalf of the Civil Service Association of Western Australia (Incorporated), and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Midland College of TAFE Public Service and Government Officers' Enterprise Agreement 2000 in the terms of the following schedule be registered on the 21st day of December 2000 and shall replace the Midland College of TAFE Public Service and Government Officers' Enterprise Agreement 1998 (No. PSA AG 9 of 1998).

[L.S.]

(Sgd.) P. E. SCOTT,
Commissioner,
Public Service Arbitrator.

Schedule.

PART 1—APPLICATION AND OPERATION OF AGREEMENT

1.—TITLE

This Agreement will be called the Midland College of TAFE Public Service and Government Officers' Enterprise Agreement 2000 and will replace the Midland College of TAFE Public Service and Government Officers' Enterprise Agreement 1998.

2.—ARRANGEMENT

PART 1—APPLICATION AND OPERATION OF AGREEMENT

1. TITLE
2. ARRANGEMENT
3. SCOPE
4. PARTIES BOUND
5. DEFINITIONS
6. NUMBER OF EMPLOYEES COVERED
7. NO FURTHER CLAIMS
8. TERM OF AGREEMENT AND RENEGOTIATION
9. RELATIONSHIP TO AWARDS
10. AVAILABILITY OF AGREEMENT
11. OBJECTIVES OF THE AGREEMENT
12. PAST PRODUCTIVITY

PART 2—DISPUTE RESOLUTION

13. CONSULTATION PROVISIONS
14. DISPUTE RESOLUTION PROCEDURE
15. SUBSTANDARD PERFORMANCE
16. BREACHES OF DISCIPLINE

PART 3—EMPLOYER AND EMPLOYEES' DUTIES, EMPLOYMENT RELATIONSHIP AND RELATED ARRANGEMENTS

17. HIGHER DUTIES
18. CASUAL EMPLOYMENT

PART 4—WAGES AND RELATED MATTERS

19. SALARIES
20. SALARY PACKAGING
21. PAYMENT ARRANGEMENTS
22. REPAYMENTS OF OVERPAYMENTS
23. VARIATION OF ALLOWANCES

PART 5—HOUR OF WORK, BREAKS, OVERTIME, SHIFT WORK AND WEEKEND WORK

24. HOURS OF WORK
25. FLEXITIME

PART 6—LEAVE OF ABSENCE AND PUBLIC HOLIDAYS

26. ANNUAL LEAVE
27. LONG SERVICE LEAVE
28. SICK LEAVE
29. FAMILY/CARER'S LEAVE
30. COMPASSIONATE LEAVE
31. SHORT LEAVE
32. CEREMONIAL/CULTURAL LEAVE
33. PUBLIC HOLIDAYS
34. CHRISTMAS CLOSEDOWN
35. PARENTAL LEAVE
36. EMERGENCY AND COMMUNITY SERVICE LEAVE
37. ANNUAL LEAVE LOADING
38. SELF-FUNDED WORK BREAKS

PART 7—TRANSFERS, TRAVELLING AND WORKING AWAY FROM USUAL PLACE OF WORK

39. HOME BASED WORK
40. TRAVELLING ALLOWANCE
41. TRANSFER

SCHEDULE A: SALARIES

SCHEDULE B: PRODUCTIVITY IMPROVEMENTS

SCHEDULE C: SIGNATORIES OF PARTIES TO THE AGREEMENT

SCHEDULE D: ALPHABETICAL LISTING OF PROVISIONS

3.—SCOPE

This Agreement will apply throughout the state of Western Australia to Officers employed in the Midland College of TAFE. This Agreement will also apply to Officers on secondment to or in the College.

4.—PARTIES BOUND

The parties to this Agreement will be the Governing Council of the Midland College of TAFE, and the Civil Service Association of Western Australia (Inc).

5.—DEFINITIONS

The following terms will have the following meanings—

“**Agreement**”: means the Midland College of TAFE Public Service and Government Officers' Enterprise Agreement 2000.

“**Award**”: means the Government Officers' Salaries, Allowances and Conditions Award 1989.

“**College**” means the Midland College of TAFE.

“**Continuous service**”: Any period of service between the employee and employer under an unbroken contract of employment, and includes any authorised unpaid or paid absences.

“**CSA**”: means the Civil Service Association of Western Australia (Inc).

“**Department**”: means the Western Australian Department of Training and Employment.

“**Employee**”: for the purpose of this Agreement means, someone who is referred to at Clause 3—Scope.

“Employer”: means the Governing Council of the Midland College of TAFE.

“Full-Time Officer”: A person employed to work 37 1/2 ordinary hours per week.

“Government”: means the Government of Western Australia.

“GOSAC Award”: means the Government Officers’ Salaries Allowances & Conditions Award 1989.

“Managing Director” means the Managing Director of the Midland College of TAFE, pursuant to section 46 of the Vocational Education and Training Act 1996.

“Minister”: is the Minister of the Crown who is responsible for the administration of the employing agency.

“Officer”: means a Public Service Officer as defined in the Public Sector Management Act 1994 or Government Officer as defined in the Industrial Relations Act 1979.

“Part-Time”: means regular and continuing employment for less than the ordinary hours for a “Full-Time Officer”.

“Spouse”: means a husband or wife of an employee, and includes a de facto spouse. For the purposes of Bereavement leave it includes a former spouse.

“Union”: means the Civil Service Association of Western Australia (Inc).

“WAIRC”: means the Western Australian Industrial Relations Commission.

6.—NUMBER OF EMPLOYEES COVERED

At the date of registration of this Agreement the approximate number of employees covered by this Agreement is 100.

7.—NO FURTHER CLAIMS

7.1 There will be no extra claims for salary adjustments other than that which is provided by this Agreement for the duration of its term.

7.2 There will be no further claims on matters contained in this Agreement for the duration of its term.

8.—TERM OF AGREEMENT AND RENEGOTIATION

8.1 This Agreement will operate on and from the date of registration and will remain in force for two years.

8.2 Six (6) months prior to the date of expiration of this Agreement, the parties will commence negotiation for its renewal or replacement.

8.3 The pay rates attained under this Agreement will form the new base rates for any future Agreement, provided that the productivity targets attained under this Agreement continue and previous productivity improvements in the last agreement are sustained, and changes to Award conditions maintained, or changed by agreement.

9.—RELATIONSHIP TO AWARDS

This Agreement will be read and interpreted wholly in conjunction with the Government Officers’ Salaries, Allowances and Conditions Award 1989. This Agreement will have precedence to the extent of any inconsistency. Where the agreement is silent the relevant award will apply.

10.—AVAILABILITY OF AGREEMENT

Employees will have access to an electronic copy of this agreement. Where electronic copies are unavailable, hard copies of the agreement will be provided.

11.—OBJECTIVES OF THE AGREEMENT

It is the shared objectives of the parties to—

Work towards alignment of conditions for all TAFE employees.

Meet the requirements of clients and students through the provision of reliable, efficient and competitive services.

Achieve the Department’s mission and improve productivity and efficiency through identified improvements.

Achieve improvement and greater flexibility of working patterns and arrangements.

Promote and facilitate enhanced employee relations and increased job satisfaction.

To facilitate a continued cooperative approach to the introduction of change.

This Agreement will operate as a contributive mechanism to deliver a cost efficient Vocational Education and Training service.

12.—PAST PRODUCTIVITY

This Agreement incorporates past productivity to the date of registration.

PART 2—DISPUTE RESOLUTION

13.—CONSULTATION PROVISIONS

13.1 The parties acknowledge the need for a satisfactory College consultative procedure. Staff participation and consultation is encouraged. The form of participation and consultation may vary at each workplace depending on individual circumstances. The College will establish its own structure and processes. However, the non-establishment of a structure or process will not be used as a means to avoid requirement to consult.

13.2 Employees will be involved in broadly based representative consultative committees with structure and functions determined by the College.

13.3 Consultative committees will provide a forum for staff and management to, where appropriate, seek the views of the other and enter into meaningful discussions that may contribute towards outcomes, in relation to operational matters.

13.4 Representatives from the Union, where it has members at the workplace, will be invited to participate on consultative committees.

13.5 The parties to this Agreement acknowledge that decision making continues to rest with the College, which is accountable to Government, through legislation, for the operation of its business.

14.—DISPUTE RESOLUTION PROCEDURE

14.1 In the event of a dispute arising in the workplace the procedure to be followed to resolve the matter will be as follows—

14.1.1 The employee and their supervisor will meet and confer on the matter; and

14.1.2 If the matter is not resolved at such a meeting, the parties will arrange for further discussions between the employee and his or her nominated representative, if any, and more senior levels of management.

14.1.3 If the matter is still unresolved a discussion will be held between representatives of the College or other representative of the employer and the Union or other employee representative.

14.1.4 If the matter cannot be resolved it may be referred to the WAIRC.

14.2 While the parties attempt to resolve the matter work will continue as normal unless an employee has a reasonable concern about an imminent risk to his or her health and safety.

15.—SUBSTANDARD PERFORMANCE

For the purposes of this clause the following definition will apply—

Substandard performance: The performance of an employee is substandard if the employee does not, in the performance of the functions that he or she is required to perform, attain or sustain a standard that a person may reasonably be expected to attain or sustain in the performance of his or her duties.

15.1 No employee shall be subject to the penalties of clause 15.2 unless a fair procedure is applied and decisions and processes incorporate the principles of natural justice and are free from bias.

15.2 If, in accordance with the College’s substandard performance management policy, an employee is found by the College to be performing at a substandard level, the College may—

15.2.1 withhold an increment of remuneration otherwise payable to that employee;

15.2.2 reduce the classification of that employee; or

15.2.3 terminate the employment of that employee.

15.3 If an employee who has been subject to substandard performance management is aggrieved by any resulting decision, he/she may appeal against that decision in the WAIRC.

16.—BREACHES OF DISCIPLINE

16.1 No employee shall be subject to the penalties of clause 16.2 unless a fair procedure is applied and decisions and processes incorporate the principles of natural justice and are free from bias.

16.2 If, in accordance with the College's disciplinary policy, an employee is found by the College to have committed a breach of discipline, the College may—

- 16.2.1 reprimand the employee;
- 16.2.2 transfer the employee to another public sector agency or authority, with the consent of that agency or transfer the employee to another position at the College at which the employee is currently employed;
- 16.2.3 impose on the employee a fine not exceeding the equivalent of five days pay that the employee would have received immediately prior to the breach of discipline finding;
- 16.2.4 reduce the monetary remuneration of the employee within the employee's existing classification;
- 16.2.5 reduce the level of classification of the employee;
- 16.2.6 dismiss the employee;

or, except where the employee is dismissed under subclause 16.2.6, take action under any two or more of the above subclauses.

16.3 If an employee who has been subject to disciplinary action is aggrieved by a decision resulting from such action, he/she may appeal against that decision to the WAIRC.

PART 3—EMPLOYER AND EMPLOYEES' DUTIES, EMPLOYMENT RELATIONSHIP AND RELATED ARRANGEMENTS

17.—HIGHER DUTIES

17.1 An officer who undertakes duties of a higher classification for a period of 10 consecutive working days or more, inclusive of public holidays, will be paid at the salary applicable to the higher level proportionate to the level of duties and responsibilities assigned for the entire period of the higher duties.

17.2 The higher rate of payment will apply to an officer who proceeds on normal annual leave or any other approved leave of absence of not more than four weeks provided that the officer was in receipt of the additional payment for a continuous period of 12 months or more.

18.—CASUAL EMPLOYMENT

18.1 Casual employees may be employed for up to three months in any period of engagement, provided that where operationally necessary and in compliance with subclause 18.2 of this clause the period of engagement may be extended for up to a period of a further three months.

18.2 All casual engagements shall be in accordance with the following guidelines.

- 1 The type of employment involves specific workload demands of a short term nature;
- 2 The job is a short term project of a finite nature;
- 3 To replace an employee during a short term approved leave of absence.

PART 4—WAGES AND RELATED MATTERS

19.—SALARIES

19.1 Increases have been applied to the rates paid pursuant to the Midland College of TAFE Public Service and Government Officers' Enterprise Agreement 1998 as expressed in column A.

19.2 The rates in Column B will be paid effective from the date of registration of the Agreement. The rates in column B reflect a 1.5% increase for changes to award/employment conditions contained in this Agreement.

19.3 The rates in Column C will be paid from the first pay period on or after 15 March 2001. The rates in Column C reflect a 1.5% increase for changes to award/employment conditions contained in this Agreement.

19.4 The rates in Column D will be paid from the first pay period on or after 15 March 2002. The rates in Column D reflect a 3% increase, subject to Cabinet Standing Committee on Labour Relations endorsement that the Productivity Improvement Plan targets have been achieved.

19.5 The pay rates attained under this Agreement will form the new base rates for any future Agreement, provided that the productivity targets attained under this Agreement continue and previous productivity improvements in the last agreement are sustained and changes to Award conditions maintained, or changed by agreement.

20.—SALARY PACKAGING

20.1 An employee may, by agreement with the employer, enter into a salary packaging arrangement in accordance with the Midland College of TAFE Flexible Remuneration Packaging Scheme or any similar salary packaging arrangement offered by the employer.

20.2 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.

20.3 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.

20.4 The TEC for the purposes of salary packaging, is calculated by adding—

- 20.4.1 The base salary;
- 20.4.2 Other cash allowances, eg. Annual leave loading;
- 20.4.3 Non-cash benefits, eg superannuation, motor vehicles etc;
- 20.4.4 Any Fringe Benefit Tax liabilities currently paid; and
- 20.4.5 Any shift or commuted allowance or variable components, eg performance based incentives (where they exist).

20.5 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 agreement.

20.6 The salary packaging arrangement must be cost neutral in relation to the total cost to the employer.

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

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

20.9 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.

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

20.11 An employer will not unreasonably withhold agreement to salary packaging on request from an employee.

20.12 The Dispute Settlement Procedure contained in this Agreement will 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 to the WAIRC.

21.—PAYMENT ARRANGEMENTS

Salaries will be paid on a fortnightly basis directly into an approved bank, building society or credit union nominated by the employee.

22.—REPAYMENTS OF OVERPAYMENTS

22.1 Any salary overpayments will be repaid to the employer within a reasonable period of time.

22.2 If agreement cannot be reached, the employer may deduct the amount of overpayment over the same length of time that the overpayments occurred, or up to 6 months, whichever period is less.

22.3 The employer may not deduct or require an employee to repay an amount exceeding 20% of the employees' net pay in any one pay period.

22.4 On compassionate grounds, the Managing Director may allow an extended period for the repayment of overpayments.

23.—VARIATION OF ALLOWANCES

23.1 Wherever an award allowance is calculated by reference to a classification salary point, the parties agree that all such allowances will be so varied by reference to the salary provided by this agreement.

23.2 All such allowances will be applicable from the same date as provided for any salary variation under this agreement.

PART 5—HOUR OF WORK, BREAKS, OVERTIME, SHIFT WORK AND WEEKEND WORK

24.—HOURS OF WORK

Notwithstanding the prescribed hours of duty in clause 16 of the Award, the employer and an employee may agree to vary the spread of hours during which the employee's ordinary hours of work may be worked. Any agreement must be voluntarily and genuinely made and an employee may not be forced, coerced or intimidated into any such variation to the spread of ordinary hours during which the hours of work may be worked.

25.—FLEXITIME

25.1 For the purpose of this clause, a settlement period will—

25.1.1 consist of 12 weeks;

25.1.2 have the required hours of duty of 450 hours; and

25.1.3 commence at the beginning of a pay period.

25.2 Credit hours at any point within the settlement period will not exceed 60 hours.

25.3 An officer may be allowed to clear flexi leave of a maximum of 6 full days, or any combination of half days and full days that does not exceed 6 full days in any settlement period.

25.4 Full days of flexi leave may be taken in accordance with College policy.

25.5 Flexi-leave days may be taken consecutively during a Christmas Closedown.

25.6 Notwithstanding subclause 25.3, in the case of a Christmas Closedown of 12 working days, where sufficient credit hours are accrued, an employee may take seven consecutive flexi-leave days. This subclause does not apply in the case of a Christmas Closedown of less than 12 working days.

25.7 Credit hours to a maximum of thirty seven hours thirty minutes will be allowed at the end of each settlement period and will be carried forward to the next settlement period.

25.8 In the case of credit hours greater than thirty seven hours thirty minutes gained in one settlement period, the hours in excess of thirty seven hours thirty minutes will be lost.

PART 6—LEAVE OF ABSENCE AND PUBLIC HOLIDAYS

26.—ANNUAL LEAVE

26.1 By written approval of the employer, accrued annual leave may be paid out (equivalent benefit) instead of taken.

26.2 The paying out of accrued annual leave is not obligatory and is subject to agreement of both the employer and employee.

26.3 Annual Leave Travel Concessions—Officers Stationed in Remote Areas

26.3.1 Where an officer's headquarters is situated in District Allowance Areas 3,5,6 and in that portion of area 4 located north of 30° South Latitude, as

defined in Schedule D—District Allowance of the PSA/ Schedule G—District Allowance of the GOSAC Award, a travel concession to the value of return economy airfares to Perth or Geraldton will be provided for the officer and his/her dependants when the officer travels from his/her normal place of employment on Annual Leave.

26.3.2 The officer will only be entitled to the actual cost of the travel, up to the value of return economy airfares for the officer and his/her dependants to Perth or Geraldton, whichever is the higher. The employer will not reimburse the officer unless the officer supplies evidence acceptable to the employer of the actual cost of travel.

26.3.3 An officer is required to serve 12 months in these areas before qualifying for travel concessions.

27.—LONG SERVICE LEAVE

27.1 Accrued long service leave may be taken in periods of not less than one day.

27.2 By written approval of the employer, accrued long service leave may be paid out (equivalent benefit) instead of taken.

27.3 The paying out of accrued Long Service Leave is not obligatory and is subject to agreement of both the employer and employee.

28.—SICK LEAVE

28.1 Sick leave entitlement

28.2 The sick leave provisions of the GOSAC Awards will continue to apply, except that the Managing Director may approve further paid leave in exceptional circumstances.

29.—FAMILY/CARER'S LEAVE

29.1 An employee with responsibilities in relation to either members of their family or members of their household who need their care and support, is entitled to paid leave of up to 5 days per annum, to provide care and support for such persons when they are ill.

29.2 Family/carer's leave taken will be deducted from an employee's sick leave entitlements, provided that 10 days of the employee's sick leave entitlement credited in the current year cannot be used for family/carer's leave. Family/carer's leave is not cumulative from year to year.

29.3 Where family/carer's leave is exhausted, an employee may take unpaid carer's leave by agreement with the employer.

29.4 The employee will if required by the employer establish, by production of medical evidence or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another.

29.5 The employee will, wherever possible, give the employer notice prior to the absence of the intention to take such leave.

29.6 For the purposes of this clause, a family member or member of the employee's household is one who is wholly or partially dependent on the employee.

30.—COMPASSIONATE LEAVE

30.1 Subject to paragraph 30.2 hereof, an officer will be entitled to paid compassionate leave of up to 2 days on the death of a family member.

30.2 The Managing Director may grant compassionate leave on the death of a person other than a family member in personal and compassionate circumstances.

30.3 Compassionate leave will not be granted during a period of any other leave.

30.4 Payment for compassionate leave is to be made only where the officer otherwise would have been on duty.

31.—SHORT LEAVE

The Award entitlement to short leave will no longer apply.

32.—CEREMONIAL/CULTURAL LEAVE

32.1 Ceremonial/Cultural Leave may be granted, to employees who have a ritual obligation to participate in ceremonial activity which requires absence from work. Such leave will also include leave to meet the employee's custom and traditional laws.

32.2 An employee granted leave to participate in ceremonial, cultural or traditional law activities will have such leave deducted from accrued annual leave or long service leave.

32.3 Leave without pay to participate in ceremonial, cultural or traditional law activities may be granted by the employer.

33.—PUBLIC HOLIDAYS

33.1 The following days are paid public holidays; New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Foundation Day, Labour Day, Sovereign's Birthday, Christmas Day and Boxing Day.

33.2 Whenever any of these days falls on a Saturday or a Sunday, the holiday is observed on the next succeeding Monday, or in the case of Boxing Day falling on a Sunday or Monday, on the next succeeding Tuesday.

33.3 There is no entitlement to any additional Public Service holidays in addition to those prescribed in this agreement.

34.—CHRISTMAS CLOSEDOWN

34.1 The College may observe a closedown over the Christmas/New Year period.

34.2 The duration of the closedown will be at the discretion of the Managing Director but will not exceed 12 working days.

34.3 Employees will be required to take annual leave, long service leave, rostered days off, time in lieu of overtime or flexitime credit hours on the working days that the College is closed down. The employee may elect which form of leave is to be taken.

34.4 The Managing Director will as soon as possible, in each calendar year but not later than 30 June, advise employees of the period of closedown and the number of working days involved.

34.5 When taking leave during the year employees must be aware of the requirement to retain credits to cover the required number of days over the compulsory close down period.

34.6 New employees, employees who have exhausted their annual leave credits at the commencement of this Agreement, or employees who have been granted approval to utilise all leave credits will be entitled to take leave without pay or go into debit to cover the amount of leave involved, provided a refund is made by the employee, on termination, if credits to the value of the leave taken in advance have not been accrued.

35.—PARENTAL LEAVE

Definitions

For the purpose of this clause, the following terms have the following meanings—

“Adoption”: is the placement (including any initial temporary placement with a view to a permanent placement) of a child who is less than 5 years of age, who is not the natural or step-child of the employee or employee's spouse and who has not lived with the employee for longer than 6 months.

“Adoption leave”: Unpaid parental leave of up to 12 months taken by either parent in connection with the adoption or placement of a child under the age of 5 years.

“Certification”—

- (a) 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 birth.
- (b) For the purpose of maternity leave means a certificate from a registered medical practitioner stating that the employee is pregnant and the expected date of birth.
- (c) For the purpose of adoption leave and special adoption leave means the requirements that an employee must comply with before being eligible for the entitlement.

The employee must produce to the employer—

a statement from an adoption agency or other appropriate body of the placement of the child for adoption purposes; or

presumed date confirming that the employee or employee's spouse is to have custody of the child pending application for an adoption order.

“Child”: A person to whom an employee or employee's spouse has given birth, or 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 stepchild of the employee or employee's spouse who has previously lived with the employee for a period of 6 months or more.

“Expected date of birth”: The day certified by a medical practitioner, to be the day on which the birth of the child of the employee, or employee's spouse is expected.

“Maternity leave”: Unpaid parental leave of up to 12 months taken by a female employee in connection with her pregnancy, and the subsequent birth of a child.

“Parental leave”: Any period of maternity leave, paternity leave and/or adoption leave of up to 12 months taken in connection with the birth or adoption of a child.

“Paternity leave”: Unpaid parental leave of up to 12 months which is taken by a male employee in connection with the birth or adoption of a child. Such an employee is permitted to take one week of unpaid paternity leave immediately after the birth or adoption of a child, in conjunction with any leave taken by his spouse.

35.1 Entitlement to parental leave

35.1.1 Employees are entitled to parental leave in connection with the birth or adoption of a child, in accordance with this clause.

35.1.2 Parental leave only applies to part-time or full time employees. Temporary full time or part-time employees on fixed term contracts are only eligible for parental leave for the duration of their fixed term contract of employment.

35.1.3 For female employees parental leave may, at the employee's discretion, commence prior to 6 weeks before the expected date of birth of the child.

35.1.4 The minimum period of absence on maternity leave will commence six weeks before the expected date of birth and end six weeks after the day on which the birth has taken place, however an employee may apply to the Managing Director to vary this period provided her application is supported by a certificate from a registered medical practitioner indicating that the employee is fit to continue or resume duty within this minimum period.

35.2 Eligibility for parental leave

35.2.1 An employee must comply with the certification and notice requirements to be entitled to parental leave, unless these requirements are waived by the employer.

35.2.2 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 during one week of paternity leave taken immediately after the birth or adoption of a child.

35.3 Notice requirements

An employee is to give the employer at least 10 weeks written notice of the intention to take parental leave other than for the purposes of adoption and of the expected duration of the leave.

35.4 Transfer to a safe job

Where in the opinion of a registered medical practitioner illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue her present work, she may be transferred to a safe job, at the rate and on the conditions attached to that job or at the employee's substantive level, whichever is the higher, until the employee commences parental leave.

35.5 Variation and/or cancellation of parental leave period

- 35.5.1 The period of parental leave may be lengthened or shortened by Agreement between the employer and the employee, provided that the amount of leave does not exceed the maximum allowed.
- 35.5.2 The employee must where practicable give the employer 14 days written notice of any request to vary the period of leave.
- 35.5.3 Parental leave applied for, but not commenced, by an employee for any reason is cancelled. Reasons for cancellation include, but are not limited to—
- 35.5.3(a) where a pregnancy terminates, other than by the birth of a living child;
- 35.5.3(b) or where a planned adoption or placement of a child does not proceed.
- 35.5.3(c) An employee must notify the employer of any change in certification details.

35.6 Parental leave and sick leave

- 35.6.1 Where the pregnancy of an employee terminates after 28 weeks, other than by the birth of a living child, and the employee is not on parental leave, she is entitled to sick leave in accordance with Award entitlements.
- 35.6.2 An employee who suffers any illness or injury related to her pregnancy and/or the birth whilst on parental leave cannot utilise sick leave entitlements.
- 35.6.3 An employee may utilise sick leave entitlements in accordance with clause 27.1—Sick Leave when not on parental leave.

35.7 Special adoption leave

An employee is entitled to special unpaid adoption leave of up to 2 days to attend any compulsory interviews, examinations or the like which are required by the adoption procedure.

35.8 Effect of parental leave on leave entitlements and employment

- 35.8.1 Any absence on parental leave will not break the continuity of service.
- 35.8.2 However, absence on parental leave will not be taken into account for the purpose of salary increment progression. Paid leave entitlements such as annual leave, long service leave and public holidays will not accrue during any period of parental leave.
- 35.8.3 An employee may, instead of or in conjunction with parental leave, take annual leave or long service leave entitlements to which he or she is entitled.

An employee proceeding on parental leave may elect to utilise—

- 35.8.3(a) accrued annual leave
- 35.8.3(b) accrued long service leave
- for the whole or part of the period referred to in subclause 35.1 of this clause. The periods of leave referred to in paragraphs 35.8.3(a) and 35.8.3(b) of this subclause, which are utilised, will be paid leave.

35.9 Replacement employees

- 35.9.1 Before the employer engages a replacement employee (including a temporarily promoted or transferred employee), the employer must inform that person of the temporary nature of the employment, and of the rights of the person on parental leave who is being replaced.
- 35.9.2 The employer does not have to engage a replacement employee if one is not required.

35.10 Return to work after parental leave

- 35.10.1 An employee must confirm to the employer an intention of returning to work prior to re-commencing work.
- 35.10.2 An employee returning to work from parental leave is entitled to the position held immediately

before beginning 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.

- 35.10.3 Where the position no longer exists, the employee is entitled to the same classification and pay to that of the employee's former position, and for which the employee is qualified and capable of performing.

- 35.10.4 Where immediately before commencing parental leave, an employee was acting in a higher position, or performing additional duties on a temporary basis, this subclause only applies in respect of the position held by the employee immediately before taking the acting or temporary position.

35.11 Termination of employment and parental leave

- 35.11.1 An employee may terminate his or her employment at any time during a period of parental leave, by giving the employer the appropriate period of notice detailed in the relevant award.
- 35.11.2 The employer must not terminate an employee or transfer them from their existing position on the grounds of the employee's parental leave application and/or absence on parental leave.

36.—EMERGENCY AND COMMUNITY SERVICE LEAVE

36.1 Emergency Service Leave may be granted to an Employee who is an active volunteer member of the—

- * Western Australian State Emergency Service;
- * Western Australian Bush Fire Brigade;
- * St John Ambulance Brigade;
- * Defence Force Reserves;
- * Sea and rescue associations; or
- * Other similar Authorities or bodies, recognised by the College.

to attend emergencies as declared by the recognised Authority or body provided that it does not interfere with essential customer service and work requirements.

36.2 If an employee is an active member of a recognised Authority or body they are to advise the College of membership in writing at the commencement of employment or membership in order to seek leave to attend emergencies.

36.3 The employer will be advised as soon as possible by the employee, the emergency service or such other persons as to the absence and, where possible, the expected duration of the absence. Such advice will be provided within 24 hours of the event or activity requiring the person's absence.

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

36.5 The application form must be accompanied by a certificate from the emergency organisation certifying that the employee was required for the specified period. If a certificate of attendance is not provided from the emergency service organisation absence may be considered to be leave without pay. If the absence is deemed to be leave without pay, any adjustment in entitlements arising as a result of not proving a certificate of service will be processed in the next scheduled pay period.

36.6 An employee, who during the course of the emergency volunteers their services to an emergency service organisation, will comply with subclauses 36.2 to 36.5 inclusive.

36.7 Such leave will not affect any continuity of service for the purpose of higher duties arrangements or eligibility for allowances.

36.8 An employee may be granted reasonable Community Service Leave, subject to proof, to donate blood products to the Red Cross Blood Bank.

37.—ANNUAL LEAVE LOADING

Annual leave loading provisions in the GOSAC Award have been absorbed and no longer apply.

38.—SELF-FUNDED WORK BREAKS

38.1 Employees may receive 4 years salary over a period of five years, with no attendance at work required in the fifth year, in accordance with the College's Policy and Guidelines.

38.2 The employer and an employee may agree to enter into any other similar arrangements involving different periods of time, in accordance with the Policy and Guidelines.

PART 7: TRANSFERS, TRAVELLING AND WORKING AWAY FROM USUAL PLACE OF WORK

39.—HOME BASED WORK

An employee may make application to the College to engage in home based work subject to the College's Home Based Work policy.

40.—TRAVELLING ALLOWANCE

40.1 This clause replaces Clause 42. —Travelling Allowance of the Government Officers' Salaries, Allowances and Conditions Award in its entirety.

40.2 An employee who travels on official business will be reimbursed reasonable expenses on the basis of the production of receipts for reasonable expenses. Reasonable expenses will include but not be limited to accommodation costs, purchase of meals as necessary, and cost of transport to destination.

40.3 In addition to clause 40.2—Travelling Allowance above, an employee will be reimbursed reasonable incidental expenses such as train, bus and taxi fares, official telephone calls, laundry and dry cleaning expenses, on production of receipts.

40.4 If on account of lack of suitable transport facilities, an employee necessarily engages reasonable accommodation for the night prior to commencing travelling on early morning transport the employee will be reimbursed the actual cost of such accommodation.

40.5 Reimbursement of expenses will not be suspended should an employee become ill whilst travelling, provided leave for the period of such illness is approved in accordance with provisions of Clause 28.1—Sick Leave of this Agreement, and the employee continues to incur accommodation, meal and incidental expenses.

40.6 Reimbursement claims for travelling in excess of 14 days in one month will not be passed for payment by a certifying employee unless the Managing Director has endorsed the account.

40.7 An employee who is relieving at or temporarily transferred to any place within a radius of fifty (50) kilometres measured from the employee's headquarters will not be reimbursed the cost of midday meals purchased, but an employee travelling on duty within that area which requires absence from the employee's headquarters over the usual midday meal period will be, on the production of receipts, for each meal necessarily purchased, provided that—

40.7.1 such travelling is not a normal feature in the performance of the employee's duties; and

40.7.2 such travelling is not within the suburb in which the employee resides.

41.—TRANSFER

41.1 The College may transfer, at the same level of classification, an officer from one office, post or position within the College to another such office, post or position, for which that officer possesses the appropriate qualifications and skills,

provided the College considers it to be in its interests to do so. Such transfers include the transfer of an employee from one campus of the College to another campus of the College.

41.2 The decision to transfer will be equitable and free from bias.

41.3 If the College transfers an employee in accordance with subclause 41.1 of this Clause it will comply with the following—

41.3.1 The transfer will be at the employee's current classification level;

41.3.2 The transfer will not result in a loss of the employee's continuity of service;

41.3.3 The transfer will not change the tenure of the employee;

41.3.4 The College's and employee's needs will be taken into account in the transfer decision. The employee's needs include distance of new work site from place of residence, skills, qualification and experience of the employee, requirement to undertake training to perform the duties of the new position.

41.3.5 The employee will be notified of the transfer decision and arrangements. The College will give the employee at least four weeks notice of intention to transfer.

41.3.6 Policies relating to transfer will be documented, equitable, free from bias, applied consistently and accessible to College employees.

41.3.7 The decisions and processes relating to transfer will embody the principles of natural justice including access to documentation specifically relating to the particular employee's transfer, explanation as to the reasons for the transfer and consultation with the employee where their input is taken into consideration;

41.3.8 The transfer decision will be capable of review; and

41.3.9 The appropriate confidentiality will be observed.

41.4 The College must adhere to the Public Sector Standards in Human Resource Management standard regarding transfer.

41.5 The College will act in accordance with the report and implement any recommendations of a reviewer selected by the Commissioner for Public Sector Standards to investigate any suspected breach of standard in accordance with s.15 of the Public Sector Management (Review Procedures) Regulations 1995.

41.6 If the College does not act in accordance with and implement the recommendations of the reviewer selected by the Commissioner for Public Sector Standards, the College will be in breach of the Agreement.

41.7 Should an application for a breach of the Public Sector Standard relating to Transfer be lodged with the Managing Director within 15 days of an employee being notified of a decision to transfer and a review of the transfer be carried out, the status quo will remain until such time as the reviewer has made recommendations.

SCHEDULE A: SALARIES ENTERPRISE BARGAINING AGREEMENT 2000

SCHEDULE A

LEVEL	Column A— Current Annual Salary Rates	Column B— Date of Registration 1.5%	New Fortnightly Rate	Column C— Annual Salary as at First Pay Period on or After March 15, 2001	New Fortnightly Rate	Column D— Annual Salary as at First Pay Period on or After March 15, 2002	New Fortnightly Rate
				1.5%		3%*	
LEVEL 1							
Age 16	12,900	13,094	501.99	13,290	509.52	13,689	524.80
Age 17	15,075	15,301	586.62	15,531	595.42	15,997	613.29
Age 18	17,585	17,849	684.30	18,117	694.56	18,660	715.40
Age 19	20,355	20,660	792.09	20,970	803.97	21,599	828.09
Age 20	22,858	23,201	889.49	23,549	902.83	24,255	929.92

LEVEL	Column A— Current Annual Salary Rates	Column B— Date of Registration 1.5%	New Fortnightly Rate	Column C— Annual Salary as at First Pay Period on or After March 15, 2001 1.5%	New Fortnightly Rate	Column D— Annual Salary as at First Pay Period on or After March 15, 2002 3%*	New Fortnightly Rate
YEAR 1	25,110	25,487	977.12	25,869	991.78	26,645	1021.53
YEAR 2	25,883	26,271	1,007.20	26,665	1022.31	27,465	1052.98
YEAR 3	26,656	27,056	1,037.28	27,462	1052.84	28,286	1084.43
YEAR 4	27,423	27,834	1,067.13	28,252	1083.14	29,099	1115.63
YEAR 5	28,196	28,619	1,097.21	29,048	1113.67	29,920	1147.08
YEAR 6	28,968	29,403	1,127.25	29,844	1144.16	30,739	1178.49
YEAR 7	29,857	30,305	1,161.85	30,759	1179.28	31,682	1214.65
YEAR 8	30,471	30,928	1,185.74	31,392	1203.53	32,334	1239.63
YEAR 9	31,380	31,851	1,221.11	32,328	1239.43	33,298	1276.61
LEVEL 2							
YEAR 1	32,468	32,955	1,263.45	33,449	1282.40	34,453	1320.88
YEAR 2	33,302	33,802	1,295.91	34,309	1315.34	35,338	1354.80
YEAR 3	34,179	34,692	1,330.03	35,212	1349.98	36,268	1390.48
YEAR 4	35,105	35,632	1,366.07	36,166	1386.56	37,251	1428.15
YEAR 5	36,074	36,615	1,403.77	37,164	1424.83	38,279	1467.58
LEVEL 3							
YEAR 1	37,407	37,968	1,455.65	38,538	1477.48	39,694	1521.81
YEAR 2	38,445	39,022	1,496.04	39,607	1518.48	40,795	1564.03
YEAR 3	39,515	40,108	1,537.68	40,709	1560.74	41,931	1607.56
YEAR 4	40,614	41,223	1,580.44	41,842	1604.15	43,097	1652.27
LEVEL 4							
YEAR 1	42,120	42,752	1,639.05	43,393	1663.63	44,695	1713.54
YEAR 2	43,301	43,951	1,685.00	44,610	1710.28	45,948	1761.59
YEAR 3	44,516	45,184	1,732.28	45,861	1758.27	47,237	1811.02
LEVEL 5							
YEAR 1	46,855	47,558	1,823.30	48,271	1850.65	49,719	1906.17
YEAR 2	48,437	49,164	1,884.86	49,901	1913.14	51,398	1970.53
YEAR 3	50,080	50,831	1,948.80	51,594	1978.03	53,141	2037.37
YEAR 4	51,785	52,562	2,015.15	53,350	2045.38	54,951	2106.74
LEVEL 6							
YEAR 1	54,526	55,344	2,121.81	56,174	2153.64	57,859	2218.25
YEAR 2	56,390	57,236	2,194.35	58,094	2227.26	59,837	2294.08
YEAR 3	58,305	59,180	2,268.87	60,067	2302.90	61,869	2371.99
YEAR 4	60,338	61,243	2,347.98	62,162	2383.20	64,027	2454.69
LEVEL 7							
YEAR 1	63,454	64,406	2,469.23	65,372	2506.27	67,333	2581.46
YEAR 2	65,610	66,594	2,553.13	67,593	2591.43	69,621	2669.17
YEAR 3	67,956	68,975	2,644.42	70,010	2684.09	72,110	2764.61
LEVEL 8							
YEAR 1	71,769	72,846	2,792.80	73,938	2834.69	76,156	2919.73
YEAR 2	74,500	75,618	2,899.07	76,752	2942.56	79,054	3030.84
YEAR 3	77,887	79,055	3,030.87	80,241	3076.34	82,648	3168.63
LEVEL 9							
YEAR 1	82,117	83,349	3,195.48	84,599	3243.41	87,137	3340.71
YEAR 2	84,975	86,250	3,306.69	87,543	3356.30	90,170	3456.98
YEAR 3	88,234	89,558	3,433.51	90,901	3485.02	93,628	3589.57
CLASS 1	93,162	94,559	3,625.28	95,978	3679.66	98,857	3790.05
CLASS 2	98,090	99,561	3,817.05	101,055	3874.30	104,086	3990.53
CLASS 3	103,016	104,561	4,008.74	106,130	4068.87	109,314	4190.93
CLASS 4	107,945	109,564	4,200.54	111,208	4263.55	114,544	4391.46
LEVEL 2/4							
YEAR 1 (2.1)	32,468	32,955	1,263.45	33,449	1282.40	34,453	1320.88
YEAR 2 (2.3)	34,179	34,692	1,330.03	35,212	1349.98	36,268	1390.48
YEAR 3 (2.5)	36,074	36,615	1,403.77	37,164	1424.83	38,279	1467.58
YEAR 4 (3.2)	38,445	39,022	1,496.04	39,607	1518.48	40,795	1564.03
YEAR 5 (4.1)	42,120	42,752	1,639.05	43,393	1663.63	44,695	1713.54
YEAR 6 (4.3)	44,516	45,184	1,732.28	45,861	1758.27	47,237	1811.02
OTHER							
Job Skills Trainees Under 21	19,625 16,593	19,919 16,842	763.68 645.70	20,218 17,095	775.14 655.38	20,825 17,607	798.39 675.04

* The payment of this increase is subject to the approval of the Cabinet Standing Committee on Labour Relations

SCHEDULE B: PRODUCTIVITY IMPROVEMENTS
PRODUCTIVITY IMPROVEMENT PLAN

Staff will actively participate in the development and implementation of a Productivity Improvement Plan/s (PIP/s) as determined by the Managing Director.

PIPs may be developed at the College or Campus level, or any combination as determined by the Managing Director.

The PIP/s may involve changes to work practices, but will not involve changes to award/agreement/enterprise bargaining agreement employment conditions.

Subject to the approval of the Cabinet Standing Committee on Labour Relations, a 3% pay increase will be paid to employees from the first pay period on or after 15 March 2002 for productivity improvements.

SCHEDULE C: SIGNATORIES OF PARTIES TO THE AGREEMENT

The following signatories are authorised to sign this Agreement.

Signatories

.....Signed..... Date 20/12/2000

Employer—

Royce Standish, Managing Director of Midland College of TAFE, on behalf of the Governing Council

Signed for and on behalf of the *Civil Service Association of Western Australia (Inc)* by

.....Signed..... Date 20/12/2000

Common Seal

Mr Dave Robinson, Branch Secretary,
Civil Service Association WA Inc

SCHEDULE D: ALPHABETICAL LISTING OF PROVISIONS

Annual Leave
Annual Leave Loading
Annual Leave Travel Concessions
Arrangement
Availability of Agreements
Breaches of Discipline
Casual Employment
Ceremonial/Cultural Leave
Christmas Closedown
Compassionate Leave
Consultation Provisions
Definitions
Dispute Resolution Procedure
Emergency and Community Service Leave
Flexitime
Higher Duties
Home Based Work
Hours of Work
Long Service Leave
No Further Claims
Number of Employees Covered
Objectives of the Agreement
Parental Leave
Parties Bound
Past Productivity
Payment Arrangements
Productivity Improvements
Public Holidays
Relationship to Awards/Agreements
Repayments of Overpayments
Salaries
Salary Packaging
Scope
Self Funded Work Breaks
Short Leave
Sick Leave and Family/Carer's Leave
Signatories of Parties to the Agreement
Substandard Performance
Term of Agreement and Renegotiation
Title
Transfer
Travelling Allowance
Variation of Allowances

MINISTRY FOR CULTURE & THE ARTS ALHMWU
ENTERPRISE BARGAINING AGREEMENT 2000.

No. AG 2 of 2001.

2001 WAIRC 01820

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	THE MINISTRY FOR CULTURE & THE ARTS, APPLICANT v. AUSTRALIAN LIQUOR, HOSPITALITY AND MISCELLANEOUS WORKERS UNION, WESTERN AUSTRALIAN BRANCH, RESPONDENT
CORAM	SENIOR COMMISSIONER G L FIELDING
DELIVERED	WEDNESDAY, 17 JANUARY 2001
FILE NO/S	AG 2 OF 2001
CITATION NO.	2001 WAIRC 01820
Result	Agreement registered
Representation	
Applicant	Ms A M Manley as agent
Respondent	Ms D E MacTiernan as agent

Order.

HAVING heard Ms A M Manley as agent on behalf of the Ministry for Culture & the Arts and Ms D E MacTiernan as agent on behalf of the Australian, Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders—

THAT the agreement made between the parties lodged in the Commission on 3 January 2001 entitled the Ministry for Culture & the Arts ALHMWU Enterprise Bargaining Agreement 2000 and as subsequently amended by direction of the Commission be registered in the terms of the following Schedule as an industrial agreement in replacement of the Art Gallery of Western Australia Enterprise Bargaining Agreement 1997 AG 330 of 1997 which is hereby cancelled.

(Sgd.) G. L. FIELDING,
Senior Commissioner.

[L.S.]

Schedule.

1.—TITLE

This Agreement shall be known as the Ministry for Culture & the Arts ALHMWU Enterprise Bargaining Agreement 2000.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Scope of the Agreement
4. Parties to the Agreement
5. Definitions
6. Date and Period of Operation of the Agreement
7. No Further Claims
8. Relationship to Parent Awards and Agreements
9. Single Bargaining Unit
10. Objectives and Principles
11. Productivity Improvement
12. Productivity Measurement
13. Salary Increases
14. Dispute Settlement Procedure
15. Parental Leave
16. Family Carers Leave
17. Ceremonial/Cultural Leave
18. Emergency Service Leave
19. Blood Donors Leave
20. Return to Work During Periods of Approved Absences

21. Long Service Leave
 22. Meal Allowance
 23. Consultative Process
 24. Employees Covered by This Agreement
 25. Signatures of Parties to Agreement
- Schedule 1—Salaries
Appendix 1—Productivity Initiatives

3.—SCOPE OF THE AGREEMENT

This Enterprise Bargaining Agreement shall apply to employees of the Ministry for Culture & The Arts who are eligible to be members of the Australian Liquor Hospitality and Miscellaneous Workers Union, Western Australian Branch and who are located at the Art Gallery of Western Australia in Perth and Geraldton.

4.—PARTIES TO THE AGREEMENT

(1) Employer

Director General of the Ministry for Culture & The Arts

(2) Union

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

5.—DEFINITIONS

“**Agreement**”: the Art Gallery of Western Australia Enterprise Bargaining Agreement 2000.

“**Award**”: Cultural Centre Award 1987

“**Gallery**”: the Art Gallery of Western Australia

“**employee**”: for the purpose of this Agreement, someone who is referred to at Clause 3—Scope

“**employer**”: the Ministry for Culture & The Arts

“**Government**”: the State Government of Western Australia

“**Minister**”: the Minister for the Arts

“**Union**”: the Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch

“**WAIRC**”: the Western Australian Industrial Relations Commission

“**annual or short-term leave**”: annual and short-term leave means any period of annual or other leave not exceeding 20 days

6.—DATE AND PERIOD OF OPERATION OF THE AGREEMENT

(1) Except as herein provided, this Agreement shall have effect as from 17 January 2001 for a period of 24 months.

(2) The parties will review this Agreement three months prior to the expiration of the Agreement to commence negotiations for a new Agreement.

(3) The parties will assess achievement 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 by notification in writing to the other party and to the WAIRC.

(6) This Agreement may be, with consent of the parties, varied, renewed or cancelled as appropriate.

(7) The parties agree that the benefits derived from the initiatives introduced during the term of this Agreement will form the basis of further discussions in accordance with subclause (2) of this clause, and improvements to the terms and conditions of future Agreements.

7.—NO FURTHER CLAIMS

(1) The parties of 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 Cultural Centre Award 1987, 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.

9.—SINGLE BARGAINING UNIT

(1) This Agreement has been negotiated through a Single Bargaining Unit (SBU).

(2) The SBU comprises representatives from the Gallery and the Union.

10.—OBJECTIVES AND PRINCIPLES

The shared objectives of the parties are—

(1) To achieve the Gallery’s mission and increase productivity and efficiency through continuous improvement.

(2) To satisfy the requirements of clients and customers through the provision of reliable, efficient and competitive services.

(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 practices.

(7) To promote health, safety, welfare and equal opportunity for all employees.

11.—PRODUCTIVITY IMPROVEMENT

(1) Objectives of Performance Improvement

Gallery Mission

To develop and present the best public art collection in the State and the pre-eminent collection of Western Australian art, and to increase the knowledge and appreciation of the art of the world for the enjoyment and cultural enrichment of the people of Western Australia.

Gallery goals

Develop and maintain the best public art collection in the State

Build a strong and committed audience for Gallery programs

Diversify and enhance services to create a better understanding and appreciation of art

Grow our professional reputation

Maximise the effective use of our resources

Raise revenue to support delivery of programs

Improved management of our risks

Develop and improve our customer/client relationships

Have a motivated, flexible and competent workforce

Maintain and where appropriate improve the safety and well-being of our people

Reflect community diversity in our paid and volunteer workforce

Lead and influence cultural policy and community opinion

Provide a forum for dialogue and debate

Foster the importance of visual arts as a key component of trade, tourism, diplomacy, entertainment and events.

(2) Strategies and Initiatives Developed to Achieve Objectives

The parties are committed to the development and implementation of a broad agenda of initiatives designed to increase efficiency and effectiveness of program and service delivery of the Gallery.

The parties agree to develop and implement improvements by way of—

(a) Customer Service

(b) Establishment of effective team working through multiskilling and flexible work practices

(c) Quality Improvement/Continuous Improvement

The parties agree the increased productivity be achieved through the implementation of agreed quality management concepts, including team based approaches to improve productivity.

(3) The strategies and initiatives introduced over the life of the Agreement will impact significantly on the work practices, customer service and employee satisfaction.

(a) Introduction of Team Working—General Principles

(i) Benefits of Team Working

Teams provide significantly greater operational efficiencies through the breaking down of sectional and divisional boundaries.

Teams facilitate—

- Increased morale of workforce through empowerment, spreading of responsibilities (involving people end to end on process and process outcomes);
- Increased employee identification with the organisation as employees become more aware of, and involved in, organisational strategy issues and outcomes.

Teams allow for a reduction of the number of discrete steps, and number of separate personal interfaces, in any process leading to lower error rates and minimisation of work.

Teams foster much improved vertical and lateral communication flows.

Teams promote a more democratic management style.

Teams provide for a stronger focus, enabling more effective delivery of planned outcomes via better utilisation of resources.

(ii) Team Working Philosophy

The following statements represent the beliefs which establish the parameters and principles for this Enterprise Bargaining Agreement.

- Team based structures represent the most efficient and effective way of working within the Gallery. Teams focus attention on outputs and outcomes. The Gallery's team development will be encouraged.
- Flexibility in the way work is organised and undertaken is paramount to achieving high quality service delivery and outcomes. Work practices will be continually reviewed in the light of program outcomes in consultation with all participants.
- Job training and skills development, quality of work life and a culture of innovation and continuous improvement will be supported by the Gallery and continually addressed by staff. Emphasis will be given to work flexibility through multiskilling and multifunctionality, supported by appropriate training and professional development.
- Teams need to be able to plan within an overall program to provide a consistent basis for delivery of team outcomes and the whole of Gallery programs. Changing priorities and programs must be supported by both a reasonable level of team flexibility and a considered and timely approach by management to reordering of priorities.

(iii) Team Structure

In pursuit of the objectives outlined in this Agreement, the Gallery is committed to the development of a team based structure. The Gallery expects and will facilitate the involvement of all its employees in the development of work teams with a focus on quality client service and continuous improvement processes which contribute to the achievement of mandate and mission through program and organisational objectives.

For employees, this means becoming involved in the implementation of the Gallery's operational plan,

developing open communication with team leaders and team members, and accepting personal responsibility for their own and their team's performance. Team leaders will have a particular accountability for achievement of team objectives, supported by team performance Agreements.

(iv) Team Characteristics

An effective team has the following characteristics—

- The team is committed to achieving the highest standard of service delivery to clients, be they internal or external clients.
- Outcome focused.

Team members will treat each other with courtesy, consideration and respect, and will strive to practise the following work behaviours—

- Act with honesty and integrity;
- Maintain a flexible, achievement focussed outlook;
- Make consultative decisions;
- Strive to be the best through continuous improvement;
- Encourage innovation and creativity;
- Accept shared accountability for achievement of objectives;
- Exhibit team pride;
- Deal with official information responsibly and appropriately;
- Take responsibility for skills and professional development and maintenance which contribute to operational needs;
- Take responsibility for effective communication.

Communication is open within the team and across teams. Information is shared and decisions can be challenged and explained in a non-threatening environment.

(v) Production of Work Team Plans

Each team shall be organised to achieve clear objectives and outcomes which contribute to the achievement of program objectives and Gallery's goals.

Work teams shall prepare written plans, the major elements of which shall be the work teams' agreed service outputs. Work team plans shall also document—

- Identified changes to work practices;
- Skill development required by team members; and
- Methods for ensuring effective communication both within the work team and with other work teams, and with internal and external clients.

Work team plans will be formally reviewed and outcomes reported as and when required to ensure consistent standards and performance evaluation and outcomes.

(vi) Pilot Programs

- The purpose of this Pilot Program is to reduce the requirement for supervision while maintaining the agreed staffing levels.
- The parties commit to more effective current and future work practices through multiskilling by—
 - ◆ Providing skilled and semi-skilled carpentry services to allow for the construction of crates, frames, backing boards, exhibition furniture, etc
 - ◆ Allowing for routine condition reporting to a standard checklist at the time of receipt and unpacking of crates
 - ◆ Routinely ordering and maintaining stock
 - ◆ Routinely rostering staff resources to meet operational needs and program delivery requirements

(b) Introduction of Multifunctionality

The parties commit to undertake training in order to broaden skills, providing greater mobility of staff within the Gallery.

(c) Centenary Galleries Planning and Liaison

The parties commit to service 25% more public display and access space, realising efficiencies to the equivalent of 1 FTE.

(d) Part-Time Flexibility

(i) For the purpose of meeting exhibition schedules, part-time employees may work an aggregate of their part-time hours over an eight week period. For example, a part-time employee normally working 48 hours per fortnight, may work and be paid for 76 hours per fortnight and proportionately reduce his/her normal hours for the remainder of the eight week period.

(ii) Unless extra hours are worked, part-time employees will continue to receive their normal part-time salary on a fortnightly basis.

(iii) By agreement within the Team process, and in order to meet schedules, part-time employees may extend their hours within the range of normal full-time hours without incurring overtime, up to a maximum of 8 hours per day in any day. However, any hours worked in excess of 8 hours per day will attract overtime penalties.

(iv) In order to meet schedules, and subject to subclause (f)(v), full-time employees commit to accruing RDOs, which will be taken during off-peak periods.

(v) No more than five RDOs can be accrued.

(e) Casual Labour and Overtime

The parties commit to abolish the residual of the vacant position set aside for employing casual labour and overtime. The Gallery's exhibition and display program will be delivered without funding extra time through the salaries budget.

(f) Use of Contractors

The parties commit to provide skilled labour in support of other Gallery operations, saving on the use of contractors.

(4) Future Issues For Negotiations

During the life of this Agreement the parties will continue to address a range of issues and reforms specifically aimed at increasing productivity. The parties agree that these issues will form the basis of future Agreements.

Full value of initiatives will be recorded and may form the basis for negotiations of future wage increases.

12.—PRODUCTIVITY MEASUREMENT

(1) Productivity Initiatives

The parties commit to the productivity schedule at Attachment 1 to this Agreement.

(2) Measurement

A management reporting system will be developed to measure the initiatives contained in Clause 12 (1) above.

13.—SALARY INCREASES

(1) The following salary increases are payable on the basis of implementation and continued co-operation of those improvements in productivity and/or work practice changes outlined in Clause 12—Productivity Measurement.

(2) The following increases, which are reflected in Schedule 1—Salaries, to this Agreement, will be paid during the life of this Agreement—

(3) An increase of 6.5% from pay period on or after (date of registration) and in accordance with subclause (1) hereof.

14.—DISPUTE SETTLEMENT PROCEDURE

This dispute settlement procedure will apply to any question, dispute or difficulty that arises under this Agreement.

(1) The Union representative and/or the employee/s concerned shall discuss the matters with the team leader 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 sub-clause (1) hereof the matter shall be referred by the Union representative or employee to the Gallery Chief Executive or his/her nominee for resolution.

(3) If the matter is not resolved within 5 working days of the Union representative's or employee's notification of the dispute to the Gallery Chief Executive, it may be referred by either party to the Western Australian Industrial Relations Commission.

15.—PARENTAL LEAVE

(1) Definition

(a) "employee" includes full time, part time, permanent and fixed term contract employees

(b) "replacement employee" is an employee specifically engaged to replace an employee proceeding on paternal leave

(2) Eligibility for unpaid 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 week leave may be taken at the birth of the child concurrently with parental leave taken by the pregnant employee.

(c) 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 from the date of adoption.

(d) An employee seeking to adopt a child shall be entitled to two days 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 days leave. The employee may take any paid leave entitlement in lieu of this leave.

(e) Subject to sub-clause (b) of this clause where both partners are employed by the Gallery the leave shall not be taken concurrently except under special circumstances and with the approval of the Chief Executive.

(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 Chief Executive's approval.

(c) An employee on parental leave is not entitled to paid sick leave and other paid Award absences.

(d) Where the pregnancy of an employee terminates other than by the birth of 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 paternal 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.

(f) Accrual of all leave entitlements shall be suspended during periods of Parental Leave.

(4) Notice and Variation

(a) The employee shall give not less than ten weeks notice in writing to the Gallery of the date the employee proposes to commence maternity leave starting the period of leave to be taken.

(b) An employee proceeding on parental leave may, subject to Chief Executive's approval, 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.

(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 maternity leave.

(b) Where the employer is unable to provide a safe job with the organisation, or modify work to the extent required to

provide safe employment, with the consent of the employee, and where practicable, the employee may be transferred to another agency until the commencement of parental leave.

(c) Where an external transfer is arranged, the work undertaken by the employee shall be at the same classification and within the employee's competence.

(d) 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 Gallery 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 Gallery not less than four weeks prior to the expiration of the period of parental leave;

(b) An employee on return from parental leave shall be entitled to the position which the employee occupied immediately prior to proceeding on parental leave. Where an employee was transferred to a safe job pursuant to sub-clause (e) hereof the employee is entitled to return to the position occupied immediately prior to the transfer.

(c) An employee may return on a part-time basis to the same position occupied prior to the commencement of leave or to a different position at the same classification level on a part-time basis in accordance with the Part-Time provisions of the relevant Award and subject to Chief Executive's approval.

(d) Where the position occupied by the employee no longer exists or is unavailable the employee shall be entitled to a position of the same classification level within the officer's skills and competence.

(e) For the purposes of sub-clause (7)(d) of this clause, the employer shall act in accord with the Public Sector Management Act, regulations and standards and shall notify the employee and the Union of an impending decision to transfer another employee into a position where the substantive occupant is on a period of parental leave.

(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 leave accrual purpose under the relevant Award or this Agreement.

(c) Termination of Employment

An employee on parental leave may terminate employment at any time during the period of leave by written notice in accordance with the relevant Award.

16.—FAMILY CARERS LEAVE

(1) Employees covered by this Agreement may with management approval use a maximum of five (5) days Sick Leave entitlement in any calendar year in accordance with this clause to provide care for another person subject to—

- (a) The employee maintaining a minimum of ten (10) days accrued or pro rata Sick Leave for their own use during the calendar year;
- (b) The employee being responsible for the care of the person concerned; and
- (c) The person concerned being either—
 - (i) a member of the employee's immediate family; or
 - (ii) a person residing at the employee's residence for a period of no less than six months.
- (d) The term "*immediate family*" includes—
 - (i) a spouse or a de facto spouse of the employee. A de facto spouse, in relation to a person, means a person who lives with the first

mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; and

- (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.

- (e) Production of satisfactory evidence of illness of the other person.

(2) The employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and their relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee shall notify the employer by telephoning of such absence as soon as possible on the first day of absence.

(3) Leave taken under this provision is deemed to be Sick Leave.

An employee may elect, with the consent of the Gallery, to take unpaid leave for the purpose of providing care to a family member who is ill.

17.—CEREMONIAL/CULTURAL LEAVE

(1) Subject to organisational requirements, an employee covered by this Agreement is entitled to apply for leave for tribal/ceremonial/cultural purposes.

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

(3) Each day or part thereof, taken in accordance with subclause (1) may be deducted from short leave, annual leave or flexi-leave entitlements.

(4) Time off without pay may be granted by Agreement between the employer and the employee for tribal/ceremonial/cultural purposes.

(5) Ceremonial/cultural leave shall be available, but not limited to Aboriginal and Torres Strait Islanders.

18.—EMERGENCY SERVICE LEAVE

Emergency Service Leave of absence shall be granted by the employer to an officer who is an active volunteer member of either the Western Australian State Emergency Service, Western Australian Volunteer Bush Fire Brigade or St John Ambulance Brigade, in order to allow for attendances at emergencies as declared by the recognised authority.

(1) The employer shall be advised as soon as possible by the employee, the emergency service, or such other person as to the absence and, where possible, the expected duration of the absence.

(2) The employee must complete a leave of absence form immediately upon return to work.

(3) The application form must be accompanied by a certificate from the emergency organisation certifying that the officer was required for the specified period.

(4) An employee, who during the course of an emergency, volunteers their services to an emergency organisation, shall comply with subclauses (1), (2) and (3) of this clause.

19.—BLOOD DONORS LEAVE

(1) New and Regular Donors

(a) Employees shall be entitled to 2 hours per quarter year of paid leave for the purpose of donating blood to the Red Cross Blood Centre where—

- (i) prior arrangement with the team has been made; and
- (ii) at least two (2) days' notice has been provided.

(2) Plasma Donors

(a) Employees who are plasma donors shall be entitled to two (2) hours per month of paid leave for the purpose of donating blood product where—

- (i) prior arrangement with the team has been made, by giving at least two (2) days' notice; or
- (ii) the employee is called upon by the Blood Centre.

(b) The notification period shall be waived or reduced where the team is satisfied that operations would not be unduly affected by the employee's absence.

(3) The employee shall be required to provide proof of attendance at the Blood Centre upon return to work.

(4) Other Donor Requirements

(a) The employer may grant an employee access to sick leave for the purpose of donating other tissue, such as bone marrow or a kidney. Each application for leave of this type shall be with compassion and in the strictest confidence.

(b) Access to leave under this subclause shall be in accordance with the normal provision of sick leave.

20.—RETURN TO WORK DURING PERIODS OF APPROVED ABSENCES

(1) Employees who are or have been absent from the workplace other than on secondment for a period in excess of three (3) months, whether on leave without pay or parental leave, may by mutual Agreement return to work in order to meet organisational needs.

(2) Subject to Agreement between the parties regarding return to work, the employee shall be paid at casual rates for the period of recall.

21.—LONG SERVICE LEAVE

An employee covered by this Agreement is entitled to apply for long service leave in periods of not less than one week, providing that a minimum of four consecutive weeks is preserved and taken during the clearance of this leave.

22.—MEAL ALLOWANCE

Where an officer has completed a period of approved overtime and has qualified for the payment of a meal allowance, such allowance shall be paid through the normal payroll processing procedures of the Gallery.

Any such payments shall be identified through appropriate payroll codes.

23.—CONSULTATIVE PROCESS

The parties are committed to working together to improve the business performance and working environment of the Gallery.

Consultation in the context of this Agreement is defined as information sharing and discussion on significant matters relevant to organisational change processes of the Gallery and conditions of service, and shall be conducted in such a way as to enable the parties to contribute to the decision-making process.

It is agreed that consultation with employees and the Union party to this Agreement on proposed significant changes to work organisation shall occur prior to change being made or implemented.

Where the Gallery proposes to make any changes likely to affect existing work practices, working conditions or employment prospects of employees, the Union and the staff affected shall be notified by the Gallery as early as possible.

It is acknowledged by the parties to this Agreement that decisions will continue to be made by the Gallery, which is responsible and accountable to Government through statute for the efficient and effective operation of its business.

As part of this Agreement, the Gallery agrees to establish processes which will facilitate employee involvement.

The process will be at two levels—

- At the workplace level employees will be involved in contributing to improve the efficiency and effectiveness of their work teams within set policies and guidelines.
- At strategic and corporate level, the parties agree to establish a peak consultative forum to monitor, review and have input into the progress of the implementation of this Enterprise Bargaining Agreement and to actively share information and consult on corporate issues affecting the Gallery's business operations.

The parties to the peak consultative forum will consist of, but not be limited to, senior management, a Union official and an employee representative from the Union.

24.—EMPLOYEES COVERED BY THIS AGREEMENT

As at the date of registration the approximate number of employees bound by this Agreement is eight (8).

25.—SIGNATURES OF PARTIES TO THIS AGREEMENT

Signatories

Signed on behalf of the Ministry for Culture & the Arts

Alastair Bryant (signed) 28/12/00

Director General Date

Signed for and on behalf of the The Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch

Helen M Creed (signed) 28/12/00

Secretary

SCHEDULE 1.—SALARIES

Classification	Base 21.12.98 Annual	Fortnightly	Weekly	Hourly	Base plus 6.5% at registration	Fortnightly	Weekly	Hourly
Installation Assistant								
1 st year	\$27,115	\$1039.55	\$519.78	\$13.68	\$28,877	\$1107.11	\$553.55	\$14.57
2 nd year	\$27,511	\$1054.73	\$527.37	\$13.88	\$29,299	\$1123.28	\$561.64	\$14.78
3 rd year	\$27,952	\$1071.64	\$535.82	\$14.10	\$29,769	\$1141.30	\$570.65	\$15.02
Installation Supervisor								
1 st year	\$30,467	\$1168.06	\$584.03	\$15.37	\$32,447	\$1243.97	\$621.99	\$16.37
2 nd year	\$31,255	\$1198.27	\$599.14	\$15.77	\$33,287	\$1276.18	\$638.09	\$16.79
Regional Attendant								
1 st year	\$25,478	\$976.79	\$488.40	\$12.85	\$27,134	\$1040.28	\$520.14	\$13.69
2 nd year	\$25,935	\$994.31	\$497.16	\$13.08	\$27,621	\$1058.95	\$529.48	\$13.93
3 rd year	\$26,394	\$1011.91	\$505.96	\$13.31	\$28,110	\$1077.70	\$538.85	\$14.18

Appendix 1
Productivity Initiatives

Team Exhibitions
Salaries Budget \$191,888

Productivity Improvement Strategies/ Initiatives Title (Description and impact summary)	Outcome (What will the initiative do)	Achievement Date	Cash Savings, increase in revenue or additional cost \$	Value of Productivity \$
Review of positions	The staff undertake to abolish the vacant position (0.58FTE) set aside for employing casual labour and overtime. The Gallery's exhibition and display programme will be delivered without funding extra time through the salaries budget	Date of registration	\$10,783	
Contractors	The staff undertake to provide skilled labour in support of other Gallery operations, saving on the use of contractors	Date of registration	\$5,000	
Total Value			\$15,783	

MINISTRY OF JUSTICE ENTERPRISE AGREEMENT 2000.

No. PSAAG 2 of 2001.

2001 WAIRC 01946

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA INCORPORATED, DIRECTOR GENERAL, MINISTRY OF JUSTICE, THE ATTORNEY GENERAL OF WESTERN AUSTRALIA, APPLICANTS

CORAM SENIOR COMMISSIONER G L FIELDING

DELIVERED THURSDAY, 1 FEBRUARY 2001

FILE NO/S PSAAG 2 OF 2001

CITATION NO. 2001 WAIRC 01946

Result Agreement registered

Representation

Applicants Mr M Finnegan and Ms K L Shay as agents on behalf of the Civil Service Association of Western Australia Incorporated and Mr N Cinquina as agent on behalf of the Director General, Ministry of Justice and the Attorney General of Western Australia

Order.

HAVING heard Mr M Finnegan and Ms K L Shay as agents on behalf of the Civil Service Association of Western Australia Incorporated and Mr N Cinquina as agent on behalf of the Director General, Ministry of Justice and the Attorney General of Western Australia, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders—

THAT the agreement made between the parties lodged in the Commission on 23 January 2000 entitled Ministry of Justice Enterprise Agreement 2000 and as subsequently amended by direction of the Commission be registered in the terms of the following Schedule as an industrial agreement in replacement of the Ministry of Justice Enterprise Agreement 1995/1997 PSAAG 6 of 1995 which is hereby cancelled.

[L.S.] (Sgd.) G. L. FIELDING,
Senior Commissioner/
Public Service Arbitrator.

Schedule.

MINISTRY OF JUSTICE ENTERPRISE AGREEMENT
2000

1.—TITLE

This Agreement shall be known as the Ministry of Justice Enterprise Agreement 2000, and replaces the Ministry of Justice Enterprise Agreement 1995/1997.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Scope
4. Parties to the Agreement
5. Number of Employees Covered
6. Date and Operation
7. No Further Claims
8. Relationship to Parent Awards
9. Consultation
10. Performance Measurement Model
11. Hours
12. Salaries and Salary Increases
13. Part Time Employment
14. Parental Leave
15. Paid Parental leave
16. Family Leave
17. Option to Take 48 Weeks' Pay Over 52 Weeks
18. Annual Leave Travel Concessions for Employees Stationed in Remote Areas
19. Long Service Leave
20. Compaction of Annual Leave and Long Service Leave
21. Short Leave
22. Cultural/Ceremonial Leave
23. Bereavement Leave
24. Emergency Services Leave
25. Skills Development Leave
26. Self Funded Career Break
27. Contactability Allowance
28. Traveling Allowance
29. Regional Coordinators' Allowance
30. Dispute Resolution Procedure
31. Public Service Award 1992 and Government Officers' Salaries and Conditions Award 1989
32. Groupworker Commuted Shiftwork Allowance
33. Signatories to Agreement

Schedule A Ministry of Justice Performance Measurement Model

Schedule B Productivity Projects and Initiatives

Schedule C Salaries

3.—SCOPE

This Agreement applies to the Ministry of Justice employees who are eligible to be members of the Civil Service Association. It does not apply to the Judiciary or their personal staff, those appointed to related judicial offices and specified offices whose salaries are determined by the Salaries and Allowances Tribunal.

4.—PARTIES TO THE AGREEMENT

(1) This agreement shall be binding upon the following parties—

Director General, of the Ministry of Justice
Hon Attorney General

Civil Service Association of Western Australia (Inc)

5.—NUMBER OF EMPLOYEES COVERED

It is estimated that 1300 employees will be covered by this Agreement upon registration.

6.—DATE AND OPERATION *

(1) This agreement shall operate on and from date of registration and shall remain in force for a period of 25 months from the date of registration.

(2) Six months prior to the date of expiration of this Agreement, the parties will commence negotiations for its renewal or replacement.

(3) Unless otherwise varied, renewed or cancelled by a subsequent Agreement, this Agreement shall continue in force after the expiry of its term and apply to all parties. If a party wishes to withdraw from the Agreement on or after the date of expiry, they may do so in accordance with the Industrial Relations Act 1979.

(4) In the event of the parties withdrawing from this Agreement on the expiry of its term and failing to negotiate a further agreement, employees will revert to the applicable parent award or agreement, which applies at that time.

7.—NO FURTHER CLAIMS

The parties to this Agreement undertake 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 the National or State Wage Case Decisions.

8.—RELATIONSHIP TO PARENT AWARDS

This Agreement shall be read and interpreted wholly in conjunction with the provisions of the following parent awards:

- Public Service Award 1992
- Government Officers & Salaries Allowances & Conditions Award 1989
- Institution Officers Allowances and Conditions Award 1977

In the case of any inconsistency, the terms of this Agreement shall override any inconsistent provision of the awards or agreement.

9.—CONSULTATION

(1) The parties are committed to working together to improve the business performance and working environment in the Ministry of Justice. While it is acknowledged by the parties that decisions will continue to be made by the Ministry, the parties are committed to effective communication with respect to work practices, working conditions or the employment prospects of employees and agree that—

- (a) Where the Ministry of Justice proposes to make significant changes likely to affect existing work practices, working conditions or employment prospects of employees, the Ministry shall notify the Civil Service Association and staff affected as early as possible.
- (b) Consultation with employees and the Civil Service Association on significant changes to work organisation should occur prior to final decisions being made.
- (c) While employees will have a genuine opportunity to influence changes in the workplace, management will be accountable for the outcome of properly made decisions.
- (d) In the context of this clause consultation shall mean information sharing and discussion on matters relevant to decision making processes which shall be conducted in a way as to enable employees to contribute to the decision making process.

10.—PERFORMANCE MEASUREMENT MODEL

Performance Measurement Model and Implementation of Enterprise Bargaining Initiatives

(1) Performance Targets

(a) Productivity based salary increases during the life of this Agreement are dependent on the achievement of targeted budget savings and divisional performance outcomes, in accordance with the Ministry's Performance Measurement Model (Schedule A of this Agreement) supported by a number of on-going projects and initiatives as agreed between the Parties (Schedule B of this Agreement). These projects and initiatives which complement measures in the Ministry's Performance Measurement Model are matters which impact on a large number of employees across business areas and are reasonably large in size. The Parties acknowledge and accept that projects or initiatives can be added, adjusted or removed by agreement during the life of this Agreement. The joint consultative committee referred to in sub clause 10 (2) (a) shall be the forum for such deletions, adjustments or additions to occur. Any addition, adjustment or removal to projects or

initiatives during the life of this Agreement requires the approval of Government.

(b) Some areas within the Ministry have been required to set baselines and targets for the first measurement period relating to the proposed productivity based salary increases, without the availability of historic data. To account for this and to provide fairness and equity to the process, a review of baselines and targets will be conducted as part of the Ministry of Justice's quarterly reporting process. Baselines and targets will only be adjusted with an auditable justification which reflects that the division/employees would have been disadvantaged had such an adjustment not occurred. The joint consultative committee referred to in sub clause 10 (2) (a) below shall be able to recommend such adjustments to the Director General. The discretion to allow such adjustments will lie with the Director General after staff affected by the proposed adjustment have been consulted.

(2) Implementation of Enterprise Bargaining Initiatives

(a) The Parties agree to establish a Joint Consultative Committee to—

- (i) Monitor and review the Agreement and have input to the progress of the its implementation
- (ii) Actively share information, and consult on corporate strategic issues affecting the Ministry's business operation; providing the Ministry will not be required to disclose confidential information the disclosure of which would be inimical to its interests, or the Ministry's obligations and requirements under relevant legislation,
- (iii) Assess, review and adjust any matter in this Agreement, including those relating to the Performance Management Model and the associated list of on going projects and initiatives.

(b) The Parties to the consultative committee will consist of senior management and accredited Union representatives. The consultative committee will generally meet on a quarterly basis, but may meet at other times if required. The Ministry will provide the necessary resources and information for the consultative committee in order that the consultative committee can adequately conduct its business.

(3) Fair and Equitable Consideration

(a) Notwithstanding anything in this clause, there may be special circumstances applying to a division that will affect the fairness and equity of a productivity payment. In the event that a division considers that its circumstances require special consideration for Productivity Payment purposes, an application to this effect, endorsed by the relevant Executive Director may be made for the Director General's consideration prior to 30 June each year. If, in his/her discretion, the Director General is satisfied that special circumstances exist he/she may vary the assessment criteria and/or awarding of Productivity Payment to ensure the division is treated fairly and equitably. Any Productivity Payment requires the approval of Government.

(b) The Parties acknowledge and accept there may be special circumstances or factors beyond the control of the Ministry or officers that will affect the achievement of the efficiencies and savings required for a productivity payment. If such a special circumstances or factors have occurred, the distribution of savings achieved between staff and the Ministry of Justice may be adjusted by the Ministry, which will endeavour to ensure that staff are not disadvantaged by matters beyond their control.

(c) The Director General, if satisfied that exceptional circumstances exist, may determine the distribution of surplus savings on a proportionate basis across the Ministry, for the purposes of assessing and awarding productivity payment.

(d) The Joint Consultative Committee may make recommendations to the Director General on the implementation of any matter in this Agreement.

11.—HOURS *

(1) Prescribed hours of duty

(a) Prescribed hours of duty to be observed by employees shall be seven hours and 36 minutes per day to be worked between 7.00 am and 7.00 pm Monday to Friday as determined by the Director General.

(b) The Director General can vary the prescribed hours of duty to be observed with one month's notice in writing to the department, branch, section or employees to be affected by the change.

(2) Meal breaks

(i) Employees shall be entitled to take an unpaid meal break for a minimum duration of 30 minutes up to a maximum of 45 minutes, between the hours of 12 noon and 2 pm.

(ii) Subject to meal breaks, ordinary working hours shall be worked as one continuous period.

(3) Other Working Arrangements

(a) The Director General may vary the prescribed hours of duty observed in the Ministry or any branch or section thereof so as to make provisions for:

- (i) the attendance of officers for duty on a Saturday, Sunday or Public Holiday.
- (ii) the performance of shift work including work on Saturdays, Sundays, or Public Holidays; and
- (iii) the nature of the duties of an officer or class of officers 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.

(4) Flexible working hours

(a) Definitions

"Settlement Period" means a period of four weeks commencing at the beginning of a pay period in which all hours worked must be recorded. The required hours of duty in one settlement period are 152.

"Credit Hours" means time worked in excess of 152 hours at the end of the settlement period. Credit hours may only accrue to a maximum of 15 hours and 12 minutes (2 days) in any one settlement period.

"Debit hours" means time worked below 152 hours at the end of a settlement period. The maximum debit hours in any one settlement period is 7 hours and 36 minutes (1 day).

(b) In addition to other working arrangements provided in this Agreement, the Director General authorises each workplace to develop its own system of hours, within the prescribed hours, under the following circumstances—

(i) Each employee and their supervisors or managers at the workplace can reach agreement on the system of hours to be worked providing the system meets the needs of the Ministry and its customers. This agreement shall be in writing and a copy is to be available to management and all staff to whom it will apply.

(ii) The system of hours will include—

- starting and finishing times on a daily and weekly basis;
- The minimum staffing requirements; and
- any other requirements in respect to meal break coverage and leave.

(c) Maximum flexibility in working arrangements

(i) Settlement period

For recording time worked, there will be a settlement period, which will consist of four weeks or 152 hours. In each settlement period, accrued or carried forward credit hours may be taken as time off to a maximum of 15 hours and 12 minutes.

(ii) Credit hours

At the end of any settlement period credit hours in excess of 152 hours to a maximum of 15 hours and 12 minutes are permitted. Such credit hours may be carried forward to the next settlement period.

(iii) Debit hours

At the end of any settlement period, debit hours below 152 hours to a maximum of 7 hours and 36 minutes is permitted. Such debit hours will be carried forward to the next settlement period. Employees who do not make up the debit hours in the next settlement period may be placed on standard working hours as determined by the Manager.

(iv) Maximum Hours Per Day

A maximum of 10 hours may be worked in any one day, including 30 minutes for a meal break.

(d) Meal Breaks

Employees shall be entitled to take an unpaid meal break for a minimum duration of 30 minutes, between the hours of 12 noon and 2 pm. With the prior approval of the employee's supervisor, a meal break may be extended to a maximum of 2 hours between the hours of 12.00 noon and 2.00 pm. Employees shall not be required to work more than 5 consecutive hours on any day without taking a meal break.

(5) Ordinary Working Hours on Saturdays and Sundays

Where agreement is reached between the manager and an employee, ordinary working hours may be worked on a Saturday or Sunday subject to the following—

- (a) The agreement must be in writing and specify—
 - (i) starting and finishing times on a daily and weekly basis;
 - (ii) minimum staffing requirements; and
 - (iii) any other requirements in respect to meal break coverage and leave.
- (b) The agreement may be cancelled in writing by either party by the giving of two weeks notice;
- (c) The needs of the Ministry and its customers are to be taken into consideration, particularly those areas which deal with members of the public;
- (d) Managers are to ensure adequate supervision where appropriate; and
- (e) The provisions of Clause—Overtime shall not apply where employees work Saturday and/or Sunday as their ordinary hours in accordance with this subclause.

(6) Skills Development Leave

Where skills development leave has been approved by the Director General pursuant to the provisions of the relevant clause in this Agreement, credits will be given for education commitments falling within the hours of duty as defined in the roster and for which "time off" is necessary to allow for attendance at formal classes.

(7) Overtime

Where an employee is directed to work at times other than the agreed system of hours, overtime conditions will apply as per the overtime provisions in the relevant parent Award. For the purposes of overtime, prescribed hours shall be the system of hours developed under this clause. Wherever practicable, 24 hours notice will be given for a requirement to work overtime.

12.—SALARIES AND SALARY INCREASES

(1) The timing, basis for and the quantum of salary increases agreed for the term of this Agreement shall be as follows—

- (a) From date of registration employees under this Agreement will receive a 3% salary increase for agreement to implement all provisions of this Agreement in accordance with column (1) of Schedule C—Salaries of this Agreement.
- (b) Twelve months after date of registration of this Agreement, employees under this Agreement will receive a productivity based salary increase of up to 3% in accordance with column (2) of Schedule C—Salaries of this Agreement. The salary increase is subject to the achievement of specific performance targets contained in the Performance Management Model and the ongoing implementation of agreed projects and initiatives in accordance with Schedule A and B. This productivity based salary increase requires the approval of Government.

(2) Salaries will be paid fortnightly in accordance with Schedules C—Salaries of this Agreement, but where the usual payday falls on a Public Holiday; payment will be made on the previous working day.

(3) A fortnight's salary will be computed by dividing the annual salary by 313 and multiplying the result by 12. The hourly rate will be computed as one seventy-sixth of the fortnight's salary.

(4) Salaries will be paid by direct funds transfer to the credit of an account nominated by the employee at a bank, building society or credit union approved by the Under Treasurer or an Accountable Officer.

(5) An adult employee employed pursuant to Level 1 will commence employment at Level 1.1. The employee may be appointed to a higher incremental point subject to previous relevant knowledge and experience at the discretion of the Director General.

(6) Employees who are new to the public sector, or who commence employment with the Ministry from another public sector agency, may apply to the Director General to be appointed at the nearest salary point higher than their previous salary within the same classification level.

(7) Subclause (6) of this clause does not apply to existing employees of the Ministry of Justice who are promoted to a higher classification level.

(8) Overpayments

(a) Where an employee is paid for work not subsequently performed or is overpaid in any other manner, the employer is entitled to make adjustment to the subsequent wages or salaries of the employee in accordance with formulas hereunder. The employer will notify the employee of their intention to recoup the overpayment and consult with the employee as to the appropriate recovery rate.

(b) One-off Overpayments

One-off overpayments may be recovered by the employer in the pay period immediately following the pay period in which the overpayment was made, or in the period immediately following the pay period in which it was discovered that overpayment had occurred. The employer will notify the employee of their intention to recoup the overpayment.

(c) Cumulative Overpayments

Cumulative overpayments may be recovered by the employer at a rate agreed between the employer and employee, provided that the rate at which the overpayment is recovered is not at a lesser rate than the rate at which it was overpaid or \$50 per week, depending on which is the lesser amount per pay period.

(d) Monies Owing Upon Cessation of Employment

Employees who have overpayments outstanding or who are required to repay monies owing to the Ministry of Justice shall repay any outstanding amounts prior to the cessation of employment. Failing this, the employer may deduct all monies owing from the final termination payment to the employee.

(e) In exceptional circumstances, other arrangements for the recovery of overpayments may be agreed between the parties.

(9) Underpayments

(a) Where an error has resulted in an officer not being paid their normal salary or they have been underpaid by more than \$100 of their normal fortnightly salary, the Ministry will reinstate the shortfall within 2 working days of the error being notified to the Human Resources Directorate.

(b) Where the underpayment is less than \$100 of an employee's normal fortnightly salary, the shortfall will be included in the next available pay.

(c) Where an error has resulted in an employee not being paid all or part of any payments due in addition to their normal salary (such as overtime or other allowances), the Ministry will include such payment in the next available pay following the error being notified to the Human Resources Directorate.

13.—PART TIME EMPLOYMENT

(1) A part-time employee is an employee who is engaged in regular and continuing employment for a minimum of 10 hours per week and less than an average of 38 hours per week.

(2) All other provisions relating to part time employment shall apply as per the relevant parent award.

14.—PARENTAL LEAVE

14.1 (a) Type of leave—This clause includes maternity leave, paternity leave, and adoption leave.

(b) Nature of leave—Parental leave, whether it is maternity leave, paternity leave or adoption leave, is unpaid leave.

(c) Definitions—For the purposes of this section—

- (i) Employee includes a part time employee and fixed term contract employee up until the end of their contract period but does not include an employee engaged upon casual work.
- (ii) Spouse includes a de facto or former spouse.
- (iii) Continuous service means service under an unbroken contract of employment and includes—
 - any period of leave taken in accordance with this clause;
 - any period of part time employment worked in accordance with the parent Award or
 - any period of leave or absence authorised by Ministry or by the parent award.
- (iv) Child for the purposes of maternity and paternity leave means a natural child of the employee or the employee's spouse.
- (v) Child for the purposes of adoption leave means a person under the age of 5 years who is placed with the employee for the purposes of adoption, other than a child or step-child of the employee or a child who has previously lived continuously with the employee for a period of 6 months or more.
- (vi) Maternity leave means leave of the type provided for in this clause (and includes special maternity leave) whether prescribed in an award or otherwise.
- (vii) Relative adoption occurs where a child, as defined, is adopted by a grandparent, brother, sister, aunt or uncle (whether of whole blood or half blood or by marriage).
- (viii) Male employee, in the case of part time workers, means an employed male employee who is caring for a child born of his spouse or a child placed with the employee for adoption purposes-
- (ix) Female employee in the case of part time workers, means an employed female employee who is pregnant or is caring for a child she has borne or a child who has been placed with her for adoption purposes.
- (x) Former position means the position held by a female or male employee immediately before proceeding on maternity, paternity or adoption leave or part time employment, or if such position no longer exists but there are other positions available for which the employee is qualified and the duties of which he or she is capable of performing, a position of equal status and pay to that of the position first mentioned in this definition.

14.2 MATERNITY LEAVE

(a) Eligibility for maternity leave

- (i) An employee who becomes pregnant, upon production to the Ministry of the certificate required by subclause 14.2 (b) hereof shall be entitled to a period of up to 104 weeks maternity leave. This entitlement shall be reduced by any period of paternity leave taken by the employee's spouse in relation to the same child and apart from paternity leave of up to one week at the time of confinement shall not be taken concurrently with paternity leave.
- (ii) Subject to subclause 14.2 (d) and (h) hereof the period of maternity leave shall be unbroken.
- (iii) Under special circumstances the Ministry may approve leave concurrent with the employee's spouse or in more than one period.

(b) Certification

At the time specified in subclause 14.2 (c) the employee must produce to the Ministry a certificate from a registered medical practitioner stating that she is pregnant and the expected date of confinement.

(c) Notice requirements

- (i) An employee shall, not less than 10 weeks prior to the presumed date of confinement, produce to the Ministry the certificate referred to in subclause 14.2 (b).

- (ii) An employee shall give not less than 4 weeks notice in writing to the Ministry of the date upon which she proposes to commence maternity leave stating the period of leave to be taken.
 - (iii) The minimum period of absence on maternity leave shall commence 6 weeks before the expected date of birth and end 6 weeks after the day on which the birth has taken place. However, an employee may apply to the Ministry to reduce this period provided their application is supported by a certificate from a registered medical practitioner indicating that the employee is fit to continue or resume their normal duty within this period.
 - (iv) An employee shall not be in breach of this clause as a consequence of failure to give the stipulated period of notice in accordance with subclause 14.2 (c)(ii) hereof if such failure is occasioned by the confinement occurring earlier than the presumed date.
- (d) Transfer to a safe job
- (i) Where, in the opinion of a registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at their present work, the employee shall, be transferred to a safe job at the rate and on the conditions attaching to her former job until the commencement of maternity leave.
 - (ii) If the transfer to a safe job is not practicable, the employee may or the Ministry may require the employee to take leave for such period as is certified necessary by a registered medical practitioner. Such leave shall be treated as maternity leave for the purposes of subclause 14.2 (e) to (h) hereof
 - (iii) The Ministry shall provide a replacement employee to cover the absence of an employee transferred in accordance with paragraph (i) of this subclause.
- (e) Variations of period of maternity leave
- (i) Provided the maximum period of maternity leave does not exceed the period to which the employee is entitled under subclause 14.2 (a) hereof—
 - the period of maternity leave may be lengthened once only by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be lengthened;
 - the period may be further lengthened by agreement between the Ministry and the employee.
 - (ii) The period of maternity leave may, with the consent of the Ministry, 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.
- (f) Cancellation of maternity leave
- (i) 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.
 - (ii) Where the pregnancy of an employee then on maternity leave terminates other than by the birth of a living child, it shall be the right of the employee to resume work at a time nominated by the Ministry which shall not exceed 4 weeks from the date of notice in writing by the employee to the Ministry that she wishes to resume work.
- (g) Special maternity leave and sick leave
- 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 registered medical practitioner certifies as necessary before her return to work; or
 - (ii) for illness other than the normal consequences of confinement she shall be entitled, either in lieu or in addition to special maternity leave, to such paid sick leave as to which she is then entitled and which a registered medical practitioner certifies as necessary before her return to work.

(h) Maternity leave and other leave entitlements

An employee proceeding on maternity leave may elect to utilise—

- (i) accrued annual leave; or
- (ii) accrued long service leave for the whole or part of the period referred to in subclause 14.2 (a) of this clause.
- (iii) An employee may extend her period of maternity leave by taking accrued annual or long service leave or, on application, a further period of leave without pay.
- (iv) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave) shall not be available to an employee during her absence on maternity leave.

The periods of leave referred to in subclauses (i) and (ii) of this subclause 14.2 (h) which are utilised, shall be paid leave.

(i) 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 an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant parent award..

(j) Termination of employment

- (i) An employee on maternity leave may terminate her employment any time during the period of leave at by notice given in accordance with this agreement.
- (ii) The Ministry shall not terminate the employment of an employee on grounds of her pregnancy or of her absence on maternity leave, but otherwise the rights of the Ministry in relation to termination of employment are not hereby affected.

(k) Return to work after maternity leave

- (i) An employee shall confirm her intention of returning to work by notice in writing to The Ministry given not less than 4 week prior to the expiration of her period of maternity leave.
- (ii) An employee, upon returning to work after maternity leave or the expiration of the notice required by subclause 14.2 (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 14.2(d) hereof, the position which she held immediately before such transfer.
- (iii) Where such a position no longer exists but there are other positions available which the employee is qualified for and is capable of performing- she shall be entitled to a position of equal status and pay to that of her former position.

(l) Replacement employees

- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on maternity leave.
- (ii) Before engaging a replacement employee the Ministry shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (iii) Before engaging a person to replace an employee temporarily promoted or transferred in order to replace an employer exercising their rights under this clause, the Ministry shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- (iv) Nothing in this clause shall be construed as to require the Ministry to engage a replacement employee.

14.3 PATERNITY LEAVE

(a) Eligibility for paternity leave a male employee, upon production to the Ministry of the certificate required by subclause 14.3 shall be entitled to a period of up to 104 weeks of paternity leave, in the following circumstances—

- (i) An unbroken period of up to one week at the time of confinement of their spouse.

- (ii) A further unbroken period of up to 103 weeks in order to be the primary carer of a child. This entitlement shall be reduced by any period of maternity leave taken by the employee's spouse and shall not be taken concurrently with that maternity leave.
- (iii) Under special circumstances the Ministry may approve leave concurrent with the spouse or in more than 2 periods.

(b) Certification

At the time specified in subclause 14.3 (c) the employee must produce to The Ministry 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.

(c) Notice requirements

- (i) The employee shall not less than 10 weeks prior to each proposed period of leave, give the Ministry notice in writing stating the dates on which he proposes to start and finish the period or periods of leave and produce the certificate required in sub clause (b) hereof.
- (ii) The employee shall not be in breach of this subclause 14.3 (c) as a consequence of failure to give the notice required in subclause 14.3 (c) (i) hereof if such failure is due to—
 - the birth occurring earlier than the expected date; or
 - the death of the mother of the child; or
 - other compelling circumstances.
- (iii) The employee shall immediately notify the Ministry of any change in the information provided pursuant to subclause 14.3 (b) hereof.

(d) Variation of period of paternity leave

- (i) Provided the maximum period of paternity leave does not exceed the period to which the employee is entitled under subclause 14.3 (a) hereof—
 - the period of paternity leave provided by subclause 14.3 (a) (ii) may be lengthened once only by the employee giving not less than 14 days notice in writing stating the period by which leave is to be lengthened;
 - the period may be further lengthened by agreement between the Ministry and the employee.
- (ii) The period of paternity leave taken under subclause 14.3 (a) (ii) hereof may, with the consent of the Ministry, 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.

(e) Cancellation of paternity leave

Paternity leave, applied for under subclause 14.3 (a) (iii) hereof but not commenced shall be cancelled when the pregnancy of the employee's spouse terminates other than by the birth of a living child.

(f) Paternity leave and other leave entitlements

An employee proceeding on paternity leave may elect to utilise—

- (i) Accrued annual leave; or
- (ii) Accrued long service leave. For the whole or part of the period referred to in subclause 14.3 (a) of this clause.
- (iii) An employee may extend his period of paternity leave by taking accrued annual or long service leave or, on application, a further period of leave without pay.
- (iv) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave) shall not be available to an employee during his absence on paternity leave.

The periods of leave referred to in subclauses (i) and (ii) of this subclause 14.3 (f) which are utilised, shall be paid leave.

(g) Effect of paternity leave on employment

Subject to this clause, notwithstanding any award or other provision to the contrary, absence on paternity leave shall not break the continuity of service of an employee but shall not

be taken into account in calculating the period of service for any purpose of any relevant award or agreement.

(h) Termination of employment

- (i) An employee on paternity leave may terminate his employment at any time during the period of leave by notice given in accordance with the parent award.
- (ii) The Ministry shall not terminate the employment of an employee on the ground of their absence on paternity leave, but otherwise the rights of the Ministry in relation to termination of employment are not hereby affected.

(i) Return to work after paternity leave

- (i) An employee shall confirm his intention of returning to work by notice in writing to the Ministry given not less than 4 weeks prior to the expiration of the period of paternity leave provided by subclause 14.3 (a) (ii) hereof.
- (ii) An employee, upon returning to work after paternity leave or the expiration of the notice required by subclause 14.3 (i) (i) hereof shall be entitled to the position which he held immediately before proceeding on paternity leave.
- (iii) Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing he shall be entitled to a position as equal in status and pay to that of his former position

(j) Replacement employee

- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on paternity leave.
- (ii) Before engaging a replacement employee the Ministry shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (iii) Before engaging a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising their rights under this clause, the Ministry shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- (iv) Nothing in this clause shall be construed as requiring the Ministry to engage a replacement employee

14.4 ADOPTION LEAVE

(a) Eligibility

An employee, upon production to the Ministry of the documentation required by subclause 14.4 (b) hereof shall be entitled to adoption leave, the total of which shall not exceed 52 weeks in the following circumstances—

- (i) A period of up to 3 weeks at the time of the placement of the child.
- (ii) A period of up to 52 weeks from the time of the child's placement in order to be its primary caregiver. This leave shall not extend beyond 1 year after the placement of the child and shall not be taken concurrently with adoption leave taken by the employee's spouse in relation to the same child except in the circumstances where both adoptive parents need to go overseas to complete the adoption. This entitlement of up to 52 weeks shall be reduced by any period of leave taken pursuant to subclause 14.4 (a) (i) hereof.
- (iii) Under special circumstances the Ministry may approve leave concurrent with the employee's spouse or in more than 1 period.

(b) Certification—before taking adoption leave the employee must produce to the Ministry

- (i) A statement from an adoption agency or other appropriate body of the presumed date of placement of the child with the employee for adoption purposes; or
- (ii) a statement from the appropriate government authority confirming that the employee is to have custody of the child pending application for an adoption order.

(c) Notice requirements

- (i) Upon receiving notice of approval for adoption purposes an employee shall notify The Ministry of such approval and within 2 months of such approval shall further notify the Ministry of the period or periods of adoption leave the employee proposes to take. In the case of a relative adoption the employee shall notify as aforesaid upon deciding to take a child into custody pending an application for an adoption order.
- (ii) An employee who commences employment with the Ministry after the date of approval for adoption purposes shall notify the Ministry thereof upon commencing employment and of the period or periods of adoption leave which the employee proposes to take.
- (iii) An employee shall, as soon as the employee is aware of the presumed date of placement of a child for adoption purposes but no later than 14 days before such placement, give notice in writing to the Ministry of such date and of the date of the commencement of any period of leave to be taken under subclause 14.4 (a) (iii) hereof
- (iv) An employee shall, 10 weeks before the proposed date of commencing any leave to be taken under subclause 14.4 (a) (iii), hereof give notice in writing to the Ministry of the date of commencing leave and the period of leave to be taken.
- (v) An employee shall not be in breach of this clause as a consequence of failure to give the stipulated period of notice in accordance with subclauses 14.4 (c) (iii) and (iv) hereof if such failure is occasioned by the requirement of an adoption agency to accept earlier or later placement of a child, the death of a spouse or other compelling circumstances.

(d) Variation of period of adoption leave

- (i) Provided the maximum period of adoption leave does not exceed the period to which the employee is entitled under subclause 14.4 (a) (ii) hereof—
 - (a) the period of leave taken under subclause 14.4 (a) (ii) hereof may be lengthened once only by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be lengthened;
 - (b) the period may be further lengthened by agreement between the Ministry and the employee.
- (ii) The period of adoption leave taken under subclause 14.4 (a) (ii) hereof may, with the consent of the Ministry 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.

(e) Cancellation of adoption leave

- (i) Adoption leave applied for but not commenced shall be cancelled should the placement of the child not proceed.
- (ii) Where the placement of a child for adoption purposes with an employee then on adoption leave does not proceed or continue, the employee shall notify the Ministry forthwith and the Ministry shall nominate a time not exceeding 4 weeks from receipt of notification for the employees resumption of work.

(f) Special leave

The Ministry shall grant to any employee who is seeking to adopt a child such unpaid leave not exceeding 2 days plus an additional day for employees working and residing in rural locations as is required by the employee to attend any compulsory interviews or examinations as are necessary as part of the adoption procedure. Where paid leave is available to the employee the Ministry may require the employee to take such leave in lieu of special leave.

(g) An employee proceeding on adoption leave may elect to utilise

- (i) Accrued annual leave; or
- (ii) Accrued long service leave for the whole or part of the period referred to in subclause 14.4 (a) of this clause.

- (iii) Employees may extend their period of adoption leave by taking accrued annual and/or long service leave or, on application, a further period of leave without pay.
- (iv) Paid sick leave or other paid award authorised absences (excluding annual leave or long service leave) shall not be available to employees during their absence on adoption leave.

The periods of leave referred to in subclauses (i) and (ii) of this subclause 14.4 (g) which are utilised, shall be paid leave.

(h) Effect of adoption leave on employment

Subject to this clause, notwithstanding any award or other provision to the contrary, absence on adoption leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of the award or agreement.

(i) Termination of employment

- (i) An employee on adoption leave may terminate the employment at any time during the period of leave by notice given in accordance with the parent award..
- (ii) The Ministry shall not terminate the employment of an employee on the ground of the employee's application to adopt a child or absence on adoption leave, but otherwise the rights the Ministry in relation to termination of employment are hereby not affected.

(j) Return to work after adoption leave

- (i) An employee shall confirm the intention of returning to work by notice in writing to The Ministry given not less than 4 weeks prior to the expiration of the period of adoption leave provided by subclause 14.4 (a) (iii) hereof.
- (ii) An employee, upon returning to work after adoption leave shall be entitled to the position held immediately before proceeding on such leave.
- (iii) Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, the employee shall be entitled to a position equal in status and pay to that of the employees former position.

(k) Replacement employees

- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on adoption leave.
- (ii) Before the Ministry engages a replacement employee it shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (iii) Before the Ministry engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising rights under this clause, the Ministry shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- (iv) Nothing under this clause shall be construed as requiring the Ministry to engage a replacement employee.

15.—PAID PARENTAL LEAVE

(1) Notwithstanding the provisions of Clause 14—Parental Leave of this Agreement, paid parental leave will be granted to employees, subject to the following—

- (a) An employee who is the primary care giver, and who has completed 12 months continuous service with the Ministry or recognised previous employer, will be entitled to 6 weeks paid parental leave, from the anticipated birth date.
- (b) Only one period of paid parental leave is available for each birth or adoption.
- (c) Contract employees' paid parental leave cannot continue beyond the expiry date of their contract.
- (d) Paid parental leave taken in accordance with paragraph (1)(a) of this clause will form part of the 104 weeks unpaid parental leave entitlement provided in Clause—Parental Leave of this Agreement. Paid

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

- (e) Absence on paid parental leave will not count as service for the purpose of accruing entitlements to sick leave, annual leave or long service leave.

(2) The Director General may request evidence of primary care giver status.

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

(4) All other conditions contained in Clause—Parental Leave of this Agreement will apply.

16.—FAMILY LEAVE

(1) An employee is entitled to use a maximum of 5 days per annum of his/her accrued sick leave to care for an ill family member, providing the days used to care for an ill family member are sick leave entitlement accrued from previous years of service and are not the employee's entitlements for the current year. The employee will provide, where practicable, notice prior to the absence of the intention to take leave, the name of the person requiring care and their relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee will notify the employer by telephone of such absence.

(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) With the consent of the Director General, an employee may take unpaid leave for the purpose of providing care to a family member who is ill.

(4) Where the leave entitlements provided for in subclause (1) have been exhausted, employees may use accrued annual leave entitlements, short leave or leave without pay.

17.—OPTION TO TAKE 48 WEEKS PAY OVER 52 WEEKS

(1) Where an individual employee and the employer mutually agree, the employee may receive 48 weeks pay spread over the full 52 weeks of the year, whereby the employee will take 8 weeks leave instead of 4 weeks per year. The additional 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.

(2) Where approval is not given by the employer, full justification for the decision must be provided to the employee, based on sound operational reasons.

(3) Access to this entitlement will be subject to the employee having satisfied the Ministry's accrued leave management policy.

18.—ANNUAL LEAVE TRAVEL CONCESSIONS FOR EMPLOYEES STATIONED IN REMOTE AREAS

(1) The travel concessions contained in the following table are provided to employees and their dependents when on annual leave to a destination outside the geographical region of their headquarters situated in District Allowance Areas 3, 5 and 6, and in that portion of Area 4 located north of 30 degrees South latitude provided that such concessions are limited to the lesser value of the return economy airfare from their headquarters to the destination or Perth.

(2) Travel concessions are limited to destinations within the State of Western Australia, provided that where compassionate grounds exist, approval may be sought from the Director General to travel to any other State or Territory within Australia, subject to the provisions of this subclause.

(3) Employees accessing air travel for the purposes of this clause, shall obtain the lowest cost fare at the date of booking.

(4) Employees are required to serve a year in these areas before qualifying for travel concessions. However,

employees who have less than a year's service in these areas and who are required to 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 year's service provided that the employee returns to the area to complete the year's service at the expiration of the period of leave.

(5) The mode of travel is to be at the discretion of the Director General.

(6) Travel concessions not utilised within twelve months of becoming due will lapse.

(7) Part-time employees are entitled to travel concessions on a pro rata basis according to the usual number of hours worked per week.

(8) Travelling time will be calculated on a pro rata basis according to the number of hours worked.

APPROVED MODE OF TRAVEL	TRAVEL CONCESSION	TRAVELLING TIME
AIR	Airfare for the employee, dependant spouse and dependant children	One day each way
ROAD	Full motor vehicle allowance rates, but reimbursement not to exceed the cost of the return airfare for the employee, dependant spouse and dependant children travelling in the motor vehicle	North of 20degrees South Latitude- Two and one half days each way. Remainder—Two days each way
AIR AND ROAD	Full motor vehicle allowance rates for car trip, but reimbursement not to exceed the cost of the return air-fare for the Employee. Air fares for the dependant spouse and children	North of 20degrees South Latitude- two and one half days each way Remainder — Two days each way

19.—LONG SERVICE LEAVE *

The existing provisions as detailed in each Award continue to apply with the exception that Long Service Leave entitlements may be taken in minimum time blocks of 1 week or 7 consecutive days.

20.—COMPACTION OF ANNUAL LEAVE AND LONG SERVICE LEAVE

(1) Employees may make application to compact annual and long service leave through the following means—

- (a) Annual Leave

An employee who has in excess of one normal annual leave period of accrued leave owing to them may take a reduced amount of time on leave but at a higher salary rate subject to meeting the provisions outlined in this clause.

- (b) Long Service Leave

An employee who has elected to compact an accrued entitlement to long service leave in accordance with this clause, may compact a minimum of 4 weeks of such accrued leave and will only take such leave on full pay, and the period excised as "continuous service" will be the total amount of leave compacted. In order to do this, the employee must meet the provisions outlined in this clause.

- (c) An employee who, during an accrual period was subject to variations in ordinary working hours or whose ordinary working hours during the accrual period are less than the employee's ordinary working hours at the time of commencement of annual leave, may elect to take a lesser period of annual leave calculated by converting the average ordinary working hours during the accrual period to the equivalent ordinary hours at the time of commencement of leave.

(2) Leave compaction will only be approved in accordance with the conditions set out in the following subclauses.

(3) At least 50% of the leave has to be taken in the form of paid time off, e.g. an employee wishing to compact 6 weeks accrued leave could take 3 weeks off at double pay or 4 weeks at time and a half, but would not be allowed to take 2 weeks at treble pay.

- (4) Funding is available.

(5) An employee must have been absent on either annual leave or long service leave for a period equivalent to a normal annual leave period, (4 weeks or 5 weeks for shift employees) within the past 12 months.

(6) An employee is required to always have the current years annual leave period available.

(7) Only one period of compacted leave shall be available to an employee in a (calendar/financial) year.

(8) Effect of Higher Duties Allowance

Employees who are in receipt of a Higher Duties Allowance (HDA) shall only be entitled to receive the HDA whilst on compacted leave if the total amount of accrued leave compacted does not exceed four weeks, and

- (a) if they have been in receipt of the HDA for a continuous period of twelve (12) months or more, or
- (b) if during the employee's absence no other officer acts in the position in which the employee was acting immediately prior to proceeding on leave and the employee resumes in the position immediately on return from leave.

(9) The Director General shall determine the amount of funding available annually for leave compaction under this agreement on a divisional basis. Executive Directors (or their equivalents) may further subdivide the funding allocation for their Division.

(10) Employees seeking to compact a period of leave will lodge an application with their Manager who may endorse the leave request in accordance with the Ministry's operational requirements.

(11) If the Manager endorses the leave application it shall be forwarded to the Executive Director (or their equivalent) who may approve the compaction.

(12) Applications will be considered and processed in order of receipt.

(13) Where the Manager endorses an employee's leave application but compaction is not approved or available, the employee may still elect to proceed on normal leave between the dates endorsed by the Manager.

21.—SHORT LEAVE

(1) The Director General may, upon sufficient cause being shown, grant an employee (including fixed term contract employees on contracts of twelve months or more) short leave on full pay of up to 3 days in any one calendar year.

- (a) "Sufficient cause" is defined as matters of a compassionate and pressing nature which arise without notice and require immediate attention.

(2) Part-time employees and contract employees on fixed term contracts of less than twelve months are eligible for special leave in accordance with this clause, on a pro rata basis.

22.—CULTURAL/CEREMONIAL LEAVE

(1) The Director General may give approval for an employee to take time off work to meet the employee's religious 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 will be deducted from annual leave entitlements or granted as leave without pay and may be taken as whole or part days off.

23.—BEREAVEMENT LEAVE

Employees covered by this Agreement will be entitled to Bereavement Leave as provided by the Minimum Conditions of Employment Act 1993, i.e. two days bereavement leave for each death of an immediate family member.

24.—EMERGENCY SERVICES LEAVE

(1) An employee may be granted Emergency Service Leave without loss of pay if he/she is an active volunteer member of the—

- (a) Western Australian State Emergency Service;
- (b) Western Australian Bush Fires Brigade;
- (c) St John Ambulance Brigade; or
- (d) Defence Force Reserves,

to attend emergencies as declared by the recognised Authority, subject to the conditions contained in the Ministry's Emergency Services Leave Policy.

(2) Attendance at State Emergency Service Volunteer's Training Course shall be granted as leave without pay. In exceptional circumstances, an employee may make application to the Director General for paid leave.

25.—SKILLS DEVELOPMENT LEAVE *

(1) The Ministry is committed to fostering a learning environment where employees and the business can develop together. To help achieve this, the Ministry may grant employees paid skills development leave for accredited course of study.

(2) Paid skills development leave will normally be granted where the course being undertaken—

- (a) is relevant to the duties being or likely to be performed by the employee;
- (b) is relevant to the current and emerging business needs of the Ministry;
- (c) enhances the career development of the employee; and
- (d) does not unduly affect or inconvenience the operations of the Ministry.

(3) To obtain skills development leave, employees must demonstrate their shared responsibility to learning and studying by undertaking an acceptable formal study load in their own time.

(4) The Ministry may grant an employee leave without pay to undertake full-time study for a period up to 12 months and subject to the conditions specified in subclause (2) of this clause.

(5) All applications for leave under this clause shall be in accordance with the Ministry Study Assistance policy and procedure in effect as at the date of registration of this Agreement.

(6) Scholarships

Employees may apply for scholarships when they are offered. The granting of scholarships is subject to Ministry Study Assistance policy, in effect as at the date of registration of this Agreement.

26.—SELF-FUNDED WORK/CAREER BREAK

(1) Employees may initiate with management a proposal to join a self funded career break scheme. This scheme will allow employees to forgo a portion of their normal salary during a period of 2 years or 4 years, to be redrawn at a later date for the purposes of taking a self funded career break.

(2) The self funded career break may be for a period of 6 months or 12 months, to be utilised for personal or professional development. The scheme will be administered as leave without pay and subject to Ministry policy.

27.—CONTACTABILITY ALLOWANCE

(1) Contactability will mean where agreement is reached between an employee and the employer, a written instruction to an employee to remain contactable outside of ordinary working hours through the use of mobile telephones, paging devices or through the provision of other contact telephone numbers only in the event that they may be needed for casual contact or occasional recall to work.

(2) Subject to subclause (3) of Clause 18—Overtime Allowance in the Public Service Award, recall to work in such circumstances would constitute emergency duty in accordance with subclause (6) of Clause 18 Overtime Allowance.

28.—TRAVELLING ALLOWANCE**(1) Definitions**

In this clause—

- (a) "personal incidental expenses" includes expenses for such things as newspapers, non-alcoholic drinks, and personal phone calls;
- (b) "work related incidental expenses" includes expenses for such things as work related train, bus and taxi fares, work related telephone calls, and laundry and dry cleaning expenses of work clothes;
- (c) "incidental expenses" means personal incidental expenses and work related incidental expenses; and
- (d) "Schedule—Travelling, Transfer and Relieving Allowance" means the schedule titled Travelling, Transfer and Relieving Allowance in the relevant award.

(2) Reimbursement of Accommodation Expenses

If an employee travels on work related business which necessitates an overnight stay and the employee pays the cost of his or her own accommodation, the employee will be reimbursed the cost of the accommodation upon production of a receipt or other satisfactory proof of expenditure.

(3) Reimbursement of Meal and Incidental Expenses

- (a) An employee who, while travelling on work related business, pays for meals and/or incidental expenses will be reimbursed the cost of those meals and/or incidental expenses up to the amounts specified in items (1) to (3) of Schedule—Travelling, Transfer and Relieving Allowance, as appropriate, in respect of incidental expenses, and items (12) to (14) of Schedule—Travelling, Transfer and Relieving Allowance, as appropriate, in respect of meals, without the need to produce receipts or other satisfactory proof of expenditure.
- (b) An employee who, while travelling on work related business, pays for meals may, at the discretion of the Director General or his delegate, be reimbursed the reasonable cost of meals exceeding the amounts specified in items (12) to (14) of Schedule—Travelling, Transfer and Relieving Allowance, as appropriate, upon production of receipts or other satisfactory proof of expenditure.
- (c) An employee who, while travelling on work related business, pays for incidental expenses exceeding in total the amounts specified in items (1) to (3) of Schedule—Travelling, Transfer and Relieving Allowance, as appropriate—
 - (i) will be reimbursed the cost of work related incidental expenses upon production of receipts or other satisfactory proof of expenditure;
 - (ii) may, at the discretion of the Director General or his delegate, be reimbursed the reasonable cost of his or her personal incidental expenses upon production of receipts or other satisfactory proof of expenditure.

(4) Total Amount Reimbursed not to Exceed Daily Rate in Schedule

Despite anything else in this clause, the total amount reimbursed to an employee in respect of expenditure on any one day on accommodation, meals and incidental expenses shall not exceed the amount set out in items (4) to (11), as appropriate, of Schedule—Travelling, Transfer and Relieving Allowance unless—

- (a) the expenses are reasonable in the circumstances; and
- (b) receipts or other satisfactory proof of expenditure are produced in respect of all expenses claimed.

29.—REGIONAL COORDINATORS' ALLOWANCE

(1) Employees who are appointed as Regional Co-ordinators by the Director General shall be entitled to an allowance of \$5,000 per annum, to be paid on a fortnightly basis. Provided that—

- (a) Employees who do not fulfill the responsibilities of Regional Co-ordinator for the full year shall be entitled to part of the allowance, proportionate to the length of time served as Regional Co-ordinator; and
- (b) The allowance shall not be paid during—
 - (i) any period of annual leave and/or long service leave, and
 - (ii) sick leave in excess of 10 days.

30.—DISPUTE RESOLUTION PROCEDURE

(1) This dispute settlement procedure will apply to any questions, dispute or difficulties that arise under this Agreement—

- (a) 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.
- (b) If the matter is not resolved within 5 working days following the discussion in accordance with

paragraph (1) the matter shall be referred by the Union representative or employee to the Ministry of Justice for resolution.

- (c) If the matter is not resolved within 5 working days of the Union representative or employee's notification of the dispute to the Ministry of Justice, it may be referred by the Union or the Ministry of Justice to the Western Australian Industrial Relations Commission.

31.—PUBLIC SERVICE AWARD 1992 AND GOVERNMENT OFFICERS' SALARIES, ALLOWANCES AND CONDITIONS AWARD 1989

(1) The following provisions apply only to officers whose terms of appointment are regulated by the Public Service Award 1992 and the Government Officers' Salaries, Allowances and Conditions Award 1989.

(2) Where the Public Service Award 1992 and Government Officers' Salaries, Allowances and Conditions Award 1989 refer to 7.5 hours per day, 37.5 hours per week, 75 hours per fortnight and 150 hours per month, those hours shall now read as 7 hours and 36 minutes per day, 38 hours per week, 76 hours per fortnight and 152 hours per month respectively, unless otherwise prescribed in this Agreement.

(3) An officer who enters the Ministry of Justice after January 1 is entitled to pro rata annual leave for that year, calculated on a weekly basis. For each completed week of service, the officer shall be entitled to 2.92 hours paid leave.

(4) Annual leave loading as prescribed in the parent award does not apply to employees covered by this Agreement on and from 15th December 1995. Annual leave accrued prior to 15th December 1995 attracts a loading in accordance with the parent award.

(5) Sick Leave

- (a) The Director General shall credit each officer other than a casual employee, with the following sick leave credits, which shall be cumulative—

SICK LEAVE ON FULL PAY

On the day of initial appointment	45.6 hours
On completion of 6 months continuous service	49.4 hours
On the completion of 12 months continuous service	95 hours
On the completion of each further period of 12 months continuous service	95 hours

(b) War Caused Illness

The following provisions apply in lieu of subclause 22(11)(a) of the Public Service Award 1992.

An officer, who produces a certificate from the Department of Veterans' Affairs stating that the officer suffers from war caused illness, may be granted special sick leave credits of 114 hours (15 standard hour days) per annum on full pay in respect of that war caused illness. These credits shall accumulate up to a maximum credit of 342 hours (45 standard hour days), and shall be recorded separately to the officer's normal sick leave credits.

32.—GROUPWORKER COMMUTED SHIFTWORK ALLOWANCE

(1) In addition to the salaries paid in accordance with this Agreement, groupworkers who can occupy designated shift positions and are required to perform shift work, currently receive a 14% commuted shift work allowance. This commuted shift work allowance is paid in accordance with the consent Order of the Commission in matter PSA CR11 of 1989 dated 19 October 1989.

(2) The Union is seeking an increase in the commuted shift work allowance.

(3) The Ministry will undertake a review of juvenile custodial operations including group workers' terms and conditions of employment (including the commuted shift work allowance). Any proposed changes to group workers' terms and conditions that arise from the review will be progressed in accordance with Clause 9—Consultation.

(4) Notwithstanding the review of juvenile custodial operations, the Parties have agreed to continue discussion on the issue of the quantum and application of the groupworkers

commuted shift work allowance after the registration of this Agreement. If the discussions fail to result in an agreed outcome, the parties reserve their rights at any time to resolve this matter in accordance with Clause 30—Dispute Resolution Procedure.

33.—SIGNATORIES TO THE AGREEMENT

Executed as an agreement

Dated this 23 day of January 2001

Signed by Alan Piper, Director General of the Ministry of Justice

In the presence of

.....
(signed) Signed Alan Piper

Signed by David Robinson, General Secretary of the Civil Service Association of Western Australia Inc.

In the presence of

.....
(signed) Signed David Robinson
Date 23/01/01 Common Seal

SCHEDULE A—MINISTRY OF JUSTICE
PERFORMANCE MEASUREMENT MODEL

Introduction

This Schedule outlines the application of the Ministry of Justice Performance Measurement Model (“the Model”), which is referred to in Performance Targets clause of this Agreement.

The Model describes the performance targets to be achieved by the various Divisions in the Ministry to enable a performance based pay salary increase to be provided. The Model describes “baseline” (starting) levels of performance for those areas of the Ministry’s Divisions’ business identified as being important for the success of the Division.

For each measurement period the Model has the potential to deliver a salary increase that is consistent with the Government’s Wages Policy.

Criteria For Assessing Performance

The output based management strategy introduced by Government across the public service required all agencies to identify performance measures for the services they provide—taking into account the effectiveness, timeliness and cost of those services. The various Divisions in the Ministry developed these measures and they now form the basis of the measures used in the Model.

An organisation like the Ministry provides a large range of services and, therefore, has developed a range of performance measures associated with the quality, timeliness and cost of these services. No one measure will give a true indication of how successful the Ministry or a business area has been in providing these services.

For each performance criteria, a starting level of performance and targets has been identified. Performance in each of these areas is likely to be assessed in August/September 2001. As a consequence of improved performance a salary increase will be available twelve months after registration of the Ministry of Justice Enterprise Agreement 2000 subject to approval by Government. Salary increases are linked to improvements in performance.

How The Salary Increase Is Determined

A salary increase will be calculated in November 2001 (and audited in August/September 2001) by—

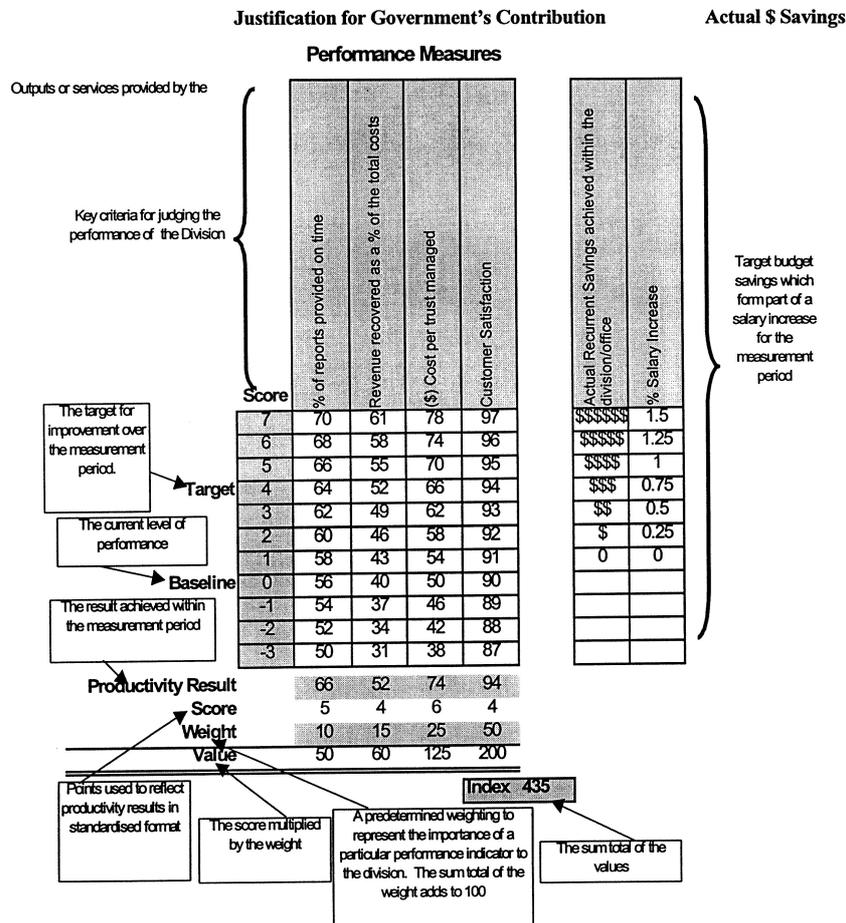
- Identifying the level of achievement in each performance criteria; and
- Identifying the savings achieved and determining the corresponding salary increase for these savings.

The Steps To Measuring Performance

There are 2 parts to the performance measurement model.

The first part of the model involves setting targets against performance measures. It’s the achievement of these targets that provides the justification for Government’s funding of the salary increase each year.

The second part of the model involves making \$ savings to pay the additional salary increase each year and also provide an equivalent return to the Ministry.



Note: The key criteria identified above are examples of performance measures, which may be applicable to a particular Division in the Ministry.

How The Performance Measurement Model Works

- The top line of the matrix indicates the set of performance measures or measurement criteria by which to assess performance.
- Baseline performance represents the current performance level for each of the performance measures.
- Performance targets are set to represent the various levels of improved performance by which staff can be rewarded against.
- The productivity result represents the result achieved within a measurement period.
- The score represents the points used to reflect performance results in a standardised format.
- The weights add up to 100 and take into consideration the relative level of control individual staff have over each performance measure.
- The score in each column is multiplied by its weight, to determine the value in the last row. The values on the bottom row are then added together to give a total value, referred to as the index.

The separate table on the right hand side shows the value of savings including the return to the Ministry and the corresponding salary increase this provides for. Justifications for the performance baseline and targets are available from the relevant business area.

There is no direct correlation between improved performance and actual savings necessary to pay for salary increases. Improved performance can be in the area of quality, timeliness and efficiency but this may not equate to actual \$ savings. To accommodate for actual \$ savings to be identified, the two right hand columns were developed and now form part of the performance measurement model.

To ensure areas are not disadvantaged as a result of setting unrealistic baselines and targets due to limited historical data, there will be provision to "adjust" these, as the Ministry becomes more informed in the early stages of the measurement period.

How Officers Can Contribute To Improving Performance

Officers can contribute both as an individual and as members of a team to the improvement of performance in their Division. This can be done by—

- * Making regular and consistent suggestions to ensure there is no double handling of work;
- * Periodic review of work practices to ensure maximum performance gains are obtained from existing and emerging technologies and undertaking necessary training;
- * Periodic planning and initiating innovative practices in their Division, subject to approval from the Director General; and
- * Participating with other employees to ensure the optimum utilisation of resources and the effective operation of their Division.

SCHEDULE B—PRODUCTIVITY PROJECTS AND INITIATIVES

The Parties to this Agreement have agreed that the following projects and initiatives will contribute to productivity improvements, which will be shared equally between the Parties—

1. Court Services Restructure
2. Integrated Courts Management System (formerly Genisys and Fines 2000)
3. Project to investigate issues for Aboriginal people in respect to the Guardianship and Administration Act
4. Australasian Juvenile Justice Administrators (AJJA) National Standards
5. Total Offender Management System (TOMS) and Enhancements for Tracking Systems for Life and Indeterminate, Terminally Ill and Prisoner Grievances

6. Community Based Information System (C-BIS)
7. Prison Industries
8. Prison Management Reporting Systems
9. Review of Prisons procurement
10. Prison Roster Management
11. Systems and Business Improvements
12. Registry of Births, Deaths and Marriages Organisational Structure
13. West Australian Registration System 2000 (WARS 2000)
14. Aboriginal Visitors Scheme
15. Aboriginal Over-representation in the Justice System
16. Justice System Review Implementation
17. Secure Internet/Intranet and Web enable capability
18. Financial Management Information System (FMIS)
19. HR Employee Kiosk
20. Human Resources Review
21. Ministry's IT and Telecommunication Infrastructure
22. JUSTPLAN
23. Justice Issues Management System (JIMS)

The Parties acknowledge and accept that the above projects and initiatives can be added or removed during the life of this Agreement.

SCHEDULE C—SALARIES

Public Service Award 1992

Government Officers & Salaries Allowances & Conditions Award

	Present Annual Rate	(1) Annual Rate Date of Registration 3% Increase	(2) Annual Rate 12 months after Date of Registration subject to achievement of performance targets 3% Increase
	\$	\$	\$
Level 1			
Under 17 Years	13,109	13,502	13,907
17 Years	15,320	15,780	16,253
18 Years	17,869	18,405	18,957
19 Years	20,684	21,305	21,944
20 Years	23,277	23,975	24,694
21 Years or 1st Year	25,516	26,281	27,069
22 Years or 2nd Year	26,302	27,091	27,904
23 Years or 3rd Year	27,087	27,900	28,737
24 Years or 4th Year	27,867	28,703	29,564
25 Years or 5th Year	28,652	29,512	30,397
26 Years or 6th Year	29,436	30,319	31,229
27 Years or 7th Year	30,339	31,249	32,186
28 Years or 8th Year	30,964	31,893	32,850
29 Years or 9th Year	31,887	32,844	33,829
Level 2			
1st Year	32,993	33,983	35,002
2 nd Year	33,841	34,856	35,902
3rd Year	34,731	35,773	36,846
4th Year	35,673	36,743	37,845
5th Year	36,658	37,758	38,891
Level 3			
1st Year	38,011	39,151	40,326
2nd Year	39,067	40,239	41,446
3rd Year	40,154	41,359	42,600
4th Year	41,270	42,508	43,783
Level 4			
1st Year	42,802	44,086	45,409
2nd Year	44,002	45,322	46,682
3rd Year	45,236	46,593	47,991
Level 2/4 (Clause 11)			
1st Year	32,993	33,983	35,002
2nd Year	34,731	35,773	36,846
3rd Year	36,658	37,758	38,891
4th Year	39,067	40,239	41,446
5th Year	42,802	44,086	45,409
6th Year	45,236	46,593	47,991
Level 5			
1st Year	47,613	49,041	50,512
2nd Year	49,220	50,697	52,218
3rd Year	50,890	52,417	53,990
4th Year	52,622	54,201	55,827

	Present Annual Rate	(1) Annual Rate Date of Registration 3% Increase	(2) Annual Rate 12 months after Date of Registration subject to achievement of performance targets 3% Increase		Present Annual Rate	(1) Annual Rate Date of Registration 3% Increase	(2) Annual Rate 12 months after Date of Registration subject to achievement of performance targets 3% Increase
	\$	\$	\$		\$	\$	\$
Level 6				Level 4/5			
1st Year	55,406	57,068	58,780	1st Year	47,613	49,041	50,512
2nd Year	57,277	58,995	60,765	2nd Year	49,220	50,697	52,218
3rd Year	59,214	60,990	62,820	3rd Year	50,890	52,417	53,990
4th Year	61,283	63,121	65,015	4th Year	52,622	54,201	55,827
Level 7				5th Year	55,406	57,068	58,780
1st Year	64,453	66,387	68,379	6th Year	57,277	58,995	60,765
2nd Year	66,647	68,646	70,705	Level 6/7			
3rd Year	69,035	71,106	73,239	1st Year	64,453	66,387	68,379
Level 8				2nd Year	66,647	68,646	70,705
1st Year	72,914	75,101	77,354	3rd Year	69,035	71,107	73,240
2nd Year	75,694	77,965	80,304	4th Year	69,035	71,107	73,240
3rd Year	79,140	81,514	83,959	Level 7/8			
Level 9				1st Year	72,914	75,101	77,354
1st Year	83,443	85,946	88,524	2nd Year	75,694	77,965	80,304
2nd Year	86,351	88,942	91,610	3rd Year	79,140	81,514	83,959
3rd Year	89,668	92,358	95,129	4th Year	83,443	85,946	88,524
Class 1	94,682	97,522	100,448	5th Year	86,351	88,942	91,610
Class 2	99,698	102,689	105,770	Class 1	94,682	97,522	100,448
Class 3	104,710	107,851	111,087	Senior Assistant CL3			
Class 4	109,725	113,017	116,408	1st Year	104,710	107,851	111,087
				2nd Year	110,931	114,259	117,687
				3rd Year	117,645	121,174	124,809

**GROUP WORKERS & SENIOR GROUP WORKERS.
[DCS AWARD FREE SALARIES]**

Group Workers.

	Present Annual Rate	(1) Annual Rate Date of Registration 3% Increase	(2) Annual Rate 12 months after Date of Registration subject to achievement of performance targets 3% Increase
	\$	\$	\$
(F18503)			
1st Year	32,847	33,832	34,847
(F14798)			
1st Year	32,847	33,832	34,847
2nd Year	33,691	34,702	35,743
3rd Year	34,578	35,615	36,683
4th Year	35,515	36,580	37,677
5th Year	36,496	37,591	38,719

Senior Group Workers

	Present Annual Rate	(1) Annual Rate Date of Registration 3% Increase	(2) Annual Rate 12 months after Date of Registration subject to achievement of performance targets 3% Increase
	\$	\$	\$
(F14799)			
1st Year	37,844	38,979	40,148
2nd Year	38,894	40,061	41,263
3rd Year	39,977	41,176	42,411
4th Year	41,088	42,320	43,590

PUBLIC SERVICE LEGAL OFFICERS

	Present Annual Rate	(1) Annual Rate Date of Registration 3% Increase	(2) Annual Rate 12 months after Date of Registration subject to achievement of performance targets 3% Increase
	\$	\$	\$
Level 2/4			
1st Year	42,802	44,086	45,409
2nd Year	44,002	45,322	46,682
3rd Year	45,236	46,593	47,991
4th Year	47,613	49,041	50,512
5th Year	49,220	50,696	52,216

**MR FORMWORK / BLPPU AND THE CMETU
COLLECTIVE AGREEMENT 2000.**

No. AG 288 of 2000.

2001 WAIRC 01770

**WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.**

PARTIES

THE WESTERN AUSTRALIAN BUILDERS' LABOURERS, PAINTERS & PLASTERERS UNION OF WORKERS, CONSTRUCTION, MINING, ENERGY, TIMBERYARDS, SAWMILLS AND WOODWORKERS UNION OF AUSTRALIA—WESTERN AUSTRALIAN BRANCH, APPLICANT
v.

MR FORMWORK (WA) PTY LTD,
RESPONDENT

CORAM

CHIEF COMMISSIONER W S COLEMAN

DELIVERED

FRIDAY, 12 JANUARY 2001

FILE NO/S

AG 288 OF 2000

CITATION NO.

2001 WAIRC 01770

Result

Agreement registered

Representation

Applicant

Ms L Dowden

Respondent

no appearance

Order:

HAVING heard Ms L Dowden for the applicant and there being no appearance for the respondent;

NOW THEREFORE, I the undersigned, pursuant to the powers conferred under the Industrial Relations Act, 1979 do hereby order —

THAT the agreement entitled Mr Formwork/BLPPU and the CMETU Collective Agreement 2000 in the terms of the following Schedule be registered as an industrial agreement.

(Sgd.) W. S. COLEMAN,
Chief Commissioner.

[L.S.]

Schedule.

1.—TITLE

This agreement shall be known as the *Mr Formwork / BLPPU and the CMETU* Collective Agreement 2000.

2.—ARRANGEMENT	
	Clause No.
Title	1
Arrangement	2
Parties and Persons Bound	3
Application	4
Relationship to Parent Award	5
Period of Operation	6
Classification Structures & Rates of Pay	7
Industry Standards	8
Sick Leave	9
Negotiation of a Subsequent Agreement	10
Application of Project Agreements	11
Fares and Travelling Allowance	12
Seniority	13
Pyramid Sub-Contracting	14
Dispute Settlement Procedure	15
Safety Dispute Resolution	16
Training and Related Matters	17
Drug & Alcohol, Safety & Rehabilitation Program	18
Clothing & Safety Footwear	19
Income Protection	20
Accident Pay	21
Union Membership	22
Company Based Incentive Scheme	23
Minimum Requirement	24
Signatories to the Agreement	25
Appendix A—Drug & Alcohol, Safety and Rehabilitation	
Appendix B—Site Allowance	

3.—PARTIES AND PERSONS BOUND

This agreement shall be binding on Mr Formwork (WA) Pty Ltd (hereinafter referred to as "the company"), the Western Australian Builders' Labourers, Painters and Plasterers Union of Workers and the Construction Mining Energy Timberryards Sawmills and Woodworkers Union of Australia—WA Branch (hereinafter referred to as "the unions") and all employees of the company eligible to be members of the unions.

4.—APPLICATION

This agreement shall apply to all employees of the company engaged on work in or in connection with construction, alteration, maintenance, repair or demolition of buildings or other structures of any kind whatsoever.

This agreement shall apply in Western Australia only. There are approximately 6 employees covered by this agreement.

5.—RELATIONSHIP TO PARENT AWARD

1. This agreement is supplementary to, and shall be read and interpreted wholly in conjunction with, the Building Trades (Construction) Award 1987, Award No. R14 of 1978 (hereinafter referred to as "the award").

2. In the event of any inconsistency between the award and an express provision of this agreement, the terms of this agreement shall prevail to the extent of such inconsistency, unless the express provision of the agreement provides otherwise.

6.—PERIOD OF OPERATION

This agreement shall come into force from the first pay period commencing on or after the date of signing and shall remain in force until the 1st of November, 2002.

7.—CLASSIFICATION STRUCTURE & RATES OF PAY

1. All employees working under this agreement shall be paid according to the wage rates set out below.

2. Wage Rates (per hour at ordinary time)

	Current EBA Rate Hourly Rate \$	1 November 2001 Hourly Rate \$
Labourer Group 1	18.91	19.86
Labourer Group 2	18.26	19.17
Labourer Group 3	17.78	18.67
Plaster, Fixer	19.65	20.63
Painter, Glazier	19.20	20.16
Signwriter	19.62	20.63
Carpenter/Roofer	19.79	20.78
Bricklayer	19.61	20.59
Refractory Bricklayer	22.47	25.59
Stonemason	19.76	20.75
Rooftiler	19.43	20.40
Marker/Setter Out	20.35	21.37
Special Class T	20.61	21.64

APPRENTICE RATES

	Current EBA Rate Hourly Rate \$	1 November 2001 Hourly Rate \$
Plasterer, Fixer		
Year 1	8.25	8.66
Year 2 (1/3)	10.81	11.35
Year 3 (2/3)	14.74	15.47
Year 4 (3/3)	17.29	18.15
Painter, Glazier		
Year 1 (.5/3/5)	8.06	8.47
Year 2 (1/3), (1.5/3.5)	10.56	11.09
Year 3 (2/3), (2.5/3.5)	14.40	15.12
Year 4 (3/3), (3.5/3.5)	16.90	17.74
Signwriter		
Year 1 (.5/3.5)	8.24	8.66
Year 2 (1/3, 1.5/3.5)	10.79	11.35
Year 3 (2/3, 2.5/3.5)	14.72	15.47
Year 4 (3/3, 3/5/3.5)	17.27	18.15
Carpenter/Roofer		
Year 1	8.31	8.73
Year 2 (1/3)	10.88	11.43
Year 3 (2/3)	14.84	15.59
Year 4 (3/3)	17.42	18.29
Bricklayer		
Year 1	8.24	8.65
Year 2 (1/3)	10.79	11.32
Year 3 (2/3)	14.71	15.44
Year 4 (3/3)	17.26	18.12
Stonemason		
Year 1	8.31	8.73
Year 2 (1/3)	10.88	11.43
Year 3 (2/3)	14.84	15.59
Year 4 (3/3)	17.42	18.29
Rooftiler		
6 months	11.07	11.62
2nd 6 months	12.17	12.78
Year 2	14.23	14.94
Year 3	16.70	17.54

3. All expense related allowances not specifically mentioned in this agreement will be paid as per the award as varied from time to time.

4. Site allowances relating to particular sites shall be paid in accordance with Appendix B of this Agreement, when applicable. When Appendix B does not apply, the site allowance rates shall be as agreed between the parties. Where there is no agreement the issues in dispute may be referred to the Western Australian Industrial Relations Commission for arbitration.

5. (i) An additional payment will be made to compensate for the impact of the Goods and Services Tax on the Consumer Price Index (CPI). In the circumstance that the CPI limit below is exceeded the appropriate additional payment will be made to the wage rates. The CPI figure for the applicable dates will be the official figure released by the Australian Bureau of Statistics for the preceding year.

Date	CPI Limit	Additional Payment
June 2001	5%	1% (paid 1/9/2001)
June 2001	6%	2% (paid 1/9/2001)
June 2002	5%	1% (paid 1/9/2002)
June 2002	6%	2% (paid 1/9/2002)

(ii) This payment, if it applies, shall be as agreed between the parties when the employer is working on sites where the union's commercial construction agreement doesn't apply, formally or informally.

8.—INDUSTRY STANDARDS

Redundancy

The company shall increase redundancy contributions on behalf of each employee to the following sums on a weekly basis—

Rate on signing	\$50
Rate as of 1/05/2001	\$60

Superannuation

(i) The Company will make a payment of \$60 per week per employee or the percentage rate that is prescribed under the Superannuation Guarantee Charge, whichever is the greater.

The Company will advise all employees subject to the Agreement of their right to have payments made to a complying superannuation fund of their choice. The Company is bound by the employee's election. The aforementioned payment will then be made to that fund.

Until each employee nominates the fund of their choice the Company will make payments into the Construction + Building Unions Superannuation Scheme (the "C+BUSS").

In the event that any employee chooses a fund other than the C+BUSS the Company will, within seven days of the employee advising the Company of the fund of their choice, advise the Union in writing of the employee's decision.

In the event that the employee and the Company reach an agreement pursuant to section 49C(2)(d) of the Act to change the complying superannuation fund or scheme the Company will, within seven days of the employee and the Company reaching such an agreement, advise the Union in writing of the agreement. The employer shall not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by the employee.

(ii) "Ordinary Time Earnings" (which for the purposes of the Superannuation Guarantee (Administration) Act 1992 will operate to provide a notional earnings base) shall mean the actual ordinary rate of pay the employee receives for ordinary hours of work including tool allowance, industry allowance, trade allowances, shift loading, special rates, qualification allowances (eg. first aid, laser safety officer), multi-storey allowance, site allowance, asbestos eradication allowance, leading hand allowances, in charge of plant allowance and supervisory allowances where applicable. The term includes any regular over-award pay as well as casual rates received and any additional rates and allowances paid for work undertaken during ordinary hours of work, including fares and travel.

9.—SICK LEAVE

For sick leave accrued after the date of signing this agreement the following will apply—

- The Company's employees shall have the option of converting 100% of accrued sick leave entitlement to a cash payment on termination
- If an employee who has been terminated by the Company without exercising the above option is re-engaged within a period of six months, the unpaid balance of sick leave shall continue from the date of re-engagement.
- Where the Company has signed a previous Agreement with the Union that also allowed for the conversion to cash payment on termination for accrued sick leave, that accrued sick leave will be treated as if is accrued under this agreement.
- Sick leave shall accrue, for the purposes of this clause, at the rate of one day at the beginning of each of the first ten calendar months of each year.
- Employees shall have the option of converting to a cash payment all sick leave entitlements over 5 days. Payment shall be made on the last pay period prior to the Christmas closedown.

10.—NEGOTIATION OF A SUBSEQUENT AGREEMENT

The parties agree to commence negotiations for a new collective agreement to succeed this agreement at least 3 months before the nominal expiry date. The parties intend to conclude these negotiations prior to the nominal expiry date. These negotiations shall be conducted on a collective basis between all of the parties with the negotiated outcome being subject to approval of a vote of the employees collectively.

11.—APPLICATION OF PROJECT AGREEMENTS

1. This agreement shall apply to all persons employed in the employer's business and every part thereof throughout Western Australia until **1st November 2002** except where the company commences work on a project where a site agreement to which the union is a party exists that provides for higher rates of pay and conditions.

2. The conditions contained in any such site agreement will take precedence over this agreement for the duration of the project.

12.—FARES AND TRAVELLING ALLOWANCE

In addition to Clause 12A of the award a travel payment shall be made in the form of a daily payment (on days worked) of \$6.15 per day per employee.

13.—SENIORITY

1. The parties agree the continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

2. When applying the "first on last off" principle it is agreed subject to the caveat of "all things being equal", it is intended to apply on a Company basis rather than a site by site basis.

3. It is recognised that from time to time instances may arise where the employee's individual skills may be subject to this caveat. Where there is any disagreement as to the application of this the matter will be processed in accordance with Clause 16—Dispute Settlement Procedure.

4. An employee who has been retrenched by the Company shall have absolute preference and priority for re-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

14.—PYRAMID SUB-CONTRACTING

1. "Pyramid Sub-Contracting" is defined as the practice of a sub-contractor, to whom a sub-contract is originally awarded, sub-letting that contract or part thereof to another sub-contractor.

2. Provided that where a sub-contractor does not have the technical capacity to handle a specialist section of the contract and intends to engage a specialist sub-contractor to perform that work, that section may be re-let to a specialist sub-contractor.

3. Further provided that when a sub-contract is let for labour and material, a labour-only sub-contract may be let by the sub-contractor, but it is unacceptable as a principle for further labour-only sub-contracts to be re-let.

4. A bona fide sub-contractor is generally an employer of labour, save for a machine owner-operator.

5. Where a disagreement arises in relation to the definition or application of the term "Pyramid Sub-Contracting" the parties shall discuss and determine the issue in accordance with the agreement dispute resolution procedure. In any event of a disagreement, the matter shall be negotiated further between the parties or referred to the Western Australian Industrial Relations Commission. Whilst these procedures are undertaken no industrial action shall occur.

15.—DISPUTE SETTLEMENT PROCEDURE

1. Disputes over any work related or industrial question, dispute or difficulty should be dealt with as close to its source as possible.

2. An employee or the union delegate should initially submit any work related and/or industrial matter referred to in (1), to the site foreperson, supervisor or other appropriate site representative of the company.

3. If the matter remains unresolved the union delegate may then submit the matter to the appropriate senior management person.

4. If still not resolved the delegate shall refer the matter to an appropriate official of the union, who shall discuss the matter with the nominated representative of the employer.

5. Whilst the above procedures are being followed work should continue as normal.

6. This procedure is to be followed in good faith and without unreasonable delay by any party.

7. Should the matter remain unresolved it shall be dealt with in one of the following ways as agreed to between the parties:

- referred to the Western Australian Industrial Relations Commission for conciliation and if required arbitration provided that the parties involved in the matter will confer among themselves and make reasonable attempts to resolve the matter before taking those matters to the Commission. The Commission's decision will be accepted by all parties subject to legal rights of appeal; or
- referred to a disputes board for determination; or
- referred to a private arbitrator agreed to between the parties, for determination.

8. This dispute settlement procedure does not apply to health and safety issues.

16.—SAFETY DISPUTE RESOLUTION

1. The parties to this agreement are committed to the safe operation of plant and equipment, to the observance of safe working practices, and the provision by the employer and correct use of all personal protective equipment. The company recognises its responsibilities to provide a safe and healthy workplace.

2. In the event of any disagreements on the necessity to carry out any safety measure or modify, reinforce or reinstate any safety device whatsoever, the procedures set out in this clause will be adopted.

3. No person shall dismiss a safety complaint. Any complaint should be referred to the company safety officer or workers' safety representative to be dealt with in accordance with the following procedures—

- (i) Where any employee becomes aware of an unsafe situation, that employee will immediately notify the company safety officer or the workers' safety representative.
- (ii) The company safety officer and the workers' safety representative will take immediate action to have the unsafe situation rectified.
- (iii) Should the company safety officer consider that no safety precautions are necessary, he/she will notify the workers' safety representative accordingly as soon as possible.
- (iv) While there is disagreement on the ruling of the company safety officer, the company safety officer will arrange for the immediate transfer of all employees from the disputed area.
- (v) Should the company safety officer be of the opinion that no action is necessary and the worker's safety representative disagrees, an appropriate inspector from Worksafe/Workcover will be requested to undertake an inspection of the disputed area for the purpose of resolving any such matter.
- (vi) If disagreement still exists the chief inspector or his/her nominee will be called in to assist in the resolution of the dispute.
- (vii) If no agreement can be reached between the parties the matter will be dealt with in accordance with the dispute resolution procedure of this agreement.
- (viii) Whilst the above procedure is being followed there will be no stoppage of work in respect of the matter being considered, except in the area alleged to be unsafe.
- (ix) It is accepted that safety considerations override normal work practices and depending on the degree of potential risk to persons on the job, or the general public, can override normal demarcation practices.

17.—TRAINING AND RELATED MATTERS

1. A training allowance of \$14.00 per week per worker shall be paid by the employer to the Union Education and Training Fund. This shall increase to \$15.00 per week on 1 November 2001.

2. Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calendar year pro-rata to attend courses conducted or approved by the NBCITC. The employers approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an inability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

3. The Company will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per (2) above for such purposes including but not limited to securing Tradesmen's Rights Certificates.

4. When working on sites where the union's commercial construction agreement (formally or informally) does not apply, the employer shall pay 50% of the allowance specified in subclause (1) or as otherwise agreed between the parties.

18.—DRUG & ALCOHOL, SAFETY & REHABILITATION PROGRAM

The parties are committed to the Drug and Alcohol, Safety and Rehabilitation program as outlined in Appendix A—Drug and Alcohol, Safety and Rehabilitation Program.

19.—CLOTHING AND SAFETY FOOTWEAR

1. The following items will be supplied to each employee by the Company, upon the completion of five working days.

- (a) 1 pair safety boots, to be replaced on a fair wear and tear basis.
- (b) 2 T-shirts with collars, and will be replaced on a fair wear and tear basis.
- (c) 1 blue jacket for each employee employed during the period 1 April to 31 October. (One issued per year)

2. The Company will also make available to each employee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

20.—INCOME PROTECTION

The Company agrees to insure employees covered by this Agreement for injury and sickness from the date of registration of the Agreement. The cover is to be for the life of the Agreement, and must be a policy with entitlements no less than the Jardines 24-hour cover, as negotiated between the unions and the MBA.

If the Company fails to take out income protection insurance the Company shall be liable for all claims arising from injury and sickness, under the terms and conditions of the Jardine's policy, until income protection insurance is taken out.

21.—ACCIDENT PAY

1. The Company agrees to pay each employee accident pay where the employee receives an injury for which weekly payments or compensation are payable by or on behalf of the Company pursuant to the provisions of the Workers' Compensation and Rehabilitation Act 1981, as amended.

2. "Accident Pay" means a weekly payment of an amount being the difference between the weekly amount of compensation paid to the employee pursuant to the Workers' Compensation and Rehabilitation Act and the employee's ordinary wage under this Agreement.

3. The Company shall pay accident pay during the incapacity of the employee arising from any one injury for a total of 39 weeks whether the incapacity is in one continuous period or not.

22.—UNION MEMBERSHIP

The employer will encourage, as far as possible, all employees covered by the agreement, to be financial members of the Unions.

23.—COMPANY BASED INCENTIVE SCHEME

Individual companies may negotiate company specific incentive schemes which will form an appendix to this agreement. These incentive schemes must ensure that this industrial agreement provides the base safety net and that all workers in the site have the opportunity to share in the proposed scheme.

Once negotiated bonus based incentive schemes will be submitted to the Union prior to its implementation for confirmation that the relevant requirements have been satisfied.

24.—MINIMUM REQUIREMENT

The Company undertakes to ensure that as a minimum, workers shall receive on a weekly basis, all entitlements as provided for under this agreement.

25.—SIGNATORIES

BLPPU	signed	
	Date: 15/12/2000	
CMETU	signed	
	Date: 15/12/2000	
The Company:	signed	
		Signature
	Date: 14/12/2000	
Company Seal	Mark Crier	
	Print Name	

APPENDIX A—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PROGRAM

1. PRINCIPLE

People dangerously affected by alcohol, and/or drugs are a safety hazard to themselves and all other persons in the workplace.

2. FOCUS

- Site safety and the involvement of the site safety committee
- Peer intervention and support
- Rehabilitation

3. WORKPLACE POLICY

a) A person who is dangerously affected by drugs or alcohol will not be allowed to work until that person can work in a safe manner.

b) The decision on a persons ability to work in a safe manner will be made by the safety committee, or on projects with no safety committee, by a body of at least equal numbers of employee/employer representatives.

c) There will be no payment of lost time to a person unable to work in a safe manner.

d) If this happens 3 times the worker shall be given a written warning and made aware of the availability of treatment/counselling. If the worker refuses help he/she may be transferred/dismissed the next time he/she is dangerously affected.

e) For the purposes of disciplinary action a warning shall be effective for a period of 12 months from the date of issue.

f) A worker having problems with alcohol and or other drugs—

- Will not be sacked if he/she is willing to get help.
- Must undertake and continue with the recommended treatment to maintain the protection of this program.
- Will be entitled to sick leave or leave without pay while attending treatment.

4. IMPLEMENTATION

To assist with the adoption and implementation with this policy the company will—

- Clearly state its endorsement of the BTG Drug and Alcohol program and comply with it.
- Provide access at an agreed time and venue for a representative of the BTG Drug and Alcohol Program to address a meeting of employees to discuss and endorse the program.
- Authorise the attendance of appropriate company personnel eg. Safety delegate/officer, safety committee members, union delegate, consultative committee members(s) at the two hour BTG Drug and Safety in the Workplace training course.

APPENDIX B—SITE ALLOWANCE

1. This appendix applies when the union's commercial construction agreement applies to the site, formally or informally.

2. This agreement shall apply to construction work undertaken in the commercial/industrial sector of the building industry in the state of Western Australia within a 50km radius of the Perth General Post Office.

3. This agreement provides for a site allowance to be paid to employees engaged on particular building projects, and for such site allowance to be paid in addition to the wage rates and allowances prescribed by the relevant building construction awards as well as any industrial or certified agreements made in conjunction with those awards which do not prescribe a site allowance.

4. The site allowance payable under this agreement is to be paid at a flat rate per hour for all hours worked to compensate for all special factors/disabilities on the project and in lieu of all award special rates, with the exception of rates relating to the lifting of heavy blocks, cleaning down brickwork and the use of explosive powered tools which will be payable to an employee when he/she encounters that particular disability.

5. Site Allowance Formula

At the commencement of a project the particular site allowance to apply shall be determined in accordance with the following formula—

5.1 Projects Located Within Perth C.B.D. (as defined)

New Work

Project Contractual Value	Site Allowance
Up to \$520,000	NIL
Above \$520,000 to \$2.17 m	\$1.95
Above \$2.17m to \$4.55m	\$2.30
Over \$4.55m	\$2.90

Renovations, Restorations and/or Refurbishment Work

Project Contractual Value	Site Allowance
Up to \$520,000	NIL
Above \$520,000 to \$2.17m	\$1.75
Above \$2.17m to \$4.55m	\$1.95
Over \$4.55m	\$2.50

5.2 Projects Located Within West Perth (as defined)

New Work

Project Contractual Value	Site Allowance
Up to \$520,000	NIL
Above \$520,000 to \$2.17 m	\$1.75
Above \$2.17m to \$4.55m	\$1.95
Over \$4.55m	\$2.50

Renovations, Restorations and/or Refurbishment Work

Project Contractual Value	Site Allowance
Up to \$520,000	NIL
Above \$520,000 to \$2.17m	\$1.65
Above \$2.17 m to \$4.55m	\$1.85
Over \$4.55m	\$2.10

The site allowance on projects which are a combination of new and renovation work shall be governed by the majority of work involved. For example, where the majority of work is new work, then the site allowance appropriate to new work shall be paid for all employees on the project.

5.3 Projects within 50 km radius of Perth G.P.O. but not including the C.B.D. or West Perth (as defined)

Project Contractual Value	Site Allowance
Up to \$1 m	NIL
Above \$1 m to \$2.17 m	\$1.35
Above \$2.17m to 6m	\$1.65
Above \$6m to \$11.98m	\$1.90
Above \$11.98m to \$24.43m	\$2.10
Above \$24.43m to \$60.5m	\$2.40
Over \$60.5m	\$2.60

“**C.B.D.**”—Central Business District shall mean the area bounded by the Swan River South, Swan River East to Nile Street running into Wittenoom Street, Hill Street to Royal Street, Royal Street to Lord Street, Lord Street to Newcastle Street, along Newcastle Street to the Freeway, the Freeway South to the Perth-Fremantle railway line, along the Perth-Fremantle railway line to Dyer Street, Dyer Street through to Havelock Street, Havelock Street to Kings Park Road, Kings Park Road to Fraser Avenue, Fraser Avenue projected through to the Swan River. (Refer attached Map 1).

“**West Perth**”—shall mean the area contained within the boundaries formed by Thomas Street, Kings Park Road, Havelock Street, Dyer Street and the Perth-Fremantle railway line back to Thomas Street. (Refer attached Map 2).

Boundary roads: If a road borders between two regions in which site allowances are to be paid as per this agreement, the parties confirm that one side of such a boundary road will be deemed to fall in one region and the other side of the boundary road will be deemed to fall in the other region. For example, the eastern side of Havelock Street will be in the “CBD” and the western side of Havelock Street shall be in “West Perth”.

“**Project Contractual Value**”—shall be deemed to mean the value of all tendered work which falls under the scope of the principal contractor’s contract.

6. The site/project allowance and project contractual value detailed in this agreement shall be adjusted on 1 January each year by the total C.P.I. movements for Perth during the preceding four quarters ending 30 September and accordingly, the site allowance amounts shall be adjusted up or down to the nearest five cents. Provided that where adjustment equates to less than two cents, existing allowance levels shall be maintained.

7. Project contractual values shall be subject to review at any renewal of this agreement, but in any event shall not be adjusted by a percentage less than the total CPI movements for Perth during the preceding four quarters ending 30 September. Such adjustment being to the nearest \$10,000.

8. The agreed site allowance once set pursuant to this agreement shall be recorded in a site agreement to which the applicable principal contractor and the BTA will be signatories. The level of allowance once nominated at the commencement of the project will continue without change until completion of the project.

9. It is acknowledged that on certain projects a site agreement may be entered into between the principal contractor and the building trades group of unions for that project that may include matters regularly addressed within the industry, such as, but not limited to, the following—

- Disputes Procedures
- Occupational Health and Safety Procedures
- Demarcation Procedures
- First Aid Provisions and On-Site Amenities

and the unions will not unreasonably refuse to continue to discuss such matters if raised by the principal contractor.

10. This agreement does not apply to resource development projects or civil and engineering projects.

11. Where a dispute arises as to the application of the terms of this agreement, if the issue cannot be resolved in discussions between the parties, it is agreed that the matter will be referred to the appropriate industrial tribunal for resolution without recourse to industrial action.

12. It is a term of this agreement that all site allowance agreements entered into prior to this date will be honored by all

parties and will continue to operate for the life of the particular project.

13. Where because of a condition of contract the principal contractor is required not to allow for a site allowance, before final application of this agreement, discussions will be held between the parties with a view to resolving any problems that may arise as a result of this situation.

14. This agreement shall only apply to building contracts entered into on or tendered for on or after 1 January 2000.

15. Productivity Allowance

In return for increased productivity and/or timely completion of projects it is agreed that a productivity allowance of \$1.00 per hour worked shall be paid to all employees engaged upon projects in excess of \$10 million, or such other sum as agreed. The productivity allowance may be accumulated and paid at the end of the project.

16. Structural Frame Allowance

It is agreed that a structural frame allowance of \$1.00 per hour all purpose shall be paid to all employees engaged upon projects (new construction only) which exceed two stories in height or on buildings or structures where the structure exceeds 10 metres in height (excluding spirres, flagpoles and the like).

17. Application to Apprentices

a) The rates prescribed in clause 4 of this agreement shall apply to **all** apprentices commencing on-site (whether as direct employees or under a group training scheme) after 31 December 1998 in the same proportion as the percentage of a tradesperson’s wage rate as prescribed by the appropriate award or Enterprise Bargaining Agreement, being

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

b) Fares and Travel Allowances—Apprentices shall receive 100% of all fares and travel allowances paid under this agreement and or the award.

18. Provision of Canteen

It is agreed that a staffed canteen shall be provided where a project exceeds \$35 million in value and where the operation of the canteen is financially self supporting in respect of consumables. The Canteen shall come into operation when on site worker levels exceed 50 and to cease when the worker levels reduce to below 50.

19. Provision of Nurse

It is agreed that a qualified nurse shall be engaged where the forecast long term staffing levels for a project exceed 100 (one hundred) or when actual numbers exceed 100 notwithstanding that forecasts may have been below that level. The nurse shall commence duties when staffing levels reach 50 (fifty) and shall terminate when levels reduce to 50 (fifty). The requirement for the provision of a nurse shall be waived if the project is adjacent to a hospital with a public emergency department.

20. Apprentice Ratio to Tradespersons

There shall be at least one apprentice employed on site to every 6 tradespersons employed on site.

PARLIAMENTARY EMPLOYEES ENTERPRISE AGREEMENT 2000.

No. PSGAG 2 of 2001.

2001 WAIRC 01825

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA INCORPORATED, AUSTRALIAN LIQUOR, HOSPITALITY AND MISCELLANEOUS WORKERS UNION, WESTERN AUSTRALIAN BRANCH, MEDIA, ENTERTAINMENT AND ARTS ALLIANCE, PRESIDENT OF LEGISLATIVE COUNCIL, SPEAKER OF LEGISLATIVE ASSEMBLY, APPLICANTS
CORAM	SENIOR COMMISSIONER G L FIELDING
DELIVERED	WEDNESDAY, 17 JANUARY 2001
FILE NO/S	PSGAG 2 OF 2001
CITATION NO.	2001 WAIRC 01825

Result	Agreement registered
Representation	
Applicants	Ms R G Harley as agent on behalf of the Civil Service Association of Western Australia Incorporated and the Media, Entertainment and Arts Alliance of Western Australia (Union of Employees), Ms D E MacTiernan as agent on behalf of the Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch and Mr R J Hunter as agent for the President of the Legislative Council and the Speaker of the Legislative Assembly

Order.

HAVING heard Ms R G Harley as agent on behalf of the Civil Service Association of Western Australia Incorporated and the Media, Entertainment and Arts Alliance of Western Australia (Union of Employees), Ms D E MacTiernan as agent on behalf of the Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch and Mr R J Hunter as agent for the President of the Legislative Council and the Speaker of the Legislative Assembly, 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 lodged in the Commission on 4 January 2001 entitled Parliamentary Employees Enterprise Agreement 2000 and as subsequently amended by direction of the Commission be registered in the terms of the following Schedule as an industrial agreement in replacement of the Parliamentary Employees Enterprise Agreement 1998 PSGAG 10 of 1998 which is hereby cancelled.

[L.S.] (Sgd.) G. L. FIELDING,
Senior Commissioner/
Public Service Arbitrator.

Schedule.

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1.—TITLE AND REPLACEMENT

(1) This Agreement shall be known as the *Parliamentary Employees Enterprise Agreement 2000* and shall replace the *Parliamentary Employees Enterprise Agreement 1998*.

2.—SCOPE

(1) This Agreement applies to all Employees eligible for membership of the Unions listed in clause 3 of this Agreement.

3.—PARTIES

Employers

The Employers under this Agreement are—

- (1) The President, acting on the recommendation of the Clerk of the Legislative Council, is, subject to section 35 of the *Constitution Act 1889*, the employer of each member of the Department of the Legislative Council other than the Clerk of the Legislative

Council and the Deputy Clerk of the Legislative Council.

- (2) The Speaker, acting on the recommendation of the Clerk of the Legislative Assembly, is, subject to section 35 of the *Constitution Act 1889*, the employer of each member of the Department of the Legislative Assembly other than the Clerk of the Legislative Assembly and the Deputy Clerks of the Legislative Assembly.
- (3) The President and the Speaker, acting jointly, are the employer of the Executive Manager, Parliamentary Services and on the recommendation of the Executive Manager, Parliamentary Services, are the employer of each member of the Department of Parliamentary Services other than the Executive Manager, Parliamentary Services.

Unions

The following Unions are party to this Agreement—

- (4) Civil Service Association of Western Australia Incorporated;
- (5) Media, Entertainment and Arts Alliance of Western Australia (Union of Employees); and
- (6) The Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch.

4.—SINGLE BARGAINING UNIT

- (1) This Agreement has been negotiated through a Single Bargaining Unit.

5.—NUMBER OF EMPLOYEES BOUND BY AGREEMENT

- (1) It is estimated that 80 Employees will be subject to this Agreement at the time of registration.

6.—DEFINITIONS

- (1) The following terms are defined for the purposes of this Agreement—

“**Agreement**” the Parliamentary Employees Enterprise Agreement of 2000;

“**Award**” the *Parliamentary Employees Award 1989*;

“**Departments**” The Department of the Legislative Council, the Department of the Legislative Assembly and the Parliamentary Services Department of the Parliament of Western Australia;

“**Employee**” an Officer or a PSSE;

“**Employer(s)**” has the meaning assigned to that word in clause 3(1), 3(2), and 3(3);

“**grievance**” a formal complaint or expression of concern made by an Employee to a supervisor where the basis of that complaint or concern is the Employee’s belief that he/she has been subjected to unlawful, unfair or inequitable treatment including, but not limited to, employment and leave arrangements, work practices, workplace conflicts, health or safety issues, harassment or discrimination;

“**Hansard Reporters**” Hansard Reporters other than trainee Hansard Reporters;

“**House**” either the Legislative Council or the Legislative Assembly of the Parliament of Western Australia;

“**MEC**” the Management Executive Committee which is the peak management committee of the Parliament of WA comprising the two Presiding Officers and the three heads of the Departments of the Parliament of Western Australia;

“**multi-skilling**” includes both the broadening of existing skills and the gaining of additional skills that promote workplace flexibility and enhance career opportunities for Employees;

“**Officer**” all Employees other than PSSEs;

“**overtime**” all work performed at the prior direction of a Departmental Head, or duly authorised delegate, outside an Employee’s prescribed ordinary hours of duty.

“**Departmental Head**” the Clerk of the Legislative Council; or

the Clerk of the Legislative Assembly; or
the Executive Manager, Parliamentary Services.

“**PSSE**” Parliamentary Support Services Employees being all those employees employed in the occupational areas of gardening, catering, stewarding and bar attending;

“**Roster PSSEs**” PSSEs who have rostered working hours and includes Shift PSSEs;

“**Sessional Officer**” an Officer who is directed to work after 8.00 pm on any sitting day and the number of nights directed to be worked is at least—

- (a) 50% of the sitting days in a calendar year; or
- (b) in a period of less than a calendar year, 50% of the sitting days in the period;

“**PSSE Shift**” day shift is a shift commencing after 6.00 am and before 12 noon, and an afternoon shift is a shift commencing after 12 noon and before 6.00 pm

“**Shift PSSEs**” PSSEs who are required to work shifts;

“**sitting day**” a day on which a House actually sits and includes Legislative Assembly Estimates Hearings;

“**Unions**” those Unions listed as parties in clause 3(4), 3(5) and 3(6) of this Agreement;

“**WAIRC**” the Western Australian Industrial Relations Commission;

“**Workplace Teams**” groups of Employees who form self-managed teams within established guidelines for the purpose of cooperatively delivering services and completing tasks.

7.—DATE AND PERIOD OF OPERATION OF AGREEMENT

- (1) This Agreement shall operate from the date on which it is registered in the WAIRC and shall remain in operation for a period of two (2) years from the date of registration.

- (2) The parties will commence negotiations for a new Agreement six (6) months prior to the expiration of this Agreement.

- (3) The pay quantum achieved as a result of this Agreement will continue to apply in the absence of a further Agreement.

- (4) This Agreement will continue in force after the expiry of its term until such time as any of the parties withdraws from this Agreement by notification in writing to the other parties and to the WAIRC in accordance with the provisions of the *Industrial Relations Act 1979*.

8.—NO FURTHER CLAIMS

- (1) The parties undertake that for the duration of this Agreement no further salary or wage increases shall be sought or granted except for those provided under the terms of this Agreement or provided for in a National or State Wage Case.

9.—INCONSISTENCIES BETWEEN AWARD AND AGREEMENT

- (1) In the event of an inconsistency between a provision of this Agreement and the Award the provision of this Agreement, to the extent of the inconsistency, shall prevail.

10.—AVAILABILITY OF AGREEMENT

- (1) Every Employee shall upon request to the Employer be entitled to a copy of this Agreement. In addition, copies of this Agreement will be kept in the office of the Manager, Human Resources.

- (2) The Employer will also disseminate this Agreement electronically.

11.—AIMS AND OBJECTIVES OF THIS AGREEMENT

- (1) The aim of this Agreement is to ensure the delivery of effective, efficient and high quality services to the Parliament by constantly developing and improving the performance of all Employees and keeping pace with the requirements and anticipated needs of the Parliament.

- (2) The objectives of this Agreement are—

- (a) to contribute to the achievement of the objectives of the Departments;
- (b) to pursue a high level of customer service orientation and improved customer focus;
- (c) to provide a work environment which fosters an appropriately trained, skilled and adaptable staff committed to facilitating improved work practices;

- (d) to effectively and efficiently manage assets and resources;
- (e) to provide a safe and functional work environment;
- (f) to achieve productivity improvements within budget;
- (g) to recognise individual performance through annual performance review;
- (h) to adopt flexible and progressive work practices and reasonable changes in the way work is organised; and
- (i) to apply human resource policies and practices which are based on human resource industry best practice.

(3) Employees are encouraged to treat Parliamentary employment as a career, and fair and open access to promotion opportunities will be offered in order to retain Employees' valuable skills, experience and expertise.

(4) The parties and Employees will use their best endeavours to ensure that the provisions of this Agreement are implemented in accordance with its terms.

(5) The parties and Employees undertake to comply with the spirit and intent of this Agreement.

12.—WORKPLACE TEAMS

Workplace Teams

(1) The fostering of existing Workplace Teams and the establishment of new Workplace Teams is an integral part of the workplace reform process underpinning improved efficiency and productivity.

(2) Employers and Employees will establish and maintain Workplace Teams for all appropriate activities performed by the Departments.

(3) Workplace Teams are committed to continual improvements to services and will co-operate in reviewing current work methods, identifying areas of improvement, developing measurable customer service standards for the Team, planning and implementing approved changes to improve work methods and performance. During the consultation process the issues addressed by Workplace Teams may include, but not be limited to—

- (a) extended hours;
- (b) flexible hours;
- (c) spread of hours;
- (d) reduced down time;
- (e) seasonal variation of hours;
- (f) job sharing;
- (g) meal breaks;
- (h) morning and afternoon tea breaks;
- (i) time between shifts;
- (j) roster hours;
- (k) flexible leave practices;
- (l) call outs/on call;
- (m) the application of penalty rates;
- (n) time in lieu;
- (o) allowances and gratuities;
- (p) gain-sharing;
- (q) staffing structures;
- (r) salary maintenance; and
- (s) multi-skilling.

(4) Each person in a Workplace Team is a valued member, whose contribution to the Workplace Team is vital to the entire wellbeing of the organisation. Accordingly, it is important that each member be a keen participant and be interested in contributing their knowledge, skills and ideas for the benefit of the Workplace Team and in turn the entire organisation.

Consultation

(5) Whilst it is acknowledged by the parties that decisions will continue to be made by the Employers, who are responsible and accountable for the effective operation of the Departments, the Employers and Employees are committed to working together to improve the business performance and working environment of the Departments.

(6) Where a Workplace Team is considering an issue which affects Employees' working conditions or employment

status, it must share information and discuss the issue with Employees who are likely to be directly affected and may seek advice from relevant Unions.

(7) Where a Workplace Team recommends changes that affect Employees' working conditions or employment status, the Employees affected and the relevant Unions will be notified by the Departmental Head as early as possible.

Creation/Restructuring of Workplace Teams

(8) It is the responsibility of the Employers and Employees to see that the appropriate Workplace Teams are established as soon as possible after the commencement of operation of this Agreement and to ensure Workplace Teams remain viable and relevant.

(9) It is the responsibility of management to maintain an accurate list of all Workplace Teams, including the members of each Team and the person to whom the Team reports. That list will be available to all Unions.

(10) Workplace Teams may appoint a Team member responsible for facilitating the self-management of the Team.

Scope of Authority

(11) Workplace Teams will have delegated authority to make decisions and recommendations within established guidelines including the setting of goals, work programs and task allocation.

(12) Workplace Teams may discuss relevant issues and problems, investigate options, evaluate them, and, within the scope of their delegated authority, put their decisions into practice.

Processes for Workplace Teams

(13) Management will prepare and distribute guidelines for the operation of Workplace Teams.

(14) At their first meeting Workplace Teams will determine their future meetings procedures.

(15) Workplace Team meetings will be held at regular intervals. This will enable the Team to get together, discuss and, within their delegated authority, decide upon such issues as—

- (a) identification of cost saving initiatives;
- (b) identification of improvements in customer services;
- (c) documenting current and proposed level and quality of service for all activities undertaken by the organisation;
- (d) monitoring of operational and capital works budgets for which the Workplace Teams have some responsibility;
- (e) recommending leave arrangements and other rosters;
- (f) reviewing and prioritising work programs; and
- (g) recommending when work is commenced and finished.

Outcomes, as opposed to inputs, should be the main concern.

(16) Every effort should be made to hold meetings at times that have the least impact upon existing work and customer services.

(17) Workplace Team meetings are recognised as legitimate work and as such will be paid at the appropriate agreed rate or conditions, including meetings that are required to be held outside ordinary working hours. Heads of Department shall not unreasonably refuse overtime for Workplace Team meetings that are required to be held outside ordinary working hours.

(18) All decisions of Workplace Teams are to be properly documented, with an action plan showing what has to be done, by whom and when. While the primary focus will be upon the work of the Workplace Team, organisation-wide issues are also expected to surface and, correspondingly, to be acted upon in the appropriate manner.

(19) It will be the appropriate manager's responsibility to monitor each Team's progress and to take up issues raised by Workplace Teams that are beyond their sphere of responsibility.

13.—WORKING HOURS

Span of Ordinary Hours

(1) Ordinary hours for all Employees, other than Roster PSSes, shall be worked between the hours of 7.00 am and

6.00 pm, Monday to Friday. Employees may be required to work hours outside ordinary hours.

(2) Notwithstanding subclause (1), Parliament House Gardeners may elect, with the consent of the Employer, to commence ordinary hours from 6.00 am.

Non-Sessional Officers

(3) The ordinary working hours of Officers, other than Sessional Officers, shall be 7.5 hours a day.

Sessional Officers, L5 and Below

(4) The ordinary hours of Sessional Officers, other than Hansard Reporters, who are paid a salary not exceeding the rate for salary classification level 5 are not to exceed—

- (a) eight (8) on a sitting day; or
- (b) seven (7) on a non-sitting day.

Sessional Officers, L6 and Above and Hansard Reporters

(5) The ordinary hours of Sessional Officers who are paid a salary equal to or greater than the rate for salary classification level 6 and Hansard Reporters are not to exceed—

- (a) nine (9) on a sitting day; or
- (b) seven (7) on a non-sitting day.

Roster PSSEs

(6) Roster PSSEs may be rostered to work ordinary hours Monday to Friday as follows—

- (a) **Sitting Days—**
Maximum ten (10) hours per shift between the hours 7.00 am and 11.00 pm.
- (b) **Non Sitting Days**
Minimum six (6) hours per shift between the hours of 7.00 am and 6.00 pm.
- (c) **Parliamentary Functions**
Maximum of ten (10) hours per shift, subject to the Employee being notified at least two (2) weeks in advance.

(7) Roster PSSEs may be required to work overtime outside the ordinary hours. Overtime rates shall apply after completion of rostered hours and/or outside the spread of hours.

(8) The total ordinary hours worked by a Roster PSSE shall not exceed an average of 76 hours a fortnight in any twelve (12) month period.

(9) Rostered PSSE hours described in subclauses (6)(a), (6)(b) and (6)(c) may be varied provided the Union and the Employer agree in writing.

PSSEs

(10) The ordinary working hours of PSSEs, other than Roster PSSEs are not to exceed eight (8) hours a day and seventy-six (76) hours a fortnight.

14.—ASSIGNMENT TO OTHER DUTIES

(1) Where Employees are assigned insufficient duties to complete their required hours of work in a non-sitting week, the Departmental Head may assign them to other Departments or to government agencies, so as to ensure that those hours are worked in that week.

15.—OVERTIME AND LEAVE IN LIEU

Overtime

(1) Sessional Officers, other than Hansard Reporters, who are paid salary not exceeding the rate for salary classification level 5 who are required to work more than eight (8) hours on a sitting day or seven (7) hours on a non-sitting day; and

officers who are paid salary not exceeding the rate for salary classification level 5 who are not Sessional Officers who are required to work more than 7.5 hours on any day; PSSEs who are not Roster PSSEs who are required to work more than eight (8) hours on any day; and Roster PSSEs who are required to work more than the hours for which they are rostered on any day—

- (a) may elect either to be paid or to accrue leave-in-lieu at the rate of time and one half for the first 3 additional hours worked; and
- (b) may elect either to be paid or to accrue leave-in-lieu at the rate of double time for hours worked after the first 3 additional hours.

(2) Officers who are paid a salary equal to or greater than the rate for salary classification level 6 and above, Hansard Reporters, Subeditors and the Deputy Editor Parliamentary Debates when required to work more than nine (9) hours on any day accrue leave-in-lieu on a time for time basis for each hour worked after nine (9) hours.

Election Current for 12 months

(3) An election to take paid overtime, or to accrue leave in lieu, remains in place for twelve (12) months) and may be varied during that period only by agreement between the Employer and the Employee.

Maximum Leave-in-Lieu

(4) Where possible an Employee should not accumulate more than 37.5 hours leave-in-lieu at any time unless otherwise agreed by the Employer and the Employee.

(5) Clause 15(4) shall not apply to accrued leave-in-lieu which the Employee is unable to take because a House is sitting or because of other Parliamentary requirements or because the Employer has refused a request by the Employee to take the leave-in-lieu.

(6) Clause 15(4) shall not apply to Employees who have elected to take 200 hours leave in lieu of the Special Allowance referred to in clause 25.

Acquittal of Leave-in-Lieu

(7) Accrued leave in lieu shall be taken at a time to be agreed between the Employer and the Employee. In determining the taking of such leave, consideration shall be given to meeting the operational requirements for the effective functioning of the Parliament.

(8) Accrued leave in lieu must be acquitted in the calendar year in which it accrues or the year following.

(9) Employees who have elected to take 200 hours leave in lieu of the Special Allowance referred to in clause 25 must clear the leave prior to January 1 each year.

Ten (10) Hour Break

(10) When overtime is worked by an Employee who is paid a salary or wages not exceeding the rate for salary classification level 5, a break of not less than ten (10) hours shall be taken between the completion of work on one day and the commencement of work on the next.

(11) Where an Employee who is paid a salary or wages not exceeding the rate for salary classification level 5 is required to return to or continue work without the break provided for in subclause (10), the Employee shall be paid at double the Employee's ordinary rate until released from duty.

(12) Where an Employee is required to take a break of ten (10) hours after completing a working day and as a consequence recommences duty at a time later than the usual commencement of duty on the following working day, the Employee shall be deemed to have commenced work at the usual commencement time for that day.

(13) Employees who are paid a salary or wages equal to or greater than the rate for salary classification level 6 and Hansard Reporters who resume duty after having had less than a ten (10) hour break shall not be eligible to receive penalty payments.

16.—OVERTIME WHILE TRAVELLING ON OFFICIAL BUSINESS

(1) This clause applies only to Employees classified Level 5 or below.

(2) Overtime will not be paid where travel of more than one day's duration is undertaken on official business, but time in lieu will apply as follows—

- (a) When total actual hours worked in any week, inclusive of Saturday and Sunday and commencing from the date of travel, exceed the Employee's ordinary weekly working hours (37.5), time in lieu will apply for those excess hours.
- (b) For the purposes only of determining time in lieu for subclause (a), time spent travelling between 6.00 pm and 7.00 am will not be counted.
- (c) When a public holiday falls on any day the Employee is on official business, including time spent travelling, the Employee will be granted a subsequent day off on their return to work.

17.—PART-TIME EMPLOYMENT

(1) Definition

(a) Part-time employment is regular and continuing employment for a period of—

- (i) in the case of an Officer, less than 37.5 hours per week; and
- (ii) in the case of a PSSE, less than thirty-eight (38) hours per week.

(2) Part-Time Agreement

(a) Each part-time engagement shall be made in writing and shall include the agreed period of the engagement, and the agreed hours of duty.

(b) Subject to the approval of the Employer, the conversion of a full-time Employee to a part-time Employee can be implemented only with the written consent or by written request of that Employee. No full-time Employee may be made a part-time Employee without his or her prior agreement.

(3) Hours of Duty

(a) The Employer shall, before a part-time Employee commences employment, prescribe the weekly and daily hours of duty, including starting and finishing times, for the Employee ("ordinary hours").

(b) The Employer shall give a part-time Employee four (4) weeks notice of any proposed variation to that Employee's ordinary hours provided that the Employer, subject always to subclause (1)(a) shall not vary the Employee's total weekly hours of duty without the Employee's prior written consent.

(c) Temporary variations to an Employee's working hours may be agreed to by the Employer and Employee without notice.

(d) Where a part-time Employee is directed to work hours in excess of the Employee's ordinary hours, overtime shall be paid or leave-in-lieu accrued in accordance with clause 15.

(4) Salary and Annual Increments

(a) A part-time Employee shall be paid a proportion of the appropriate full-time salary or wages calculated upon time worked.

(b) A part-time Employee shall be entitled to annual increments in accordance with this Agreement, subject to meeting the performance criteria referred to in clause 19(3).

(5) Leave

(a) A part-time Employee shall be entitled on a pro rata basis to the same leave and conditions prescribed in this Agreement for full time Employees.

(b) Sick leave and any other paid leave shall be paid at the Employee's current salary or wages, but only for those hours or days that would normally have been worked had the Employee not been on such leave.

(6) Holidays

(a) A part-time Employee shall be allowed the prescribed Public Holidays without deduction of pay in respect of each holiday which falls on a day ordinarily worked by the part-time Employee.

(7) Reversion of Employees to Full-Time

(a) A part-time Employee who was previously a full-time Employee and who desires to revert to full-time employment will be required to seek promotion or transfer to a full-time position by—

- (i) applying for advertised vacancies; and/or
- (ii) written notification to the Employer of his or her desire to revert to full-time employment.

(b) Nothing in paragraph (a) will prevent the Employer, with the written consent of the Employee, transferring that Employee to a full-time position at a remuneration less than the Employee's substantive remuneration.

(c) Before transferring an Employee under paragraph (b), 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 her transfer to that position.

18.—HIGHER DUTIES

(1) When an Employee is to undertake additional and higher level duties on a temporary basis for ten (10) consecutive working days or more—

- (a) in circumstances where the full duties of the higher position are to be performed, payment shall be at the minimum rate of pay of the substantive pay level of the higher position; and
- (b) in circumstances where the Employee will not be performing the full duties of the higher position, the Employee shall be advised of the additional duties to be performed and the higher rate of pay.

(2) Subject to subclause (1), Employees shall be paid the higher duties allowance for the entire period during which they are undertaking the higher level duties.

19.—ANNUAL REVIEWS

(1) Guidelines for annual staff performance development and review will be implemented within six months of registration of this Agreement.

(2) Annual staff reviews will be undertaken before or as soon as practicable after the anniversary date of the commencement of the employment with Parliament of each Employee.

(3) Performance satisfactory to the Employer in accordance with appropriate guidelines is a condition precedent to the payment of any salary or wages increment to an Employee. Subject to satisfactory performance, payment of a salary or wages increment shall be back-dated to the Employee's employment anniversary date.

20.—TRAINING AND DEVELOPMENT

(1) Access to training is a fundamental element of the process of achieving a total service culture. Training of Employees with special expertise to train others in areas such as skills development, introduction of new technologies and on-the-job training will be part of this process. Staff development and review processes will be closely connected to Employee development, training requirements and career opportunities.

(2) The Employer will conduct a training needs analysis and develop an annual training program for Employees. Training resources will be allocated and programs developed for each work area. The recommendations of the training needs analysis will be a prime determinant in the allocation of resources and the development of training programs. Priority of allocation of training resources will be dependent on budgetary constraints and strategic objectives.

(3) The Employer will be responsible for implementing training initiatives.

(4) Workplace Teams may provide advice to the Employer in respect of ongoing training and development programs.

(5) The parties and Employees acknowledge that training is a joint commitment of management and staff.

21.—OCCUPATIONAL SAFETY AND HEALTH

(1) The Employers are committed to providing a safe and healthy working environment for all their Employees.

(2) Policies consistent with the relevant principles of the *Occupational Safety and Health Act 1984* will be developed.

22.—EQUAL EMPLOYMENT OPPORTUNITY

(1) The Employers are committed to equal employment opportunity principles.

(2) Policies consistent with relevant equal employment opportunity principles will be developed.

23.—LEAVE ENTITLEMENTS

(1) Annual Leave

(a) Each Employee accrues four (4) weeks paid annual leave for each twelve (12) months of completed service from the commencement of employment. Annual leave accrues pro rata on a weekly basis.

(b) Accrued annual leave and the additional one (1) week's paid leave, unless otherwise approved by the Employer, must not exceed one annual accrual in total as at the commencement of the Spring Sitting each year.

(2) Additional Leave for Certain Employees

(a) Sessional Officers and Roster PSSEs are entitled to 1 week's additional paid leave.

(3) Bereavement Leave

(a) Subject to paragraph (b), on the death of—

- (i) a relative of the Employee;
- (ii) a member of the Employee's household; or
- (iii) a close personal friend of the Employee,

the Employee is entitled to paid bereavement leave of up to two (2) days. The two days need not be consecutive.

(b) The entitlement to paid bereavement leave does not apply during a period of any other kind of leave.

(4) Proof in support of claim for leave

(a) An Employee who claims to be entitled to paid leave under subclause (3)(a) is to provide to the Employer, if so requested by the Employer, evidence that would satisfy a reasonable person as to—

- (i) the death that is the subject of the leave sought; and
- (ii) the relationship of the Employee to the deceased person.

(5) Parental Leave

Interpretation

(a) In this clause—

“**adoption**”, in relation to a child, is a reference to a child who—

- (i) is not the natural child or the step-child of the Employee or the Employee's spouse;
- (ii) is less than five (5) years of age; and

has not lived continuously with the Employee for six (6) months or longer;

(b) “**continuous service**” means service under an unbroken contract of employment and includes—

- (i) any period of parental leave; and
- (ii) any period of leave or absence authorised by the Employer or by a workplace agreement, an award, a contract of employment or the *Minimum Conditions of Employment Act 1993*.

(c) “**expected date of birth**” means the day certified by a medical practitioner to be the day on which the medical practitioner expects the Employee or the Employee's spouse, as the case may be, to give birth to a child;

(d) “**parental leave**” means leave provided for in clause 23(5) of this Agreement.

(e) “**spouse**” includes a *de facto* spouse.

(6) Entitlement to paid and unpaid parental leave

(a) Subject to subclauses (8)(a), (9)(a), (9)(b), and (10)(a), an Employee, other than a casual Employee, is entitled to take—

- (i) up to fifty-two (52) consecutive weeks of unpaid leave; or
- (ii) if the Employee is the primary care giver, up to six (6) consecutive weeks of paid leave and a further 46 consecutive weeks of unpaid leave

in respect of —

- (iii) the birth of a child to the Employee or the Employee's spouse; or
- (iv) the placement of a child with the Employee with a view to the adoption of the child by the Employee.

(b) An Employee is not entitled to take parental leave unless he or she has given the Employer at least ten (10) weeks' written notice of his or her intention to take the leave unless otherwise agreed by the Employer and the Employee.

(c) An Employee is not entitled to take parental leave at the same time as the Employee's spouse but this clause does not apply to one week's paid parental leave—

- (i) taken by the male parent immediately after the birth of the child; or
- (ii) taken by the Employee and the Employee's spouse immediately after a child has been placed with them with a view to their adoption of the child.

(d) The entitlement to parental leave is reduced by any period of parental leave taken by the Employee's spouse in relation to the same child, except the period of one week's paid leave referred to above.

(e) An Employee who is a contract Employee cannot continue on paid parental leave beyond the expiry date of her or his contract.

(f) An Employee on parental leave may, with the agreement of the Employer, substitute any part of that leave by taking accrued annual or long service leave for the whole or part of the period of parental leave.

(g) An Employee on parental leave is not entitled to paid sick leave.

(h) Should the birth or adoption result in other than the arrival of a child, the Employee shall be entitled to such period of paid sick or other leave to which the Employee is entitled or unpaid leave for a period certified as necessary by a registered medical practitioner, up to a maximum of 26 weeks.

(i) 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 or other leave to which the Employee is entitled or unpaid leave for a period certified as necessary by a registered medical practitioner.

(7) Maternity leave to start six (6) weeks before birth

(a) A female Employee who has given notice of her intention to take parental leave, other than for an adoption, is to start the leave 6 weeks before the expected date of birth unless in respect of any period closer to the expected date of birth a medical practitioner has certified that the Employee is fit to work.

(8) Medical certificate

(a) An Employee who has given notice of his or her intention to take parental leave, other than for adoption, is to provide to the Employer a certificate from a medical practitioner stating that the Employee or the Employee's spouse, as the case may be, is pregnant and the expected date of birth.

(9) Notice of spouse's parental leave

(a) An Employee who has given notice of his or her intention to take parental leave or who is actually taking parental leave is to notify the Employer of particulars of any period of parental leave taken or to be taken by the Employee's spouse in relation to the same child.

(b) Any notice given under paragraph (a) is to be supported by a statutory declaration by the Employee as to the truth of the particulars notified.

(10) Notice of parental leave details

(a) An Employee who has given notice under subclause (6)(b) of intention to take parental leave is to provide four (4) weeks written notice to the Employer of the dates on which the Employee wishes to start and finish the leave.

(b) An Employee who is taking parental leave is to provide four (4) weeks written notice to the Employer of any change to the date on which the Employee wishes to finish the leave, provided that any extension does not exceed fifty-two (52) weeks in total

(c) The starting and finishing dates of a period of parental leave are to be agreed in writing between the Employee and Employer.

(d) An Employee seeking to adopt a child shall not be in breach of subclause (6)(b) 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 the child, or other compelling circumstances.

(e) An Employee on parental leave may terminate employment at any time during the period of the leave by providing four (4) weeks written notice.

(11) Return to work after parental leave

(a) On finishing parental leave, an Employee is entitled to the position he or she held immediately before starting parental leave.

(b) If the position referred to in paragraph (a) is not available, the Employee is entitled to an available position—

- (i) for which the Employee is qualified; and
- (ii) that the Employee is capable of performing, most comparable in status and at least equal in pay to that of his or her former position.

(c) Where, immediately before starting parental leave, an Employee was acting in, or performing on a temporary basis the duties of, the position referred to in paragraph (a), that provision applies only in respect of the position held by the Employee immediately before taking the acting or temporary position.

(12) Effect of parental leave on employment

(a) Absence on parental leave

- (i) does not break the continuity of service of an Employee; and
- (ii) is not to be taken into account when calculating the period of service for a purpose of a relevant workplace agreement, award or contract of employment.

(13) Carer's Leave

(a) An Employee is entitled to use up to five (5) days or ten (10) half days per annum of accrued sick leave for the purpose of providing care and support to a relative of an Employee or a member of the Employee's household when they are ill ("carer's leave").

(b) If so required, an Employee is to provide suitable proof of the person's illness and that it is such as to require another person's care.

(c) An Employee is not to take carer's leave if another person has taken leave to care for the same person.

(d) An Employee must give notice of intention to take carer's leave or, where the circumstances do not allow for such notice, the Employee must inform the Employer of the reason for absence at the earliest opportunity on the day of absence. In either case, the Employee must provide to the Employer—

- (i) the name of the person requiring care;
- (ii) that person's relationship to the Employee;
- (iii) the reasons for taking carer's leave;
- (iv) the estimated length of absence.

(e) An Employee may take unpaid carer's leave of any duration by arrangement with the Employer.

(14) Long Service Leave

(a) Each Employee who has completed—

- (i) a period of seven (7) years of continuous service in a permanent capacity; or
- (ii) ten (10) years of continuous service in a temporary capacity

shall be entitled to thirteen (13) weeks of long service leave on full pay.

(15) Pro Rata—Long Service Leave

(a) When an Employee's service is terminated for reasons other than misconduct, and the Employee has accrued at least three years continuous service since their last entitlement to long service, the Employee will be entitled to receive payment for the pro rata portion of the Employee's accrued long service leave.

(b) When an Employee aged 55 years or over retires the Employee will be paid pro rata accrued long service leave without the requirements to satisfy the provisions of paragraph (a).

(16) Election For Forty-eight (48) Weeks Pay Over Fifty-two (52) Weeks

(a) By agreement between the Employee and the Employer, the Employee may elect to receive forty-eight (48) weeks of pay spread over fifty-two (52) weeks, such that the Employee receives an additional four weeks leave.

(b) The Employer will not approve this request where in the Employer's opinion the operation of the Department will be adversely affected.

(c) The additional four (4) weeks may not be accrued.

(d) In the event that the Employee is unable to take such leave, the Employee's salary will be adjusted at the completion of the fifty-two (52) weeks to take account of the time worked during the year not included in the salary.

(e) Access to this election will be subject to the Employee having satisfied the Parliament's Leave Management policy

(17) Volunteer Emergency Services Leave

(a) With the agreement of the Employer, an Employee who is an active volunteer member of one of the recognised volunteer emergency services listed in paragraph (b) or another volunteer emergency service approved by Employer, may be granted paid leave for attendance at an emergency incident, including before and after an emergency incident.

(b) Recognised volunteer emergency services are: State Emergency Services, Bush Fire Service and Volunteer Sea Search and Rescue.

(c) The amount of paid leave will be determined by the Employer, taking into consideration the circumstances of the emergency incident.

24.—ANNUAL LEAVE LOADING

(1) Employees shall be paid an annual leave loading of 17.5% of the Employee's salary or wages for the period of annual leave entitlement in one lump sum in the first pay period in December in each year.

(2) Annual leave loading will be paid on a maximum of four (4) weeks annual leave per annum.

(3) An Employee's salary or wages for the purposes of this clause includes allowances or other payments which the Employee would normally receive whilst on annual leave.

25.—SPECIAL ALLOWANCE FOR CERTAIN EMPLOYEES

(1) Sessional Officers classified level 6 or above, Hansard Reporters, Subeditors and the Deputy Editor Parliamentary Debates receive a Special Allowance of \$5 500 per annum in recognition of the additional hours worked past 9.00 pm on sitting nights.

(2) The parties agree that the Special Allowance specified in subclause (1) will be amortised over a twelve (12) month period, such that the Employee will receive 1/26.0833 of \$5 500, each fortnight, in addition to the Employee's salary for ordinary hours worked.

(3) The parties agree that the amortisation of the Special Allowance specified in subclause (1) will take effect from 1 January 2001.

(a) The parties agree that the Special Allowance provisions of the 1998 Parliamentary Employees Enterprise Agreement will cease to have effect from 31 December 2000.

(b) In addition to the Special Allowance specified in subclause (1) Sessional Officers classified level 6 or above, Hansard Reporters, Subeditors and the Deputy Editor Parliamentary Debates are entitled to the Salary and Wage Increments contained in clause 26.

(c) Sessional Officers classified level 6 or above, Hansard Reporters, Subeditors and the Deputy Editor Parliamentary Debates may elect to either—

- (i) be paid the Special Allowance specified in subclause (1); or
- (ii) be credited with 200 hours time in lieu, on 1 January each twelve (12) months, in lieu of the Special Allowance specified in subclause (1), effective from 1 January 2001.

(d) An election under paragraph (c)(i) or (c)(ii) remains in place for twelve (12) months.

(4) The parties agree that the Employer or the Union, by notice in writing to the other party, four (4) weeks prior to the expiry of this Agreement, may—

- (a) At the expiry of this Agreement, withdraw the Special Allowance payment specified in clause 25.
- (b) Where either the Employer or Union has withdrawn the Special Allowance payment, in accordance with paragraph (a), the Special Allowance conditions of the *Parliamentary Employees Enterprise Agreement 1998* shall prevail.

- (c) Where the parties are silent, the Special Allowance payment as specified in clause 25, will continue until replaced.
- (d) The parties may agree to adjust the value of the Special Allowance payment after the expiry of this Agreement.

26.—SALARY AND WAGES INCREMENTS

(1) The following salary and wages increases shall be implemented in the two (2) instalments set out in this part during the term of this Agreement subject to the satisfactory achievement of the objectives pertaining to each instalment.

(a) First Instalment

- (i) The first instalment, being an increase in pay of three (3) per cent on pay levels immediately prior to registration of this Agreement, will take effect from the first complete pay period after the date that this Agreement is registered by the Western Australian Industrial Relations Commission.
- (ii) This instalment is in recognition of the full commitment by all Employees to the provisions of this Agreement and their effective implementation. This instalment also recognises the continuing productivity improvements in recent months achieved by the Parliament.

(b) Second Instalment

- (i) The second instalment, being an increase in pay of up to three (3) per cent on pay levels immediately prior to registration of this Agreement, will take effect from the first pay period twelve (12) months after registration of this Agreement.
- (ii) This instalment and the amount of this instalment is subject to and dependent upon Employees realising measurable and quantifiable productivity and efficiency gains in the workplace. Employees will receive a pay rise equivalent to half the percentage increase in productivity and efficiency gains actually achieved in the 12 months following registration of this Agreement up to a maximum of 3%.
- (iii) The benefit of productivity and efficiency gains which are realised shall be shared between the Employers and Employees in equal proportions.
- (iv) Productivity and efficiency gains that are realised as a result of initiatives commenced and implemented solely by or at the direction of the Employers shall not be taken into account in determining productivity and efficiency gains for the purposes of the second instalment pay increase.
- (v) To determine whether the proposed productivity and efficiency gains have been achieved, an assessment will be conducted by the SEBU.

27.—CAREER STRUCTURE FOR GARDENERS

(1) Within six months of the date of registration of this Agreement the parties, including the Head of the Parliamentary Services Department, the Building Services Manager, the Union and a representative of the Gardening Staff nominated by the Union shall conclude discussions for the purpose of establishing a new career structure for the Parliament House Gardeners.

28.—CODE OF CONDUCT

(1) The Code of Conduct contained in Schedule 4 applies to all Employees who are subject to this Agreement.

29.—GRIEVANCES

(1) The grievance resolution procedure will be that set out in Schedule 3.

(2) The parties agree to review the grievance resolution procedure within twelve (12) months of registration of this Agreement.

30.—DISPUTE SETTLEMENT PROCEDURES

(1) This dispute settlement procedure will apply to any questions, disputes or difficulties arising as to the meaning and effect of this Agreement:

(2) The Union representative and/or the Employee(s) concerned shall discuss the matters with the immediate supervisor

in the first instance. A Union representative may accompany an Employee.

(3) If the matter is not resolved within five (5) working days following the discussion in accordance with subclause (2) the matter shall be referred by the Union representative or Employee to the Employer for resolution.

(4) If the matter is not resolved within five (5) working days of the Union representative's or Employee's notification of dispute to the Employer, it may be referred by the Union or the Employer to the WAIRC.

SCHEDULE 1: PRODUCTIVITY IMPROVEMENT PLAN

Productivity Initiatives: Part 1

(1) The Employers and Employees will undertake the following productivity initiatives during the first three months of this Agreement.

(2) Continuation of productivity initiatives from the *Parliamentary Employees Enterprise Agreement 1998*, including improvements to work organisation practices and procedures, reductions in duplication and waste and introduction of new technology.

(3) Establishment and continuation of Workplace Teams in agreed priority areas and the identification of strategies to—

- (a) define all aspects of the service being delivered and in particular the—
 - (i) level of service currently provided;
 - (ii) level of demand for the service provided;
 - (iii) model of service delivery;
 - (iv) customer groups;
 - (v) service unit costs; and
 - (vi) issues impacting on the quality and level of services provided;
- (b) develop service standards which best meet the needs of customers; and
- (c) commence to develop key performance indicators that facilitate the measurement of actual performance against best practice benchmarks.

(4) Commencement of pilot projects to assess the effectiveness of the application of new technologies in the delivery of Hansard services, provided that a detailed analysis and costings are made before any financial or policy commitment is made to proceed with the implementation of such technology.

(5) Participation of staff in training programs consistent with clause 20 of this Agreement.

Productivity Initiatives: Part 2

(1) The Employers and Employees will undertake or finalise the following productivity initiatives during the first twelve (12) months of this Agreement. Continuation of those productivity initiatives that span the life of this Agreement.

(2) Continuation of those productivity initiatives identified at Schedule 1, Part 1.

The ongoing development and performance of Workplace Teams as reflected in the effective implementation of workplace strategies identified pursuant to Schedule 1, Part 1(2) including, but not restricted to, the following—

- (a) identifying options for the provision of services by alternative means including technological innovation, improved resource management, innovative work practices etc;
- (b) evaluating options for the future delivery of services as to cost, quality, and responsiveness to customers' needs, and recommending preferred options for future implementation;
- (c) applying key performance indicators in the measurement of actual performance against best practice benchmarks;
- (d) facilitating the open and transparent market testing of services to Parliament where feasible and desirable;
- (e) implementing the business plans and corporate plans of the Parliament;
- (f) accommodating staff within the expanded parliamentary precinct (including annexes) in a way that is

consistent with the principles of Occupational Safety and Health and promotes Employee effectiveness, while increasing the net accommodation available to members of the Parliament within the parliamentary precinct; and

- (g) development of a productivity measurement matrix to quantify productivity and efficiency gains which may be revised from time to time by agreement.

Productivity Measurement

The parties agree to the following principles of productivity measurement—

- (1) The parties and Employees recognise that productivity improvement may take the form of a benefit or improvement of service to customers of the Parliament without a direct quantifiable financial gain to the Parliament.
- (2) Productivity improvement is central to the success of the enterprise bargaining process. The Employers and Employees will refine performance measurement systems during the life of this Agreement and they may represent a combination of both qualitative and quantitative measures.
- (3) Performance measures should be developed taking into account indicators including: outcome, output, process, equity, efficiency, effectiveness and quality.

SCHEDULE 2A: REMUNERATION SCALES

Parliamentary Officers—Salaries

Rates of Pay

Classification	EBA Salary Per Annum as at 26/5/2000	EBA Salary upon Registration	EBA Salary 12 months after Registration	EBA Salary Per F/Night 12 months after Registration
LEVEL 1				
Under 17 Years	12,681.64	13,062.09	13,442.54	515.04
17 Years	14,820.57	15,265.19	15,709.80	601.91
18 Years	17,286.92	17,805.53	18,324.14	702.07
19 Years	20,010.07	20,610.37	21,210.67	812.67
20 Years	22,471.07	23,145.20	23,819.33	912.62
21 Years or 1st Year	24,684.90	25,425.45	26,165.99	1,002.53
22 Years or 2nd Year	25,619.01	26,387.58	27,156.15	1,040.47
23 Years or 3rd Year	26,588.43	27,386.08	28,183.74	1,079.84
24 Years or 4th Year	27,595.30	28,423.16	29,251.02	1,120.73
25 Years or 5th Year	28,639.62	29,498.81	30,358.00	1,163.14
26 Years or 6th Year	29,723.53	30,615.24	31,506.94	1,207.16
27 Years or 7th Year	30,849.17	31,774.65	32,700.12	1,252.88
LEVEL 2				
1st Year	31,918.10	32,875.64	33,833.19	1,296.29
2nd Year	32,737.72	33,719.85	34,701.98	1,329.58
3rd Year	33,600.14	34,608.14	35,616.15	1,364.60
4th Year	34,510.71	35,546.03	36,581.35	1,401.58
5th Year	35,464.08	36,528.00	37,591.92	1,440.30
LEVEL 3				
1st Year	36,773.76	37,876.97	38,980.19	1,493.49
2nd Year	37,793.47	38,927.27	40,061.08	1,534.91
3rd Year	38,846.35	40,011.74	41,177.13	1,577.67
4th Year	39,925.98	41,123.76	42,321.54	1,621.51
LEVEL 4				
1st Year	41,406.86	42,649.07	43,891.27	1,681.66
2nd Year	42,567.81	43,844.84	45,121.88	1,728.81
3rd Year	43,761.93	45,074.79	46,387.65	1,777.30
LEVEL 5				
1st Year	46,061.36	47,443.20	48,825.04	1,870.69
2nd Year	47,616.07	49,044.55	50,473.03	1,933.83
3rd Year	49,231.77	50,708.72	52,185.68	1,999.45
4th Year	50,907.39	52,434.61	53,961.83	2,067.50
LEVEL 6				
1st Year	53,602.72	55,210.80	56,818.88	2,176.97
2nd Year	55,435.63	57,098.70	58,761.77	2,251.41
3rd Year	57,331.67	59,051.62	60,771.57	2,328.41
4th Year	59,356.11	61,136.79	62,917.48	2,410.63
LEVEL 7				
1st Year	62,461.25	64,335.09	66,208.93	2,536.74
2nd Year	64,609.81	66,548.10	68,486.40	2,624.00
3rd Year	66,946.69	68,955.09	70,963.49	2,718.91

Classification	EBA Salary Per Annum as at 26/5/2000	EBA Salary upon Registration	EBA Salary 12 months after Registration	EBA Salary Per F/Night 12 months after Registration
LEVEL 8				
1st Year	70,745.19	72,867.55	74,989.90	2,873.18
2nd Year	73,466.20	75,670.19	77,874.172	2,983.68
3rd Year	76,840.98	79,146.21	81,451.4388	3,120.74
LEVEL 9				
1st Year	81,054.64	83,486.28	85,917.92	3,291.87
2nd Year	83,900.84	86,417.87	88,934.89	3,407.47
3rd Year	87,148.29	89,762.74	92,377.19	3,539.36
LEVEL 2/4				
1st Year	31,918.10	32,875.64	33,833.19	1,296.29
2nd Year	33,600.14	34,608.14	35,616.15	1,364.60
3rd Year	35,464.08	36,528.00	37,591.92	1,440.30
4th Year	37,793.47	38,927.27	40,061.08	1,534.91
5th Year	41,406.86	42,649.07	43,891.27	1,681.66
6th Year	43,761.93	45,074.79	46,387.65	1,777.30

SCHEDULE 2B: PARLIAMENTARY SUPPORT SERVICES EMPLOYEES

Rates of Pay

	EBA Salary Per Fortnight 26/5/2000	EBA Salary upon Registration	EBA Salary Per Fortnight 12 months after Registration	EBA Salary Hourly 12 months after Registration
<i>Kitchenhands and Gardeners</i>				
1st year of service	905.23	932.39	959.54	12.6256
2nd year of service	915.96	943.44	970.92	12.7752
3rd year of service	925.06	952.81	980.56	12.9022
<i>Steward/Cleaner</i>				
1st year of service	950.42	978.93	1007.45	13.2559
2nd year of service	960.93	989.76	1018.59	13.4024
3rd year of service	969.55	998.64	1027.72	13.5227
<i>Steward/Cleaner & Rlg Bar Attendant</i>				
1st year of service	974.30	1003.53	1032.76	13.5889
2nd year of service	985.31	1014.87	1044.43	13.7425
3rd year of service	995.60	1025.47	1055.34	13.8860
<i>Cook (Cakes and Second)</i>				
1st year of service	1004.21	1034.34	1064.46	14.0061
2nd year of service	1015.43	1045.89	1076.36	14.1626
3rd year of service	1025.25	1056.01	1086.77	14.2995
<i>Assistant Chief Steward</i>				
1st year of service	1029.07	1059.94	1090.81	14.3528
2nd year of service	1043.91	1075.23	1106.54	14.5598
3rd year of service	1057.30	1089.02	1120.74	14.7466
<i>Horticulturist (Certificate)</i>				
1st year of service	1047.97	1079.41	1110.85	14.6164
2nd year of service	1060.40	1092.21	1124.02	14.7898
3rd year of service	1070.55	1102.67	1134.78	14.9314
<i>Tradesperson Cook</i>				
1st year of service	1098.16	1131.10	1164.05	15.3164
2nd year of service	1108.22	1141.47	1174.71	15.4568
3rd year of service	1117.06	1150.57	1184.08	15.5800
<i>Chef, Chief Steward and Bar Attendant</i>				
1st year of service	1184.73	1220.27	1255.81	16.5239
2nd year of service	1199.31	1235.29	1271.27	16.7272
3rd year of service	1214.38	1250.81	1287.24	16.9374
<i>Foreperson of Horticulture</i>				
1st year of service	1152.94	1187.53	1222.12	16.0805
2nd year of service	1164.41	1199.34	1234.27	16.2405
3rd year of service	1174.21	1209.44	1244.66	16.3771
<i>Apprentice Cook</i>				
1st year of service (42%)	461.23	475.07	488.90	6.4329
2nd year of service (55%)	609.52	627.81	646.09	8.5012
3rd year of service (75%)	837.80	862.93	888.07	11.6851
4th year of service (88%)	983.01	1012.50	1041.99	13.7104
<i>Chef</i>				
1st year of service	1276.43	1314.72	1353.02	17.8028
2nd year of service	1382.81	1424.29	1465.78	19.2866
3rd year of service	1397.88	1439.82	1481.75	19.4967

Sous Chef

1st year of service	1157.81	1192.54	1227.28	16.1484
2nd year of service	1199.92	1235.92	1271.92	16.7357
3rd year of service	1208.76	1245.02	1281.29	16.8590

SCHEDULE 3: GRIEVANCES

Parliamentary Grievance Resolution Policy

(1) Definition

A "grievance" is a formal complaint or expression of concern made by an Employee to a supervisor where the basis of that complaint or concern is the Employee's belief that he or she has been subjected to unlawful, unfair or inequitable treatment including, but not limited to, employment and leave arrangements, work practices, workplace conflicts, health or safety issues, harassment or discrimination.

(2) Principles

- All grievances will be considered seriously and impartially.
- If possible, grievances should be resolved informally and as quickly as possible by the parties directly involved.
- When grievances cannot be resolved by the persons directly involved, the formal grievance process is to be followed.
- Supervisors and managers will attempt to resolve grievances within a reasonable time.

(3) Procedure for Dealing with an Informal Grievance

- Any Employee may refer a grievance to his or her appropriate supervisor, or more senior manager.
- The grievance shall be referred as soon as practicable after the occurrence giving rise to the grievance so as to enable its prompt resolution.
- Supervisors will try to resolve the grievance through informal process within 10 working days.
- During the informal process the parties involved in the grievance have the right to seek assistance from appropriate persons, including Unions.

(4) Procedure for Dealing with a Formal Grievance

- When the informal process does not or is not likely to satisfactorily resolve the grievance, any party directly involved may have the matter dealt with through the formal grievance process.
- A formal grievance process shall be initiated in writing to a senior manager nominated by the Departmental Head, either generally or in a particular case.
- During the formal process the parties to the grievance have the right to seek assistance from appropriate persons, including Unions.
- The responsible manager will—
 - obtain a broad outline of each involved party's claims relating to the grievance;
 - attempt to agree with the parties involved on a timetable for resolution of the grievance;
 - take brief notes;
 - maintain an appropriate level of confidentiality of the proceedings and ensure security of records associated with the proceedings;
 - initiate any inquiries considered necessary or desirable to satisfactorily resolve the grievance; and
 - make a determination and inform the involved parties in writing of the outcome of the grievance process and any decision made as a result.

Schedule 4: Code of Conduct

For Employees of the Parliament of Western Australia

Introduction

(1) This Code of Conduct outlines the standard of behaviour expected of all employees of the Parliament. It is designed to help you understand your responsibilities and obligations, and provide guidance if you are faced with an ethical dilemma or conflict of interest in your work. In committing itself to this Code of Conduct the Employers will provide the support

and backing necessary to give employees the confidence to act in conformity with the Code.

(2) Please familiarise yourself with this Code and observe their provisions.

(3) A code of conduct cannot cover every situation. If you are unsure of the appropriate action to take in a particular situation, discuss the matter with your colleagues, supervisor or your Head of Department. This may include acting on behaviour that you believe violates any law, rule or regulation, or represents gross mismanagement, or endangers public health or safety.

Personal and Professional Behaviour

(1) How should I serve the Parliament?

You have a principal responsibility to provide effective apolitical support and assistance, and a relevant and timely service to the Parliament, its members, their staff, committees and members of the public. You may hold views on particular matters that differ from those of the elected Government or the Opposition, but such views must not interfere with the performance of your duties. This does not include industrial action relating to terms and conditions of employment. Provide a service to the Parliament regardless of which political party or parties are in office. Act in the best interests of the Parliament rather than for the benefit of sectional interests. Endeavour to provide assistance in a pro-active manner.

(2) What is expected of me?

Your supervisor is obliged to ensure that instructions given to you are ethical, lawful and reasonable. You are expected to promptly and correctly carry out duties pertaining to your position or any other duty that you are lawfully expected to perform.

If you have grounds for complaint, whether ethical or otherwise, arising out of those directions, you should discuss and attempt to resolve the matter with your supervisor. If you are still dissatisfied, you may lodge a personal grievance to have the matter resolved. You must continue to carry out any lawful directions that you may be given until the matter is resolved.

Act with propriety and be able to demonstrate this in relation to any advice or service you give. You must be able to justify any decisions you make.

Regularly review the way you carry out your duties in an effort to identify improvements to administrative systems and procedures to achieve optimal effectiveness, efficiency and responsiveness.

Strive to attain value for public money, and avoid waste and extravagance in the use of public resources.

Use organisational facilities and other physical resources for their proper purpose and maintain them properly.

Obtain approval from your supervisor for the use of facilities such as computers, printers and photocopiers for study or other legitimate, non-profit purposes.

Where possible you must seek prior approval before being absent from duty. If you are unable to attend or you wish to be released from duty owing to unforeseen circumstances, you should ensure that the appropriate officer is notified at the earliest opportunity. If you are absent (perhaps because of illness), you must attempt to report your absence to your supervisor prior to the time you are expected to commence duty, but certainly as soon as possible.

Your activities outside working hours must not diminish public confidence in the Western Australian Parliament or your ability to perform your duties.

(3) How can we help to ensure a safe working environment?

(a) Employer's Responsibility

An employer must as far as practicable provide and maintain a working environment where employees are not exposed to hazards.

Employees have the right to refuse to work in a situation where they are at risk of injury or their health may be adversely affected.

(b) Employee's Responsibility

Employees must take reasonable care to ensure their own health and safety and to avoid adversely affecting the health or safety of any other person in the workplace through any act or omission.

Any occupational hazard or accident resulting in injury should be reported to your supervisor immediately. Incidents or hazards which may initially seem minor should be reported in writing, as they may worsen with time. Accidents involving motor vehicles during working hours must be reported to your supervisor immediately.

If you are concerned about any aspect of safety in the workplace, contact your supervisor or manager.

(4) How am I protected against discrimination and harassment?

The Employers consider it the right of every individual to be treated fairly and with respect and to carry out his or her job in an environment which promotes job satisfaction, maximises productivity, and provides economic security. Such an environment is dependent on employees being free of all forms of harassment and victimisation. You must not harass anyone (sexually or otherwise) or discriminate on the grounds of, for instance, sex; sexual preference; age; marital status; pregnancy; the state of being a parent, childless or a de facto spouse; race; colour; national extraction; lawful religious or political belief or activity; or mental or physical impairment. The principles of the Western Australian and the Commonwealth equal employment opportunity and anti-discrimination legislation are fully supported.

(5) Can I consume alcohol or use drugs while at work?

The consumption of alcohol or the improper use of drugs or other substances must not adversely affect your work performance or official conduct.

(6) Can I smoke while at work?

The Parliament has a policy which, broadly speaking, promotes the workplace as a non-smoking area. Your Departmental Head will have a copy of the guidelines.

(7) What should I do if I am charged with a criminal offence?

Any criminal offence of which you have been found guilty either prior to commencing, or during your parliamentary employment, except where the offence is covered by a prescribed spent convictions scheme, must be reported to your Head of Department. If you are charged with any criminal offence punishable by imprisonment during your parliamentary employment, immediately advise your Head of Department.

(8) How should I handle intellectual property?

Intellectual property can be some original research, training program, computer program or document which an officer produces in the course of his or her duties. Since the Parliament has funded the officer's time during the development of the intellectual property, the rights and benefits from that intellectual property should accrue to the Parliament.

(9) What happens if I attend court?

Should you be summoned or called as a witness or juror in a court of law or any legally constituted inquiry, advise your Head of Department immediately and, unless otherwise exempted, attend the court or inquiry as specified.

Some staff may be exempted from jury duty under the Juries Act 1957. The sittings of the Parliament have a greater priority to your services than the courts and an excuse from service, for that reason, may be sought by your Head of Department during sitting periods.

If attending in an official capacity, under a subpoena or order, to give evidence or to produce papers in any court, you are required to pay any fees you receive to your Departmental budget. Provide an account and vouchers of all the necessary expenses, if any, incurred in the performance of such duty to your Head of Department.

(10) Can I participate in seminars and related activities?

Obtain the prior approval of your Head of Department before addressing or chairing seminars organised by professional conference organisers.

Pay any fee received for any seminar participation in your professional capacity to your Departmental budget, unless you are specifically exempted in writing from this requirement by your Head of Department.

(11) Can I keep fees for the performance of official duties?

No. You may receive a fee for performing a function as part of your official duties, such as lecture fees or as a result of your employment in the Parliament. This fee must be paid into your Departmental budget.

(12) Can I accept gifts and favours?

You should not seek or accept favours or gifts, unless of a token nature, for services performed in connection with your official duties. Included in this category are gifts in kind, such as free accommodation or travel or entertainment vouchers whether for you or members of your family. The general principle to be followed is that you should not seek or accept favours or gifts from anyone who could benefit by influencing you.

(13) How can I prevent patronage or favouritism?

You must not use your position to obtain a private benefit for someone else. Your decisions must not be improperly influenced by family or other personal relationships.

(14) How should I handle financial matters?

Ensure that in financial matters, including the handling of moneys, there is full accountability in relation to any advice or transaction in which you may be involved. If you have financial responsibilities, observe the relevant legislative and regulatory requirements.

Use and Release of Information

(1) Can I make a public comment?

Public comment includes public speaking engagements, comments on radio and television and expressing views in letters to the newspapers or in books, journals or notices where it might be expected that the publication or circulation of the comment will spread to the community at large.

As a member of the community, you have the right to make public comment and enter into public debate on political and social issues. However, there are circumstances in which public comment is inappropriate, unless specifically authorised by the Presiding Officers or the Head of your Department. No comment is to be made on any matter to do with your work or the work of the Parliament without the express approval of your Head of Department. These include circumstances where—

- (a) the implication that the public comment, although made in a private capacity, is in some way an official comment on Government/Opposition policy or programs; and
- (b) an employee is directly involved in advising or directing the implementation or administration of policy, and public comment would compromise the employee's ability to do so.

Any public comment or behaviour should not compromise your ability to serve the Parliament in an apolitical manner.

(2) How should I handle official information?

You must not use or communicate official information for other than official purposes without the permission of your Head of Department (except where such information has already been made available officially to the public). This includes leaking information to the media. You must not take improper advantage of any information gained in the course of your employment. You may disclose official information that is normally given to members of the public seeking that information. However, if you are in any doubt when responding to a request for information, you should seek advice from your Head of Department.

Only disclose other official information or documents acquired in the course of your parliamentary employment when required to do so by law, in the course of duty, when called to give evidence in court, or when proper authority has been given. In such cases your comments should be confined to factual information and should not express opinion on official policy or practice.

If required to give evidence in court on parliamentary matters, seek the advice of your Head of Department or Presiding Officer on whether or not parliamentary privilege applies to any evidence which you might otherwise give.

If you believe an aspect of policy or administration may have unforeseen consequences or otherwise requires review,

then bring it to the attention of your supervisor or other appropriate authority.

(3) How should I treat private information?

It may be that you have access to personal information relating to other employees or members of the public. This information will have been provided to your Department on the understanding that it will be used only for a specific purpose and will remain confidential.

You must store this information securely, and not disclose it to any person except in the course of your official duties.

Unethical Behaviour

(1) What should I do about unethical behaviour?

Report any unethical behaviour or wrongdoing by any other employee to an appropriate senior officer. This may include behaviour that you believe violates any law, rule or regulation, or represents gross mismanagement, or is a danger to public health or safety.

You will be protected against discrimination for reporting unethical behaviour or wrongdoing unless your allegation is both false and not made in good faith.

Corruption

(1) What is corruption in the workplace?

The *Australian Legal Dictionary* describes corruption as "generally any conduct, where in return for a consideration, a person does or neglects to do, an act in contravention of his or her public duties".

Corruption in the workplace is a very serious matter. If you think corruption has occurred or is occurring in the workplace, you are obliged to report it. The *Anti-Corruption Commission Act* provides a mechanism for reporting corrupt activities. Anyone in the community can report matters to the Anti-Corruption Commission (ACC). The details of such reports are kept confidential. The reporting of corrupt activities is an extremely sensitive issue and the ACC may be contacted for advice on the procedures involved.

Parliamentary Committees

(2) How should I give information and evidence to Parliamentary Committees?

If you are asked to appear before a Parliamentary Committee you should inform your Head of Department. Information sought by Committees should be provided subject to direction given by the Presiding Officers or your Head of Department. Official witnesses should be co-operative and frank when giving factual information. You are not expected to answer questions—

- seeking your personal views on Government or Opposition policy;
- seeking details of matters relating to a decision or possible decision of the Presiding Officers, unless those details have already been made public or the giving of such evidence has been approved; or
- requiring a personal judgment on the administration of the Western Australian Parliament.

If you are directed to answer a question falling within the coverage of the categories listed above, seek a deferral until you can discuss the matter with the Presiding Officers or your Head of Department as appropriate. Alternatively, you can request that the answer to the particular question be reserved for submission in writing.

Conflict of Interest

(1) How can I avoid a conflict of interest?

A conflict of interest with official duties may arise for various reasons and, as an individual, you may have private interests that from time to time conflict with your duties as a Parliamentary employee. However, there is a reasonable public expectation that where such conflict occurs it will be resolved in favour of the public interest rather than your own.

Disclose potential conflicts of interest to your supervisor or Head of Department when dealing in the course of official duties with relatives, close friends or business acquaintances.

You should neither buy nor sell shares in a company at a time when you possess confidential information gained by your employment that could, if publicly disclosed, affect the value of such shares.

It is not possible to define all potential areas of conflict of interest and if you are in doubt as to whether a conflict exists, seek advice from your Head of Department. In some circumstances, the appearance of a conflict of interest could itself jeopardise your public integrity. You are required to declare to your Head of Department any conflict of interest that arises or is likely to arise. You should stand down from any decision making process where such a conflict might occur.

Immediately report to your Head of Department any circumstances where an offer of a benefit or gift is made, regardless of whether it is accepted, if you think that such circumstances involve an attempt to induce favoured treatment.

Where a gift is given without your prior knowledge or consent or where a gift is given as a token of goodwill to the State, inform your Head of Department as soon as possible. Gifts of more than token value remain the property of the Department.

Organisations vary in their policies on accepting gifts and benefits depending on the nature of their business. It is expected, however, that token gifts in the nature of souvenirs, mementos or symbolic items of low material value may be accepted in circumstances approved by your Head of Department.

Outside Employment

(1) Can I also work outside the Parliament?

You must not engage in outside employment or in the conduct of a business, trade or profession if it will or may result in a conflict of interest or adversely affect your work performance or official conduct. You must inform your Head of Department of any outside employment or business, trade or profession that you are engaged in or intend engaging in.

Signatures of Parties

Signed for and on behalf of

Civil Service Association of Western Australia Incorporated

<i>Toni Beverley Walkington</i>	<i>Toni Walkington (signed)</i>
Full Name	Signature
	Date <u>28 / 12 / 2000</u>

Signed for and on behalf of

Media, Entertainment and Arts Alliance of Western Australia (Union of Employees)

Steven J. Shaw	S J Shaw (signed)
Full Name	Signature
	Date <u>02 / 01 / 01</u>

Signed for and on behalf of

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

Dave Kelly	D Kelly (signed)
Full Name	Signature
	Date <u>02 / 01 / 01</u>

Signed for and on behalf of the Employer

	George Cash (signed)
Full Name	Signature
	Date <u>19 / 12 / 2000</u>
	George J Strickland (signed)
Full Name	Signature
	Date <u>19 / 12 / 00</u>

QUALITY ASSURED PROJECTS/BLPPU AND THE CMETU COLLECTIVE AGREEMENT 2000.

No. AG152 of 2000.

2000 WAIRC 00025

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

PARTIES THE WESTERN AUSTRALIAN BUILDERS' LABOURERS, PAINTERS & PLASTERERS UNION OF WORKERS, CONSTRUCTION, MINING, ENERGY, TIMBERYARDS, SAWMILLS AND WOODWORKERS UNION OF AUSTRALIA—WESTERN AUSTRALIAN BRANCH V VALK COMPUTER SYSTEMS PTY LTD TRADING AS QUALITY ASSURED PROJECTS

CORAM COMMISSIONER J F GREGOR

DELIVERED TUESDAY, 11 JULY 2000

FILE NO/S APPLICATION No. AG 152 OF 2000

Result The Agreement has now been registered.
Representation
Applicant/ Appellant Ms J Harrison on behalf of the applicant.
Respondent No appearance on behalf of the respondent.

Quality Assured Projects/BLPPU and The CMETU Collective Agreement 2000

Order.

HAVING heard Mr P Joyce on behalf of the (Applicant) and there being no appearance on behalf of the (Respondent), and by consent, the Commission pursuant to the powers conferred on it under the *Industrial Relations Act, 1979* hereby orders—

THAT the agreement made between Quality Assured Projects/BLPPU and the CMETU Collective Agreement 2000 to be registered in terms of the following schedule as an Industrial Agreement and replaces Quality Assured Projects/BLPPU and the CMETU Collective Agreement No. AG 264 of 1997.

(Sgd.) J. F. GREGOR,
 Commissioner.

[L.S.]

Schedule.

1.—TITLE

This agreement shall be known as the *Quality Assured Projects / BLPPU and the CMETU Collective Agreement 2000.*

2.—ARRANGEMENT

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Clause No.

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3.—PARTIES AND PERSONS BOUND

This agreement shall be binding on *Valk Computer Systems Pty Ltd T/A Quality Assured Projects* (hereinafter referred to as “the company”), the Western Australian Builders’ Labourers, Painters and Plasterers Union of Workers and the Construction Mining Energy Timberyards Sawmills and Woodworkers Union of Australia—WA Branch (hereinafter referred to as “the unions”) and all employees of the company eligible to be members of the unions.

4.—APPLICATION

This agreement shall apply to all employees of the company engaged on work in or in connection with construction, alteration, maintenance, repair or demolition of buildings or other structures of any kind whatsoever. However, when employees are undertaking work in the employer’s yard, the wages and conditions shall be as agreed between the parties.

This agreement shall apply in Western Australia only. There are approximately 2 employees covered by this agreement.

5.—RELATIONSHIP TO PARENT AWARD

1. This agreement is supplementary to, and shall be read and interpreted wholly in conjunction with, the Building Trades (Construction) Award 1987, Award No. R14 of 1978 (hereinafter referred to as “the award”).

2. In the event of any inconsistency between the award and an express provision of this agreement, the terms of this agreement shall prevail to the extent of such inconsistency, unless the express provision of the agreement provides otherwise.

6.—PERIOD OF OPERATION

This agreement shall come into force from the first pay period commencing on or after November 1st 1999 and shall remain in force until the 1st of November, 2002.

7.—CLASSIFICATION STRUCTURE & RATES OF PAY

1. All employees working under this agreement shall be paid according to the wage rates set out below.

2. Wage Rates (per hour at ordinary time)

	Previous EBA Rate Hourly Rate \$	1st November 1999 Hourly Rate \$	1st November 2000 Hourly Rate \$	1st November 2001 Hourly Rate \$
Labourer Group 1	17.15	18.01	18.91	19.86
Labourer Group 2	16.56	17.39	18.26	19.17
Labourer Group 3	16.12	16.93	17.78	18.67
Plaster, Fixer	17.82	18.71	19.65	20.63
Painter, Glazier	17.42	18.29	19.20	20.16
Signwriter	17.80	18.69	19.62	20.63
Carpenter/Roofer	17.93	18.85	19.79	20.78
Bricklayer	17.75	18.63	19.61	20.59
Refractory				
Bricklayer	20.38	21.40	22.47	25.59
Stonemason	17.93	18.82	19.76	20.75
Roofitiler	17.62	18.50	19.43	20.40
Marker/Setter Out	18.46	19.38	20.35	21.37
Special Class T	18.69	19.62	20.61	21.64

APPRENTICE RATES

	Previous EBA Rate Hourly Rate \$	1st November 1999 Hourly Rate \$	1st November 2000 Hourly Rate \$	1st November 2001 Hourly Rate \$
Plasterer, Fixer				
Year 1	7.48	7.86	8.25	8.66
Year 2 (1/3)	9.81	10.29	10.81	11.35
Year 3 (2/3)	13.37	14.03	14.74	15.47
Year 4 (3/3)	15.69	16.46	17.29	18.15

	Previous EBA Rate Hourly Rate \$	1st November 1999 Hourly Rate \$	1st November 2000 Hourly Rate \$	1st November 2001 Hourly Rate \$
Painter. Glazier				
Year 1 (.5/3/5)	7.32	7.68	8.06	8.47
Year 2 (1/3), (1.5/3.5)	9.58	10.06	10.56	11.09
Year 3 (2/3), (2.5/3.5)	13.06	13.72	14.40	15.12
Year 4 (3/3), (3.5/3.5)	15.33	16.10	16.90	17.74
Signwriter				
Year 1 (.5/3.5)	7.48	7.85	8.24	8.66
Year 2 (1/3, 1.5/3.5)	9.78	10.28	10.79	11.35
Year 3 (2/3, 2.5/3.5)	13.35	14.02	14.72	15.47
Year 4 (3/3, 3/5/3.5)	15.66	16.45	17.27	18.15
Carpenter/Roofer				
Year 1	7.54	7.92	8.31	8.73
Year 2 (1/3)	9.86	10.37	10.88	11.43
Year 3 (2/3)	13.45	14.14	14.84	15.59
Year 4 (3/3)	15.78	16.59	17.42	18.29
Bricklayer				
Year 1	7.46	7.82	8.24	8.65
Year 2 (1/3)	9.76	10.25	10.79	11.32
Year 3 (2/3)	13.31	13.97	14.71	15.44
Year 4 (3/3)	15.62	16.39	17.26	18.12
Stonemason				
Year 1	7.54	7.92	8.31	8.73
Year 2 (1/3)	9.86	10.37	10.88	11.43
Year 3 (2/3)	13.45	14.14	14.84	15.59
Year 4 (3/3)	15.78	16.59	17.42	18.29
Rooftiler				
6 months	10.04	10.54	11.07	11.62
2nd 6 months	11.04	11.59	12.17	12.78
Year 2	12.90	13.55	14.23	14.94
Year 3	15.14	15.90	16.70	17.54

3. All expense related allowances not specifically mentioned in this agreement will be paid as per the award as varied from time to time.

4. Site allowances relating to particular sites shall be paid in accordance with Appendix B of this Agreement.

5. An additional payment will be made to compensate for the impact of the Goods and Services Tax on the Consumer Price Index. In the circumstance that the CPI limit below is exceeded the appropriate additional payment will be made to the wage rates. The CPI figure for the applicable dates will be the official figure released by the ABS for the preceding year.

Date	CPI Limit	Additional Payment
June 2001	5%	1% (paid 1/9/2001)
June 2001	6%	2% (paid 1/9/2001)
June 2002	5%	1% (paid 1/9/2002)
June 2002	6%	2% (paid 1/9/2002)

8.—INDUSTRY STANDARDS

Redundancy

The company shall increase redundancy contributions on behalf of each employee to the following sums on a weekly basis—

Rate on signing	\$50
Rate as of 1/05/2001	\$60

Superannuation

(i) The Company will make a payment of \$60 per week per employee or the percentage rate that is prescribed under the Superannuation Guarantee Charge, whichever is the greater.

The Company will advise all employees subject to the Agreement of their right to have payments made to a complying superannuation fund of their choice. The Company is bound by the employee's election. The aforementioned payment will then be made to that fund.

Until each employee nominates the fund of their choice the Company will make payments into the Construction + Building Unions Superannuation Scheme (the "C+BUSS").

In the event that any employee chooses a fund other than the C+BUSS the Company will, within seven days of the

employee advising the Company of the fund of their choice, advise the Union in writing of the employee's decision.

In the event that the employee and the Company reach an agreement pursuant to section 49C(2)(d) of the Act to change the complying superannuation fund or scheme the Company will, within seven days of the employee and the Company reaching such an agreement, advise the Union in writing of the agreement. The employer shall not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by the employee.

(ii) "Ordinary Time Earnings" (which for the purposes of the Superannuation Guarantee (Administration) Act 1992 will operate to provide a notional earnings base) shall mean the actual ordinary rate of pay the employee receives for ordinary hours of work including tool allowance, industry allowance, trade allowances, shift loading, special rates, qualification allowances (eg. first aid, laser safety officer), multi-storey allowance, site allowance, asbestos eradication allowance, leading hand allowances, in charge of plant allowance and supervisory allowances where applicable. The term includes any regular over-award pay as well as casual rates received and any additional rates and allowances paid for work undertaken during ordinary hours of work, including fares and travel.

9.—SICK LEAVE

For sick leave accrued after the date of signing this agreement the following will apply—

- The Company's employees shall have the option of converting 100% of accrued sick leave entitlement to a cash payment on termination
- If an employee who has been terminated by the Company without exercising the above option is re-engaged within a period of six months, the unpaid balance of sick leave shall continue from the date of re-engagement.
- Where the Company has signed a previous Agreement with the Union that also allowed for the conversion to cash payment on termination for accrued sick leave, that accrued sick leave will be treated as if is accrued under this agreement.
- Sick leave shall accrue, for the purposes of this clause, at the rate of one day at the beginning of each of the first ten calendar months of each year.
- Employees shall have the option of converting to a cash payment all sick leave entitlements over 5 days. Payment shall be made on the last pay period prior to the Christmas closedown.

10.—NEGOTIATION OF A SUBSEQUENT AGREEMENT

The parties agree to commence negotiations for a new collective agreement to succeed this agreement at least 3 months before the nominal expiry date. The parties intend to conclude these negotiations prior to the nominal expiry date. These negotiations shall be conducted on a collective basis between all of the parties with the negotiated outcome being subject to approval of a vote of the employees collectively.

11.—APPLICATION OF PROJECT AGREEMENTS

1. This agreement shall apply to all persons employed in the employer's business and every part thereof throughout Western Australia until 1st November 2002 except where the company commences work on a project where a site agreement to which the union is a party exists that provides for higher rates of pay and conditions.

2. The conditions contained in any such site agreement will take precedence over this agreement for the duration of the project.

12.—FARES AND TRAVELLING ALLOWANCE

In addition to Clause 12A of the award a travel payment shall be made in the form of a daily payment (on days worked) of \$6.15 per day per employee.

13.—SENIORITY

1. The parties agree the continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

2. When applying the “first on last off” principle it is agreed subject to the caveat of “all things being equal”, it is intended to apply on a Company basis rather than a site by site basis.

3. It is recognised that from time to time instances may arise where the employee’s individual skills may be subject to this caveat. Where there is any disagreement as to the application of this the matter will be processed in accordance with Clause 16—Dispute Settlement Procedure.

4. An employee who has been retrenched by the Company shall have absolute preference and priority for re-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

14.—ALL IN PAYMENTS

1. All-in payments to employees will not be made. All-in payments are defined as an hourly rate or piece work rate which is meant to cover wages and all allowances, such as annual leave, sick leave, etc., on which tax is being paid using the Prescribed Payments System.

2. It is agreed that where a breach of this clause is discovered, the employer shall continue paying the “all-in” rate as the employees hourly rate, but shall pay all award and other entitlements on top of this amount, back-dated to the commencement of the all-in rate arrangement. The company shall not be entitled to offset any amount in excess of the ordinary hourly rate against any other entitlement in this agreement.

3. This clause shall not be applied to prevent the employer subletting specialised work outside of the normal scope of work which the employer performs. The union shall be notified when specialist sub-contractors are to be engaged.

15.—PYRAMID SUB-CONTRACTING

1. “Pyramid Sub-Contracting” is defined as the practice of a sub-contractor, to whom a sub-contract is originally awarded, sub-letting that contract or part thereof to another sub-contractor.

2. Provided that where a sub-contractor does not have the technical capacity to handle a specialist section of the contract and intends to engage a specialist sub-contractor to perform that work, that section may be re-let to a specialist sub-contractor.

3. Further provided that when a sub-contract is let for labour and material, a labour-only sub-contract may be let by the sub-contractor, but it is unacceptable as a principle for further labour-only sub-contracts to be re-let.

4. A bona fide sub-contractor is generally an employer of labour, save for a machine owner-operator.

5. Where a disagreement arises in relation to the definition or application of the term “Pyramid Sub-Contracting” the parties shall discuss and determine the issue in accordance with the agreement dispute resolution procedure. In any event of a disagreement, the matter shall be negotiated further between the parties or referred to the Western Australian Industrial Relations Commission. Whilst these procedures are undertaken no industrial action shall occur.

16.—DISPUTE SETTLEMENT PROCEDURE

1. Disputes over any work related or industrial matter should be dealt with as close to its source as possible.

2. An employee or the union delegate should initially submit any work related grievance and/or industrial matter to the site foreperson, supervisor or other appropriate site representative of the company.

3. If the matter remains unresolved the union delegate may then submit the matter to the appropriate senior management person.

4. If still not resolved the delegate shall refer the matter to an appropriate official of the union, who shall discuss the matter with the nominated representative of the employer.

5. Whilst the above procedures are being followed work should continue as normal.

6. This procedure is to be followed in good faith and without unreasonable delay by any party.

7. Should the matter remain unresolved it shall be dealt with in one of the following ways as agreed to between the parties—

- referred to the Western Australian Industrial Relations Commission for conciliation and if required arbitration. The Commission’s decision will be accepted by all parties subject to legal rights of appeal; or
- referred to a disputes board for determination; or
- referred to a private arbitrator agreed to between the parties, for determination.

8. This dispute settlement procedure does not apply to health and safety issues.

17.—SAFETY DISPUTE RESOLUTION

1. The parties to this agreement are committed to the safe operation of plant and equipment, to the observance of safe working practices, and the provision by the employer and correct use of all personal protective equipment. The company recognises its responsibilities to provide a safe and healthy workplace.

2. In the event of any disagreements on the necessity to carry out any safety measure or modify, reinforce or reinstate any safety device whatsoever, the procedures set out in this clause will be adopted.

3. No person shall dismiss a safety complaint. Any complaint should be referred to the company safety officer or workers’ safety representative to be dealt with in accordance with the following procedures—

- (i) Where any employee becomes aware of an unsafe situation, that employee will immediately notify the company safety officer or the workers’ safety representative.
- (ii) The company safety officer and the workers’ safety representative will take immediate action to have the unsafe situation rectified.
- (iii) Should the company safety officer consider that no safety precautions are necessary, he/she will notify the workers’ safety representative accordingly as soon as possible.
- (iv) While there is disagreement on the ruling of the company safety officer, the company safety officer will arrange for the immediate transfer of all employees from the disputed area.
- (v) Should the company safety officer be of the opinion that no action is necessary and the worker’s safety representative disagrees, an appropriate inspector from Worksafe/Workcover will be requested to undertake an inspection of the disputed area for the purpose of resolving any such matter.
- (vi) If disagreement still exists the chief inspector or his/her nominee will be called in to assist in the resolution of the dispute.
- (vii) If no agreement can be reached between the parties the matter will be dealt with in accordance with the dispute resolution procedure of this agreement.
- (viii) Whilst the above procedure is being followed there will be no stoppage of work in respect of the matter being considered, except in the area alleged to be unsafe.
- (ix) It is accepted that safety considerations override normal work practices and depending on the degree of potential risk to persons on the job, or the general public, can override normal demarcation practices.

18.—AMENITIES

1. The parties agree that it is the responsibility of the company to ensure that the amenities prescribed by the Award are provided as a minimum. Where, however, that standard is not maintained due to an action or event beyond the control of the company, the union agrees that the company should be allowed reasonable time in which to rectify the problem. If the company acts promptly to rectify the problem, there should be no interruption to work from industrial stoppages, bans and limitations.

2. In all instances, the following procedure shall be observed.

3. A uniformly high standard of amenities and facilities such as ablution blocks, change rooms, crib sheds, etc. shall be provided.

4. All Sheds shall be weatherproof and soundly constructed to an approved standard with sufficient windows and doors, adequate ventilation and lighting. They must have a floor above ground level and be lined on ceilings and walls.

5. Mess Shed/s fitted with fly screens are provided for exclusive use of workers and not for the storage of employers' equipment, tools and materials.

6. Shed/s shall provide not less than 0.75 square metres of floor space per person employed at any one time, provided that the area be not less than 4.65 square metres. Fixtures, other than tables and chairs, shall not be included when calculating floor space.

7. Where 5 or more persons are employed at one time, the floor area shall not be less than 9 square metres.

8. Adequate facilities are to be provided for warmth and for drying clothes eg. strip heaters.

9. Provided that 20 or more persons are employed on the site at any one time, the employer shall provide a separate shed or sheds for messing, which shall be of such dimension as to provide not less than 0.75 square metres of floor space per person.

10. Where less than 20 persons are employed on site, Regulation 3.20—Workplace Facilities of the Occupational Safety and Health Regulations 1996 shall apply to provisions of messing and changing facilities.

11. In the changing facilities, separate clothes-hanging facilities for each person employed are to be provided (coat hooks only to be used).

12. In the changing facilities, sufficient seating accommodation for the changing of work apparel is to be provided.

13. In the messing facilities, sufficient tables with fixed washable laminated or vinyl surface, and seating for the taking of meals, are to be provided.

14. Food warming facilities to be supplied, together with a supply of cool, clean water conveniently accessible, as well as boiling water at meal/rest breaks.

15. Receptacle for garbage with bin liner and rat and fly proof is to be supplied in mess area, and emptied regularly.

16. A washable vinyl floor surface in all facilities is to be provided.

17. Shelving is to be supplied in the mess shed for storage (cups, lunch bags, etc).

18. All facilities are to be cleaned and disinfected on a regular basis.

19. All mess sheds shall be supplied with reverse cycle air-conditioning.

20. Toilet blocks shall be soundly constructed and roofed with weatherproof material. The floor of each toilet shall be well-drained and constructed of concrete, bricks and cement, or other approved materials which shall be impervious to water. Every toilet shall be well lighted by natural or artificial light and shall be ventilated. Each toilet shall have a hinged door, capable of being fastened on the inside, lift seats/flaps and toilet paper.

21. Where practicable, toilets to be connected to sewerage before commencement of the job.

22. Toilet/urinal location to be conveniently accessible to employees, but not so close as to cause a nuisance to those persons.

23. Where necessary, portable water seal toilets of an approved standard are to be provided and regularly serviced.

24. Conveniently accessible toilets and urinals are to be distributed every 5th floor on multi-storey constructions.

25. Toilets and urinals are to be washed daily with disinfectant and kept in clean, hygienic condition.

26. Adequate washing facilities, suitably drained, and was basins/troughs are to be supplied with running water.

27. Soap and towels are to be supplied.

28. The following toilet/urinal ratio shall be applied in respect to all employees—

Employees	Toilets	Urinals
1-5	1	Nil
6-10	1	1
11-20	2	2
21-35	3	4
36-50	4	6
51-75	5	7
76-100	6	8

NB. For each additional 20 persons or part thereof up to 200 persons or part thereof up to 200 persons, one additional urinal and one additional toilet is required. For each additional 35 persons or part thereof in excess of 200 persons, one additional urinal and one additional toilet is required. If a slab urinal is provided, each 600mm shall be regarded as one urinal.

19.—TRAINING AND RELATED MATTERS

1. A training allowance of \$13.00 per week per worker shall be paid by the employer to the Union Education and Training Fund. This shall increase to \$14.00 per week on 1 November 2000 and a further increase to \$15.00 per week on 1 November 2001.

2. Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calendar year pro-rata to attend courses conducted or approved by the NBCITC. The employers approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an inability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

3. The Company will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per (2) above for such purposes including but not limited to securing Tradesmen's Rights Certificates.

20.—DRUG & ALCOHOL, SAFETY & REHABILITATION PROGRAM

The parties are committed to the Drug and Alcohol, Safety and Rehabilitation program as outlined in Appendix A—Drug and Alcohol, Safety and Rehabilitation Program.

21.—CLOTHING AND SAFETY FOOTWEAR

1. The following items will be supplied to each employee by the Company, upon the completion of five working days.

- 1 pair safety boots, to be replaced on a fair wear and tear basis.
- 2 T-shirts with collars, and will be replaced on a fair wear and tear basis.
- 1 bluey jacket for each employee employed during the period 1 April to 31 October. (One issued per year)

2. The Company will also make available to each employee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

22.—INCOME PROTECTION

The Company agrees to insure employees covered by this Agreement for injury and sickness. The scheme is to be negotiated between the parties.

23.—ACCIDENT PAY

1. The Company agrees to pay each employee accident pay where the employee receives an injury for which weekly

payments or compensation are payable by or on behalf of the Company pursuant to the provisions of the Workers' Compensation and Rehabilitation Act 1981, as amended.

2. "Accident Pay" means a weekly payment of an amount being the difference between the weekly amount of compensation paid to the employee pursuant to the Workers Compensation and Rehabilitation Act and the employee's ordinary wage under this Agreement.

3. The Company shall pay accident pay during the incapacity of the employee arising from any one injury for a total of 39 weeks whether the incapacity is in one continuous period or not.

24.—UNION MEMBERSHIP

The employer will encourage, as far as possible, all employees covered by the agreement, to be financial members of the Unions.

25.—Y2K

On the following key dates the Company will issue written records of accrued entitlements to each employee. The accrued entitlements will include annual leave, sick leave, any accruing productivity bonuses, redundancy payments and Superannuation payments and also on each employees anniversary date—

- 31 December 1999
- 28 February 2000
- 31 December 2000
- 28 February 2001

26.—SIGNATORIES

BLPPU	Mr K Reynolds	<i>Common seal over name.</i>
	Date: 13/06/00	
CMETU	Mr J McDonald	<i>Common seal over name</i>
	Date: 13/06/00	
The Company:	Mr D Spelt	<i>Common Seal</i>
	Date: 02/06/00	

APPENDIX A—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PROGRAM

1. PRINCIPLE

People dangerously affected by alcohol, and/or drugs are a safety hazard to themselves and all other persons in the workplace.

2. FOCUS

- * Site safety and the involvement of the site safety committee
- * Peer intervention and support
- * Rehabilitation

3. WORKPLACE POLICY

- (a) A person who is dangerously affected by drugs or alcohol will not be allowed to work until that person can work in a safe manner.
- (b) The decision on a persons ability to work in a safe manner will be made by the safety committee, or on projects with no safety committee, by a body of at least equal numbers of employee/employer representatives.
- (c) There will be no payment of lost time to a person unable to work in a safe manner.
- (d) If this happens 3 times the worker shall be given a written warning and made aware of the availability of treatment/counselling. If the worker refuses help he/she may be transferred/dismissed the next time he/she is dangerously affected.
- (e) For the purposes of disciplinary action a warning shall be effective for a period of 12 months from the date of issue.

- (f) A worker having problems with alcohol and or other drugs—

- Will not be sacked if he/she is willing to get help.
- Must undertake and continue with the recommended treatment to maintain the protection of this program.
- Will be entitled to sick leave or leave without pay while attending treatment.

4. IMPLEMENTATION

To assist with the adoption and implementation with this policy the company will—

- (a) Clearly state its endorsement of the BTG Drug and Alcohol program and comply with it.
- (b) Provide access at an agreed time and venue for a representative of the BTG Drug and Alcohol Program to address a meeting of employees to discuss and endorse the program.
- (c) Authorise the attendance of appropriate company personnel eg. Safety delegate/officer, safety committee members, union delegate, consultative committee members(s) at the two hour BTG Drug and Safety in the Workplace training course.

APPENDIX B—SITE ALLOWANCE

1. This agreement is between the parties to this agreement and shall apply to construction work undertaken by principal contractors who are engaged in the commercial/industrial sector of the building industry in the state of Western Australia within a 50km radius of the Perth General Post Office.

2. This agreement provides for a site allowance to be paid to employees engaged on particular building projects, and for such site allowance to be paid in addition to the wage rates and allowances prescribed by the award as well as any industrial or certified agreements made in conjunction with the award which does not prescribe a site allowance.

3. The site allowance payable under this agreement is to be paid at a flat rate per hour for all hours worked to compensate for all special factors/disabilities on the project and in lieu of all award special rates, with the exception of rates relating to the lifting of heavy blocks, cleaning down brickwork and the use of explosive powered tools which will be payable to an employee when he/she encounters that particular disability.

4. Site Allowance Formula

At the commencement of a project the particular site allowance to apply shall be determined in accordance with the following formula—

4.1 Projects Located Within Perth C.B.D. (as defined) New Work

<u>Project Contractual Value</u>	<u>Site Allowance</u>
Up to \$520,000	NIL
Above \$520,000 to \$2.17m	\$1.90
Above \$2.17m to \$4.55m	\$2.25
Over \$4.55m	\$2.85

Renovations, Restorations and/or Refurbishment Work

<u>Project Contractual Value</u>	<u>Site Allowance</u>
Up to \$520,000	NIL
Above \$520,000 to \$2.17m	\$1.70
Above \$2.17m to \$4.55m	\$1.90
Over \$4.55m	\$2.45

4.2 Projects Located Within West Perth (as defined) New Work

<u>Project Contractual Value</u>	<u>Site Allowance</u>
Up to \$520,000	NIL
Above \$520,000 to \$2.17m	\$1.70
Above \$2.17m to \$4.55m	\$1.90
Over \$4.55m	\$2.45

Renovations, Restorations
and/or Refurbishment Work

<u>Project Contractual Value</u>	<u>Site Allowance</u>
Up to \$520,000	NIL
Above \$520,000 to \$2.17m	\$1.60
Above \$2.17 m to \$4.55m	\$1.80
Over \$4.55m	\$2.05

The site allowance on projects which are a combination of new and renovation work shall be governed by the majority of work involved. For example, where the majority of work is new work, then the site allowance appropriate to new work shall be paid for all employees on the project.

- 4.3 Projects within 50 km radius of Perth G.P.O. but not including the C.B.D. or West Perth (as defined)

<u>Project Contractual Value</u>	<u>Site Allowance</u>
Up to \$1 m	NIL
Above \$1 m to \$2.17m	\$1.30
Above \$2.17m to 6m	\$1.60
Above \$6m to \$11.98m	\$1.85
Above \$11.98m to \$24.43m	\$2.05
Above \$24.43m to \$60.5m	\$2.35
Over \$60.5m	\$2.55

“C.B.D.”—Central Business District shall mean the area bounded by the Swan River South, Swan River East to Nile Street running into Wittenoom Street, Hill Street to Royal Street, Royal Street to Lord Street, Lord Street to Newcastle Street, along Newcastle Street to the Freeway, the Freeway South to the Perth-Fremantle railway line, along the Perth-Fremantle railway line to Dyer Street, Dyer Street through to Havelock Street, Havelock Street to Kings Park Road, Kings Park Road to Fraser Avenue, Fraser Avenue projected through to the Swan River.

“West Perth”—shall mean the area contained within the boundaries formed by Thomas Street, Kings Park Road, Havelock Street, Dyer Street and the Perth-Fremantle railway line back to Thomas Street.

Boundary roads: If a road borders between two regions in which site allowances are to be paid as per this agreement, the parties confirm that one side of such a boundary road will be deemed to fall in one region and the other side of the boundary road will be deemed to fall in the other region. For example, the eastern side of Havelock Street will be in the “CBD” and the western side of Havelock Street shall be in “West Perth”.

“Project Contractual Value”—shall be deemed to mean the value of all tendered work which falls under the scope of the principal contractor’s contract.

5. The site/project allowance and project contractual value detailed in this agreement shall be adjusted on 1 October each year by the total C.P.I. movements for Perth during the preceding four quarters ending 30 June and accordingly, the site allowance amounts shall be adjusted up or down to the nearest five cents.

6. Project contractual values shall be subject to review at any renewal of this agreement, but in any event shall not be adjusted by a percentage less than the total CPI movements for Perth during the preceding four quarters ending 30 June. Such adjustment being to the nearest \$10,000.

7. The agreed site allowance once set pursuant to this agreement shall be recorded in a site agreement to which the applicable principal contractor and the Union will be signatories. The level of allowance once nominated at the commencement of the project will continue without change until completion of the project.

8. It is acknowledged that on certain projects a site agreement may be entered into between the principal contractor and the building trades group of unions for that project that may include matters regularly addressed within the industry, such as, but not limited to, the following—

- Disputes Procedures
- Occupational Health and Safety Procedures
- Demarcation Procedures
- First Aid Provisions and On-Site Amenities

and the union will not unreasonably refuse to continue to discuss such matters if raised by the principal contractor.

9. This agreement does not apply to resource development projects or civil and engineering projects.

10. Where a dispute arises as to the application of the terms of this agreement, if the issue cannot be resolved in discussions between the parties, it is agreed that the matter will be referred to the appropriate industrial tribunal for resolution without recourse to industrial action.

11. It is a term of this agreement that all site allowance agreements entered into prior to this date will be honored by all parties and will continue to apply for the life of the particular project.

12. Where because of a condition of contract the principal contractor is required not to allow for a site allowance, before final application of this agreement, discussions will be held between the parties with a view to resolving any problems that may arise as a result of this situation.

13. Productivity Allowance

In return to increase productivity and/or timely completion of projects it is agreed that a productivity allowance of \$1.00 per hour worked shall be paid to employees engaged upon projects in excess of \$10 million, or such other sum as agreed. The productivity allowance may be accumulated and paid at the end of the project.

14. Structural Frame Allowance

It is agreed that a structural frame allowance of \$1.00 per hour all purpose shall be paid to all employees engaged upon projects (new construction only) which exceed two stories in height or building where the structure exceeds 10 metres in height (excluding spires, flagpoles and the like).

15. Provision of Canteen

It is agreed that canteen accommodation shall be provided where a project exceeds \$35 million in values and where the operation of the canteen is financially self supporting in respect of consumables. Canteen to come into operation when on site manning levels exceed 50 and to cease when manning levels reduce to below 50.

16. Provision of Nurse

It is agreed that a qualified nurse shall be engaged where the forecast long term staffing levels for a project exceed 100 (one hundred) or when actual numbers exceed 100 not withstanding that forecasts may have been below that level. The nurse shall commence duties when staffing levels reach (fifty) and shall terminate when levels reduce to 50 (fifty). The requirement for a provision of a nurse shall be waived if the project is adjacent to a hospital with a public emergency department.

17. This agreement shall only apply to building contracts entered into on or tendered for on or after 1 January 1999.

18. Application to Apprentices

The rates prescribed in this agreement shall apply to all apprentices commencing employment after 31 December 1997 in the same proportion as the percentage of a tradesperson’s wage rate as prescribed by the appropriate award or Enterprise Bargaining Agreement, being—

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

**REO CRAFT/BLPPU AND THE CMETU
COLLECTIVE AGREEMENT 2000.**

No. AG150 of 2000.

2000 WAIRC 00027

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES THE WESTERN AUSTRALIAN BUILDERS' LABOURERS, PAINTERS & PLASTERERS UNION OF WORKERS, CONSTRUCTION, MINING, ENERGY, TIMBERYARDS, SAWMILLS AND WOODWORKERS UNION OF AUSTRALIA—WESTERN AUSTRALIAN BRANCH V MEL HOPA AND LOUISE HOPA TRADING AS REO CRAFT

CORAM COMMISSIONER J F GREGOR
DELIVERED TUESDAY, 11 JULY 2000
FILE NO/S APPLICATION AG 150 OF 2000

Result Registered Agreement by Consent
Representation
Applicant/ Appellant Mr P Joyce for the applicant
Respondent No appearance on behalf of the respondent

Reo Craft/BLPPU and the CMETU Collective Agreement 2000.

Order.

HAVING heard Mr P Joyce on behalf of (the applicant) and there being no appearance on behalf of (the respondent) and by consent, the Commission pursuant to the powers conferred on it under the *Industrial Relations Act, 1979* hereby orders—

THAT the agreement made between Reo Craft/BLPPU and the CMETU to be registered in terms of the following schedule as an Industrial Agreement and replaces Reo Craft /BLPPU and the CMETU Collective Agreement 1999 No AG 29 of 1998.

(Sgd.) J. F. GREGOR,
Commissioner.

[L.S.]

Schedule.

1.—TITLE

This agreement shall be known as the *Reo Craft/BLPPU and the CMETU Collective Agreement 2000.*

2.—ARRANGEMENT

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3.—PARTIES AND PERSONS BOUND

This agreement shall be binding on *Mel Hopa and Louise Hopa Trading As Reo Craft* (hereinafter referred to as “the company”), the Western Australian Builders’ Labourers, Painters and Plasterers Union of Workers and the Construction Mining Energy Timberyards Sawmills and Woodworkers Union of Australia—WA Branch (hereinafter referred to as “the unions”) and all employees of the company eligible to be members of the unions.

4.—APPLICATION

This agreement shall apply to all employees of the company engaged on work in or in connection with construction, alteration, maintenance, repair or demolition of buildings or other structures of any kind whatsoever.

This agreement shall apply in Western Australia only. There are approximately 4 employees covered by this agreement.

5.—RELATIONSHIP TO PARENT AWARD

1. This agreement is supplementary to, and shall be read and interpreted wholly in conjunction with, the Building Trades (Construction) Award 1987, Award No. R14 of 1978 (hereinafter referred to as “the award”).

2. In the event of any inconsistency between the award and an express provision of this agreement, the terms of this agreement shall prevail to the extent of such inconsistency, unless the express provision of the agreement provides otherwise.

6.—PERIOD OF OPERATION

This agreement shall come into force from the first pay period commencing on or after November 1st 1999 and shall remain in force until the 1st of November, 2002.

7.—CLASSIFICATION STRUCTURE & RATES OF PAY

1. All employees working under this agreement shall be paid according to the wage rates set out below.

2. Wage Rates (per hour at ordinary time)

	Previous EBA Rate Hourly Rate \$	1st November 1999 Hourly Rate \$	1st November 2000 Hourly Rate \$	1st November 2001 Hourly Rate \$
Labourer Group 1	17.15	18.01	18.91	19.86
Labourer Group 2	16.56	17.39	18.26	19.17
Labourer Group 3	16.12	16.93	17.78	18.67
Plaster, Fixer	17.82	18.71	19.65	20.63
Painter, Glazier	17.42	18.29	19.20	20.16
Signwriter	17.80	18.69	19.62	20.63
Carpenter/Roofer	17.93	18.85	19.79	20.78
Bricklayer	17.75	18.63	19.61	20.59
Refractory				
Bricklayer	20.38	21.40	22.47	25.59
Stonemason	17.93	18.82	19.76	20.75
Roofiler	17.62	18.50	19.43	20.40
Marker/Setter Out	18.46	19.38	20.35	21.37
Special Class T	18.69	19.62	20.61	21.64

APPRENTICE RATES

	Previous EBA Rate Hourly Rate \$	1st November 1999 Hourly Rate \$	1st November 2000 Hourly Rate \$	1st November 2001 Hourly Rate \$
Plasterer, Fixer				
Year 1 (.5/3/5)	7.48	7.86	8.25	8.66
Year 2 (1/3)	9.81	10.29	10.81	11.35
Year 3 (2/3)	13.37	14.03	14.74	15.47
Year 4 (3/3)	15.69	16.46	17.29	18.15
Painter, Glazier				
Year 1 (.5/3/5)	7.32	7.68	8.06	8.47
Year 2 (1/3), (1.5/3.5)	9.58	10.06	10.56	11.09
Year 3 (2/3), (2.5/3.5)	13.06	13.72	14.40	15.12
Year 4 (3/3), (3.5/3.5)	15.33	16.10	16.90	17.74

	Previous EBA Rate Hourly Rate \$	1st November 1999 Hourly Rate \$	1st November 2000 Hourly Rate \$	1st November 2001 Hourly Rate \$
Signwriter				
Year 1 (.5/3.5)	7.48	7.85	8.24	8.66
Year 2 (1/3, 1.5/3.5)	9.78	10.28	10.79	11.35
Year 3 (2/3, 2.5/3.5)	13.35	14.02	14.72	15.47
Year 4 (3/3, 3/5/3.5)	15.66	16.45	17.27	18.15
Carpenter/Roofer				
Year 1	7.54	7.92	8.31	8.73
Year 2 (1/3)	9.86	10.37	10.88	11.43
Year 3 (2/3)	13.45	14.14	14.84	15.59
Year 4 (3/3)	15.78	16.59	17.42	18.29
Bricklayer				
Year 1	7.46	7.82	8.24	8.65
Year 2 (1/3)	9.76	10.25	10.79	11.32
Year 3 (2/3)	13.31	13.97	14.71	15.44
Year 4 (3/3)	15.62	16.39	17.26	18.12
Stonemason				
Year 1	7.54	7.92	8.31	8.73
Year 2 (1/3)	9.86	10.37	10.88	11.43
Year 3 (2/3)	13.45	14.14	14.84	15.59
Year 4 (3/3)	15.78	16.59	17.42	18.29
Rooftiler				
6 months	10.04	10.54	11.07	11.62
2nd 6 months	11.04	11.59	12.17	12.78
Year 2	12.90	13.55	14.23	14.94
Year 3	15.14	15.90	16.70	17.54

3. All expense related allowances not specifically mentioned in this agreement will be paid as per the award as varied from time to time.

4. Site allowances relating to particular sites shall be paid in accordance with Appendix B of this Agreement.

5. An additional payment will be made to compensate for the impact of the Goods and Services Tax on the Consumer Price Index. In the circumstance that the CPI limit below is exceeded the appropriate additional payment will be made to the wage rates. The CPI figure for the applicable dates will be the official figure released by the ABS for the preceding year.

Date	CPI Limit	Additional Payment
June 2001	5%	1% (paid 1/9/2001)
June 2001	6%	2% (paid 1/9/2001)
June 2002	5%	1% (paid 1/9/2002)
June 2002	6%	2% (paid 1/9/2002)

8.—INDUSTRY STANDARDS

Redundancy

The company shall increase redundancy contributions on behalf of each employee to the following sums on a weekly basis—

Rate on signing	\$50
Rate as of 1/05/2001	\$60

Superannuation

(i) The Company will make a payment of \$60 per week per employee or the percentage rate that is prescribed under the Superannuation Guarantee Charge, whichever is the greater.

The Company will advise all employees subject to the Agreement of their right to have payments made to a complying superannuation fund of their choice. The Company is bound by the employee's election. The aforementioned payment will then be made to that fund.

Until each employee nominates the fund of their choice the Company will make payments into the Construction + Building Unions Superannuation Scheme (the "C+BUSS").

In the event that any employee chooses a fund other than the C+BUSS the Company will, within seven days of the employee advising the Company of the fund of their choice, advise the Union in writing of the employee's decision.

In the event that the employee and the Company reach an agreement pursuant to section 49C(2)(d) of the Act to change

the complying superannuation fund or scheme the Company will, within seven days of the employee and the Company reaching such an agreement, advise the Union in writing of the agreement. The employer shall not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by the employee.

(ii) "Ordinary Time Earnings" (which for the purposes of the Superannuation Guarantee (Administration) Act 1992 will operate to provide a notional earnings base) shall mean the actual ordinary rate of pay the employee receives for ordinary hours of work including tool allowance, industry allowance, trade allowances, shift loading, special rates, qualification allowances (eg. first aid, laser safety officer), multi-storey allowance, site allowance, asbestos eradication allowance, leading hand allowances, in charge of plant allowance and supervisory allowances where applicable. The term includes any regular over-award pay as well as casual rates received and any additional rates and allowances paid for work undertaken during ordinary hours of work, including fares and travel.

9.—SICK LEAVE

For sick leave accrued after the date of signing this agreement the following will apply—

- The Company's employees shall have the option of converting 100% of accrued sick leave entitlement to a cash payment on termination
- If an employee who has been terminated by the Company without exercising the above option is re-engaged within a period of six months, the unpaid balance of sick leave shall continue from the date of re-engagement.
- Where the Company has signed a previous Agreement with the Union that also allowed for the conversion to cash payment on termination for accrued sick leave, that accrued sick leave will be treated as if it accrued under this agreement.
- Sick leave shall accrue, for the purposes of this clause, at the rate of one day at the beginning of each of the first ten calendar months of each year.
- Employees shall have the option of converting to a cash payment all sick leave entitlements over 5 days. Payment shall be made on the last pay period prior to the Christmas closedown.

10.—NEGOTIATION OF A SUBSEQUENT AGREEMENT

The parties agree to commence negotiations for a new collective agreement to succeed this agreement at least 3 months before the nominal expiry date. The parties intend to conclude these negotiations prior to the nominal expiry date. These negotiations shall be conducted on a collective basis between all of the parties with the negotiated outcome being subject to approval of a vote of the employees collectively.

11.—APPLICATION OF PROJECT AGREEMENTS

1. This agreement shall apply to all persons employed in the employer's business and every part thereof throughout Western Australia until 1st November 2002 except where the company commences work on a project where a site agreement to which the union is a party exists that provides for higher rates of pay and conditions.

2. The conditions contained in any such site agreement will take precedence over this agreement for the duration of the project.

12.—FARES AND TRAVELLING ALLOWANCE

In addition to Clause 12A of the award a travel payment shall be made in the form of a daily payment (on days worked) of \$6.15 per day per employee.

13.—SENIORITY

1. The parties agree the continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

2. When applying the "first on last off" principle it is agreed subject to the caveat of "all things being equal", it is intended to apply on a Company basis rather than a site by site basis.

3. It is recognised that from time to time instances may arise where the employee's individual skills may be subject to this

caveat. Where there is any disagreement as to the application of this the matter will be processed in accordance with Clause 16—Dispute Settlement Procedure.

4. An employee who has been retrenched by the Company shall have absolute preference and priority for re-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

14.—ALL IN PAYMENTS

1. All-in payments to employees will not be made. All-in payments are defined as an hourly rate or piece work rate which is meant to cover wages and all allowances, such as annual leave, sick leave, etc., on which tax is being paid using the Prescribed Payments System.

2. It is agreed that where a breach of this clause is discovered, the employer shall continue paying the “all-in” rate as the employees hourly rate, but shall pay all award and other entitlements on top of this amount, back-dated to the commencement of the all-in rate arrangement. The company shall not be entitled to offset any amount in excess of the ordinary hourly rate against any other entitlement in this agreement.

3. This clause shall not be applied to prevent the employer subcontracting specialised work outside of the normal scope of work which the employer performs. The union shall be notified when specialist sub-contractors are to be engaged.

15.—PYRAMID SUB-CONTRACTING

1. “Pyramid Sub-Contracting” is defined as the practice of a sub-contractor, to whom a sub-contract is originally awarded, sub-letting that contract or part thereof to another sub-contractor.

2. Provided that where a sub-contractor does not have the technical capacity to handle a specialist section of the contract and intends to engage a specialist sub-contractor to perform that work, that section may be re-let to a specialist sub-contractor.

3. Further provided that when a sub-contract is let for labour and material, a labour-only sub-contract may be let by the sub-contractor, but it is unacceptable as a principle for further labour-only sub-contracts to be re-let.

4. A bona fide sub-contractor is generally an employer of labour, save for a machine owner-operator.

5. Where a disagreement arises in relation to the definition or application of the term “Pyramid Sub-Contracting” the parties shall discuss and determine the issue in accordance with the agreement dispute resolution procedure. In any event of a disagreement, the matter shall be negotiated further between the parties or referred to the Western Australian Industrial Relations Commission. Whilst these procedures are undertaken no industrial action shall occur.

16.—DISPUTE SETTLEMENT PROCEDURE

1. Disputes over any work related or industrial matter should be dealt with as close to its source as possible.

2. An employee or the union delegate should initially submit any work related grievance and/or industrial matter to the site foreperson, supervisor or other appropriate site representative of the company.

3. If the matter remains unresolved the union delegate may then submit the matter to the appropriate senior management person.

4. If still not resolved the delegate shall refer the matter to an appropriate official of the union, who shall discuss the matter with the nominated representative of the employer.

5. Whilst the above procedures are being followed work should continue as normal.

6. This procedure is to be followed in good faith and without unreasonable delay by any party.

7. Should the matter remain unresolved it shall be dealt with in one of the following ways as agreed to between the parties—

- referred to the Western Australian Industrial Relations Commission for conciliation and if required arbitration. The Commission's decision will be accepted by all parties subject to legal rights of appeal; or

- referred to a disputes board for determination; or
- referred to a private arbitrator agreed to between the parties, for determination.

8. This dispute settlement procedure does not apply to health and safety issues.

17.—SAFETY DISPUTE RESOLUTION

1. The parties to this agreement are committed to the safe operation of plant and equipment, to the observance of safe working practices, and the provision by the employer and correct use of all personal protective equipment. The company recognises its responsibilities to provide a safe and healthy workplace.

2. In the event of any disagreements on the necessity to carry out any safety measure or modify, reinforce or reinstate any safety device whatsoever, the procedures set out in this clause will be adopted.

3. No person shall dismiss a safety complaint. Any complaint should be referred to the company safety officer or workers' safety representative to be dealt with in accordance with the following procedures—

- (i) Where any employee becomes aware of an unsafe situation, that employee will immediately notify the company safety officer or the workers' safety representative.
- (ii) The company safety officer and the workers' safety representative will take immediate action to have the unsafe situation rectified.
- (iii) Should the company safety officer consider that no safety precautions are necessary, he/she will notify the workers' safety representative accordingly as soon as possible.
- (iv) While there is disagreement on the ruling of the company safety officer, the company safety officer will arrange for the immediate transfer of all employees from the disputed area.
- (v) Should the company safety officer be of the opinion that no action is necessary and the worker's safety representative disagrees, an appropriate inspector from Worksafe/Workcover will be requested to undertake an inspection of the disputed area for the purpose of resolving any such matter.
- (vi) If disagreement still exists the chief inspector or his/her nominee will be called in to assist in the resolution of the dispute.
- (vii) If no agreement can be reached between the parties the matter will be dealt with in accordance with the dispute resolution procedure of this agreement.
- (viii) Whilst the above procedure is being followed there will be no stoppage of work in respect of the matter being considered, except in the area alleged to be unsafe.
- (ix) It is accepted that safety considerations override normal work practices and depending on the degree of potential risk to persons on the job, or the general public, can override normal demarcation practices.

18.—AMENITIES

1. The parties agree that it is the responsibility of the company to ensure that the amenities prescribed by the Award are provided as a minimum. Where, however, that standard is not maintained due to an action or event beyond the control of the company, the union agrees that the company should be allowed reasonable time in which to rectify the problem. If the company acts promptly to rectify the problem, there should be no interruption to work from industrial stoppages, bans and limitations.

2. In all instances, the following procedure shall be observed.

3. A uniformly high standard of amenities and facilities such as ablution blocks, change rooms, crib sheds, etc. shall be provided.

4. All Sheds shall be weatherproof and soundly constructed to an approved standard with sufficient windows and doors, adequate ventilation and lighting. They must have a floor above ground level and be lined on ceilings and walls.

5. Mess Shed/s fitted with fly screens are provided for exclusive use of workers and not for the storage of employers' equipment, tools and materials.

6. Shed/s shall provide not less than 0.75 square metres of floor space per person employed at any one time, provided that the area be not less than 4.65 square metres. Fixtures, other than tables and chairs, shall not be included when calculating floor space.

7. Where 5 or more persons are employed at one time, the floor area shall not be less than 9 square metres.

8. Adequate facilities are to be provided for warmth and for drying clothes eg. strip heaters.

9. Provided that 20 or more persons are employed on the site at any one time, the employer shall provide a separate shed or sheds for messing, which shall be of such dimension as to provide not less than 0.75 square metres of floor space per person.

10. Where less than 20 persons are employed on site, Regulation 3.20—Workplace Facilities of the Occupational Safety and Health Regulations 1996 shall apply to provisions of messing and changing facilities.

11. In the changing facilities, separate clothes-hanging facilities for each person employed are to be provided (coat hooks only to be used).

12. In the changing facilities, sufficient seating accommodation for the changing of work apparel is to be provided.

13. In the messing facilities, sufficient tables with fixed washable laminated or vinyl surface, and seating for the taking of meals, are to be provided.

14. Food warming facilities to be supplied, together with a supply of cool, clean water conveniently accessible, as well as boiling water at meal/rest breaks.

15. Receptacle for garbage with bin liner and rat and fly proof is to be supplied in mess area, and emptied regularly.

16. A washable vinyl floor surface in all facilities is to be provided.

17. Shelving is to be supplied in the mess shed for storage (cups, lunch bags, etc).

18. All facilities are to be cleaned and disinfected on a regular basis.

19. All mess sheds shall be supplied with reverse cycle air-conditioning.

20. Toilet blocks shall be soundly constructed and roofed with weatherproof material. The floor of each toilet shall be well-drained and constructed of concrete, bricks and cement, or other approved materials which shall be impervious to water. Every toilet shall be well lighted by natural or artificial light and shall be ventilated. Each toilet shall have a hinged door, capable of being fastened on the inside, lift seats/flaps and toilet paper.

21. Where practicable, toilets to be connected to sewerage before commencement of the job.

22. Toilet/urinal location to be conveniently accessible to employees, but not so close as to cause a nuisance to those persons.

23. Where necessary, portable water seal toilets of an approved standard are to be provided and regularly serviced.

24. Conveniently accessible toilets and urinals are to be distributed every 5th floor on multi-storey constructions.

25. Toilets and urinals are to be washed daily with disinfectant and kept in clean, hygienic condition.

26. Adequate washing facilities, suitably drained, and was basins/troughs are to be supplied with running water.

27. Soap and towels are to be supplied.

28. The following toilet/urinal ratio shall be applied in respect to all employees—

Employees	Toilets	Urinals
1-5	1	Nil
6-10	1	1
11-20	2	2
21-35	3	4
36-50	4	6
51-75	5	7
76-100	6	8

NB. For each additional 20 persons or part thereof up to 200 persons or part thereof up to 200 persons, one additional urinal and one additional toilet is required. For each additional 35 persons or part thereof in excess of 200 persons, one additional urinal and one additional toilet is required. If a slab urinal is provided, each 600mm shall be regarded as one urinal.

19.—TRAINING AND RELATED MATTERS

1. A training allowance of \$13.00 per week per worker shall be paid by the employer to the Union Education and Training Fund. This shall increase to \$14.00 per week on 1 November 2000 and a further increase to \$15.00 per week on 1 November 2001.

2. Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calendar year pro-rata to attend courses conducted or approved by the NBCITC. The employers approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an inability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

3. The Company will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per (2) above for such purposes including but not limited to securing Tradesmen's Rights Certificates.

20.—DRUG & ALCOHOL, SAFETY & REHABILITATION PROGRAM

The parties are committed to the Drug and Alcohol, Safety and Rehabilitation program as outlined in Appendix A—Drug and Alcohol, Safety and Rehabilitation Program.

21.—CLOTHING AND SAFETY FOOTWEAR

1. The following items will be supplied to each employee by the Company, upon the completion of five working days.

- 1 pair safety boots, to be replaced on a fair wear and tear basis.
- 2 T-shirts with collars, and will be replaced on a fair wear and tear basis.
- 1 bluey jacket for each employee employed during the period 1 April to 31 October. (One issued per year)

2. The Company will also make available to each employee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

22.—INCOME PROTECTION

The Company agrees to insure employees covered by this Agreement for injury and sickness. The scheme is to be negotiated between the parties

23.—ACCIDENT PAY

1. The Company agrees to pay each employee accident pay where the employee receives an injury for which weekly payments or compensation are payable by or on behalf of the Company pursuant to the provisions of the Workers' Compensation and Rehabilitation Act 1981, as amended.

2. "Accident Pay" means a weekly payment of an amount being the difference between the weekly amount of compensation paid to the employee pursuant to the Workers' Compensation and Rehabilitation Act and the employee's ordinary wage under this Agreement.

3. The Company shall pay accident pay during the incapacity of the employee arising from any one injury for a total of 39 weeks whether the incapacity is in one continuous period or not.

24.—UNION MEMBERSHIP

The employer will encourage, as far as possible, all employees covered by the agreement, to be financial members of the Unions.

25.—Y2K

On the following key dates the Company will issue written records of accrued entitlements to each employee. The accrued entitlements will include annual leave, sick leave, any accruing productivity bonuses, redundancy payments and Superannuation payments and also on each employees anniversary date—

- 31 December 1999
- 28 February 2000
- 31 December 2000
- 28 February 2001

26.—SIGNATORIES

BLPPU	Mr K Reynolds	<i>Common seal over name.</i>
	Date: 17/06/00	
CMETU	Mr J McDonald	<i>Common seal over name</i>
	Date: 13/06/00	
The Company:	Mr M Hopa	<i>Common Seal</i>
	Date: 06/06/00	

APPENDIX A—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PROGRAM

1. PRINCIPLE

People dangerously affected by alcohol, and/or drugs are a safety hazard to themselves and all other persons in the workplace.

2. FOCUS

- * Site safety and the involvement of the site safety committee
- * Peer intervention and support
- * Rehabilitation

3. WORKPLACE POLICY

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

4. IMPLEMENTATION

To assist with the adoption and implementation with this policy the company will—

- (a) Clearly state its endorsement of the BTG Drug and Alcohol program and comply with it.

- (b) Provide access at an agreed time and venue for a representative of the BTG Drug and Alcohol Program to address a meeting of employees to discuss and endorse the program.
- (c) Authorise the attendance of appropriate company personnel eg. Safety delegate/officer, safety committee members, union delegate, consultative committee members(s) at the two hour BTG Drug and Safety in the Workplace training course.

APPENDIX B—SITE ALLOWANCE

1. This agreement is between the parties to this agreement and shall apply to construction work undertaken by principal contractors who are engaged in the commercial/industrial sector of the building industry in the state of Western Australia within a 50km radius of the Perth General Post Office.

2. This agreement provides for a site allowance to be paid to employees engaged on particular building projects, and for such site allowance to be paid in addition to the wage rates and allowances prescribed by the award as well as any industrial or certified agreements made in conjunction with the award which does not prescribe a site allowance.

3. The site allowance payable under this agreement is to be paid at a flat rate per hour for all hours worked to compensate for all special factors/disabilities on the project and in lieu of all award special rates, with the exception of rates relating to the lifting of heavy blocks, cleaning down brickwork and the use of explosive powered tools which will be payable to an employee when he/she encounters that particular disability.

4. Site Allowance Formula

At the commencement of a project the particular site allowance to apply shall be determined in accordance with the following formula—

4.1 Projects Located Within Perth C.B.D. (as defined)

New Work		
<u>Project Contractual Value</u>	<u>Site Allowance</u>	
Up to \$520,000	NIL	
Above \$520,000 to \$2.17m	\$1.90	
Above \$2.17m to \$4.55m	\$2.25	
Over \$4.55m	\$2.85	

Renovations, Restorations and/or Refurbishment Work

<u>Project Contractual Value</u>	<u>Site Allowance</u>	
Up to \$520,000	NIL	
Above \$520,000 to \$2.17m	\$1.70	
Above \$2.17m to \$4.55m	\$1.90	
Over \$4.55m	\$2.45	

4.2 Projects Located Within West Perth (as defined)

New Work		
<u>Project Contractual Value</u>	<u>Site Allowance</u>	
Up to \$520,000	NIL	
Above \$520,000 to \$2.17m	\$1.70	
Above \$2.17m to \$4.55m	\$1.90	
Over \$4.55m	\$2.45	

Renovations, Restorations and/or Refurbishment Work

<u>Project Contractual Value</u>	<u>Site Allowance</u>	
Up to \$520,000	NIL	
Above \$520,000 to \$2.17m	\$1.60	
Above \$2.17 m to \$4.55m	\$1.80	
Over \$4.55m	\$2.05	

The site allowance on projects which are a combination of new and renovation work shall be governed by the majority of work involved. For example, where the majority of work is new work, then the site allowance appropriate to new work shall be paid for all employees on the project.

- 4.3 Projects within 50 km radius of Perth G.P.O. but not including the C.B.D. or West Perth (as defined)

<u>Project Contractual Value</u>	<u>Site Allowance</u>
Up to \$1 m	NIL
Above \$1 m to \$2.17m	\$1.30
Above \$2.17m to 6m	\$1.60
Above \$6m to \$11.98m	\$1.85
Above \$11.98m to \$24.43m	\$2.05
Above \$24.43m to \$60.5m	\$2.35
Over \$60.5m	\$2.55

“C.B.D.”—Central Business District shall mean the area bounded by the Swan River South, Swan River East to Nile Street running into Wittenoom Street, Hill Street to Royal Street, Royal Street to Lord Street, Lord Street to Newcastle Street, along Newcastle Street to the Freeway, the Freeway South to the Perth-Fremantle railway line, along the Perth-Fremantle railway line to Dyer Street, Dyer Street through to Havelock Street, Havelock Street to Kings Park Road, Kings Park Road to Fraser Avenue, Fraser Avenue projected through to the Swan River.

“West Perth”—shall mean the area contained within the boundaries formed by Thomas Street, Kings Park Road, Havelock Street, Dyer Street and the Perth-Fremantle railway line back to Thomas Street.

Boundary roads: If a road borders between two regions in which site allowances are to be paid as per this agreement, the parties confirm that one side of such a boundary road will be deemed to fall in one region and the other side of the boundary road will be deemed to fall in the other region. For example, the eastern side of Havelock Street will be in the “CBD” and the western side of Havelock Street shall be in “West Perth”.

“Project Contractual Value”—shall be deemed to mean the value of all tendered work which falls under the scope of the principal contractor’s contract.

5. The site/project allowance and project contractual value detailed in this agreement shall be adjusted on 1 October each year by the total C.P.I. movements for Perth during the preceding four quarters ending 30 June and accordingly, the site allowance amounts shall be adjusted up or down to the nearest five cents.

6. Project contractual values shall be subject to review at any renewal of this agreement, but in any event shall not be adjusted by a percentage less than the total CPI movements for Perth during the preceding four quarters ending 30 June. Such adjustment being to the nearest \$10,000.

7. The agreed site allowance once set pursuant to this agreement shall be recorded in a site agreement to which the applicable principal contractor and the Union will be signatories. The level of allowance once nominated at the commencement of the project will continue without change until completion of the project.

8. It is acknowledged that on certain projects a site agreement may be entered into between the principal contractor and the building trades group of unions for that project that may include matters regularly addressed within the industry, such as, but not limited to, the following—

- Disputes Procedures
- Occupational Health and Safety Procedures
- Demarcation Procedures
- First Aid Provisions and On-Site Amenities

and the union will not unreasonably refuse to continue to discuss such matters if raised by the principal contractor.

9. This agreement does not apply to resource development projects or civil and engineering projects.

10. Where a dispute arises as to the application of the terms of this agreement, if the issue cannot be resolved in discussions between the parties, it is agreed that the matter will be referred to the appropriate industrial tribunal for resolution without recourse to industrial action.

11. It is a term of this agreement that all site allowance agreements entered into prior to this date will be honored by all parties and will continue to apply for the life of the particular project.

12. Where because of a condition of contract the principal contractor is required not to allow for a site allowance, before final application of this agreement, discussions will be held between the parties with a view to resolving any problems that may arise as a result of this situation.

13. Productivity Allowance

In return to increase productivity and/or timely completion of projects it is agreed that a productivity allowance of \$1.00 per hour worked shall be paid to employees engaged upon projects in excess of \$10 million, or such other sum as agreed. The productivity allowance may be accumulated and paid at the end of the project.

14. Structural Frame Allowance

It is agreed that a structural frame allowance of \$1.00 per hour all purpose shall be paid to all employees engaged upon projects (new construction only) which exceed two stories in height or building where the structure exceeds 10 metres in height (excluding spires, flagpoles and the like).

15. Provision of Canteen

It is agreed that canteen accommodation shall be provided where a project exceeds \$35 million in values and where the operation of the canteen is financially self supporting in respect of consumables. Canteen to come into operation when on site manning levels exceed 50 and to cease when manning levels reduce to below 50.

16. Provision of Nurse

It is agreed that a qualified nurse shall be engaged where the forecast long term staffing levels for a project exceed 100 (one hundred) or when actual numbers exceed 100 not withstanding that forecasts may have been below that level. The nurse shall commence duties when staffing levels reach (fifty) and shall terminate when levels reduce to 50 (fifty). The requirement for a provision of a nurse shall be waived if the project is adjacent to a hospital with a public emergency department.

17. This agreement shall only apply to building contracts entered into on or tendered for on or after 1 January 1999.

18. Application to Apprentices

The rates prescribed in this agreement shall apply to all apprentices commencing employment after 31 December 1997 in the same proportion as the percentage of a tradesperson’s wage rate as prescribed by the appropriate award or Enterprise Bargaining Agreement, being—

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

ROCKY BAY INCORPORATED SALARIED OFFICERS ENTERPRISE AGREEMENT 2000.

No. AG 292 of 2000.

2001 WAIRC 01976

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

PARTIES	ROCKY BAY INC, APPLICANT v. HOSPITAL SALARIED OFFICERS ASSOCIATION OF WESTERN AUSTRALIA (UNION OF WORKERS), RESPONDENT
CORAM	SENIOR COMMISSIONER G L FIELDING
DELIVERED	MONDAY, 5 FEBRUARY 2001
FILE NO/S	AG 292 OF 2000
CITATION NO.	2001 WAIRC 01976

Result	Agreement registered
Representation	
Applicant	Mr M A O'Connor as agent
Respondent	Ms C L L Thomas as agent

Order.

HAVING heard Mr M A O'Connor as agent on behalf of Rocky Bay Inc and Ms C L L Thomas as agent on behalf of the Hospital and Salaried Officers Association of Western Australia, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders—

THAT the agreement made between the parties lodged in the Commission on 22 December 2000 entitled Rocky Bay Incorporated Salaried Officers Enterprise Agreement 2000 and as subsequently amended by direction of the Commission be registered in the terms of the following Schedule as an industrial agreement in replacement of the Rocky Bay Incorporated Salaried Officers Enterprise Agreement 1998 AG 26 of 1999 which is hereby cancelled.

[L.S.] (Sgd.) G.L. FIELDING,
Senior Commissioner.

Schedule.

1.—TITLE

This Agreement shall be titled the Rocky Bay Incorporated Salaried Officers Enterprise Agreement 2000 and shall cancel and replace Agreement AG 26 of 1999.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Parties
4. Application of Agreement
5. Relationship To Parent Award
6. Single Bargaining Unit
7. Objective
8. Contract of Service
9. Productivity and Efficiency Measures
10. Salary / Remuneration Packaging
11. Remuneration and Safety Net Adjustments
12. Dispute Resolution
13. No Precedent
14. Term
15. Renewal
16. Number of Employees

Appendix —Salary Packaging Arrangements HSOA Staff

3.—PARTIES

(1) The employer party to this Agreement is Rocky Bay Incorporated.

(2) The union party to this Agreement is the Hospital Salaried Officers Association of Western Australia (Union of Workers), hereinafter referred to as the Union.

4.—APPLICATION OF AGREEMENT

This Agreement shall apply to Rocky Bay Incorporated and all employees who are engaged in any of the occupations or callings specified in the Hospital Salaried Officers (Nursing Homes) Award 1976 hereinafter referred to as the Award.

5.—RELATIONSHIP TO PARENT AWARD

This Agreement shall be read and interpreted in conjunction with the Award, but where the terms of this Agreement are inconsistent with the Award, the terms of this Agreement shall prevail.

6.—SINGLE BARGAINING UNIT

This Agreement has been negotiated through a Single Bargaining Unit (SBU) comprising representatives from Rocky Bay Incorporated and the Union.

7.—OBJECTIVE

This Agreement is designed to provide appropriate remuneration and benefits for employees in recognition of their continuing contribution and agreement to the productivity efficiency measures outlined in the Agreement.

8.—CONTRACT OF SERVICE

(1) **Probation**

- (a) An employee may be engaged initially for a period of up to three (3) months on a probationary basis during which time either party may terminate the contract by giving one weeks notice in writing or payment or forfeiture in lieu thereof. A lesser period of notice may be agreed, in writing between the parties.
- (b) The employer shall provide the employee with an appraisal of his/her performance on at least a monthly basis during the probationary period.
- (c) If the employer concludes that the employee is unlikely to be a satisfactory appointment to the staff, the employer will give the employee opportunity to respond to such concerns as the employer may have.
- (d) After considering such response the employee may wish to make the employer may—
 - (i) Confirm the appointment of the employee; or
 - (ii) Extend the probationary period for an additional period not exceeding three months, to enable a further assessment of the employee to be made; or
 - (iii) Terminate the employment.
- (e) Where an employee's period of probation has been extended, the employer shall notify the employee in writing of the fact and the period of extension.

9.—PRODUCTIVITY AND EFFICIENCY MEASURES

(1) **Call Out**

An employee who is not on-call but who is recalled to work by agreement with the employer, shall on each occasion, in addition to the appropriate overtime rate, be paid an allowance of \$15.00.

(2) **Overtime—Getabout Employees**

- (a) The provisions of Clause 12(1) and (2) of the Award shall not be applicable to an employee where his/her duties are wholly or substantially performed with clients in the Getabout Community Access/Recreation Program funded on an individual client basis by the post School Options Program of the Disability Services Commission.
- (b) All work performed by such "Getabout" employees outside of the hours of work as prescribed in clause 11 of the Award, shall be paid at the rate of time and one quarter.
- (c) Should the program funding formula be changed from its current system of funding on an individual client basis, the parties agree to set up a consultative working party to evaluate "Getabout" employee payment options.

(3) **Overtime—TOIL**

This subclause applies notwithstanding subclause (4) of Clause 12—Overtime of the Award.

- (a) By agreement with the employer an employee may elect to be credited with time off in lieu of payment for overtime. Time off shall be proportionate to the payment to which the employee would have otherwise been entitled.
- (b) Such time off shall be taken at a time (or times) agreed between the employer and employee.
- (c) An employee cannot be instructed to work additional hours without actual payment.

(4) **Bereavement Leave**

- (a) An employee shall be entitled to bereavement leave of up to three days on ordinary pay, on the death of the employee's spouse, de facto spouse, child, step child, father, mother, parents-in-law, brother, sister, grandchild, grandparent, or any other person who,

immediately before the person's death, lived with the employee as a member of the employee's family.

- (b) The employee shall produce evidence of such death if so requested.
- (c) Reasonable additional paid or unpaid leave may be granted where an employee has assumed significant responsibility for the arrangements to do with the ceremonies resulting from the death; or where cultural obligations necessitate a longer period of bereavement leave.
- (d) The employee shall not be entitled to leave under this clause in respect of any period which coincides with any other period of leave entitlement or Accrued Day(s) Off.

(5) Sick Leave—Certificate

This subclause applies notwithstanding subclause (4) of Clause 16—Sick Leave of the Award.

An employee is allowed a maximum of five (5) days absence without production of a certificate from a medical practitioner in any one accruing year, provided that the employer may require the production of a medical certificate for any absence exceeding 3 consecutive working days.

(6) Family Leave

- (a) An employee with responsibilities in relation either to members of their immediate family or a person living with the employee as a member of the employee's immediate family who need their care and support shall be entitled to use up to 5 days per year sick leave entitlement to provide care and support for such persons when they are ill or incapacitated.
- (b) The employee shall, if required, establish by production of a medical certificate or statutory declaration, the illness or incapacitation of the person concerned.
- (c) The entitlement to sick leave in accordance with this subclause is subject to—
 - (i) the employee being responsible for the care of the person concerned; and
 - (ii) the person concerned being either:
 - (A) a member of the employee's immediate family; or
 - (B) a person who is living with the employee as a member of the employee's immediate 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, the reasons for taking such leave and 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) Family leave is not cumulative from year to year.
- (f) the term "immediate family" includes a spouse, de facto spouse, child, step child, parent, brother, sister, grandparent or grandchild of the employee or spouse of the employee.

(7) Maternity Leave

Leave before and after the birth.

A female employee who has given notice of her intention to take maternity leave, other than for an adoption, shall ordinarily commence the leave six weeks before the expected date of birth and end the leave six weeks after the day on which the birth has taken place, provided that an employee may apply to the employer to continue or resume duty in respect of any period closer to the expected date of birth and the employer may approve the application, and provided the application is supported by the certificate of a registered medical practitioner indicating that the employee is fit for duty.

(8) Long Service Leave

The long service leave provisions published in Volume 76 of the Western Australian Industrial Gazette at pages 1 to 4

inclusive as updated from time to time, are incorporated and shall be deemed to be part of this Agreement. Provided that—

- (a) Where an employee has completed at least 8 years service the amount of leave shall be—
 - (i) in respect of 8 years service so completed - 7 weeks leave;
 - (ii) in respect of the next 7 years service completed after such 8 years - 6 weeks leave;
 - (iii) in respect of each 10 years service completed after 15 years service - eight and two-thirds weeks leave.
- (b) An employee may by agreement with employer, take pro-rata long service leave provided that the employee has completed at least eight years service. Such agreement shall not be unreasonably withheld.
- (c) Long service leave may be taken in weekly multiples. Where an employee's remaining portion of accrued untaken leave entitlement is less than a week, such portion may be taken.
- (d) At the request of the employee and with the agreement of the employer, an employee faced with pressing financial needs may be paid in lieu of taking a portion of long service leave.

(9) Training/Study Leave/Professional Development

- (a) Additional paid or unpaid leave may be granted to an employee to undertake training and study, or to attend conferences and seminars related to the activities of the employee or for the development of the employees work skills.
- (b) Employees may request to attend professional development courses and shall seek prior approval for such courses from the Chief Executive Officer. Courses must be deemed to be of benefit to both the employee and employer, and must not place excessive demands on the organisation's financial and human resources.
- (c) Where employees request and receive approval to attend professional development courses, they shall contribute fifty percent of expenses actually incurred by the employee for travel, transport, accommodation, registration fees and any other charges associated with attendance at the course.

(10) Introduction of Change/Redundancy

The employer is committed to utilising its employees, who are its major resource, to the best advantage. Where the employer decides to introduce changes that are likely to have significant effects on the employee(s), the conditions of this clause shall apply.

- (a) In this clause "redundancy" means a situation where the employee's employment is liable to be terminated by the employer, the termination being attributable, wholly or mainly, to the fact the employee's position is, or will become, superfluous to the needs of the employer.
- (b) As part of the process the employer shall—
 - (i) consult the employee(s) who may be affected, and their union;
 - (ii) consider all reasonable alternatives to redundancy, eg reduced hours, appointment to a lower position, transfer to another type of position, and
 - (iii) select the person for redundancy in accordance with objective criteria developed by the parties and made known to all involved in the process.
- (c) In the event of redundancy an employee shall be given the following notice of termination of employment—
 - (i) Up to the completion of 3 years continuous service 2 weeks
 - (ii) 3 years and up to the completion of 5 years continuous service 3 weeks
 - (iii) 5 years and over continuous service 5 weeks

- (iv) In addition, employees over forty-five years of age at the time of the giving of the notice, with no less than two years continuous service, shall be entitled to an additional week's notice.
- (d) Payment in lieu of notice 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.
- (e) In addition to the period of notice, the employee shall be entitled to the following redundancy payments—
- (i) Employees who have completed up to 10 years continuous service - 1 weeks pay for every completed year of service.
 - (ii) Employees who have completed over 10 years continuous service - 2 weeks pay for every completed year of service in excess of 10 years, in addition to the payment in (i) hereof.
- (f) All compensation and other payments made pursuant to this clause shall be calculated at the employee's ordinary weekly hours (excluding overtime) as at the date notice of redundancy is given.
- (g) If requested by the employee, the employer shall provide at the employer's expense, professional out placement advice to a value of not more than \$1500.
- (h) During the period of notice of termination of employment, an employee whose employment is to be terminated by reason of redundancy, shall, for the purpose of being interviewed for further employment, be entitled to be absent from work for a maximum of eight ordinary hours without deduction of pay. The Employer is entitled to reasonable proof that the employee has sought the leave for this purpose.
- (i) This clause shall not apply where employment is terminated as a consequence of conduct that justifies instant dismissal, casual employees, or employees engaged for a specific period of time or for a specified task or tasks.

10.—SALARY / REMUNERATION PACKAGING

Salary / remuneration packaging, in accordance with the terms and conditions of this clause and the salary packaging arrangements appended to this Agreement, shall be optional for all employees covered by this Agreement.

(1) On the employer offering and the employee accepting salary / remuneration packaging, the provisions of this clause shall apply and the terms and conditions of packaging shall not, when viewed objectively, be less favourable than the entitlements otherwise available under the Award. These arrangements shall be subject to the following provisions—

- (a) The maximum amount shall be that allowed under the Fringe Benefits Tax legislation where the employer incurs no liability for the payment of Fringe Benefit Tax;
- (b) Part time employees have salary packaging based on their gross pro-rata annual salary;
- (c) The employer shall confirm in writing to the employee the classification level and salary payable as applicable to that employee under Schedule C of the Award;
- (d) The employer shall advise the employee in writing, of his/her right to choose payment of salary referred to in Schedule C of the Award instead of a salary/ remuneration package;
- (e) The employer shall advise the employee, in writing, that Award conditions, other than those varied by this Agreement, shall continue to apply;
- (f) The employee shall advise the employer, in writing, as to whether the agreed cash component is adequate for his/her ongoing living expenses.

(2) The packaging agreement, the terms and conditions of which shall be in writing and signed by both the employer and employee, shall detail the components of the total

remuneration package for the purpose of this Agreement and for the purposes of the time and wages record.

(3) A copy of the packaging agreement shall be made available to the employee.

(4) The employee shall be entitled to inspect details of payments and transactions made under the terms of the agreement.

(5) The configuration of the remuneration package shall remain in force for the period agreed between the employee and the employer, provided that an employee may withdraw from a salary / remuneration packaging arrangement by giving the employer reasonable notice of intention to withdraw from the end of the next quarter of the calendar year.

(6) An employee, on withdrawing from the packaging arrangement, shall revert to his/her appropriate salary applicable at the time of withdrawal.

(7) An employee, who wishes to take up packaging, having previously taken up that benefit and withdrawn from it, may only be entitled to do so on giving satisfactory reasons to the employer, and if approved, the package shall be based on the rate of pay applicable to the employee when originally placed on the packaging arrangement, or as amended in accordance with this Agreement.

(8) An employee who has previously declined to take up packaging, may, by giving the employer reasonable notice, take up the benefit at any time. The rate of pay used in calculating such benefit shall be in accordance with that prescribed in Schedule C of the Award at the date of this Agreement, or as amended in accordance with this Agreement.

(9) Where at the end of the financial year the full amount allocated to a specific benefit has not been utilised, by agreement between the employer and employee, any unused amount may be carried forward to the next financial year to be utilised by 30 September, or be paid as salary as at the end of the financial year, which will be subject to usual taxation requirements.

(10) For the purposes of this clause Gross Annual Salary will include the following components—

- The total of all basic salary amounts
- Shift and penalty allowances
- Leave loading
- On call allowances
- Coordinators allowance
- Higher duties allowances
- Overtime payments

But will exclude;

- Meal allowances
- Motor vehicle allowances
- Call out allowance

(11) In the event that changes in legislation, income tax assessment determinations or Rulings, particularly in respect of the employer's fringe benefits tax exempt status, remove the employer's capacity to maintain the salary packaging arrangements offered to employees under this Agreement, the employer shall be entitled to withdraw from the salary packaging arrangements by giving notice to each affected employee either three months prior to the withdrawal taking place, or notice to have effect from the date that the relevant legislation is to take effect, whichever is the earlier.

(12) Subject to subclause (14), in the event of the employer withdrawing from the salary packaging arrangements, the employees will revert to a salary not less than that applicable to the employee's classification under this Agreement.

(13) The employer shall as soon as practicable after being advised of the legislative change referred to in subclause (11) hereof, advise the Union and employees and shall convene a meeting of the parties with a view to reaching an alternative agreement on salaries and salary benefits.

(14) In the event that consensus on the terms of a replacement agreement cannot be reached it shall be open to the parties to seek cancellation of this clause and/or refer the matter to the Western Australian Industrial Relations Commission for conciliation or arbitration.

11.—REMUNERATION AND SAFETY NET ADJUSTMENTS

(1) Award safety net pay adjustments made to the Award during the life of this Agreement shall be available to employees in receipt of the salary/remuneration packaging option under this Agreement, while the relevant funding body is providing adequate funding to cover such Award increases.

(2) Should adequate funding not be forthcoming, the employer shall, as soon as practicable after being advised of the fact, advise the Union and employees and shall convene a meeting of the parties with a view to reaching an alternative agreement on salaries and salary benefits. The provisions of Clause 12.— Dispute Resolution are applicable in the event that an agreement is not achieved.

(3) Where the parties are unable to reach agreement under subclause (2) and the matter requires arbitration before the Commission pursuant to Clause 12.—Dispute Resolution, the parties undertake to accept the decision of the Commission and vary the Agreement accordingly.

(4) The 2000 arbitrated safety net adjustment of \$15.00 per week shall apply from the first pay period commencing on or after 1 August 2000, and any arbitrated safety net adjustment granted by the Australian Industrial Relations Commission in 2001 intended for general application shall apply to this Agreement from the first pay period on or after 1 July 2001.

(5) For the purposes of this Agreement the minimum salaries applicable to employees shall be the Award rates applicable as at 30 June 2000, and any adjustments referred to in subclauses (1) and (2) during the life of the Agreement shall be added to such rates.

12.—DISPUTE RESOLUTION

(1) Preamble

- (a) Subject to the provisions of the Industrial Relations Act 1979 any question, or difficulty, including any matter arising under this Agreement or any matter raised by the Union, the employer or an employee / employees, shall be settled in accordance with the procedures set out herein.
- (b) The parties agree that no bans, stoppages or limitations will be imposed prior to or during the time this procedure is being followed.
- (c) This clause in no way limits the rights of the employees and the Union under the Occupational Safety and Health Act 1984 or other related legislation.

(2) Procedure

Where the matter 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 their immediate supervisor. If the matter cannot be resolved at this level the supervisor shall, within two working days, refer the matter to a more senior officer nominated by the employer and the employee(s) shall be advised accordingly.
- (b) That senior officer shall, if able, answer the matter raised within five working days of it being referred, and if the senior officer is not so able, refer the matter to the Chief Executive Officer for his/her attention, and the employee(s) shall be advised accordingly.
- (c)
 - (i) If the matter has been referred in accordance with paragraph (b) above the employee(s) or the union representative/contact shall notify the Union Secretary or nominee, to enable the opportunity of discussing the matter with the employer.
 - (ii) The employer shall, as soon as practicable after considering the matter before it, advise the employee(s) or, where necessary, the Union of its decision, provided that such advice shall be given within 21 calendar days of the matter being referred to the employer.
- (d) Should the matter remain in dispute after the above processes have been exhausted either party may refer the matter to the Western Australian Industrial Relations Commission.

- (e) Nothing in this provision shall preclude the parties reaching agreement to shorten or extend the period specified in subclauses (2)(a), (b) or (c)(ii).

13.—NO PRECEDENT

This Agreement is applicable only to the parties named herein and shall not be used in any manner whatsoever to obtain similar arrangements or benefits in any other site or enterprise.

14.—TERM

The term of this Agreement shall be from the date of registration until 30 June 2002.

15.—RENEWAL

(1) The parties agree that negotiations for a further Agreement shall commence at least three months prior to its expiry.

(2) This Agreement shall continue to operate until it is replaced by a new Agreement.

(3) Provided that the parties may at any time agree to vary or cancel the Agreement in accordance with the provisions of the Industrial Relations Act 1979 (WA).

16.—NUMBER OF EMPLOYEES

Pursuant to s.41(A)(1a) of the Industrial Relations Act 1979 (WA), it is estimated that 86 employees are covered by this Agreement upon its registration.

SIGNATORIES TO AGREEMENT

For and on Behalf of:

ROCKY BAY INCORPORATED:

G. N. Reynolds

President

Sgd.....

Dated: 19/12/2000

Sgd.

G. M. Walsh

Chief Executive Officer

Dated: 19/12/2000

For and on behalf of:

HOSPITAL SALARIED OFFICERS' ASSOCIATION OF WESTERN AUSTRALIA (UNION OF WORKERS)

Sgd.

T. M. Farrell

President.

Dated: 20/12/2000

Sgd.

D. P. Hill

Secretary

Dated: 20/12/2000

APPENDIX

ROCKY BAY INC

SALARY PACKAGING ARRANGEMENTS HSOA STAFF

(1) Packaging Details

- (a) Salary packaging up to an amount not exceeding the maximum allowed under Clause 10 hereof will be available to staff.
- (b) Staff may elect to take the maximum rate of packaging offered to them or a lesser amount approved by the employer.
- (c) Staff wishing to alter their level of packaging may only do so at the end of each quarter.

(2) Administration Charge

- (a) Rocky Bay Inc may charge an administration fee sufficient to cover the actual cost of administering the salary packaging scheme. This fee will automatically be deducted from the packaged amount. Such fee will be utilised only for the administration of the salary packaging scheme.

(3) 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 individual staff member'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 paid out by the packaging arrangement and the figure appearing under the "Tax" column will be the tax payable on the reduced "Taxable Income".
- (c) Group Certificates will indicate the reduced taxable income and tax deducted for the year. The amount packaged will be shown on Group Certificates as required by the Tax legislation.

(4) Proposed Operation of the System

- (a) Each fortnight the payroll system will calculate each staff member's non cash benefit in accordance with the agreed sacrifice percentage. Such amount will be credited to that staff member's salary packaging account.
- (b) At the end of each month each staff member will receive a statement of account indicating all transactions for the previous month and the end of month balance or such shorter period as determined by the Employer.
- (c) 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 Salary Packaging Clerk together with the original account. In normal circumstances payment will be made by the due date of the account but not less than 3 days following receipt of the account by the salary packaging clerk.
- (d) When a staff member terminates employment with Rocky Bay Inc they may elect to either use their remaining salary package balance prior to termination or to have the balance paid out as salary. Where the balance is paid out as salary, income tax instalment deductions will be deducted from the salary by Rocky Bay Inc.

(5) Superannuation Guarantee charge

- (a) Superannuation Guarantee payments will be based upon gross award salary as defined under the Superannuation Guarantee Charge Act 1992.

(6) 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 residence.
- Rent—personal rental expenses of the employee, such as the rent they pay for their present accommodation.
- 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 employees as part of an educational activity, undertaken by themselves or dependent child.
- Child Care Fees—expenses incurred by the employee for the care of their child/children.
- Maintenance Payments—any fixed payment incurred by an employee in respect of private or court/law enforced agreements for maintenance payments.

- 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.
- Domestic Support—expenses incurred by the employee in respect of a cleaner or ironing service where an invoice is produced.
- Travel and Accommodation Costs—payments to travel agents, airlines, hotels and the like would be included under this category.
- Membership Subscription—payment of expenses of membership of any organisation to which the employee belongs.
- Medical, Dental and Pharmaceutical Accounts—doctor, dentist and chemist bills (and bills from other medical service providers) incurred in respect of self, spouse or dependant.
- Veterinary Accounts.
- Credit Card Accounts—any of the above expenses incurred by an employee and charged to them via a credit card (for example, Visa, Bankcard). The employee must have documentation to support the expenses charged to the credit card. It is important to note under no circumstances will there be payment for any cash advances. Payments made from any packaged amount will only be made in respect of expenses incurred as a result of a purchase of the eligible goods and services and will be made to the credit card provider.
- Fleetcard is a system provided by Shell/Custom Credit whereby a credit card is issued which may be used to purchase fuel and other services for a nominated motor vehicle. Fleetcard issue a monthly bill detailing all expenses incurred. This will be payable through the employee's packaging account.
- 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 principal place of residence, payment may be made through the employee's salary packaging account at the direction of the employee but Rocky Bay (Incorporated) shall not be required to determine any issues as to the responsibility or liability for such payments, or itself be held liable for such payments.

Please note that under no circumstances will a payment from a packaged amount be made directly to an employee. All payments will be made by cheque (or direct deposit) or other electronic transfer of funds to a third party in payment of an expense incurred by that employee.

**SCHINDLER LIFTS AUSTRALIA PTY LTD
(WESTERN AUSTRALIA) ENTERPRISE
AGREEMENT 2000.
No. AG256 of 2000.**

2001 WAIRC 01826

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES

SCHINDLER LIFTS AUSTRALIA PTY LTD (WESTERN AUSTRALIAN BRANCH), APPLICANT

v.

COMMUNICATIONS, ELECTRICAL, ELECTRONIC, ENERGY, INFORMATION, POSTAL, PLUMBING, AND ALLIED WORKERS UNION OF AUSTRALIA, ENGIN & ELECT DIV, WA BRANCH, RESPONDENT

CORAM

COMMISSIONER J F GREGOR

DELIVERED WEDNESDAY, 17 JANUARY 2001
FILE NO/S AG 256 OF 2000
CITATION NO. 2001 WAIRC 01826

Result Registered Agreement

Order.

HAVING heard Mr N Rowden on behalf of the Applicant and Mr P Carter 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 two parties lodged in the Commission on 2 November 2000 entitled Schindler Lifts Australia Pty Ltd (Western Australia) Enterprise Agreement 2000 be registered as an Industrial Agreement

[L.S.] (Sgd.) J.F. GREGOR,
Commissioner.

ENTERPRISE AGREEMENT 2000
Schedule.

Clause 1 Title

1.1 This Agreement shall be known as the Schindler Lifts Australia Pty Ltd (Western Australia) Enterprise Agreement 2000

Clause 2 Arrangement

Clause	Subject
1.	Title
2.	Arrangement
3.	Application of Agreement
4.	Parties Bound
5.	Date and Period of Operation
6.	Relationship To Parent Award
7.	Single Bargaining Unit
8.	No Extra Claims
9.	Preamble
10.	Accountability
11.	Family Leave
12.	Apprentices
13.	Overtime
14.	Redundancy
15.	Union Dues
16.	Hours of Work Flexibility
17.	Time in Lieu of Overtime
18.	Safety Provision
19.	Temporary Labour
20.	Inclement Weather
21.	Annualised Salaries
22.	Four Day Work Cycle
23.	After Hours Calls Penalties
24.	After Hours Call Handling
25.	Career Path/Training
26.	Payment of Wages By EFT
27.	Acceptance of Service Calls
28.	Performance Measures
29.	Dispute Avoidance & Settlement
30.	Retrenchment
31.	Consultative Mechanism
32.	Non Reduction of Entitlements
33.	Wage Increases
34.	Extended Sick Leave Scheme
35.	RDO's
36.	Construction Department Allowances
37.	Appendix clause 14 from the 1994 agreement Signatories

Clause 3 Application of Agreement

This Agreement shall apply to all Schindler field Employees employed in the State of Western Australia who are engaged in the occupations or callings prescribed in the Lift Industry (Metal & Electrical Trades) Award 1973.

This agreement shall apply to approximately 26 employees.

Clause 4 Parties Bound

4.1 The Parties bound by this Agreement shall be —

- (i) Schindler Lifts Australia Pty Ltd Western Australia Branch (hereinafter called Schindler)
- (ii) Employees, whether members of the union organisations named herein or not, engaged by Schindler under the award in Clause 3.1
- (iii) Communication, Electrical, Electronic, Energy, Information Postal, Plumbing & Allied Workers Union of Australia, Engineering & Electrical Division, WA Branch (herein after CEPU)

Clause 5 Date & Period of Operation

5.1 This Agreement shall take effect from 1 July 2000 and remain in force until 30 June 2003.

Clause 6 Relationship to the Parent Award

6.1 This Agreement shall apply and be interpreted wholly in conjunction with WA Lift Industry (Electrical and Metal Trades) Award 1973, provided that where there is any inconsistency between this Agreement and the Award, this agreement shall prevail to the extent of the inconsistency.

Clause 7 Single Bargaining Unit

7.1 For the purposes of this Agreement a single bargaining unit was established comprising employee representatives, CEPU representatives and Schindler representatives.

Clause 8 No Extra Claims

8.1 Neither the Union party to this Agreement nor their members shall make any claim against Schindler for any increases in rates of pay, remuneration or make any other claims at all whilst this Agreement is in force. This includes increases arising from Award variations or decisions of the State or Federal Industrial Relations Commissions.

Clause 9 Preamble

9.1 Nothing in the Agreement precludes the right of the Company to negotiate further increases with its employees and relevant Union based on agreed productivity gains otherwise no other claims for wage increases will be made during the terms of this Agreement.

Clause 10 Accountability

10.1 The wage increases payable under this enterprise agreement rely upon the parties (company, unions and employees) at the enterprise being committed and accountable for ensuring that the productivity improvements specifically identified in this agreement and implied in the spirit of this agreement & previous agreements will be delivered for the duration of this agreement and thereafter.

To ensure that the productivity improvements negotiated under this agreement and at the enterprise level are achieved and maintained, consultative committees including management and employees, will be established at each enterprise to monitor the implementation of the provisions of the agreement.

The parties at the enterprise level will negotiate the size and constitution of the committee in accordance with Clause 31 of this Agreement.

The committees will conduct a review on a bi-monthly basis (or as otherwise agreed)

The details of the review procedures and dates and any corrective action necessary to attain the productivity improvement will be agreed at the enterprise level.

In the event that productivity improvements are not achieved and the problem cannot be resolved at the enterprise level, the parties will seek to resolve the matter in accordance with the disputes procedure.

The company agrees that wages paid for changes under this Agreement will not be withdrawn unless the employees/union or company refuse to implement and/or withdraw the agreed changes Clause 11 Family Leave

Clause 11 Family Leave

11.1 Family leave is in accordance with award provisions.

In extenuating circumstances, where award entitlements are exhausted, the company agrees to review the situation and

may extend ex gratia payments or leave in advance. This is to be granted at the company's discretion and be applicable only in cases of serious illness or injury.

Clause 12 Apprentices

12.1 The company agrees that they will, subject to operations and business requirements, continue to employ apprentices provided that the employment of any additional apprentices to satisfy the above does not jeopardise the employment of current personnel.

Clause 13 Overtime

13.1 The company agrees that overtime should be held within reasonable limits. However, in exceptional circumstances where overtime in a two month period exceeds 25% of normal working time, it is agreed to review the employment situation. The foregoing calculations will not include any site where a six day week is a normal part of the working hours of that site.

Clause 14 Redundancy

14.1 The company agrees to continue its participation in the MERT scheme, until an alternative redundancy type scheme can be agreed upon. The sum available for any alternative is not to exceed \$44.80 per week with the rate changes to occur on January 1st 2001, January 1st 2002 and January 1st 2003 to the amounts of \$46.40 per week, \$48.20 per week and \$49.80 per week respectively.

Clause 15 Union Dues

15.1 If agreed to by an employee, the company will deduct union dues direct from wages.

Clause 16 Hours of Work Flexibility

16.1 The parties to this agreement are committed to the continued use of existing Enterprise Agreement hours of work flexibility provisions and award provisions on hours of work.

Clause 17 Time Off In Lieu Of Overtime

17.1 The parties agree to develop a procedure to facilitate the implementation of this clause.

The fundamental principles of this agreement are—

1. Any time off must be by mutual agreement between the employee and employer. It is only applicable to pre-arranged overtime of four or more hours.
2. Overtime penalty amounts and associated allowances may be paid when worked.
3. Actual overtime hours worked may be accumulated.
4. Time off accrued shall be taken within 6 months of accrual.
5. In the case where time off in lieu is taken on a week days for overtime accrued at weekend penalty rates, travelling allowance will be paid.
6. Where an employee has accrued a bank of time off in accordance with this clause the accrual time may be cashed out by agreement with the Company.
7. Maximum hours to be accrued is 40 hours.

17.2 Example

Flexibility RE: Hours/Time off in Lieu
8 hours Saturday O.T
Pay 7 hours Penalty
Pay applicable allowances such as fares
Accumulate 8 hours Worked

Clause 18 Safety Provision

18.1 It is acknowledged that safe work practices and work environment are critical to the health and safety of all employees. All employees agree to abide by and actively participate in all safety awareness programs.

It is agreed that all employees will present themselves for work in the correct company clothing as provided and wear the appropriate equipment such as safety boots, ear protection, helmets and safety glasses etc as reasonably required.

In the event that a person should present themselves for work with out the correct company provided clothing and/or

protective safety equipment that person shall not begin work until the correct clothing or protective equipment is provided.

Subject to the company having previously provided the clothing and/or equipment, the employee may be asked to go home without pay to collect the safety equipment or clothing. In such cases the elected O.H. & S. representative should be consulted prior to action taking place.

Clause 19 Temporary Labour

19.1 The parties are committed to the continued use of provisions of Clause 14 of the 1994 Enterprise Agreement which provides for the flexible use of additional labour to cover peaks of work or shortages of particular skills. The Company reaffirms its previous commitment that it endeavours to maintain a core workforce of regular full time employees as outlined in Clause 14 of the 1994 Enterprise Agreement.

19.2 The parties further agree that the use of subcontractors will on be on occasions where it is impractical to use Schindler employees to perform the work, eg distant work (outside 100kms from Perth), specialist work, and/or peak work loads.

19.3 Specialist work involves tasks not normally undertaken by Schindler Lifts employees eg car interiors, spray painting, grouting of doors, etc.

Clause 20 Inclement Weather

20.1 The parties are committed to the principle that employees not affected by inclement weather can continue to be usefully utilised as per the agreement under the 1994 Enterprise Agreement.

Clause 21 Annualised Salaries

21.1 During the term of this agreement the parties commit through the consultative committee process to the discussion and consideration of an annualised salaries system for field employees.

Prior to introduction of any scheme, agreement must be gained from the majority of employees in a business unit and the relevant Union.

Clause 22 Four Day Work Cycle

22.1 The parties to this agreement agree to the introduction of a four day ordinary work cycle. The four day work cycle will only apply to repair, modernisation and installation work. The fundamental principles of this agreement are —

1. It shall operate in accordance with Clause II of the Lift Industry (Metal & Electrical Trades) Award 1973.
2. It shall be initiated only after agreement is reached between the relevant employee at a site and the company.
3. Hours will be 4 consecutive x 9 ½ hour days with no rostered day off accrual.
4. Fares will only be paid for days actually worked.

Clause 23 After Hours Calls Penalties

23.1 After hour call penalties shall be paid in accordance with either i) or ii) as agreed, but not both.

1. After hours call between 2400 hours and 0600 hours to be paid at double time. All calls from Friday 2400 to 0600 Monday are to be paid at double time. In all other respects Clause 12 of the Lift Industry (Electrical & Metal Trades) Award 1973 shall continue to apply.

OR

2. An after hours call payment shall be paid to any service technician who at the time is available and rostered to accept after hour call outs. This payment shall only apply to two service technicians during any one week period. During this one week period the nominated service technicians shall attend to all after hours call outs and no payment (other than the after hours call payment) shall be made to the nominated service technicians for attending these after hours calls, except where the length of the call exceeds three hours, in which case the additional time will be paid at the appropriate overtime rates. Before any paid overtime can be worked approval must be given by the service manager or someone authorised to do so. It is the prerogative of the nominated service technician to arrange for other Schindler employees to attend to their after hours calls in their stead should they desire. In this case the substitute service technician will receive the appropriate after hours payment for that particular day.

The agreed amount for each day, expressed as a percentage of the whole amount of the after hours call payment is as follows.

- | | |
|----------------------|--------|
| (a) Monday to Friday | 9.36% |
| (b) Saturday | 29.80% |
| (c) Sunday | 23.4% |

The value of this payment shall be \$955.00 as from the first full call week in July 2000, and then adjusted in accordance with the provisions provided for in clause 33 of this agreement, with the first adjustment to occur as from the first full call week in January 2001.

Any employee who is rostered for duty on after hour calls on a gazetted public holiday shall be allowed to take one day in lieu per public holiday worked. This day in lieu must be taken within two weeks of the public holiday and on a day to be mutually agreed upon between the employee and the employer with due consideration for operational requirements.

Employees rostered for after hours calls who attend calls on either Sunday, Monday, Tuesday, Wednesday or Thursday between the hours of 12.00 Midnight and 6.30am shall be entitled to a reasonable break from the time of completion of the last call as registered on the signed work docket (and allowing for reasonable travel time to home). The employee shall return to complete his shift, without pay loss, when it is considered he/she has had sufficient rest.

If, between the hours of 11 PM and 5.30 AM the following day, no calls are received or the service mechanic is not engaged on a call, this clause shall not apply and the after hours technician shall commence work at his normal start time.

Any calls received from 6.30am onwards shall be passed to the early starters.

Any disputes or interpretations regarding the above paragraph will be discussed at a combined meeting of the Consultative Committee and the Safety Committee, whose recommendation will form the basis of a resolution by the Department Manager.

In order to allow Schindler Lifts to carry out its work as a Service provider and to enable the company to fulfill its contractual obligations, all Service technicians are required to make themselves available for the after hours roster if required.

Clause 24 After Hours Call Handling

24.1 As from the first full call week in July 2000, and in addition to the after hours call payment, there will be a further \$212 paid to the service technician whom, at that particular time, is designated to receive the call handling fee on the proviso that they receive and dispatch any calls from the answering service between the hours of 6.00am and 7am and 5pm and 6pm Monday to Friday. This payment will be adjusted in accordance with the provisions provided for in clause 33 of this agreement, with the first adjustment to occur as from the first full call week in January 2001. These calls will be passed on to the relevant "early or late start" mechanic. In the unlikely event that there is no early or late start mechanic then the after hours mechanic shall attend to the call and be paid the appropriate overtime rate.

24.2 The after hours roster shall be so arranged that on alternate rosters the after hours technicians will assume the call handling responsibilities as described in Clause 24.1. This technician will receive the call handling payment. The technician receiving the call handling payment will take all after hour calls from the answering service. He will take the first call and pass the second call on to the second technician. Whoever takes the last call on any given night or any given roster will take second call the following night or the following roster. The technician must physically attend the call before passing the next call to his team mate.

Clause 25 Career Path/Training

25.1 The Company agrees in principle to provide a career path and associated training for its employees. Courses must be company related, approved in advance and relevant to the employee's current position or career path.

Courses should be accredited or reflect agreed national standard wherever practicable.

Clause 26 Payment Of Wages By EFT

26.1 The acceptance of this agreement includes any consideration for any taxes or charges associated with payments made

through the electronic funds transfer/banking system, i.e. the Company will make no payment in respect of bank charges, taxes etc. associated with EFT payments.

Clause 27 Acceptance Of Service Calls

27.1 To facilitate Schindler Lifts vision to provide the highest level of customer satisfaction all service personnel shall make themselves available to accept breakdown calls up to the schedule completion of their particular shift. Should the acceptance of the breakdown call lead to the person(s) being required to work overtime on any day, this will be paid in accordance with the relevant award rate of pay. Notwithstanding the above, where the service mechanic attending the call determines that the call will take more than one hours overtime, they may arrange for another mechanic to attend the call by contacting their supervisors. Where a person is not able to work overtime on a particular day due to prearranged personal commitments, that person shall advise their supervisor prior to lunch break of that shift. The award requirements for all employees to work reasonable overtime applies.

Clause 28 Performance Measures

28.1 During the first six months of this agreement, the parties commit to the development and implementation of meaningful performance measures in order to develop performance benchmarks for the business. These benchmarks will be used to facilitate the continuous improvement of business performance. Benchmarks and KPI's will not be used as the sole measure to award pay increases.

Clause 29 Dispute Avoidance & Settlement

29.1 It is the intention of all parties that through improved communication and consultation, disputes shall be avoided.

29.2 Where a question, dispute or difficulty arises, the parties agree to abide by the following settlement procedure to ensure prompt resolution, whilst maintaining efficiency of operations —

1. In the first instance, discussion should take place between the Employee and immediate Supervisor. The relevant Union Delegate may also be involved in this discussion.
2. If not settled at Stage (i) discussion will take place between the Employee, the immediate Supervisor and the relevant Union Delegate.
3. If not settled at Stage (ii) the matter will be referred to the appropriate Site, Department or State Manager (as appropriate) for discussion and settlement.
4. If not settled at Stage (iii) the Union Delegate shall submit the matter to the Union Organiser for discussion and settlement with the State Manager.
5. If not settled at Stage (iv) the matter may be referred to the AIRC (or appropriate State Industrial Dispute Settlement Body) by any of the parties to this Agreement, for determination.
6. Whilst the above steps are being carried out every endeavour shall be made by the parties to the Agreement to ensure work continues normally. No party to the Agreement shall be prejudiced as to the final settlement by the continuance of work in accordance with this clause.
7. In the interest of prompt settlement, the relevant Union Organiser may be involved in the dispute settlement procedure at any stage if appropriate.

Clause 30 Retrenchment

30.1 The parties to this Agreement to incorporate the terms and conditions of the existing Schindler Lifts Australia Pty Ltd National Retrenchment Agreement into this Agreement.

30.2 The terms and conditions of the Agreement are as follows —

- (a) NOTICE—One (1) weeks full pay in lieu of notice.
- (b) SEVERANCE PAY—This will continue to be paid as per the current award provision via the MERT scheme. In addition to the above, the Company also agrees to pay any previous entitlement accrual under the previous Metal Industry Award—Appendix A—On Site Construction, up to October 1989, to be calculated on a pro-rata basis to the nearest month of service.

- (c) **LONG SERVICE LEAVE**—This will continue to be paid as per current award provision, or applicable State Portable Long Service Scheme Leave Payment Legislation as varied from time to time.
- (d) **ANNUAL LEAVE**—This will continue to be paid as per current award provisions.
- (e) **SERVICE PAYMENT**— A service payment of \$2000 will be paid to all retrenched employees.
- (f) **RDO's**—Any unused accrued R.D.O's (including part days) will be paid out on termination.
- (g) **RATE OF PAY**—Notice and severance payments are paid at the ordinary time/all purpose rate of pay for the employee concerned.
- (h) **RETRENCHMENT**—When The Company determines that retrenchments are necessary, it shall, following reasonable consultation with the Union adviser the number and classifications involved.
As a first step volunteer will be considered. In the case of such volunteers, The Company has the right due to commercial, skill base, qualifications or other reasons, to either accept or reject these volunteers in consultation with the Union.
If the first step does not result in sufficient acceptances, then following consultation with the Union, The Company will select employees having due regard to the commercial, skill base and qualification needs of the Company at that time, together with the work performance and length of service of the individuals involved.
- (i) **RE-EMPLOYMENT**— Should future positions become available The Company will, subject to the skills and qualifications required and location of the job(s) involved, advise and give preference to employees retrenched during the preceding 12 months.
- (j) **DISPUTE SETTLEMENT**—The parties to this agreement, agree that any dispute arising out of the interpretation of this Clause will be dealt with under the Dispute Avoidance and Settlement procedure of this Agreement.
- (k) **CERTIFICATE OF SERVICE**—A written Certificate of Service will be provided showing reasons for termination of employment.
- (l) The benefit of this clause is not applicable to casual employees, fixed term employees or subcontract (labour hire) workers, engaged by Schindler under the relevant terms of the Lift industry (Electrical & Metal Trades) Award 1973 and/or Clause 19 of this Agreement.

Clause 31 Consultative Mechanism

31.1 Following certification of this Agreement Schindler WA will maintain a consultative committee having regard to the size, number of employees and geographic location of employees and operations in the State.

31.2 The committee shall comprise equal numbers of employee and Schindler appointed members. Employee representatives will be determined by the Union through an election involving the permanent full time employees. All members shall be permanent full time employees.

31.3 The committee shall meet as reasonably as required to discuss, formulate and recommend initiatives under the terms of this agreement within the State.

31.4 A quorum will require equal numbers of employees and Company Representatives comprising not less than half the committee membership.

31.5 Consultative Committee Members will be given reasonable paid time to participate in the Group and consult with other employees on initiatives under negotiations with respect to this agreement.

Clause 32 Non Reduction of Entitlements

32.1 This Agreement shall not operate to cause an employee to suffer a reduction in ordinary time earnings, standard hours of work, annual leave, long service leave, superannuation or redundancy arrangements.

Clause 33 Wage Increases

33.1 The wage increases detailed below will be calculated on the employee's "all purpose" hourly rate and shall apply in

consideration for the implementation and observance of this agreement.

From the first full pay period to commence on or after 1st July 2000—3%

From the first full pay period to commence on or after 1st January 2001—2%

From the first full pay period to commence on or after 1st July 2001—3%

From the first full pay period to commence on or after 1st January 2002—2%

From the first full pay period to commence on or after 1st July 2002—3%

From the first full pay period to commence on or after 1st January 2003—2%

Clause 34 Extended Sick Leave Scheme

34.1 The Company and the Consultative Committee shall finalise details of an extended Sick Leave Scheme designed to assist employees who suffer from a serious illness or injury necessitating an extended absence from work. The fundamental principles of the scheme are as follows—

- (a) Extended sick leave is to be provided for periods of serious illness or injury where the employees sick leave balance is exhausted before they return to work.
- (b) A minimum of three (3) sick days leave balance must be maintained as a minimum waiting period and used before extended sick leave will be provided.
- (c) All accrued sick leave must be used before extended sick leave is provided.
- (d) Serious illness is defined as being of at least three (3) days duration and is supported by a medical certificate from a registered medical practitioner certifying that the employee is unfit for work.
- (e) A total of up to (6) months extended sick leave may be provided. The provision of extended sick leave is at the discretion of the Company but will not be unreasonably withheld.
- (f) Where an employee becomes well enough to carry out some limited duties and the Company can provide such suitable duties, the employee shall work limited hours or modified duties as specified by their doctor

Clause 35 RDO's

To avoid an over accumulation of RDO's it is a requirement that RDO's accrued will not exceed 3 days.

Clause 36 Construction Department Allowances

An allowance of \$2.00 per hour worked on site, irrespective of the individual site arrangements with regard to site allowances, shall be paid. This allowance will be increased to the level of any individual site allowance paid by a Main Contractor to which Schindler is contracted to complete work on that specific site.

APPENDIX

Clause 14 from 1994 Agreement

The construction industry and hence our business is subject to cyclical fluctuations in work volume, beyond the control of Schindler. Whilst we endeavour to maintain the core employees of our business as regular full time employees, fluctuations and peaks in our workload are best addressed by the use of casual, fixed term periods of employment and/or subcontract (labour hire) labour. The parties to this agreement agree to Schindler utilising casual, fixed term periods on employment and/or subcontract (labour hire) labour subject to the following conditions.

The use of casual, fixed term periods of employment and/or subcontract (labour hire) labour is for the purpose of addressing peaks and fluctuations in labour requirements of short term duration or shortages of appropriately skilled labour and is not intended to reduce or replace the permanent workforce.

Where a need for a such additional casual, fixed term periods of employment and/or subcontract (labour hire) labour occurs, the relevant Schindler Manager or Supervisor will consult and reach agreement with the State Union and the Local Consultative Committee regarding the need, type of labour, duration required and conditions of employment. Such agreement will not be unreasonably withheld.

The employment of casual, fixed term periods of employment and/or subcontract (labour hire) labour shall be on the rates and conditions specified by the relevant awards varied by the conditions of this agreement.

Fixed Term Periods of Employment: Schindler may offer fixed term periods of employment for a period of up to one year subject to the relevant award conditions. Such employment will be on a week to week basis during the fixed term. The Company will not guarantee employment beyond the specified fixed term of employment.

Subcontract (labour hire) Labour: Schindler may engage labour through labour hire organisations under conditions not less than those specified by MECA or the WA Award and this Agreement.

In the event that retrenchments are required within one of Schindler's State Operations, any casual, fixed term or subcontract (labour hire) labour in the classification to be retrenched in that State Operation will be terminated before any Schindler employee is retrenched. In all other respects Clause 16 sets out the retrenchment arrangements of the Company.

Clause 38 Signatories

- (i) Schindler Lifts Australia Pty Ltd
(Western Australia Branch)
Signed
Dated this 7th day of September 2000
- (ii) Communication, Electrical, Electronic, Energy, Information, Postal, Plumbing & Allied Workers Union of Australia, Engineering & Electrical Division, WA Branch
Signed
Dated this 15th day of September 2000
- (iii) Elected representatives of the field employees by Schindler in Western Australia under the Lift Industry (Metal & Electrical Trades) Award 1972.
Signed
Signed
Signed
Signed
Dated this 7th day of September 2000.

**SOUTH WEST REGIONAL COLLEGE OF TAFE
PUBLIC SERVICE AND GOVERNMENT OFFICERS'
ENTERPRISE AGREEMENT 2000.**

No. PSAAG 76 of 2000.

2001 WAIRC 01804

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES GOVERNING COUNCIL, SOUTH WEST REGIONAL COLLEGE OF TAFE
-and-
THE CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA INCORPORATED

CORAM COMMISSIONER P E SCOTT

DELIVERED TUESDAY, 16 JANUARY 2001

FILE NO PSAAG 76 OF 2000

CITATION NO. 2001 WAIRC 01804

Result Agreement registered

Order.

HAVING heard Ms J Caiacob on behalf of the Governing Council, South West Regional College of TAFE and Ms J van den Herik on behalf of the Civil Service Association of Western Australia (Incorporated), and by consent, the Commission,

pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the South West Regional College of TAFE Public Service and Government Officers' Enterprise Agreement 2000 in the terms of the following schedule be registered on the 21st day of December 2000 and shall replace the South-West Regional College of TAFE Public Service and Government Officers' Enterprise Agreement 1998 (No. PSA AG 6 of 1998).

[L.S.] (Sgd.) P. E. SCOTT,
Commissioner,
Public Service Arbitrator.

Schedule.

PART 1—APPLICATION AND OPERATION OF AGREEMENT

1.—TITLE

This Agreement will be called the South West Regional College of TAFE Public Service and Government Officers' Enterprise Agreement 2000 and will replace the South West Regional College of TAFE Public Service and Government Officers' Enterprise Agreement 1998.

2.—ARRANGEMENT

PART 1—APPLICATION AND OPERATION OF AGREEMENT

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 40. TRAVELLING ALLOWANCE
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SCHEDULE B: PRODUCTIVITY IMPROVEMENTS

SCHEDULE C: SIGNATORIES OF PARTIES TO THE AGREEMENT

SCHEDULE D: ALPHABETICAL LISTING OF PROVISIONS

3.—SCOPE

This Agreement will apply throughout the state of Western Australia to Officers employed in the South West Regional College of TAFE. This Agreement will also apply to Officers on secondment to or in the College.

4.—PARTIES BOUND

The parties to this Agreement will be the Governing Council of the South West Regional College of TAFE, and the Civil Service Association of Western Australia (Inc).

5.—DEFINITIONS

The following terms will have the following meanings—

“**Agreement**”: means the South West Regional College of TAFE Public Service and Government Officers’ Enterprise Agreement 2000.

“**Award**”: means the Government Officers’ Salaries, Allowances and Conditions Award 1989.

“**College**” means the South West Regional College of TAFE.

“**Continuous service**”: Any period of service between the employee and employer under an unbroken contract of employment, and includes any authorised unpaid or paid absences.

“**CSA**”: means the Civil Service Association of Western Australia (Inc).

“**Department**”: means the Western Australian Department of Training and Employment.

“**Employee**”: for the purpose of this Agreement means, someone who is referred to at Clause 3—Scope.

“**Employer**”: means the Governing Council of the South West Regional College of TAFE.

“**Full-Time Officer**”: A person employed to work 37 1/2 ordinary hours per week.

“**Government**”: means the Government of Western Australia.

“**GOSAC Award**”: means the Government Officers’ Salaries Allowances & Conditions Award 1989.

“**Managing Director**” means the Managing Director of the South West Regional College of TAFE, pursuant to section 46 of the Vocational Education and Training Act 1996.

“**Minister**”: is the Minister of the Crown who is responsible for the administration of the employing agency.

“**Officer**”: means a Public Service Officer as defined in the Public Sector Management Act 1994 or Government Officer as defined in the Industrial Relations Act 1979.

“**Part-Time**”: means regular and continuing employment for less than the ordinary hours for a “Full-Time Officer”.

“**Spouse**”: means a husband or wife of an employee, and includes a de facto spouse. For the purposes of Bereavement leave it includes a former spouse.

“**Union**”: means the Civil Service Association of Western Australia (Inc).

“**WAIRC**”: means the Western Australian Industrial Relations Commission.

6.—NUMBER OF EMPLOYEES COVERED

At the date of registration of this Agreement the approximate number of employees covered by this Agreement is 60.

7.—NO FURTHER CLAIMS

7.1 There will be no extra claims for salary adjustments other than that which is provided by this Agreement for the duration of its term.

7.2 There will be no further claims on matters contained in this Agreement for the duration of its term.

8.—TERM OF AGREEMENT AND RENEGOTIATION

8.1 This Agreement will operate on and from the date of registration and will remain in force for two years.

8.2 Six (6) months prior to the date of expiration of this Agreement, the parties will commence negotiation for its renewal or replacement.

8.3 The pay rates attained under this Agreement will form the new base rates for any future Agreement, provided that the productivity targets attained under this Agreement continue and previous productivity improvements in the last agreement are sustained, and changes to Award conditions maintained, or changed by agreement.

9.—RELATIONSHIP TO AWARDS

This Agreement will be read and interpreted wholly in conjunction with the Government Officers’ Salaries, Allowances and Conditions Award 1989. This Agreement will have precedence to the extent of any inconsistency. Where the agreement is silent the relevant award will apply.

10.—AVAILABILITY OF AGREEMENT

Employees will have access to an electronic copy of this agreement. Where electronic copies are unavailable, hard copies of the agreement will be provided.

11.—OBJECTIVES OF THE AGREEMENT

It is the shared objectives of the parties to—

Work towards alignment of conditions for all TAFE employees.

Meet the requirements of clients and students through the provision of reliable, efficient and competitive services.

Achieve the Department’s mission and improve productivity and efficiency through identified improvements.

Achieve improvement and greater flexibility of working patterns and arrangements.

Promote and facilitate enhanced employee relations and increased job satisfaction.

To facilitate a continued cooperative approach to the introduction of change.

This Agreement will operate as a contributive mechanism to deliver a cost efficient Vocational Education and Training service.

12.—PAST PRODUCTIVITY

This Agreement incorporates past productivity to the date of registration.

PART 2—DISPUTE RESOLUTION

13.—CONSULTATION PROVISIONS

13.1 The parties acknowledge the need for a satisfactory College consultative procedure. Staff participation and consultation is encouraged. The form of participation and consultation may vary at each workplace depending on individual circumstances. The College will establish its own structure and processes. However, the non-establishment of a structure or process will not be used as a means to avoid requirement to consult.

13.2 Employees will be involved in broadly based representative consultative committees with structure and functions determined by the College.

13.3 Consultative committees will provide a forum for staff and management to, where appropriate, seek the views of the other and enter into meaningful discussions that may contribute towards outcomes, in relation to operational matters.

13.4 Representatives from the Union, where it has members at the workplace, will be invited to participate on consultative committees.

13.5 The parties to this Agreement acknowledge that decision making continues to rest with the College, which is accountable to Government, through legislation, for the operation of its business.

14.—DISPUTE RESOLUTION PROCEDURE

14.1 In the event of a dispute arising in the workplace the procedure to be followed to resolve the matter will be as follows—

- 14.1.1 The employee and their supervisor will meet and confer on the matter; and
- 14.1.2 If the matter is not resolved at such a meeting, the parties will arrange for further discussions between the employee and his or her nominated representative, if any, and more senior levels of management.
- 14.1.3 If the matter is still unresolved a discussion will be held between representatives of the College or other representative of the employer and the Union or other employee representative.
- 14.1.4 If the matter cannot be resolved it may be referred to the WAIRC.

14.2 While the parties attempt to resolve the matter work will continue as normal unless an employee has a reasonable concern about an imminent risk to his or her health and safety.

15.—SUBSTANDARD PERFORMANCE

For the purposes of this clause the following definition will apply—

Substandard performance: The performance of an employee is substandard if the employee does not, in the performance of the functions that he or she is required to perform, attain or sustain a standard that a person may reasonably be expected to attain or sustain in the performance of his or her duties.

15.1 No employee shall be subject to the penalties of clause 15.2 unless a fair procedure is applied and decisions and processes incorporate the principles of natural justice and are free from bias.

15.2 If, in accordance with the College's substandard performance management policy, an employee is found by the College to be performing at a substandard level, the College may—

- 15.2.1 withhold an increment of remuneration otherwise payable to that employee;
- 15.2.2 reduce the classification of that employee; or
- 15.2.3 terminate the employment of that employee.

15.3 If an employee who has been subject to substandard performance management is aggrieved by any resulting decision, he/she may appeal against that decision in the WAIRC.

16.—BREACHES OF DISCIPLINE

16.1 No employee shall be subject to the penalties of clause 16.2 unless a fair procedure is applied and decisions and processes incorporate the principles of natural justice and are free from bias.

16.2 If, in accordance with the College's disciplinary policy, an employee is found by the College to have committed a breach of discipline, the College may—

- 16.2.1 reprimand the employee;
- 16.2.2 transfer the employee to another public sector agency or authority, with the consent of that agency or transfer the employee to another position at the College at which the employee is currently employed;
- 16.2.3 impose on the employee a fine not exceeding the equivalent of five days pay that the employee would have received immediately prior to the breach of discipline finding;
- 16.2.4 reduce the monetary remuneration of the employee within the employee's existing classification;
- 16.2.5 reduce the level of classification of the employee;
- 16.2.6 dismiss the employee;

or, except where the employee is dismissed under subclause 16.2.6, take action under any two or more of the above subclauses.

16.3 If an employee who has been subject to disciplinary action is aggrieved by a decision resulting from such action, he/she may appeal against that decision to the WAIRC.

PART 3—EMPLOYER AND EMPLOYEES' DUTIES, EMPLOYMENT RELATIONSHIP AND RELATED ARRANGEMENTS

17.—HIGHER DUTIES

17.1 An officer who undertakes duties of a higher classification for a period of 10 consecutive working days or more, inclusive of public holidays, will be paid at the salary applicable to the higher level proportionate to the level of duties and responsibilities assigned for the entire period of the higher duties.

17.2 The higher rate of payment will apply to an officer who proceeds on normal annual leave or any other approved leave of absence of not more than four weeks provided that the officer was in receipt of the additional payment for a continuous period of 12 months or more.

18.—CASUAL EMPLOYMENT

18.1 Casual employees may be employed for up to three months in any period of engagement, provided that where operationally necessary and in compliance with subclause 18.2 of this clause the period of engagement may be extended for up to a period of a further three months.

18.2 All casual engagements shall be in accordance with the following guidelines.

- 1 The type of employment involves specific workload demands of a short term nature;
- 2 The job is a short term project of a finite nature;
- 3 To replace an employee during a short term approved leave of absence.

PART 4—WAGES AND RELATED MATTERS

19.—SALARIES

19.1 Increases have been applied to the rates paid pursuant to the South West Regional College of TAFE Public Service and Government Officers' Enterprise Agreement 1998 as expressed in column A.

19.2 The rates in Column B will be paid effective from the date of registration of the Agreement. The rates in column B reflect a 1.5% increase for changes to award/employment conditions contained in this Agreement.

19.3 The rates in Column C will be paid from the first pay period on or after 15 March 2001. The rates in Column C reflect a 1.5% increase for changes to award/employment conditions contained in this Agreement.

19.4 The rates in Column D will be paid from the first pay period on or after 15 March 2002. The rates in Column D reflect a 3% increase, subject to Cabinet Standing Committee on Labour Relations endorsement that the Productivity Improvement Plan targets have been achieved.

19.5 The pay rates attained under this Agreement will form the new base rates for any future Agreement, provided that the productivity targets attained under this Agreement continue and previous productivity improvements in the last agreement are sustained and changes to Award conditions maintained, or changed by agreement.

20.—SALARY PACKAGING

20.1 An employee may, by agreement with the employer, enter into a salary packaging arrangement in accordance with the South West Regional College of TAFE Flexible Remuneration Packaging Scheme or any similar salary packaging arrangement offered by the employer.

20.2 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.

20.3 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.

20.4 The TEC for the purposes of salary packaging, is calculated by adding—

- 20.4.1 The base salary;
- 20.4.2 Other cash allowances, eg. Annual leave loading;
- 20.4.3 Non-cash benefits, eg superannuation, motor vehicles etc;
- 20.4.4 Any Fringe Benefit Tax liabilities currently paid; and
- 20.4.5 Any shift or commuted allowance or variable components, eg performance based incentives (where they exist).

20.5 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 agreement.

20.6 The salary packaging arrangement must be cost neutral in relation to the total cost to the employer.

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

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

20.9 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.

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

20.11 An employer will not unreasonably withhold agreement to salary packaging on request from an employee.

20.12 The Dispute Settlement Procedure contained in this Agreement will 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 to the WAIRC.

21.—PAYMENT ARRANGEMENTS

Salaries will be paid on a fortnightly basis directly into an approved bank, building society or credit union nominated by the employee.

22.—REPAYMENTS OF OVERPAYMENTS

22.1 Any salary overpayments will be repaid to the employer within a reasonable period of time.

22.2 If agreement cannot be reached, the employer may deduct the amount of overpayment over the same length of time that the overpayments occurred, or up to 6 months, whichever period is less.

22.3 The employer may not deduct or require an employee to repay an amount exceeding 20% of the employees' net pay in any one pay period.

22.4 On compassionate grounds, the Managing Director may allow an extended period for the repayment of overpayments.

23.—VARIATION OF ALLOWANCES

23.1 Wherever an award allowance is calculated by reference to a classification salary point, the parties agree that all such allowances will be so varied by reference to the salary provided by this agreement.

23.2 All such allowances will be applicable from the same date as provided for any salary variation under this agreement.

PART 5—HOUR OF WORK, BREAKS, OVERTIME, SHIFT WORK AND WEEKEND WORK

24.—HOURS OF WORK

Notwithstanding the prescribed hours of duty in clause 16 of the Award, the employer and an employee may agree to vary the spread of hours during which the employee's ordinary hours of work may be worked. Any agreement must be voluntarily and genuinely made and an employee may not be forced, coerced or intimidated into any such variation to the spread of ordinary hours during which the hours of work may be worked.

25.—FLEXITIME

25.1 For the purpose of this clause, a settlement period will—

- 25.1.1 consist of 12 weeks;
- 25.1.2 have the required hours of duty of 450 hours; and

25.1.3 commence at the beginning of a pay period.

25.2 Credit hours at any point within the settlement period will not exceed 60 hours.

25.3 An officer may be allowed to clear flexi leave of a maximum of 6 full days, or any combination of half days and full days that does not exceed 6 full days in any settlement period.

25.4 Full days of flexi leave may be taken in accordance with College policy.

25.5 Flexi-leave days may be taken consecutively during a Christmas Closedown.

25.6 Notwithstanding subclause 25.3, in the case of a Christmas Closedown of 12 working days, where sufficient credit hours are accrued, an employee may take seven consecutive flexi-leave days. This subclause does not apply in the case of a Christmas Closedown of less than 12 working days.

25.7 Credit hours of thirty seven hours thirty minutes will be allowed at the end of each settlement period and will be carried forward to the next settlement period.

25.8 In the case of credit hours greater than thirty seven hours thirty minutes gained in one settlement period, the hours in excess of thirty seven hours thirty minutes will be lost.

PART 6—LEAVE OF ABSENCE AND PUBLIC HOLIDAYS

26.—ANNUAL LEAVE

26.1 By written approval of the employer, accrued annual leave may be paid out (equivalent benefit) instead of taken.

26.2 The paying out of accrued annual leave is not obligatory and is subject to agreement of both the employer and employee.

26.3 Annual Leave Travel Concessions—Officers Stationed in Remote Areas

26.3.1 Where an officer's headquarters is situated in District Allowance Areas 3,5,6 and in that portion of area 4 located north of 30° South Latitude, as defined in Schedule D—District Allowance of the PSA/ Schedule G—District Allowance of the GOSAC Award, a travel concession to the value of return economy airfares to Perth or Geraldton will be provided for the officer and his/her dependants when the officer travels from his/her normal place of employment on Annual Leave.

26.3.2 The officer will only be entitled to the actual cost of the travel, up to the value of return economy airfares for the officer and his/her dependents to Perth or Geraldton, whichever is the higher. The employer will not reimburse the officer unless the officer supplies evidence acceptable to the employer of the actual cost of travel.

26.3.3 An officer is required to serve 12 months in these areas before qualifying for travel concessions.

27.—LONG SERVICE LEAVE

27.1 Accrued long service leave may be taken in periods of not less than one day.

27.2 By written approval of the employer, accrued long service leave may be paid out (equivalent benefit) instead of taken.

27.3 The paying out of accrued Long Service Leave is not obligatory and is subject to agreement of both the employer and employee.

28.—SICK LEAVE

28.1 Sick leave entitlement

28.2 The sick leave provisions of the GOSAC Awards will continue to apply, except that the Managing Director may approve further paid leave in exceptional circumstances.

29.—FAMILY/CARER'S LEAVE

29.1 An employee with responsibilities in relation to either members of their family or members of their household who

need their care and support, is entitled to paid leave of up to 5 days per annum, to provide care and support for such persons when they are ill.

29.2 Family/carer's leave taken will be deducted from an employee's sick leave entitlements, provided that 10 days of the employee's sick leave entitlement credited in the current year cannot be used for family/carer's leave. Family/carer's leave is not cumulative from year to year.

29.3 Where family/carer's leave is exhausted, an employee may take unpaid carer's leave by agreement with the employer.

29.4 The employee will if required by the employer establish, by production of medical evidence or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another.

29.5 The employee will, wherever possible, give the employer notice prior to the absence of the intention to take such leave.

29.6 For the purposes of this clause, a family member or member of the employee's household is one who is wholly or partially dependent on the employee.

30.—COMPASSIONATE LEAVE

30.1 Subject to paragraph 30.2 hereof, an officer will be entitled to paid compassionate leave of up to 2 days on the death of a family member.

30.2 The Managing Director may grant compassionate leave on the death of a person other than a family member in personal and compassionate circumstances.

30.3 Compassionate leave will not be granted during a period of any other leave.

30.4 Payment for compassionate leave is to be made only where the officer otherwise would have been on duty.

31.—SHORT LEAVE

The Award entitlement to short leave will no longer apply.

32.—CEREMONIAL/CULTURAL LEAVE

32.1 Ceremonial/Cultural Leave may be granted, to employees who have a ritual obligation to participate in ceremonial activity which requires absence from work. Such leave will also include leave to meet the employee's custom and traditional laws.

32.2 An employee granted leave to participate in ceremonial, cultural or traditional law activities will have such leave deducted from accrued annual leave or long service leave.

32.3 Leave without pay to participate in ceremonial, cultural or traditional law activities may be granted by the employer.

33.—PUBLIC HOLIDAYS

33.1 The following days are paid public holidays; New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Foundation Day, Labour Day, Sovereign's Birthday, Christmas Day and Boxing Day.

33.2 Whenever any of these days falls on a Saturday or a Sunday, the holiday is observed on the next succeeding Monday, or in the case of Boxing Day falling on a Sunday or Monday, on the next succeeding Tuesday.

33.3 There is no entitlement to any additional Public Service holidays in addition to those prescribed in this agreement.

34.—CHRISTMAS CLOSEDOWN

34.1 The College may observe a closedown over the Christmas/New Year period.

34.2 The duration of the closedown will be at the discretion of the Managing Director but will not exceed 12 working days.

34.3 Employees will be required to take annual leave, long service leave, rostered days off, time in lieu of overtime or flexitime credit hours on the working days that the College is closed down. The employee may elect which form of leave is to be taken.

34.4 The Managing Director will as soon as possible, in each calendar year but not later than 30 June, advise employees of the period of closedown and the number of working days involved.

34.5 When taking leave during the year employees must be aware of the requirement to retain credits to cover the required number of days over the compulsory close down period.

34.6 New employees, employees who have exhausted their annual leave credits at the commencement of this Agreement, or employees who have been granted approval to utilise all leave credits will be entitled to take leave without pay or go into debit to cover the amount of leave involved, provided a refund is made by the employee, on termination, if credits to the value of the leave taken in advance have not been accrued.

35.—PARENTAL LEAVE

Definitions

For the purpose of this clause, the following terms have the following meanings—

“Adoption”: is the placement (including any initial temporary placement with a view to a permanent placement) of a child who is less than 5 years of age, who is not the natural or step-child of the employee or employee's spouse and who has not lived with the employee for longer than 6 months.

“Adoption leave”: Unpaid parental leave of up to 12 months taken by either parent in connection with the adoption or placement of a child under the age of 5 years.

“Certification”—

- (a) 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 birth.
- (b) For the purpose of maternity leave means a certificate from a registered medical practitioner stating that the employee is pregnant and the expected date of birth.
- (c) For the purpose of adoption leave and special adoption leave means the requirements that an employee must comply with before being eligible for the entitlement.

The employee must produce to the employer—

a statement from an adoption agency or other appropriate body of the placement of the child for adoption purposes; or

presumed date confirming that the employee or employee's spouse is to have custody of the child pending application for an adoption order.

“Child”: A person to whom an employee or employee's spouse has given birth, or 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 stepchild of the employee or employee's spouse who has previously lived with the employee for a period of 6 months or more.

“Expected date of birth”: The day certified by a medical practitioner, to be the day on which the birth of the child of the employee, or employee's spouse is expected.

“Maternity leave”: Unpaid parental leave of up to 12 months taken by a female employee in connection with her pregnancy, and the subsequent birth of a child.

“Parental leave”: Any period of maternity leave, paternity leave and/or adoption leave of up to 12 months taken in connection with the birth or adoption of a child.

“Paternity leave”: Unpaid parental leave of up to 12 months which is taken by a male employee in connection with the birth or adoption of a child. Such an employee is permitted to take one week of unpaid paternity leave immediately after the birth or adoption of a child, in conjunction with any leave taken by his spouse.

35.1 Entitlement to parental leave

35.1.1 Employees are entitled to parental leave in connection with the birth or adoption of a child, in accordance with this clause.

35.1.2 Parental leave only applies to part-time or full time employees. Temporary full time or part-time employees on fixed term contracts are only eligible for parental leave for the duration of their fixed term contract of employment.

35.1.3 For female employees parental leave may, at the employee's discretion, commence prior to 6 weeks before the expected date of birth of the child.

35.1.4 The minimum period of absence on maternity leave will commence six weeks before the expected date of birth and end six weeks after the day on which the birth has taken place, however an employee may apply to the Managing Director to vary this period provided her application is supported by a certificate from a registered medical practitioner indicating that the employee is fit to continue or resume duty within this minimum period.

35.2 Eligibility for parental leave

35.2.1 An employee must comply with the certification and notice requirements to be entitled to parental leave, unless these requirements are waived by the employer.

35.2.2 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 during one week of paternity leave taken immediately after the birth or adoption of a child.

35.3 Notice requirements

An employee is to give the employer at least 10 weeks written notice of the intention to take parental leave other than for the purposes of adoption and of the expected duration of the leave.

35.4 Transfer to a safe job

Where in the opinion of a registered medical practitioner illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue her present work, she may be transferred to a safe job, at the rate and on the conditions attached to that job or at the employee's substantive level, whichever is the higher, until the employee commences parental leave.

35.5 Variation and/or cancellation of parental leave period

35.5.1 The period of parental leave may be lengthened or shortened by Agreement between the employer and the employee, provided that the amount of leave does not exceed the maximum allowed.

35.5.2 The employee must where practicable give the employer 14 days written notice of any request to vary the period of leave.

35.5.3 Parental leave applied for, but not commenced, by an employee for any reason is cancelled. Reasons for cancellation include, but are not limited to—

35.5.3(a) where a pregnancy terminates, other than by the birth of a living child;

35.5.3(b) or where a planned adoption or placement of a child does not proceed.

35.5.3(c) An employee must notify the employer of any change in certification details.

35.6 Parental leave and sick leave

35.6.1 Where the pregnancy of an employee terminates after 28 weeks, other than by the birth of a living child, and the employee is not on parental leave, she is entitled to sick leave in accordance with Award entitlements.

35.6.2 An employee who suffers any illness or injury related to her pregnancy and/or the birth whilst on parental leave cannot utilise sick leave entitlements.

35.6.3 An employee may utilise sick leave entitlements in accordance with clause 27.1—Sick Leave when not on parental leave.

35.7 Special adoption leave

An employee is entitled to special unpaid adoption leave of up to 2 days to attend any compulsory interviews, examinations or the like which are required by the adoption procedure.

35.8 Effect of parental leave on leave entitlements and employment

35.8.1 Any absence on parental leave will not break the continuity of service.

35.8.2 However, absence on parental leave will not be taken into account for the purpose of salary increment progression. Paid leave entitlements such as annual leave, long service leave and public holidays will not accrue during any period of parental leave.

35.8.3 An employee may, instead of or in conjunction with parental leave, take annual leave or long service leave entitlements to which he or she is entitled.

An employee proceeding on parental leave may elect to utilise—

35.8.3(a) accrued annual leave

35.8.3(b) accrued long service leave

for the whole or part of the period referred to in subclause 35.1 of this clause. The periods of leave referred to in paragraphs 35.8.3(a) and 35.8.3(b) of this subclause, which are utilised, will be paid leave.

35.9 Replacement employees

35.9.1 Before the employer engages a replacement employee (including a temporarily promoted or transferred employee), the employer must inform that person of the temporary nature of the employment, and of the rights of the person on parental leave who is being replaced.

35.9.2 The employer does not have to engage a replacement employee if one is not required.

35.10 Return to work after parental leave

35.10.1 An employee must confirm to the employer an intention of returning to work prior to re-commencing work.

35.10.2 An employee returning to work from parental leave is entitled to the position held immediately before beginning 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.

35.10.3 Where the position no longer exists, the employee is entitled to the same classification and pay to that of the employee's former position, and for which the employee is qualified and capable of performing.

35.10.4 Where immediately before commencing parental leave, an employee was acting in a higher position, or performing additional duties on a temporary basis, this subclause only applies in respect of the position held by the employee immediately before taking the acting or temporary position.

35.11 Termination of employment and parental leave

35.11.1 An employee may terminate his or her employment at any time during a period of parental leave, by giving the employer the appropriate period of notice detailed in the relevant award.

35.11.2 The employer must not terminate an employee or transfer them from their existing position on the grounds of the employee's parental leave application and/or absence on parental leave.

36.—EMERGENCY AND COMMUNITY SERVICE LEAVE

36.1 Emergency Service Leave may be granted to an Employee who is an active volunteer member of the—

* Western Australian State Emergency Service;

* Western Australian Bush Fire Brigade;

* St John Ambulance Brigade;

* Defence Force Reserves;

* Sea and rescue associations; or

* Other similar Authorities or bodies, recognised by the College.

to attend emergencies as declared by the recognised Authority or body provided that it does not interfere with essential customer service and work requirements.

36.2 If an employee is an active member of a recognised Authority or body they are to advise the College of membership in writing at the commencement of employment or membership in order to seek leave to attend emergencies.

36.3 The employer will be advised as soon as possible by the employee, the emergency service or such other persons as to the absence and, where possible, the expected duration of the absence. Such advice will be provided within 24 hours of the event or activity requiring the person's absence.

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

36.5 The application form must be accompanied by a certificate from the emergency organisation certifying that the employee was required for the specified period. If a certificate of attendance is not provided from the emergency service organisation absence may be considered to be leave without pay. If the absence is deemed to be leave without pay, any adjustment in entitlements arising as a result of not proving a certificate of service will be processed in the next scheduled pay period.

36.6 An employee, who during the course of the emergency volunteers their services to an emergency service organisation, will comply with subclauses 36.2 to 36.5 inclusive.

36.7 Such leave will not affect any continuity of service for the purpose of higher duties arrangements or eligibility for allowances.

36.8 An employee may be granted reasonable Community Service Leave, subject to proof, to donate blood products to the Red Cross Blood Bank.

37.—ANNUAL LEAVE LOADING

Annual leave loading provisions in the GOSAC Award have been absorbed and no longer apply.

38.—SELF-FUNDED WORK BREAKS

38.1 Employees may receive 4 years salary over a period of five years, with no attendance at work required in the fifth year, in accordance with the College's Policy and Guidelines.

38.2 The employer and an employee may agree to enter into any other similar arrangements involving different periods of time, in accordance with the Policy and Guidelines.

PART 7: TRANSFERS, TRAVELLING AND WORKING AWAY FROM USUAL PLACE OF WORK

39.—HOME BASED WORK

An employee may make application to the College to engage in home based work subject to the College's Home Based Work policy.

40.—TRAVELLING ALLOWANCE

40.1 This clause replaces Clause 42.—Travelling Allowance of the Government Officers' Salaries, Allowances and Conditions Award in its entirety.

40.2 An employee who travels on official business will be reimbursed reasonable expenses on the basis of the production of receipts for reasonable expenses. Reasonable expenses will include but not be limited to accommodation costs, purchase of meals as necessary, and cost of transport to destination.

40.3 In addition to clause 40.2—Travelling Allowance above, an employee will be reimbursed reasonable incidental expenses such as train, bus and taxi fares, official telephone calls, laundry and dry cleaning expenses, on production of receipts.

40.4 If on account of lack of suitable transport facilities, an employee necessarily engages reasonable accommodation for the night prior to commencing travelling on early morning transport the employee will be reimbursed the actual cost of such accommodation.

40.5 Reimbursement of expenses will not be suspended should an employee become ill whilst travelling, provided leave for the period of such illness is approved in accordance with provisions of Clause 28.1—Sick Leave of this Agreement, and the employee continues to incur accommodation, meal and incidental expenses.

40.6 Reimbursement claims for travelling in excess of 14 days in one month will not be passed for payment by a certifying employee unless the Managing Director has endorsed the account.

40.7 An employee who is relieving at or temporarily transferred to any place within a radius of fifty (50) kilometres measured from the employee's headquarters will not be reimbursed the cost of midday meals purchased, but an employee travelling on duty within that area which requires absence from the employee's headquarters over the usual midday meal period will be, on the production of receipts, for each meal necessarily purchased, provided that—

40.7.1 such travelling is not a normal feature in the performance of the employee's duties; and

40.7.2 such travelling is not within the suburb in which the employee resides.

41.—TRANSFER

41.1 The College may transfer, at the same level of classification, an officer from one office, post or position within the College to another such office, post or position, for which that officer possesses the appropriate qualifications and skills, provided the College considers it to be in its interests to do so. Such transfers include the transfer of an employee from one campus of the College to another campus of the College.

41.2 The decision to transfer will be equitable and free from bias.

41.3 If the College transfers an employee in accordance with subclause 41.1 of this Clause it will comply with the following—

41.3.1 The transfer will be at the employee's current classification level;

41.3.2 The transfer will not result in a loss of the employee's continuity of service;

41.3.3 The transfer will not change the tenure of the employee;

41.3.4 The College's and employee's needs will be taken into account in the transfer decision. The employee's needs include distance of new work site from place of residence, skills, qualification and experience of the employee, requirement to undertake training to perform the duties of the new position.

41.3.5 The employee will be notified of the transfer decision and arrangements. The College will give the employee at least four weeks notice of intention to transfer.

41.3.6 Policies relating to transfer will be documented, equitable, free from bias, applied consistently and accessible to College employees.

41.3.7 The decisions and processes relating to transfer will embody the principles of natural justice including access to documentation specifically relating to the particular employee's transfer, explanation as to the reasons for the transfer and consultation with the employee where their input is taken into consideration;

41.3.8 The transfer decision will be capable of review; and

41.3.9 The appropriate confidentiality will be observed.

41.4 The College must adhere to the Public Sector Standards in Human Resource Management standard regarding transfer.

41.5 The College will act in accordance with the report and implement any recommendations of a reviewer selected by the Commissioner for Public Sector Standards to investigate any suspected breach of standard in accordance with s.15 of the Public Sector Management (Review Procedures) Regulations 1995.

41.6 If the College does not act in accordance with and implement the recommendations of the reviewer selected by the Commissioner for Public Sector Standards, the College will be in breach of the Agreement.

41.7 Should an application for a breach of the Public Sector Standard relating to Transfer be lodged with the Managing Director within 15 days of an employee being notified of a decision to transfer and a review of the transfer be carried out, the status quo will remain until such time as the reviewer has made recommendations.

SCHEDULE A: SALARIES

ENTERPRISE BARGAINING AGREEMENT 2000

SCHEDULE A

LEVEL	Column A— Current Annual Salary Rates	Column B— Date of Registration 1.5%	New Fortnightly Rate	Column C— Annual Salary as at First Pay Period on or After March 15, 2001 1.5%	New Fortnightly Rate	Column D— Annual Salary as at First Pay Period on or After March 15, 2002 3%*	New Fortnightly Rate
LEVEL 1							
Age 16	12,900	13,094	501.99	13,290	509.52	13,689	524.80
Age 17	15,075	15,301	586.62	15,531	595.42	15,997	613.29
Age 18	17,585	17,849	684.30	18,117	694.56	18,660	715.40
Age 19	20,355	20,660	792.09	20,970	803.97	21,599	828.09
Age 20	22,858	23,201	889.49	23,549	902.83	24,255	929.92
YEAR 1	25,110	25,487	977.12	25,869	991.78	26,645	1021.53
YEAR 2	25,883	26,271	1,007.20	26,665	1022.31	27,465	1052.98
YEAR 3	26,656	27,056	1,037.28	27,462	1052.84	28,286	1084.43
YEAR 4	27,423	27,834	1,067.13	28,252	1083.14	29,099	1115.63
YEAR 5	28,196	28,619	1,097.21	29,048	1113.67	29,920	1147.08
YEAR 6	28,968	29,403	1,127.25	29,844	1144.16	30,739	1178.49
YEAR 7	29,857	30,305	1,161.85	30,759	1179.28	31,682	1214.65
YEAR 8	30,471	30,928	1,185.74	31,392	1203.53	32,334	1239.63
YEAR 9	31,380	31,851	1,221.11	32,328	1239.43	33,298	1276.61
LEVEL 2							
YEAR 1	32,468	32,955	1,263.45	33,449	1282.40	34,453	1320.88
YEAR 2	33,302	33,802	1,295.91	34,309	1315.34	35,338	1354.80
YEAR 3	34,179	34,692	1,330.03	35,212	1349.98	36,268	1390.48
YEAR 4	35,105	35,632	1,366.07	36,166	1386.56	37,251	1428.15
YEAR 5	36,074	36,615	1,403.77	37,164	1424.83	38,279	1467.58
LEVEL 3							
YEAR 1	37,407	37,968	1,455.65	38,538	1477.48	39,694	1521.81
YEAR 2	38,445	39,022	1,496.04	39,607	1518.48	40,795	1564.03
YEAR 3	39,515	40,108	1,537.68	40,709	1560.74	41,931	1607.56
YEAR 4	40,614	41,223	1,580.44	41,842	1604.15	43,097	1652.27
LEVEL 4							
YEAR 1	42,120	42,752	1,639.05	43,393	1663.63	44,695	1713.54
YEAR 2	43,301	43,951	1,685.00	44,610	1710.28	45,948	1761.59
YEAR 3	44,516	45,184	1,732.28	45,861	1758.27	47,237	1811.02
LEVEL 5							
YEAR 1	46,855	47,558	1,823.30	48,271	1850.65	49,719	1906.17
YEAR 2	48,437	49,164	1,884.86	49,901	1913.14	51,398	1970.53
YEAR 3	50,080	50,831	1,948.80	51,594	1978.03	53,141	2037.37
YEAR 4	51,785	52,562	2,015.15	53,350	2045.38	54,951	2106.74
LEVEL 6							
YEAR 1	54,526	55,344	2,121.81	56,174	2153.64	57,859	2218.25
YEAR 2	56,390	57,236	2,194.35	58,094	2227.26	59,837	2294.08
YEAR 3	58,305	59,180	2,268.87	60,067	2302.90	61,869	2371.99
YEAR 4	60,338	61,243	2,347.98	62,162	2383.20	64,027	2454.69
LEVEL 7							
YEAR 1	63,454	64,406	2,469.23	65,372	2506.27	67,333	2581.46
YEAR 2	65,610	66,594	2,553.13	67,593	2591.43	69,621	2669.17
YEAR 3	67,956	68,975	2,644.42	70,010	2684.09	72,110	2764.61
LEVEL 8							
YEAR 1	71,769	72,846	2,792.80	73,938	2834.69	76,156	2919.73
YEAR 2	74,500	75,618	2,899.07	76,752	2942.56	79,054	3030.84
YEAR 3	77,887	79,055	3,030.87	80,241	3076.34	82,648	3168.63
LEVEL 9							
YEAR 1	82,117	83,349	3,195.48	84,599	3243.41	87,137	3340.71
YEAR 2	84,975	86,250	3,306.69	87,543	3356.30	90,170	3456.98
YEAR 3	88,234	89,558	3,433.51	90,901	3485.02	93,628	3589.57
CLASS 1	93,162	94,559	3,625.28	95,978	3679.66	98,857	3790.05
CLASS 2	98,090	99,561	3,817.05	101,055	3874.30	104,086	3990.53
CLASS 3	103,016	104,561	4,008.74	106,130	4068.87	109,314	4190.93
CLASS 4	107,945	109,564	4,200.54	111,208	4263.55	114,544	4391.46

LEVEL	Column A— Current Annual Salary Rates	Column B— Date of Registration 1.5%	New Fortnightly Rate	Column C— Annual Salary as at First Pay Period on or After March 15, 2001 1.5%	New Fortnightly Rate	Column D— Annual Salary as at First Pay Period on or After March 15, 2002 3%*	New Fortnightly Rate
LEVEL 2/4							
YEAR 1 (2.1)	32,468	32,955	1,263.45	33,449	1282.40	34,453	1320.88
YEAR 2 (2.3)	34,179	34,692	1,330.03	35,212	1349.98	36,268	1390.48
YEAR 3 (2.5)	36,074	36,615	1,403.77	37,164	1424.83	38,279	1467.58
YEAR 4 (3.2)	38,445	39,022	1,496.04	39,607	1518.48	40,795	1564.03
YEAR 5 (4.1)	42,120	42,752	1,639.05	43,393	1663.63	44,695	1713.54
YEAR 6 (4.3)	44,516	45,184	1,732.28	45,861	1758.27	47,237	1811.02
OTHER							
Job Skills Trainees	19,625	19,919	763.68	20,218	775.14	20,825	798.39
Under 21	16,593	16,842	645.70	17,095	655.38	17,607	675.04

* The payment of this increase is subject to the approval of the Cabinet Standing Committee on Labour Relations

SCHEDULE B: PRODUCTIVITY IMPROVEMENTS

PRODUCTIVITY IMPROVEMENT PLAN

Staff will actively participate in the development and implementation of a Productivity Improvement Plan/s (PIP/s) as determined by the Managing Director.

PIPs may be developed at the College or Campus level, or any combination as determined by the Managing Director.

The PIP/s may involve changes to work practices, but will not involve changes to award/agreement/enterprise bargaining agreement employment conditions.

Subject to the approval of the Cabinet Standing Committee on Labour Relations, a 3% pay increase will be paid to employees from the first pay period on or after 15 March 2002 for productivity improvements.

SCHEDULE C: SIGNATORIES OF PARTIES TO THE AGREEMENT

The following signatories are authorised to sign this Agreement.

Signatories

.....Signed..... Date 20/12/2000

Employer—

Robert Smillie, Managing Director of South West Regional College of TAFE, on behalf of the Governing Council

Signed for and on behalf of the *Civil Service Association of Western Australia (Inc)* by

.....Signed..... Date 20/12/2000

Common Seal

Mr Dave Robinson, Branch Secretary,
Civil Service Association WA Inc

SCHEDULE D: ALPHABETICAL LISTING OF PROVISIONS

- Annual Leave
- Annual Leave Loading
- Annual Leave Travel Concessions
- Arrangement
- Availability of Agreements
- Breaches of Discipline
- Casual Employment
- Ceremonial/Cultural Leave
- Christmas Closedown
- Compassionate Leave
- Consultation Provisions
- Definitions
- Dispute Resolution Procedure
- Emergency and Community Service Leave
- Flexitime
- Higher Duties
- Home Based Work
- Hours of Work
- Long Service Leave
- No Further Claims
- Number of Employees Covered
- Objectives of the Agreement

- Parental Leave
- Parties Bound
- Past Productivity
- Payment Arrangements
- Productivity Improvements
- Public Holidays
- Relationship to Awards/Agreements
- Repayments of Overpayments
- Salaries
- Salary Packaging
- Scope
- Self Funded Work Breaks
- Short Leave
- Sick Leave and Family/Carer's Leave
- Signatories of Parties to the Agreement
- Substandard Performance
- Term of Agreement and Renegotiation
- Title
- Transfer
- Travelling Allowance
- Variation of Allowances

UNIVERSAL COMMERCIAL CLEANING / BLPPU AND THE CMETU COLLECTIVE AGREEMENT 2000.

No. AG 287 of 2000.

2001 WAIRC 01769

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

PARTIES

THE WESTERN AUSTRALIAN BUILDERS' LABOURERS, PAINTERS & PLASTERERS UNION OF WORKERS, CONSTRUCTION, MINING, ENERGY, TIMBERYARDS, SAWMILLS AND WOODWORKERS UNION OF AUSTRALIA—WESTERN AUSTRALIAN BRANCH, APPLICANT

v.
UNIVERSAL COMMERCIAL CLEANERS PTY LTD, RESPONDENT

CORAM

CHIEF COMMISSIONER W S COLEMAN

DELIVERED

FRIDAY, 12 JANUARY 2001

FILE NO/S

AG 287 OF 2000

CITATION NO.

2001 WAIRC 01769

Result

Agreement registered

Representation

Applicant

Ms L Dowden

Respondent

no appearance

Order.

HAVING heard Ms L Dowden for the applicant and there being no appearance for the respondent;

NOW THEREFORE, I the undersigned, pursuant to the powers conferred under the Industrial Relations Act, 1979 do hereby order —

THAT the agreement entitled Universal Commercial Cleaning/BLPPU and the CMETU Collective Agreement 2000 in the terms of the following Schedule be registered as an industrial agreement.

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

Schedule.

1.—TITLE

This agreement shall be known as the *Universal Commercial Cleaning /BLPPU and the CMETU* Collective Agreement 2000.

2.—ARRANGEMENT

	Clause No.
Title	1
Arrangement	2
Parties and Persons Bound	3
Application	4
Relationship to Parent Award	5
Period of Operation	6
Classification Structures & Rates of Pay	7
Industry Standards	8
Sick Leave	9
Negotiation of a Subsequent Agreement	10
Application of Project Agreements	11
Fares and Travelling Allowance	12
Seniority	13
All In Payments	14
Pyramid Sub-Contracting	15
Dispute Settlement Procedure	16
Safety Dispute Resolution	17
Amenities	18
Training and Related Matters	19
Drug & Alcohol, Safety & Rehabilitation Program	20
Clothing & Safety Footwear	21
Income Protection	22
Accident Pay	23
Union Membership	24
Signatories to the Agreement	25
Appendix A—Drug & Alcohol, Safety and Rehabilitation	
Appendix B—Site Allowance	

3.—PARTIES AND PERSONS BOUND

This agreement shall be binding on Universal Commercial Cleaners Pty Ltd (hereinafter referred to as “the company”), the Western Australian Builders’ Labourers, Painters and Plasterers Union of Workers and the Construction Mining Energy Timberyards Sawmills and Woodworkers Union of Australia—WA Branch (hereinafter referred to as “the unions”) and all employees of the company eligible to be members of the unions.

4.—APPLICATION

This agreement shall apply to all employees of the company engaged on work in or in connection with construction, alteration, maintenance, repair or demolition of buildings or other structures of any kind whatsoever on—

1. All sites where the Principal Contractor has an agreement or understanding with the Union;
2. All sites where the Principal Contractor has a contract with a project contractual value of or over \$6 million; and
3. All sites in the CBD and West Perth (as defined in Appendix A) with a project contractual value of or over \$750,000.

This agreement shall apply in Western Australia only. There are approximately 2 employees covered by this agreement.

5.—RELATIONSHIP TO PARENT AWARD

1. This agreement is supplementary to, and shall be read and interpreted wholly in conjunction with, the Building Trades (Construction) Award 1987, Award No. R14 of 1978 (hereinafter referred to as “the award”).

2. In the event of any inconsistency between the award and an express provision of this agreement, the terms of this agreement shall prevail to the extent of such inconsistency, unless the express provision of the agreement provides otherwise.

6.—PERIOD OF OPERATION

This agreement shall come into force from the first pay period commencing on or after the date of signing and shall remain in force until the 1st of November, 2002.

7.—CLASSIFICATION STRUCTURE & RATES OF PAY

1. All employees working under this agreement shall be paid according to the wage rates set out below.

2. Wage Rates (per hour at ordinary time)

	Current EBA Rate Hourly Rate \$	1 November 2001 Hourly Rate \$
Labourer Group 1	18.91	19.86
Labourer Group 2	18.26	19.17
Labourer Group 3	17.78	18.67
Plaster, Fixer	19.65	20.63
Painter, Glazier	19.20	20.16
Signwriter	19.62	20.63
Carpenter/Roofer	19.79	20.78
Bricklayer	19.61	20.59
Refractory Bricklayer	22.47	25.59
Stonemason	19.76	20.75
Rooftiler	19.43	20.40
Marker/Setter Out	20.35	21.37
Special Class T	20.61	21.64

APPRENTICE RATES

	Current EBA Rate Hourly Rate \$	1 November 2001 Hourly Rate \$
Plasterer, Fixer		
Year 1	8.25	8.66
Year 2 (1/3)	10.81	11.35
Year 3 (2/3)	14.74	15.47
Year 4 (3/3)	17.29	18.15
Painter, Glazier		
Year 1 (.5/3.5)	8.06	8.47
Year 2 (1/3), (1.5/3.5)	10.56	11.09
Year 3 (2/3), (2.5/3.5)	14.40	15.12
Year 4 (3/3), (3.5/3.5)	16.90	17.74
Signwriter		
Year 1 (.5/3.5)	8.24	8.66
Year 2 (1/3, 1.5/3.5)	10.79	11.35
Year 3 (2/3, 2.5/3.5)	14.72	15.47
Year 4 (3/3, 3/5/3.5)	17.27	18.15
Carpenter/Roofer		
Year 1	8.31	8.73
Year 2 (1/3)	10.88	11.43
Year 3 (2/3)	14.84	15.59
Year 4 (3/3)	17.42	18.29
Bricklayer		
Year 1	8.24	8.65
Year 2 (1/3)	10.79	11.32
Year 3 (2/3)	14.71	15.44
Year 4 (3/3)	17.26	18.12
Stonemason		
Year 1	8.31	8.73
Year 2 (1/3)	10.88	11.43
Year 3 (2/3)	14.84	15.59
Year 4 (3/3)	17.42	18.29
Rooftiler		
6 months	11.07	11.62
2nd 6 months	12.17	12.78
Year 2	14.23	14.94
Year 3	16.70	17.54

3. All expense related allowances not specifically mentioned in this agreement will be paid as per the award as varied from time to time.

4. Site allowances relating to particular sites shall be paid in accordance with Appendix B of this Agreement.

5. An additional payment will be made to compensate for the impact of the Goods and Services Tax on the Consumer Price Index. In the circumstance that the CPI limit below is exceeded the appropriate additional payment will be made to the wage rates. The CPI figure for the applicable dates will be the official figure released by the ABS for the preceding year.

Date	CPI Limit	Additional Payment
June 2001	5%	1% (paid 1/9/2001)
June 2001	6%	2% (paid 1/9/2001)
June 2002	5%	1% (paid 1/9/2002)
June 2002	6%	2% (paid 1/9/2002)

8.—INDUSTRY STANDARDS

Redundancy

The company shall increase redundancy contributions on behalf of each employee to the following sums on a weekly basis—

Rate on signing	\$50
Rate as of 1/05/2001	\$60

Superannuation

(i) The Company will make a payment of \$60 per week per employee or the percentage rate that is prescribed under the Superannuation Guarantee Charge, whichever is the greater.

The Company will advise all employees subject to the Agreement of their right to have payments made to a complying superannuation fund of their choice. The Company is bound by the employee's election. The aforementioned payment will then be made to that fund.

Until each employee nominates the fund of their choice the Company will make payments into the Construction + Building Unions Superannuation Scheme (the "C+BUSS").

In the event that any employee chooses a fund other than the C+BUSS the Company will, within seven days of the employee advising the Company of the fund of their choice, advise the Union in writing of the employee's decision.

In the event that the employee and the Company reach an agreement pursuant to section 49C(2)(d) of the Act to change the complying superannuation fund or scheme the Company will, within seven days of the employee and the Company reaching such an agreement, advise the Union in writing of the agreement. The employer shall not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by the employee.

(ii) "Ordinary Time Earnings" (which for the purposes of the Superannuation Guarantee (Administration) Act 1992 will operate to provide a notional earnings base) shall mean the actual ordinary rate of pay the employee receives for ordinary hours of work including tool allowance, industry allowance, trade allowances, shift loading, special rates, qualification allowances (eg. first aid, laser safety officer), multi-storey allowance, site allowance, asbestos eradication allowance, leading hand allowances, in charge of plant allowance and supervisory allowances where applicable. The term includes any regular over-award pay as well as casual rates received and any additional rates and allowances paid for work undertaken during ordinary hours of work, including fares and travel.

9.—SICK LEAVE

For sick leave accrued after the date of signing this agreement the following will apply—

- The Company's employees shall have the option of converting 100% of accrued sick leave entitlement to a cash payment on termination
- If an employee who has been terminated by the Company without exercising the above option is re-engaged within a period of six months, the unpaid balance of sick leave shall continue from the date of re-engagement.
- Where the Company has signed a previous Agreement with the Union that also allowed for the conversion to cash payment on termination for

accrued sick leave, that accrued sick leave will be treated as if is accrued under this agreement.

- Sick leave shall accrue, for the purposes of this clause, at the rate of one day at the beginning of each of the first ten calendar months of each year.
- Employees shall have the option of converting to a cash payment all sick leave entitlements over 5 days. Payment shall be made on the last pay period prior to the Christmas closedown.

10.—NEGOTIATION OF A SUBSEQUENT AGREEMENT

The parties agree to commence negotiations for a new collective agreement to succeed this agreement at least 3 months before the nominal expiry date. The parties intend to conclude these negotiations prior to the nominal expiry date. These negotiations shall be conducted on a collective basis between all of the parties with the negotiated outcome being subject to approval of a vote of the employees collectively.

11.—APPLICATION OF PROJECT AGREEMENTS

1. This agreement shall apply to all persons employed in the employer's business and every part thereof throughout Western Australia until **1st November 2002** except where the company commences work on a project where a site agreement to which the union is a party exists that provides for higher rates of pay and conditions.

2. The conditions contained in any such site agreement will take precedence over this agreement for the duration of the project.

12.—FARES AND TRAVELLING ALLOWANCE

In addition to Clause 12A of the award a travel payment shall be made in the form of a daily payment (on days worked) of \$6.15 per day per employee.

13.—SENIORITY

1. The parties agree the continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

2. When applying the "first on last off" principle it is agreed subject to the caveat of "all things being equal", it is intended to apply on a Company basis rather than a site by site basis.

3. It is recognised that from time to time instances may arise where the employee's individual skills may be subject to this caveat. Where there is any disagreement as to the application of this the matter will be processed in accordance with Clause 16—Dispute Settlement Procedure.

4. An employee who has been retrenched by the Company shall have absolute preference and priority for re-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

14.—ALL IN PAYMENTS

1. All-in payments to employees will not be made. All-in payments are defined as an hourly rate or piece work rate which is meant to cover wages and all allowances, such as annual leave, sick leave, etc., on which tax is being paid using the Prescribed Payments System.

2. It is agreed that where a breach of this clause is discovered, the employer shall continue paying the "all-in" rate as the employees hourly rate, but shall pay all award and other entitlements on top of this amount, back-dated to the commencement of the all-in rate arrangement. The company shall not be entitled to offset any amount in excess of the ordinary hourly rate against any other entitlement in this agreement.

3. This clause shall not be applied to prevent the employer subletting specialised work outside of the normal scope of work which the employer performs. The union shall be notified when specialist sub-contractors are to be engaged.

15.—PYRAMID SUB-CONTRACTING

1. "Pyramid Sub-Contracting" is defined as the practice of a sub-contractor, to whom a sub-contract is originally awarded, sub-letting that contract or part thereof to another sub-contractor.

2. Provided that where a sub-contractor does not have the technical capacity to handle a specialist section of the contract and intends to engage a specialist sub-contractor to perform that work, that section may be re-let to a specialist sub-contractor.

3. Further provided that when a sub-contract is let for labour and material, a labour-only sub-contract may be let by the sub-contractor, but it is unacceptable as a principle for further labour-only sub-contracts to be re-let.

4. A bona fide sub-contractor is generally an employer of labour, save for a machine owner-operator.

5. Where a disagreement arises in relation to the definition or application of the term "Pyramid Sub-Contracting" the parties shall discuss and determine the issue in accordance with the agreement dispute resolution procedure. In any event of a disagreement, the matter shall be negotiated further between the parties or referred to the Western Australian Industrial Relations Commission. Whilst these procedures are undertaken no industrial action shall occur.

16.—DISPUTE SETTLEMENT PROCEDURE

1. Disputes over any work related or industrial question, dispute or difficulty should be dealt with as close to its source as possible.

2. An employee or the union delegate should initially submit any work related and/or industrial matter referred to in (1), to the site foreperson, supervisor or other appropriate site representative of the company.

3. If the matter remains unresolved the union delegate may then submit the matter to the appropriate senior management person.

4. If still not resolved the delegate shall refer the matter to an appropriate official of the union, who shall discuss the matter with the nominated representative of the employer.

5. Whilst the above procedures are being followed work should continue as normal.

6. This procedure is to be followed in good faith and without unreasonable delay by any party.

7. Should the matter remain unresolved it shall be dealt with in one of the following ways as agreed to between the parties—

- referred to the Western Australian Industrial Relations Commission for conciliation and if required arbitration provided that the parties involved in the matter will confer among themselves and make reasonable attempts to resolve the matter before taking those matters to the Commission. The Commission's decision will be accepted by all parties subject to legal rights of appeal; or
- referred to a disputes board for determination; or
- referred to a private arbitrator agreed to between the parties, for determination.

8. This dispute settlement procedure does not apply to health and safety issues.

17.—SAFETY DISPUTE RESOLUTION

1. The parties to this agreement are committed to the safe operation of plant and equipment, to the observance of safe working practices, and the provision by the employer and correct use of all personal protective equipment. The company recognises its responsibilities to provide a safe and healthy workplace.

2. In the event of any disagreements on the necessity to carry out any safety measure or modify, reinforce or reinstate any safety device whatsoever, the procedures set out in this clause will be adopted.

3. No person shall dismiss a safety complaint. Any complaint should be referred to the company safety officer or workers' safety representative to be dealt with in accordance with the following procedures—

- (i) Where any employee becomes aware of an unsafe situation, that employee will immediately notify the company safety officer or the workers' safety representative.
- (ii) The company safety officer and the workers' safety representative will take immediate action to have the unsafe situation rectified.

(iii) Should the company safety officer consider that no safety precautions are necessary, he/she will notify the workers' safety representative accordingly as soon as possible.

(iv) While there is disagreement on the ruling of the company safety officer, the company safety officer will arrange for the immediate transfer of all employees from the disputed area.

(v) Should the company safety officer be of the opinion that no action is necessary and the worker's safety representative disagrees, an appropriate inspector from Worksafe/Workcover will be requested to undertake an inspection of the disputed area for the purpose of resolving any such matter.

(vi) If disagreement still exists the chief inspector or his/her nominee will be called in to assist in the resolution of the dispute.

(vii) If no agreement can be reached between the parties the matter will be dealt with in accordance with the dispute resolution procedure of this agreement.

(viii) Whilst the above procedure is being followed there will be no stoppage of work in respect of the matter being considered, except in the area alleged to be unsafe.

(ix) It is accepted that safety considerations override normal work practices and depending on the degree of potential risk to persons on the job, or the general public, can override normal demarcation practices.

18.—AMENITIES

1. The parties agree that it is the responsibility of the company to ensure that the amenities prescribed by the Award are provided as a minimum. Where, however, that standard is not maintained due to an action or event beyond the control of the company, the union agrees that the company should be allowed reasonable time in which to rectify the problem. If the company acts promptly to rectify the problem, there should be no interruption to work from industrial stoppages, bans and limitations.

2. In all instances, the following procedure shall be observed—

3. A uniformly high standard of amenities and facilities such as ablation blocks, change rooms, crib sheds, etc. shall be provided.

4. All Sheds shall be weatherproof and soundly constructed to an approved standard with sufficient windows and doors, adequate ventilation and lighting. They must have a floor above ground level and be lined on ceilings and walls.

5. Mess Shed/s fitted with fly screens are provided for exclusive use of workers and not for the storage of employers' equipment, tools and materials.

6. Shed/s shall provide not less than 0.75 square metres of floor space per person employed at any one time, provided that the area be not less than 4.65 square metres. Fixtures, other than tables and chairs, shall not be included when calculating floor space.

7. Where 5 or more persons are employed at one time, the floor area shall not be less than 9 square metres.

8. Adequate facilities are to be provided for warmth and for drying clothes eg. strip heaters.

9. Provided that 20 or more persons are employed on the site at any one time, the employer shall provide a separate shed or sheds for messing, which shall be of such dimension as to provide not less than 0.75 square metres of floor space per person.

10. Where less than 20 persons are employed on site, Regulation 3.20—Workplace Facilities of the Occupational Safety and Health Regulations 1996 shall apply to provisions of messing and changing facilities.

11. In the changing facilities, separate clothes-hanging facilities for each person employed are to be provided (coat hooks only to be used).

12. In the changing facilities, sufficient seating accommodation for the changing of work apparel is to be provided.

13. In the messing facilities, sufficient tables with fixed washable laminated or vinyl surface, and seating for the taking of meals, are to be provided.

14. Food warming facilities to be supplied, together with a supply of cool, clean water conveniently accessible, as well as boiling water at meal/rest breaks.

15. Receptacle for garbage with bin liner and rat and fly proof is to be supplied in mess area, and emptied regularly.

16. A washable vinyl floor surface in all facilities is to be provided.

17. Shelving is to be supplied in the mess shed for storage (cups, lunch bags, etc).

18. All facilities are to be cleaned and disinfected on a regular basis.

19. All mess sheds shall be supplied with reverse cycle air-conditioning.

20. Toilet blocks shall be soundly constructed and roofed with weatherproof material. The floor of each toilet shall be well-drained and constructed of concrete, bricks and cement, or other approved materials which shall be impervious to water. Every toilet shall be well lighted by natural or artificial light and shall be ventilated. Each toilet shall have a hinged door, capable of being fastened on the inside, lift seats/flaps and toilet paper.

21. Where practicable, toilets to be connected to sewerage before commencement of the job.

22. Toilet/urinal location to be conveniently accessible to employees, but not so close as to cause a nuisance to those persons.

23. Where necessary, portable water seal toilets of an approved standard are to be provided and regularly serviced.

24. Conveniently accessible toilets and urinals are to be distributed every 5th floor on multi-storey constructions.

25. Toilets and urinals are to be washed daily with disinfectant and kept in clean, hygienic condition.

26. Adequate washing facilities, suitably drained, and was basins/troughs are to be supplied with running water.

27. Soap and towels are to be supplied.

28. The following toilet/urinal ratio shall be applied in respect to all employees—

Employees	Toilets	Urinals
1-5	1	Nil
6-10	1	1
11-20	2	2
21-35	3	4
36-50	4	6
51-75	5	7
76-100	6	8

NB. For each additional 20 persons or part thereof up to 200 persons or part thereof up to 200 persons, one additional urinal and one additional toilet is required. For each additional 35 persons or part thereof in excess of 200 persons, one additional urinal and one additional toilet is required. If a slab urinal is provided, each 600mm shall be regarded as one urinal.

19.—TRAINING AND RELATED MATTERS

1. A training allowance of \$14.00 per week per worker shall be paid by the employer to the Union Education and Training Fund. This shall increase to \$15.00 per week on 1 November 2001.

2. Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calendar year pro-rata to attend courses conducted or approved by the NBCITC. The employers approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an inability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

3. The Company will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per (2) above for such purposes including but not limited to securing Tradesmen's Rights Certificates.

20.—DRUG & ALCOHOL, SAFETY & REHABILITATION PROGRAM

The parties are committed to the Drug and Alcohol, Safety and Rehabilitation program as outlined in Appendix A—Drug and Alcohol, Safety and Rehabilitation Program.

21.—CLOTHING AND SAFETY FOOTWEAR

1. The following items will be supplied to each employee by the Company, upon the completion of five working days.

- 1 pair safety boots, to be replaced on a fair wear and tear basis.
- 2 T-shirts with collars, and will be replaced on a fair wear and tear basis.
- 1 bluey jacket for each employee employed during the period 1 April to 31 October. (One issued per year)

2. The Company will also make available to each employee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

22.—INCOME PROTECTION

The Company agrees to insure employees covered by this Agreement for injury and sickness from the date of signing this Agreement. The cover is to be for the life of the agreement, and must be a policy with entitlements no less than the Jardine's 24-hour cover, as negotiated between the unions and the MBA.

If the Company fails to take out income protection insurance the Company shall be liable for all claims arising from injury and sickness, under the terms and conditions of the Jardine's policy, until income protection is taken out.

23.—ACCIDENT PAY

1. The Company agrees to pay each employee accident pay where the employee receives an injury for which weekly payments or compensation are payable by or on behalf of the Company pursuant to the provisions of the Workers' Compensation and Rehabilitation Act 1981, as amended.

2. "Accident Pay" means a weekly payment of an amount being the difference between the weekly amount of compensation paid to the employee pursuant to the Workers Compensation and Rehabilitation Act and the employee's ordinary wage under this Agreement.

3. The Company shall pay accident pay during the incapacity of the employee arising from any one injury for a total of 39 weeks whether the incapacity is in one continuous period or not.

24.—UNION MEMBERSHIP

The employer will encourage, as far as possible, all employees covered by the agreement, to be financial members of the Unions.

25.—SIGNATORIES

BLPPU	<i>signed</i>
	Date: 15/12/2000
CMETU	<i>signed</i>
	Date: 15/12/2000
The Company:	<i>signed</i>
	Signature
	Date: 12/12/2000
Company Seal	Scott Langley
	Print Name

APPENDIX A—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PROGRAM

1. PRINCIPLE

People dangerously affected by alcohol, and/or drugs are a safety hazard to themselves and all other persons in the workplace.

2. FOCUS

- Site safety and the involvement of the site safety committee
- Peer intervention and support
- Rehabilitation

3. WORKPLACE POLICY

a) A person who is dangerously affected by drugs or alcohol will not be allowed to work until that person can work in a safe manner.

b) The decision on a persons ability to work in a safe manner will be made by the safety committee, or on projects with no safety committee, by a body of at least equal numbers of employee/employer representatives.

c) There will be no payment of lost time to a person unable to work in a safe manner.

d) If this happens 3 times the worker shall be given a written warning and made aware of the availability of treatment/counselling. If the worker refuses help he/she may be transferred/dismissed the next time he/she is dangerously affected.

e) For the purposes of disciplinary action a warning shall be effective for a period of 12 months from the date of issue.

f) A worker having problems with alcohol and or other drugs—

- Will not be sacked if he/she is willing to get help.
- Must undertake and continue with the recommended treatment to maintain the protection of this program.
- Will be entitled to sick leave or leave without pay while attending treatment.

4. IMPLEMENTATION

To assist with the adoption and implementation with this policy the company will—

- Clearly state its endorsement of the BTG Drug and Alcohol program and comply with it.
- Provide access at an agreed time and venue for a representative of the BTG Drug and Alcohol Program to address a meeting of employees to discuss and endorse the program.
- Authorise the attendance of appropriate company personnel eg. Safety delegate/officer, safety committee members, union delegate, consultative committee members(s) at the two hour BTG Drug and Safety in the Workplace training course.

APPENDIX B—SITE ALLOWANCE

1. This agreement shall apply to construction work undertaken in the commercial/industrial sector of the building industry in the state of Western Australia within a 50km radius of the Perth General Post Office.

2. This agreement provides for a site allowance to be paid to employees engaged on particular building projects, and for such site allowance to be paid in addition to the wage rates and allowances prescribed by the relevant building construction awards as well as any industrial or certified agreements made in conjunction with those awards which do not prescribe a site allowance.

3. The site allowance payable under this agreement is to be paid at a flat rate per hour for all hours worked to compensate for all special factors/disabilities on the project and in lieu of all award special rates, with the exception of rates relating to the lifting of heavy blocks, cleaning down brickwork and the use of explosive powered tools which will be payable to an employee when he/she encounters that particular disability.

4. Site Allowance Formula

At the commencement of a project the particular site allowance to apply shall be determined in accordance with the following formula—

4.1 Projects Located Within Perth C.B.D. (as defined)

New Work

Project Contractual Value	Site Allowance
Up to \$520,000	NIL
Above \$520,000 to \$2.17 m	\$1.95
Above \$2.17m to \$4.55m	\$2.30
Over \$4.55m	\$2.90

Renovations, Restorations and/or Refurbishment Work

Project Contractual Value	Site Allowance
Up to \$520,000	NIL
Above \$520,000 to \$2.17m	\$1.75
Above \$2.17m to \$4.55m	\$1.95
Over \$4.55m	\$2.50

4.2 Projects Located Within West Perth (as defined)

New Work

Project Contractual Value	Site Allowance
Up to \$520,000	NIL
Above \$520,000 to \$2.17 m	\$1.75
Above \$2.17m to \$4.55m	\$1.95
Over \$4.55m	\$2.50

Renovations, Restorations and/or Refurbishment Work

Project Contractual Value	Site Allowance
Up to \$520,000	NIL
Above \$520,000 to \$2.17m	\$1.65
Above \$2.17 m to \$4.55m	\$1.85
Over \$4.55m	\$2.10

The site allowance on projects which are a combination of new and renovation work shall be governed by the majority of work involved. For example, where the majority of work is new work, then the site allowance appropriate to new work shall be paid for all employees on the project.

4.3 Projects within 50 km radius of Perth G.P.O. but not including the C.B.D. or West Perth (as defined)

Project Contractual Value	Site Allowance
Up to \$1 m	NIL
Above \$1 m to \$2.17 m	\$1.35
Above \$2.17m to 6m	\$1.65
Above \$6m to \$11.98m	\$1.90
Above \$11.98m to \$24.43m	\$2.10
Above \$24.43m to \$60.5m	\$2.40
Over \$60.5m	\$2.60

“C.B.D.”—Central Business District shall mean the area bounded by the Swan River South, Swan River East to Nile Street running into Wittenoom Street, Hill Street to Royal Street, Royal Street to Lord Street, Lord Street to Newcastle Street, along Newcastle Street to the Freeway, the Freeway South to the Perth-Fremantle railway line, along the Perth-Fremantle railway line to Dyer Street, Dyer Street through to Havelock Street, Havelock Street to Kings Park Road, Kings Park Road to Fraser Avenue, Fraser Avenue projected through to the Swan River. (Refer attached Map 1).

“West Perth”—shall mean the area contained within the boundaries formed by Thomas Street, Kings Park Road, Havelock Street, Dyer Street and the Perth-Fremantle railway line back to Thomas Street. (Refer attached Map 2).

Boundary roads: If a road borders between two regions in which site allowances are to be paid as per this agreement, the parties confirm that one side of such a boundary road will be deemed to fall in one region and the other side of the boundary road will be deemed to fall in the other region. For example, the eastern side of Havelock Street will be in the “CBD” and the western side of Havelock Street shall be in “West Perth”.

“Project Contractual Value”—shall be deemed to mean the value of all tendered work which falls under the scope of the principal contractor’s contract.

5. The site/project allowance and project contractual value detailed in this agreement shall be adjusted on 1 January each year by the total C.P.I. movements for Perth during the preceding four quarters ending 30 September and accordingly, the site allowance amounts shall be adjusted up or down to the nearest five cents. Provided that where adjustment equates to less than two cents, existing allowance levels shall be maintained.

6. Project contractual values shall be subject to review at any renewal of this agreement, but in any event shall not be adjusted by a percentage less than the total CPI movements for Perth during the preceding four quarters ending 30 September. Such adjustment being to the nearest \$10,000.

7. The agreed site allowance once set pursuant to this agreement shall be recorded in a site agreement to which the applicable principal contractor and the BTA will be signatories. The level of allowance once nominated at the commencement of the project will continue without change until completion of the project.

8. It is acknowledged that on certain projects a site agreement may be entered into between the principal contractor and the building trades group of unions for that project that may include matters regularly addressed within the industry, such as, but not limited to, the following—

- Disputes Procedures
- Occupational Health and Safety Procedures
- Demarcation Procedures
- First Aid Provisions and On-Site Amenities

and the unions will not unreasonably refuse to continue to discuss such matters if raised by the principal contractor.

9. This agreement does not apply to resource development projects or civil and engineering projects.

10. Where a dispute arises as to the application of the terms of this agreement, if the issue cannot be resolved in discussions between the parties, it is agreed that the matter will be referred to the appropriate industrial tribunal for resolution without recourse to industrial action.

11. It is a term of this agreement that all site allowance agreements entered into prior to this date will be honored by all parties and will continue to operate for the life of the particular project.

12. Where because of a condition of contract the principal contractor is required not to allow for a site allowance, before final application of this agreement, discussions will be held between the parties with a view to resolving any problems that may arise as a result of this situation.

13. This agreement shall only apply to building contracts entered into on or tendered for on or after 1 January 2000.

14. Productivity Allowance

In return for increased productivity and/or timely completion of projects it is agreed that a productivity allowance of \$1.00 per hour worked shall be paid to all employees engaged upon projects in excess of \$10 million, or such other sum as agreed. The productivity allowance may be accumulated and paid at the end of the project.

15. Structural Frame Allowance

It is agreed that a structural frame allowance of \$1.00 per hour all purpose shall be paid to all employees engaged upon projects (new construction only) which exceed two stories in height or on buildings or structures where the structure exceeds 10 metres in height (excluding spires, flagpoles and the like).

16. Application to Apprentices

a) The rates prescribed in clause 4 of this agreement shall apply to all apprentices commencing on-site (whether as direct employees or under a group training scheme) after 31 December 1998 in the same proportion as the percentage of a tradesperson's wage rate as prescribed by the appropriate award or Enterprise Bargaining Agreement, being

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

b) Fares and Travel Allowances—Apprentices shall receive 100% of all fares and travel allowances paid under this agreement and or the award.

17. Provision of Canteen

It is agreed that a staffed canteen shall be provided where a project exceeds \$35 million in value and where the operation of the canteen is financially self supporting in respect of consumables. The Canteen shall come into operation when on site worker levels exceed 50 and to cease when the worker levels reduce to below 50.

18. Provision of Nurse

It is agreed that a qualified nurse shall be engaged where the forecast long term staffing levels for a project exceed 100 (one hundred) or when actual numbers exceed 100 notwithstanding that forecasts may have been below that level. The nurse shall commence duties when staffing levels reach 50 (fifty) and shall terminate when levels reduce to 50 (fifty). The requirement for the provision of a nurse shall be waived if the project is adjacent to a hospital with a public emergency department.

19. Apprentice Ratio to Tradespersons

There shall be at least one apprentice employed on site to every 6 tradespersons employed on site.

WA GREYHOUND RACING AUTHORITY ENTERPRISE AGREEMENT 2000.

No. PSAAG1 of 2001.

2001 WAIRC 01941

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

PARTIES	CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA INCORPORATED, APPLICANT v. CHIEF EXECUTIVE OFFICER, WA GREYHOUND RACING AUTHORITY, RESPONDENT
CORAM	SENIOR COMMISSIONER G L FIELDING
DELIVERED	WEDNESDAY, 31 JANUARY 2001
FILE NO/S	PSAAG 1 OF 2001
CITATION NO.	2001 WAIRC 01941

Result	Agreement registered
Representation	
Applicant	Mr B G Cusack as agent
Respondent	Mr P J Duxbury as agent

Order.

HAVING heard Mr B G Cusack as agent on behalf of the Applicant and Mr P J Duxbury 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 agreement made between the parties lodged in the Commission on 16 January 2001 entitled WA Greyhound Racing Authority Enterprise Agreement—2000 and as subsequently amended by direction of the Commission be registered in the terms of the following Schedule as an industrial agreement in replacement of the WA Greyhound Racing Authority Enterprise Agreement—1998 PSAAG 58 of 1998 which is hereby cancelled.

[L.S.] (Sgd.) G. L. FIELDING,
Senior Commissioner/
Public Service Arbitrator.

Schedule.

1.—TITLE

This Agreement shall be known as the WA Greyhound Racing Authority Enterprise Agreement—2000 and shall replace the WA Greyhound Racing Association Enterprise Agreement—1998.

2.—ARRANGEMENT

1. Title
 2. Arrangement
 3. Scope
 4. Parties to the Agreement
 5. Definitions
 6. Number of Employees Covered
 7. Term of Agreement and Renegotiation
 8. Availability of Agreement
 9. Relationship to Parent Award
 10. Single Bargaining Unit
 11. Objectives and Principles
 12. Continuous Improvement
 13. Implementation of Agreement
 14. Dispute Resolution Procedure
 15. Training and Development
 16. Salary Increases
 17. Level 1 Classification
 18. Hours
 19. Part-Time Employment
 20. Annual Leave Loading
 21. Family Carers Leave
 22. Parental Leave
 23. Family Care
 24. Short Leave
 25. Bereavement Leave
 26. Community Services Leave
 27. Signature of the Parties
- Schedule A—Salaries

3.—SCOPE

This Agreement shall apply throughout the State of Western Australia to all officers employed by or working in the WA Greyhound Racing Authority who are members of, or eligible to be members of, the Civil Service Association of Western Australia Incorporated.

4.—PARTIES TO THE AGREEMENT

This Agreement shall be binding upon the Western Australian Greyhound Racing Authority and the Civil Service Association of Western Australia Incorporated.

5.—DEFINITIONS

“Agreement”: The WA Greyhound Racing Authority Enterprise Agreement—2000.

“employee”: For the purpose of this Agreement someone who is referred to at Clause 3.—Scope of this Agreement.

“employer”: The Western Australian Greyhound Racing Authority.

“Government”: The State Government of Western Australia.

“Union”: The Civil Service Association of Western Australia Incorporated.

“WAIRC”: The Western Australian Industrial Relations Commission.

6.—NUMBER OF EMPLOYEES COVERED

At the date of registration of this Agreement the approximate number of employees covered by this Agreement is 30 employees.

7.—TERM OF AGREEMENT AND RENEGOTIATION

1. This Agreement shall have effect from the date of registration in the Western Australian Industrial Relations Commission and continue for a period of two (2) years from that date.

2. The parties to this Agreement shall meet not later than 6 months prior to the expiry of this Agreement in order to commence negotiations for the replacement of this Agreement.

3. The pay quantum achieved as a result of the Agreement will remain and form the new base pay rates for the next Agreement or continue to apply in the absence of a further Agreement, except where the Award salary rate is higher in which the case the Award rate shall apply.

4. The parties to this Agreement undertake that for the duration of this Agreement there shall be no further salary or wage increases sought or granted outside of the terms and conditions of this Agreement.

5. The parties recognise that it is important to encourage further productivity improvements beyond those currently identified in the Agreement and agree that where such improvements are identified and implemented they will be negotiated as part of the next Enterprise Agreement.

6. This Agreement shall not operate so as to cause an employee to suffer a reduction in ordinary time earnings.

8.—AVAILABILITY OF AGREEMENT

1. Every employee shall, upon request to the employer, 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 clearly communicated to all employees.

2. The employer may utilise computer resources to disseminate this Agreement. However, where information technology is not available or is limited within the workplace the requirements of subclause (1) of this clause will apply.

9.—RELATIONSHIP TO PARENT AWARD

This Agreement shall be read in conjunction with the *Government Officers Salaries Allowances and Conditions Award 1989* that applies to the parties to this Agreement. 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.

10.—SINGLE BARGAINING UNIT

This Agreement has been negotiated through a Single Bargaining Unit comprising management and employees of the employer and Union representatives.

11.—OBJECTIVES AND PRINCIPLES

1. The parties to this Agreement are committed to achieving the employer’s Mission Statement, which is—

To achieve sustainable profit to invest in the development of greyhound racing in Western Australia. To be affordable and accessible for industry participants, and to provide exciting and comfortable entertainment for patrons.

2. To achieve this goal the objectives to be pursued by the parties include, but are not limited, to the following—

- (a) Ensure that the organisation operates as effectively, efficiently and competitively as possible.
- (b) Adopt an internal and external customer focused approach to the delivery of quality service and standards.
- (c) Identify and implement best practice and continuous improvement across all areas of service delivery.
- (d) Ensure high quality of employment and jobs.
- (e) Provide remuneration to employees based on the achievement of improved productivity and efficiency.
- (f) Develop and pursue changes on a co-operative and continuing basis through the Continuous Improvement Program.
- (g) Encourage greater flexibility in decision making and the allocation of human and other resources.
- (h) To improve organisational performance through the targeted and programmed training and continued development of staff skills.

12.—CONTINUOUS IMPROVEMENT

The employer and its employees are committed to continually improving productivity and overall performance. A Continuous Improvement Program assists the organisation in the following way—

1. Achieving pay increases for staff based on improvements in efficiency, service provision, quality and general productivity.

2. Encourages all employees and management to identify and deal with real productivity barriers in a clear and participative manner.
3. Achieves improved quality, work organisation, customer service, delivery, timeliness, safety, skills and training.
4. Provides a forum and process in which staff are encouraged to contribute ideas and initiatives for productivity improvements and which will assist in their implementation.
5. Making use of, and improving existing consultative processes.

13.—IMPLEMENTATION OF AGREEMENT

The parties agree that the implementation of this Agreement will occur in a cooperative and open manner. On a needs basis, employer and Union representatives will meet to discuss issues arising from the implementation.

14.—DISPUTE RESOLUTION PROCEDURE

1. This dispute settlement procedure will apply to any questions, dispute or difficulties that arise under this Agreement—

- (a) The Union's representative and/or the employee/s concerned shall discuss the matters with the immediate supervisor or employer's representative, as appropriate.
- (b) If the matter is not resolved within 5 working days following discussions in accordance with paragraph (a) of subclause (1) of this clause the matter shall be referred by the union representative or the employee/s to the Chief Executive Officer or his/her nominee, for resolution.
- (c) The parties to the dispute may individually or collectively seek advice and assistance from any appropriate organisation or person in an attempt to resolve the matter.
- (d) If the matter is not resolved within 10 working days following notification pursuant to paragraph (b) of subclause (1) of this clause it may be referred by either party to the WAIRC for resolution.

2. In implementing the above procedure the following principles shall be applied—

- (a) Decisions made are unbiased and are seen to be unbiased.
- (b) All parties to the dispute have the opportunity to put their cases fully.
- (c) Appropriate confidentiality is to be maintained.
- (d) Employees will not be subject to any discrimination as a result of using the dispute resolution procedure.

15.—TRAINING AND DEVELOPMENT

1. The parties to this Agreement are committed to external, industry and enterprise training of employees to achieve—

- (a) Skills relevant to the needs of the organisation.
- (b) Multi-skilling of employees to the level required for operational efficiency and flexibility.
- (c) A career path within the organisation.
- (d) Adjustment to technological change.
- (e) Greater efficiency and job satisfaction.

(2) A targeted training program will continue to be offered consistent with—

- (a) The likely future skills needs of the organisation.
- (b) The size, structure and nature of the operations of the organisation.
- (c) The need to develop vocational skills relevant to the organisation through courses conducted by accredited educational institutions and providers.

16.—SALARY INCREASES

1. Employees will receive the salary as contained in Schedule A of this Agreement.

2. The following salary increases are payable under this Agreement—

- (a) 3% from the date of registration; and
- (b) 3% from the pay period on or after 1 August 2001.

3. Employees recognise and acknowledge that salaries payable under this Agreement are being awarded for work practices and initiatives in place at the commencement of this Agreement and for ongoing productivity commenced prior to the commencement of this Agreement.

4. Employees will not be disadvantaged by any factors outside of their control.

17.—LEVEL 1 CLASSIFICATION

The parties agree that the adult Level 1 increment range will be reduced from 9 to 7 increment levels as provided for in Schedule A of this Agreement.

18.—HOURS

1. Notwithstanding Clause 16.—Hours of the *Government Officers Salaries, Allowances and Conditions Award 1989*, employees will be required to work—

- (a) thirty eight (38) hours per week;
- (b) seventy six (76) hours per fortnight;
- (c) one hundred and fifty two (152) hours per four (4) week period.

2. An employee may be required to vary the time of attendance because of the circumstances of the business or because of the nature of the duties of the employee or class of employee. If, as a consequence to a direction issued under this subclause the employee accrues time in lieu, management undertakes to effectively monitor and manage the hours of such employee so as to extinguish such time earned in lieu within a settlement period of three (3) months after having accrued such time in lieu.

3. If unable to do so within this prescribed period the employee and his/her immediate supervisor shall at that time, determine the entitlement. In the first instance this shall be by agreeing to a period when it is appropriate for such leave to be taken. Should agreement not be reached then the matter shall be determined by either crediting the employee with the appropriate days/hours in lieu as Annual Leave, or by paying out such amount calculated to reflect the amount of time in lieu due to the employee as salary or wages. The settlement period shall not apply when time worked in lieu is deemed by the employer and agreed by the employee to be time worked in lieu on special projects.

4. Records shall be maintained by the employee of time worked in lieu pursuant to this clause and must be endorsed as frequently as required by the employee's immediate supervisor.

5. Notwithstanding the provisions of Clause 17.—Shift Work, Clause 18.—Overtime and Clause 22.—Sick Leave of the *Government Officers Salaries, Allowances and Conditions Award 1989* entitlements shall be calculated on the basis of a thirty eight (38) hour working week.

19.—PART-TIME EMPLOYMENT

1. Except where varied by this clause, all other provisions of Clause 9.—Part-Time Employment of the *Government Officers Salaries, Allowances and Conditions Award 1989* continue to apply.

2. Permanent part-time employment is defined as regular and continuing employment for a minimum of fifteen (15) hours and twelve (12) minutes per week and a maximum of thirty (30) hours and twenty four (24) minutes per week.

3. 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.

4. The employer shall give a part-time employee one month's notice, in writing, of any proposed variation to that employee's starting and finishing times and/or particular days worked provided the employer shall not vary the employee's total weekly hours or the agreed hours of duty without the employee's prior written consent.

5. An employee who is employed on a part-time basis shall be paid a proportion of the appropriate full-time salary dependent upon the number of hours worked. The salary shall be calculated in the following manner—

$$\frac{\text{Hours worked per fortnight}}{76} \times \frac{\text{Full-time fortnightly salary}}{1}$$

6. The employee shall be entitled to the same leave and conditions as prescribed for full-time employees on a pro-rata basis wherever it applies. Payment to an employee proceeding on accrued 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.

7. The conversion of a full-time employee to part-time employment shall be implemented only upon written request of the employee and subsequent approval of the Chief Executive Officer.

8. No employee may be converted to part-time employment without his or her prior agreement.

9. Where approval has been granted to a full-time employee to convert to part-time status, any reversion to full-time employment shall be approved by the Chief Executive Officer, subject to operational requirements.

20.—ANNUAL LEAVE LOADING

Notwithstanding Clause 19.—Annual Leave of the *Government Officers Salaries, Allowances and Conditions Award 1989*, payment of accrued annual leave loading will be effected with a salary payment in December of each year.

21.—FAMILY CARERS LEAVE

Employees covered by this Agreement may use accrued sick leave entitlements up to a maximum of thirty eight (38) hours per annum in accordance with this clause to provide care for another person subject to the following requirements.

1. The employee being responsible for the care of the person concerned.

2. The person concerned being either a member of the employee's immediate family or a member of the employee's household.

3. The term "immediate family" includes a partner (including a spouse or de-facto spouse), child or adult child (including an adopted child, step child or ex nuptial child), parent, grandparent, grandchild or sibling of the employee or partner of the employee.

4. Where any application for leave pursuant to this clause exceeds two consecutive days the employee shall provide to the employer satisfactory evidence of the need for care by the other person.

5. The employee shall, where practicable, give the employer prior notice of the intention to take leave, details of their relationship to the person requiring care, the reasons for taking such leave and the estimated length of absence. In any event the particulars required by the prior notice must be provided to the employer as soon as practicable, in default of which there will be no entitlement to paid leave under this clause.

22.—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 without pay 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 week's 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 WA Greyhound Racing 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 WA Greyhound Racing 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) (i) Subject to all other leave entitlements being exhausted employees shall be entitled to apply for leave without pay following parental leave to extend their leave by up to two years.

(ii) 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.

(iii) Any period of leave without pay must be applied for and approved in advance and will be granted on a year by year basis. Where both parents work for the agency the total period of leave without pay following parental leave will not exceed two years.

(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 weeks notice in writing to the WA Greyhound Racing Authority 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) of this clause 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, up to 52 weeks, 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 WA Greyhound Racing 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 with duties similar to that of the abolished position.

(d) An employee may return on a part-time basis to the same position occupied prior to the commencement of leave or to a different position at the same classification level 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 104 weeks of the commencement of the parental leave.

8. Effect of Leave on the Employment Contract

(a) 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) 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.

23.—FAMILY CARE

The employer recognises the needs of employees with family responsibilities and in cases of short term emergencies is committed wherever possible to meeting those needs with minimal conflict between work and home.

24.—SHORT LEAVE

The provisions of Clause 26.—Short Leave of the *Government Officers Salaries Allowances and Conditions Award 1989*, shall no longer apply.

25.—BEREAVEMENT LEAVE

1. Employees will be entitled to two (2) days Bereavement Leave to be taken when a family member dies, including a spouse, de facto spouse, child or stepchild, parent, step parent or someone who lives with the employee, in accordance with Division 4 of the *Minimum Conditions of Employment Act 1993*.

2. Nothing prevents the granting of accrued Annual or Long Service Leave to an employee should additional leave be required. If such leave is not available, the Chief Executive Officer may approve the use of sick leave entitlements.

26.—COMMUNITY SERVICES LEAVE

1. Employees who are members of the State Emergency Service or the St John Ambulance Brigade, or who are volunteers of the Bush Fire Brigade and who are absent from duty as a result of their attendance at an emergency, may be granted leave with pay for the period of absence.

2. The leave with pay will be granted on the basis that the employee is not required for the employer's own essential operations and/or emergency services and that the voluntary organisation requiring an employee's services certifies that the person is or was required for the specified period.

27.—SIGNATURE OF THE PARTIES

Signed for and on behalf of the WESTERN AUSTRALIAN GREYHOUND RACING AUTHORITY by: Mr K. Norquay.

.....(Signed).....

Western Australian Greyhound Racing Authority
PO Box 6, Cannington WA 6987
Dated: 16/01/01

Signed for and on behalf of the CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIAN INCORPORATED by: D. Robinson.

.....(Signed).....

Date: 16/01/01

SCHEDULE A—SALARIES

EBA Level/Classification	Current Salary	From Date of Registration 3%	From 01/08/01 3%
UNDER 17	12519	12895	13282
17 YRS	14630	15069	15521
18 YRS	17066	17578	18105
19 YRS	19754	20347	20957
20 YRS	22183	22848	23534
21YR 1ST YR	24369	25100	25853
22YR 2ND YR	25383	26145	26929
23YR 3RD YR	26397	27189	28005
24YR 4TH YR	27412	28234	29081
25YR 5TH YR	28426	29278	30157
26YR 6TH YR	29440	30323	31232
27YR 7TH YR	30454	31368	32309
LEVEL 2			
1ST YR	31510	32456	33429
2ND YR	32319	33289	34288
3RD YR	33171	34166	35191
4TH YR	34070	35092	36145
5TH YR	35010	36060	37142
LEVEL 3			
1st YR	36303	37392	38514
2ND YR	37310	38429	39582
3RD YR	38349	39500	40685
4TH YR	39415	40598	41816
LEVEL 4			
1ST YR	40878	42105	43368
2ND YR	42023	43284	44582
3RD YR	43203	44499	45834
LEVEL 5			
1ST YR	45473	46837	48242
2ND YR	47008	48418	49870
3RD YR	48603	50061	51562
4TH YR	50257	51765	53317
LEVEL 6			
1ST YR	52918	54505	56140
2ND YR	54727	56368	58059
3RD YR	56598	58296	60045
4TH YR	58598	60356	62166
LEVEL 7			
1ST YR	61663	63513	65418
2ND YR	63784	65697	67668
3RD YR	66090	68072	70115
LEVEL 8			
1ST YR	69840	71935	74093
2ND YR	72527	74703	76944
3RD YR	75858	78134	80478
LEVEL 9			
1ST YR	80018	82418	84891
2ND YR	82830	85315	87874
3RD YR	86033	88614	91273
CLASS 1	90880	93607	96415
CLASS 2	95728	98600	101558
CLASS 3	100573	103590	106698
CLASS 4	105421	108584	111841

WATER AND RIVERS COMMISSION INDUSTRIAL AGREEMENT 2001.

No. PSGAG 1 of 2001

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	WATER AND RIVERS COMMISSION, CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA INCORPORATED, THE AUTOMOTIVE, FOOD, METALS, ENGINEERING, PRINTING AND KINDRED INDUSTRIES UNION OF WORKERS — WESTERN AUSTRALIAN BRANCH, APPLICANTS
CORAM	SENIOR COMMISSIONER G L FIELDING
DELIVERED	WEDNESDAY, 17 JANUARY 2001
FILE NO/S	PSGAG 1 OF 2001
CITATION NO.	2001 WAIRC 01824

Result	Agreement registered
Representation	
Applicants	Ms F A Smith as agent on behalf of the Water and Rivers Commission and Ms S K Newby as agent on behalf of the Civil Service Association of Western Australia Incorporated and the Automotive Food, Metals, Engineering, Printing and Kindred Industries Union of Workers— Western Australian Branch

Order.

HAVING heard Ms F A Smith as agent on behalf of the Water and Rivers Commission and Ms S K Newby as agent on behalf of the Civil Service Association of Western Australia Incorporated and the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders—

THAT the agreement made between the parties lodged in the Commission on 3 January 2001 entitled Water and Rivers Commission Industrial Agreement 2001 and as subsequently amended by direction of the Commission be registered in the terms of the following Schedule as an industrial agreement in replacement of the Water and Rivers Commission Industrial Agreement 1999 PSGAG 8 of 1998 which is hereby cancelled.

(Sgd.) G. L. FIELDING,
Senior Commissioner/
Public Service Arbitrator.

Schedule.

1.—TITLE

This Agreement shall be known as the “Water and Rivers Commission Industrial Agreement 2001” and shall replace the Water and Rivers Commission Industrial Agreement 1998 and the Water and Rivers Commission Industrial Agreement 1999.

2.—ARRANGEMENT

1. Title
2. Arrangement

PART ONE—GENERAL

3. Scope of the Agreement
4. Parties to the Agreement
5. Number of Employees Covered
6. Definitions
7. Date And Operation of Agreement
8. No Further Claims

9. Single Bargaining Unit
10. Relationship to Parent Awards
11. Further Negotiations
12. Availability of Agreement

PART TWO—WATER AND RIVERS COMMISSION BUSINESS PLANNING AND PERFORMANCE MEASUREMENT

13. Commission Strategic Direction
14. Productivity Measurement
15. Implementation of Agreement Initiatives and Productivity Measures

PART THREE—EMPLOYMENT CONDITIONS

16. Flexible Work Arrangements
 17. Hours of Duty
 18. Consultation
 19. Salary Increases
 20. Salary Packaging
 21. Recovery of Overpayments
 22. Part-Time Employment
 23. Parental Leave
 24. Home Based Work
 25. Carer's Leave
 26. Annual Leave Travel Concessions
 27. Ceremonial & Cultural Leave
 28. Annual Leave Loading
 29. Sick leave
 30. Long Service Leave
 31. Defence Force Leave
 32. Dispute Settlement Procedure
 33. Further Matters for Consideration
- Schedule A—Public Service Officers' Salaries
Schedule B—Productivity Measurement Model
Schedule C—Signatures of the Parties to the Agreement

PART ONE—GENERAL

3.—SCOPE OF THE AGREEMENT

This Agreement shall apply to all Water and Rivers Commission employees who are members, or eligible to be members of the Civil Service Association of Western Australia Incorporated or the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch, with the exception of the Chief Executive.

4.—PARTIES TO THE AGREEMENT

- (1) The employer party to this Agreement is the Water and Rivers Commission.
- (2) The union parties to this Agreement are—
 - (a) the Civil Service Association of Western Australia Incorporated.
 - (b) Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch.

5.—NUMBER OF EMPLOYEES COVERED

As at the date of registration of this Agreement the approximate number of employees eligible to be covered by this Agreement is three hundred and sixty (360).

6.—DEFINITIONS

For the purposes of the Water and Rivers Commission Industrial Agreement 2001 the following shall apply—

“Agreement” means Water and Rivers Commission Industrial Agreement 2001.

“Award” means the Public Service Award 1992 and the Engineering Trades (Government) Award 1967, Award Nos 29, 30 and 31 of 1961 and 3 of 1962.

“Board” means the Board of Management governing the Water and Rivers Commission.

“Commission” means the Water and Rivers Commission.

“employee” means an employee covered by this Agreement.

“employer” means the Chief Executive of the Water and Rivers Commission or, where appropriate, the Chief Executive's formal delegate.

“Government” means the State Government of Western Australia.

“Minister” means the Minister or the Ministers of the Crown responsible for the administration of the Commission.

“metropolitan area” means the area within a radius of fifty (50) kilometres from the Perth City Railway Station.

“Union” means the Unions referred to in subclause (2) of Clause 4.—Parties to the Agreement of this Agreement.

“WAIRC” means the Western Australian Industrial Relations Commission.

“WRC” means the Water and Rivers Commission.

7.—DATE AND OPERATION OF AGREEMENT

(1) This Agreement shall operate on and from the date of registration and shall remain in force for two years.

(2) The pay quantum achieved as a result of this Agreement will remain and form the new base pay rates for the next Agreement 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.

(3) 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 this Agreement is replaced by another 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.

9.—SINGLE BARGAINING UNIT

(1) This Agreement has been negotiated through a Single Bargaining Unit (SBU).

(2) The SBU comprises representatives of the WRC and Unions as specified in subclause (2) of Clause 4.—Parties to the Agreement.

(3) The SBU has held negotiations and reached full agreement on the terms of this Agreement.

10.—RELATIONSHIP TO PARENT AWARDS

(1) This Agreement shall be read in conjunction with the existing Awards and agreements that apply to the parties to this Agreement. In the case of any inconsistencies, this Agreement shall have precedence to the extent of any inconsistencies.

(2) The relevant parent awards are—

- (a) The Public Service Award 1992;
- (b) Engineering Trades (Government) Award 1967, Award Nos 29, 30 and 31 of 1961 and 3 of 1962.

(3) Where this Agreement is silent, the relevant Award shall apply.

11.—FURTHER NEGOTIATIONS

The parties to this Agreement shall meet no later than six months prior to the expiry of this Agreement in order to commence negotiations for the replacement of this Agreement.

12.—AVAILABILITY OF AGREEMENT

Every employee will be entitled to a copy of this Agreement. The employer will provide access to this Agreement through its Intranet facility. Should an employee not be able to access a copy of this Agreement through the employer's Intranet facility, a copy of this Agreement will be provided on request.

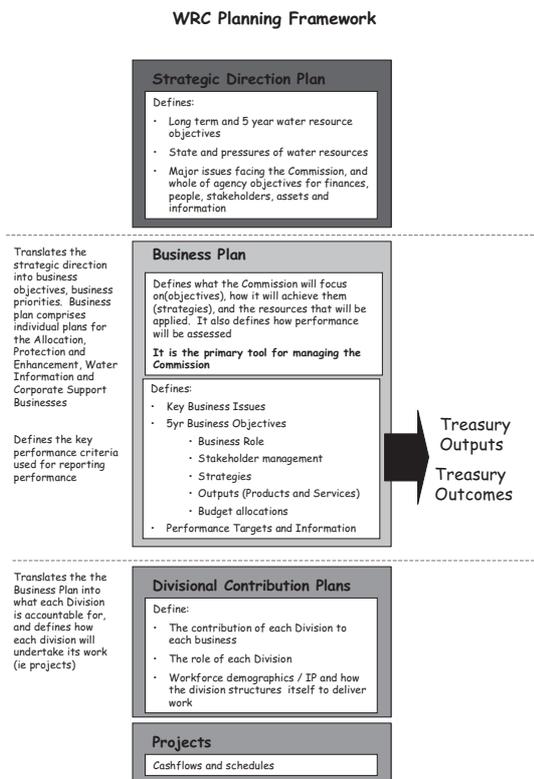
PART TWO—WATER AND RIVERS COMMISSION BUSINESS PLANNING AND PERFORMANCE MEASUREMENT

13.—COMMISSION STRATEGIC DIRECTION

(1) The WRC is committed to protecting, managing and equitably allocating the State's Water Resources. To do this, all employees need to work together with management and

the Board to improve the business and achieve the WRC's strategic and operational outcomes.

(2) The following diagram provides an outline of the WRC Planning Framework—



(3) A range of measurement systems is used to track and report progress of implementation of the Commission's planning systems.

(4) To establish productivity and justify payments under this Agreement, the Commission also operates a Productivity Measurement Model.

14.—PRODUCTIVITY MEASUREMENT

(1) The parties to this Agreement are committed to the measurement and monitoring of productivity improvement.

(2) In negotiating this Agreement a revised and improved Productivity Measurement Model has been developed and agreed as the basis for establishing pay increases within the life of this Agreement.

(3) This Productivity Measurement Model is made up of four elements, which have zones of performance, multipliers and weightings set at the beginning of each measurement period. The indicators are from these four elements:

- Financial Estimates
- Corporate Management
- Corporate Oncost
- Operational / process performance (KPIs).

(4) Financial Estimate indicators are those indicators which the Commission uses in reporting to Parliament on performance. The Financial Estimate indicators are established to assist the Commission demonstrate the effectiveness and efficiency of key products and services which are incorporated in the Commission's budget.

(5) Corporate Management indicators comprise five macro measures covering project management, stakeholder satisfaction, workforce planning, performance conversations and the extent to which agreed initiatives as defined in the Financial Estimates are met.

(6) Corporate Oncost Indices are two indices established to improve management of corporate costs and employee-related costs. Corporate costs cover administrative expenses and include rents and electricity, vehicle costs, computing, stationery etc. Employee costs include superannuation, payroll tax, workers compensation and other costs related to the employment of people via payroll.

(7) Operational/process key performance indicators (KPIs) are local work group indicators. These indicators are developed and managed locally by all Branches within the Commission. This system was established as the primary productivity measurement model under earlier agreements and has been progressively reviewed and enhanced.

(8) Calculation of productivity and pay increases

- (a) The quantum of pay increases, as per subclause (2) of Clause 19.—Salary Increases of this Agreement is established by determining the tangible benefits or financial savings from within the above four elements. Potential savings or benefits are identified in establishing the indicators when the indicators are established.
- (b) The total of all these savings determines a quantum of money that is available for distribution amongst all employees.
- (c) At the commencement of each measurement period, the Commission's Executive will develop the targets for performance, and the weighting of the factors, which if met provide the relevant pay increase quantum within that period.
- (d) The performance targets and their weightings will be negotiated and agreed by the parties to this Agreement at the commencement of each measurement period.

(9) Details of this Productivity Measurement Model are provided at Schedule B—Productivity Measurement Model of this Agreement.

15.—IMPLEMENTATION OF AGREEMENT INITIATIVES AND PRODUCTIVITY MEASURES

(1) The SBU will meet every six months following the commencement of the Agreement to monitor, review and have input into the progress of the implementation of the Agreement.

(2) The elements, targets and weightings within the Productivity Measurement Model will be continuously reviewed during the life of this Agreement and reset as appropriate. These changes will be renegotiated with the SBU when proposed.

(3) The WRC and the Unions have mutual responsibility to ensure the review meetings are convened.

PART THREE—EMPLOYMENT CONDITIONS

16.—FLEXIBLE WORK ARRANGEMENTS

(1) The WRC has responsibility for measurement, management and protection of the water resources of the State. Management of this natural resource cannot be confined to normal working arrangements and hence the WRC needs flexibility in its working arrangements.

(2) The WRC delivers its services under a variety of difficult and challenging conditions, for example—

- (a) responding to work demands dictated by environmental conditions and seasonal variables—eg flood measurement, water quality sampling;
- (b) provision of services across the state, in particular the requirement to work flexibly to maximise the efficiency of activities carried out in remote locations;
- (c) convening consultative processes outside normal working hours, where practical, to maximise opportunities for public involvement;
- (d) responding to customer needs at any time—eg environmental emergencies; and
- (e) building collaborative relationships with other agencies and interest groups whose agenda impacts on water quality and access—eg partnering with other agencies in public consultations and in responding to relevant customer requirements.

(3) In combination, these factors demand that the WRC is innovative and flexible in its workplace philosophy and practice and it will pursue continuous improvement in working arrangements that enhance both productivity and the welfare of its staff.

17.—HOURS OF DUTY

It is agreed that the development of flexible working hours will take into consideration customer needs, business efficiency and, where practicable, the preference of employees subject to the provisions of this clause.

(1) Consultation

- (a) In determining any variation in hours, the employer will consult with the employee.

(2) Hours of service

- (a) For the purpose of meeting the WRC's customer needs and operational requirements, the WRC's business hours for providing service to the public will be from 8.00am until 5.00pm, Monday to Friday.
- (b) Employees covered by the Civil Service Association of Western Australia Incorporated have ordinary hours of service of one hundred and fifty hours (150) hours in any four (4) week cycle, subject to the settlement period provision in the Clause 16.—Hours of the Public Service Award 1992.
- (c) Employees covered by the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch have ordinary hours of service of 152 hours in any four (4) week cycle.
- (d) Subject to the employer's approval, an employee may elect to work a minimum of four (4) hours up to a maximum of ten (10) ordinary hours, exclusive of meal breaks, on any given work day.
- (e) Unless a shorter period is agreed to, the employer shall give the employee thirty (30) days notice of any proposed variation to the employee's commencement and finishing times and/or days to be worked. The employer cannot alter the total hours worked by the employee without the employee's consent.
- (f) Credit hours for employees covered by the Civil Service Association of Western Australia Incorporated include the following—
 - (i) These employees may be permitted to incur credit hours in excess of the required one hundred and fifty (150) hours to a maximum of seven hours thirty minutes 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 seven hours and thirty minutes at the end of a settlement period shall be lost.
 - (iii) Credit hours at any point within the settlement period shall not exceed twenty hours.
- (g) Employees covered by the Civil Service Association of Western Australia Incorporated may be allowed to incur debit hours to a maximum of seven hours and thirty minutes per cycle period when authorised by the employer.
- (h) Employees covered by the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch may be allowed to incur debit hours to a maximum of seven hours and thirty-six minutes per cycle period when authorised by the employer.
- (i) Debit hours at or below the required hours in the cycle period will be carried forward to the next cycle period.
- (j) The employer may require an employee to make up all debit hours within a cycle period.

(3) Special Working Arrangements

- (a) Flexible working arrangements may be entered into by agreement, in writing, between the employer and the employee and as determined by them.
- (b) Either the WRC or employees may request special work arrangements within the hours of 6.00am to 10.00pm Monday to Sunday.
- (c) The working arrangements must be explained to the employees directly affected by the agreement.
- (d) If this special work arrangement is agreed to by the employer and employee, the arrangement is to be

documented as an agreement and the WRC and the employee entering into the agreement must sign the agreement.

- (e) The hours worked under the special working arrangements are to be paid at the ordinary time rates and do not attract overtime.
 - (f) A copy of all special working arrangement agreements shall be forwarded to the relevant unions within fourteen (14) days of the agreement being reached.
 - (g) The employer or the employee may withdraw from the special arrangement by giving each other fourteen (14) days notice.
- (4) Flexitime Arrangement
- (a) All staff will be required to work in accordance with the provisions of the flexitime arrangement provisions in the parent award.
- (5) Time off in lieu
- (a) Overtime shall be paid at the specified penalty rate or taken as time off in lieu by agreement between the employer and the employee. Time off in lieu will be calculated at the appropriate overtime rates or a combination of time off in lieu and payment at the appropriate overtime rates.

18.—CONSULTATION

(1) The parties are committed to working together to develop a more efficient working environment and to improve the business performance of the Commission.

(2) Consultation in the context of this Agreement is defined as information sharing and discussion on matters relevant to the operation of the WRC. It is acknowledged by the parties to this Agreement that decisions will continue to be made by the WRC which is responsible and accountable to Government through legislation for the efficient and effective operation of its business.

(3) To support the consultation process, the WRC has established processes which facilitate employee involvement. The processes are at two levels—

- (a) at the workplace level; and
- (b) at the strategic and corporate level.

19.—SALARY INCREASES

(1) The following salary increases are payable on the basis of the implementation and on-going participation in the initiatives contained in Clause 13.—Commission Strategic Direction; Clause 14.—Productivity Measurement and Clause 15.—Implementation of Agreement Initiatives and Productivity Measures of this Agreement. The increases payable are 1.5%—

- (a) on the first pay period on or after registration of this Agreement; and
- (b) on the first pay period on or after 1 January, 2002.

(2) Other salary increases are payable during the life of this Agreement on the basis of the achievement of targets outlined within the Productivity Measurement Model as contained in Schedule B—Productivity Measurement Model of this Agreement as follows—

- (a) an increase up to a maximum of 1%, payable from the first pay period on or after 1 July, 2001; and
- (b) an increase up to a maximum of 2%, payable from the first pay period on or after 1 July 2002.

(3) Where targets are not met due to circumstances beyond the control of the employees these circumstances will be taken into account when considering the productivity achieved.

(4) Where productivity targets are not met within the stipulated time frame the second and fourth pay increases as outlined in subclause (2) (a) and (b) of this clause shall be made on a proportional basis.

(5) Unmet targets from the second milestone date as outlined in subclause (2) (a) of this clause may be carried forward to the next productivity milestone date and be incorporated in this payment if targets are met at this later stage.

20.—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 arrangement, contributing toward the Total Employment Cost (TEC) of an employee, can be reduced by and substituted with another, or other benefits.

(3) For the purpose 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 purpose of salary packaging, is calculated by adding the base salary and—

- (a) other cash allowances;
- (b) non cash benefits, eg. superannuation, motor vehicles etc;
- (c) any Fringe Benefits Tax liabilities currently paid; and
- (d) any variable components, eg. performance based incentives where they exist.

(5) Where employees enter 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 arrangements.

(6) Where an employee enters into a salary packaging arrangement the salary rate as specified in Schedule A—Public Service Officers' Salaries of this Agreement is the basis to calculate entitlements in respect of—

- (a) shift penalty rates;
- (b) overtime rates;
- (c) redundancy payments;
- (d) early retirement; and
- (e) any other salary related entitlements.

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

(8) 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 which may become payable by the employee.

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

(10) In the event of any 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.

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

(12) The employer shall not reasonably withhold agreement to salary packaging on request from an employee.

(13) The dispute settlement procedures as contained in Clause 32.—Dispute Settlement Procedures of 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.

21.—RECOVERY OF OVERPAYMENTS

(1) In the event of an overpayment of salaries or allowances the employer will provide written evidence of such overpayment.

(2) If agreement on the overpayment is reached between the parties, the employee will provide written authorisation of the salary or allowance overpayment to be recovered by the employer.

(3) The legally recoverable salary or allowance overpayment will be repaid by the employee within a reasonable period of time as agreed between the employee and the employer. The employer may not deduct or require the employee to repay more than 10% of the employee's net pay in any one pay period.

(4) In the event of mitigating circumstance, the Chief Executive may allow an extended period for the recovery of the overpayment.

(5) Any dispute regarding the recovery of overpayments shall be dealt with in accordance with Clause 32.—Dispute Settlement Procedure of this Agreement.

22.—PART-TIME EMPLOYMENT

(1) Definitions

- (a) A part-time employee is a person employed on permanent basis who works a minimum of fifteen (15) hours per week but works less than the standard full-time hours.
- (b) A part-time position shall be one which has discrete functions and responsibilities but arranged in such a way as to be consistent with job redesign and multi-skilling.

(2) Part-Time Agreement

- (a) Each permanent part-time arrangement shall be confirmed in writing and shall include the agreed period of the arrangement.
- (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 can be converted to part-time employment without his/her prior agreement.

23.—PARENTAL LEAVE

(1) Definitions

For the purposes of this clause, the following definitions shall apply—

- (a) “employee” means permanent and fixed term contract employees who may be employed in a full-time or part-time capacity.
- (b) “replacement employee” means an employee specifically engaged to replace an employee proceeding on parental leave.
- (c) “primary care-giver” means a person who assumes the principal role of providing care and attention to a child.

(2) Eligibility for Parental Leave

- (a) An employee is entitled to a period of up to fifty-two (52) weeks unpaid 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 unpaid leave may be taken at the birth of the child concurrently with parental leave taken by the pregnant employee.
- (c) An employee seeking to adopt a child under the age of five years shall be entitled to three weeks unpaid parental leave at the placement of the child and a further period of unpaid parental leave up to a maximum of fifty-two (52) weeks.
- (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. Employees working or residing outside the Perth metropolitan area are entitled to an additional days unpaid leave. The employee may take any paid leave entitlement in lieu of this leave.
- (e) Subject to subclause (b) of this clause where both partners are employed by the WRC the leave shall not be taken concurrently except under special circumstances and with the approval of the Chief Executive.

(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, subject to the Chief Executive’s approval.

- (b) An employee may extend the maximum period of parental leave with a period of leave without pay subject to the Chief Executive’s approval.

- (c) An employee on parental leave is not entitled to paid sick leave and other paid award absences.

- (d) Where the pregnancy of an employee terminates due to the death of the child being carried, then the employee 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 such further 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 ten week’s notice in writing to the WRC of the date the employee proposes to commence parental leave stating the period of leave to be taken.

- (b) An employee seeking to adopt a child shall not be in breach of subclause (4) (a) above 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

- (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 at 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 in accordance with the award for such period as is certified necessary by a registered medical practitioner.

(6) Replacement Employee

- (a) Prior to engaging a replacement employee the WRC shall inform the person in writing 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 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 pursuant to subclause (5) of this clause 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 with duties similar to that of the abolished position.

- (d) An employee may return on a part-time basis to the same position occupied prior to the commencement of leave or to a different position at the same classification level on a part-time basis in accordance with the part-time provisions of the relevant parent Award or this Agreement.

- (8) Effect of Leave on the Employment Contract
 - (a) 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) Absence on parental leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose under the relevant Award or this Agreement.
 - (c) 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 this Agreement.

24.—HOME BASED WORK

With the approval of the employer, employees may work from home on an ad hoc, short-term basis in order to accommodate special circumstances. On-going or long-term working from home will not be permitted.

25.—CARER'S LEAVE

(1) Employees are entitled to the equivalent of thirty-seven (37) hours and thirty (30) minutes sick leave per year for the employee to care for an ill family member, provided the days are accrued sick leave entitlements. These days are not cumulative.

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

(3) Absence on Carer's Leave of more than two consecutive working days must be supported by a certificate from a registered medical practitioner or dentist (dated for the time of absence) stating that the absence from work was on account of family illness or injury.

(4) In exceptional circumstances, and with the approval of the employer, additional accrued sick leave entitlements may be used to extend Carer's Leave. This paid Carer's Leave is available by the employee accessing accrued sick leave and subject to the employee's annual leave and long service leave being managed so that the employee—

- (a) has no greater than a current year's entitlement plus one accrued entitlement of annual leave entitlement owing; and
- (b) has had one long service leave entitlement accrued for no greater than three years.

26.—ANNUAL LEAVE TRAVEL CONCESSIONS

Annual leave travel concessions for employees stationed in remote areas is covered by the following—

- (1) For the purposes of this clause, the following definitions shall apply—
 - (a) "dependant" is defined as—
 - (i) a spouse; or
 - (ii) where there is no spouse, a child or any other relative resident within the State who rely on the employee for their main support; and
 - (iii) who does not receive a district or location allowance of any kind.
 - (b) "spouse" means an employee's spouse including defacto spouse.
 - (c) "defacto spouse" means a person who lives with the employee as the spouse of the employee on a bona fide domestic basis although not legally married to that person.
 - (d) "full economy air fare" means a fully refundable, transferable and re-routable ticket. Wherever possible, advance purchase fares should be utilised. If advance purchase fares are utilised and changes are required, the WRC will meet additional costs, up to the cost of the full economy air fare.

(2) (a) Travel concessions

- (i) The travel concessions contained in the following table are provided to employees, their spouses and dependants when proceeding on annual leave. Provided the amounts involved are no greater than for air travel to Perth from headquarters situated in District Allowance Areas 3, 5 and 6, and in that portion of area 4 located north of 30 South latitude, employees and their dependants may travel to any destination of their choosing outside the region. Travel must be undertaken outside the region in which the employee is employed.
- (ii) Where an employee's spouse receives a similar provision then the travel concession in subclause (a)(i) above does not apply.
- (iii) Employees are required to serve a year in these areas before qualifying for travel concessions. However, employees who have less than a year's service in these areas and who are required to proceed on annual leave to suit the Commission's convenience will be allowed the concessions. The concession may also be given to an employee who proceeds on annual leave before completing the year's service, provided that the employee returns to the area to complete the year's service at the expiration of that leave.
- (iv) The mode of travel is to be at the discretion of the employer.
- (v) Travel concessions not utilised within twelve months of becoming due will lapse.
- (vi) Part-time employees are entitled to travel concessions on a pro rata basis according to the usual number of hours worked per week.
- (vii) Travelling time shall be calculated on a pro rata basis according to the number of hours worked per week.

Approved Mode of Travel	Travel Concession	Travelling Time
Air	Air fare for the employee, dependent spouse and dependent children.	One day each way
Road	Full motor vehicle allowance rates, but reimbursement not to exceed the cost of return air fare for the employee, dependent spouse and dependant children, travelling in the motor vehicle.	North of 20 South Latitude—two and one half days each way. Remainder—two days each way.
Air & Road.	Full motor vehicle allowance rates for car trip, but reimbursement not to exceed the cost of the return air fare for the employee. Air fares for the dependent spouse and dependent children.	North of 20 South Latitude—two and one half days each way. Remainder—two days each way.

27.—CEREMONIAL & CULTURAL LEAVE

(1) An employee covered by this Agreement may apply to use Clause 26.—Short Leave of the Public Service Award 1992 for tribal/ceremonial/cultural purposes.

(2) Subject to the employer's approval and WRC's convenience, an employee may be allowed to use accrued Annual Leave for Ceremonial/Cultural purposes.

28.—ANNUAL LEAVE LOADING

(1) Employees will be paid the annual leave loading entitlement provided by the Annual Leave clause contained in the relevant parent Awards as specified in Clause 10.—Relationship to Parent Awards of this Agreement. This annual leave loading has been incorporated into the relevant annual salaries provided at Schedule A—Public Service Officers' Salaries of this Agreement.

29.—SICK LEAVE

(1) Permanent employees covered by the Civil Service Association of Western Australia Incorporated will be credited with the following sick leave credits, which shall be cumulative—

On the day of initial appointment	45 hours
On completion of 6 months continuous service	48 hours 45 minutes
On completion of 12 months continuous service	93 hours 45 minutes
On the completion of each further period of 12 months continuous service	93 hours 45 minutes

(2) All other sick leave entitlements shall be in accordance with those provided by the Sick Leave clause contained in the relevant parent Award as specified in Clause 10.—Relationship to Parent Awards of this Agreement.

30.—LONG SERVICE LEAVE

By agreement between the parties—

- (1) Long service leave may be taken in periods of not less than one week or more.
- (2) The employee may take accrued long service leave entitlements on full pay, double pay or half pay or any variation thereof.
- (3) An employee may apply to receive payment for up to 50% of accrued long service leave entitlements instead of taking the leave. The amount of payment will be the dollar value of the leave had it been taken at the time the payment is received. The payment of long service leave entitlements will be taxed according to the appropriate designated rate.
- (4) Employees shall be responsible for seeking appropriate financial advice prior to accessing payment in lieu of long service leave as outlined in subclause (3) above.

31.—DEFENCE FORCE LEAVE

(1) Subject to the employer's convenience, leave of absence may be granted by the employer to an employee who is a volunteer member of the Defence Force Reserves or the Cadet Force for the purpose of attending a training camp, school, class or course of instruction under the conditions contained in this clause.

(2) In order to attend at a camp for annual continuous obligatory training, an employee may be granted one period of not exceeding ten working days on full pay in any period of twelve (12) months commencing on and from July 1 each year.

(3) If the Officer-in-Charge of a unit certifies that it is essential for an employee to be at the camp in an advance or rear party, a maximum of four (4) extra days on full pay may be granted in a twelve (12) month period.

(4) For attendance at one special school, class or course of instructions—

- (a) in addition to the leave granted under subclause (1) hereof, a period exceeding sixteen (16) calendar days in any period of twelve (12) months commencing on and from July 1, in each year may be granted provided that the employer must be satisfied that the leave required is for a special purpose and not for a further routine camp;
- (b) this leave may, at the option of the employer, be granted from annual leave due;
- (c) if the leave is not taken from accrued annual leave, the wage payable during the period shall be at the rate of difference between the normal remuneration of the employee and the defence force payment to which the employee is entitled is this does not exceed normal pay from the employer;
- (d) in calculating the pay differential, pay for Saturdays, Sundays, and public holidays is to be excluded, and no account is to be taken of the value of any board or lodging provided for the employee;
- (e) leave without pay shall be granted if the defence force payments exceed the normal pay of the employee.

(5) Application for leave of absence for the above reasons shall, in all cases be accompanied by evidence of the necessity for attendance. At the expiration of the leave of absence granted, the employee shall furnish a certificate of attendance to the employer where leave of absence has been granted with pay at the rate of difference between normal wage and defence force payment received.

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

(7) Where annual leave is not utilised for attendance at a special school or course the period shall be treated as leave without pay and then adjusted for the pay differential when the certificate of attendance and payment is received.

32.—DISPUTE SETTLEMENT PROCEDURE

Any questions, disputes or difficulties arising under this Agreement shall be dealt with in the following manner—

- (1) The employee(s) concerned and/or the Union representative, if requested, 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 working days following the discussion in accordance with subclause (1) hereof, the matter shall be referred by the employee(s) and/or the Union representative to the employer for resolution.
- (3) If the matter is not resolved within five working days of the employee's and/or the Union representative's notification of the dispute to the employer, it may be referred by either party to the WAIRC.

33.—FURTHER MATTERS FOR CONSIDERATION

(1) During the life of the Agreement the parties will continue to address a range of issues and reforms specifically aimed at increasing productivity and achieving more conducive employment conditions.

(2) The parties agree that these issues will form the basis of future negotiations.

(3) Issues for discussion during the life of this Agreement include, but are not necessarily restricted to, the following—

- (a) Parental Leave; and
- (b) Family Friendly Work Initiatives.

SCHEDULE A—PUBLIC SERVICE OFFICERS' SALARIES

Level		Base Rate	Leave Loading	Reg 1.5%	1/7/01 >1%	1/1/02 1.5%	1/7/02 >2%
1	U/17 yrs	14316	14508	14725	14873	15096	15398
	17 yrs	16455	16675	16926	17095	17351	17698
	18 yrs	18920	19173	19461	19656	19951	20350
	19 yrs	21641	21931	22260	22482	22820	23276
	20 yrs	24102	24425	24791	25039	25415	25923
2	1	25334	25673	26059	26319	26714	27248
	2	26567	26923	27327	27600	28014	28574
	3	27799	28172	28594	28880	29313	29899
	4	29032	29421	29862	30161	30613	31226
	5	30264	30670	31130	31441	31912	32551
	6	31497	31919	32398	32722	33213	33877
	7	32729	33168	33665	34002	34512	35202
3	1	33840	34293	34808	35156	35683	36397
	2	34693	35158	35685	36042	36583	37314
	3	35590	36067	36608	36974	37529	38279
	4	36537	37027	37582	37958	38527	39298
4	1	37529	38032	38602	38988	39573	40365
	2	38892	39413	40004	40404	41010	41831
	3	39954	40489	41097	41508	42130	42973
	4	41049	41599	42223	42645	43285	44151
5	1	42173	42738	43379	43813	44470	45360
	2	43714	44300	44964	45414	46095	47017
	3	44922	45524	46207	46669	47369	48316
6	1	46163	46782	47483	47958	48678	49651
	2	48557	49177	49915	50414	51170	52193
	3	50175	50795	51557	52072	52854	53911
	4	51856	52476	53263	53796	54603	55695
7	1	53600	54220	55033	55584	56417	57546
	2	56404	57024	57899	58458	59335	60522
	3	58310	58930	59814	60412	61318	62545
	4	60283	60903	61817	62435	63371	64639
8	1	62391	63011	63956	64596	65565	66876
	2	65621	66241	67235	67907	68926	70304
	3	67858	68478	69505	70200	71253	72678
9	1	70289	70909	71973	72692	73783	75258

Level	Base Rate	Leave Loading	Reg 1.5%	1/7/01 >1%	1/1/02 1.5%	1/7/02 >2%	
8	1	74241	74861	75984	76744	77895	79453
	2	77072	77692	78857	79646	80841	82457
	3	80583	81203	82421	83245	84494	86184
9	1	84968	85588	86872	87741	89057	90838
	2	87930	88550	89878	90777	92139	93981
	3	91308	91928	93307	94240	95654	97567
2/4	1	33840	34293	34807	35155	35683	36396
	2	35590	36067	36608	36974	37529	38279
	3	37529	38032	38602	38989	39573	40365
	4	39954	40489	41096	41507	42130	42972
	5	43714	44300	44965	45414	46095	47017
	6	46163	46782	47484	47959	48678	49651
Class 1	1	96417	97037	98493	994777	100970	102989
	2	101527	102147	103679	104716	106287	108412
	3	106634	107254	108863	109951	111601	113833
	4	111743	112363	114048	115189	116917	119255

Wage Rates—Engineering Trades (Government) Award

Level	Base Rate	Leave Loading	Reg 1.5%	1/7/01 >1%	1/1/02 1.5%	1/7/02 >2%
Tradesperson	581.71	589.50	598.35	604.33	613.40	625.66

SCHEDULE B—PRODUCTIVITY MEASUREMENT MODEL

In order to increase coverage of the work of the Commission and measurement rigour four factors are weighted to

reflect Commission outcome priorities. Target performance zones against each of the four factors are negotiated and set for each measurement period under the Agreement.

The four elements are—

- Treasury Indicators**
A series of indicators relating to cost and timeliness which, if improved, will generate tangible savings for benefits.
- Internal Performance Indicators**
A range of indicators which are focussed on the improvement of internal processes are able to be costed and have savings or benefits quantified.
- Corporate Management**
A range of indicators or milestones that will improve the performance of the Commission, or deliver an agreed set of commitments. Generally, these indicators will not deliver tangible cash benefits.
- Corporate Costs**
This factor incorporates two key indicators (employee costs and corporate costs). The two indicators are combined to produce one productivity measure.

The four indicators with targets, multipliers and weightings are detailed on the following—

Corporate Management Weighting 2.		Payment 1		Payment 2		
Measure Category	Measure	Target	Multiplier	Target	Multiplier	
Project Management	% of Projects which are on schedule and agreed deliverables are achieved (based on monthly scores averaged between measurement milestones).	>70%	1.00	80-100%	1.00	
		60-70%	0.75	70-80%	0.75	
		50-60%	0.50	60-70%	0.50	
		<50%	0	<60%	0	
	% of CF recurrent and Capital and existing external Projects with expenditures in line with agreed cashflows (based on monthly scored averaged between measurement milestones).	>60%	1.00	>70%	1.00	
		50-60%	0.75	60-70%	0.75	
		40-50%	0.50	50-60%	0.50	
		<40%	0	<50%	0	
Performance Conversations	% of Directors, Managers and fourth tier staff with Conversations in place each year.	100%	1.00	100%	1.00	
		<100	0.00	<100	0.00	
Stakeholder satisfaction	Independent rating applied to Commission's service.	Not to be measured		80-100%	1.00	
				75 - 80%	0.75	
				65 - 75%	0.50	
				50-65%	0.00	
Workforce Planning	Workforce plan complete and timely - Whole of agency.	100%	1.00	100%	1.00	
		For the second year, that the targets within the plan are achieved.			95-100%	0.75
					90-95%	0.50
					<90%	0.00
Financial Estimates	Achievement of agreed deliverables and initiatives as defined in the financial estimates.	90-100%	1.00	90-100%	1.00	
				80 - 90%	0.75	
				<80%	0.00	
		Achievement of actual expenditure to budgeted targets – whole of CF recurrent capital budgets.			>97%	1.00
			93-97%	0.50		
			<93%	0		
Maximum Score			5.00		6.00	

Summary of all Improvement Categories

Indicator	Target	Multiplier	Input	Weighting
Treasury Indicators				
Total savings/ CF budget (for those activities measured)	>=2%	1.00	1.00	0.30
	1-2%	0.75		
	0-1%	0.50		
	<0	0.00		
Employee Costs and Corporate Cost Reductions				
Reduction in employee on-costs expressed as total on-costs per FTE	>=2.5%	1.00	1.00	0.30
	1-2.5%	0.75		
	0-1%	0.50		
	<0	0.00		
Reduction in total corporate costs				
Change in index				
Corporate Management				
	Sum of Individual Scores		1.00	0.20
	5	1.00		
Internal Performance Indicators				
	140/100	1.00	1.00	0.20
	120/100	0.50		
	100/100	0.00		

SCHEDULE C— SIGNATURES OF THE PARTIES TO THE AGREEMENT

Signed for and on behalf of the Water and Rivers Commission by—
....Roger Payne (signed)....
 Roger F Payne
 CHIEF EXECUTIVE
 Date 21/12/00

In the presence of—
....PR Kent (signed)....
 Date 21/12/00

Signed for and on behalf of the Civil Service Association of Western Australia Incorporated by—
....pp Toni Walkington (signed)....
 Dave Robinson
 GENERAL SECRETARY
 Date 2/1/01

In the presence of—
....Ken Ross (signed)....
 Date 2/1/2001

Signed for and on behalf of the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch by—
....G T Bucknall (signed)....
 for John Ferguson
 STATE SECRETARY
 Date 2/1/2001

In the presence of—
....Ken Ross (signed)....
 Date 2/1/2001

WATER CORPORATION INTERIM AGREEMENT 2000.
No. AG 12 of 2001.
2001 WAIRC 01949

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

PARTIES WATER CORPORATION, APPLICANT
 v.
 AUSTRALIAN LIQUOR, HOSPITALITY AND MISCELLANEOUS WORKERS UNION, WESTERN AUSTRALIAN BRANCH, THE AUSTRALIAN WORKERS' UNION, WEST AUSTRALIAN BRANCH, INDUSTRIAL UNION OF WORKERS, CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA INCORPORATED, 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 & ELECTRICAL DIVISION, WA BRANCH, RESPONDENTS

CORAM SENIOR COMMISSIONER G L FIELDING

DELIVERED THURSDAY, 1 FEBRUARY 2001

FILE NO/S	AG 12 OF 2001
CITATION NO.	2001 WAIRC 01949
<hr/>	
Result	Agreement registered
Representation	
Applicant	Mr S W Rooke as agent
Respondent	Ms S K Newby as agent for the Civil Service Association of Western Australia Incorporated, the Australian, Liquor, Hospitality and Miscellaneous Workers' Union, Western Australian Branch and the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch
	Mr C Young as agent for the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch

Order.

HAVING heard Mr S W Rook as agent on behalf of the Water Corporation and Ms S K Newby as agent for the Civil Service Association of Western Australia Incorporated, the Australian, Liquor, Hospitality and Miscellaneous Workers' Union, Western Australian Branch and the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch and Mr C Young as agent for the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders—

That the agreement made between the parties lodged in the Commission on 15 January 2001 entitled Water Corporation Interim Agreement 2000 be registered in the terms of the following Schedule as an industrial agreement in replacement of the Water Corporation Conditions Agreement 1997 AG 332/97 and the pay and the Water Corporation Allowances Agreement 2000 AG 331/97 which are hereby cancelled.

[L.S.] (Sgd.) G.L. FIELDING,
Senior Commissioner.

SCHEDULE

PART A—CONDITIONS

SECTION ONE — PRELIMINARY

CLAUSE 1.1 TITLE

This Agreement shall be known as the Water Corporation Interim Agreement 2000. It replaces the Water Corporation Conditions Agreement 1997 (No. AG332 of 1997) and the Water Corporation Pay and Allowances Agreement 2000 (No. AG3 of 2000).

CLAUSE 1.2 ARRANGEMENTS

SECTION ONE — PRELIMINARY

CLAUSE 1.1	TITLE
CLAUSE 1.2	ARRANGEMENT
CLAUSE 1.3	PARTIES BOUND
CLAUSE 1.4	NO FURTHER CLAIMS
CLAUSE 1.5	PRECEDENCE OVER AWARDS
CLAUSE 1.6	CLAUSE TERM OF AGREEMENT
CLAUSE 1.7	RENEWAL OF AGREEMENT
CLAUSE 1.8	Deleted
CLAUSE 1.9	CONTRACT OF SERVICE
CLAUSE 1.10	PART-TIME EMPLOYMENT
CLAUSE 1.11	CASUAL EMPLOYMENT

SECTION TWO — CONDITIONS MATTERS

CLAUSE 2.1	HOURS
CLAUSE 2.2	ANNUAL LEAVE
CLAUSE 2.3	PUBLIC HOLIDAYS
CLAUSE 2.4	LONG SERVICE LEAVE
CLAUSE 2.5	SICK LEAVE
CLAUSE 2.6	PARENTAL LEAVE
CLAUSE 2.7	LEAVE WITHOUT PAY
CLAUSE 2.8	BEREAVEMENT LEAVE
CLAUSE 2.9	LEAVE TO ATTEND UNION BUSINESS
CLAUSE 2.10	TRADE UNION TRAINING LEAVE
CLAUSE 2.11	LEAVE FOR TRAINING WITH DEFENCE FORCE RESERVES
CLAUSE 2.12	LEAVE FOR INTERNATIONAL SPORTING EVENTS
CLAUSE 2.13	WITNESS AND JURY SERVICE LEAVE
CLAUSE 2.14	CEREMONIAL LEAVE
CLAUSE 2.15	LEAVE FOR EMERGENCY SERVICE VOLUNTEERS
CLAUSE 2.16	LEAVE TO ATTEND LOCAL GOVERNMENT ISSUES
CLAUSE 2.17	STUDY ASSISTANCE

SECTION THREE — MONEY MATTERS

CLAUSE 3.1	METHOD OF PAYMENT
CLAUSE 3.2	OVERTIME RATES
CLAUSE 3.3	SHIFT WORK ALLOWANCE
CLAUSE 3.4	LIVING AWAY FROM HOME
CLAUSE 3.5	REMOTE LOCATION/DISTRICT ALLOWANCES
CLAUSE 3.6	TRANSFER/DISTURBANCE ALLOWANCES
CLAUSE 3.7	MOTOR VEHICLE ALLOWANCES
CLAUSE 3.8	REMOVAL/PROPERTY ALLOWANCES
CLAUSE 3.9	RELIEVING ALLOWANCES
CLAUSE 3.10	FARES
CLAUSE 3.11	Deleted

SECTION FOUR — LOCAL AGREEMENTS

Deleted

SECTION FIVE — MISCELLANEOUS

CLAUSE 5.1	TRANSITIONAL ARRANGEMENTS
CLAUSE 5.2	TIME AND PAY RECORDS
CLAUSE 5.3	NOTIFICATION OF CHANGE
CLAUSE 5.4	RIGHT OF ENTRY
CLAUSE 5.5	COPIES OF AGREEMENT
CLAUSE 5.6	DISPUTE RESOLUTION PROCEDURE
CLAUSE 5.7	LEAVE RESERVED
CLAUSE 5.8	SALARY PACKAGING
CLAUSE 5.9	ADJUSTMENT OF ALLOWANCES
CLAUSE 5.10	MONITORING AND IMPLEMENTATION
CLAUSE 5.11	PROTECTIVE CLOTHING

SECTION SIX — APPENDICES

SCHEDULE A—DISTRICT ELECTRICAL TECHNICIANS

SCHEDULE B—MOBILE MECHANICAL FITTERS

SCHEDULE C—RANGERS

SCHEDULE D—APPRENTICES

SCHEDULE E—PUMPERS NORTH WEST REGION

PART B—PAY AND ALLOWANCES

SECTION ONE — PRELIMINARY

Deleted

SECTION TWO — MONEY MATTERS

CLAUSE 2.1	GENERAL PAY INCREASES
CLAUSE 2.2	RATES OF PAY
CLAUSE 2.3	SPECIAL RATES AND PROVISIONS
CLAUSE 2.4	ADJUSTMENT OF ALLOWANCES
CLAUSE 2.5	HIGHER RESPONSIBILITY ALLOWANCE

SECTION THREE — MISCELLANEOUS

- CLAUSE 3.1 Deleted
 CLAUSE 3.2 Deleted
 CLAUSE 3.3 Deleted
 CLAUSE 3.4 SIGNATORIES

PART A—CONDITIONS AGREEMENT

CLAUSE 1.3 PARTIES BOUND

This Agreement is an agreement made under Part VI B of the Workplace Relations Act 1996 in respect of—

the Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Division, WA Branch and;
 the Australian Workers Union, for those classifications prescribed in Table (B), Clause 2.2—Rates of Pay of Part B Pay and Allowances of this Agreement.

This Agreement is an agreement made under Section 41 of the Industrial Relations Act 1979 in respect of—

the Civil Service Association of Western Australia (Inc) for those classifications prescribed in Table (A), Clause 2.2—Rates of Pay of Part B Pay and Allowances of this Agreement and;

the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers, Western Australian Branch for those classifications prescribed in Tables (B) and (C), Clause 2.2—Rates of Pay of Part B, Pay and Allowances of this Agreement and;

the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia for those classifications prescribed in Table (C) Clause 2.2—Rates of Pay of Part B, Pay and Allowances, of this Agreement and;

the Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Division, WA Branch for those classifications prescribed in Tables (C) and (D), Clause 2.2—Rates of Pay of Part B, Pay and Allowances Agreement.

This Agreement applies to and binds the Corporation, all persons (except those in managerial positions who are or become parties to common law contracts) who are employees of the Corporation during the operation of this Agreement and also applies to and binds the following organisations—

AUSTRALIAN LIQUOR HOSPITALITY AND MISCELLANEOUS WORKERS UNION,
 MISCELLANEOUS DIVISION, WA BRANCH—
 (ALHMWU)

THE AUSTRALIAN WORKERS UNION—(AWU)

CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA (INC)—(CSA)

AUTOMOTIVE, FOOD, METALS, ENGINEERING, PRINTING AND KINDRED INDUSTRIES UNION OF WORKERS, WESTERN AUSTRALIAN BRANCH—
 (AMWU)

COMMUNICATIONS, ELECTRICAL, ELECTRONIC, ENERGY, INFORMATION, POSTAL, PLUMBING AND ALLIED WORKERS UNION OF AUSTRALIA, ENGINEERING & ELECTRICAL DIVISION, WESTERN AUSTRALIAN BRANCH —(CEPU)

This Agreement will cover an estimated 2022 employees at the date of registration.

CLAUSE 1.4 NO FURTHER CLAIMS

The parties to this Agreement undertake that for the duration of this Agreement there shall be no further pay 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.

CLAUSE 1.5 PRECEDENCE OVER AWARDS

Where the terms of an award covering employees covered by this Agreement are inconsistent with the terms of this Agreement, the Agreement shall prevail to the extent of any such inconsistency. The relevant awards are—

Awards of the Australian Industrial Relations Commission
 the Australian Worker's Union (Western Australian Public Sector) Award 1992;

the Metropolitan Water Supply Sewerage and Drainage Employees Western Australia Award 1988.

Awards of the Western Australian Industrial Relations Commissions

the Government Water Supply, Sewerage and Drainage Foremens Award 1984;

the Government Water Supply, Sewerage and Drainage Employees Award 1981.

CLAUSE 1.6 TERM OF AGREEMENT

This Agreement shall operate from the beginning of the first pay period to commence on or after the date on which it is certified under Part VIB of the Workplace Relations Act 1996 and registered under Section 41 of the Industrial Relations Act 1979, or if it is so certified and so registered on different dates, the later of the two dates, and remain in force until 31 December 2001.

CLAUSE 1.7 RENEWAL OF AGREEMENT

At least 6 months prior to the expiry of this Agreement the parties shall indicate their intentions with respect to a replacement for this Agreement.

As soon as practicable the parties shall enter into intensive negotiations aimed at reaching agreement on a replacement for this Agreement. The parties will use their best endeavours to have a new Agreement certified under Part VIB of the Workplace Relations Act 1996 and registered under Section 41 of the Industrial Relations Act 1979 before 31 December 2001.

CLAUSE 1.9 CONTRACT OF SERVICE

(A)(i) The Corporation may engage employees for—

- (a) an indefinite period or;
 (b) a fixed term period or;
 (c) on a part time basis or;
 (d) on a casual basis.

(ii) For the purposes of this Agreement—

- (a) Indefinite Period means employment under the provisions of this clause, other than fixed term, part-time or casual.
 (b) Fixed Term means that the employee shall be advised in writing of the terms of the appointment and such advice shall specify the dates of commencement and termination of employment.
 (c) Part Time means employment under the provisions of clause 1.10 of this Part.
 (d) Casual means employment under the provisions of clause 1.11 of this Part.

(B) Employment may be terminated by the giving of the appropriate period of notice in accordance with subclause (C) of this clause, or the payment or forfeiture of the ordinary pay for the period of notice not given.

(C) Employee's period of continuous service with the Corporation	Period of notice
Not more than 1 year	At least 1 week
More than 1 year but not more than 3 years	At least 2 weeks
More than 3 years but not more than 5 years	At least 3 weeks
More than 5 years	At least 4 weeks

In addition to the above notice, employees over 45 years of age with a minimum of 2 years service at the time of termination by the Corporation, shall be entitled to an additional 1 weeks notice.

CLAUSE 1.10 PART-TIME EMPLOYMENT

(A) Definitions

- (i) "Part-Time" employment is defined as regular and continuing employment of less than 38 hours per week.
 (ii) A "Part-Time" position shall be one which has discrete functions and responsibilities, but arranged in such a way as to be consistent with job redesign and multi-skilling.

(B) Part-Time Agreement

- (i) Each 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 (C) of this clause.
- (ii) A change to any part-time arrangement or an agreement to revert to full-time employment shall be confirmed in writing.
- (iii) 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 such employees prior agreement.

(C) Hours of Duty

- (i) Except as agreed between the Corporation and relevant union, the parameters for the working of ordinary hours shall be 6.00am to 6.00pm.
- (ii) The Corporation 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.
- (iii) Unless otherwise agreed to by the employee, the Corporation may only vary an employee's starting and finishing times by the giving of 1 month's notice. The Corporation shall not vary the employee's total weekly hours of duty without the employee's prior written consent.

If agreement is reached to vary an employee's ordinary working hours pursuant to this subclause—

- (a) Time worked to 7.6 hours on any day is not to be regarded as overtime, even if it is an extension of the usual contract hours for that day, and shall be paid at the normal rate of pay.
- (b) Additional days worked, up to a total of 5 days per week, Monday to Friday, are also regarded as an extension of the contract and shall be paid at the normal rate.

(D) Payment

An employee who is employed on a part-time basis shall be paid a proportion of the appropriate full-time rate according to time worked, calculated in the following manner—

<u>Hours worked per fortnight</u>	X	<u>Pay Rate</u>
76		1

(E) Leave

- (i) A part-time employee shall be entitled to the same leave and conditions prescribed in this Agreement for full-time employees.
- (ii) Payment to an employee proceeding on annual leave or long service leave shall be calculated on a pro-rata basis having regard to any variations to the employee's ordinary working hours during the accrual period.
- (iii) Sick leave shall be paid at the current rate, but only for those hours on the days that would normally have been worked had the employee not been on such leave.

(F) 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.

CLAUSE 1.11 CASUAL EMPLOYMENT**(A) Definition**

- (i) "Casual Employee" means an employee engaged by the hour not exceeding 1 calendar month.
- (ii) Casual employment is limited to peaks in work load, irregular demands and other short term needs.

(B) Payment

- (i) A casual employee shall be paid for each ordinary hour worked at the appropriate classification contained in Clause 2.2—Rates of Pay of Part B, Pay and Allowances of this Agreement in accordance with the following formula—

<u>Fortnightly Pay Rate</u>			
76	+	20%	

The 20% loading is in lieu of annual leave, sick leave, long service leave and payment for public holidays.

(C) Conditions of Employment

- (i) Where expenses are directly and necessarily incurred by a casual employee in the ordinary performance of such employee's duties, the employee shall be entitled to reimbursement in accordance with the provisions of this Agreement.
- (ii) Nothing in this Agreement shall confer indefinite or fixed term employee status to a casual employee.
- (iii) The employment of a casual employee may be terminated at any time by the casual employee or the Corporation giving to the other 1 hour's notice. In the event of either party failing to give the required notice, 1 hour's pay shall be paid or forfeited.

SECTION TWO—CONDITIONS MATTERS**CLAUSE 2.1 HOURS****(A) Ordinary Hours**

Subject to the provisions of subclause (B) of this clause, the ordinary hours of duty shall be 76 hours per fortnight worked over 10 days, Monday to Friday, unless otherwise agreed by the relevant parties to this Agreement.

- (i) Ordinary hours shall be worked between 6am and 6pm, unless mutually agreed otherwise.
- (ii) Employees shall not work longer than 5 hours without a break for a meal, unless mutually agreed otherwise.
- (iii) Employees shall not work longer than 12 hours on any day, except in an emergency.
- (iv) Hours of duty are exclusive of an unpaid meal break of a minimum of 30 minutes each day.

(B) Other Working Arrangements

- (i) Ordinary hours of duty may be varied so as to make provisions for—
 - (a) the attendance of employees for duty on a Saturday, Sunday, or Public Holiday;
 - (b) the performance of shift work including work on Saturdays, Sundays, or Public Holidays; and
 - (c) the nature of the duties of an employee or class of employees in fulfilling the responsibilities of their position,

either by agreement between the relevant parties or by determination by the relevant industrial relations tribunal.

(ii) Nine Day Fortnight

Subject to taking into account the interests of the customer, the business and the employee, the ordinary hours of work shall be 76 hours per fortnight worked over 9 days, Monday to Friday. In such cases—

- (a) Ordinary hours shall be 8.5 hours on 8 days with 1 day of 8 hours, or 9 days of 8.44 hours per day.
- (b) Employees shall be granted 1 Rostered Day Off each fortnight.
- (c) Employees may elect to take time in lieu or payment at single time if required to work during ordinary hours on a Rostered Day Off.
- (d) Employees may accumulate a maximum of 5 days in lieu.
- (e) Employees are entitled to 1 day in lieu if a Public Holiday falls on a Rostered Day Off.
- (f) Days in lieu shall be taken at a time mutually agreed between the employee and the Corporation.

Provided that the 9 day fortnight shall continue in operation in those areas where it currently applies unless, as a result of changed circumstances it is agreed by the parties, or determined by the relevant industrial relations tribunal, that it is no longer in the best interests of the customer or the business or the employees.

- (iii) Flexible Working Hours
Subject to taking into account the interests of the customer, the business and the employee, the ordinary hours of work shall be an average of 152 hours per 4 week period. In such cases—
- (a) Hours during which an employee must attend for duty shall be determined in advance and may only be varied by the giving of 1 month's notice in writing by the Corporation or by mutual agreement.
 - (b) Employees may accumulate a maximum credit of 38 hours and maximum debit of 7.6 hours
 - (c) Credits may be taken as flexi leave at times which suit the requirements of the work area. The Corporation shall not unreasonably withhold approval.
 - (d) On termination, accumulated credit hours will be paid and any debit hours deducted from an employee's final pay.
- (C) Special Work Arrangements
- (i) Special work arrangements varying the ordinary hours prescribed in subclause (A) may be entered into at the request of either the Corporation or the employee. Special work arrangements take account of requirements for the efficient and effective performance of particular jobs or projects and shall be limited to the duration of the particular job or project for which they are designed.
 - (ii) Introduction of special work arrangements require—
 - (a) the proposed special arrangement must be documented and explained to all affected employees;
 - (b) the proposed special work arrangements must be agreed to in writing by all affected employees;
 - (c) the agreement must be forwarded to the relevant union/s for consideration and ratification at least 2 weeks prior to commencing the arrangement;
 - (d) the agreement requires ratification by the relevant unions and shall not be unreasonably withheld by the union/s.
- (D) Annualised Hours
- (i) Annualised hours may be utilised to enable longer hours to be worked in periods where there are peak workload requirements due to seasonal or other factors and shorter hours when the workload is lower.
 - (ii) Annualised hours arrangements may only be entered into by mutual agreement between the Corporation, employees and relevant unions.
 - (iii) Annualised working hours will operate in the following way—
 - (a) an employee is paid at the rate of 38 hours per week throughout the year;
 - (b) work on Saturdays or Sundays is considered normal time;
 - (c) where work out of hours or on weekends is a regular requirement of the employee's duties this shall be taken into account in the hourly rate agreed for the work;
 - (d) on termination of employment an employee is paid for any accumulated credit hours at ordinary time or any money owed for debit hours is deducted from the employee's final pay;
 - (e) clearance of credit hours will be by mutual agreement and approval should not be unreasonably withheld.
 - (iv) Annualised arrangements are not available to employees classified above the equivalent of pay point 17 prescribed in Part B, Pay and Allowances of this Agreement, Clause 2.2—Rates of Pay, Table (A).
- (E) Home Based Work
- (i) Definitions
 - (a) "Home Based Site" means a private dwelling agreed between the Corporation and the employee.
 - (b) "Home Based Employee" means an employee who is authorised in accordance with this subclause to work from a home based site.
 - (c) "Home Based Work" means regular performance of ordinary hours of duty at the home based site.
 - (d) "Usual Work Site" means the location where the employee would ordinarily work if there were no home based work arrangement.
 - (ii) Terms and Conditions
 - (a) This subclause will apply to an employee who is authorised to perform ordinary hours of duty or part thereof at a home based site.
 - (b) The employee's home based site will be deemed to be the employee's headquarters for the purposes of payment of allowances and other arrangements.
 - (c) The status of the home based employee will be identical to that of a non-home based employee. All relevant agreements, policies and legislation shall apply and be binding.
 - (d) The employee shall agree to maintain an accurate record of hours worked including work carried out at the home based work site. The employee is to be contactable during periods in which home based work is carried out and available for communication with the Corporation.
 - (e) The home based work site may be used for overtime provided that separate written agreement is reached prior to the commencement of overtime. Overtime hours of work will be agreed in writing and paid in accordance with the overtime provisions of this Agreement. A copy of the written agreement will be held by both the employee and the Corporation for the period during which the overtime is carried out at the home based site.
 - (f) Home based work will be on the basis that the employee spends a designated period of time, agreed between the Corporation and the employee, of the employee's usual weekly hours of duty at the usual work site.
 - (g) The Corporation will be responsible for the provision and maintenance of Corporation equipment in a condition that complies with the Western Australian Occupational Safety and Health Act 1984 and the provision of supplies as set out in paragraph (iv) of this subclause, provided that the Corporation and the employee may agree on any alternative arrangements if appropriate. Such alternative arrangements must be recorded.
 - (h) An employee in a homed based work arrangement shall not contract out the work being paid for by the Corporation.
 - (i) The Corporation shall ensure home based employees have the same opportunities for career development and training as non home based employees. In particular—
 - (a) a home based employee will carry out such duties as are within the limits of the employee's skill, competence and training and job description; and
 - (b) an employee working at the home based site will be expected to undertake appropriate work-related training, occupational safety and health training and staff development and shall receive notification of career and training opportunities available; and
 - (c) such training may include change to work design, work organisation and technical developments in the employee's field of employment; and
 - (d) such training should occur in work time, at either the usual work site or in a recognised training centre.

(iii) Initiation of and Approval for Home Based Work

- (a) Home based work is not a right or an entitlement nor an obligation and may only be entered into on a voluntary basis, with either party initiating the proposal or maintaining the right of refusal. An employee may only initiate a proposal for home based work in respect of—
 - (i) that employee's substantive position; or
 - (ii) a position in which the employee is temporarily performing duties.
- (b) Each application for a home based work arrangement is to be considered on a case by case basis.
- (c) The parties acknowledge that a home based work arrangement generally will not be appropriate when an employee is on a return to work program, particularly a graduated return to work program following an injury as a result of work. Should it be considered appropriate to initiate a home based work arrangement in these circumstance the Corporation and employee must consult the employee's approved rehabilitation provider prior to commencing such an arrangement.
- (d) A home based work arrangement is not a substitute for dependant care.
- (e) The Corporation shall advise the employee that it is the employee's responsibility to assess the personal implications of commencing home based work with respect to taxation, insurances, leasing or mortgage arrangements.
- (f) Arrangements may be for a fixed or indefinite period.
- (g) The Corporation shall provide the relevant union with a quarterly report of home based work arrangements.

(iv) Requirements for Approval

- (a) Before approval can be given for a home based work arrangement to commence, the Corporation and the employee must agree to the following matters—
 - (i) The address, telephone number, facsimile number and E-mail address of the home based site.
 - (ii) The duties to be performed.
 - (iii) The days and hours of duty at the usual work site and at the home based site.
 - (iv) Duration of the arrangement and agreed period of notice for purposes of terminating the arrangement.
 - (v) The specific facilities to be used at the home based site.
 - (vi) The method of disseminating Corporation communication bulletins to the home based employee where access to that information may be reduced.
 - (vii) Methods of measuring work performance, provided that systems-based automated work measurements will not be used as the sole means for determining or monitoring individual work performance.
 - (viii) Details of Corporation assets and supplies to be used at the home based site, including maintenance arrangements.
 - (ix) Details of employee's assets and supplies to be used at the home based site for official use, including maintenance and insurance coverage.
 - (x) Details of workspace and facilities to be provided when the employee attends the usual work site.

(xi) Any alterations to the workplace and facilities that may be required resulting from occupational safety and health legislation.

- (b) All matters listed in paragraph (iv) and the matters listed hereunder shall be recorded—
 - (i) The employee's name.
 - (ii) The employee's position indicating whether it is the employee's substantive position.
 - (iii) The name and position of the employee's supervisor.
 - (iv) The employee's division/branch/region/area/centre.
 - (v) Agreed security measures and occupational safety and health requirements.

(v) Job Characteristics Not Considered Appropriate for Home Based Work

- (a) Employees performing the duties of a position where the position could be described as having at least one of the following characteristics will not be considered for home based work—
 - (i) the position requires a high degree of supervision or close scrutiny;
 - (ii) the position requires a direct client face to face contact on a frequent basis without the option of easily rescheduling;
 - (iii) the position does not lend itself to objective performance monitoring of outcomes;
 - (iv) the position requires the occupant to be a member of a team and that regular direct face to face contact on a daily basis with other team members at the usual work based site is an integral part of the job's responsibilities or;
 - (v) the position has other characteristics which the Corporation and the relevant union considers are unsuitable for home based work.

(vi) Access Arrangements

- (a) The parties acknowledge that the Corporation will from time to time need to obtain access to a home based site and that the relevant union may also wish to visit a member while he or she is working from a home based site. The parties also acknowledge that only the Corporation may require urgent access under the terms of this clause.
- (b) The parties also acknowledge that the consent of the home based employee is required before access can be obtained to a home based work site.
- (c) Unless urgent access is required to a home based work site, or the home based work employee agrees otherwise, on a case by case basis, the employee must be given at least 2 clear days notice. Neither the Corporation nor the union/s will apply pressure to reduce this notice period.
- (d) The purposes for which the Corporation may require urgent access to a home based work site are—
 - (i) Maintenance of faulty equipment.
 - (ii) Occupational safety and health purposes.
 - (iii) Urgent security and audit purposes; and
 - (iv) Other purposes agreed between the Corporation and the employee and the relevant union.
- (e) The purposes for which non-urgent access may be sought include but are not limited to—
 - (i) Routine maintenance of equipment and supplies.

- (ii) Assessing and monitoring security arrangements of equipment and documents.
- (iii) Routine occupational safety and health assessments.
- (iv) Supervision where usual work based supervision would not be adequate.
- (vii) Alteration or Termination and Re-negotiation
 - (a) In the event of re-negotiation as a result of the commencement of a return to work program, the employee's approved rehabilitation provider must be consulted.
 - (b) A home based working arrangement may be—
 - (i) altered or discontinued by agreement at the request of the Corporation or the employee, and neither party will unreasonably withhold agreement to alter or discontinue the arrangement;
 - (ii) terminated by the Corporation due to operational requirements, including where the employee unreasonably withholds consent with respect to access by the Corporation in accordance with paragraph (vi), after 4 weeks' notice;
 - (iii) terminated by the Corporation on grounds of inefficiency of the arrangements, after 4 weeks' notice; or
 - (iv) terminated by the Corporation in the event of failure to comply with occupational safety and health or security arrangements.
 - (c) Where an arrangement is terminated in accordance with this subclause the employee will be provided with written reasons at the time when the notice is given. In accordance with the principles of natural justice, the employee shall be given 2 weeks to reply to the written reasons and the Corporation will give due consideration to any response provided.
- (vi) Any approved period of absence from work caused through accident sustained in the course of employment shall not be deemed to be a break in continuity of service, but the first 6 months only of any such continuous period shall count as service for the purpose of computing annual leave.
- (vii) Absence from work on leave without pay, other than situations expressed in (v) and (vi) of this clause, is deemed a break in continuity of service for the purpose of calculating annual leave entitlements.
- (viii) A 7 day shift employee, i.e. a shift employee who is rostered to work regularly on Sundays and holidays shall be allowed 38 hours leave in addition to the leave to which the employee is otherwise entitled under this clause.
- (ix) An employee with 12 months continuous service engaged for part of a qualifying 12 monthly period as a 7 day shift employee shall be entitled to have the period of annual leave under this clause increased by 0.7308 hours for each week continuously so engaged, up to a maximum of 38 hours additional leave entitlement.
- (x) **Compaction of Annual Leave**
An employee who, during an accrual period was subject to variations in ordinary working hours or whose ordinary working hours during the accrual period are less than the employee's ordinary working hours at the time of commencement of annual leave, may elect to take a lesser period of annual leave calculated by converting the average ordinary working hours during the accrual period to the equivalent ordinary hours at the time of commencement of annual leave.

CLAUSE 2.2 ANNUAL LEAVE

(A) Definitions

- (i) **Anniversary Date**—is the date on which an employee is employed by the Corporation, or the date on which an employee is engaged North of 26o South Latitude, or the date on which the employee is engaged as a 7 day shift employee.
- (ii) **Accrued Leave**—is the leave an employee is entitled to after completion of 12 months continuous service between the employee's anniversary dates.
- (iii) **Pro rata Leave**—is the proportion of leave an employee is entitled to calculated from the employee's anniversary date to the date of cessation of employment.

(B) Entitlement

- (i) The provisions of this clause do not apply to casual employees.
- (ii) Each employee is entitled to 4 weeks (152 hours) paid leave for each 12 months of service.
- (iii) Where the contract is for a period of less than 12 months, the entitlement is calculated on a pro-rata basis for the period of the contract.
- (iv) A part-time employee shall be granted annual leave in accordance with this clause, however payment to a part-time employee proceeding on annual leave shall be calculated having regard for any variations to the employee's ordinary working hours during the accrual period.
- (v) In computing the annual leave due under this clause, no deduction shall be made from such leave in respect of the period that an employee is absent on a public holiday or in respect of any continuous period of absence through sickness not exceeding 3 calendar months.

(C) Pro-rata Annual Leave

- (i) An employee who proceeds on annual leave and who ceases duty before completing the required continuous service to accrue the leave, must refund the value of the unearned portion, calculated at the rate of pay at the date the leave was taken, but no refund is required in the event of the death of an employee.

(D) Additional Leave for the North West

- (i) Employees whose headquarters are located North of 26o South Latitude shall receive an additional 5 working days (38 hours) annual leave on the completion of each year of continuous service in the region.
- (ii) In addition to the leave prescribed in paragraph (i) of this subclause, employees engaged as Pumpers shall be entitled to an additional 5 working days (38 hours) annual leave for each year of continuous service. This leave is not subject to the loading prescribed in subclause (G) of this clause.
- (iii) An employee who proceeds on annual leave before having completed the necessary 12 months of continuous service may be given approval for the additional 5 working days leave provided the leave is taken at the Corporation's convenience and provided the employee returns to that region to complete the necessary service.
- (iv) Where an employee who has served continuously for at least 12 months North of the 26o South Latitude, leaves the region because of promotion or transfer, the employee shall be entitled to a pro-rata leave credit.
- (v) Where payment in lieu of pro-rata annual leave is made on the death, resignation or retirement of an employee in the region, in addition to the payment calculated on a 4 week basis, payment may be made for the pro-rata entitlement.

(E) Other Additional Leave

Every employee other than an employee referred to in subclause (D) of this clause, to whom the Corporation has granted annual leave in excess of 4 weeks because of special circumstances, shall be credited with such additional leave on a pro-rata basis.

(F) Taking of Annual Leave

- (i) Except as hereinafter provided leave will generally be taken in periods of not less than 1 week (38 hours). By mutual agreement, an employee may elect to take leave in periods of less than a week, up to a maximum of 5 days cumulative per calendar year.
- (ii) On written application, an employee shall be paid in advance when proceeding on annual leave.
- (iii) An employee may take annual leave during the year in which it accrues or any time thereafter, but the time during which the leave may be taken is subject to mutual agreement between the employee and the Corporation.
- (iv) When work is closed down for the purpose of allowing annual leave to be taken, employees with less than an accrued entitlement shall be entitled to take leave in advance.

(G) Leave Loading

- (i) Subject to the provisions of paragraphs (iii) and (vii) of this subclause, a loading equivalent to 17.5% of the normal pay rate is payable to employees proceeding on annual leave, including accrued annual leave.
- (ii) Subject to the provisions of paragraphs (iii) and (vii) of this subclause, shift workers who are granted an additional week's penalty leave when proceeding on annual leave including accrued annual leave shall be paid—
 - (a) shift and weekend penalties the employee would have received had the employee not proceeded on annual leave, or;
 - (b) a loading equivalent to 20% of the normal pay rate for 5 weeks leave;
 whichever is the greater.

(iii) Maximum Loading

- (a) Subject to the provisions of paragraph (v) of this subclause the loading is paid on a maximum of 4 weeks annual leave, or 5 weeks in the case of shift workers who are granted an additional weeks' penalty leave. Payment of the loading is not made on additional leave granted for any other purpose.
- (b) Maximum payment shall not exceed statistic of 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.
- (c) Maximum payment to shift workers who are granted an additional week's penalty leave shall not exceed 5/4th of that prescribed in paragraph (b).
- (iv) Annual leave commencing in any year and extending without a break into the following year attracts the loading calculated on the pay rate applicable on the day the leave commenced.
- (v) The loading payable on approved accrued annual leave shall be at the pay rate applicable at the date the leave is commenced. Under these circumstances an employee can receive up to the maximum loading for the approved accumulated annual leave in addition to the loading for the current year's entitlement.
- (vi) A pro-rata loading is payable on periods of approved annual leave less than 4 weeks.
- (vii) Effect of Higher Duties Allowance, Allowances and Shiftwork
 - (a) For employees paid in accordance with Clause 2.2—Rates of Pay, Table (A) of Part B Pay and Allowances of this Agreement the loading is calculated on the normal fortnightly pay rate including any allowances which are paid as a regular fortnightly or annual amount. Any allowance paid to an employee for undertaking additional or higher level duties is only

included if the allowance is payable during that period of normal annual leave as provided in the Part B, Pay and Allowances of this Agreement Clause 2.6—Higher Responsibility Allowance, subclauses (A) and (B).

- (b) For employees paid in accordance with Clause 2.2 Rates of Pay Tables (B), (C), and (D) of Part B, Pay and Allowances of this Agreement the loading is calculated on the pay rate the employee has received for the greatest portion of the calendar month prior to taking the leave. In the case of a shift employee the pay rate includes penalties associated with a roster or projected shift, including Saturday and Sunday shifts.
- (viii) Where payment in lieu of accrued or pro-rata annual leave is made on the death, retirement, redundancy or completion of a fixed term contract of an employee, a loading calculated in accordance with the terms of this clause is to be paid on accrued and pro-rata annual leave.
- (ix) When an employee resigns, or ceases employment, or where an employee is dismissed from the Corporation, annual leave loading shall be as follows—
 - (a) Accrued entitlements to annual leave—a loading calculated in accordance with the terms of this clause for accrued annual leave is to be paid.
 - (b) Pro-rata annual leave—no loading is to be paid.
- (x) Part-time employees shall be paid a proportion of the annual leave loading at the pay rate applicable, provided that the maximum loading payable shall be calculated in accordance with the following—

Hours of Work Per Fortnight	Maximum loading in accordance with subclause (iii)(b) of this clause	
76	X	1

- (xi) An employee who proceeds on annual leave and who ceases duty other than by resignation or dismissal, before completing the required continuous service to accrue the leave must refund the value of the unearned portion of leave loading but no refund is required in the event of the death of an employee.
- (xii) An employee who proceeds on annual leave and resigns or is dismissed from the Corporation must refund the value of the loading paid for leave other than accrued leave.

(H) Annual Leave Travel Conditions

- (i) The additional benefits applying to employees in non metropolitan area locations shall continue to apply as they apply at the date of registration of this agreement.
- (ii) Employees Paid In Accordance With Clause 2.2.—Rates Of Pay Table (A) Of Part B, Pay and Allowances of this Agreement.
 - (a) The travel concessions contained in Table (iv) of this subclause are provided to employees and their dependents when proceeding on annual leave. Provided the amounts involved are no greater than for travel to either Perth or Geraldton from headquarters situated in Areas 3,5 and 6, and in that portion of Area 4 located north of 30° South latitude of Clause 3.5 Remote Location /District Allowances, employees and their dependants may travel to any location of their choosing.
 - (b) Employees are required to serve 12 months in these areas before qualifying for travel concessions. However, employees who have less than 12 months service in these areas and who are required to proceed on annual leave to suit the Corporation's convenience will be allowed the concessions. The concession may also be given to an employee who proceeds on annual leave before completing 12 months

- service provided that the employee returns to the area to complete 12 months service at the expiration of the period of leave.
- (c) The mode of travel is to be at the discretion of the Corporation.
 - (d) Travel concessions not utilised within 12 months of becoming due will lapse.
 - (e) Part-time employees are entitled to travel concessions on a pro rata basis according to the usual number of hours worked per week. Travelling time shall be calculated on a pro rata basis according to the number of hours worked.
 - (f) Employees, other than those designated in paragraph (ii) (a) whose headquarters are situated 240 kilometres or more from Perth General Post Office and who travel to Perth for their annual leave may be granted by the Corporation reasonable travelling time to enable them to complete the return journey.
- (iii) Employees Paid In Accordance With Clause 2.2—Rates Of Pay Table (B),(C) And (D) Of Part B, Pay and Allowances of this Agreement.
- (a) The travel concessions contained in Table (iv) of this subclause are provided to employees and their dependents when proceeding on annual leave. Provided the amounts involved are no greater than for travel to Perth from headquarters situated in Areas 3,5 and 6 and in that portion of Area 4 located north of 30° South latitude of Clause 3.5 Remote Location /District Allowances of this Part, employees and their dependants may travel to any location of their choosing.
 - (b) Employees are required to serve 12 months in these areas before qualifying for travel concessions. However, employees who have less 12 months service in these areas and who are required to proceed on annual leave to suit the Corporation's convenience will be allowed the concessions. The concession may also be given to an employee who proceeds on annual leave before completing 12 months service provided that the employee returns to the area to complete 12 months service at the expiration of the period of leave.
 - (c) The mode of travel is to be at the discretion of the Corporation.
 - (d) Travel concessions not utilised within 12 months of becoming due will lapse.

(iv) Travel Conditions Table

Approved Mode of Travel	Travel Concession	Travelling Time
(a) Air	Air fare for the employee, dependent spouse and dependent children	One day Each way
(b) Road	Full motor vehicle allowance rates, but reimbursement not to exceed the cost of the return air fare for the employee, dependent spouse and dependent children, travelling in the motor vehicle.	North of 20° South Latitude—two and one half days each way. Remainder—two days each way.
(c) Air and Road	Full Motor Vehicle allowance rates for car trip, but reimbursement not to exceed the cost of the return air fare for the employee. Air fares for the dependent spouse and dependent children.	North of 20° South Latitude—two and one half days each way. Remainder—two days each way.

CLAUSE 2.3 PUBLIC HOLIDAYS

(A) The following public holidays as published in the *Government Gazette* by the Western Australian Government, from time to time, shall be allowed as holidays—

New Year's Day, Australia Day, Good Friday, Easter Monday, Christmas Day, Boxing Day, Anzac Day, Sovereign's Birthday, Foundation Day, Labour Day provided that—

- (i) where any of the days mentioned in this subclause falls on a Saturday or a Sunday the holiday shall be observed on the next succeeding Monday or when Boxing Day falls on a Sunday or a Monday the holiday shall be observed on the next succeeding Tuesday, provided that where any day falls on a rostered day off, the rostered day off shall be observed on the next ordinary working day.
- (ii) when any of the days observed as a holiday under this clause falls on a day when a rostered shift employee is rostered off duty and the employee has not been required to work on that day the employee shall be paid as if the day was an ordinary working day, or if the employee agrees, be allowed a day's leave with pay in lieu of the holiday at a time mutually acceptable to the Corporation and the employee.

(B) The Corporation may approve another day to be taken in lieu of those days referred to in subclause (A) of this clause.

(C) Employees, other than casual employees, not required to work on a day solely because that day is a Public Holiday, are entitled to be paid as if they worked on that day.

(D) Part-time employees have the same entitlement to Public Holidays as full time employees, paid on a pro-rata basis.

CLAUSE 2.4 LONG SERVICE LEAVE

(A)(i) Subject to subclause (K) Transitional Arrangements, each employee who has completed a period of 7 years of continuous service shall be entitled to 13 weeks long service leave on full pay, and an additional 13 weeks long service leave on full pay for each subsequent period of 7 years of continuous service completed.

- (ii) Long Service Leave may be taken in a number of periods on full or half pay provided that no period shall be less than 4 weeks, except where the employee demonstrates to the Corporation that it would be unreasonable not to allow the employee to take a period of not less than a week (38 hours) on full pay.

(B) Clearing Long Service Leave

Employees are required to clear each full accrued entitlement to long service leave prior to the next entitlement falling due.

(C) A part-time employee shall have the same entitlement to long service leave as full time employees, however payment made during such periods of long service leave shall be adjusted according to the hours worked by the employee during that accrual period.

(D) Continuous Service

- (i) For the purpose of determining an employee's long service leave entitlement, continuous service includes;
 - (a) an absence from duty on full or part pay;
 - (b) a continuous absence on sick leave without pay up to 3 months;
 - (c) a continuous absence on workers compensation up to 6 months;
 - (d) an absence on an Australian Institute of Sport scholarship;
 - (e) an absence on military training, but only if the difference between the employee's military pay and the employee's civilian pay is made up, or would, but for the fact that the employee's military pay exceeds the employee's civilian pay, be made up by the Corporation;
 - (f) an absence on approved leave to attend Trade Union Training courses or on approved leave to attend Trade Union business; or

- (g) service with the Corporation as an apprentice, provided that appointment to the Corporation occurs at the completion of the period of apprenticeship.
- (ii) For the purpose of determining an employee's long service leave entitlement, continuous service does not include;
- the employee's absence on parental leave;
 - the employee's absence on approved leave without pay in excess of 14 working days cumulative, except that specified in D(i)(b) and (c) of this clause;
 - any service of an employee who resigns, is dismissed or whose services are otherwise terminated other than service prior to such resignation, dismissal or termination when that prior service has actually entitled the employee to the long service leave under this clause;
 - any period of service that was taken into account in ascertaining the amount of a lump sum payment in lieu of long service leave;
 - any period during which an employee is employed as a casual; or
 - absence of an employee on Long Service Leave prior to 1 January 1998 where the employee was employed under the Water Corporation (Salaries, Allowances & Conditions) Agreement 1996;

(E) For employees paid in accordance with the Part B, Pay and Allowances of this Agreement, Clause 2.2—Rates of Pay, Table (A), a long service leave entitlement which fell due prior to March 16, 1988 amounted to 3 months. A long service leave entitlement which falls due on or after that date shall amount to 13 weeks.

(F) Any Public Holiday occurring during an employee's absence on long service leave shall be deemed to be a portion of the long service leave and extra days in lieu thereof shall not be granted.

(G) An employee who has elected to retire at or over the age of 55 years and who will complete not less than 12 months continuous service before the date of retirement may make application to the Corporation to take pro-rata long service leave before the date of retirement, based on continuous service of a lesser period than that prescribed by this clause for a long service leave entitlement.

(H) **Compaction of Leave**

- An employee who, during an accrual period was subject to variations in ordinary working hours or whose ordinary working hours during the accrual period are less than the employee's ordinary working hours at the time of commencement of long service leave, may elect to take a lesser period of long service leave calculated by converting the average ordinary working hours during the accrual period to the equivalent ordinary hours at the time of commencement of long service leave.
- Notwithstanding subclause (E) of this clause, an employee who has elected to compact an accrued entitlement to long service leave in accordance with paragraph (i) above, shall only take such leave in any period on full pay.
- Employees may take cash in lieu of long service leave in conjunction with any period of long service leave, provided that the period of leave to be cashed out shall not exceed the amount of leave being taken.

(I) District allowance shall not be paid during long service leave unless the family or dependants of the employee remain in the district and only for the period they do so remain.

(J) **Pro-rata Payments**

- If the employment of an employee ends before the employee has completed the first or further qualifying periods in accordance with subclause (A)(i) of this clause, payment in lieu of long service leave proportionate to the employee's length of service shall not be made unless the employee—
 - has completed a total of at least 3 years' continuous service and the employee's

employment has been ended by the Corporation for reasons other than serious misconduct; or

- is not less than 55 years of age and resigns, but only if the employee has completed a total of not less than 12 months' continuous service prior to the day the resignation takes effect; or;
 - has completed a total of not less than 12 months' continuous service and the employee's employment is ended by the Corporation on account of incapacity, ill health or the result of an accident; or
 - has completed a total of not less than 3 years' continuous service and resigns or whose services are terminated; or
 - dies after having served continuously for not less than 12 months before the employee's death and leaves a spouse, children, parent or invalid brother or sister dependant on the employee in which case the payment shall be made to such spouse or other dependant; or
 - has completed a total of not less than 3 years' continuous service and resigns due to pregnancy or in order to enter an In Vitro Fertilisation Programme provided the employee produces written confirmation from an appropriate medical authority of the dates of involvement in the programme.
- (ii) Notwithstanding the provisions of paragraphs (i)(a) and (c) of this subclause an employee whose position has become redundant and who refuses an offer by the Corporation of reasonable alternative employment or who refuses to accept a transfer in accordance with the terms of the employee's employment, shall not be entitled to payment in lieu of long service leave proportionate to the employee's length of service.

(K) **Transitional Arrangements**

From 1 January 1998, employees paid in accordance with Part B, Pay and Allowances of this Agreement, Clause 2.2—Rates of Pay, Tables (B), (C) & (D) shall have their qualifying period for long service leave adjusted in the manner prescribed in paragraphs (i) and (ii) of subclause (A) of Clause 5.1—Transitional Arrangements of this Part.

(L) **Contractual Obligations**

An employee on long service leave shall not undertake any form of employment for hire or reward without written approval from the Corporation.

CLAUSE 2.5 SICK LEAVE

(A) **Entitlement**

- The provisions of this clause do not apply to casual employees.
- Subject to subclause (B) of Clause 5.1, Transitional Arrangements of this Part, employees are entitled to sick leave credits which are cumulative on the following basis.

	<i>Sick Leave on Full Pay</i>	<i>Sick Leave on Half Pay</i>
On the day of initial appointment	38 hours	15.2 hours
On the completion of 6 months continuous service	38 hours	22.8 hours
On the completion of 12 months continuous service	76 hours	38 hours
On the completion of each further period of 12 months continuous service	76 hours	38 hours

- Where the employment is for a period less than 12 months, employees will be credited with a pro-rata entitlement.
- A part-time employee is 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 will only be made for those hours that would normally have been worked had the employee not been on sick leave.

- (v) In order to acquire entitlement to payment in accordance with this clause the employee shall as soon as reasonably practicable advise the Corporation of the inability to attend 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 Corporation within 24 hours of the commencement of the absence.
- (vi) No employee is entitled to the benefit of this clause unless the employee produces proof to the satisfaction of the Corporation of such sickness or injury.
- (vii) An employee who proceeds on sick leave and subsequently terminates employment before completing the required continuous service to accrue the leave, must refund the value of the unearned portion, calculated at the rate of pay at the date the leave was taken.

(B) Medical Certificate

- (i) An application for sick leave exceeding 2 consecutive working days shall be supported by the certificate of a registered medical practitioner or, when the nature of the illness consists of a dental condition, by the certificate of a registered dentist.
- (ii) The amount of sick leave granted without the production of the certificate required in paragraph (i) of this subclause shall not exceed, in the aggregate, 5 working days in any one year.

(C) Where an employee is ill during the period of annual leave and produces at the time, or as soon as practicable after returning to work, medical evidence to the satisfaction of the Corporation that as a result of the illness the employee was confined to the employee's place of residence or a hospital for a period of at least 7 consecutive days, the Corporation may grant sick leave for the period during which the employee was so confined and reinstate annual leave equivalent to the period of confinement.

(D) Where an employee is ill during the period of long service leave and produces at the time, or as soon as practicable after returning to work, medical evidence to the satisfaction of the Corporation that as a result of illness the employee was confined to the employee's place of residence or a hospital for a period of at least 14 consecutive days, the Corporation may grant sick leave for the period during which the employee was so confined and reinstate long service leave equivalent to the period of confinement.

(E) An employee who is absent on leave without pay is not eligible for sick leave during the currency of that leave without pay.

(F) No sick leave will be granted with pay, if the illness has been caused by the misconduct of the employee or in any case of absence from duty without sufficient cause.

(G) Workers Compensation

- (i) Where an employee suffers a disability within the meaning of the Worker's Compensation and Rehabilitation Act, 1981 which necessitates that employee being absent from duty, sick leave with pay will be granted to the extent of sick leave credits.
- (ii) In accordance with Section 80(2) of the Worker's Compensation and Rehabilitation Act, 1981 where the claim for worker's compensation is decided in favour of the employee, sick leave credit is to be reinstated.

(H) War Caused Illnesses

- (i) An employee who produces a certificate from the Department of Veterans' Affairs stating that the employee suffers from war caused illness, may be granted special sick leave credits of 114 hours (15 ordinary hour days) per annum on full pay in respect of that war caused illness. These credits shall accumulate up to a maximum credit of 342 hours (45 ordinary hour days), and shall be recorded separately to the employee's normal sick leave credit.
- (ii) Every application for sick leave for war caused illness shall be supported by a certificate from a registered medical practitioner as to the nature of the illness.

(I) Family Leave

- (i) Employees may use up to 5 days accrued sick leave in any calendar year to care for family/dependants who are ill.
- (ii) Sick leave used for this purpose in excess of 2 consecutive days will require confirmation of the circumstances by a medical practitioner.

CLAUSE 2.6 PARENTAL LEAVE

(A) GENERAL APPLICATION

- (i) Subject to the provisions of this clause employees are entitled to Maternity, Paternity and Adoption leave in connection with the birth or adoption of a child.
- (ii) This clause does not apply to casual employees.
- (iii) A part time employee and an employee employed on a fixed term contract shall have the same entitlements under this clause as full time employees, provided that the period of leave granted to a fixed term employee shall not extend beyond the term of the contract.
- (iv) Notwithstanding any other provision to the contrary, approved leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of this Agreement.
- (v) An employee shall confirm the employee's intention of returning to work by notice in writing to the Corporation given not less than 4 weeks prior to the expiration of the period of approved leave and upon returning to work after the approved leave or the expiration of the required notice, shall be entitled to the position which the employee held immediately before proceeding on approved leave, or in relation to an employee who has worked part-time to the position the employee held immediately before commencing such part-time work.
- (vi) A replacement employee is an employee specifically engaged as a result of an employee proceeding on approved leave. Before the Corporation engages a replacement the Corporation shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (vii) Before the Corporation engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising the employee's rights under this clause, the Corporation shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- (viii) Nothing in this clause shall be construed as requiring the Corporation to engage a replacement employee.
- (ix) An employee may terminate employment at any time during the period of parental leave by notice given in accordance with this Agreement
- (x) The Corporation shall not terminate the employment of an employee on the grounds of the employee's absence on parental leave, but otherwise the rights of the Corporation in relation to termination of employment are not hereby affected.

(B) MATERNITY LEAVE

- (i) A pregnant employee is entitled to a maximum of 12 months maternity leave without pay.
- (ii) A pregnant employee shall, no later than 10 weeks before the expected date of birth make application to the Corporation for maternity leave for a period not exceeding 12 months. Every application for maternity leave shall be supported by a certificate from a registered medical practitioner which shall indicate the expected date of birth.
- (iii) An employee proceeding on maternity leave may elect to take a shorter period of maternity leave in accordance with paragraph (iv) of this subclause, and may at any time during that period of leave elect to extend or reduce the period of the original application within the limitations of the provisions of subclause (i) and (iv) of this clause.

- (iv) The minimum period of absence on maternity leave shall commence 6 weeks before the expected date of birth and end 6 weeks after the day on which the birth has taken place, however an employee may apply to the Corporation to vary this period provided the employee's application is supported by a certificate from a registered medical practitioner indicating that the employee is fit to continue or resume duty within this minimum period.
- (v) An employee proceeding on maternity leave may elect to utilise—
 - (a) accrued annual leave,
 - (b) accrued long service leave,
 - for the whole or part of the period referred to in paragraph (i) of this subclause. The periods of leave referred to in (a) and (b) which are utilised, shall be paid leave.
- (vi) Absence of an employee which has been permitted in accordance with the provisions of this clause shall not be deemed absence on sick leave.
- (vii) Where an employee has not applied for leave in accordance with the provisions of this clause, and does not have express approval of the Corporation for continued employment, the Corporation may direct the employee to take maternity leave, and may determine the date on which such leave shall commence.

(C) PATERNITY LEAVE

(i) Nature of Leave

Paternity leave is unpaid leave.

(ii) Definitions

For the purposes of this subclause—

- (a) "Paternity Leave" includes "Maternity Leave" of this clause.
- (b) "Child" means a child of the employee or the employee's spouse under the age of 1 year.
- (c) "Spouse" includes a de facto or a former spouse.
- (d) "Primary care-giver" means a person who assumes the principal role of providing care and attention to a child.
- (e) "Continuous service" means service under an unbroken contract of employment and includes—
 - (i) any period of leave taken in accordance with this clause;
 - (ii) any period of part-time or fixed term employment worked in accordance with this clause; or
 - (iii) any period of leave or absence authorised by the Corporation.

(iii) Eligibility for Paternity Leave

An employee, upon production to the Corporation of the certificate required by paragraph (iv), shall be entitled to one or two periods of paternity leave, the total of which shall not exceed 52 weeks, in the following circumstances—

- (a) an unbroken period of up to 1 week at the time of confinement of the employee's spouse;
- (b) a further unbroken period of up to 51 weeks in order to be the primary care-giver of a child provided that such leave shall not extend beyond the child's first birthday. This entitlement shall be reduced by any period of maternity leave taken by the employee's spouse and shall not be taken concurrently with that maternity leave.

(iv) Certification

At the time specified in paragraph (v) the employee must produce to the Corporation—

- (a) a certificate from a registered medical practitioner which names the employee's spouse, states that the employee is pregnant and the expected date of confinement or states the date on which the birth took place;

- (b) in relation to any period to be taken under circumstance (b) of paragraph (iii) hereof, a statutory declaration stating—

- (i) the employee will take that period of paternity leave to become the primary care-giver of a child;
- (ii) particulars of any period of maternity leave sought or taken by his spouse; and
- (iii) for the period of paternity leave the employee will not engage in any conduct inconsistent with the employee's contract of employment.

(v) Notice Requirements

- (a) The employee shall, not less than 10 weeks prior to each proposed period of leave, give the Corporation notice in writing stating the dates on which the employee proposes to start and finish the period or periods of leave and produce the certificate and statutory declaration required in paragraph (iv) hereof.
- (b) The employee shall not be in breach of this clause as a consequence of failure to give the notice required in (a) hereof if such failure is due to—
 - (i) the birth occurring earlier than the expected date; or
 - (ii) the death of the mother of the child; or
 - (iii) other compelling circumstances.
- (c) The employee shall immediately notify the Corporation of any change in the information provided pursuant to paragraph (iv) hereof.

(vi) Variation of Period of Paternity Leave

- (a) Provided the maximum period of paternity leave does not exceed the period to which the employee is entitled under paragraph (iii)—
 - (i) the period of paternity leave taken in circumstance (b) of paragraph (iii) may be lengthened once only by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be lengthened;
 - (ii) the period may be further lengthened by agreement between the Corporation and the employee.

- (b) The period of paternity leave taken under circumstance (b) of paragraph (iii) may, with the consent of the Corporation 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.

(vii) Cancellation of Paternity Leave

- (a) Paternity leave, applied for under paragraph (iii)(b) but not commenced, shall be cancelled when the pregnancy of the employee's spouse terminates other than by the birth of a living child.

(viii) Paternity Leave and Other Leave Entitlements

- (a) Provided the aggregate of any leave, including leave taken under this subclause, does not exceed the period to which the employee is entitled under paragraph (iii), an employee may, in lieu of or in conjunction with paternity leave, take any annual leave or long service leave or any part thereof to which the employee is entitled.
- (b) Paid sick leave or other paid authorised absences (excluding annual leave or long service leave) shall not be available to an employee during the employee's absence on paternity leave.

(D) ADOPTION LEAVE

(i) Nature of Leave

Adoption leave is unpaid leave.

(ii) Definitions

For the purposes of this subclause—

- (a) “Child” means a person under the age of 5 years who is placed with the employee for the purposes of adoption, other than child or step-child of the employee or of the spouse of the employee or a child who has previously lived continuously with the employee for a period of 6 months or more.
- (b) “Relative adoption” occurs where a child, as defined, is adopted by a grandparent, brother, sister, aunt or uncle (whether of the whole blood or half blood or by marriage).
- (c) “Primary care-giver” means a person who assumes the principal role of providing care and attention to a child.
- (d) “Spouse” includes a de facto spouse.
- (e) “Continuous service” means service under an unbroken contract of employment and includes—
 - (i) any period of leave taken in accordance with this clause;
 - (ii) any period of part-time/fixed term employment worked in accordance with this clause; or
 - (iii) any period of leave or absence authorised by the Corporation or by this Agreement.

(iii) Eligibility

An employee, upon production to the Corporation of the documentation required by paragraph (iv) hereof shall be entitled to one or two periods of adoption leave, the total of which shall not exceed 52 weeks, in the following circumstances—

- (a) an unbroken period of up to 3 weeks at the time of the placement of the child, which may be taken concurrently by the employee and the employee’s spouse;
- (b) an unbroken period of up to 52 weeks from the time of its placement in order to be the primary care-giver of the child. This leave shall not extend beyond 1 year after the placement of the child and shall not be taken concurrently with adoption leave taken by the employee’s spouse in relation to the same child except in the case of the concurrent period of leave provided in paragraph (a).
- (c) This entitlement of up to 52 weeks shall be reduced by—
 - (i) any period of leave taken pursuant to paragraph (a) hereof; and
 - (ii) the aggregate of any periods of adoption leave taken or to be taken by the employee’s spouse and including any period of leave under paragraph (a), taken concurrently by the spouse where the employee is to be the primary care-giver.

(iv) Certification

Before taking adoption leave the employee must produce to the Corporation—

- (a)
 - (i) a statement from an adoption agency or other appropriate body of the presumed date of placement of the child with the employee for adoption purposes; or
 - (ii) a statement from the appropriate government authority confirming that the employee is to have custody of the child pending application for an adoption order.
- (b) In relation to any period to be taken under circumstance (b) in paragraph (iii), a statutory declaration stating—
 - (i) the employee is seeking adoption leave to become the primary care-giver of the child.

- (ii) particulars of any period of adoption leave sought or taken by the employee’s spouse; and

- (iii) for the period of adoption leave the employee will not engage in any conduct inconsistent with the employee’s contract of employment.

(v) Notice Requirements

- (a) Upon receiving notice of approval for adoption purposes, an employee shall notify the Corporation of such approval and within 2 months of such approval shall further notify the Corporation of the period or periods of adoption leave the employee proposed to take. In the case of a relative adoption the employee shall notify as aforesaid upon deciding to take the child into custody pending an application for an adoption order.
- (b) An employee who commences employment with the Corporation after the date of approval for adoption purposes shall notify the Corporation thereof upon commencing employment and of the period or periods of adoption leave which the employee proposes to take.
- (c) An employee, shall, as soon as the employee is aware of the presumed date of placement of a child for adoption purposes but not later than 14 days before such placement, give notice in writing to the Corporation of such date, and of the date of the commencement of any period of leave to be taken in circumstance (a) of paragraph (iii).
- (d) An employee shall, 10 weeks before the proposed date of commencing any leave to be taken in circumstance (b) of paragraph (iii) give notice in writing to the Corporation of the date of commencing leave and the period of leave to be taken.
- (e) An employee shall not be in breach of this subclause, as a consequence of failure to give the notice prescribed in paragraphs (c) or (d) hereof if such failure is occasioned by the requirement of an adoption agency to accept earlier or later placement of a child, the death of the spouse or other compelling circumstances.

(vi) Variation of Period of Adoption Leave

- (a) Provided the maximum period of adoption leave does not exceed the period to which the employee is entitled under paragraph (iii)—
 - (i) the period of leave taken in circumstance (b) of paragraph (iii) may be lengthened, once only, by the employee giving 14 days notice in writing stating the period by which the leave is to be lengthened;
 - (ii) the period may be further lengthened by agreement between the Corporation and employee.
- (b) The period of adoption leave taken in circumstance (b) of paragraph (iii) may, with the consent of the Corporation 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.

(vii) Cancellation of Adoption Leave

- (a) Adoption leave, applied for but not commenced, shall be cancelled should the placement of the child not proceed.
- (b) Where the placement of a child for adoption purposes with an employee then on adoption leave does not proceed or continue, the employee shall notify the Corporation forthwith and the Corporation shall nominate a time not exceeding 4 weeks from receipt of notification for the employee’s resumption of work.

(viii) Special Leave

The Corporation shall grant to any employee who is seeking to adopt a child, such unpaid leave not exceeding 2 days, as is required by the employee to attend any compulsory interviews or examinations as are necessary as part of the adoption procedure. Where paid leave is available to the employee, the Corporation may require the employee to take such leave in lieu of special leave.

(ix) Adoption Leave and Other Entitlements

- (a) Provided the aggregate of any leave, including leave taken under this subclause, does not exceed the period to which the employee is entitled under paragraph (iii) hereof, an employee may, in lieu of or in conjunction with adoption leave, take any annual leave or long service leave or any part thereof to which the employee is entitled.
- (b) Paid sick leave or other paid authorised absences (excluding annual leave or long service leave), shall not be available to an employee during the employee's absence on adoption leave.

CLAUSE 2.7 LEAVE WITHOUT PAY

(A) Subject to the provisions of subclause (B) of this clause, the Corporation may grant an employee leave without pay for any period.

(B) Every application for leave without pay will be considered on its merits and may be granted provided that the following conditions are met;

- (i) the work of the Corporation is not inconvenienced; and
- (ii) the employee's annual/long service leave credits and days in lieu are exhausted, except where the Corporation determines otherwise.

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

(D) Leave Without Pay for Full Time Study

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

- (i) the course of study is directly related to the employee's official duties; or;
- (ii) the course is not available on a part-time basis; or
- (iii) there is an identified shortage of individuals with skills in the area addressed by the particular course of study; or
- (iv) it is critical to the continued operation of the Corporation for the employee to undertake the particular course of study.

Leave without pay for this purpose shall not count as qualifying service for leave purposes.

(E) Leave Without Pay for Australian Institute of Sport Scholarships

Subject to the provisions of subclause (B) of this clause, the Corporation may grant leave without pay to an employee who has been awarded a sporting scholarship by the Australian Institute of Sport. Leave without pay for this purpose shall count as qualifying service for all purposes except annual leave.

CLAUSE 2.8 BEREAVEMENT LEAVE

(A) An employee will, on the death of a wife, husband, de-facto wife or de-facto husband, father, father-in-law, mother, mother-in-law, sister, brother, child or step-child be entitled, on notice, to leave up to and including the day of the funeral of such relation and the leave will be without deduction of pay for a period not exceeding the number of hours worked by the employee in 2 ordinary working days. The two days need not be consecutive. Proof of death will be furnished by the employee to the satisfaction of the Corporation.

(B) Provided that payment in respect of this leave will be made only where the employee otherwise would have been on duty.

CLAUSE 2.9 LEAVE TO ATTEND UNION BUSINESS

(A) The Corporation shall grant paid leave at the ordinary rate of pay during normal 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 relevant union and the Corporation;
- (iii) when prior agreement between the union and the Corporation has been reached for the employee to attend official union meetings preliminary to negotiations or industrial hearings; and
- (iv) who as a union-nominated representative is required to attend joint union/management consultative committees or working parties.

(B) The granting of leave is subject to the Corporation's convenience and will only be approved—

- (i) where reasonable notice is given for the application for leave;
- (ii) for the minimum period necessary to enable the union business to be conducted or evidence to be given; and
- (iii) for those employees whose attendance is essential.

(C) The Corporation shall not be liable for any expenses associated with an employee attending to union business.

(D) Leave of absence granted under this clause shall include any necessary travelling time in normal working hours.

(E) An employee will not be entitled to paid leave to attend to union business other than as prescribed by this clause.

(F) The provisions of the clause shall not apply to—

- (i) special arrangements made with the union which provide for unpaid leave for employees to conduct union business;
- (ii) when an employee is absent from work without the approval of the Corporation; and
- (iii) casual employees.

CLAUSE 2.10 TRADE UNION TRAINING LEAVE

(A) Subject to the Corporation's convenience, paid leave of absence shall be granted by the Corporation to employees who are nominated by the relevant union to attend short courses or seminars as from time to time approved by agreement between the Corporation and the union.

(B) An employee shall be granted up to a maximum of 5 days paid leave per calendar year for trade union training or similar courses or seminars as approved. However, leave of absence in excess of 5 days and up to 10 days may be granted in any one calendar year provided that the total leave being granted in that year and in the subsequent year does not exceed 10 days.

(C) (i) Leave of absence will be granted at the ordinary rate of pay and shall not include shift allowances, penalty rates or overtime.

(ii) Where a Public Holiday, or rostered day off falls during the duration of a course, a day off in lieu of that day shall not be granted.

(ii) Subject to paragraph (i) of this subclause, shift workers attending a course shall be deemed to have worked the shifts they would have worked had leave not been taken to attend the course.

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

(v) Any application by an employee shall be submitted to the Corporation for approval at least 4 weeks before the commencement of the course unless the Corporation agrees otherwise.

(vi) All applications for leave shall be accompanied by a statement from the relevant union indicating that the employee has been nominated for the course. The application shall provide details as to the subject, commencement date, length of course, venue and the organisation which is conducting the course.

(D) A qualifying period of 12 months service will be served before an employee is eligible to attend courses or seminars of more than a half day duration. The Corporation may, where special circumstances exist, approve an application to attend a course or seminar where an employee has less than 12 months service.

- (E) (i) The Corporation will not be liable for any expenses associated with an employee's attendance at union training courses.
- (ii) Leave of absence granted under this clause shall include any necessary travelling time in normal working hours immediately before or after the course.

CLAUSE 2.11 LEAVE FOR TRAINING WITH DEFENCE FORCE RESERVES

(A) Subject to the Corporation's convenience, leave of absence may be granted by the Corporation to an employee who is a volunteer member of the Defence Force Reserves or the Cadet Force for the purpose of attending a training camp, school, class or course of instruction subject to the conditions set out hereunder—

- (i) application for leave of absence for the above reasons, shall, in all cases, be accompanied by evidence of the necessity for attendance. At the expiration of the leave of absence granted, the employee shall furnish a certificate of attendance to the Corporation and;
- (ii) an employee may only be granted leave for attendance at one camp of continuous training and one additional special school, class or course of instruction in each calendar year and;
- (iii) on written application, an employee shall be paid in advance when proceeding on such leave.

(B) Attendance at a Camp for Annual Continuous Obligatory Training

- (i) An employee may be granted leave for a period not exceeding 76 hours on full pay in any calendar year.
- (ii) If the person-in-charge of a military unit certifies that it is essential for the employee to be at the camp in an advance or rear party, a maximum of 30 extra hours on full pay may be granted.

(C) Attendance at One Special School, Class or Course of Instruction

- (i) In addition to the leave granted under subclause (B) of this clause a period not to exceed 16 working days in any calendar year may be granted by the Corporation, provided the Corporation is satisfied that the leave required is for a special purpose, and not for a further routine camp.
- (ii) In this circumstance, an employee may elect to utilise annual leave credits. However, if the leave is not taken from annual leave, the employee's pay during the period shall be at the rate of the difference between the employee's normal pay and the defence force payments to which the employee is entitled, if such payments do not exceed the normal pay. In calculating the pay differential, Defence Force pays for Saturdays, Sundays, Public Holidays and special rostered days off are to be excluded, and no account is to be taken of the value of any board or lodging provided for the employee.
- (iii) Leave without pay shall be granted if the defence force payments exceed the normal pay of the employee.

(D) The provisions of this clause do not apply to casual employees.

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

CLAUSE 2.12 LEAVE FOR INTERNATIONAL SPORTING EVENTS

(A) Special leave with pay may be granted by the Corporation to an employee chosen to represent Australia as a

competitor or official at a sporting event which meets the following criteria—

- (i) it is a recognised international amateur sport of national significance; or
- (ii) it is a world or international regional competition; and
- (iii) no contribution is made by the sporting organisation towards the normal pay of the employee.

(B) The Corporation shall make enquiries with the appropriate Ministry—

- (i) whether the application meets the above criteria; and
- (ii) the period of leave to be granted.

CLAUSE 2.13 WITNESS AND JURY SERVICE LEAVE

(A) An employee subpoenaed or called as a witness to give evidence in any proceeding shall as soon as practicable notify the Corporation.

(B) Where an employee is subpoenaed or called as a witness to give evidence in an official capacity, that employee shall be granted by the Corporation leave of absence with pay, but only for such period as is required to enable the employee to carry out duties related to being a witness. If the employee is on any form of paid leave, the leave involved in being a witness will be reinstated, subject to the satisfaction of the Corporation as to the circumstances. The employee is entitled to retain any witness fee but the receipt for such payment with a voucher showing the amount of fees received shall be forwarded to the Corporation and an equivalent amount shall be deducted from the employee's pay.

(C) An employee subpoenaed or called as a witness to give evidence in an official capacity shall, in the event of non-payment of the proper witness fees or travelling expenses, as soon as practicable after the default, notify the Corporation.

(D) An employee subpoenaed or called as a witness on behalf of the Crown, not in an official capacity shall be granted leave with full pay entitlements. If the employee is on any form of paid leave, this leave shall not be reinstated as such witness service is deemed to be part of the employee's civic duty.

(E) An employee subpoenaed or called as a witness under any other circumstances other than specified in subclauses (B) and (D) of this clause shall be granted leave of absence without pay except when the employee makes an application to clear accrued leave in accordance with the relevant provisions of this Agreement.

(F) An employee required to serve on a jury shall as soon as practicable after being summoned to serve, notify the Corporation.

(G) An employee required to serve on a jury shall be granted by the Corporation leave of absence on full pay, but only for such period as is required to enable the employee to carry out duties as a juror.

(H) An employee granted leave of absence on full pay as prescribed in subclause (G) of this clause is entitled to retain any juror's fees but the receipt for such payment shall be forwarded with a voucher showing the amount of juror's fees received to the Corporation and an equivalent amount shall be deducted from the employee's pay.

CLAUSE 2.14 CEREMONIAL LEAVE

(A) Subject to paragraph (E) an employee covered by this Agreement is entitled to time off without loss of pay for tribal/ceremonial/cultural purposes.

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

(C) Ceremonial/cultural leave may be taken as whole or part days off. Each day or part thereof, shall be deducted from annual leave entitlements.

(D) The Corporation may request reasonable evidence of the legitimate need for the employee to be allowed time off.

(E) Time off without pay may be granted by arrangement between the Corporation and employee for tribal/ceremonial/cultural purposes.

(F) Ceremonial/cultural leave shall be available, but not limited to Aboriginal and Torres Strait Islanders.

CLAUSE 2.15 LEAVE FOR EMERGENCY SERVICE VOLUNTEERS

(A) When an employee is absent from work because of the requirement to carry out emergency service volunteer work, the employee shall be paid as if they were at work, subject to satisfactory evidence of the reason for the absence being supplied to the Corporation.

(B) Applications from employees for training related to emergency service volunteers shall generally be paid subject to each application being considered by the Corporation on its merits.

CLAUSE 2.16 LEAVE TO ATTEND LOCAL GOVERNMENT BUSINESS

(A) Employees elected to Local Councils shall be entitled to up to 1 day's paid leave per month to attend Council meetings and Standing Committee meetings which are held during working hours.

(B) The leave prescribed in subclause (A) shall be paid as if the employee had been at work.

(C) The Corporation shall be entitled to satisfactory evidence of the reason for the absence being supplied by the employee.

CLAUSE 2.17 STUDY ASSISTANCE**(A) Conditions for Granting Time Off**

- (i) An employee may be granted time off with pay for part-time study purposes at the discretion of the Corporation.
- (ii) Part-time employees, where possible, are expected to undertake classes outside their normal working hours.
- (iii) Full-time employees may be granted time off with pay up to a maximum of 5 hours per week including travelling time, where subjects of approved courses are available during normal working hours, or where approved study by correspondence is undertaken in remote locations lacking the required educational facilities. Part-time employees may be granted time off on a pro rata basis.
- (iv) External students based in remote locations, who are obliged to attend educational institutions for compulsory sessions during vacation periods, may be granted time off with pay including travelling time up to the maximum annual amount allowed to an employee in the metropolitan area, as defined in Clause 1.8 of this Part .
- (v) Employees shall be granted sufficient time off with pay to travel to and sit for the examinations of any approved course of study.
- (vi) In every case the approval of time off to attend lectures and tutorials shall be subject to—
 - (a) the Corporation's convenience;
 - (b) the course being undertaken on a part-time basis;
 - (c) employees undertaking an acceptable formal study load in their own time;
 - (d) employees making satisfactory progress with their studies; and
 - (e) the course being relevant to the employee's career in the Corporation and being of value to the Corporation.

(B) Study Assistance**(i) Approved courses include—**

- (a) Masters degree at an accredited university;
- (b) First degree course at an accredited university;
- (c) First Graduate Diploma course at an accredited university;
- (d) First Diploma and Certificate courses at a TAFE college; or
- (e) Other courses which have specific relevance to the Corporation.

(ii) Assistance towards higher level qualifications may be granted.

(iii) Assistance may be granted for a second qualification (at the same level) in a specialist area of value to the Corporation.

(C) Payment of Fees

(i) The Corporation shall meet the payment of higher education administrative charges for employees who, as a condition of their employment, are required to undertake studies at a University or other educational institutions.

(ii) In all other cases where study assistance is approved, reimbursement of 66% of all compulsory fees (including HECS) shall be made by the Corporation, except that part-time employees shall be reimbursed on a pro rata basis. Proof of enrolment and payment must be submitted to facilitate reimbursement.

(iii) Payment of the total enrolment cost must be made by the employee at the time of enrolment.

(iv) Fees will only be paid once per subject.

(D) Payment for Text Books

Upon presentation of proof of purchase, reimbursement for compulsory text books up to a total of \$60 per subject shall be provided, to a maximum of \$300 per annum.

(E) Full-Time Study

(i) Subject to the provisions of paragraph (ii) of this subclause, the Corporation may grant an employee full-time study leave with pay to undertake—

- (a) post graduate degree studies at Australian or overseas tertiary education institutions; or
- (b) study tours involving observations and/or investigations; or
- (c) a combination of post graduate studies and study tour.

(ii) Applications for full-time study leave with pay are to be considered on their merits and may be granted provided that the following conditions are met—

- (a) The course or a similar course is not available locally. Where the course of study is available locally, applications shall be considered in accordance with the provisions of Clause 2.7—Leave Without Pay of this Part .
- (b) It must be a highly specialised course with direct relevance to the employee's profession.
- (c) It must be relevant to the Corporation's corporate strategies and goals.
- (d) The expertise or specialisation offered by the course of study should not already be available through other employees employed within the Corporation.
- (e) If the applicant was previously granted study leave, studies must have been successfully completed at that time.

(iii) Full-time study leave with pay may be approved for more than 12 months subject to an annual review of performance.

(iv) Payments made to employees under this provision shall be reduced by the amount of any scholarship or other financial assistance which the employee is receiving.

(v) Where recipients are in receipt of a living allowance, this amount shall be deducted from the employee's pay for that period.

(vi) The period of full-time study leave with pay is accepted as qualifying service for leave entitlements and other entitlements and conditions of service prescribed for employees under this Agreement.

(F) Numeracy and Literacy

(i) Employees who are unable to adequately communicate in the English language may be given paid time off during normal working hours to attend basic numeracy and literacy classes conducted by a registered trainer.

(ii) The selection of employees and the type, duration and extent of such courses shall be by agreement between the Corporation and the relevant parties.

SECTION THREE — MONEY MATTERS**CLAUSE 3.1 METHOD OF PAYMENT**

(A) Employees shall be paid fortnightly. Where the usual pay day falls on a public holiday, payment shall be made on the previous working day.

(B) Pay rates expressed as an annual figure shall be divided by 26.0833 to compute the fortnightly figure.

(C) The hourly rate shall be computed as one seventy-sixth of a fortnight's pay rate.

(D) An employee's pay shall be paid by direct funds transfer to the credit of an account nominated by the employee at a bank, building society or credit union.

(E) Provided that where such form of payment is impracticable or where some exceptional circumstances exist, and by agreement between the Corporation and the employees, payment by cheque may be made.

(F) Where it is a requirement in the work area for plod cards or time dockets, each employee shall be responsible for the filling in of personal plod cards or time dockets. Alterations will be permitted provided the original entry is not rendered illegible and the reasons are explained to the employee who shall initial the alterations. All dockets and plod cards are to be completed in the Corporation's time.

(G) Subject to the provisions of this clause, no deduction shall be made from an employee's pay unless the employee has authorised such deduction in writing, provided that this requirement shall not apply in respect of the normal adjustments arising from the fact that fortnightly pays are processed prior to all relevant information being available.

(H) The Corporation shall provide each employee with a pay advice slip in respect of each fortnightly pay in accordance with the provisions of Clause 5.2—Time and Pay Records of Part B, Pay and Allowances of this Agreement and pay advice slips shall be provided to employees on or before each pay day.

(I) The annual pay rates are shown in Table (A), Clause 2.2—Rates of Pay of Part B, Pay and Allowances of this Agreement.

(J) The fortnightly pay rates are shown in Tables (B), (C) and (D), Clause 2.2 Rates of Pay of Part B Pay and Allowances of this Agreement.

(i) Water Industry Workers

Employees paid according to Clause 2.2 Rates of Pay, Table (B) of Part B Pay and Allowances of this Agreement as Water Industry Workers shall proceed by annual increments to the maximum rate applicable to the level the employee is classified. Provided that:

- (a) An employee classified as Water Industry Worker Level 1 shall proceed by annual increments to the top of Water Industry Worker Level 2.
- (b) Progression from Water Industry Worker Level 2 into Water Industry Worker Level 3 through to Level 7 shall be by vacancy and demonstrated capability.

(ii) Water Industry Engineering Tradespersons

Employees paid according to Clause 2.2 Rates of Pay, Table (C) of the Water Corporation Pay and Allowances Agreement 1997 as Water Industry Engineering Tradespersons will progress from one level to the next contingent upon:

- (a) such additional skills being required to be performed by the Corporation, the related level of technology being in operation, such a move promotes and maintains the cost efficiency and effectiveness of the work area and the individual having demonstrated capability and such pre-requisites and minimum training as prescribed in paragraph (b) of this subclause.

(b) Level	Classification Title	Minimum Training Requirement
C 5	Water Industry Engineering Tradesperson	Advanced Certificate or 15 appropriate accredited modules of an Associate Diploma, or formal equivalent.
C 6	Water Industry Engineering Tradesperson	12 appropriate accredited modules of an Advanced Certificate or Associate Diploma, or formal equivalent.
C 7	Water Industry Engineering Tradesperson	9 appropriate training modules in addition to the training requirements for C 10.

Level	Classification Title	Minimum Training Requirement
C 8	Water Industry Engineering Tradesperson	6 appropriate accredited technical modules in addition to the training requirements for C 10.
C 9	Water Industry Engineering Tradesperson	3 appropriate accredited technical modules in addition to the training requirements for C 10.
C 10	Water Industry Engineering Tradesperson	Trades Certificate or Tradespersons Rights Certificate.
C 11	Water Industry Engineering Employee	16 appropriate accredited modules and relevant on the job training.
C 12	Water Industry Engineering Employee	8 appropriate accredited modules and relevant on the job training.
C 13	Water Industry Engineering Employee	Up to 38 hours induction training and up to 3 months structured training.

- (c) The definitions for Levels DC 10—DC 5 inclusive are as for the C structure as listed above except that, in addition, employees appointed to the DC structure are required to hold the appropriate cross or dual trained instrument/electrical fitting trades certificate. Minimum training requirements for Levels DC 10—DC 5 inclusive are described by the corresponding number of appropriate technical training modules in addition to the training requirements for DC 10.

(K) Specified Callings

(i) Employees who possess a relevant tertiary level qualification, or equivalent determined by the Corporation, and who are employed in the callings of Engineer, Librarian, Scientific Employee or any other professional calling determined by the Corporation shall be paid in accordance with Clause 2.2—Rates of Pay, Table (A) Specified Callings of Part B, Pay and Allowances of this Agreement.

(ii) Subject to paragraph (v) of this subclause, on appointment or promotion to a Specified Calling under this clause—

- (a) Employees shall progress by annual adjustments, except as provided in paragraph (b) of this subclause, to the maximum of the range for Specified Callings in Table (A) of Clause 2.2. Rates of Pay of Part B, Pay and Allowances of this Agreement
- (b) Employees who have completed an approved 3 year tertiary qualification, relevant to their calling, shall commence at the first year rate for specified callings and shall remain on that rate for 2 years before progressions in accordance with paragraph (a) of this subclause.
- (c) Employees who have completed an approved 4 year tertiary qualification, relevant to their calling, shall commence at the first year rate and shall be eligible to progress in accordance with paragraph (a) of this subclause after 1 year.
- (d) Employees who have completed an approved Masters or PhD degree relevant to their calling shall commence on the second year rate.

Provided that employees who attain a higher tertiary level qualification after appointment shall not be entitled to any advanced progression through the range.

(iii) The Corporation shall determine the relevant acceptable qualifications for appointment for the callings covered by this subclause.

(iv) The Corporation may determine a commencing pay rate above the pay rates shown for a particular calling/s.

(v) Employees employed in the calling of engineer and who are employed in a specified calling under this Agreement shall be paid the maximum pay rate prescribed in Clause 2.2, Table (A), Specified Callings of Part B, Pay and Allowances of this Agreement where the employee is an "experienced engineer" as defined.

For the purposes of this paragraph "experienced engineer" shall mean—

- (a) An engineer appointed to perform professional engineering duties and who is a Corporate Member of

the Institution of Engineers, Australia and who attains that status during service.

- (b) An engineer appointed to perform professional duties who is not a Corporate Member of the Institution of Engineers, Australia but who possesses a degree or diploma from a University, College or Institution acceptable to the Corporation on the recommendation of the Institution of Engineers, Australia, and who—
- (1) having graduated in a 4 or 5 year degree course at a University or Institution recognised by the Corporation, has had 4 years experience on professional engineering duties acceptable to the Corporation since becoming a qualified engineer, or
 - (2) not having a University degree but possessing a diploma recognised by the Corporation, has had 5 years experience on professional engineering duties, recognised by the Corporation since becoming a qualified engineer.

CLAUSE 3.2 OVERTIME RATES

(A) (i) The provisions of this subclause shall apply to all employees other than those engaged on continuous shift work or above the equivalent of pay point 17 prescribed in Part B, Pay and Allowances of this Agreement, Clause 2.2—Rates of Pay Table (A), or where an alternative arrangement is made under the provisions of Clause 2.1 Hours of this Part. Provided that where it appears just and reasonable the Corporation may approve the payment of overtime or grant time off in lieu to an employee above the equivalent of pay point 17 referred to in this subclause.

(ii) Subject to the provisions of this subclause all work done beyond the ordinary working hours on any day Monday to Friday inclusive, shall be paid for at the rate of time and one half for the first 2 hours and double time thereafter.

(iii) Work done on Saturday prior to 12:00 noon shall be paid for at the rate of time and one half for the first 2 hours and double time thereafter.

(iv) Work done on Saturday after 12:00 noon or on Sunday shall be paid for at the rate of double time.

(v) An employee who works on a day observed as a holiday pursuant to Clause 2.3—Public Holidays of this Part outside of the ordinary hours of work shall be paid for the time worked at the rate of double time and one half except on Christmas Day when the rate shall be treble time.

(vi) An employee who works on a day observed as a rostered day off pursuant to Clause 2.1—Hours of this Part shall not be paid overtime, but shall be allowed another mutually convenient day off within a period of 1 month in lieu. Where the operational requirements of the Corporation are such that a day in lieu of the rostered day off cannot be reasonably taken, payment at ordinary rates shall be made.

(B) Call-Out

(i) An employee who is called out to work on any day Monday to Friday after having left work for the day shall for each time called out be paid for a minimum of 4 hours which shall be calculated at time and one half unless the employee is required to work for 2 hours or more in which case it shall be calculated at time and one half for the first 2 hours and at double time for the other 2, but employees rostered on standby shall not be paid more than once for any period of time.

- (ii) (a) Subject to the provisions of paragraph (b) an employee who reports for work on a Saturday, Sunday, rostered day off or public holiday pursuant to a requirement to do so shall be deemed to have worked for a minimum of 3 hours on each occasion the employee reports but shall not be paid more than once for any period of time.
- (b) Where it is customary for particular work to be carried out on Saturdays, Sundays, rostered days off or public holidays either in respect of a particular job or kind of job or in respect of the industry as a whole and the work is completed within 1 hour, a minimum of 2 hours shall be substituted for the 3 hours prescribed in paragraph (a) of this subclause.

(iii) An employee shall not be obliged to work for longer than it takes to complete the work for which the employee has been brought on duty.

(C) Stand-by

An employee required to remain in readiness for recall to duty if required shall be rostered on a system to be mutually agreed and shall be paid 3 hours at ordinary rates for stand-by on any day from Monday to Friday inclusive and 4 hours on a Saturday, Sunday, Public Holiday or rostered day off in addition to any overtime to which the employee is entitled under this Agreement. An employee required to stand-by on a holiday shall also receive a day in lieu of that day.

(D) (i) When overtime is necessary it shall, wherever reasonably practicable, be so arranged that each employee has at least 10 consecutive hours off duty between the work of successive days.

(ii) An employee who works so much overtime between the termination of the ordinary work on one day and the commencement of the ordinary work on the next day that the employee has not had at least 10 consecutive hours off duty between these times shall, subject to this subclause, be released after completion of such overtime until the employee has had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

(iii) If an employee is required to resume duty or continues work without having 10 consecutive hours off duty, the employee shall be paid at double rates until released from duty and the employee shall be then entitled to be absent until having had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during the absence.

(iv) An employee called in to work on a Sunday or public holiday preceding an ordinary working day, shall, wherever reasonably practicable, be given 10 consecutive hours off duty before the usual starting time on the next day. If this is not practicable then the provisions of paragraphs (ii) and (iii) of this subclause shall apply with modification as necessary.

(v) The amount due under this subclause in respect of any day shall be reduced by any amount due under subclause (B) of this clause for the time not worked (but counted as being worked) within 10 hours prior to the employee's ordinary commencing time on that day.

(E) Continuous Shift Work

(i) The provisions of this subclause applies only to continuous shift employees.

(ii) Subject as hereinafter provided all time worked in excess of or outside the ordinary working hours shall be paid for at the rate of double time except where an employee is called upon to work a 6th shift in not more than 1 week in any 4 weeks when the employee shall be paid for such shift at the rate of time and one half for the first 2 hours and double time thereafter.

(iii) Time worked in excess of ordinary working hours shall be paid for at ordinary rates—

- (a) if it is due to private arrangements between the employees themselves; or
- (b) if it does not exceed 2 hours and is due to a relieving employee not coming on duty at the proper time; or
- (c) if it is for the purpose of effecting the customary rotation of shifts.

(F) Overtime rates shall be computed on a rate applicable to the day on which the time is worked, each day standing alone, but when an employee works overtime which continued 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 subclause.

(G) Commuted Overtime

When an employee is required to work regularly and consistently outside and in excess of the employees prescribed hours of duty, an agreed allowance negotiated between the Corporation and the relevant union/s may be paid in lieu of actual overtime worked.

(H) Excess Travelling Time

An employee eligible for payment of overtime, who is required to travel on official business outside normal working hours and away from the employee's usual place of work shall

be granted time off in lieu of such actual time spent in travelling at equivalent or ordinary rates on weekdays and at time and one half rates on Saturdays, Sundays and Public Holidays, otherwise than during prescribed hours of duty, provided that—

- (i) Such travel is undertaken as a requirement of the Corporation;
- (ii) Such travel shall not include—
 - (a) Time spent in travelling by an employee on duty at a temporary location to the employee's home for weekends for the employee's own convenience.
 - (b) Time spent in travel resulting from the permanent transfer or promotion of an employee to a new location.
 - (c) Time of travelling in which an employee is required by the Corporation to drive, outside ordinary hours of duty, a Corporation vehicle or to drive the employee's own motor vehicle involving the payment of motor vehicle allowance, but such time shall be deemed to be overtime and paid in accordance with subclause (A)(ii) of this clause. Passengers, however, are entitled to the provisions of subclause (H)(i) of this clause.
 - (d) Time spent in travelling to and from the place at which overtime or emergency duty is performed, when that travelling time is already included with actual duty time for the payment of overtime.
- (iii) Where such travel is undertaken on a normal working day, time off in lieu is granted only for such time spent in travelling before and/or after the ordinary hours of duty which is in excess of the employee's ordinary travelling time to and from work.
- (iv) In the case of an employee absent from headquarters, not involving an overnight stay, the time spent by the employee, outside the prescribed hours of duty, in waiting between the time of arrival at place of duty and the time of commencing duty, and between the time of ceasing duty and the time of departure by the first available transport shall be deemed to be excess travelling time.
- (v) Meal Allowances
 - (a) An employee required to work overtime without prior notification where the overtime extends beyond a 5 hour period since the last meal shall be paid the appropriate rate set out in paragraph (c) of this subclause;
 - (b) Where prior notification of the requirement to work overtime is given the appropriate meal allowance shall be paid for the second and subsequent meal.
 - (c)

Breakfast	\$ 6.95
Lunch	\$ 8.60
Evening Meal	\$ 10.30
 - (d) If an employee, having received prior notification of a requirement to work overtime, is no longer required to work overtime, then the employee shall be entitled, in addition to any other penalty, to reimbursement for a meal previously purchased.
- (vi) Late Lunch

Ordinarily employees shall not work more than 5 hours without a meal break. By mutual agreement between local management and employees, up to a maximum of 6 hours may be worked at ordinary rates of pay. In all other circumstances employees shall be paid at time and one half for the first 30 minutes and at double time thereafter until such meal break is taken.
- (vii) Rest/M meal Breaks
 - (a) An employee working overtime shall have a 20 minute paid break after each 4 hours or after 5 hours since the employees last meal, whichever occurs earlier.

- (b) Employees shall have a paid meal break after each 5 hours of overtime duty.

CLAUSE 3.3 SHIFT WORK ALLOWANCE

(A) Standard Shift Arrangements

- (i) The provisions of this clause apply to shift work, continuous or otherwise.
 - (ii) Shifts may be rostered on any 7 days of the week but no employee is to be rostered on duty for more than 6 consecutive days.
 - (iii) Shift work occurring regularly on Sundays and/or Public Holidays will incur an additional week's leave in accordance with Clause 2.2—Annual Leave of this Part.
 - (iv) The Corporation in any part of its operations where it is usual to work shifts may work any employees on shifts, but before doing so shall give 48 hours' notice to each employee concerned informing them of the intended starting and finishing times of ordinary working hours of the shifts. Where it is not usual to work shift this shall be subject to either agreement between the relevant parties or by determination by the relevant industrial relations tribunal.
 - (v) The ordinary hours of an employee on shift work shall not exceed an average of 38 hours per week, to be worked in shifts of 8 hours per day inclusive of a meal break of 30 minutes, in accordance with a recognised shift roster cycle;
 - (a) the meal break shall be paid time in circumstances where the shift arrangement prevents the employee leaving the immediate work area for the duration of the meal break; or
 - (b) the meal break shall be unpaid time in circumstances where the shift arrangement is such that the employee is able to leave the immediate work area for the duration of the break.
 - (vi) A shift employee shall be paid an additional 15% on the employees ordinary rate for each afternoon and night shift worked on any day other than a Saturday, Sunday or Public Holiday.
 - (vii) Where shift employees are not able to rotate day shift with afternoon and/or night shift they shall, in lieu of the loading prescribed in subclause (vi), be paid an additional 30% on the employee's ordinary rate for each afternoon and night shift worked, but this provision shall not apply in cases where the employee works afternoon and/or night shift for 2 weeks or less.
 - (viii) The sequence of shifts shall not be deemed to be broken by a Public Holiday or a rostered day off.
 - (ix) Subject to the provisions of this Agreement all work performed on a rostered shift when the major portion of such shift falls on a Saturday, Sunday or Public Holiday shall be paid for as follows—
 - (a) Saturday—at the rate of time and one half
 - (b) Sunday—at the rate of double time
 - (c) Public Holiday—at the rate of double time and one half
 - (x) Day Shift—commencing at or after 6:00am and before 12:00 noon
 - Afternoon Shift—commencing at or after 12:00 noon and before 6:00pm
 - Night Shift—commencing at or after 6:00pm and before 6:00am
 - (xi) An employee shall not be rostered for duty until at least 10 hours have elapsed since the employee's last shift.
 - (xii) Shift arrangements may be varied by agreement between the employee and the Corporation. The relevant union shall be advised of any such variation.
- #### (B) Twelve Hour Shift Arrangements
- (i) Notwithstanding the provisions of subclause (A) of this clause, the provisions of this clause shall apply to employees engaged as 12-hour shift employees.
 - (ii) The ordinary hours of an employee shall not exceed an average of 38 hours per week to be worked in shifts of 12 hours per day inclusive of 2 paid meal breaks of 30 minutes and 20 minutes respectively, in accordance with recognised shift roster cycle.

- (iii) (a) An employee shall, in respect of each hour of shift worked, be allowed 0.05 of an hour's leave with pay. Such leave shall accumulate and be taken by the employee in complete days during the shut down period at a time acceptable to the Corporation and the employee.
- (b) Where it is not possible for the employee to take rostered days off during the shut down period or at a time mutually acceptable to the Corporation and the employee, the Corporation may pay out a sum of money equivalent to the rostered days off owed to the employee.
- (iv) Subject to the provisions of this Agreement, all work performed on a rostered shift shall be paid for as follows—
 - (a) Saturday—at the rate of time and one half;
 - (b) Sunday—at the rate of double time;
 - (c) Public Holidays, except for Christmas Day and Labour Day, at the rate of time and one half plus 7.6 hours ordinary time;
 - (d) Christmas Day and Labour Day—at the rate of double time plus 7.6 hours ordinary time.
- (v) A 12 hour shift employee shall be paid as follows for each night and day shift worked on any day other than a Saturday, Sunday or Public Holiday.
 - (a) Day Shift—5% more than the ordinary rate;
 - (b) Night Shift—15% more than the ordinary rate;
- (vi) An employee called upon to relieve on any shift shall receive payment as prescribed in paragraphs (iv) and (v) of this subclause.
- (vii) A shift starting before 6:00am or after 6:00pm shall be deemed a night shift. Any alteration to the shift roster and starting times shall be by agreement in writing between the Corporation, employees and the relevant union.
- (viii) (a) Notwithstanding the provisions of Clause 3.2—Overtime Rates of this Part, the provisions of this subclause apply only to employees engaged as 12 hour shift employees.
 - (b) The ordinary hours of work for employees shall be an average of 76 hours per fortnight.
 - (c) Subject as hereinafter provided all time worked in excess of normal shift rostered hours shall be paid for at the rate of double time.
 - (d) Provided that the two supplementary shifts an employee is required to work in a roster cycle shall be paid in accordance with subclause (ix) of this clause.
- (ix) (a) For the purposes of this clause a “supplementary shift” shall mean the overtime shift which is worked to effect an efficient roster operation.
- (b) An employee shall be paid for a supplementary shift on other than a public holiday as follows—
 - (i) Day Shift—
 - 3.8 hours at ordinary rates, plus 2 hours at the rate of time and one half, plus 6 hours at the rate of double time, plus a 5% shift loading for 4 hours of the shift.
 - (ii) Night Shift—
 - As per the rates for day shift prescribed in paragraph (i) with a 15% loading for 4 hours of the shift being substituted for the 5% loading.
- (x) Employees shall take their leave in periods which assist the efficient operation of the 12 hour shift roster.
- (xi) Any proposed rostered position variations shall be made by agreement between the employees directly affected and the Corporation.

CLAUSE 3.4 LIVING AWAY FROM HOME AND TRAVELLING ALLOWANCES

(A) An employee who travels on official Corporation business will be reimbursed reasonable expenses on the following basis—

- (i) When a trip necessitates an overnight stay away from home and the employee is provided with accommo-

dation and meals free of charge, reimbursement shall be—

Incidental Expenses

- (a) WA—South of 26° South Latitude \$ 9.55
- (b) WA—North of 26° South Latitude \$ 12.30
- (c) Interstate \$ 12.30
- (ii) When a trip necessitates an overnight stay away from home and the employee is fully responsible for the employee's own accommodation, meals and incidental expenses, reimbursement shall be—

(a) Hotel/Motel Accommodation	
Locality North of 26° Latitude	WA—Metropolitan Hotel or Motel \$180.70
Broome	\$218.35
Carnarvon	\$164.40
Dampier	\$171.25
Derby	\$181.80
Exmouth	\$193.05
Fitzroy Crossing	\$240.80
Gascoyne Junction	\$125.30
Halls Creek	\$230.80
Karratha	\$256.55
Kununurra	\$206.80
Marble Bar	\$151.60
Newman	\$236.30
Nullagine	\$113.15
Onslow	\$168.55
Pannawonica	\$177.90
Paraburdoo	\$200.30
Port Hedland	\$223.25
Roebourne	\$122.15
Sandfire	\$121.80
Shark Bay	\$125.80
Tom Price	\$193.45
Turkey Creek	\$117.30
Wickham	\$150.05
Wyndham	\$136.30

- (b) Other than Hotel/Motel Accommodation
- When a trip necessitates an overnight stay away from home and other than hotel or motel accommodation is utilised, reimbursement shall be—
- WA— South of 26° South Latitude \$62.45
- WA—North of 26° South Latitude \$75.05
- Interstate \$75.05

- (iii) Part Days
- Reimbursement under subclause (ii) of this clause for part of a day shall be according to the following formula—

Time to/from Headquarters	Percentage of Daily Rate on Day of Departure	Percentage of Daily Rate on Day of Return
Before 8:00am	100%	0%
From 8:00am to 1:00pm	90%	10%
From 1:00pm to 6:00pm	75%	25%
After 6:00pm	50%	50%
After 11:00pm	0%	100%

- (iv) When a trip necessitates an overnight stay away from home and accommodation only is provided at no charge to the employee, reimbursement shall be, subject to the employee's certification that each meal claimed was purchased, according to the following—

Meals	Incidental Expenses
WA—South of 26° South Latitude—	
	WA—South of 26° South Latitude \$ 9.55
Breakfast	\$ 12.00
Lunch	\$ 12.00
Evening Meal	\$ 28.90
WA—North of 26° South Latitude—	
	Interstate \$ 12.30
Breakfast	\$14.00
Lunch	\$19.85
Evening Meal	\$28.95

Interstate:

Breakfast	\$14.00
Lunch	\$19.85
Evening Meal	\$28.95

(v) Camping "Under the Stars"

In the event that the Corporation cannot reasonably provide accommodation and the employees are required to camp "under the stars" the Corporation shall—

- (a) pay an allowance of \$68.10 per day to cover all expenses and associated disabilities; or
- (b) where the majority of employees agree, the Corporation shall provide all food and incidentals and pay an allowance of \$27.80 per day to cover associated disabilities;
- (c) the allowances prescribed in this subclause shall be paid by the Corporation for each day or part thereof where work is being performed at a location which is so far from the employee's usual place of residence that the employee cannot reasonably return home each night;
- (d) the Corporation shall reimburse the employee any outlay of expenses in excess of the allowances prescribed in this subclause, if the employee satisfies the Corporation that these costs have been reasonably incurred.

(B) Trips Not Involving an Overnight Stay

(i) When an employee travels to a place outside a radius of 50 kilometres measured from the employee's headquarters and the trip does not involve an overnight stay away from headquarters, reimbursement for all meals claimed shall be at the rates set out in paragraph (iv) of subclause (A), subject to the employee's certification that each meal claimed was actually purchased, provided that:

- (a) such travelling is not a normal feature in the performance of the employee's duties; and
- (b) such travelling is not within the suburb in which the employee resides.

(ii) When an employee departs from headquarters before 8:00am and does not arrive back at headquarters until after 11:00pm on the same day the employee shall be paid at the appropriate rate prescribed in Table (a) of paragraph (ii) of subclause (A).

(C) An employee who is relieving at or temporarily transferred to any place within a radius of 50 kilometres measured from the employee's headquarters shall not be reimbursed the cost of midday meals purchased.

(D) If on account of lack of suitable transport facilities an employee necessarily secures reasonable accommodation for the night prior to commencing travelling on early morning transport the employee shall be reimbursed the actual cost of such accommodation.

(E) Reimbursement of expenses shall not be suspended should an employee become ill whilst travelling, provided leave for the period of such illness is approved in accordance with provisions of the Clause 2.5—Sick Leave of this Part and the employee continues to incur accommodation, meal and incidental expenses.

(F) When it can be shown to the satisfaction of the Corporation by the production of receipts that reimbursement in accordance with this clause does not cover an employee's reasonable expenses for a whole trip the employee shall be reimbursed the excess expenditure.

(G) Weekend Absence from Residence

(i) An employee who is temporarily absent from normal headquarters on relieving duty or travelling on official business outside a radius of 320 kilometres measured from the normal headquarters and is necessarily absent from the employee's residence and separated from dependants, shall be granted an additional day's leave for every group of 3 consecutive weekends so absent, provided that each weekend shall be counted as a member of only one group. Provided that—

- (a) the relief duty or travelling on official business is within Australia and the employee is not required by the Corporation to work on the weekend;

- (b) an additional day's leave shall not be allowed if the Corporation has approved the employee's dependants accompanying the employee during the period of relief or travelling;

- (c) additional leave under this subclause shall be commenced within 1 month of the period of relief duty or travelling being completed unless the Corporation approves otherwise; and

- (d) the annual leave loading prescribed by Clause 2.2—Annual Leave of this Part shall not apply to any leave entitlements under this clause.

(ii) Employees who are temporarily absent from their normal headquarters on relieving duty or travelling on official business outside a radius of 320 and up to 400 kilometres measured from the normal headquarters, may elect to have the benefit of concessions provide by paragraph (iii) of this subclause in lieu of those provided by paragraph (i) of this subclause. Kalgoorlie, Albany and Geraldton shall be regarded as being within a radius of 400 kilometres for the purpose of this paragraph in the case of an employee resident in the metropolitan area.

(iii) Employees who are temporarily absent from their normal headquarters on relieving duty or travelling on official business within a radius of 320 kilometres measured from the employee's headquarters and such relief duty or travel would normally necessitate the employee being absent from the employee's residence for a weekend, shall be allowed to return to such residence for the weekend. Provided that—

- (a) an employee who is required by the Corporation to work on a weekend shall not be entitled to the concessions;

- (b) all travelling to and from the employee's residence shall be undertaken outside of the employees prescribed hours of duty;

- (c) an employee who has obtained the approval of the Corporation for dependants to accompany the employee during the period of relief or travelling shall not be entitled to the concessions provided by this subclause;

- (d) when an employee is authorised by the Corporation to use the employee's own motor vehicle to travel to the locality where the relief duty is being performed or when travelling on official business the employee shall be reimbursed on the basis of one half of the appropriate rate prescribed in Clause 3.7—Motor Vehicle Allowances of this Part for the journey to the employee's residence for the weekend and the return to the place of relief duty: Provided that the maximum amount of reimbursement shall not exceed the cost of the rail or bus fare by public conveyance which otherwise would be utilised for such journey and payment shall be made only to the owner of such vehicle;

- (e) when an employee has been authorised by the Corporation to use a Corporation motor vehicle in connection with the relief duty or travelling on official business, the employee shall be allowed to use that vehicle for the purpose of returning to the employee's residence for the weekend;

- (f) an employee who does not use the employee's own vehicle or a Corporation motor vehicle as provided by paragraphs (d) and (e) shall be reimbursed the cost of the fare by public conveyance by road or rail for the journey to and from the employee's residence for the weekend;

- (g) an employee who does not make use of the provision of this subclause shall be paid travelling allowance or relieving allowance as the case may require in accordance with the provisions of Clause 3.9—Relieving Allowance or subclause (A) of Clause 3.4—Living Away From Home & Travelling Allowances of this Part; and

- (h) employees who return to their residence for the weekend in accordance with the provisions of this subclause shall not be entitled to the reimbursement of any expenses under Clause 3.9—Relieving Allowance and Clause 3.4—Living Away from Home

and Travelling Allowances of this Part from the time when the employee returns to the employee's residence to the time of departing from such residence to travel to resume duty at the place away from the residence.

(iv) Local Arrangements

Notwithstanding the provisions of this clause the Corporation and employees may, by mutual agreement, vary the arrangements applying to a particular job provided that the cost per day does not exceed what would have ordinarily been available under this clause.

CLAUSE 3.5 REMOTE LOCATION / DISTRICT ALLOWANCES

(A) District Allowances

(B) Definitions

(i) "Dependant" in relation to an employee means: a spouse or where there is no spouse, a child or any other relative resident within Western Australia who relies on the employee for their main support and who does not receive a district or location allowance of any kind.

(ii) "Partial dependant" in relation to an employee (for the purpose of district allowance) means: a spouse or where there is no spouse, a child or any other relative resident within Western Australia who relies on the employee for their main support and who receives a district or location allowance of any kind less than that applicable to an employee without dependants under any award, agreement or other provision regulating the employment of the partial dependant.

(iii) "Spouse means an employee's spouse including defacto spouse.

(C) (i) An employee shall be paid a district allowance at the standard rate prescribed in column 2 of the District Allowance Table of this clause, for the district in which the employee's headquarters is located. Provided that where the employee's headquarters is situated in a town or place specified in column 3 of that schedule the employee shall be paid a district allowance at the rate appropriate to that town or place as prescribed in column 4.

(ii) An employee who has a dependant shall be paid double the district allowance prescribed in paragraph (i) of this subclause for the district, town or place in which the employee's headquarters is located.

(iii) Where an employee has a partial dependant the total district allowance payable to the employee shall be the district allowance prescribed in paragraph (i) of this subclause plus an allowance equivalent to the difference between the rate of district or location allowance the partial dependant receives and the rate of district or location allowance the partial dependant would receive if the employee was employed in a full time capacity under the agreement or other provision regulating the employment of the partial dependant.

(iv) When an employee is on approved annual leave, the employee shall for the period of such leave, be paid the district allowance to which the employee would ordinarily be entitled.

(v) When an employee is on long service leave or other approved leave with pay, other than annual leave, the employee shall only be paid district allowance for the period of such leave if the employee, dependant/s or partial dependant/s remain in the district in which the employee's headquarters are situated.

(vi) When an employee leaves the employee's district on duty, payment of any district allowance to which the employee would ordinarily be entitled shall cease after the expiration of 2 weeks unless the employee's dependant/s or partial dependant/s remain in the district or as otherwise approved by the Corporation.

(vii) Except as provided in paragraph (vi) of this subclause, a district allowance shall be paid to any employee ordinarily entitled thereto in addition to reimbursement of any travelling, transfer, relieving expenses or living away from home allowances prescribed in this Agreement.

(viii) Where an employee, whose headquarters is located in a district in respect of which no allowance is prescribed in the District Allowance Table of this clause, is required to travel or temporarily reside for any period in excess of 1 month in any

district or districts in respect of which such allowance is payable, then notwithstanding the employee's entitlement to any allowance provided by Clause 3.9—Relieving Allowance and Clause 3.4—Living Away from Home and Travelling Allowances of this Part the employee shall be paid for the whole of such a period a district allowance at the appropriate rate prescribed by paragraphs (i), (ii) and (iii) of this subclause, for the district in which the employee spends the greater period of time.

(ix) When an employee is provided with free board and lodging by the Corporation the allowance shall be reduced to two-thirds of the allowance the employee would ordinarily be entitled to under this clause.

(D) Part-Time Employees

An employee who is employed on a part-time basis shall be paid a proportion of the appropriate district allowance payable in accordance with the following formula—

$$\frac{\text{Hours worked per week}}{38} \times \frac{\text{Appropriate District Allowance}}{1}$$

(E) Adjustment of Rates

The rates expressed in the District Allowance Table of this clause shall be adjusted administratively every 12 months in the same manner as those formally published from time to time in the Western Australian Public Sector, effective from the first pay period to commence on or after the first day of July in each year.

Boundaries

For the purpose of the District Allowance Table the boundaries of the various districts shall be as described as follows.

District

(1) The area within a line commencing on the coast; then east along Lat 28 to a point north of Tallering Peak, then due south to Tallering Peak; then south east to Mt Gibson and Burracoppin; then to a point south east at the junction of Lat 32 and Long 119; then south along Long 119 to the coast.

(2) That area within a line commencing on the south coast at Long 119 then east along the coast to Long 123; then north along Long 123 to a point on Lat 30; then west along Lat 30 to the boundary of No. 1 district.

(3) The area within a line commencing on the coast at Lat 26; then along Lat 26 to Long 123; then south along Long 123 to the boundary of No. 2 district.

(4) The area within a line commencing on the coast at Lat 24; then east to the South Australian border; then south to the coast; then along the coast to Long 123 then north to the intersection of Lat 26; then west along Lat 26 to the coast.

(5) That area of the State situated between Lat 24 and a line running east from Carnot Bay to the Northern Territory Border.

(6) That area of the state north of a line running east from Carnot Bay to the Northern Territory Border.

(F) District Allowance Table

(A) Without Dependants

Column 1 District No	Column 2 Standard Rate		Column 3 Exceptions to Standard Rate Town or Place	Column 4 Rate	
	\$ p.a.	\$ p.w.		\$ p.a.	\$ p.w.
(6)	3032	58.12	Nil	Nil	Nil
(5)	2481	46.60	Fitzroy Crossing Halls Creek Turner River Camp Nullagine Liveringa (Camballin) Marble Bar Wittenoom Karratha Port Hedland	3341	64.04
(4)	1250	23.96	Warburton Mission Carnarvon	3359	64.39
(3)	788	15.11	Meekatharra Mount Magnet Wiluna Laverton Leonora Cue	1177	22.56
				1250	23.96

Column 1 District No	Column 2 Standard Rate		Column 3 Exceptions to Standard Rate Town or Place	Column 4 Rate	
	\$ p.a.	\$ p.w.		\$ p.a.	\$ p.w.
(2)	565	10.83	Kalgoorlie Boulder	189	3.62
		10.83	Ravensthorpe Norseman Salmon Gums Marvel Loch Esperance	746	14.30
(1)	Nil	Nil		Nil	Nil

(B) With Dependants

Double the appropriate rate as prescribed in this table.

CLAUSE 3.6 TRANSFER / DISTURBANCE ALLOWANCES

(A) Subject to subclauses (B) and (F) of this clause an employee who is transferred to a new locality in the ordinary course of promotion or transfer, or on account of illness due to causes over which the employee has no control, shall be paid at the rates prescribed in paragraph (ii) of subclause (A) of Clause 3.4—Living Away From Home & Travelling Allowances of this Part for a period of 14 days after arrival at new headquarters within Western Australia or for 21 days after arrival at a new headquarters in another state of Australia: Provided that if an employee is required to travel on official business during the said periods, such period shall be extended by the time spent in travelling. Under no circumstances, however, shall the provisions of this subclause operate concurrently with those of Clause 3.4—Living Away From Home & Travelling Allowances of this Part so as to permit an employee to be paid allowances in respect of both travelling and transfer expenses for the same period.

(B) Prior to the payment of an allowance specified in subclause (A) of this clause, the Corporation shall—

- (i) require the employee to certify that permanent accommodation has not been arranged or is not available from the date of transfer. In the event that permanent accommodation is to be immediately available, no allowance is payable; and
- (ii) require the employee to advise the Corporation that should permanent accommodation be arranged or become available within the prescribed allowance periods, the employee shall refund the pro-rata amount of the allowance for that period the occupancy in permanent accommodation takes place prior to the completion of the prescribed allowance periods; and
- (iii) provided also that should an occupancy date which falls within the specified allowance periods be notified to the Corporation prior to the employee's transfer the payment of a pro-rata amount of the allowance shall be made in lieu of the full amount.

(C) If an employee is unable to obtain reasonable accommodation for the transfer of the employee's home within the prescribed period referred to in subclause (A) of this clause and the Corporation is satisfied that the employee has taken all possible steps to secure reasonable accommodation the employee shall, after the expiration of the prescribed period, be paid in accordance with the rates prescribed in paragraph (i) of this subclause, as the case may require, until such time as the employee has secured reasonable accommodation: Provided that the period of reimbursement under this subclause shall not exceed 77 days without the approval of the Corporation.

(D) (i) Hotel/Motel Accommodation

WA—Metropolitan Hotel or Motel	\$90.55	Interstate—Capital City	
Locality South of 26° South Latitude	\$68.55	Sydney Melbourne Other Capitals	\$105.15 \$107.80 \$86.75
Locality North of 26° South Latitude		Interstate— Other than Capital City	\$68.55

Broome	\$109.20
Carnarvon	\$82.50
Dampier	\$85.60
Derby	\$90.90
Exmouth	\$96.50
Fitzroy Crossing	\$120.40
Gascoyne Junction	\$62.65
Halls Creek	\$115.40
Karratha	\$128.25
Kununurra	\$103.40
Marble Bar	\$75.80
Newman	\$118.15
Nullagine	\$56.60
Onslow	\$84.30
Pannawonica	\$88.95
Paraburdoo	\$100.15
Port Hedland	\$111.60
Roebourne	\$61.10
Sandfire	\$60.90
Shark Bay	\$62.90
Tom Price	\$96.70
Turkey Creek	\$58.65
Wickham	\$75.05
Wyndham	\$68.15

(ii) Deduction for Normal Living Expenses

Each adult	\$19.30
Each child	\$3.30

(E) When it can be shown by the production of receipts or other evidence that an allowance payable under this clause would be insufficient to meet reasonable additional costs incurred by an employee on transfer, an appropriate rate of reimbursement shall be determined by the Corporation.

(F) An employee who is transferred to Corporation accommodation shall not be entitled to reimbursement under this clause: Provided that—

- (i) where entry into the Corporation accommodation is delayed through circumstances beyond the employee's control an employee may, subject to the production of receipts, be reimbursed actual reasonable accommodation and meal expenses for the employee and dependants less a deduction for normal living expenses prescribed in subclause (D)(ii) of this clause; and provided that
- (ii) if any costs are incurred under paragraph (ii) of subclause (G)—Disturbance Allowance they shall be reimbursed by the Corporation.

(G) Disturbance Allowance

(i) Where an employee is transferred and incurs expenses referred to in paragraph (ii) of this subclause as a result of that transfer then the employee shall be granted a disturbance allowance and shall be reimbursed by the Corporation the actual expenditure incurred upon production of receipts or such other evidence as may be required.

(ii) The disturbance allowance shall include—

- (a) costs incurred for telephone installation at the employee's new residence provided that the cost of telephone installation shall be reimbursed only where a telephone was installed at the employee's former residence including Corporation accommodation;
- (b) costs incurred with the connection or reconnection of services to the employee's household, including Corporation accommodation, for water, gas or electricity; and
- (c) costs incurred with the redirection of mail to the employee's new residence for a period of not more than 3 months.

CLAUSE 3.7 MOTOR VEHICLE ALLOWANCES

(A) For the purposes of this clause the following expressions shall have the following meanings—

- (i) "Metropolitan area" means within the boundaries of the Corporation's Perth Region.
- (ii) "South West Land Division" means the South West Land Division as defined by Section 28 of the Land Act, 1933-1972 excluding the area contained within the metropolitan area.

- (iii) "Rest of the State" means that area south of 23.5o south latitude, excluding the metropolitan area and the "South West Land Division".

(B) Allowance for employees using their private vehicle on official business.

- (i) An employee who voluntarily consents to use the employee's vehicle when travelling on official business shall for journeys approved by the Corporation be reimbursed all expenses incurred in accordance with the appropriate rates set out in the Motor Vehicle Allowance Table of this clause.
- (ii) For the purpose of paragraph (i) of this subclause an employee shall not be entitled to reimbursement for any expenses incurred in respect of the distance between the employee's residence and headquarters and the return distance from headquarters to the employee's residence.

(C) Adjustments

Where the cost of fuel exceeds the allowance paid for a trip prescribed in subclause (B) of this clause the employee shall be reimbursed by the Corporation, subject to the production of receipts.

Motor Vehicle Allowance Table

Designated Areas	Engine Displacement (in cubic centimetres)		
	Over 2600	1600 & Under 2600	Over 1600
	[Rate per kilometre (cents)]		
(i) Metropolitan Area	63.3	54.9	48.7
South West Land Division	65.1	56.5	50.2
North of 23.5° South Latitude	71.4	62.3	55.5
Rest of the State	67.3	58.4	51.8

Motor Vehicle Allowance Table

(ii) Motor Cycle

Irrespective of engine capacity, 21.9 cents per kilometre in all circumstances.

CLAUSE 3.8 REMOVAL / PROPERTY ALLOWANCES

(A) Removal Allowance

When an employee is transferred in the ordinary course of promotion or transfer, or on account of illness due to causes over which the employee has no control the employee shall be reimbursed—

- (i) the actual reasonable cost of conveyance of the employee and dependants;
- (ii) the actual cost (including insurance) of the conveyance of an employee's household furniture, effects and appliances up to a maximum volume of 50 cubic metres, provided that a larger volume may be approved by the Corporation in special cases;
- (iii) an allowance of \$501.00 for accelerated depreciation and extra wear and tear on furniture, effects and appliances for each occasion that an employee is required to transport the employee's furniture, effects and appliances provided that the Corporation is satisfied that the value of household furniture, effects and appliances moved by the employee is at least \$2996.00;
- (iv) reimbursement of reasonable expenses in kennelling and transporting of domestic pet or pets up to a maximum amount of \$134.00. Pets are defined as dogs, cats, birds or other domestic animals kept by the employee or the employee's dependants for the purpose of household enjoyment. Pets do not include domesticated livestock, native animals or equine animals.

(B) An employee who is transferred solely at the employee's own request or on account of misconduct must bear the whole cost of removal unless otherwise determined by the Corporation prior to removal.

(C) An employee shall be reimbursed the full freight charges necessarily incurred in respect of the removal of the employee's motor vehicle plus a second motor vehicle or boat or trailer in lieu thereof. If authorised by the Corporation to travel to a new locality in the employee's own motor vehicle, reimbursement shall be one half the appropriate rate prescribed in Clause 3.7—Motor Vehicle Allowances of this Part.

(D) The employee shall, before removal is undertaken obtain quotes from at least two carriers which shall be submitted to the Corporation. Provided that payment by the Corporation for a volume amount beyond 50 cubic metres is not to occur without prior written approval.

(E) The Corporation may, in lieu of conveyance, authorise payment to compensate for any loss in any case where an employee, with prior approval of the Corporation, disposes of the employee's household furniture, effects and appliances instead of removing them to the new headquarters: Provided that such payments shall not exceed the sum which would have been paid if the employee's household furniture, effects and appliances had been removed by the cheapest method of transport available and the volume was 50 cubic metres.

(F) Receipts must be produced for all sums claimed.

(G) New appointees to the Corporation shall be entitled to receive the benefits of this clause if they are required by the Corporation to participate in any training course prior to being posted to their respective positions. This entitlement shall only be available to employees who have completed their training and who incur costs when moving to their first posting.

(H) Property Allowance

For the purposes of this clause the following expressions shall have the following meanings—

- (i) "Agent" means a person carrying on business as an estate agent in a state or territory of the Commonwealth, being, in a case where the law of that state or territory provides for the registration or licensing of persons who carry on such a business, a person duly registered or licensed under that law.
- (ii) "Dependant" in relation to an employee means—
- spouse including defacto spouse;
 - child/children; or
 - other dependant family;

who resides with the employee and who relies on the employee for support.

(iii) "Expenses" in relation to an employee means all costs incurred by the employee in the following areas—

- legal fees in accordance with the Solicitor's Remuneration Order, 1976 as amended and varied, duly paid to a solicitor or in lieu thereof, fees charged by a settlement agent for professional costs incurred in respect of the sale or purchase, up to the maximum fee set out under item 8 of the said Order;
- disbursements duly paid to a solicitor or a settlement agent necessarily incurred in respect of the sale or purchase of the residence;
- real estate agent's commission in accordance with that fixed by the Real Estate and Business Agents Supervisory Board, acting under Section 61 of the Real Estate and Business Agents Act, 1978, duly paid to an agent for services rendered in the course of and incidental to the sale of the property, the maximum fee to be claimed shall be 50% as set out under Items 1 or 2—Sales by Private Treaty or Items 1 or 2—Sales by Auction of the Maximum Remuneration Notice;
- stamp duty;
- fees paid to the Registrar of Titles or to the employee performing duties of a like nature and for the same purpose in another state or territory of the Commonwealth;
- expenses relating to the execution or discharge of a first mortgage; or
- the amount of expenses reasonably incurred by the employee in advertising the residence for sale.

(iv) "Locality" in relation to an employee means—

- Within the metropolitan area, that area within the boundaries of the Corporation's Perth region.
- Outside the metropolitan area, that area within a radius of 50 kilometres from an employee's

headquarters when they are situated outside of the metropolitan area.

- (v) "Property" shall mean a residence as defined in this clause including a block of land purchased for the purpose of erecting a residence thereon to the extent that it represents a normal urban block of land for the particular locality.
- (vi) "Residence" includes any accommodation of a kind commonly known as a flat or a home unit that is, or is intended to be, a separate tenement including dwelling house, and the surrounding land, exclusive of any other commercial property, as would represent a normal urban block of land for the particular locality.
- (vii) "Settlement Agent" means a person carrying on business as settlement agent in a state or territory of the Commonwealth, being, in a case where the law of that state or territory provides for the registration or licensing of persons who carry on such a business, a person duly registered or licensed under the law.

(I) When an employee is transferred from one locality to another or in the ordinary course of promotion or transfer, or on account of illness due to causes over which the employee has no control the employee shall be entitled to be paid a property allowance for reimbursement of expenses incurred by the employee—

- (i) In the sale of residence in the employee's former locality, which, at the date on which the employee received notice of transfer to a new locality—
 - (a) the employee owned and occupied; or
 - (b) the employee was purchasing under a contract of sale providing for vacant possession; or
 - (c) the employee was constructing for the employee's own permanent occupation, on completion of construction; and
- (ii) In the purchase of a residence or land for the purpose of erecting a residence thereon for the employee's own permanent occupation in the new locality.

(J) An employee shall be reimbursed such following expenses as are incurred in relation to the sale of a residence—

- (i) if the employee engaged an agent to sell the residence on the employee's behalf—50% of the amount of the commission paid to the agent in respect of the sale of the residence;
- (ii) if a solicitor was engaged to act for the employee in connection with the sale of the residence—the amount of the professional costs and disbursements necessarily incurred and paid to the solicitor in respect of the sale of the residence;
- (iii) if the land on which the residence is created was subject to a first mortgage and that mortgage was discharged on the sale, then an employee shall, if, in a case where a solicitor acted for the mortgagee in respect of the discharge of the mortgage and the employee is required to pay the amount of professional costs and disbursements necessarily incurred by the mortgagee in respect of the discharge of the mortgage—the amount so paid by the employee; or
- (iv) if the employee did not engage an agent to sell the residence on the employee's behalf—the amount of the expenses reasonably incurred by the employee in advertising the residence for sale.

(K) An employee shall be reimbursed such following expenses as are incurred in relation to the purchase of a residence—

- (i) if a solicitor or settlement agent was engaged to act for the employee in connection with the purchase of the residence—the amount of the professional costs and disbursements necessarily incurred are paid to the solicitor or settlement agent in respect of the purchase of the residence;
- (ii) if the employee mortgaged the land on which the residence was erected in conjunction with the purchase of the residence, then an employee shall, if, in a case where a solicitor acted for the mortgagee and

the employee is required to pay and has paid the amount of the professional costs and disbursements, including valuation fees but not a procuracy fee payable in connection with the mortgage, necessarily incurred by the mortgagee in respect of the mortgage, the amount so paid by the employee; and

- (iii) if the employee did not engage a solicitor or settlement agent to act for the employee in connection with the purchase or such a mortgage, the amount of the expenses reasonably incurred by the employee in connection with the purchase or the mortgage, as the case may be, other than a procuracy fee paid by the employee in connection with the mortgage.

(L) An employee is not entitled to be paid a property allowance under paragraph (ii) of subclause (I) of this clause unless the employee is entitled to be paid a property allowance under paragraph (i) of subclause (I), provided that the Corporation may approve the payment of a property allowance under paragraph (ii) of subclause (I) to an employee who is not entitled to be paid a property allowance under paragraph (i) if the Corporation is satisfied that it was necessary for the employee to purchase a residence or land for the purpose of erecting a residence thereon in the employee's new locality because of the employee's transfer from the former locality.

(M) For the purpose of this Agreement it is immaterial that the ownership, sale or purchase is carried out on behalf of an employee who owns solely, jointly or in common with—

- (i) the employee's spouse; or
- (ii) a dependant relative; or
- (iii) the employee's spouse and a dependant relative.

(N) Where an employee sells or purchases a residence jointly or in common with another person, not being a person referred to in subclause (M) of this clause, the employee shall be paid only the proportion of the expenses for which the employee is responsible.

(O) An application by an employee for a property allowance shall be accompanied by evidence of the payment by the employee of the expenses, being evidence that is satisfactory to the Corporation.

(P) Notwithstanding the foregoing provisions, an employee is not entitled to the payment of a property allowance—

- (i) In respect of a sale or purchase prescribed in subclause (I) of this clause which is effected—
 - (a) more than 12 months after the date on which the employee took up duty in the new locality; or
 - (b) after the date on which the Corporation received notification of being transferred back to the former locality;

Provided that the Corporation may, in exceptional circumstances, grant an extension of time for such period as is deemed reasonable.

- (ii) Where the employee is transferred from one locality to another solely at the employee's own request or on account of misconduct.

CLAUSE 3.9 RELIEVING ALLOWANCES

An employee who is required to take up duty away from headquarters on relief duty or to perform special duty, and necessarily resides temporarily away from the employee's usual place of residence shall be reimbursed reasonable expenses on the following basis—

(A) Where the employee is provided with accommodation and meals free of charge an allowance to meet incidental expenses shall be paid, as follows—

WA—South of 26o South Latitude—\$9.55 per day
 WA—North of 26o South Latitude—\$12.30 per day
 Interstate—\$12.30 per day

(B) Where employees are fully responsible for their own accommodation, meals and incidental expenses and hotel or motel accommodation is utilised—

- (i) For the first 42 days after arrival at the new locality reimbursement shall be in accordance with the rates prescribed in Column A hereunder—

	Column				Column		
	A	B	C		A	B	C
	\$	\$	\$	\$	\$	\$	
WA—Metro Hotel or Motel	180.70	90.35	60.25	Nullagine	113.15	56.60	37.70
				Onslow	168.55	84.30	56.20
				Pannawonica	177.90	88.95	59.30
Locality South of 26o South Latitude	137.10	68.55	45.70	Paraburdoo	200.30	100.15	66.75
				Port Hedland	223.25	111.60	74.40
				Roebourne	122.15	61.10	40.70
Locality North of 26o North Latitude				Sandfire	121.80	60.90	40.60
				Shark Bay	125.80	62.90	41.95
				Tom Price	193.45	96.70	64.50
Broome	218.35	109.20	72.80	Turkey Creek	117.30	58.65	39.10
Carnarvon	164.40	82.20	54.80	Wickham	150.05	75.05	50.00
Dampier	171.25	85.60	57.10	Wyndham	136.30	68.15	45.45
Derby	181.80	90.90	60.60				
Exmouth	193.05	96.50	64.35	Interstate—			
Fitzroy Crossing	240.80	120.40	80.25	Capital City			
Gascoyne Junction	125.30	62.65	41.75	Sydney	210.30	105.15	70.05
Halls Creek	230.80	115.40	76.95	Melbourne	215.60	107.80	71.80
Karratha	256.55	128.25	85.50	Other Capitals	173.50	86.75	57.80
Kununurra	206.80	103.40	68.95				
Marble Bar	151.60	75.80	50.55	Interstate—			
Newman	236.30	118.15	78.75	Other than Capital City	137.10	68.55	45.70

- (ii) For periods in excess of 42 days after arrival in the new locality reimbursement shall be in accordance with the rates prescribed in Column B for employees with dependants or Column C for other employees, provided that the period of reimbursement under this subclause shall not exceed 49 days without the approval of the Corporation.

(C) Where employees are fully responsible for their own accommodation, meal and incidental expenses and other than hotel or motel accommodation is utilised reimbursement shall be in accordance with the rates prescribed hereunder—

WA—South of 26o South Latitude—\$62.45 per day

WA—North of 26o South Latitude—\$75.05 per day

Interstate—\$75.05 per day

(D) Reimbursement of expenses shall not be suspended should an employee become ill when on relief duty, provided leave for the period of the illness is approved in accordance with the provisions of this Agreement and the employee continues to incur accommodation, meal and incidental expenses.

(E) When an employee is required to relieve or perform special duties in accordance with this clause is authorised by the Corporation to travel to the new locality in the employee's own motor vehicle, reimbursement for the return journey will be half the appropriate rate prescribed by Clause 3.7—Motor Vehicle Allowances of this Part. Provided that the maximum amount of reimbursement shall not exceed the cost of the fare by public conveyance which otherwise would be utilised for such return journey.

(F) Where it can be shown by the production of receipts or other evidence that an allowance payable under this clause would be insufficient to meet reasonable additional costs incurred, an appropriate rate of reimbursement shall be determined by the Corporation.

(G) The provisions of Clause 3.4—Living Away from Home and Travelling Allowances of this Part shall not operate concurrently with the provisions of this clause to permit an employee to be paid allowances in respect of both travelling and relieving expenses for the same period, provided that where an employee is required to travel on official business which involves an overnight stay away from the employee's temporary headquarters the Corporation may extend the periods specified in subclause(B) of this clause by the time spent in travelling.

(H) An employee who is required to relieve another employee or to perform special duty away from the employee's usual headquarters and is not required to reside temporarily away from the employee's usual place of residence shall, if the employee is not in receipt of a higher duties or special allowance for such work, be reimbursed the amount of additional fares paid by the employee travelling by public transport to and from the place of temporary duty.

CLAUSE 3.10 FARES

(A) This clause does not apply to employees permanently attached to a depot or centre.

(B) This clause applies to employees, other than those prescribed in subclause (A), required to start and finish on the job. By custom and practice this is ordinarily construction workers.

(C) Subject to subclauses (A) and (B) the following allowances shall be paid to employees to compensate for fares and travelling time incurred in getting from home to and from a designated work site.

- (i) Within a radius of 50 kilometres of the GPO Perth—\$11.95 day.
- (ii) In respect of work carried out from a Corporation's main centre, where that centre is situated more than 50 kilometres from the GPO Perth the main post office in the town where that centre is situated is the starting point for the 50 kilometre radius.
- (iii) Where employees travel daily to a job outside the radial area described in subclause(C)(i) and (ii) the employee shall be paid at the ordinary hourly "on site" rate calculated to the next quarter of an hour, with a minimum payment for one-half hour for each return journey for any time outside ordinary working hours reasonably spent in travelling daily from the designated kilometre radius to a job and returning to that radius, in addition to the allowance prescribed in subclause (C)(i), plus any expenses necessarily and reasonably incurred in so travelling outside such radius.

(D) Provisions of Transport

- (i) The allowances prescribed in this clause, except the additional payment prescribed in circumstance paragraph (iii) of subclause (C) shall not be payable on any day on which the Corporation provides, or offers to provide, transport free of charge from the employee's home to the employee's place of work and return.
- (ii) Where an employee is required to start and finish on the job, uses transport provided by the Corporation from an agreed pick up point, other than the employee's home, to the job and return, the employee shall be paid 50% of the allowance prescribed in subclause (C)(i).

(E) Start and Finish

Employees shall start and cease work on the job at the usual commencing and finishing times within which ordinary hours may be worked, as required by the Corporation.

(F) Transfer

Employees shall transfer from site to site during ordinary working hours, as required by the Corporation.

(G) Daily Entitlement

The travelling allowances prescribed in this clause shall not be taken into account in calculating overtime, penalty rates, annual or sick leave, but shall be payable for any day on which the employee, in accordance with the Corporation requirements, works or reports for work or allocation of work.

(H) No Reduction

An employee currently in receipt of a fares and travelling time allowance which is in excess of the allowance contained in this clause shall not have the current allowance reduced until the job is completed or the employee is transferred to another site.

SECTION FIVE — MISCELLANEOUS

CLAUSE 5.1 TRANSITIONAL ARRANGEMENTS

(A) Long Service Leave

Transition Arrangements

(i) Any qualifying service prior to 1 January 1998 for the first qualifying period of long service leave in relation to employees classified as wages or fixed term shall be calculated on a 10 year qualifying period basis and all qualifying service after that shall be calculated on a 7 year qualifying period basis.

(ii) Subject to subclause (K) of Clause 2.4 Long Service Leave, (i) and (ii) of this Part, employees who resign or whose services are terminated other than for misconduct, prior to completion of the full qualifying period for the first entitlement shall, subject to having completed 7 years continuous service, be paid pro rata long service leave.

(iii) Employees who, prior to the operative date of this Agreement would have qualified for Long Service Leave at 10 years service shall be entitled to take pro-rata Long Service Leave at the completion of 7 years service subject to the provisions of Clause 2.4 of this Part.

(B) Adjustment of Leave Balances

Employees who were employed prior to 1 January 1998 under the Water Corporation (Salaries, Allowances and Conditions) Agreement 1996 shall have all leave balances other than long service leave balances increased by a factor of 38/37.5 to reflect the increase in standard weekly hours from 37.5 to 38 per week.

CLAUSE 5.2 TIME AND PAY RECORDS

(A) The Corporation shall keep or cause to be kept a time and pay record showing—

- (i) the name of each employee;
- (ii) the nature of the work performed;
- (iii) the hours worked each day; and
- (iv) the pay, allowances and overtime paid to each employee.

Any system of automatic recording by means of machines shall be deemed to comply with the provision to the extent of the information recorded.

(B) Contents of Pay Slips

- (i) the name of the employee;
- (ii) the classification of the employee in accordance with this Agreement;
- (iii) the date on which the payment to which the pay slip relates is made;
- (iv) the period of days to which the payment relates; and
- (v) if the employee is paid at an hourly rate of remuneration—
 - (a) the ordinary hourly rate; and
 - (b) the number of hours in that period for which the employee was employed at that rate; and
 - (c) the amount of the payment made at that rate;
- (vi) if the employee is paid at another hourly rate of remuneration in addition to the ordinary hourly rate—
 - (a) that other rate, or those other rates, of remuneration;
 - (b) the number of hours in the period for which the employee was employed at the other rate or rates; and

(c) the amount of the payment made at the other rate or rates;

- (vii) if the employee is paid at an annual rate of remuneration—that rate as at the latest date to which the payment relates;
 - (viii) the gross amount of the payment;
 - (ix) the net amount of the payment; and
 - (x) any amount included in the net amount of the payment that is by way of an allowance;
 - (xi) the following details of each amount deducted from the gross amount of the payment—
 - (a) the purpose of each deduction; or
 - (b) the name, or the name and number, of the fund or account into which the amount of the deduction was paid;
 - (xii) in respect of any occupational superannuation fund or scheme to which the employer made a contribution in respect of the employee in the period;
 - (a) the amount of the contribution; and
 - (b) the name of the fund or scheme.
- (C) (i) The time and pay record will be produced for inspection by the Secretary or duly accredited official of the organisations named as parties to this Agreement during the Corporation's usual office hours and when necessary the duly accredited official of the relevant organisation may take a copy of the record.
- (ii) The organisations referred to in paragraph (i) of this subclause shall—
- (a) give prior notification to the Corporation on when it proposes to inspect the record;
 - (b) not conduct interviews during normal working hours in circumstances which will result in the Corporation's business being unduly interrupted or otherwise hampered; and
 - (c) treat with confidentiality any information obtained from time to time on pay records.
- (iii) The Corporation's office shall be deemed to be a convenient place for the purposes of inspecting records and if for any reason the time and pay record is not available when the duly accredited official of the relevant organisation calls to inspect it, the record shall be made available for inspection at a mutually convenient time at the Corporation's office.
- (iv) If the Corporation maintains a personal or other file on an employee subject to the Corporation's convenience, the employee shall be entitled to examine all material maintained on that file.

CLAUSE 5.3 NOTIFICATION OF CHANGE

- (A)(i) Where the Corporation has made a definite decision to introduce major changes in production, programme, organisation, structure or technology that are likely to have significant effects on employees the Corporation shall notify the employees who may be affected by the proposed changes and the relevant organisation representing the employees.
- (ii) For the purpose of this clause "significant effects" include termination of employment; major changes in the composition, operation or size of the Corporation's workforce or in the skills required; elimination or diminution of job opportunities, promotion opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations and restructuring of jobs. Provided that where this Agreement makes provision for alteration of any of the matters referred to in this clause an alteration shall be deemed not to have significant effect.
- (B)(i) The Corporation shall discuss with the employees affected and the relevant organisations representing the employees, inter alia, the introduction of the changes referred to in subclause (A) of this clause the effects the changes are likely to have on employees, measures to avert or mitigate the adverse effects of such changes on employees and shall give prompt

consideration to matters raised by the employees and/or the relevant organisations representing the employees in relation to the changes.

- (ii) The discussion shall commence as early as practicable after a firm decision has been made by the Corporation to make the changes referred to in subclause (A) of this clause, unless by prior arrangement the relevant organisations representing the employees are represented on the body formulating recommendations for change to be considered by the Corporation.
- (iii) For the purposes of such discussion the Corporation shall provide to the employees concerned and the relevant organisations representing the employees all 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 Corporation shall not be required to disclose confidential information, the disclosure of which would be harmful to the Corporation's interests.

CLAUSE 5.4 RIGHT OF ENTRY

(A) The Secretaries of the organisations named as parties to this Agreement or duly authorised representatives, subject to notification to the Corporation, have the right to enter the Corporation's premises during working hours, including meal breaks, for the purpose of discussing with employees covered by this Agreement the legitimate business of the respective organisations or for the purpose of investigating complaints concerning the application of this Agreement, but shall in no way unduly interfere with the work of employees.

(B) 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 Corporation unless the Corporation is the employer, or former employer of a member of the Union.

CLAUSE 5.5 COPIES OF AGREEMENT

(A) Every employee shall be entitled to have access to a copy of this Agreement. Sufficient copies shall be made available by the Corporation for this purpose.

CLAUSE 5.6 DISPUTE RESOLUTION PROCEDURE

Unless otherwise agreed by the parties to this Agreement at an enterprise or local level, the following procedure shall apply—

- (A) (i) this procedure is entered into by all parties in the interests of promoting a more open environment conducive of change. Parties to this procedure shall at all levels regard any dispute raised as a matter of importance;
- (ii) this is not a procedure for the resolution of safety, equal employment opportunity matters, or selection and recruitment appeals; and
- (iii) the parties to this Agreement shall take steps to jointly notify all employees covered by this procedure of its terms and obligations.

(B) Objective

The objective of the parties to this procedure is to avoid industrial disputes and resolve issues by—

- (i) providing a mutually satisfactory mechanism for dealing with issues;
- (ii) clearly identifying the issue/dispute; and
- (iii) engaging expeditiously in—
 - (a) consultations and discussions; and/or
 - (b) negotiations; and
- (iv) having regard to the rules of natural justice and by abiding with the following procedure to facilitate an early resolution at the local level or wherever is most practical before an amicable settlement.

(C) Definitions

- (i) An issue—is a difference of opinion between an employee or group of employees and management. It shall include a disagreement, complaint or grievance

raised in accordance with subclause (A) of this clause.

- (ii) A dispute—is an issue which cannot be resolved by discussion between local management and employees.
- (iii) Status quo is that which is the usual custom and practice applied to work arrangements.
 - (a) In the event of a dispute arising and this dispute settlement procedure being invoked by either party, the status quo shall be maintained pending resolution of the dispute by conciliation or arbitration.
 - (b) That in the event of a dispute over the facts of what constitutes the status quo, the parties shall—
 - (i) have discussions as soon as is practicable with a view to reaching agreement on what is to apply pending resolution of the dispute;
 - (ii) in the event of no agreement being reached in paragraph (i) the parties shall refer that matter to the Australian/Western Australian Industrial Relations Commission(s) for a conference, at which each party may put its proposal for the interim arrangement to apply on a without prejudice basis.

(D) Preliminary Stage

Any dispute or issue shall be dealt with in accordance with the following procedure. At each stage discussion shall be confined to the issue as first stated.

(i) Issue Resolution Stage

- (a) Any employee or group of employees with a grievance or complaint shall discuss it at a local level with their immediate supervisor in the first instance; provided that this does not prevent a shop steward or union representative from directly approaching the immediate supervisor on behalf of such employee(s) or being present at such meeting and does not prevent any employee of the Corporation from being present on behalf of management.
- (b) The supervisor or union representative shall make any necessary enquiries and shall attempt to resolve the matter or provide an answer, if not on the day the issue is raised, then as soon as it is practical to do so.
- (c) If any such issue requires time to provide an answer, the supervisor or union representative shall keep the employee(s) informed of the progress, until an answer has been given.
- (d) If the employee or group of employees continues to be aggrieved or the issue is still in dispute, Stage 1 of the dispute resolution stage shall be invoked.
- (e) However, where the issue(s) has widespread implication for the Corporations' employees represented by the union(s) concerned, Stage 2 of the dispute resolution stage shall be the first step in the dispute settlement process.

(ii) Dispute Resolution Stage

Stage 1

- (a) If an issue is unresolved after application of Preliminary Stage and/or the employee(s) continue/s to be aggrieved, then the dispute shall be submitted in writing to the Supervisor's Manager, and union official or representative, within 5 working days excluding Saturdays, Sundays and Public Holidays. Employees may seek the advice of their shop steward/workplace delegate/councillor at this stage if they have not already done so.
- (b) As soon as possible, but usually within 2 working days, excluding Saturdays, Sundays and Public Holidays, of receipt of the document, the Manager or nominated representative and/or Union Representative shall convene a meeting with a view to making a decision as to the action to be taken.

- (c) The employee's union representative together with another member of management may be present. Each party is to be given prior notice of who will be present at the meeting.
 - (d) The Manager or nominated representative shall confirm the decision in writing to the parties concerned.
 - (e) If the employee or relevant manager continues to be aggrieved or unreasonable delay on the part of management or union representatives has resulted in Stage 1 not being implemented or the issue is unresolved the matter as first stated shall be referred in writing to the Manager responsible for Employee Relations for the Corporation, or the relevant Union Branch Secretary(s).
- (iii) Stage 2
- (a) On being notified of an unresolved issue/grievance the Manager specified in paragraph (e) of Stage 1 shall arrange a meeting between the State Secretary of the Union(s) or nominee(s), the Union's local representative (if any), the appropriate Regional/Branch Manager and appropriate local personnel.
 - (b) A meeting shall be arranged as soon as possible but normally within 3 working days of a request by a party excluding Saturdays, Sundays and Public Holidays. Depending upon the nature of the issue, an extension to the 3 day provision may be agreed between the parties.
 - (c) Each party shall be given reasonable notice of the issues to be discussed or negotiated at the meeting convened.
 - (d) If Stage 2 of the procedure is completed without the full resolution of the issue(s) the parties may proceed to Stage 3.
- (iv) Stage 3

Each party is free to refer any industrial matter to the Australian/ Western Australian Industrial Relations Commission as appropriate. In keeping with the spirit of this procedure, this would be after Stage 2 is completed.

CLAUSE 5.7 LEAVE RESERVED

It is the intention of the parties to vary this Agreement during its term to give effect to the results of—

(A) Review of Remote Location Conditions & Allowances

It is the intention of the parties to consolidate, where appropriate, remote location conditions and allowances in effect at the operative date of this Agreement. The review shall commence as soon as practicable after the implementation of this Agreement and, subject to agreement being reached between the parties, the results of the review shall be implemented from the beginning of the first pay period commencing on or after 1 July 1998.

CLAUSE 5.8 SALARY PACKAGING

(A) At the request of an employee and where agreed between the Corporation and an employee, the Corporation may introduce salary packaging in lieu of pay rates prescribed in Clause 2.2—Rates of Pay of Part B Pay and Allowances of this Agreement and the terms and conditions of such a package shall not, when viewed objectively, be less favourable than the entitlements otherwise available under this Agreement and shall be subject to the following provisions—

- (i) The Salary Package terms and conditions shall be in writing and signed by both the Corporation and employee and shall detail the components of the total salary package for the purpose of complying with Clause 5.2 -Time and Pay Records of this Part .
- (ii) A copy of the Salary Package shall be made available to the employee and a copy shall be open for inspection by an accredited representative of the relevant union in accordance with Clause 5.4—Right of Entry of this Part .
- (iii) The Corporation must inform the employee in writing of how the benefits are costed in money terms.

- (iv) The salary package shall not increase the total cost of employment.
- (v) The employee shall be entitled to inspect details of payments and transactions made under the terms of the Salary Package.
- (vi) (a) Subject to paragraph (vii) of this subclause the configuration of the salary package shall remain in force for the period agreed between the Corporation and the employee; and
 - (b) where at the end of the agreed period the full amount allocated to a specific benefit has not been utilised, by agreement between the Corporation and the employee, any unused amount may be carried forward to the next period, or paid as a normal pay which shall be subject to usual taxation requirements.
- (vii) During the agreed period the Corporation or the employee may request a review of the package in the event that its cost or benefits are materially affected by changes in tax rulings or legislation. If agreement is unable to be reached the matter may be referred to the Western Australian or Australian Industrial Relations Commission for conciliation and/or arbitration.

CLAUSE 5.9 ADJUSTMENT OF ALLOWANCES

The allowances referred to in this clause shall be varied according to changes formally published in the public sector from time to time.

- (A) Living Away From Home and Travelling Allowances
- (B) District Allowances
- (C) Transfer/Disturbance Allowances
- (D) Motor Vehicle Allowances
- (F) Removal/Property Allowances
- (G) Relieving Allowances.

CLAUSE 5.10 MONITORING AND IMPLEMENTATION

The parties agree to the formation of a joint forum to monitor the implementation of the new Agreement.

CLAUSE 5.11 PROTECTIVE CLOTHING

Employees engaged on work which requires the wearing of protective clothing shall be provided with the necessary protective clothing. Any laundering costs associated with protective clothing shall be at the expense of the Corporation.

SECTION SIX—APPENDICES

WATER CORPORATION INTERIM AGREEMENT 2000 SCHEDULE A—DISTRICT ELECTRICAL TECHNICIANS

(A) Title

This Schedule shall be known as Schedule A—Engineering Tradespersons (District Electrical Technicians) and comprises conditions conferred by Order No. C 749 of 1990.

(B) Arrangement

- (A) Title
- (B) Arrangement
- (C) Application and General Conditions of Employment
- (D) Standby
- (E) Pay
- (F) Overtime
- (G) Late Start
- (H) Travelling Allowances
- (I) Meal Allowances
- (J) Assistants
- (K) Telephones
- (L) Vehicles
- (M) Districts
- (N) Date of Operation

(C) Application and General Conditions of Employment

The provisions of this Schedule shall apply to persons employed by the Corporation as Engineering Tradespersons (District Electrical Technicians). The provisions of this Schedule shall apply in addition to the provisions of the Water Corporation Interim Agreement 2000.

(D) Standby

Engineering Tradespersons (District Electrical Technicians) employed by the Corporation shall be rostered for standby each alternate week to be available for out of hours duty for 7 days in accordance with a formal roster and payment for standby shall be made in accordance with subclause (C) of Clause 3.2—Overtime of Part A, Conditions of the Water Corporation Interim Agreement 2000.

(E) Pay

In addition to the total weekly rate prescribed in Table (C) of Clause 2.2—Rates of Pay of Part B Pay and Allowances of the Water Corporation Interim Agreement 2000 for the classification Water Industry Engineering Tradesperson Level C8, an all purpose payment equal to 25% of the total weekly rate including tool allowance shall be paid to District Electrical Technicians. Except as provided in Clause (D)—Standby and Clause (F)—Overtime of this Schedule, such payment shall be paid in recognition of all out of hours work.

(F) Overtime

In addition to the payment provided for in Clause (E)—Pay, of this Schedule, overtime shall be paid in accordance with Part A, Conditions of the Water Corporation Interim Agreement 2000 where out of hours work is required and involves—

- (i) installation work necessary to complete a construction project;
- (ii) work not associated with a fault in an operating system provided the work is not a continuation of the normal daily maintenance;
- (iii) call-outs occurring on a non-standby week;
- (iv) emergencies brought about by cyclone, flood or storm or other similar occurrences; or
- (v) call-outs occurring on a standby week for time in excess of a 6 hour continuous period inclusive of travelling time.

(G) Late Start

Notwithstanding the provisions of subclause (D) of Clause 3.2—Overtime, of Part A, Conditions of the Water Corporation Interim Agreement 2000, all time worked after midnight and prior to the commencement of the ordinary work of that day shall be added to the usual commencing time of that day to enable a late start for such employee and in any event, any call-out after midnight shall entitle the employee to a minimum late start of 2 hours.

(H) Travelling Allowances

When a job necessitates an overnight stay away from headquarters, reimbursement shall be according to rates prescribed in Clause 3.4—Living Away from Home & Travelling Allowances of Part A, Conditions of the Water Corporation Interim Agreement 2000.

(I) Meal Allowances

The provisions of Clause 3.4—Living Away from Home & Travelling Allowances of Part A, Conditions of the Water Corporation Interim Agreement 2000, shall apply in circumstances where the job does not involve an overnight stay.

(J) Assistants

Assistants shall be assigned on a needs basis determined by the nature of the particular job. Any dispute shall be determined having regard for the provisions of the Occupational Safety and Health Act 1994.

(K) Telephones

- (i) The cost of new installations and/or new connections shall be met by the Corporation. District Electrical Technicians shall be reimbursed costs associated with rental and Corporation business calls in the manner applying generally to Corporation employees.
- (ii) Employees relieving as District Electrical Technicians shall be reimbursed costs of rental and business calls proportionate to the duration of the relief.

(L) Vehicles

District Electrical Technicians shall be supplied suitable vehicles which shall be equipped to a suitable standard agreed to by the parties from time to time.

(M) Districts

- (i) District Electrical Technicians employed by the Corporation shall operate within districts identified by the parties through an exchange of letters from time to time for the purposes of allocating day to day routine maintenance.
- (ii) Variations to the districts described in paragraph (i) of this clause shall be by agreement between the parties and shall be limited to such variations as are needed due to changes in workload which may occur from time to time.
- (iii) Call-outs on standby weeks shall be limited to those districts identified by the standby roster.

(N) Date of Operation

This Schedule shall operate from the date of the Water Corporation Interim Agreement 2000.

WATER CORPORATION INTERIM AGREEMENT 2000**SCHEDULE B—MOBILE MECHANICAL FITTERS****(A) Title**

This Schedule shall be known as Schedule B—Engineering Tradespersons (Mobile Mechanical Fitters) and comprises conditions conferred by Order No. C 380 of 1991.

(B) Arrangements

- (A) Title
- (B) Arrangement
- (C) Application and General Conditions of Employment
- (D) Date of Operation
- (E) Pay
- (F) Overtime
- (G) Late Start
- (H) Telephones

(C) Application and General Conditions of Employment

The provisions of this Schedule shall apply to persons employed by the Corporation as Engineering Tradespersons (Mobile Mechanical Fitters). The provisions of this Schedule shall apply in addition to the provisions of the Water Corporation Interim Agreement 2000.

(D) Date of Operation

This Schedule shall take effect from the operative date of the Water Corporation Interim Agreement 2000.

(E) Pay

In addition to the appropriate total weekly pay prescribed in Table (C) of Clause 2.2—Rates of Pay Part B, Pay and Allowances of the Water Corporation Interim Agreement 2000, an all purpose payment equal to 25% of the total weekly pay including tool allowance shall be paid to Mobile Mechanical Fitters. Except as provided in Clause (F)—Overtime of this Schedule, such payment shall be in recognition of all out of hours work.

(F) Overtime

In addition to the payment set out in Clause (E)—Pay of this Schedule, overtime shall be paid in accordance with Part A, Conditions of the Water Corporation Interim Agreement 2000 where out of hours work is required and involves—

- (i) installation work necessary to complete a construction project;
- (ii) work not associated with a fault in an operating system provided the work is not a continuation of the normal maintenance programme;
- (iii) emergencies brought about by cyclone, flood or other similar occurrences; or
- (iv) call-outs in excess of a 6 hour continuous period inclusive of travelling time. In such a case, the whole of the period worked, inclusive of travelling time, shall be paid for in accordance with the overtime provisions of the Water Corporation Interim Agreement 2000.

(G) Late Start

Notwithstanding the provisions of subclause (D) of Clause 3.2—Overtime of the Part A, Conditions of the Water Corporation Interim Agreement 2000, all time worked after midnight

and prior to the commencement of the ordinary work of that day shall be added to the usual commencing time of that day to enable a late start for such employee and in any event, any call-out after midnight shall entitle the employee to a minimum late start of 2 hours. Such a late start shall be without loss of pay.

(H) Telephones

- (i) Where, at the commencement of the Water Corporation Interim Agreement 2000, the telephone rental and business calls of an employee were being paid for by the Corporation, that arrangement shall continue whilst the employment status of that employee remains constant.
- (ii) An employee relieving as a Mobile Mechanical Fitter shall be reimbursed pro-rata telephone rental for the duration of such relief, where the employee being relieved has such rental reimbursed.
- (iii) In any event, an employee shall be reimbursed the cost of business calls.
- (iv) Allocation of new installations and/or connections paid for by the Corporation shall be at discretion of the Corporation.

**WATER CORPORATION INTERIM AGREEMENT 2000
SCHEDULE C—RANGERS**

The provisions of the Water Corporation Interim Agreement 2000 apply to Rangers employed by the Corporation, except where those provisions are inconsistent with this Schedule, in which case the provisions of this Schedule shall apply.

(A) Hours

- (i) An employee who is classified as a Ranger and paid the rates prescribed for a Ranger in Table (B) of Clause 2.2—Rates of Pay of Part B, Pay and Allowances of the Water Corporation Interim Agreement 2000, shall be available for duty as required on any of the 7 days of the week.
- (ii) In the absence of fixed hours of duty the Corporation may substitute the hours generally applying to the majority of the workforce for timekeeping and payroll purposes.

(B) Rostered Time Off

In each 14 day period a Ranger shall have one 12 hour period during the day and one 36 hour period (day/night/day) rostered off duty.

(C) Public Holidays

- (i) A Ranger required to work on a public holiday shall be paid 8.5 hours, irrespective of actual time worked, at double time and one half, or if the employee agrees at time and one half and in addition be allowed to take a day's leave with pay on a day mutually agreed between the employee and the Corporation.
- (ii) For the purposes of this clause the hourly rate shall be calculated by dividing the weekly pay rate by 38.

(D) Sick Leave

A Ranger shall have sick leave entitlements debited at the rate of one eleventh of a fortnight for each day's non-attendance on the grounds of personal ill health or injury.

(E) Special Provisions

- (i) A Ranger shall be supplied with a house on site and be required to live in it.
- (ii) Power, water and fuels for cooking and heating shall be supplied free of charge.
- (iii) Telephone rental and calls within areas designated by the Corporation shall be paid for by the Corporation.
- (iv) A Ranger shall be provided with first aid training and be appointed as First Aid Attendant in accordance with subclause (N) of Clause 2.2, Special Rates and Provisions of Part B, Pay and Allowances of the Water Corporation Interim Agreement 2000 .
- (v) A Ranger shall be provided with a uniform as agreed from time to time between the Corporation and the relevant Union.

(vi) A Ranger called out to work during the period 10:30pm to 5:30am shall not be required to perform other than source operational duties for an equivalent period of that day.

- (vii) (a) In addition to the pay rates prescribed for a Ranger in Table (B) of Clause 2.2- Rates of Pay of Part B, Pay and Allowances of the Water Corporation Interim Agreement 2000 , a weekly loading of 25% of the pay shall be payable for all purposes, including calculation of superannuation entitlements.
- (b) The loading prescribed above shall be paid as compensation for the absence of fixed hours of duty.

(F) Ranger Harding Dam

An additional loading of 10% shall be paid on the rates prescribed in paragraph (vii)(a) of subclause (E), in lieu of the time provisions set out in paragraph (vi) of subclause (E).

(G) Ranger Relieving at Another Dam

- (i) Accommodation provided to a Ranger relieving at another dam shall be of a standard agreed to from time to time between the Corporation and the relevant Union.
- (ii) An allowance equivalent to that prescribed in subclause (V) of Clause 3.2—Overtime of Part A, Conditions of the Water Corporation Interim Agreement 2000 shall be paid on the following basis—
 - (a) relief not involving an overnight stay—one allowance; or
 - (b) relief involving an overnight stay—three allowances.
- (iii) In addition to any other provisions in this clause the following provisions shall apply—
 - (a) When relief extends beyond 4 consecutive 24 hour periods a Ranger shall be allowed 8 hours off duty without loss of pay for the purpose of re-provisioning for the continuance of that relief.
 - (b) The 8 hour period shall be allowed after each 4th day or by mutual agreement with the Corporation.
 - (c) For the purposes of this subclause the 8 hours off duty does not break the continuity of the relief.

**WATER CORPORATION INTERIM AGREEMENT 2000
SCHEDULE D—APPRENTICES**

(A) For the purposes of this Schedule, Tradespersons rate means the rate of pay prescribed for an employee classified as a Water Industry Tradesperson Level C10 in Table (C) of Clause 2.2—Rates of Pay of Part B, Pay and Allowances of the Water Corporation Interim Agreement 2000 .

(B) The weekly pay for apprentices shall be a percentage of a tradespersons rate according to the following—

Five-year term	%
First year	40
Second year	48
Third year	55
Fourth year	75
Fifth year	88
Four-year term	
First year	42
Second year	55
Third year	75
Fourth year	88
Three and a half-year term	
First six months	42
Next year	55
Next following year	75
Final year	88
Three-year term	
First year	55
Second year	75
Third year	88

(C) Tool Allowance

In addition to the pay rates prescribed in this schedule, apprentices shall be paid the appropriate tool allowance prescribed in Clause 2.2—Rates of Pay of Part B, Pay and Allowances of the Water Corporation Interim Agreement 2000.

(D) Minimum Wage

- (i) No employee, 21 years of age or over shall be paid less than the minimum weekly rate of pay for employees 21 or more years of age as prescribed by an Order made under Section 15 of the Western Australian Minimum Conditions of Employment Act 1993 as the ordinary rate of pay in respect of the ordinary hours of work prescribed by the Water Corporation Interim Agreement 2000, or in the case of an adult apprentice, not less than 87.4% of the tradespersons rate at C10, prescribed in paragraph (A) of this schedule, whichever is the greater.
- (ii) Where the minimum rate of pay is applicable that rate shall be payable for public holidays, during annual leave, sick leave, long service leave and any other paid leave prescribed by the Water Corporation Interim Agreement 2000.

WATER CORPORATION INTERIM AGREEMENT 2000

SCHEDULE E—PUMPERS NORTH WEST REGION

(A) Application and General Conditions of Employment

The provisions of the Water Corporation Interim Agreement 2000 shall apply to pumpers employed by the Corporation, except where those provisions are inconsistent with this schedule, in which case the provisions of this schedule shall apply.

(B) Pay

In addition to the appropriate weekly pay prescribed in Clause 2.2—Rates of Pay, Table (B) of Part B, Pay and Allowances of the Water Corporation Interim Agreement 2000 an allowance expressed as a percentage shall be paid in lieu of all work performed outside designated ordinary hours of work.

(C) Hours

- (i) An employee who is classified as a Pumper shall be available for duty as required on any 7 days of the week.
- (ii) In the absence of fixed hours of duty the Corporation may substitute the hours generally applying to the majority of the workforce for timekeeping and payroll purposes.
- (iii) Days in lieu of rostered days off and Public Holidays worked shall be taken by mutual arrangement between the employee and the Corporation.

PART B—PAY AND ALLOWANCES

SECTION ONE—PRELIMINARY

Deleted

SECTION TWO — MONEY MATTERS

CLAUSE 2.1 GENERAL PAY INCREASE

An employee covered by this Agreement on the date on which it comes into effect shall be entitled to an increase of four percent on their then substantive base rate of pay, provided that—

- (a) If such an employee qualifies, during the term of this Agreement, to progress within any of the Schedules in Clause 2.2 Rates Of Pay of this Part, that employee shall be entitled to be paid four percent above the relevant rate of pay shown in the Schedules for the point to which they progress.
- (b) If such an employee is promoted during the term of this Agreement, that employee shall be entitled to be paid four percent above the relevant rate of pay shown in the above Schedules for the level or classification to which they are promoted.
- (c) If such an employee is in receipt of higher responsibility allowance on the date on which this Agreement comes into effect or subsequently becomes eligible for higher responsibility allowance, the rate on which that allowance is calculated shall be the relevant rate shown in the above Schedules plus four percent.

- (d) A former employee whose fixed term contract expired prior to the date on which this Agreement comes into effect and who was not offered a renewal of that contract at that time, and who subsequently rejoins the Corporation within six months of the expiry of the former contract, is entitled to the four percent increase.
- (e) An employee covered by this Agreement on the date on which it comes into effect whose fixed term contract subsequently expires and who is not offered a renewal of that contract at that time, and who subsequently rejoins the Corporation within six months of the expiry of the former contract, is entitled to the four percent increase.

CLAUSE 2.2 RATES OF PAY

Subject to Clause 3.3—Leave Reserved of this Agreement and Clause 3.1—Method of Payment of the Water Corporation Interim Agreement 2000, the rates of pay for employees covered by this Agreement shall be according to the tables in (A), (B), (C) and (D) hereunder.

(A) Annual Pay Rate Employees

Classification	Pay Point	Annual Rate \$	F/Night \$
Level 8	Point 23	86,437	3313.91
	Point 22	83,035	3183.47
Level 7	Point 21	75,394	2890.54
	Point 20	72,890	2794.54
Level 6	Point 19	66,923	2565.76
	Point 18	63,713	2442.69
Level 5	Point 17	57,493	2204.22
	Point 16	54,789	2100.54
Level 4	Point 15	49,516	1898.39
	Point 14	48,203	1848.05
Level 3	Point 13	45,236	1734.31
	Point 12	43,476	1666.84
Level 2	Point 11	40,255	1543.35
	Point 10	38,277	1467.50
Level 1	Point 9	35,105	1345.89
	Point 8	33,677	1291.14
	Point 7	31,383	1203.19
	Point 6	28,225	1082.12
	Point 5	25,852	991.14
	Point 4	23,213	889.98
	Point 3	20,294	778.08
	Point 2	17,650	676.69
	Point 1	15,355	588.71

Specified Callings

Level 2/4	5th Year	49,516	1898.39
Level 2/4	4th Year	48,203	1848.05
Level 2/4	3rd Year	43,476	1666.84
Level 2/4	2nd Year	40,255	1543.35
Level 2/4	1st Year	38,277	1467.50

(B) Water Industry Workers

Water Industry Worker	Annual Rate	Rate per f/n \$	Relativity to Tradesperson (%)	Skill Band
Level 7.1	41,156	1577.88	132.5	
Level 6.4	40,409	1549.23	130.0	
Level 6.3	38,931	1492.58	125.0	E
Level 6.2	37,448	1435.72	120.0	
Level 6.1	36,690	1406.65	117.5	
Level 5.4	35,959	1378.64	115.0	
Level 5.3	35,209	1349.89	112.5	D
Level 5.2	34,462	1321.24	110.0	
Level 5.1	33,712	1292.50	107.5	
Level 4.2	32,973	1264.17	105.0	C+
Level 4.1	32,235	1235.85	102.5	
Level 3.2	31,493	1207.41	100.0	C
Level 3.1	30,942	1186.30	98.2	
Level 2.4	30,693	1176.75	97.3	
Level 2.3	30,021	1150.97	95.1	B
Level 2.2	29,370	1126.04	92.9	
Level 2.1	28,889	1107.58	91.3	
Level 1	28,678	1099.51	90.6	A

- (i) The base rates shown include the Government Water Supply, Sewerage & Drainage Wage Loading previously prescribed as at 18 April 1990.

(C) Water Industry Engineering Tradespersons

Classification	Annual Rate \$	F/Nightly Rate \$
Level C13	25,602	981.55
Level C12	27,160	1041.28
Level C11	28,615	1097.07
Level C10	30,826	1181.84
Level C9	32,287	1237.85
Level C8	33,740	1293.56
Level C8.5	34,583	1325.90
Level C7	35,198	1349.46
Level C6	38,104	1460.86
Level C5	39,556	1516.56
Instrument/Electrical		
Level DC10	34,711	1330.79
Level DC9	36,784	1410.26
Level DC 8	38,228	1465.64
Level DC 7	39,698	1521.97
Level DC 6	41,850	1604.50
Level DC 5	43,303	1660.21

- (i) In addition to the above rates an employee classified C13 to C7 or DC10 to DC7 inclusive, shall receive an all purpose experience allowance of \$12.55 per week, payable after 1 year of service in the Water Industry or the equivalent elsewhere in industry.

(D) Building Trades Employees

Classification	Annual Rate \$	F/Nightly Rate \$
Painter or signwriter on engagement	30,826	1181.84
After 1 years service	31,185	1195.63
After 2 years service	31,473	1206.67

(E) Tool Allowance

(i) Engineering Trades

- (a) Where the Corporation does not provide a tradesperson or an apprentice with the tools ordinarily required by that tradesperson or apprentice in the performance of work as a tradesperson or as an apprentice the Corporation shall pay a tool allowance of—

- (i) \$9.71 per week to such tradesperson or apprentice
- (b) Any tool allowance paid pursuant to (a) shall be included in, and form part of, the ordinary weekly rate prescribed in Table (C) of this clause.
- (c) The Corporation shall provide for the use of tradespersons or apprentices all necessary power tools, special purpose tools and precision measuring instruments.
- (d) A tradesperson or apprentice shall replace or pay for any tools supplied by the Corporation if lost through the negligence of the employee.

(ii) Building Trades

In addition to the rate of pay prescribed in Tables (B) and (D) of this clause for a tradesperson bricklayer, carpenter, painter or signwriter or plasterer such employee shall be paid a tool allowance as follows—

	\$ Per Week
(a) Tradesperson Bricklayer	13.40
(b) Carpenter and/or Joiner	18.70
(c) Painter or Signwriter	4.60
(d) Plasterer	15.40

(F) Leading Hands

An employee placed in charge of—

- (i) for Metal Trades;
- (a) 3 and not more than 10 other employees shall be paid \$17.52 per week extra.

- (b) more than 10 and not more than 20 other employees shall be paid \$26.81 per week extra.

- (c) more than 20 other employees shall be paid \$34.62 per week extra.

(ii) for Building Trades;

- (a) 3 and not more than 10 other employees shall be paid \$27.02 per week extra.

- (b) more than 10 and not more than 20 other employees shall be paid \$36.00 per week extra.

- (c) more than 20 other employees shall be paid \$45.07 per week extra.

CLAUSE 2.3 SPECIAL RATES AND PROVISIONS

(A) The following rates apply only to employees paid in accordance with Tables (B), (C) and (D) of Clause 2.2—Rates of Pay of this Part.

(B) Allowances not Cumulative

For the purposes of this clause, where more than one of the disabilities entitling an employee to extra rates exists on the same job, the Corporation shall be bound to pay only one rate, namely the highest for the disabilities so prevailing. Provided that this subclause shall not apply to confined space, dirt money, height money, hot work, wet work, first aid or construction allowance the rates for which are cumulative.

(C) Asbestos

- (i) An employee using materials containing asbestos or working in close proximity to any employee using such material shall be provided with and shall use all necessary safeguards as required by the appropriate occupational health authority.

- (ii) Where such safeguards include the mandatory wearing of protective equipment i.e. combination overalls and breathing equipment of similar apparatus, any such employee shall be paid 47 cents per hour extra whilst so engaged.

(D) Bosun's Chair Allowance

An employee required to work in a bosun's chair or on a single plank swing-scaffold shall be paid an additional 53 cents per hour or part thereof.

(E) Cement, Lime Or Flyash

- (i) An employee exposed to cement dust or powdered lime, while spreading or mixing them, shall be paid 36 cents per hour extra.

- (ii) Employees working with powdered lime are to be supplied by the Corporation with adequate protective clothing.

(F) Closet Cleaning Allowance

- (i) All employees called upon to clean closets, connected with septic tanks or sewerage shall receive an allowance of 46 cents per closet per week.

- (ii) For the purposes of this subclause 1 metre of urinal shall count as one closet and three urinal stalls shall count as one closet.

- (iii) All such employees shall be supplied with rubber gloves.

(G) Cofferdams

Any employee doing coffer dam work not under air pressure shall be paid an all purpose allowance of \$6.73 per week. Where employees are doing such work under pressure a rate shall be agreed between the parties.

(H) Confined Spaces

An employee working in a compartment, space or place the dimensions of which necessitate working in an unusually stooped or otherwise cramped position, or without proper ventilation, shall be paid an allowance of 49 cents per hour whilst so engaged.

(I) Chainmen And Meter Fitters' Vehicle Allowance

A chainman or meter fitter who, in the course of his/her duties, has to ride a motor cycle or drive a motor vehicle shall be paid \$8.19 per week extra.

(J) Construction Work Allowance

- (i) All employees required to perform construction work, as defined below, shall be paid an allowance of \$16.47 per week to compensate for disabilities when actually engaged on construction work on site.

(ii) "Construction Work" for the purpose of paragraph (i) of this subclause hereof shall mean and include all work performed on site on the construction, alteration, repair or maintenance of roads, reservoirs and drainage works, pipelines, water and sewerage mains and services. It shall not include the following classes of work—

- (a) work in, around and/or adjacent to any office, workshop, depot, yard, treatment works, nursery or other similar establishments where there is access to reasonable amenities;
- (b) work in, around and/or adjacent to pumping stations for less than 2 hours;
- (c) gardening operations; or
- (d) driving vehicles, floats or fork lifts when that driving is not directly associated with construction work (as defined) for less than 4 hours on the day.

(iii) Provided that employees who are engaged in the construction or alteration of any building, structure or other civil engineering project which is carried out in areas excluded in paragraph (ii)(a) and (b) of this subclause shall be paid a construction allowance at the rate of \$8.23 per week.

(K) Dirt Money

An employee while engaged on work of an unusually dirty nature shall be paid an extra 37 cents per hour.

(L) Electrical Licence Allowance

An Electronic Tradesperson, an Electrician—Special Class, an Electrical Fitter and/or an Armature Winder or an Electrical Installer who holds and in the course of employment may be required to use a current 'A' grade or 'B' grade licence issued pursuant to the relevant Regulation in force on the 28th day of February 1978 under the Electricity Act 1948 shall be paid an allowance of \$13.95 per week. Provided that an employee appointed to the DC classification structure as contained in Table (C) of Clause 2.2—Rates of Pay of this Part shall not receive this allowance as the pay rate contained in the DC classification structure includes a component for license allowance.

(M) Explosive Powered Tools Allowance

An employee qualified in accordance with the laws and regulations of the State to operate explosive powered tools shall be paid an allowance of 91 cents per day on which the employee uses such tools.

(N) First Aid Attendant

- (i) An adequate first aid outfit shall be provided and maintained by the Corporation in work areas.
- (ii) An employee who is a qualified first aid attendant and is appointed by the Corporation to carry out first aid duties in addition to normal duties, shall be paid an additional rate of \$1.35 per day.
- (iii) The name and where practicable the location of the appointed first aid attendant shall be made known to employees.

(O) Fluoride Allowance

An employee who is required to handle fluoride shall be paid an allowance of \$3.31 per week. This allowance shall only be payable to an employee who was formerly covered by the Government Water Supply (Kalgoorlie Pipeline) Award No 15 of 1981, which has been cancelled.

(P) Fumes

An employee required to work in a place where fumes of sulphur or acids or other offensive fumes are present shall be paid an allowance of 36 cents for each hour worked.

(Q) Drivers Licenses

Initial issue or additional classifications of drivers licenses required by the Corporation shall be paid for by the Corporation. In addition the Corporation shall allow the employee sufficient time off with pay to take the requisite test.

(R) Height Money

An employee while working at a height of 9 metres or more above the nearest horizontal plane shall be paid 37 cents per hour extra.

(S) Hot Bitumen

An employee handling hot bitumen or asphalt or dipping materials in creosote shall be paid 48 cents per hour extra.

An employee shall be supplied with gloves and overalls and with oil or other solvents suitable for the removal of the said materials.

(T) Hotwork

An employee who works in a place where the temperature has been raised by artificial means to between 46°C and 54°C shall be paid 40 cents per hour or part thereof, and to more than 54°C—49 cents per hour or part thereof, in addition to any other amount prescribed for the employee elsewhere in this Agreement. Where such work continues for more than 2 hours the employee shall be entitled to 20 minutes rest after every 2 hours work without loss of pay, not including the special rate provided by this subclause.

(U) Pesticides

- (i) An employee required to wear protective clothing or equipment for the purposes of this subclause shall be paid 46 cents per hour or part thereof while doing so.
- (ii) An allowance is not payable under this subclause if the appropriate Health Authority advises the Corporation in writing that protective clothing or equipment is not necessary.
- (iii) When the Corporation requires an employee to use a pesticide it shall—
 - (a) Inform the employee of any known health hazards involved; and
 - (b) Ascertain from the appropriate Health Authority whether and, if so, what protective clothing or equipment should be worn during its use.
- (iv) Pending advice from that Authority the Corporation may require the pesticide to be used, provided that the Corporation informs the employee of any safety precautions specified by the manufacturer of the pesticide and instructs the employee to follow those precautions.
- (v) The Corporation shall supply the employee with any protective clothing or equipment required pursuant to (iii) or (iv) of this subclause and, where necessary, instruct the employee in its use.

(V) Pneumatic Tools (Percussion)

Any employee actually working a pneumatic tool of the percussion type shall be paid 34 cents per hour extra whilst so engaged.

(W) Polychlorinated Biphenyls

Employees required to remove or handle equipment or fittings containing polychlorinated biphenyls (PCBs) for which protective clothing must be worn shall, in addition to the rates and provisions contained in this clause, be paid an allowance of \$1.40 per hour whilst so engaged.

(X) Sand Blasting

An employee sand blasting shall be paid an allowance of 48 cents per hour for each such hour.

(Y) Scrub Cutter Allowance

An employee required to use a scrub cutter shall be paid an allowance of 46 cents per hour. No employee shall be required to work for more than 50 consecutive minutes without a break of 10 minutes, whilst so engaged.

(Z) Sewerage Work

- (i) Sewerage maintenance employees, whilst engaged in field work, shall be paid \$23.88 per week to compensate for the disabilities and dirty work associated with the work performed. This allowance is to be in lieu of all other allowances contained within this clause.
- (ii) An employee on live sewer work shall be paid an additional 32 cents per hour.
- (iii) An employee (other than a sewerage maintenance employee) who comes into contact with raw sewage during the operation of cleaning out septic tanks, sand pits, ripple chambers, suction chambers of sewerage pumping stations or in deragging of sewerage pumps shall be paid \$3.44 per day extra.

- (iv) An employee (other than a sewerage maintenance employee) employed on offensive work in connection with working in or about old sewers or working in ground where fumes arise from decomposed material or from any other cause shall be paid 25% of the employee's ordinary time rate extra.

(AA) Compressed Air Work

The following special rates shall be paid to employees engaged in construction work in compressed air—

Gauge Reading	Rates per hour worked and spent in compression and decompression
0 to 34 KPa	\$0.63
Over 35 and up to 65 KPa	\$0.84
Over 65 and up to 100 KPa	\$1.69
Over 100 and up to 170 KPa	\$3.30
Over 170 and up to 225 KPa	\$5.80
Over 225 and up to 275 KPa	\$10.53

(BB) Slurry Work

A slurry refiller when so engaged shall not be entitled to wet pay, but shall receive an additional \$1.50 per day.

(CC) Shaft Sinking

Any sinker required to timber any shaft, drive or trench shall be paid an additional 42 cents per day or part thereof.

(DD) Shotfirers Allowance

An employee being a permit holder, responsible for the proper handling of explosives and the conducting of firing shall be paid an allowance of \$4.28 per shift.

(EE) Spray Painting

- (i) Where the nature of the paint or substance used in spraying is such that a respirator would be of little or no practical use in preventing the absorption of fumes or materials from substances used, an employee shall be paid an extra \$1.12 per day.
- (ii) Each employee applying paint by spraying, shall be provided with full overalls, head covering and a respirator by the Corporation.
- (iii) Lead paint shall not be applied by a spray to the interior of any building.
- (iv) No surface painted with lead paint shall be rubbed down or scraped by a dry process.
- (v) Width of brushes: Paint brushes shall not exceed 127 mm in width and no kalsomine brush shall be more than 177.8 mm in width.
- (vi) No employee shall be permitted to have a meal in any paint shop or place where paint is stored or used.

(FF) Steam/Water Cleaning

An employee using a steam or water cleaning unit shall be paid an allowance of 36 cents per hour whilst so engaged.

(GG) Toxic Substances

- (i) An employee using toxic substances or materials of a like nature shall be paid 49 cents per hour extra. An employee working in close proximity to any employee so engaged shall be paid 40 cents per hour extra.
- (ii) For the purpose of this subclause toxic substances shall include epoxy based materials and all materials which include or require the addition of a catalyst hardener or reactive additives deemed (by mutual agreement between the Corporation and the relevant Union) to be materials of a similar relative toxicity to epoxy resins.

(HH) Traffic Control

An employee who regulates and controls vehicular traffic in thoroughfares shall receive an allowance of \$1.62 per shift above the employee's usual rate.

(II) Underground Allowance

- (i) An employee required to work underground on tunnelling or shaft sinking shall be paid an amount of \$1.62 per day or shift in addition to any other amount prescribed for such employee elsewhere in this Agreement. Where a shaft is to be sunk to a depth greater than 6 metres the payment of the underground

allowance shall commence from the surface. This allowance shall not be payable to employees engaged upon "cut and cover" work at a depth of 3.5 metres or less or to employees in trenches or excavations.

- (ii) "Shaft" means an excavation over 1.8 metres deep with a cross sectional area of less than 13.4 square metres.
- (iii) "Tunnelling" shall include all work performed in a tunnel until it is commissioned.

(JJ) Well Work

An employee required to enter a well 9 metres or more in depth for the purpose, in the first instance, of examining the pump, or any other work connected therewith, shall receive an amount of \$1.96 for such examination and 75 cents per hour extra thereafter for fixing, renewing or repairing such work.

(KK) Wet Places

- (i) Any employee working in a wet place shall be paid an allowance of \$1.87 per day in addition to the employee's ordinary rate, irrespective of the time worked unless the employee's classification expressly includes an allowance for wet pay.
- (ii) A place shall be deemed to be wet when it is agreed that water (other than rain) is continually dropping from overhead to such an extent that it would saturate the clothing of an employee if the employee was not provided with waterproof clothing or when the water in the place where the employee is standing is over 2.5 cm deep.
- (iii) An employee shall be paid an allowance of 25% of the employee's ordinary rate where the Corporation directs work to continue in the rain.
- (iv) An employee required to work in a wet place or during wet weather shall be provided with rubber boots and adequate waterproof clothing, including waterproof head covering so as to protect the employee from getting wet. Such waterproof clothing and rubber boots shall be replaced as required, subject to fair wear and tear in the service of the Corporation.

(LL) Workers Compensation Make Up Pay

- (i) The Corporation shall pay an employee workers' compensation make-up pay where the employee received an injury for which weekly payments of compensation are payable by or on behalf of the Corporation pursuant to the provisions of the Workers' Compensation and Rehabilitation Act 1981, as amended from time to time.
- (ii) "Workers' compensation make-up pay" means a weekly payment of an amount being the difference between the weekly amount of compensation paid to the employee pursuant to Workers' Compensation and Rehabilitation Act and the employee's appropriate 38 hour rate, or where the incapacity is for a lesser period than 1 week, the difference between the amount of compensation and the employee's 38 hour rate for that period.
- (iii) The Corporation shall pay workers' compensation make-up pay during the incapacity of the employee until such incapacity ceases or until the expiration of a period of 26 weeks from the date of injury, whichever event shall first occur.
- (iv) The liability of the Corporation to pay workers' compensation make-up pay in accordance with this clause shall arise as at the date of the injury or accident in respect of which compensation is payable. The termination of the employee's employment for any reason during the period of any incapacity shall in no way affect the liability of the Corporation to pay workers' compensation make-up pay as provided in this subclause.
- (v) In the event that the employee receives a lump sum in redemption of weekly payments under the Workers' Compensation and Rehabilitation Act, the liability of the Corporation to pay workers' compensation make-up pay as herein provided shall cease from the date of such redemption.
- (vi) The Corporation may at any time apply to the Western Australian/Australian Industrial Relations

Commission for exemption from the provisions of this clause on the grounds that a workers' compensation make-up pay scheme proposed and implemented by the Corporation contains provisions generally more favourable to the employees than the provisions of this clause.

CLAUSE 2.4 ADJUSTMENT OF ALLOWANCES

Allowances prescribed in this Agreement will be varied to reflect changes in relevant awards as described in Part A, Conditions Clause 1.4—Precedence Over Awards, subject to orders of the Australian or Western Australian Industrial Relations Commission, as and when they occur.

CLAUSE 2.5 HIGHER RESPONSIBILITY ALLOWANCE

(A) Employees Paid in Accordance with Clause 2.2—Rates of Pay Table (A) of this Part—

- (i) An employee who is requested by the Corporation to act in a position which is classified higher than the employee's substantive position and who performs the full duties and accepts the full responsibility of the higher position for a continuous period of 76 hours or more, shall, subject to the provisions of this clause, be paid an allowance equal to the difference between the employee's own pay rate and the pay rate the employee would receive if the employee was appointed to the position in which the employee is required to act.
- (ii) Provided that where the hours of duty of an employee performing shift work are greater than 7.6 hours per day as provided for in Clause 3.3—Shift Work Allowance of Part A, Conditions of this Agreement the allowance shall be payable after the completion of 38 consecutive working hours in the higher classified position. This period shall not include any time worked as overtime.
- (iii) Where the full duties of a higher position are temporarily performed by 2 or more employees they shall each be paid an allowance based on the proportion of duties undertaken.
- (iv) An employee who is requested to act in a higher classified position but who is not required to carry out the full duties of the position and/or accept the full responsibilities, shall be paid such proportion of the allowance provided for in paragraph (i) of this subclause as the duties and responsibilities performed bear to the full duties and responsibilities of the higher position. Provided that the employee shall be informed, prior to the commencement of acting in the higher classified position of the duties to be carried out, the responsibilities to be accepted and the allowance to be paid.
- (v) The allowance paid may be adjusted during the period of higher duties.
- (vi) Where an employee who has qualified for payment of higher duties allowance under this clause is required to act in another position or other positions classified higher than the employee's own for periods less than 76 consecutive hours without any break in acting service, such employee shall be paid a higher duties allowance for such periods: provided that payment shall be made at the highest rate the employee has been paid during the term of continuous acting or at the rate applicable to the position in which the employee is currently acting, whichever is the higher.
- (vii) Acting service with allowances for acting in offices for the same classification or higher than the position during the 18 months preceding the commencement of such acting shall aggregate as qualifying service towards such an increase in the allowance.
- (viii) Where an employee who is in receipt of an allowance provided under this clause and has been so for a continuous period of 12 months or more, proceeds on—
 - (a) a period of normal annual leave; or
 - (b) a period of any other paid leave of absence of not more than 4 weeks;

the employee shall continue to receive the allowance for the period of leave: provided that this subclause shall also apply to an employee who has been in receipt of an allowance for less than 12 months if during the employee's absence no other employee acts in the position in which the employee was acting immediately prior to proceeding on leave and the employee resumes in the position immediately on return from leave.

- (ix) For the purpose of this subclause the expression "normal annual leave" shall mean the annual period of recreation leave as referred to in Clause 2.2—Annual Leave of Part A, Conditions of the Water Corporation Interim Agreement 2000 and shall include any public holidays and leave in lieu accrued during the preceding 12 months taken in conjunction with such annual recreation leave.
- (x) Where an employee who is in receipt of an allowance granted under this clause proceeds on—
 - (a) a period of annual leave in excess of the normal; or
 - (b) a period of any other approved leave of absence of more than 4 weeks, the employee shall not be entitled to receive payment of the allowance for the whole or any part of the period of such leave.

(B) Employees Paid in Accordance with Clause 2.2—Rates of Pay Tables (B),(C) and (D) of this Part—

- (i) An employee required by the Corporation to carry out the duties and responsibilities of a higher level job ranked at WIW Level 3 or C 10 and above shall be paid the higher rate for the whole day or shift during which such duties and skills are being exercised. Provided that an employee so engaged for less than 2 hours shall be paid for the time actually worked.
- (ii) These arrangements shall apply where an individual is covering a position vacant as a result of such things as sickness, annual leave, long service leave, special leave or the position is vacant because the normal occupant is in another position on acting duty arrangements. Ordinarily this would be for a period of no longer than 3 months and in any event no longer than 6 months.
- (iii) An employee who proceeds on annual leave shall be paid at the rate the employee has received for the greatest portion of the calendar month prior to taking the leave.
- (iv) An employee who has been employed in 1 or more positions each of which carries a higher rate than the employee's permanent classified rate for a continuous period of 12 months ending not earlier than 2 weeks before the day on which the employee commences long service leave or is paid pro rata long service leave in accordance with Clause 2.4 of the Water Corporation Interim Agreement 2000, the rate which the employee has received for the greatest portion of that 12 month period shall be the rate at which the long service leave is paid.

CLAUSE 3.4 SIGNATORIES

Signed for and on behalf of the Corporation.

Sgd.....

Acting Chief Executive Officer.

Dated: 9/1/01

Sgd.....

Witness.

Dated: 9/1/01

Signed for and on behalf of the Community and Public Sector Union, WA Branch, Civil Service Association of Western Australia Incorporated.

Sgd.....

Dated: 8/1/01

Sgd.....

Witness.

Dated: 5/1/01

Signed for and on behalf of the Australian Liquor, Hospitality and Miscellaneous Workers Union(WA Branch).

Sgd.....

Dated: 8/1/01

Sgd.....

Witness.

Dated: 8/1/01

Signed for and on behalf of the Australian Workers Union.

Sgd.....

Dated: 21/12/00

Sgd.....

Witness.

Dated: 21/12/00

**WESTERN AUSTRALIAN DEPARTMENT OF
TRAINING AND EMPLOYMENT PUBLIC SERVICE
AND GOVERNMENT OFFICERS' ENTERPRISE
AGREEMENT 2000.**

No. PSAAG 80 of 2000.

2001 WAIRC 01809

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES CHIEF EXECUTIVE, DEPARTMENT
OF TRAINING AND EMPLOYMENT
-and-

THE CIVIL SERVICE ASSOCIATION
OF WESTERN AUSTRALIA
INCORPORATED

CORAM COMMISSIONER P E SCOTT
DELIVERED TUESDAY, 16 JANUARY 2001

FILE NO PSAAG 80 OF 2000

CITATION NO. 2001 WAIRC 01809

Result Agreement registered

Order.

HAVING heard Ms J Caiacob on behalf of the Chief Executive, Department of Training and Employment and Ms J van den Herik on behalf of the Civil Service Association of Western Australia (Incorporated), and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Western Australian Department of Training and Employment Public Service and Government Officers' Enterprise Agreement 2000 in the terms of the following schedule be registered on the 21st day of December 2000 and shall replace the Western Australian Department of Training Public Service and Government Officers' Enterprise Agreement 1998 (No. PSA AG 12 of 1998), in respect of Public Service Officers employed at the Western Australian Department of Training.

(Sgd.) P. E. SCOTT,
Commissioner,
Public Service Arbitrator.

[L.S.]

Schedule.

PART 1—APPLICATION AND OPERATION OF
AGREEMENT

1.—TITLE

This Agreement will be called the Western Australian Department of Training and Employment Public Service and Government Officers' Enterprise Agreement 2000 and will replace the Western Australian Department of Training and Employment Public Service and Government Officers' Enterprise Agreement 1998.

2.—ARRANGEMENT

PART 1—APPLICATION AND OPERATION OF
AGREEMENT

1. TITLE
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12. PAST PRODUCTIVITY

PART 2—DISPUTE RESOLUTION

13. CONSULTATION PROVISIONS
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PART 3—EMPLOYER AND EMPLOYEES' DUTIES,
EMPLOYMENT RELATIONSHIP AND RELATED
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15. HIGHER DUTIES
16. CASUAL EMPLOYMENT

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37. HOME BASED WORK
 38. TRAVELLING ALLOWANCE
- SCHEDULE A: SALARIES
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- SCHEDULE C: SIGNATORIES OF PARTIES TO THE AGREEMENT
- SCHEDULE D: ALPHABETICAL LISTING OF PROVISIONS

3.—SCOPE

This Agreement will apply throughout the state of Western Australia to Officers employed in the Western Australian Department of Training and Employment. This Agreement will also apply to Officers on secondment to or in the College.

4.—PARTIES BOUND

The parties to this Agreement will be the Governing Council of the Western Australian Department of Training and Employment, and the Civil Service Association of Western Australia (Inc).

5.—DEFINITIONS

The following terms will have the following meanings—

“**Agreement**”: means the Western Australian Department of Training and Employment Public Service and Government Officers’ Enterprise Agreement 2000.

“**Award**”: means the Government Officers’ Salaries, Allowances and Conditions Award 1989.

“**College**”: means the Western Australian Department of Training and Employment.

“**Continuous service**”: Any period of service between the employee and employer under an unbroken contract of employment, and includes any authorised unpaid or paid absences.

“**CSA**”: means the Civil Service Association of Western Australia (Inc).

“**Department**”: means the Western Australian Department of Training and Employment.

“**Employee**”: for the purpose of this Agreement means, someone who is referred to at Clause 3—Scope.

“**Employer**”: means the Governing Council of the Western Australian Department of Training and Employment.

“**Full-Time Officer**”: A person employed to work 37 1/2 ordinary hours per week.

“**Government**”: means the Government of Western Australia.

“**GOSAC Award**”: means the Government Officers’ Salaries Allowances & Conditions Award 1989.

“**Managing Director**”: means the Managing Director of the Western Australian Department of Training and Employment, pursuant to section 46 of the Vocational Education and Training Act 1996.

“**Minister**”: is the Minister of the Crown who is responsible for the administration of the employing agency.

“**Officer**”: means a Public Service Officer as defined in the Public Sector Management Act 1994 or Government Officer as defined in the Industrial Relations Act 1979.

“**Part-Time**”: means regular and continuing employment for less than the ordinary hours for a “Full-Time Officer”.

“**Spouse**”: means a husband or wife of an employee, and includes a de facto spouse. For the purposes of Bereavement leave it includes a former spouse.

“**Union**”: means the Civil Service Association of Western Australia (Inc).

“**WAIRC**”: means the Western Australian Industrial Relations Commission.

6.—NUMBER OF EMPLOYEES COVERED

At the date of registration of this Agreement the approximate number of employees covered by this Agreement is (number).

7.—NO FURTHER CLAIMS

7.1 There will be no extra claims for salary adjustments other than that which is provided by this Agreement for the duration of its term.

7.2 There will be no further claims on matters contained in this Agreement for the duration of its term.

8.—TERM OF AGREEMENT AND RENEGOTIATION

8.1 This Agreement will operate on and from the date of registration and will remain in force for two years.

8.2 Six (6) months prior to the date of expiration of this Agreement, the parties will commence negotiation for its renewal or replacement.

8.3 The pay rates attained under this Agreement will form the new base rates for any future Agreement, provided that the productivity targets attained under this Agreement continue and previous productivity improvements in the last agreement are sustained, and changes to Award conditions maintained, or changed by agreement.

9.—RELATIONSHIP TO AWARDS

This Agreement will be read and interpreted wholly in conjunction with the Public Service Award 1992. This Agreement will have precedence to the extent of any inconsistency. Where the agreement is silent the relevant award will apply.

10.—AVAILABILITY OF AGREEMENT

Employees will have access to an electronic copy of this agreement. Where electronic copies are unavailable, hard copies of the agreement will be provided.

11.—OBJECTIVES OF THE AGREEMENT

It is the shared objectives of the parties to—

Work towards alignment of conditions for all TAFE employees.

Meet the requirements of clients and students through the provision of reliable, efficient and competitive services.

Achieve the Department’s mission and improve productivity and efficiency through identified improvements.

Achieve improvement and greater flexibility of working patterns and arrangements.

Promote and facilitate enhanced employee relations and increased job satisfaction.

To facilitate a continued cooperative approach to the introduction of change.

This Agreement will operate as a contributive mechanism to deliver a cost efficient Vocational Education and Training service.

12.—PAST PRODUCTIVITY

This Agreement incorporates past productivity to the date of registration.

PART 2—DISPUTE RESOLUTION

13.—CONSULTATION PROVISIONS

13.1 The parties acknowledge the need for a satisfactory Departmental consultative procedure. Staff participation and consultation is encouraged. The form of participation and consultation may vary at each workplace depending on individual circumstances. The Department will establish its own structure and processes. However, the non-establishment of a structure or process will not be used as a means to avoid requirement to consult.

13.2 Employees will be involved in broadly based representative consultative committees with structure and functions determined by the Department.

13.3 Consultative committees will provide a forum for staff and management to, where appropriate, seek the views of the other and enter into meaningful discussions that may contribute towards outcomes, in relation to operational matters.

13.4 Representatives from the Union, where it has members at the workplace, will be invited to participate on consultative committees.

13.5 The parties to this Agreement acknowledge that decision making continues to rest with the Department, which is accountable to Government, through legislation, for the operation of its business.

14.—DISPUTE RESOLUTION PROCEDURE

14.1 In the event of a dispute arising in the workplace the procedure to be followed to resolve the matter will be as follows—

14.1.1 The employee and their supervisor will meet and confer on the matter; and

14.1.2 If the matter is not resolved at such a meeting, the parties will arrange for further discussions between the employee and his or her nominated representative, if any, and more senior levels of management.

14.1.3 If the matter is still unresolved a discussion will be held between representatives of the Department or other representative of the employer and the Union or other employee representative.

14.1.4 If the matter cannot be resolved it may be referred to the WAIRC.

14.2 While the parties attempt to resolve the matter work will continue as normal unless an employee has a reasonable concern about an imminent risk to his or her health and safety.

PART 3—EMPLOYER AND EMPLOYEES' DUTIES, EMPLOYMENT RELATIONSHIP AND RELATED ARRANGEMENTS

15.—HIGHER DUTIES

15.1 An officer who undertakes duties of a higher classification for a period of 10 consecutive working days or more, inclusive of public holidays, will be paid at the salary applicable to the higher level proportionate to the level of duties and responsibilities assigned for the entire period of the higher duties.

15.2 The higher rate of payment will apply to an officer who proceeds on normal annual leave or any other approved leave of absence of not more than four weeks provided that the officer was in receipt of the additional payment for a continuous period of 12 months or more.

16.—CASUAL EMPLOYMENT

16.1 Casual employees may be employed for up to three months in any period of engagement, provided that where operationally necessary and in compliance with subclause 16.2 of this clause the period of engagement may be extended for up to a period of a further three months.

16.2 All casual engagements shall be in accordance with the following guidelines.

1. The type of employment involves specific workload demands of a short term nature;
2. The job is a short term project of a finite nature;
3. To replace an employee during a short term approved leave of absence.

PART 4—WAGES AND RELATED MATTERS

17.—SALARIES

17.1 Increases have been applied to the rates paid pursuant to the Western Australian Department of Training Public Service and Government Officers' Enterprise Agreement 1998 as expressed in column A.

17.2 The rates in Column B will be paid effective from the date of registration of the Agreement. The rates in column B reflect a 1.5% increase for changes to award/employment conditions contained in this Agreement.

17.3 The rates in Column C will be paid from the first pay period on or after 15 March 2001. The rates in Column C reflect a 1.5% increase for changes to award/employment conditions contained in this Agreement.

17.4 The rates in Column D will be paid from the first pay period on or after 15 March 2002. The rates in Column D reflect a 3% increase, subject to Cabinet Standing Committee on Labour Relations endorsement that the Productivity Improvement Plan targets have been achieved.

17.5 The pay rates attained under this Agreement will form the new base rates for any future Agreement, provided that the productivity targets attained under this Agreement continue and previous productivity improvements in the last agreement are sustained and changes to Award conditions maintained, or changed by agreement.

18.—SALARY PACKAGING

18.1 An employee may, by agreement with the employer, enter into a salary packaging arrangement in accordance with the Western Australian Department of Training and Employment Flexible Remuneration Packaging Scheme or any similar salary packaging arrangement offered by the employer.

18.2 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.

18.3 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.

18.4 The TEC for the purposes of salary packaging, is calculated by adding—

- 18.4.1 The base salary;
- 18.4.2 Other cash allowances, eg. Annual leave loading;

18.4.3 Non-cash benefits, eg superannuation, motor vehicles etc;

18.4.4 Any Fringe Benefit Tax liabilities currently paid; and

18.4.5 Any shift or commuted allowance or variable components, eg performance based incentives (where they exist).

18.5 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 agreement.

18.6 The salary packaging arrangement must be cost neutral in relation to the total cost to the employer.

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

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

18.9 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.

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

18.11 An employer will not unreasonably withhold agreement to salary packaging on request from an employee.

18.12 The Dispute Settlement Procedure contained in this Agreement will 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 to the WAIRC.

19.—PAYMENT ARRANGEMENTS

Salaries will be paid on a fortnightly basis directly into an approved bank, building society or credit union nominated by the employee.

20.—REPAYMENTS OF OVERPAYMENTS

20.1 Any salary overpayments will be repaid to the employer within a reasonable period of time.

20.2 If agreement cannot be reached, the employer may deduct the amount of overpayment over the same length of time that the overpayments occurred, or up to 6 months, whichever period is less.

20.3 The employer may not deduct or require an employee to repay an amount exceeding 20% of the employees' net pay in any one pay period.

20.4 On compassionate grounds, the Chief Executive may allow an extended period for the repayment of overpayments.

21.—VARIATION OF ALLOWANCES

21.1 Wherever an award allowance is calculated by reference to a classification salary point, the parties agree that all such allowances will be so varied by reference to the salary provided by this agreement.

21.2 All such allowances will be applicable from the same date as provided for any salary variation under this agreement.

PART 5—HOUR OF WORK, BREAKS, OVERTIME, SHIFT WORK AND WEEKEND WORK

22.—HOURS OF WORK

Notwithstanding the prescribed hours of duty in clause 16 of the Award, the employer and an employee may agree to vary the spread of hours during which the employee's ordinary hours of work may be worked. Any agreement must be voluntarily and genuinely made and an employee may not be forced, coerced or intimidated into any such variation to the spread of ordinary hours during which the hours of work may be worked.

23.—FLEXITIME

23.1 For the purpose of this clause, a settlement period will—

- 23.1.1 consist of 12 weeks;
- 23.1.2 have the required hours of duty of 450 hours; and
- 23.1.3 commence at the beginning of a pay period.

23.2 Credit hours at any point within the settlement period will not exceed 60 hours.

23.3 An officer may be allowed to clear flexi leave of a maximum of 6 full days, or any combination of half days and full days that does not exceed 6 full days in any settlement period.

23.4 Full days of flexi leave may be taken in accordance with Department policy.

23.5 Flexi-leave days may be taken consecutively during a Christmas Closedown.

23.6 Notwithstanding subclause 23.3, in the case of a Christmas Closedown of 12 working days, where sufficient credit hours are accrued, an employee may take seven consecutive flexi-leave days. This subclause does not apply in the case of a Christmas Closedown of less than 12 working days.

23.7 Credit hours to a maximum of thirty seven hours thirty minutes will be allowed at the end of each settlement period and will be carried forward to the next settlement period.

23.8 In the case of credit hours greater than thirty seven hours thirty minutes gained in one settlement period, the hours in excess of thirty seven hours thirty minutes will be lost.

PART 6—LEAVE OF ABSENCE AND PUBLIC HOLIDAYS

24.—ANNUAL LEAVE

24.1 By written approval of the employer, accrued annual leave may be paid out (equivalent benefit) instead of taken.

24.2 The paying out of accrued annual leave is not obligatory and is subject to agreement of both the employer and employee.

24.3 Annual Leave Travel Concessions—Officers Stationed in Remote Areas

24.3.1 Where an officer's headquarters is situated in District Allowance Areas 3,5,6 and in that portion of area 4 located north of 30° South Latitude, as defined in Schedule D—District Allowance of the Award, a travel concession to the value of return economy airfares to Perth or Geraldton will be provided for the officer and his/her dependants when the officer travels from his/her normal place of employment on Annual Leave.

24.3.2 The officer will only be entitled to the actual cost of the travel, up to the value of return economy airfares for the officer and his/her dependents to Perth or Geraldton, whichever is the higher. The employer will not reimburse the officer unless the officer supplies evidence acceptable to the employer of the actual cost of travel.

24.3.3 An officer is required to serve 12 months in these areas before qualifying for travel concessions.

25.—LONG SERVICE LEAVE

25.1 Long service leave will be taken within three years of it becoming due, at the convenience of the employer. Provided that the employer may approve the deferment of long service leave in exceptional circumstances. Provided further that such exceptional circumstances will include retirement within five years of the date of entitlement.

25.2 Approval to defer the taking of long service leave may be withdrawn or varied at any time by the employer giving the officer notice in writing of the withdrawal or variation.

25.3 For the purposes of determining an employee's long service leave entitlement, the expression 'continuous service' does not include any period between the third anniversary date of the employee having accrued an entitlement to long service leave, or a deferred commencing date approved by the employer pursuant to subclause 27.1 and the date on which the employee clears that entitlement.

25.4 Accrued long service leave may be taken in periods of not less than one day.

25.5 By written approval of the employer, accrued long service leave may be paid out (equivalent benefit) instead of taken.

25.6 The paying out of accrued Long Service Leave is not obligatory and is subject to agreement of both the employer and employee.

26.—SICK LEAVE

26.1 Sick leave entitlement

26.2 The sick leave provisions of the Public Service Award will continue to apply, except that the Chief Executive may approve further paid leave in exceptional circumstances.

27.—FAMILY/CARER'S LEAVE

27.1 An employee with responsibilities in relation to either members of their family or members of their household who need their care and support, is entitled to paid leave of up to 5 days per annum, to provide care and support for such persons when they are ill.

27.2 Family/carer's leave taken will be deducted from an employee's sick leave entitlements, provided that 10 days of the employee's sick leave entitlement credited in the current year cannot be used for family/carer's leave. Family/carer's leave is not cumulative from year to year.

27.3 Where family/carer's leave is exhausted, an employee may take unpaid carer's leave by agreement with the employer.

27.4 The employee will if required by the employer establish, by production of medical evidence or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another.

27.5 The employee will, wherever possible, give the employer notice prior to the absence of the intention to take such leave.

27.6 For the purposes of this clause, a family member or member of the employee's household is one who is wholly or partially dependent on the employee.

28.—COMPASSIONATE LEAVE

28.1 Subject to paragraph 28.2 hereof, an officer will be entitled to paid compassionate leave of up to 2 days on the death of a family member.

28.2 The Chief Executive may grant compassionate leave on the death of a person other than a family member in personal and compassionate circumstances.

28.3 Compassionate leave will not be granted during a period of any other leave.

28.4 Payment for compassionate leave is to be made only where the officer otherwise would have been on duty.

29.—SHORT LEAVE

The Award entitlement to short leave will no longer apply.

30.—CEREMONIAL/CULTURAL LEAVE

30.1 Ceremonial/Cultural Leave may be granted, to employees who have a ritual obligation to participate in ceremonial activity which requires absence from work. Such leave will also include leave to meet the employee's custom and traditional laws.

30.2 An employee granted leave to participate in ceremonial, cultural or traditional law activities will have such leave deducted from accrued annual leave or long service leave.

30.3 Leave without pay to participate in ceremonial, cultural or traditional law activities may be granted by the employer.

31.—PUBLIC HOLIDAYS

31.1 The following days are paid public holidays; New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Foundation Day, Labour Day, Sovereign's Birthday, Christmas Day and Boxing Day.

31.2 Whenever any of these days falls on a Saturday or a Sunday, the holiday is observed on the next succeeding Monday, or in the case of Boxing Day falling on a Sunday or Monday, on the next succeeding Tuesday.

31.3 There is no entitlement to any additional Public Service holidays in addition to those prescribed in this agreement.

32.—CHRISTMAS CLOSEDOWN

32.1 The Department may observe a closedown over the Christmas/New Year period.

32.2 The duration of the closedown will be at the discretion of the Chief Executive but will not exceed 12 working days.

32.3 Employees will be required to take annual leave, long service leave, rostered days off, time in lieu of overtime or flexitime credit hours on the working days that the Department is closed down. The employee may elect which form of leave is to be taken.

32.4 The Chief Executive will as soon as possible, in each calendar year but not later than 30 June, advise employees of the period of closedown and the number of working days involved.

32.5 When taking leave during the year employees must be aware of the requirement to retain credits to cover the required number of days over the compulsory close down period.

32.6 New employees, employees who have exhausted their annual leave credits at the commencement of this Agreement, or employees who have been granted approval to utilise all leave credits will be entitled to take leave without pay or go into debit to cover the amount of leave involved, provided a refund is made by the employee, on termination, if credits to the value of the leave taken in advance have not been accrued.

33.—PARENTAL LEAVE

Definitions

For the purpose of this clause, the following terms have the following meanings—

“Adoption”: is the placement (including any initial temporary placement with a view to a permanent placement) of a child who is less than 5 years of age, who is not the natural or step-child of the employee or employee’s spouse and who has not lived with the employee for longer than 6 months.

“Adoption leave”: Unpaid parental leave of up to 12 months taken by either parent in connection with the adoption or placement of a child under the age of 5 years.

“Certification”—

- (a) 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 birth.
- (b) For the purpose of maternity leave means a certificate from a registered medical practitioner stating that the employee is pregnant and the expected date of birth.
- (c) For the purpose of adoption leave and special adoption leave means the requirements that an employee must comply with before being eligible for the entitlement.

The employee must produce to the employer—

a statement from an adoption agency or other appropriate body of the placement of the child for adoption purposes; or

presumed date confirming that the employee or employee’s spouse is to have custody of the child pending application for an adoption order.

“Child”: A person to whom an employee or employee’s spouse has given birth, or 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 stepchild of the employee or employee’s spouse who has previously lived with the employee for a period of 6 months or more.

“Expected date of birth”: The day certified by a medical practitioner, to be the day on which the birth of the child of the employee, or employee’s spouse is expected.

“Maternity leave”: Unpaid parental leave of up to 12 months taken by a female employee in connection with her pregnancy, and the subsequent birth of a child.

“Parental leave”: Any period of maternity leave, paternity leave and/or adoption leave of up to 12 months taken in connection with the birth or adoption of a child.

“Paternity leave”: Unpaid parental leave of up to 12 months which is taken by a male employee in connection with the birth or adoption of a child. Such an employee is permitted to take one week of unpaid paternity leave immediately after the birth or adoption of a child, in conjunction with any leave taken by his spouse.

33.1 Entitlement to parental leave

33.1.1 Employees are entitled to parental leave in connection with the birth or adoption of a child, in accordance with this clause.

33.1.2 Parental leave only applies to part-time or full time employees. Temporary full time or part-time employees on fixed term contracts are only eligible for parental leave for the duration of their fixed term contract of employment.

33.1.3 For female employees parental leave may, at the employee’s discretion, commence prior to 6 weeks before the expected date of birth of the child.

33.1.4 The minimum period of absence on maternity leave will commence six weeks before the expected date of birth and end six weeks after the day on which the birth has taken place, however an employee may apply to the Chief Executive to vary this period provided her application is supported by a certificate from a registered medical practitioner indicating that the employee is fit to continue or resume duty within this minimum period.

33.2 Eligibility for parental leave

33.2.1 An employee must comply with the certification and notice requirements to be entitled to parental leave, unless these requirements are waived by the employer.

33.2.2 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 during one week of paternity leave taken immediately after the birth or adoption of a child.

33.3 Notice requirements

An employee is to give the employer at least 10 weeks written notice of the intention to take parental leave other than for the purposes of adoption and of the expected duration of the leave.

33.4 Transfer to a safe job

Where in the opinion of a registered medical practitioner illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue her present work, she may be transferred to a safe job, at the rate and on the conditions attached to that job or at the employee’s substantive level, whichever is the higher, until the employee commences parental leave.

33.5 Variation and/or cancellation of parental leave period

33.5.1 The period of parental leave may be lengthened or shortened by Agreement between the employer and the employee, provided that the amount of leave does not exceed the maximum allowed.

33.5.2 The employee must where practicable give the employer 14 days written notice of any request to vary the period of leave.

33.5.3 Parental leave applied for, but not commenced, by an employee for any reason is cancelled. Reasons for cancellation include, but are not limited to—

33.5.3(a) where a pregnancy terminates, other than by the birth of a living child;

33.5.3(b) or where a planned adoption or placement of a child does not proceed.

33.5.3(c) An employee must notify the employer of any change in certification details.

33.6 Parental leave and sick leave

- 33.6.1 Where the pregnancy of an employee terminates after 28 weeks, other than by the birth of a living child, and the employee is not on parental leave, she is entitled to sick leave in accordance with Award entitlements.
- 33.6.2 An employee who suffers any illness or injury related to her pregnancy and/or the birth whilst on parental leave cannot utilise sick leave entitlements.
- 33.6.3 An employee may utilise sick leave entitlements in accordance with clause 26.1—Sick Leave when not on parental leave.

33.7 Special adoption leave

An employee is entitled to special unpaid adoption leave of up to 2 days to attend any compulsory interviews, examinations or the like which are required by the adoption procedure.

33.8 Effect of parental leave on leave entitlements and employment

- 33.8.1 Any absence on parental leave will not break the continuity of service.
- 33.8.2 However, absence on parental leave will not be taken into account for the purpose of salary increment progression. Paid leave entitlements such as annual leave, long service leave and public holidays will not accrue during any period of parental leave.
- 33.8.3 An employee may, instead of or in conjunction with parental leave, take annual leave or long service leave entitlements to which he or she is entitled.

An employee proceeding on parental leave may elect to utilise—

- 33.8.3(a) accrued annual leave
33.8.3(b) accrued long service leave

for the whole or part of the period referred to in subclause 33.1 of this clause. The periods of leave referred to in paragraphs 33.8.3(a) and 33.8.3(b) of this subclause, which are utilised, will be paid leave.

33.9 Replacement employees

- 33.9.1 Before the employer engages a replacement employee (including a temporarily promoted or transferred employee), the employer must inform that person of the temporary nature of the employment, and of the rights of the person on parental leave who is being replaced.
- 33.9.2 The employer does not have to engage a replacement employee if one is not required.

33.10 Return to work after parental leave

- 33.10.1 An employee must confirm to the employer an intention of returning to work prior to re-commencing work.
- 33.10.2 An employee returning to work from parental leave is entitled to the position held immediately before beginning 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.
- 33.10.3 Where the position no longer exists, the employee is entitled to the same classification and pay to that of the employee's former position, and for which the employee is qualified and capable of performing.
- 33.10.4 Where immediately before commencing parental leave, an employee was acting in a higher position, or performing additional duties on a temporary basis, this subclause only applies in respect of the position held by the employee immediately before taking the acting or temporary position.

33.11 Termination of employment and parental leave

- 33.11.1 An employee may terminate his or her employment at any time during a period of parental leave, by giving the employer the appropriate period of notice detailed in the relevant award.

- 33.11.2 The employer must not terminate an employee or transfer them from their existing position on the grounds of the employee's parental leave application and/or absence on parental leave.

34.—EMERGENCY AND COMMUNITY SERVICE LEAVE

34.1 Emergency Service Leave may be granted to an employee who is an active volunteer member of the—

- Western Australian State Emergency Service;
- Western Australian Bush Fire Brigade;
- St John Ambulance Brigade;
- Defence Force Reserves;
- Sea and rescue associations; or
- Other similar Authorities or bodies, recognised by the Department.

to attend emergencies as declared by the recognised Authority or body provided that it does not interfere with essential customer service and work requirements.

34.2 If an employee is an active member of a recognised Authority or body they are to advise the Department of membership in writing at the commencement of employment or membership in order to seek leave to attend emergencies.

34.3 The employer will be advised as soon as possible by the employee, the emergency service or such other persons as to the absence and, where possible, the expected duration of the absence. Such advice will be provided within 24 hours of the event or activity requiring the person's absence.

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

34.5 The application form must be accompanied by a certificate from the emergency organisation certifying that the employee was required for the specified period. If a certificate of attendance is not provided from the emergency service organisation absence may be considered to be leave without pay. If the absence is deemed to be leave without pay, any adjustment in entitlements arising as a result of not proving a certificate of service will be processed in the next scheduled pay period.

34.6 An employee, who during the course of the emergency volunteers their services to an emergency service organisation, will comply with subclauses 34.2 to 34.5 inclusive.

34.7 Such leave will not affect any continuity of service for the purpose of higher duties arrangements or eligibility for allowances.

34.8 An employee may be granted reasonable Community Service Leave, subject to proof, to donate blood products to the Red Cross Blood Bank.

35.—ANNUAL LEAVE LOADING

Annual leave loading provisions in the Public Service Award 1992 have been absorbed and no longer apply.

36.—SELF-FUNDED WORK BREAKS

36.1 Employees may receive 4 years salary over a period of five years, with no attendance at work required in the fifth year, in accordance with the Department's Policy and Guidelines.

36.2 The employer and an employee may agree to enter into any other similar arrangements involving different periods of time, in accordance with the Policy and Guidelines.

PART 7: TRANSFERS, TRAVELLING AND WORKING AWAY FROM USUAL PLACE OF WORK

37.—HOME BASED WORK

An employee may make application to the Department to engage in home based work subject to the Department's Home Based Work policy.

38.—TRAVELLING ALLOWANCE

38.1 This clause replaces Clause 42.—Travelling Allowance of the Public Service Award in their entirety.

38.2 An employee who travels on official business will be reimbursed reasonable expenses on the basis of the production of receipts for reasonable expenses. Reasonable expenses will include but not be limited to accommodation costs, purchase of meals as necessary, and cost of transport to destination.

38.3 In addition to clause 38.2—Travelling Allowance above, an employee will be reimbursed reasonable incidental expenses such as train, bus and taxi fares, official telephone calls, laundry and dry cleaning expenses, on production of receipts.

38.4 If on account of lack of suitable transport facilities, an employee necessarily engages reasonable accommodation for the night prior to commencing travelling on early morning transport the employee will be reimbursed the actual cost of such accommodation.

38.5 Reimbursement of expenses will not be suspended should an employee become ill whilst travelling, provided leave for the period of such illness is approved in accordance with provisions of Clause 26.1—Sick Leave of this Agreement, and the employee continues to incur accommodation, meal and incidental expenses.

38.6 Reimbursement claims for travelling in excess of 14 days in one month will not be passed for payment by a certifying employee unless the Chief Executive has endorsed the account.

38.7 An employee who is relieving at or temporarily transferred to any place within a radius of fifty (50) kilometres measured from the employee's headquarters will not be reimbursed the cost of midday meals purchased, but an employee travelling on duty within that area which requires absence from the employee's headquarters over the usual midday meal period will be, on the production of receipts, for each meal necessarily purchased, provided that—

38.7.1 such travelling is not a normal feature in the performance of the employee's duties; and

38.7.2 such travelling is not within the suburb in which the employee resides.

SCHEDULE A: SALARIES
ENTERPRISE BARGAINING AGREEMENT 2000

SCHEDULE A

LEVEL	Column A— Current Annual Salary Rates	Column B— Date of Registration 1.5%	New Fortnightly Rate	Column C— Annual Salary as at First Pay Period on or After March 15, 2001 1.5%	New Fortnightly Rate	Column D— Annual Salary as at First Pay Period on or After March 15, 2002 3%*	New Fortnightly Rate
LEVEL 1							
Age 16	12,900	13,094	501.99	13,290	509.52	13,689	524.80
Age 17	15,075	15,301	586.62	15,531	595.42	15,997	613.29
Age 18	17,585	17,849	684.30	18,117	694.56	18,660	715.40
Age 19	20,355	20,660	792.09	20,970	803.97	21,599	828.09
Age 20	22,858	23,201	889.49	23,549	902.83	24,255	929.92
YEAR 1	25,110	25,487	977.12	25,869	991.78	26,645	1021.53
YEAR 2	25,883	26,271	1,007.20	26,665	1022.31	27,465	1052.98
YEAR 3	26,656	27,056	1,037.28	27,462	1052.84	28,286	1084.43
YEAR 4	27,423	27,834	1,067.13	28,252	1083.14	29,099	1115.63
YEAR 5	28,196	28,619	1,097.21	29,048	1113.67	29,920	1147.08
YEAR 6	28,968	29,403	1,127.25	29,844	1144.16	30,739	1178.49
YEAR 7	29,857	30,305	1,161.85	30,759	1179.28	31,682	1214.65
YEAR 8	30,471	30,928	1,185.74	31,392	1203.53	32,334	1239.63
YEAR 9	31,380	31,851	1,221.11	32,328	1239.43	33,298	1276.61
LEVEL 2							
YEAR 1	32,468	32,955	1,263.45	33,449	1282.40	34,453	1320.88
YEAR 2	33,302	33,802	1,295.91	34,309	1315.34	35,338	1354.80
YEAR 3	34,179	34,692	1,330.03	35,212	1349.98	36,268	1390.48
YEAR 4	35,105	35,632	1,366.07	36,166	1386.56	37,251	1428.15
YEAR 5	36,074	36,615	1,403.77	37,164	1424.83	38,279	1467.58
LEVEL 3							
YEAR 1	37,407	37,968	1,455.65	38,538	1477.48	39,694	1521.81
YEAR 2	38,445	39,022	1,496.04	39,607	1518.48	40,795	1564.03
YEAR 3	39,515	40,108	1,537.68	40,709	1560.74	41,931	1607.56
YEAR 4	40,614	41,223	1,580.44	41,842	1604.15	43,097	1652.27
LEVEL 4							
YEAR 1	42,120	42,752	1,639.05	43,393	1663.63	44,695	1713.54
YEAR 2	43,301	43,951	1,685.00	44,610	1710.28	45,948	1761.59
YEAR 3	44,516	45,184	1,732.28	45,861	1758.27	47,237	1811.02
LEVEL 5							
YEAR 1	46,855	47,558	1,823.30	48,271	1850.65	49,719	1906.17
YEAR 2	48,437	49,164	1,884.86	49,901	1913.14	51,398	1970.53
YEAR 3	50,080	50,831	1,948.80	51,594	1978.03	53,141	2037.37
YEAR 4	51,785	52,562	2,015.15	53,350	2045.38	54,951	2106.74
LEVEL 6							
YEAR 1	54,526	55,344	2,121.81	56,174	2153.64	57,859	2218.25
YEAR 2	56,390	57,236	2,194.35	58,094	2227.26	59,837	2294.08
YEAR 3	58,305	59,180	2,268.87	60,067	2302.90	61,869	2371.99
YEAR 4	60,338	61,243	2,347.98	62,162	2383.20	64,027	2454.69
LEVEL 7							
YEAR 1	63,454	64,406	2,469.23	65,372	2506.27	67,333	2581.46
YEAR 2	65,610	66,594	2,553.13	67,593	2591.43	69,621	2669.17
YEAR 3	67,956	68,975	2,644.42	70,010	2684.09	72,110	2764.61

LEVEL	Column A— Current Annual Salary Rates	Column B— Date of Registration 1.5%	New Fortnightly Rate	Column C— Annual Salary as at First Pay Period on or After March 15, 2001 1.5%	New Fortnightly Rate	Column D— Annual Salary as at First Pay Period on or After March 15, 2002 3%*	New Fortnightly Rate
LEVEL 8							
YEAR 1	71,769	72,846	2,792.80	73,938	2834.69	76,156	2919.73
YEAR 2	74,500	75,618	2,899.07	76,752	2942.56	79,054	3030.84
YEAR 3	77,887	79,055	3,030.87	80,241	3076.34	82,648	3168.63
LEVEL 9							
YEAR 1	82,117	83,349	3,195.48	84,599	3243.41	87,137	3340.71
YEAR 2	84,975	86,250	3,306.69	87,543	3356.30	90,170	3456.98
YEAR 3	88,234	89,558	3,433.51	90,901	3485.02	93,628	3589.57
CLASS 1	93,162	94,559	3,625.28	95,978	3679.66	98,857	3790.05
CLASS 2	98,090	99,561	3,817.05	101,055	3874.30	104,086	3990.53
CLASS 3	103,016	104,561	4,008.74	106,130	4068.87	109,314	4190.93
CLASS 4	107,945	109,564	4,200.54	111,208	4263.55	114,544	4391.46
LEVEL 2/4							
YEAR 1 (2.1)	32,468	32,955	1,263.45	33,449	1282.40	34,453	1320.88
YEAR 2 (2.3)	34,179	34,692	1,330.03	35,212	1349.98	36,268	1390.48
YEAR 3 (2.5)	36,074	36,615	1,403.77	37,164	1424.83	38,279	1467.58
YEAR 4 (3.2)	38,445	39,022	1,496.04	39,607	1518.48	40,795	1564.03
YEAR 5 (4.1)	42,120	42,752	1,639.05	43,393	1663.63	44,695	1713.54
YEAR 6 (4.3)	44,516	45,184	1,732.28	45,861	1758.27	47,237	1811.02
OTHER							
Job Skills Trainees Under 21	19,625 16,593	19,919 16,842	763.68 645.70	20,218 17,095	775.14 655.38	20,825 17,607	798.39 675.04

* The payment of this increase is subject to the approval of the Cabinet Standing Committee on Labour Relations

SCHEDULE B: PRODUCTIVITY IMPROVEMENTS

PRODUCTIVITY IMPROVEMENT PLAN

Staff will actively participate in the development and implementation of a Productivity Improvement Plan/s (PIP/s) as determined by the Chief Executive.

PIPs may be developed at the Department or work site level, or any combination as determined by the Chief Executive.

The PIP/s may involve changes to work practices, but will not involve changes to award/agreement/enterprise bargaining agreement employment conditions.

Subject to the approval of the Cabinet Standing Committee on Labour Relations, a 3% pay increase will be paid to employees from the first pay period on or after 15 March 2002 for productivity improvements.

SCHEDULE C: SIGNATORIES OF PARTIES TO THE AGREEMENT

The following signatories are authorised to sign this Agreement.

Signatories

.....Signed..... Date 20/12/2000

Employer—

Mr Ian Hill, Chief Executive of the Western Australian Department of Training and Employment

Signed for and on behalf of the *Civil Service Association of Western Australia (Inc)* by

.....Signed..... Date 20/12/2000

Common Seal

Mr Dave Robinson, Branch Secretary,
Civil Service Association WA Inc

SCHEDULE D: ALPHABETICAL LISTING OF PROVISIONS

Annual Leave
Annual Leave Loading
Annual Leave Travel Concessions
Arrangement
Availability of Agreements
Casual Employment

Ceremonial/Cultural Leave
Christmas Closedown
Compassionate Leave
Consultation Provisions
Definitions
Dispute Resolution Procedure
Emergency and Community Service Leave
Flexitime
Higher Duties
Home Based Work
Hours of Work
Long Service Leave
No Further Claims
Number of Employees Covered
Objectives of the Agreement
Parental Leave
Parties Bound
Past Productivity
Payment Arrangements
Productivity Improvements
Public Holidays
Relationship to Awards/Agreements
Repayments of Overpayments
Salaries
Salary Packaging
Scope
Self Funded Work Breaks
Short Leave
Sick Leave and Family/Carer's Leave
Signatories of Parties to the Agreement
Term of Agreement and Renegotiation
Title
Travelling Allowance
Variation of Allowances

WEST PILBARA COLLEGE OF TAFE PUBLIC SERVICE AND GOVERNMENT OFFICERS' ENTERPRISE AGREEMENT 2000.

No. PSAAG 73 of 2000.

2001 WAIRC 01801

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

PARTIES GOVERNING COUNCIL, WEST PILBARA COLLEGE OF TAFE
-and-
THE CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA INCORPORATED

CORAM COMMISSIONER P E SCOTT

DELIVERED TUESDAY, 16 JANUARY 2001

FILE NO PSAAG 73 OF 2000

CITATION NO. 2001 WAIRC 01801

Result Agreement registered

Order.

HAVING heard Ms J Caiacob on behalf of the Governing Council, West Pilbara College of TAFE and Ms J van den Herik on behalf of the Civil Service Association of Western Australia (Incorporated), and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the West Pilbara College of TAFE Public Service and Government Officers' Enterprise Agreement 2000 in the terms of the following schedule be registered on the 21st day of December 2000 and shall replace the Karratha College Public Service and Government Officers' Enterprise Agreement 1998 (No. PSAAG 3 of 1998).

[L.S.]

(Sgd.) P. E. SCOTT,
Commissioner,
Public Service Arbitrator.

Schedule.

PART 1—APPLICATION AND OPERATION OF AGREEMENT

1.—TITLE

This Agreement will be called the West Pilbara College of TAFE Public Service and Government Officers' Enterprise Agreement 2000 and will replace the West Pilbara College of TAFE Public Service and Government Officers' Enterprise Agreement 1998.

2.—ARRANGEMENT

PART 1—APPLICATION AND OPERATION OF AGREEMENT

1. TITLE
2. ARRANGEMENT
3. SCOPE
4. PARTIES BOUND
5. DEFINITIONS
6. NUMBER OF EMPLOYEES COVERED
7. NO FURTHER CLAIMS
8. TERM OF AGREEMENT AND RENEGOTIATION
9. RELATIONSHIP TO AWARDS
10. AVAILABILITY OF AGREEMENT
11. OBJECTIVES OF THE AGREEMENT
12. PAST PRODUCTIVITY

PART 2—DISPUTE RESOLUTION

13. CONSULTATION PROVISIONS
14. DISPUTE RESOLUTION PROCEDURE
15. SUBSTANDARD PERFORMANCE
16. BREACHES OF DISCIPLINE

PART 3—EMPLOYER AND EMPLOYEES' DUTIES, EMPLOYMENT RELATIONSHIP AND RELATED ARRANGEMENTS

17. HIGHER DUTIES
18. CASUAL EMPLOYMENT

PART 4—WAGES AND RELATED MATTERS

19. SALARIES
20. SALARY PACKAGING
21. PAYMENT ARRANGEMENTS
22. REPAYMENTS OF OVERPAYMENTS
23. VARIATION OF ALLOWANCES

PART 5—HOUR OF WORK, BREAKS, OVERTIME, SHIFT WORK AND WEEKEND WORK

24. HOURS OF WORK
25. FLEXITIME

PART 6—LEAVE OF ABSENCE AND PUBLIC HOLIDAYS

26. ANNUAL LEAVE
27. LONG SERVICE LEAVE
28. SICK LEAVE
29. FAMILY/CARER'S LEAVE
30. COMPASSIONATE LEAVE
31. SHORT LEAVE
32. CEREMONIAL/CULTURAL LEAVE
33. PUBLIC HOLIDAYS
34. CHRISTMAS CLOSEDOWN
35. PARENTAL LEAVE
36. EMERGENCY AND COMMUNITY SERVICE LEAVE
37. ANNUAL LEAVE LOADING
38. SELF-FUNDED WORK BREAKS

PART 7—TRANSFERS, TRAVELLING AND WORKING AWAY FROM USUAL PLACE OF WORK

39. HOME BASED WORK
40. TRAVELLING ALLOWANCE
41. TRANSFER

SCHEDULE A: SALARIES

SCHEDULE B: PRODUCTIVITY IMPROVEMENTS

SCHEDULE C: SIGNATORIES OF PARTIES TO THE AGREEMENT

SCHEDULE D: ALPHABETICAL LISTING OF PROVISIONS

3.—SCOPE

This Agreement will apply throughout the state of Western Australia to Officers employed in the West Pilbara College of TAFE. This Agreement will also apply to Officers on secondment to or in the College.

4.—PARTIES BOUND

The parties to this Agreement will be the Governing Council of the West Pilbara College of TAFE, and the Civil Service Association of Western Australia (Inc).

5.—DEFINITIONS

The following terms will have the following meanings—

“**Agreement**”: means the West Pilbara College of TAFE Public Service and Government Officers' Enterprise Agreement 2000.

“**Award**”: means the Government Officers' Salaries, Allowances and Conditions Award 1989.

“**College**” means the West Pilbara College of TAFE.

“**Continuous service**”: Any period of service between the employee and employer under an unbroken contract of employment, and includes any authorised unpaid or paid absences.

“**CSA**”: means the Civil Service Association of Western Australia (Inc).

“**Department**”: means the Western Australian Department of Training and Employment.

“**Employee**”: for the purpose of this Agreement means, someone who is referred to at Clause 3—Scope.

“Employer”: means the Governing Council of the West Pilbara College of TAFE.

“Full-Time Officer”: A person employed to work 37 1/2 ordinary hours per week.

“Government”: means the Government of Western Australia.

“GOSAC Award”: means the Government Officers’ Salaries Allowances & Conditions Award 1989.

“Managing Director” means the Managing Director of the West Pilbara College of TAFE, pursuant to section 46 of the Vocational Education and Training Act 1996.

“Minister”: is the Minister of the Crown who is responsible for the administration of the employing agency.

“Officer”: means a Public Service Officer as defined in the Public Sector Management Act 1994 or Government Officer as defined in the Industrial Relations Act 1979.

“Part-Time”: means regular and continuing employment for less than the ordinary hours for a “Full-Time Officer”.

“Spouse”: means a husband or wife of an employee, and includes a de facto spouse. For the purposes of Bereavement leave it includes a former spouse.

“Union”: means the Civil Service Association of Western Australia (Inc).

“WAIRC”: means the Western Australian Industrial Relations Commission.

6.—NUMBER OF EMPLOYEES COVERED

At the date of registration of this Agreement the approximate number of employees covered by this Agreement is 2.

7.—NO FURTHER CLAIMS

7.1 There will be no extra claims for salary adjustments other than that which is provided by this Agreement for the duration of its term.

7.2 There will be no further claims on matters contained in this Agreement for the duration of its term.

8.—TERM OF AGREEMENT AND RENEGOTIATION

8.1 This Agreement will operate on and from the date of registration and will remain in force for two years.

8.2 Six (6) months prior to the date of expiration of this Agreement, the parties will commence negotiation for its renewal or replacement.

8.3 The pay rates attained under this Agreement will form the new base rates for any future Agreement, provided that the productivity targets attained under this Agreement continue and previous productivity improvements in the last agreement are sustained, and changes to Award conditions maintained, or changed by agreement.

9.—RELATIONSHIP TO AWARDS

This Agreement will be read and interpreted wholly in conjunction with the Government Officers’ Salaries, Allowances and Conditions Award 1989. This Agreement will have precedence to the extent of any inconsistency. Where the agreement is silent the relevant award will apply.

10.—AVAILABILITY OF AGREEMENT

Employees will have access to an electronic copy of this agreement. Where electronic copies are unavailable, hard copies of the agreement will be provided.

11.—OBJECTIVES OF THE AGREEMENT

It is the shared objectives of the parties to—

Work towards alignment of conditions for all TAFE employees.

Meet the requirements of clients and students through the provision of reliable, efficient and competitive services.

Achieve the Department’s mission and improve productivity and efficiency through identified improvements.

Achieve improvement and greater flexibility of working patterns and arrangements.

Promote and facilitate enhanced employee relations and increased job satisfaction.

To facilitate a continued cooperative approach to the introduction of change.

This Agreement will operate as a contributive mechanism to deliver a cost efficient Vocational Education and Training service.

12.—PAST PRODUCTIVITY

This Agreement incorporates past productivity to the date of registration.

PART 2—DISPUTE RESOLUTION

13.—CONSULTATION PROVISIONS

13.1 The parties acknowledge the need for a satisfactory College consultative procedure. Staff participation and consultation is encouraged. The form of participation and consultation may vary at each workplace depending on individual circumstances. The College will establish its own structure and processes. However, the non-establishment of a structure or process will not be used as a means to avoid requirement to consult.

13.2 Employees will be involved in broadly based representative consultative committees with structure and functions determined by the College.

13.3 Consultative committees will provide a forum for staff and management to, where appropriate, seek the views of the other and enter into meaningful discussions that may contribute towards outcomes, in relation to operational matters.

13.4 Representatives from the Union, where it has members at the workplace, will be invited to participate on consultative committees.

13.5 The parties to this Agreement acknowledge that decision making continues to rest with the College, which is accountable to Government, through legislation, for the operation of its business.

14.—DISPUTE RESOLUTION PROCEDURE

14.1 In the event of a dispute arising in the workplace the procedure to be followed to resolve the matter will be as follows—

14.1.1 The employee and their supervisor will meet and confer on the matter; and

14.1.2 If the matter is not resolved at such a meeting, the parties will arrange for further discussions between the employee and his or her nominated representative, if any, and more senior levels of management.

14.1.3 If the matter is still unresolved a discussion will be held between representatives of the College or other representative of the employer and the Union or other employee representative.

14.1.4 If the matter cannot be resolved it may be referred to the WAIRC.

14.2 While the parties attempt to resolve the matter work will continue as normal unless an employee has a reasonable concern about an imminent risk to his or her health and safety.

15.—SUBSTANDARD PERFORMANCE

For the purposes of this clause the following definition will apply—

Substandard performance: The performance of an employee is substandard if the employee does not, in the performance of the functions that he or she is required to perform, attain or sustain a standard that a person may reasonably be expected to attain or sustain in the performance of his or her duties.

15.1 No employee shall be subject to the penalties of clause 15.2 unless a fair procedure is applied and decisions and processes incorporate the principles of natural justice and are free from bias.

15.2 If, in accordance with the College’s substandard performance management policy, an employee is found by the College to be performing at a substandard level, the College may—

15.2.1 withhold an increment of remuneration otherwise payable to that employee;

15.2.2 reduce the classification of that employee; or

15.2.3 terminate the employment of that employee.

15.3 If an employee who has been subject to substandard performance management is aggrieved by any resulting decision, he/she may appeal against that decision in the WAIRC.

16.—BREACHES OF DISCIPLINE

16.1 No employee shall be subject to the penalties of clause 16.2 unless a fair procedure is applied and decisions and processes incorporate the principles of natural justice and are free from bias.

16.2 If, in accordance with the College's disciplinary policy, an employee is found by the College to have committed a breach of discipline, the College may—

- 16.2.1 reprimand the employee;
- 16.2.2 transfer the employee to another public sector agency or authority, with the consent of that agency or transfer the employee to another position at the College at which the employee is currently employed;
- 16.2.3 impose on the employee a fine not exceeding the equivalent of five days pay that the employee would have received immediately prior to the breach of discipline finding;
- 16.2.4 reduce the monetary remuneration of the employee within the employee's existing classification;
- 16.2.5 reduce the level of classification of the employee;
- 16.2.6 dismiss the employee;

or, except where the employee is dismissed under subclause 16.2.6, take action under any two or more of the above sub-clauses.

16.3 If an employee who has been subject to disciplinary action is aggrieved by a decision resulting from such action, he/she may appeal against that decision to the WAIRC.

PART 3—EMPLOYER AND EMPLOYEES' DUTIES, EMPLOYMENT RELATIONSHIP AND RELATED ARRANGEMENTS

17.—HIGHER DUTIES

17.1 An officer who undertakes duties of a higher classification for a period of 10 consecutive working days or more, inclusive of public holidays, will be paid at the salary applicable to the higher level proportionate to the level of duties and responsibilities assigned for the entire period of the higher duties.

17.2 The higher rate of payment will apply to an officer who proceeds on normal annual leave or any other approved leave of absence of not more than four weeks provided that the officer was in receipt of the additional payment for a continuous period of 12 months or more.

18.—CASUAL EMPLOYMENT

18.1 Casual employees may be employed for up to three months in any period of engagement, provided that where operationally necessary and in compliance with subclause 18.2 of this clause the period of engagement may be extended for up to a period of a further three months.

18.2 All casual engagements shall be in accordance with the following guidelines.

- 1 The type of employment involves specific workload demands of a short term nature;
- 2 The job is a short term project of a finite nature;
- 3 To replace an employee during a short term approved leave of absence.

PART 4—WAGES AND RELATED MATTERS

19.—SALARIES

19.1 Increases have been applied to the rates paid pursuant to the West Pilbara College of TAFE Public Service and Government Officers' Enterprise Agreement 1998 as expressed in column A.

19.2 The rates in Column B will be paid effective from the date of registration of the Agreement. The rates in column B reflect a 1.5% increase for changes to award/employment conditions contained in this Agreement.

19.3 The rates in Column C will be paid from the first pay period on or after 15 March 2001. The rates in Column C reflect a 1.5% increase for changes to award/employment conditions contained in this Agreement.

19.4 The rates in Column D will be paid from the first pay period on or after 15 March 2002. The rates in Column D reflect a 3% increase, subject to Cabinet Standing Committee on Labour Relations endorsement that the Productivity Improvement Plan targets have been achieved.

19.5 The pay rates attained under this Agreement will form the new base rates for any future Agreement, provided that the productivity targets attained under this Agreement continue and previous productivity improvements in the last agreement are sustained and changes to Award conditions maintained, or changed by agreement.

20.—SALARY PACKAGING

20.1 An employee may, by agreement with the employer, enter into a salary packaging arrangement in accordance with the West Pilbara College of TAFE Flexible Remuneration Packaging Scheme or any similar salary packaging arrangement offered by the employer.

20.2 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.

20.3 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.

20.4 The TEC for the purposes of salary packaging, is calculated by adding—

- 20.4.1 The base salary;
- 20.4.2 Other cash allowances, eg. Annual leave loading;
- 20.4.3 Non-cash benefits, eg superannuation, motor vehicles etc;
- 20.4.4 Any Fringe Benefit Tax liabilities currently paid; and
- 20.4.5 Any shift or commuted allowance or variable components, eg performance based incentives (where they exist).

20.5 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 agreement.

20.6 The salary packaging arrangement must be cost neutral in relation to the total cost to the employer.

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

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

20.9 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.

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

20.11 An employer will not unreasonably withhold agreement to salary packaging on request from an employee.

20.12 The Dispute Settlement Procedure contained in this Agreement will 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 to the WAIRC.

21.—PAYMENT ARRANGEMENTS

Salaries will be paid on a fortnightly basis directly into an approved bank, building society or credit union nominated by the employee.

22.—REPAYMENTS OF OVERPAYMENTS

22.1 Any salary overpayments will be repaid to the employer within a reasonable period of time.

22.2 If agreement cannot be reached, the employer may deduct the amount of overpayment over the same length of time that the overpayments occurred, or up to 6 months, whichever period is less.

22.3 The employer may not deduct or require an employee to repay an amount exceeding 20% of the employees' net pay in any one pay period.

22.4 On compassionate grounds, the Managing Director may allow an extended period for the repayment of overpayments.

23.—VARIATION OF ALLOWANCES

23.1 Wherever an award allowance is calculated by reference to a classification salary point, the parties agree that all such allowances will be so varied by reference to the salary provided by this agreement.

23.2 All such allowances will be applicable from the same date as provided for any salary variation under this agreement.

PART 5—HOUR OF WORK, BREAKS, OVERTIME, SHIFT WORK AND WEEKEND WORK

24.—HOURS OF WORK

Notwithstanding the prescribed hours of duty in clause 16 of the Award, the employer and an employee may agree to vary the spread of hours during which the employee's ordinary hours of work may be worked. Any agreement must be voluntarily and genuinely made and an employee may not be forced, coerced or intimidated into any such variation to the spread of ordinary hours during which the hours of work may be worked.

25.—FLEXITIME

25.1 For the purpose of this clause, a settlement period will—

25.1.1 consist of 12 weeks;

25.1.2 have the required hours of duty of 450 hours; and

25.1.3 commence at the beginning of a pay period.

25.2 Credit hours at any point within the settlement period will not exceed 60 hours.

25.3 An officer may be allowed to clear flexi leave of a maximum of 6 full days, or any combination of half days and full days that does not exceed 6 full days in any settlement period.

25.4 Full days of flexi leave may be taken in accordance with College policy.

25.5 Flexi-leave days may be taken consecutively during a Christmas Closedown.

25.6 Notwithstanding subclause 25.3, in the case of a Christmas Closedown of 12 working days, where sufficient credit hours are accrued, an employee may take seven consecutive flexi-leave days. This subclause does not apply in the case of a Christmas Closedown of less than 12 working days.

25.7 Credit hours to a maximum of thirty seven hours thirty minutes will be allowed at the end of each settlement period and will be carried forward to the next settlement period.

25.8 In the case of credit hours greater than thirty seven hours thirty minutes gained in one settlement period, the hours in excess of thirty seven hours thirty minutes will be lost.

PART 6—LEAVE OF ABSENCE AND PUBLIC HOLIDAYS

26.—ANNUAL LEAVE

26.1 By written approval of the employer, accrued annual leave may be paid out (equivalent benefit) instead of taken.

26.2 The paying out of accrued annual leave is not obligatory and is subject to agreement of both the employer and employee.

26.3 Annual Leave Travel Concessions—Officers Stationed in Remote Areas

26.3.1 Where an officer's headquarters is situated in District Allowance Areas 3,5,6 and in that portion of area 4 located north of 30° South Latitude, as

defined in Schedule D—District Allowance of the PSA/ Schedule G—District Allowance of the GOSAC Award, a travel concession to the value of return economy airfares to Perth or Geraldton will be provided for the officer and his/her dependants when the officer travels from his/her normal place of employment on Annual Leave.

26.3.2 The officer will only be entitled to the actual cost of the travel, up to the value of return economy airfares for the officer and his/her dependants to Perth or Geraldton, whichever is the higher. The employer will not reimburse the officer unless the officer supplies evidence acceptable to the employer of the actual cost of travel.

26.3.3 An officer is required to serve 12 months in these areas before qualifying for travel concessions.

27.—LONG SERVICE LEAVE

27.1 Accrued long service leave may be taken in periods of not less than one day.

27.2 By written approval of the employer, accrued long service leave may be paid out (equivalent benefit) instead of taken.

27.3 The paying out of accrued Long Service Leave is not obligatory and is subject to agreement of both the employer and employee.

28.—SICK LEAVE

28.1 Sick leave entitlement

28.2 The sick leave provisions of the GOSAC Awards will continue to apply, except that the Managing Director may approve further paid leave in exceptional circumstances.

29.—FAMILY/CARER'S LEAVE

29.1 An employee with responsibilities in relation to either members of their family or members of their household who need their care and support, is entitled to paid leave of up to 5 days per annum, to provide care and support for such persons when they are ill.

29.2 Family/carer's leave taken will be deducted from an employee's sick leave entitlements, provided that 10 days of the employee's sick leave entitlement credited in the current year cannot be used for family/carer's leave. Family/carer's leave is not cumulative from year to year.

29.3 Where family/carer's leave is exhausted, an employee may take unpaid carer's leave by agreement with the employer.

29.4 The employee will if required by the employer establish, by production of medical evidence or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another.

29.5 The employee will, wherever possible, give the employer notice prior to the absence of the intention to take such leave.

29.6 For the purposes of this clause, a family member or member of the employee's household is one who is wholly or partially dependent on the employee.

30.—COMPASSIONATE LEAVE

30.1 Subject to paragraph 30.2 hereof, an officer will be entitled to paid compassionate leave of up to 2 days on the death of a family member.

30.2 The Managing Director may grant compassionate leave on the death of a person other than a family member in personal and compassionate circumstances.

30.3 Compassionate leave will not be granted during a period of any other leave.

30.4 Payment for compassionate leave is to be made only where the officer otherwise would have been on duty.

31.—SHORT LEAVE

The Award entitlement to short leave will no longer apply.

32.—CEREMONIAL/CULTURAL LEAVE

32.1 Ceremonial/Cultural Leave may be granted, to employees who have a ritual obligation to participate in ceremonial activity which requires absence from work. Such leave will also include leave to meet the employee's custom and traditional laws.

32.2 An employee granted leave to participate in ceremonial, cultural or traditional law activities will have such leave deducted from accrued annual leave or long service leave.

32.3 Leave without pay to participate in ceremonial, cultural or traditional law activities may be granted by the employer.

33.—PUBLIC HOLIDAYS

33.1 The following days are paid public holidays; New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Foundation Day, Labour Day, Sovereign's Birthday, Christmas Day and Boxing Day.

33.2 Whenever any of these days falls on a Saturday or a Sunday, the holiday is observed on the next succeeding Monday, or in the case of Boxing Day falling on a Sunday or Monday, on the next succeeding Tuesday.

33.3 There is no entitlement to any additional Public Service holidays in addition to those prescribed in this agreement.

34.—CHRISTMAS CLOSEDOWN

34.1 The College may observe a closedown over the Christmas/New Year period.

34.2 The duration of the closedown will be at the discretion of the Managing Director but will not exceed 12 working days.

34.3 Employees will be required to take annual leave, long service leave, rostered days off, time in lieu of overtime or flexitime credit hours on the working days that the College is closed down. The employee may elect which form of leave is to be taken.

34.4 The Managing Director will as soon as possible, in each calendar year but not later than 30 June, advise employees of the period of closedown and the number of working days involved.

34.5 When taking leave during the year employees must be aware of the requirement to retain credits to cover the required number of days over the compulsory close down period.

34.6 New employees, employees who have exhausted their annual leave credits at the commencement of this Agreement, or employees who have been granted approval to utilise all leave credits will be entitled to take leave without pay or go into debit to cover the amount of leave involved, provided a refund is made by the employee, on termination, if credits to the value of the leave taken in advance have not been accrued.

35.—PARENTAL LEAVE

Definitions

For the purpose of this clause, the following terms have the following meanings—

“Adoption”: is the placement (including any initial temporary placement with a view to a permanent placement) of a child who is less than 5 years of age, who is not the natural or step-child of the employee or employee's spouse and who has not lived with the employee for longer than 6 months.

“Adoption leave”: Unpaid parental leave of up to 12 months taken by either parent in connection with the adoption or placement of a child under the age of 5 years.

“Certification”—

- (a) 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 birth.
- (b) For the purpose of maternity leave means a certificate from a registered medical practitioner stating that the employee is pregnant and the expected date of birth.
- (c) For the purpose of adoption leave and special adoption leave means the requirements that an employee must comply with before being eligible for the entitlement.

The employee must produce to the employer—

a statement from an adoption agency or other appropriate body of the placement of the child for adoption purposes; or

presumed date confirming that the employee or employee's spouse is to have custody of the child pending application for an adoption order.

“Child”: A person to whom an employee or employee's spouse has given birth, or 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 stepchild of the employee or employee's spouse who has previously lived with the employee for a period of 6 months or more.

“Expected date of birth”: The day certified by a medical practitioner, to be the day on which the birth of the child of the employee, or employee's spouse is expected.

“Maternity leave”: Unpaid parental leave of up to 12 months taken by a female employee in connection with her pregnancy, and the subsequent birth of a child.

“Parental leave”: Any period of maternity leave, paternity leave and/or adoption leave of up to 12 months taken in connection with the birth or adoption of a child.

“Paternity leave”: Unpaid parental leave of up to 12 months which is taken by a male employee in connection with the birth or adoption of a child. Such an employee is permitted to take one week of unpaid paternity leave immediately after the birth or adoption of a child, in conjunction with any leave taken by his spouse.

35.1 Entitlement to parental leave

35.1.1 Employees are entitled to parental leave in connection with the birth or adoption of a child, in accordance with this clause.

35.1.2 Parental leave only applies to part-time or full time employees. Temporary full time or part-time employees on fixed term contracts are only eligible for parental leave for the duration of their fixed term contract of employment.

35.1.3 For female employees parental leave may, at the employee's discretion, commence prior to 6 weeks before the expected date of birth of the child.

35.1.4 The minimum period of absence on maternity leave will commence six weeks before the expected date of birth and end six weeks after the day on which the birth has taken place, however an employee may apply to the Managing Director to vary this period provided her application is supported by a certificate from a registered medical practitioner indicating that the employee is fit to continue or resume duty within this minimum period.

35.2 Eligibility for parental leave

35.2.1 An employee must comply with the certification and notice requirements to be entitled to parental leave, unless these requirements are waived by the employer.

35.2.2 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 during one week of paternity leave taken immediately after the birth or adoption of a child.

35.3 Notice requirements

An employee is to give the employer at least 10 weeks written notice of the intention to take parental leave other than for the purposes of adoption and of the expected duration of the leave.

35.4 Transfer to a safe job

Where in the opinion of a registered medical practitioner illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue her present work, she may be transferred to a safe job, at the rate and on the conditions attached to that job or at the employee's substantive level, whichever is the higher, until the employee commences parental leave.

35.5 Variation and/or cancellation of parental leave period

- 35.5.1 The period of parental leave may be lengthened or shortened by Agreement between the employer and the employee, provided that the amount of leave does not exceed the maximum allowed.
- 35.5.2 The employee must where practicable give the employer 14 days written notice of any request to vary the period of leave.
- 35.5.3 Parental leave applied for, but not commenced, by an employee for any reason is cancelled. Reasons for cancellation include, but are not limited to—
- 35.5.3(a) where a pregnancy terminates, other than by the birth of a living child;
- 35.5.3(b) or where a planned adoption or placement of a child does not proceed.
- 35.5.3(c) An employee must notify the employer of any change in certification details.

35.6 Parental leave and sick leave

- 35.6.1 Where the pregnancy of an employee terminates after 28 weeks, other than by the birth of a living child, and the employee is not on parental leave, she is entitled to sick leave in accordance with Award entitlements.
- 35.6.2 An employee who suffers any illness or injury related to her pregnancy and/or the birth whilst on parental leave cannot utilise sick leave entitlements.
- 35.6.3 An employee may utilise sick leave entitlements in accordance with clause 27.1—Sick Leave when not on parental leave.

35.7 Special adoption leave

An employee is entitled to special unpaid adoption leave of up to 2 days to attend any compulsory interviews, examinations or the like which are required by the adoption procedure.

35.8 Effect of parental leave on leave entitlements and employment

- 35.8.1 Any absence on parental leave will not break the continuity of service.
- 35.8.2 However, absence on parental leave will not be taken into account for the purpose of salary increment progression. Paid leave entitlements such as annual leave, long service leave and public holidays will not accrue during any period of parental leave.
- 35.8.3 An employee may, instead of or in conjunction with parental leave, take annual leave or long service leave entitlements to which he or she is entitled.

An employee proceeding on parental leave may elect to utilise—

35.8.3(a) accrued annual leave

35.8.3(b) accrued long service leave

for the whole or part of the period referred to in subclause 35.1 of this clause. The periods of leave referred to in paragraphs 35.8.3(a) and 35.8.3(b) of this subclause, which are utilised, will be paid leave.

35.9 Replacement employees

- 35.9.1 Before the employer engages a replacement employee (including a temporarily promoted or transferred employee), the employer must inform that person of the temporary nature of the employment, and of the rights of the person on parental leave who is being replaced.
- 35.9.2 The employer does not have to engage a replacement employee if one is not required.

35.10 Return to work after parental leave

- 35.10.1 An employee must confirm to the employer an intention of returning to work prior to re-commencing work.
- 35.10.2 An employee returning to work from parental leave is entitled to the position held immediately before beginning 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.

- 35.10.3 Where the position no longer exists, the employee is entitled to the same classification and pay to that of the employee's former position, and for which the employee is qualified and capable of performing.

35.10.4 Where immediately before commencing parental leave, an employee was acting in a higher position, or performing additional duties on a temporary basis, this subclause only applies in respect of the position held by the employee immediately before taking the acting or temporary position.

35.11 Termination of employment and parental leave

- 35.11.1 An employee may terminate his or her employment at any time during a period of parental leave, by giving the employer the appropriate period of notice detailed in the relevant award.
- 35.11.2 The employer must not terminate an employee or transfer them from their existing position on the grounds of the employee's parental leave application and/or absence on parental leave.

36.—EMERGENCY AND COMMUNITY SERVICE LEAVE

36.1 Emergency Service Leave may be granted to an Employee who is an active volunteer member of the—

- * Western Australian State Emergency Service;
- * Western Australian Bush Fire Brigade;
- * St John Ambulance Brigade;
- * Defence Force Reserves;
- * Sea and rescue associations; or
- * Other similar Authorities or bodies, recognised by the College.

to attend emergencies as declared by the recognised Authority or body provided that it does not interfere with essential customer service and work requirements.

36.2 If an employee is an active member of a recognised Authority or body they are to advise the College of membership in writing at the commencement of employment or membership in order to seek leave to attend emergencies.

36.3 The employer will be advised as soon as possible by the employee, the emergency service or such other persons as to the absence and, where possible, the expected duration of the absence. Such advice will be provided within 24 hours of the event or activity requiring the person's absence.

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

36.5 The application form must be accompanied by a certificate from the emergency organisation certifying that the employee was required for the specified period. If a certificate of attendance is not provided from the emergency service organisation absence may be considered to be leave without pay. If the absence is deemed to be leave without pay, any adjustment in entitlements arising as a result of not proving a certificate of service will be processed in the next scheduled pay period.

36.6 An employee, who during the course of the emergency volunteers their services to an emergency service organisation, will comply with subclauses 36.2 to 36.5 inclusive.

36.7 Such leave will not affect any continuity of service for the purpose of higher duties arrangements or eligibility for allowances.

36.8 An employee may be granted reasonable Community Service Leave, subject to proof, to donate blood products to the Red Cross Blood Bank.

37.—ANNUAL LEAVE LOADING

Annual leave loading provisions in the GOSAC Award have been absorbed and no longer apply.

38.—SELF-FUNDED WORK BREAKS

38.1 Employees may receive 4 years salary over a period of five years, with no attendance at work required in the fifth year, in accordance with the College's Policy and Guidelines.

38.2 The employer and an employee may agree to enter into any other similar arrangements involving different periods of time, in accordance with the Policy and Guidelines.

PART 7: TRANSFERS, TRAVELLING AND WORKING AWAY FROM USUAL PLACE OF WORK

39.—HOME BASED WORK

An employee may make application to the College to engage in home based work subject to the College's Home Based Work policy.

40.—TRAVELLING ALLOWANCE

40.1 This clause replaces Clause 42. —Travelling Allowance of the Government Officers' Salaries, Allowances and Conditions Award in its entirety.

40.2 An employee who travels on official business will be reimbursed reasonable expenses on the basis of the production of receipts for reasonable expenses. Reasonable expenses will include but not be limited to accommodation costs, purchase of meals as necessary, and cost of transport to destination.

40.3 In addition to clause 40.2—Travelling Allowance above, an employee will be reimbursed reasonable incidental expenses such as train, bus and taxi fares, official telephone calls, laundry and dry cleaning expenses, on production of receipts.

40.4 If on account of lack of suitable transport facilities, an employee necessarily engages reasonable accommodation for the night prior to commencing travelling on early morning transport the employee will be reimbursed the actual cost of such accommodation.

40.5 Reimbursement of expenses will not be suspended should an employee become ill whilst travelling, provided leave for the period of such illness is approved in accordance with provisions of Clause 28.1—Sick Leave of this Agreement, and the employee continues to incur accommodation, meal and incidental expenses.

40.6 Reimbursement claims for travelling in excess of 14 days in one month will not be passed for payment by a certifying employee unless the Managing Director has endorsed the account.

40.7 An employee who is relieving at or temporarily transferred to any place within a radius of fifty (50) kilometres measured from the employee's headquarters will not be reimbursed the cost of midday meals purchased, but an employee travelling on duty within that area which requires absence from the employee's headquarters over the usual midday meal period will be, on the production of receipts, for each meal necessarily purchased, provided that—

40.7.1 such travelling is not a normal feature in the performance of the employee's duties; and

40.7.2 such travelling is not within the suburb in which the employee resides.

41.—TRANSFER

41.1 The College may transfer, at the same level of classification, an officer from one office, post or position within the College to another such office, post or position, for which that officer possesses the appropriate qualifications and skills, provided the College considers it to be in its interests to do so.

Such transfers include the transfer of an employee from one campus of the College to another campus of the College.

41.2 The decision to transfer will be equitable and free from bias.

41.3 If the College transfers an employee in accordance with subclause 41.1 of this Clause it will comply with the following—

41.3.1 The transfer will be at the employee's current classification level;

41.3.2 The transfer will not result in a loss of the employee's continuity of service;

41.3.3 The transfer will not change the tenure of the employee;

41.3.4 The College's and employee's needs will be taken into account in the transfer decision. The employee's needs include distance of new work site from place of residence, skills, qualification and experience of the employee, requirement to undertake training to perform the duties of the new position.

41.3.5 The employee will be notified of the transfer decision and arrangements. The College will give the employee at least four weeks notice of intention to transfer.

41.3.6 Policies relating to transfer will be documented, equitable, free from bias, applied consistently and accessible to College employees.

41.3.7 The decisions and processes relating to transfer will embody the principles of natural justice including access to documentation specifically relating to the particular employee's transfer, explanation as to the reasons for the transfer and consultation with the employee where their input is taken into consideration;

41.3.8 The transfer decision will be capable of review; and

41.3.9 The appropriate confidentiality will be observed.

41.4 The College must adhere to the Public Sector Standards in Human Resource Management standard regarding transfer.

41.5 The College will act in accordance with the report and implement any recommendations of a reviewer selected by the Commissioner for Public Sector Standards to investigate any suspected breach of standard in accordance with s.15 of the Public Sector Management (Review Procedures) Regulations 1995.

41.6 If the College does not act in accordance with and implement the recommendations of the reviewer selected by the Commissioner for Public Sector Standards, the College will be in breach of the Agreement.

41.7 Should an application for a breach of the Public Sector Standard relating to Transfer be lodged with the Managing Director within 15 days of an employee being notified of a decision to transfer and a review of the transfer be carried out, the status quo will remain until such time as the reviewer has made recommendations.

SCHEDULE A: SALARIES

ENTERPRISE BARGAINING AGREEMENT 2000

SCHEDULE A

LEVEL	Column A—	Column B—	New Fortnightly Rate	Column C—	New Fortnightly Rate	Column D—	New Fortnightly Rate
	Current Annual Salary Rates	Date of Registration 1.5%		Annual Salary as at First Pay Period on or After March 15, 2001 1.5%		Annual Salary as at First Pay Period on or After March 15, 2002 3%*	
LEVEL 1							
Age 16	12,900	13,094	501.99	13,290	509.52	13,689	524.80
Age 17	15,075	15,301	586.62	15,531	595.42	15,997	613.29
Age 18	17,585	17,849	684.30	18,117	694.56	18,660	715.40
Age 19	20,355	20,660	792.09	20,970	803.97	21,599	828.09
Age 20	22,858	23,201	889.49	23,549	902.83	24,255	929.92

LEVEL	Column A— Current Annual Salary Rates	Column B— Date of Registration 1.5%	New Fortnightly Rate	Column C— Annual Salary as at First Pay Period on or After March 15, 2001 1.5%	New Fortnightly Rate	Column D— Annual Salary as at First Pay Period on or After March 15, 2002 3%*	New Fortnightly Rate
YEAR 1	25,110	25,487	977.12	25,869	991.78	26,645	1021.53
YEAR 2	25,883	26,271	1,007.20	26,665	1022.31	27,465	1052.98
YEAR 3	26,656	27,056	1,037.28	27,462	1052.84	28,286	1084.43
YEAR 4	27,423	27,834	1,067.13	28,252	1083.14	29,099	1115.63
YEAR 5	28,196	28,619	1,097.21	29,048	1113.67	29,920	1147.08
YEAR 6	28,968	29,403	1,127.25	29,844	1144.16	30,739	1178.49
YEAR 7	29,857	30,305	1,161.85	30,759	1179.28	31,682	1214.65
YEAR 8	30,471	30,928	1,185.74	31,392	1203.53	32,334	1239.63
YEAR 9	31,380	31,851	1,221.11	32,328	1239.43	33,298	1276.61
LEVEL 2							
YEAR 1	32,468	32,955	1,263.45	33,449	1282.40	34,453	1320.88
YEAR 2	33,302	33,802	1,295.91	34,309	1315.34	35,338	1354.80
YEAR 3	34,179	34,692	1,330.03	35,212	1349.98	36,268	1390.48
YEAR 4	35,105	35,632	1,366.07	36,166	1386.56	37,251	1428.15
YEAR 5	36,074	36,615	1,403.77	37,164	1424.83	38,279	1467.58
LEVEL 3							
YEAR 1	37,407	37,968	1,455.65	38,538	1477.48	39,694	1521.81
YEAR 2	38,445	39,022	1,496.04	39,607	1518.48	40,795	1564.03
YEAR 3	39,515	40,108	1,537.68	40,709	1560.74	41,931	1607.56
YEAR 4	40,614	41,223	1,580.44	41,842	1604.15	43,097	1652.27
LEVEL 4							
YEAR 1	42,120	42,752	1,639.05	43,393	1663.63	44,695	1713.54
YEAR 2	43,301	43,951	1,685.00	44,610	1710.28	45,948	1761.59
YEAR 3	44,516	45,184	1,732.28	45,861	1758.27	47,237	1811.02
LEVEL 5							
YEAR 1	46,855	47,558	1,823.30	48,271	1850.65	49,719	1906.17
YEAR 2	48,437	49,164	1,884.86	49,901	1913.14	51,398	1970.53
YEAR 3	50,080	50,831	1,948.80	51,594	1978.03	53,141	2037.37
YEAR 4	51,785	52,562	2,015.15	53,350	2045.38	54,951	2106.74
LEVEL 6							
YEAR 1	54,526	55,344	2,121.81	56,174	2153.64	57,859	2218.25
YEAR 2	56,390	57,236	2,194.35	58,094	2227.26	59,837	2294.08
YEAR 3	58,305	59,180	2,268.87	60,067	2302.90	61,869	2371.99
YEAR 4	60,338	61,243	2,347.98	62,162	2383.20	64,027	2454.69
LEVEL 7							
YEAR 1	63,454	64,406	2,469.23	65,372	2506.27	67,333	2581.46
YEAR 2	65,610	66,594	2,553.13	67,593	2591.43	69,621	2669.17
YEAR 3	67,956	68,975	2,644.42	70,010	2684.09	72,110	2764.61
LEVEL 8							
YEAR 1	71,769	72,846	2,792.80	73,938	2834.69	76,156	2919.73
YEAR 2	74,500	75,618	2,899.07	76,752	2942.56	79,054	3030.84
YEAR 3	77,887	79,055	3,030.87	80,241	3076.34	82,648	3168.63
LEVEL 9							
YEAR 1	82,117	83,349	3,195.48	84,599	3243.41	87,137	3340.71
YEAR 2	84,975	86,250	3,306.69	87,543	3356.30	90,170	3456.98
YEAR 3	88,234	89,558	3,433.51	90,901	3485.02	93,628	3589.57
CLASS 1	93,162	94,559	3,625.28	95,978	3679.66	98,857	3790.05
CLASS 2	98,090	99,561	3,817.05	101,055	3874.30	104,086	3990.53
CLASS 3	103,016	104,561	4,008.74	106,130	4068.87	109,314	4190.93
CLASS 4	107,945	109,564	4,200.54	111,208	4263.55	114,544	4391.46
LEVEL 2/4							
YEAR 1 (2.1)	32,468	32,955	1,263.45	33,449	1282.40	34,453	1320.88
YEAR 2 (2.3)	34,179	34,692	1,330.03	35,212	1349.98	36,268	1390.48
YEAR 3 (2.5)	36,074	36,615	1,403.77	37,164	1424.83	38,279	1467.58
YEAR 4 (3.2)	38,445	39,022	1,496.04	39,607	1518.48	40,795	1564.03
YEAR 5 (4.1)	42,120	42,752	1,639.05	43,393	1663.63	44,695	1713.54
YEAR 6 (4.3)	44,516	45,184	1,732.28	45,861	1758.27	47,237	1811.02
OTHER							
Job Skills Trainees Under 21	19,625 16,593	19,919 16,842	763.68 645.70	20,218 17,095	775.14 655.38	20,825 17,607	798.39 675.04

* The payment of this increase is subject to the approval of the Cabinet Standing Committee on Labour Relations

**SCHEDULE B: PRODUCTIVITY IMPROVEMENTS
PRODUCTIVITY IMPROVEMENT PLAN**

Staff will actively participate in the development and implementation of a Productivity Improvement Plan/s (PIP/s) as determined by the Managing Director.

PIPs may be developed at the College or Campus level, or any combination as determined by the Managing Director.

The PIP/s may involve changes to work practices, but will not involve changes to award/agreement/enterprise bargaining agreement employment conditions.

Subject to the approval of the Cabinet Standing Committee on Labour Relations, a 3% pay increase will be paid to employees from the first pay period on or after 15 March 2002 for productivity improvements.

SCHEDULE C: SIGNATORIES OF PARTIES TO THE AGREEMENT

The following signatories are authorised to sign this Agreement.

Signatories
.....Signed..... Date 20/12/2000

Employer—
Peter Smith, Managing Director of West Pilbara College of TAFE, on behalf of the Governing Council

Signed for and on behalf of the *Civil Service Association of Western Australia (Inc)* by

.....Signed..... Date 20/12/2000

Common Seal

Mr Dave Robinson, Branch Secretary,
Civil Service Association WA Inc

SCHEDULE D: ALPHABETICAL LISTING OF PROVISIONS

- Annual Leave
- Annual Leave Loading
- Annual Leave Travel Concessions
- Arrangement
- Availability of Agreements
- Breaches of Discipline
- Casual Employment
- Ceremonial/Cultural Leave
- Christmas Closedown
- Compassionate Leave
- Consultation Provisions
- Definitions
- Dispute Resolution Procedure
- Emergency and Community Service Leave
- Flexitime
- Higher Duties
- Home Based Work
- Hours of Work
- Long Service Leave
- No Further Claims
- Number of Employees Covered
- Objectives of the Agreement
- Parental Leave
- Parties Bound
- Past Productivity
- Payment Arrangements
- Productivity Improvements
- Public Holidays
- Relationship to Awards/Agreements
- Repayments of Overpayments
- Salaries
- Salary Packaging
- Scope
- Self Funded Work Breaks
- Short Leave
- Sick Leave and Family/Carer's Leave
- Signatories of Parties to the Agreement
- Substandard Performance
- Term of Agreement and Renegotiation
- Title
- Transfer
- Travelling Allowance
- Variation of Allowances

**PUBLIC SERVICE
ARBITRATOR—
Awards/Agreements—
Variation of—**

**GOVERNMENT OFFICERS SALARIES,
ALLOWANCES AND CONDITIONS AWARD 1989.
No. PSAA3 of 1989.**

2001 WAIRC 01873

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES ALBANY PORT AUTHORITY AND
OTHERS, APPLICANTS

v.
CIVIL SERVICE ASSOCIATION OF
WESTERN AUSTRALIA
INCORPORATED, RESPONDENT

CORAM COMMISSIONER P E SCOTT
DELIVERED THURSDAY, 25 JANUARY 2001

FILE NO P 64 OF 2000

CITATION NO. 2001 WAIRC 01873

Result Award varied

Order.

HAVING heard Ms A Davison on behalf of the applicant and Mr G Wauhop and with him Mr J Dasey 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 Government Officers Salaries, Allowances and Conditions Award 1989 be varied in accordance with the following Schedule and that such variation shall have effect on and from the 18th day of January 2001.

[L.S.] (Sgd.) P. E. SCOTT,
Commissioner.
Public Service Arbitrator.

Schedule.

1. Schedule I.—Clause 18.—Overtime: Delete Part I—Out of Hours Contact of this Schedule and insert the following in lieu thereof—

PART I—OUT OF HOURS CONTACT

(Operative from 1st pay period commencing on or after the 12th day of October 2000)

Standby	\$5.82 per hour
On Call	\$2.91 per hour
Availability	\$1.45 per hour

**GOVERNMENT OFFICERS (SOCIAL TRAINERS)
AWARD 1988.**

No. PSAA20 of 1985

2001 WAIRC 01875

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES DISABILITY SERVICES
COMMISSION, APPLICANT

v.
CIVIL SERVICE ASSOCIATION OF
WESTERN AUSTRALIA
INCORPORATED, RESPONDENT

CORAM COMMISSIONER P E SCOTT

DELIVERED THURSDAY, 25 JANUARY 2001
FILE NO P 66 OF 2000
CITATION NO. 2001 WAIRC 01875

Result Award varied

Order.

HAVING heard Ms A Davison on behalf of the applicant and Mr G Wauhup and with him Mr J Dasey 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 Government Officers (Social Trainers) Award 1988 be varied in accordance with the following Schedule and that such variation shall have effect on and from the 18th day of January 2001.

[L.S.] (Sgd.) P. E. SCOTT,
 Commissioner.
 Public Service Arbitrator.

Schedule.

1. Schedule B—Clause 22.—Overtime: Delete Part I—Out of Hours Contact of this Schedule and insert the following in lieu thereof—

PART I—OUT OF HOURS CONTACT

(Operative from 1st pay period commencing on or after the 12th day of October 2000)

Standby \$5.82 per hour
 On Call \$2.91 per hour
 Availability \$1.45 per hour

GRAYLANDS SELBY-LEMNOS AND SPECIAL CARE HEALTH SERVICES AWARD 1999.

No. PSAA1 of 1999.

2001 WAIRC 01874

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

PARTIES METROPOLITAN HEALTH SERVICE BOARD, APPLICANT

v.

CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA INCORPORATED, RESPONDENT

CORAM COMMISSIONER P E SCOTT
DELIVERED THURSDAY, 25 JANUARY 2001
FILE NO P 63 OF 2000
CITATION NO. 2001 WAIRC 01874

Result Award varied

Order.

HAVING heard Ms A Davison on behalf of the applicant and Mr G Wauhup and with him Mr J Dasey 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 Graylands Selby-Lemnos and Special Care Health Services Award 1999 be varied in accordance with the following Schedule and that such variation shall have effect on and from the 18th day of January 2001.

[L.S.] (Sgd.) P. E. SCOTT,
 Commissioner.
 Public Service Arbitrator.

Schedule.

1. Schedule H.—Overtime: Delete Part I—Out of Hours Contact of this Schedule and insert the following in lieu thereof—

PART I—OUT OF HOURS CONTACT

(Operative from 1st pay period commencing on or after the 12th day of October 2000)

Standby \$5.82 per hour
 On Call \$2.91 per hour
 Availability \$1.45 per hour

2. Schedule K—Diving, Flying and Seagoing Allowances: Delete this Schedule and insert the following in lieu thereof—

(1) Diving—(Clause 33)

\$4.66 per hour or part thereof.

(2) Flying—(Clause 34)

(a) Observation and photographic duties in fixed wing aircraft—\$8.61 per hour or part thereof.

(b) Cloud seeding and fire bombing duties, observation and photographic duties involving operations in which fixed wing aircraft are used at heights less than 304 metres or in unpressurised aircraft at heights more than 3048 metres—\$11.79 per hour or part thereof.

(c) When required to fly in a helicopter on fire bombing duties, observation and photographic duties or stock surveillance—\$16.29 per hour or part thereof.

(3) Sea Going Allowances (Clause 40)

(a) Victualling

(i) Government Vessel—meals on board not prepared by a cook—\$21.94 per day.

(ii) Government Vessel—meals on board are prepared by a cook—\$16.51 per day.

(iii) Non Government Vessel—\$20.02 each overnight period.

(b) Hard Living Allowance—45 cents per hour or part thereof.

The allowances prescribed in this schedule shall apply from the 1st pay period commencing on or after the 12th day of October 2000 and shall be varied in accordance with any movement in the equivalent allowances in the Public Service Award 1992.

PUBLIC SERVICE AWARD 1992.

No. PSAA4 of 1989.

2001 WAIRC 01876

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

PARTIES ABORIGINAL AFFAIRS DEPARTMENT AND OTHERS, APPLICANTS

v.

CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA INCORPORATED, RESPONDENT

CORAM COMMISSIONER P E SCOTT
DELIVERED THURSDAY, 25 JANUARY 2001
FILE NO P 65 OF 2000
CITATION NO. 2001 WAIRC 01876

Result Award varied

Order.

HAVING heard Ms A Davison on behalf of the applicant and Mr G Wauhup and with him Mr J Dasey 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 Public Service Award 1992 be varied in accordance with the following Schedule and that such variation shall have effect on and from the 18th day of January 2001.

[L.S.]

(Sgd.) P. E. SCOTT,
Commissioner,
Public Service Arbitrator.

Schedule.

1. Schedule H.—Overtime: Delete Part I—Out of Hours Contact of this Schedule and insert the following in lieu thereof—

PART I—OUT OF HOURS CONTACT

(Operative from 1st pay period commencing on or after the 12th day of October 2000)

Standby	\$5.82 per hour
On Call	\$2.91 per hour
Availability	\$1.45 per hour

AWARDS/AGREEMENTS— Variation of—

ELECTRICAL TRADES (SECURITY ALARMS INDUSTRY) AWARD.

No. 27 of 1979.

2000 WAIRC 01610

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES COMMUNICATIONS, ELECTRICAL,
ELECTRONIC, ENERGY,
INFORMATION, POSTAL,
PLUMBING, AND ALLIED
WORKERS UNION OF AUSTRALIA,
ENGIN & ELECT DIV, WA BRANCH,
APPLICANT

v.

WORMALD SECURITY CONTROLS
& OTHERS, RESPONDENT

CORAM CHIEF COMMISSIONER W S
COLEMAN

DELIVERED FRIDAY, 15 DECEMBER 2000

FILE NO/S APPLICATION 1282 OF 2000

CITATION NO. 2000 WAIRC 01610

Result Award varied

Representation

Applicant Mr C Young

Respondent Mr D Sproule

Order.

HAVING HEARD Mr C Young on behalf of the Applicant and Mr D Sproule on behalf of the Respondents, and by consent, the Commission, being satisfied that the claim complies with the terms of the General Order of the Commission No. 654 of 2000, dated 17 July 2000, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders—

THAT the Electrical Trades (Security Alarms Industry) Award No. 27 of 1979 be varied in accordance with the following Schedule and that such variation shall have

effect from the beginning of the first pay period commencing on or after the 8th day of December 2000.

FURTHERMORE, the Commission by consent of the parties, records the following—

- The allowances at Clause 15.—Special Rates and Provisions and Clause 28.—Wages of the award, have been adjusted by consent for Arbitrated Safety Net Increases totalling \$41.00 arising from the 1998, 1999 and 2000 State Wage Case decisions. The key classification award rate used was that for a 'Group B Serviceperson' prior to the awarding of 1998 Arbitrated Safety Net Increase—\$446.20.
- Meal allowances at Clause 11.—Overtime of the award, have been adjusted by consent for movements in CPI from the quarter ending June 1996 up to and including the quarter ending June 2000. The index used was CPI : Food : Meals out and Take-away Foods : Total.
- Car and Travelling Allowances at Clause 16.—Car Allowance and Clause 18.—Distant Work, subclauses (4) and (5) of the award, have been adjusted by consent for movements in CPI from the quarter ending June 1996 up to and including the quarter ending June 2000. The index used was CPI : Perth : Transportation.

(Sgd.) W. S. COLEMAN,
Chief Commissioner .

[L.S.]

Schedule.

1. Clause 11.—Overtime: Delete paragraph (f) of subclause (3) of this Clause and insert in lieu thereof—

- Subject to the provisions of paragraph (g) of this subclause, an employee required to work overtime for more than two hours shall be supplied with a meal by the employer or be paid **\$7.50** for a meal and, if owing to the amount of overtime worked, a second or subsequent meal is required he/she shall be supplied with each such meal by the employer or be paid **\$5.10** for each meal so required.

2. Clause 15.—Special Rates and Provisions: Delete subclauses (1)—(4), (6), (13), (14) and insert in lieu thereof the following—

- Height Money:** An employee shall be paid an allowance of **\$1.87** for each day on which he/she works at a height of 15.5 metres or more above the nearest horizontal plane but this provision does not apply to linespersons nor to riggers and splicers on ships or buildings.
- Dirt Money:** An employee shall be paid an allowance of **39 cents** per hour when engaged on work of an unusually dirty nature where clothes are necessarily unduly soiled or damaged or boots are unduly damaged by the nature of the work done.
- Confined Space:** An employee shall be paid an allowance of **47 cents** per hour when, because of the dimensions of the compartment or space in which he/she is working, he/she is required to work in a stooped or otherwise cramped position or without proper ventilation.
- Hot Work:** An employee shall be paid an allowance of **39 cents** per hour when he/she works in the shade in any place where the temperature is raised by artificial means to between 46.1 and 54.4 degrees celsius.
- Percussion Tools—**

An employee shall be paid an allowance of **23 cents** per hour when working a pneumatic rivetter of the percussion type and other pneumatic tools of the percussion type.

- An employee, holding a Third Year First Aid Medallion of the St. John Ambulance Association or a "C" Standard Senior First Aid Certificate of the Australian Red Cross Society, appointed by the employer to perform first aid duties shall be paid **\$7.65** per week in addition to his ordinary rate.

(14) A Serviceperson—Special Class, a Serviceperson or an Installer who holds, and in the course of his/her employment may be required to use, a current “A” Grade or “B” Grade Licence issued pursuant to the relevant regulation in force on the 28th day of February, 1978 under the Electricity Act 1945 shall be paid an allowance of **\$15.75** per week.

3. Clause 16.—Car Allowance: Delete subclause (3) of this Clause and insert in lieu thereof—

(3) A year for the purpose of this Clause shall commence on 1 July and end on 30 June next following.

RATES OF HIRE FOR USE OF EMPLOYEE’S OWN VEHICLE ON EMPLOYER’S BUSINESS

MOTOR CAR

Area and Details	Engine Displacement (in Cubic Centimetres)		
	Over 2600cc	Over 1600cc & under - 2600cc	1600cc & under
	Rate per Kilometre (Cents)		
Metropolitan Area	61.1	54.6	47.5
South West Land Division	62.5	55.9	48.7
North of 23.5° South Latitude	68.5	61.7	53.7
Rest of the State	64.3	57.8	50.1
Motor Cycle (In All Areas)	20.9 Cents per Kilometre		

4. Clause 18.—Distant Work: Delete subclauses (4) and (5) of this Clause and insert in lieu thereof—

(4) An employee to whom the provisions of subclause (1) of this Clause apply shall be paid an allowance of **\$25.50** for any weekend that he/she returns to his/her home from the job but only if—

- (a) The employee advises the employer or the employer’s agent of their intention no later than the Tuesday immediately preceding the weekend in which the employee so returns;
- (b) The employee is not required for work during that weekend;
- (c) The employee 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.

(5) Where an employee, supplied with board and lodging by the employer, is required to live more than 800 metres from the job the employee shall be provided with suitable transport to and from that job or be paid an allowance of **\$11.31** per day provided that where the time actually spent in travelling either to or from the job exceeds 20 minutes, that excess time shall be paid for at ordinary rates whether or not suitable transport is supplied by the employer.

5. Clause 28.—Wages: Delete subclauses (3)—(5) and insert in lieu thereof the following—

- (3) (a) Where an employer does not provide a tradesperson with the tools ordinarily required by that tradesperson in the performance of his/her work as a tradesperson the employer shall pay a tool allowance of **\$10.95** per week to such tradesperson for the purpose of such tradesperson supplying and maintaining tools ordinarily required in the performance of his/her work as a tradesperson.
- (b) Any tool allowance paid pursuant to paragraph (a) of this subclause shall be included in, and form part of, the ordinary weekly wage prescribed in this Clause.
- (c) An employer shall provide for the use of tradespersons all necessary power tools, special purpose tools and precision measuring instruments.
- (d) A tradesperson shall replace or pay for any tools supplied by his employer if lost through his/her negligence.
- (4) (a) In addition to the appropriate rates of pay prescribed in this Clause an employee shall be paid—
 - (i) **\$35.05** per week if he/she is engaged on the construction of a large industrial undertaking or any large civil engineering project.

- (ii) **\$31.70** per week if he/she is engaged in a multi-storeyed building but only until the exterior walls have been erected and the windows completed and a lift made available to carry the employee between the ground floor and the floor upon which he/she is required to work. A multi-storeyed building is a building which, when completed, will consist of at least five storeys.

- (iii) **\$18.25** per week if he/she is engaged otherwise on construction work falling within the definition of construction work in Clause 5.—Definitions of this Award.

- (b) Any dispute as to which of the aforesaid allowances apply to particular work shall be determined by the Board of Reference.

- (c) An allowance paid under this subclause includes any allowance otherwise payable under Clause 15.—Special Rates and Provisions of this Award except the allowance for work at heights, the first aid allowance and the licence allowance.

(5) **Leading Hand:** In addition to the appropriate total wage prescribed in subclause (1) of this clause, a leading hand shall be paid—

- (a) If placed in charge of not less than three and not more than ten other employees **\$19.80**
- (b) If placed in charge of more than ten and not more than twenty other employees **\$30.30**
- (c) If placed in charge of more than twenty other employees **\$39.00**

HOSPITAL WORKERS (GOVERNMENT) AWARD.

No. 21 of 1966.

2001 WAIRC 01765

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

PARTIES AUSTRALIAN LIQUOR, HOSPITALITY AND MISCELLANEOUS WORKERS UNION, WESTERN AUSTRALIAN BRANCH, APPLICANT

v.
BOARD OF MANAGEMENT—SIR CHARLES GAIRDNER HOSPITAL AND OTHERS, RESPONDENTS

CORAM COMMISSIONER P E SCOTT
DELIVERED FRIDAY, 12 JANUARY 2001
FILE NO APPLICATION 700 OF 2000
CITATION NO. 2001 WAIRC 01765

Result Award varied

Order:

HAVING heard Mr J Ridley on behalf of the applicant and Ms K Carter on behalf of the respondents, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Hospital Workers (Government) Award No. 21 of 1966 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 21st day of December 2000.

(Sgd.) P. E. SCOTT,
Commissioner.

[L.S.]

Schedule.

1. Clause 5.—Definitions: Delete subclause (12) of this clause and insert the following in lieu thereof—

- (12) “Union” means the Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch.

2. Clause 15.—Overtime: Delete subclause (4) of this clause and insert the following in lieu thereof—

- (4) Where an employee is required to work overtime and such overtime is worked for a period of at least two hours in excess of the required daily hours of work, the employee shall be provided with a meal free of cost, or shall be paid the sum of \$7.28 as meal money.

This subclause shall not apply where the employee has been advised of the necessity to work overtime on the previous day.

3. Clause 16.—Shift Work:

A. Delete subclause (1) of this clause and insert the following in lieu thereof—

- (1) Subject to subclause (2) of this clause, a loading of \$1.83 per hour or pro rata for part thereof shall be paid for time worked on afternoon or night shift as defined hereunder—
- (a) Afternoon shift—commencing between 12.00 noon and 6.00 p.m.
- (b) Night shift—commencing between 6.00 p.m. and 4.00 a.m.

B. Delete subclause (2) of this clause and insert the following in lieu thereof—

- (2) A loading of \$2.75 per hour or pro rata for part thereof shall be paid for time worked on permanent afternoon or night shift.

4. Clause 17.—Weekend Work:

A. Delete subclause (1) of this clause and insert the following in lieu thereof—

- (1) In addition to the ordinary rate of wage prescribed by this award an employee shall be paid a loading of \$7.35 per hour or pro rata for part thereof for ordinary hours worked between midnight on Friday and midnight on Saturday.

B. Delete subclause (2) of this clause and insert the following in lieu thereof—

- (2) In addition to the ordinary rate of wage prescribed by this award an employee shall be paid a loading of \$14.67 per hour or pro rata for part thereof for ordinary hours worked between midnight on Saturday and midnight on Sunday.

5. Clause 19.—Allowances and Special Provisions: Delete this clause and insert the following in lieu thereof—

In addition to the rates prescribed in Clause 39.—Wages of this award, the following allowances shall be paid—

- (1) (a) Employees handling foul linen in the course of their duties shall be paid 80 cents per hour or any part thereof, to a maximum of \$2.44 per day.
- (b) Employees handling materials such as carpet tiles, curtains, sealed bags or fabrics, which have become soiled in the same manner as foul linen as defined in Clause 5.—Definitions, shall be paid an allowance according to subclause (1)(a) of this clause.
- (2) Orderlies employed on boiler firing duties—\$1.71 per day.
- (3) Orderlies required to handle a cadaver—\$1.40 per hour with a minimum payment of one hour.
- (4) Orderlies—Sir Charles Gairdner Hospital, sterilising sputum mugs—\$1.71 per day.
- (5) (a) A storeman required to operate a ride-on power operated tow motor, a ride-on power operated pallet truck or a walk-beside power operated high lift stacker in the performance of his/her duties shall be paid an additional 35 cents per hour whilst so engaged.

- (b) A storeman required to operate a ride-on power operated fork lift, high lift stacker or high lift stock picker or a power operated overhead traversing hoist in the performance of his/her duties shall be paid an additional 45 cents per hour whilst so engaged.

- (6) A Food Service Attendant who is required to reconstitute frozen food and/or reheat chilled food, in addition to or in substitution of their normal duties, shall be paid an allowance of 57 cents per hour or part thereof whilst so engaged.

6. Clause 21.—Public Holidays: Delete subclause (3) of this clause and insert the following in lieu thereof—

- (3) Any employee who is required to work on a day observed as a public holiday shall be paid a loading of \$22.10 per hour or pro rata for part thereof in addition to his/her ordinary rate of wage or if the employer agrees be paid a loading of \$7.35 per hour or pro rata for part thereof in addition to his/her ordinary rate of wage and be entitled to observe the holiday on a day mutually acceptable to the employer and employee.

7. Clause 22.—Public Holidays—Graylands and Selby Lodge/Lemnos Hospitals: Delete subclause (3)(c) of this clause and insert the following in lieu thereof—

- (c) Any employee who is required to work on the day observed as a holiday as prescribed in this clause in his/her normal hours work or ordinary hours in the case of a rostered employee shall be paid a loading of \$7.35 per hour or pro rata for part thereof and be entitled to observe the holiday on a day mutually acceptable to the employer and the employee.

Provided that in any specified 12 monthly period, after an employee has accumulated five days in lieu of public holidays, by agreement between the employee and the employer, the employee may be paid for work performed on a day observed as a holiday as prescribed in this clause a loading of \$18.52 per hour or pro rata for part thereof in addition to his/her ordinary rate of wage in lieu of the foregoing provisions of this subclause.

8. Clause 39.—Wages : Delete subclause (4) of this clause and insert the following in lieu thereof—

- (4) General Conditions—
- (a) Casual employees shall be paid at the rate of 20 percent in addition to the rates herein prescribed.
- (b) Except where this clause specifies classifications which require the employee to be in charge of other employees, any employee who is placed in charge of—
- (i) not less than three and not more than ten other employees shall be paid \$16.05 per week in addition to the ordinary wage prescribed by this clause;
- (ii) more than 10 and not more than ten other employees shall be paid \$24.30 per week in addition to the ordinary wage prescribed by this clause;
- (iii) more than 20 other employees shall be paid \$32.05 per week in addition to the ordinary wage prescribed by this clause.
- (c) In this clause the term ‘year of employment’ shall mean year of service with the employing hospital.
- (d) The rates herein prescribed shall be increased by the amount of any percentage increase in wages awarded by the Western Australian Industrial Relations Commission to employees covered by this award.

Where any increase in wages is not a percentage increase, the rates of wage shown in this award as relating to afternoon and night shift, permanent shift or weekend work or public

holidays shall be adjusted to reflect the relationship which the additional payment bears to the amount of \$457.65 as at the 1 January, 1990.

9. Schedule A—Parties to the Award: Delete this schedule and insert the following in lieu thereof—

The following organisation is a party to this award—

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

RANGERS (NATIONAL PARKS) CONSOLIDATED AWARD, 1987.

No. 1744 of 2000.

2000 WAIRC 01374

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES DEPARTMENT OF CONSERVATION
AND LAND MANAGEMENT,
APPLICANT

v.

AUSTRALIAN LIQUOR,
HOSPITALITY AND
MISCELLANEOUS WORKERS
UNION, WESTERN AUSTRALIAN
BRANCH, RESPONDENT

CORAM COMMISSIONER A R BEECH

DELIVERED FRIDAY, 24 NOVEMBER 2000

FILE NO APPLICATION 1744 OF 2000

CITATION NO. 2000 WAIRC 01374

Result Award varied

Representation

Applicant Mr G. Wibrow appeared on behalf of the applicant by way of written submissions.

Respondent Mr J. Ridley appeared on behalf of the respondent by way of written submissions.

Reasons for Decision.

- This is an application to vary the *Rangers (National Parks) Consolidated Award, 1987*. The application proceeds by consent and follows the undertaking given by the parties in the *Department of Conservation and Land Management and ALHMWU Enterprise Agreement 1999* to jointly and co-operatively review this award with the object of rationalising and updating its provisions. This has involved codification, re-wording and modernisation of the parties but does not reduce conditions or disadvantage employees. The initiative is seen by the parties as being a productivity initiative in the administration and operation of the Department.
- The variations do not offend of the State Wage Principles given that they do not alter what would be seen to be the award safety net. The Commission is assured that there is no change to the nature, type or quanta of the entitlements provided in the award. Further, as the union properly points out, this is a single enterprise specific award which is being varied by consent to give effect to structural efficiency initiatives or productivity based arrangements and the variation made to the State Wage Principles to recognise those circumstances (2000) 80 WAIG 3379 at 3381 is applicable. Accordingly, the amendments sought are approved and the Minute of an Order now issues.

RANGERS (NATIONAL PARKS) CONSOLIDATED AWARD, 1987.

2000 WAIRC 01920

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES DEPARTMENT OF CONSERVATION
AND LAND MANAGEMENT,
APPLICANT

v.

AUSTRALIAN LIQUOR,
HOSPITALITY AND
MISCELLANEOUS WORKERS
UNION, WESTERN AUSTRALIAN
BRANCH, RESPONDENT

CORAM COMMISSIONER A R BEECH

DELIVERED TUESDAY, 30 JANUARY 2001

FILE NO APPLICATION 1744 OF 2000

CITATION NO. 2001 WAIRC 01920

Result Award varied and consolidated.

Representation

Applicant Mr G. Wibrow appeared on behalf of the applicant by way of written submissions.

Respondent Mr J. Ridley appeared on behalf of the respondent by way of written submissions.

Order.

HAVING HEARD Mr G. Wibrow on behalf of the applicant and Mr J. Ridley on behalf of the respondent, the Commission, pursuant to the powers conferred on it pursuant to the Industrial Relations Act 1979 and by consent, hereby orders—

THAT the *Rangers (National Parks) Consolidated Award, 1987* be varied and consolidated in accordance with the attached schedule and that such variation and consolidation shall have effect on and from the 22nd day of December 2000.

[L.S.] (Sgd.) A. R. BEECH,
Commissioner.

Schedule.

1.—TITLE

This Award shall be known as the *Rangers (National Parks) Consolidated Award 2000*.

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 \$400.40 per week payable from the beginning of the first pay period commencing on or after 1st August 2000.

(3) The Minimum Adult Award Wage of \$400.40 per week is deemed to include all arbitrated safety net adjustments from State Wage Case decisions to July, 2000, including the increase in Matter No. 654 of 2000.

(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 \$400.40 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.

(8) Minimum Adult Award Wage

The rates of pay in this award include the minimum weekly wage for adult employees payable under the July 2000 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.—ARRANGEMENT

- 1 Title
- 1B Minimum Adult Award Wage
- 2 Arrangement
- 3 Area and Scope
- 4 Term
- 5 Definitions
- 6 Contract of Service
- 7 Hours
- 8 Roster
- 9 Overtime
- 10 Saturday and Sunday Work
- 11 Annual Leave
- 12 Public Holidays
- 12A Public Holiday Leave
- 13 Sick Leave
- 14 Conditions and Allowances
- 15 Long Service Leave
- 16 No Reduction
- 17 Wages
- 18 Transfers and Termination
- 19 Higher Duties
- 20 Protective Clothing and Equipment
- 21 Dispute Settlement Procedure
- 22 Change Rooms and Mess Facilities
- Appendix—Resolution of Disputes Requirements
- Schedule A—Parties to the Award

3.—AREA AND SCOPE

This Award shall apply to employees employed in National Parks under and by virtue of the *Conservation and Land Management Act, 1984*, classified in clause 17.—Wages of this Award.

4.—TERM

This Award shall operate from the first pay period on or after March 6, 1987.

5.—DEFINITIONS

(1) “Accrued Day Off” means the paid day(s) off accruing to an employee resulting from an entitlement to the 38 hour week as prescribed in clause 7.—Hours.

(2) “Casual employee” means an employee who is employed by the hour.

(3) “Employees with No Fixed Hours” means those employees who have no fixed hours of work and who are in receipt of the loading prescribed in paragraph (b) of subclause (1) of clause 17.—Wages of this Award.

(4) “Employer” means the Chief Executive Officer (Executive Director) of the Department of Conservation and Land Management (“CALM”).

(5) “Mobile Ranger” means a Ranger Grade 1 or Ranger Grade 2, appointed as such under the *Conservation and Land*

Management Act, who is regularly required to move from park to park, and for that purpose is required to maintain mobile accommodation.

(6) “Non Rostered Employee” means an employee who works their ordinary hours between Monday and Friday inclusive.

(7) “Park Maintenance Employee” means an employee engaged in construction and/or maintenance work in a National Park.

(8) “Ranger Grade 1” means a Ranger, appointed as such under the *Conservation and Land Management Act*, and who, by June 30, 1992 shall possess either a Certificate of National Park Management, or a Conservation and Land Management Certificate or equivalent qualification and who under limited direction assists in the management of a major National Park or manages and controls a less complex National Park.

(9) “Ranger Grade 2” means a Ranger, appointed as such under the *Conservation and Land Management Act*, who provides significant assistance in the management of a major National Park, who has experience in two or more National Parks or equivalent experience and who has been at the top of the Ranger Grade 1 salary scale for at least 12 months.

(10) “Ranger-in-Charge” means a Ranger appointed as such under the *Conservation and Land Management Act*, who manages a National Park.

(11) “Rostered Days Off” means for

(a) Rostered Employees

the two days rostered off that an employee has as a result of being a rostered employee.

(b) Employees with No Fixed Hours

the average over a year of two full days off duty per week.

(12) “Rostered Employee” means an employee who is rostered to work any five of the seven days of the week.

(13) “Senior Ranger” means a Ranger, appointed as such under the *Conservation and Land Management Act*, who coordinates the management of a major National Park or group of National Parks and supervises 3 or more other Rangers on a full time basis.

(14) “Trainee Ranger” means an employee appointed as such under the *Conservation and Land Management Act*, who is required within a continuous two year period to undertake study and obtain a Certificate of National Park Management, whilst gaining practical work experience in National Parks, under the direct supervision and control of an experienced Ranger or other experienced CALM officer.

(15) “Union” means the Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch.

6.—CONTRACT OF SERVICE

(1) (a) Rangers

Except in the case of a casual employee the contract of service shall be by the fortnight, terminable by two weeks’ notice on either side, given on any working day, or, in the event of such notice not being given by the payment of two weeks’ wages by the employer or the forfeiture of two weeks’ wages by the employee.

(b) Other Employees

Except in the case of a casual employee the contract of service shall be by the week, terminable by one week’s notice on either side given on any working day, or, in the event of such notice not being given, by the payment of one week’s wages by the employer or the forfeiture of one week’s wages by the employee.

(2) The engagement of a casual employee may be terminated at any time without notice. Provided that all wages due to the employee shall be paid immediately upon the termination of his/her engagement.

(3) Notwithstanding the provision of subclause (1) of this clause a lesser period of notice may be given if mutually agreed to between employer and employee.

(4) The employer shall be under no obligation to pay for any day not worked upon which the employee is required to present him/herself for duty, except when such absence from work is due to illness and comes within the provisions of clause

13.—Sick Leave, or such absence is on account of holidays to which the employee is entitled under the provisions of this award.

(5) This clause does not affect the employer's right to dismiss an employee for misconduct and an employee so dismissed shall be paid wages up to the time of dismissal only.

(6) An employer may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training, including work which is incidental or peripheral to the employee's main tasks or functions.

7.—HOURS

(1) Except as hereinafter provided the ordinary hours of work shall be 38 in any week and shall be worked between the hours of 7.00am and 6.00pm.

(2) Ordinary hours shall be worked within a 20 day cycle of eight hours on the first 19 days in each cycle with 0.4 of one hour of each such day worked accruing as an entitlement to take the 20th day on each cycle as a accrued paid day off as though worked.

(3) Employees with No Fixed Hours

Employees with No Fixed Hours shall be entitled to an average over a year of two full days off duty per week to be fixed by arrangement between the employer and the employee concerned. The ordinary hours of work shall not exceed an average of 38 per week.

(4) Rostered Employees

The ordinary hours of work for Rostered Employees shall not exceed an average of 38 per week over a roster cycle and shall be worked between the hours of 7.00 am and 6.00 pm on any of the seven days of the week.

(5) Part Time Employment

(a) Employees may be regularly employed to work less hours per week than are prescribed in this clause.

(b) Subject to paragraph (c) of this subclause payment shall be a weekly rate calculated pro rata to the class of work on which the employee is engaged in the proportion which the hours of work bears to thirty eight.

(c) A part-time employee employed under the provisions of this clause shall receive payment for sick leave on a pro rata basis in the proportion which the hours of work bears to thirty eight.

(6) Workers' Compensation

(a) Where an employee is on workers' compensation for periods of less than one complete 20 day work cycle, such employee will accrue towards and be paid for the succeeding Accrued Day Off following such leave.

(b) An employee will not accrue days off for periods of workers' compensation where such period of leave exceed one or more complete 20 day work cycles.

(c) Where an employee is on workers' compensation for less than one complete 20 day work cycle and an Accrued Day Off falls within that period, the employee will not be rostered for an additional day off.

8.—ROSTER

(1) The employer shall cause to be prepared and exhibited a roster or rosters showing—

(a) the name of each employee; and

(b) the days and hours over which an employee shall be required to perform his/her ordinary hours of work.

(2) Separate rosters shall be prepared and exhibited for each group of employees employed by the employer.

Provided that Employees with No Fixed Hours are not Rostered Employees and any roster prepared shall be indicative only and subject to change to meet the requirements of the employer.

(3) A roster may be altered at any time by agreement between the employer and the employee.

(4) The Accrued Day Off will be observed to suit the circumstances of the employer. Under normal circumstances the Accrued Day Off will be the first or last working day of the week.

9.—OVERTIME

(1) Except as otherwise provided in this clause, all time worked in excess of or outside the usual hours of work or, in the case of Rostered Employees, outside the rostered hours of work shall be overtime and paid for at the rate of time and one half for the first two hours and double time thereafter.

(2) (a) Where overtime is worked on Saturdays prior to twelve noon the employee shall be paid at the rate of time and one half for the first two hours and double time thereafter.

(b) Overtime worked after twelve noon on Saturdays shall be paid at the rate of double time.

(c) All overtime performed on Sundays shall be paid at the rate of double time.

(3) The employer may require any employee to work reasonable overtime at overtime rates and such employee shall work overtime in accordance with such requirements.

(4) Employees with No Fixed Hours

Employees with No Fixed Hours shall be exempt from the provisions of subclauses (1) and (2) of this clause.

Provided that if an employee so specified is required to work on a rostered day off duty he/she shall be paid at the rate of double time for any time so worked. The rate prescribed in this subclause is exclusive of the 25% loading prescribed for Employees with No Fixed Hours in paragraph (b) of subclause (1) of clause 17.—Wages.

(5) In computing overtime each day shall stand alone but when an employee works overtime which continues beyond midnight on any day, the time worked after midnight shall be deemed to be part of the previous day's work for the purpose of this subclause.

(6) (a) When overtime is necessary it shall, wherever reasonably practicable be so arranged that employees have at least ten consecutive hours off duty between the work on successive days.

(b) An employee who works so much overtime between the termination of his/her ordinary work on one day and the commencement of his/her ordinary work on the next day that the employee has not had at least ten consecutive hours off duty between those times shall, subject to this paragraph, be released after completion of such overtime until the he/she has had ten consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

(c) If, on the instructions of the employer, such an employee resumes or continues work without having had such ten consecutive hours off duty, the employee shall be paid at double time rates until he/she is released from duty for such period and the employee shall then be entitled to be absent until he/she has had ten consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

(d) Where an employee is called into work on a Sunday or holiday preceding an ordinary working day, he/she shall, wherever reasonably practicable, be given ten consecutive hours off duty before his/her usual starting time on the next day. If this is not practicable, then the provisions of paragraphs (b) and (c) of this subclause shall apply mutatus mutandis.

Provided that overtime worked as a result of a recall, shall not be regarded as overtime for the purpose of this paragraph, when the actual time worked is less than three hours on such recall or on each such recalls.

(e) An employee called back to work after the normal working time without prior notice shall be paid a minimum of three hours at the appropriate overtime rate.

(7) (a) An employee required to work continuous overtime for more than one hour shall be supplied with a meal by the employer or be paid \$7.35 for a meal, and if owing to the amount of overtime worked, a second or subsequent meal is required he/she shall be supplied with each such meal by the employer or be paid \$4.30 for each meal so required.

(b) The provisions of paragraph (a) of this subclause do not apply—

(i) in respect of any period of overtime for which the employee has been notified on the previous day or earlier that he/she will be required; or

- (ii) to any employee who lives in the locality in which the place of work is situated who can reasonably return home for meals; or
- (iii) where the overtime worked is outside the customary meal time.

(c) If an employee provides him/herself with a meal or meals and is not required to work overtime or is required to work less overtime than the period notified, the employee shall be paid for each meal provided and not required, the appropriate amount prescribed in paragraph (a) of this subclause.

(d) An employee required to work continuously from midnight to 6.30am and ordered back to work at 8.00am the same day shall be paid \$3.80 for breakfast.

(e) The provisions of this subclause do not operate so as to require payment of more than double time rates, or double time and one half on a holiday prescribed under this Award for any work.

(8) If when the meal time customary in the industry arrives, an employee is required to continue working and his/her meal interval is thereby deferred, the employee shall be paid at overtime rates until he/she gets a meal interval of the customary duration.

(9) Provided that if the continuance of work is reasonably necessary and could not have been avoided by any reasonable action of the employer, the employer shall be allowed time not exceeding twenty minutes before such penalty rate begins to accrue.

(10) Where, to meet the needs of the employer, the employee is required to work on his/her accrued day off no overtime shall be paid and that employee shall be re-rostered for another day off duty within 10 working days.

(11) Overtime provisions for Rostered Employees and Non Rostered Employees will not apply until after 8 hours have been worked on each day.

10.—SATURDAY AND SUNDAY WORK

(1) All ordinary time worked between midnight on Friday and midnight on Saturday shall be paid at the rate of time and one half. All ordinary time worked on Sunday shall be paid at the rate of double time.

(2) Employees with No Fixed Hours

The provisions of this clause shall not apply to Employees with No Fixed Hours.

11.—ANNUAL LEAVE

(1) (a) Except as hereinafter provided a period of four consecutive weeks' leave with payment of ordinary wages as prescribed shall be allowed annually to an employee by the employer after a period of 12 months' continuous service with the employer.

(b) If after one month's continuous service in any qualifying 12 monthly period an employee lawfully leaves his/her employment or his/her employment is terminated by the employer through no fault of the employee, the employee shall be paid 2.92 hours' pay at his/her ordinary rate of wage in respect of each completed week of continuous service in that qualifying period.

(2) In addition to any payment to which he/she may be entitled under subclause (1) of this clause, an employee whose employment terminates after he/she has completed a 12 monthly qualifying period and who has not been allowed the leave prescribed under this Award in respect of that qualifying period, shall be given payment in lieu of that leave and the loading prescribed in subclause (7) hereof unless—

- (a) the employee has been justifiably dismissed for misconduct; and
- (b) the misconduct for which the employee has been dismissed occurred prior to the completion of that qualifying period.

(3) An employee may be granted annual leave with payment of ordinary wages as prescribed prior to the employee having completed a period of 12 months' continuous service, in which case should the services of such employee terminate or be terminated prior to the completion of 12 months' continuous service, the employee shall refund to the employer the difference between the amount received by him/her for

wages in respect of the period of his/her annual leave and the amount which would have accrued to the employee by reason of the length of the employee's service up to the date of the termination of his/her services.

(4) Ordinary wages for an employee shall mean the rate of wage (including the 25% loading for Employees with No Fixed Hours) the employee has received for the greatest proportion of the calendar month prior to taking his/her leave.

(5) (a) When computing the annual leave due under this clause, no deduction shall be made from such leave in respect of the period that an employee is on annual leave, long service leave and/or holidays. Provided that no deduction shall be made for any approved period an employee is absent from duty through sickness, with or without pay, unless the absence exceeds three calendar months, in which case deduction may be made for such excess only.

(b) Approved periods of absence from work caused through accident sustained in the course of employment shall not be considered breaks in continuity of service, but the first six months only of any such period shall count as service for the purpose of computing annual leave.

(6) Employees regularly working north of South Latitude 26 shall be allowed to accumulate annual leave for two years, subject to the convenience of the employer. Entitlements for paid travelling time are as detailed in subclause (5) of clause 19.—Employees Living North of the 26 degrees South Latitude of the *Miscellaneous Government Conditions and Allowances Award No A4 of 1992*

(7) In addition to the payment prescribed for annual leave an employee shall receive a loading calculated on the rate of wage prescribed by subclause (4) hereof. The loading shall be as follows—

- (a) An employee proceeding on annual leave shall be paid, in addition to the ordinary payment for such leave, a loading of 17.5 percent calculated on the rate of wage prescribed by subclause (4) of this clause.
- (b) Provided that the maximum loading payable shall not exceed the amount set out in the Commonwealth Bureau of Census and Statistics Publication for "average weekly earnings per male employed unit" in Western Australia for the September quarter immediately preceding the date of accrual of such leave.
- (c) The loading prescribed by this subclause shall not apply to proportionate leave on termination.

(8) The provisions of this clause shall not apply to casual employees.

(9) The total annual leave entitlement may, by agreement between the employee and the employer, be taken in more than one portion. Provided that no portion is less than one week.

12.—PUBLIC HOLIDAYS

(1) The provisions of subclauses (2)—(5) inclusive of this clause do not apply to—

- (a) Employees with No Fixed Hours; or
- (b) Rostered Employees; or
- (c) Casual employees.

(2) The following days, or the days observed in lieu shall, subject as hereinafter provided, be allowed as holidays, without deduction of pay, namely—

New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, Foundation Day, Sovereign's Birthday, Christmas Day and Boxing Day.

Provided that another day may be taken as a holiday by arrangement between the parties, in lieu of any of the days named in the subclause.

When any of the days mentioned in paragraph (a) hereof falls on a Saturday or a Sunday the holiday shall be observed on the next succeeding Monday, and when Boxing Day falls on a Sunday or a Monday the holiday shall be observed on the next succeeding Tuesday. In each case the substituted day shall be a holiday without deduction of pay and the day for which it is substituted shall not be a holiday.

(3) Where—

- (a) a day is proclaimed as a public holiday or as a public half-holiday under Section 7 of the *Public and Bank Holidays Act, 1972*; and
- (b) that proclamation does not apply throughout the State or to the metropolitan area of the State, that day shall be a public holiday or, as the case may be a public half-holiday for the purposes of this Award within the district or locality specified in the proclamation.

(4) Whenever any of the days referred to in paragraph (a) of subclause (2) of this clause falls on an employee's ordinary working day and the employee is not required to work on such day he/she shall be paid for the ordinary hours he/she would have worked on such day had it not been a holiday.

(5) If any employee other than—

- (a) An Employee with No Fixed Hours; or
- (b) a Rostered Employee,

is required to work on a Public Holiday the employee shall be paid the time worked at the rate of double time and one-half.

Provided that in lieu of the foregoing provisions of this paragraph and subject to an agreement between the employer and the employee, work done on any day prescribed as a Public Holiday under this Award shall be paid for at the rate of time and one-half and the employee shall, in addition, be allowed a day's leave with pay to be taken at some subsequent date if the employee so agrees.

(6) When the employee is absent on leave without pay, sick leave without pay or workers' compensation any day falling during such absence shall not be treated as a paid holiday. Where the employee is on duty or available for duty on the working day immediately preceding a holiday, or resumes duty or is available on the working day immediately following a day observed as a holiday as prescribed in this clause, the employee shall be entitled to be paid for such holiday.

(7) Employees with No Fixed Hours and Rostered Employees

Employees with No Fixed Hours and Rostered Employees who are required to work on a Public Holiday shall be paid at the rate of time and one half time for time worked.

12A.—PUBLIC HOLIDAY LEAVE

(1) The following provisions apply to—

- (a) Employees with No Fixed Hours; and
- (b) Rostered Employees

who are excluded from the provisions of subclauses (2) to (5) of Clause 12.—Public Holidays of this Award.

(2) (a) Subject to the provisions of this subclause a period of two consecutive weeks' leave with payment of ordinary wages as prescribed shall be allowed annually to an employee by the employer after a period of 12 months' continuous service with that employer.

(b) An employee subject to this subclause if after completing one month's continuous service in any qualifying 12 monthly period lawfully leaves his/her employment or the employment is terminated by the employer through no fault of the employee, shall be paid 1.46 hours' pay at the employee's ordinary rate of wage in respect of each completed week of continuous service in that qualifying period.

(3) For the purposes of this clause ordinary wages for an employee means the rate of wage (including 25% loading for Employees with No Fixed Hours) the employee has received for the greatest proportion of the calendar month prior to taking his/her leave.

13.—SICK LEAVE

(1) (a) An employee shall be entitled to payment for non-attendance on the ground of personal ill health or injury for one-sixth of a week's pay for each completed month of service.

(b) Payment hereunder may be adjusted at the end of each accruing year, or at the time the employee leaves the service of the employer in the event of the employee being entitled by service subsequent to the sickness in that year to a greater allowance than that made at the time the sickness occurred.

(2) The unused portions of the entitlement prescribed in subclause (1) hereof in any accruing year shall be allowed to

accumulate and may be availed of in the next or any succeeding year.

(3) In order to acquire entitlement to payment in accordance with this clause the employee shall as soon as reasonably practicable advise the employer of his/her inability to attend for work, the nature of the illness or injury and the estimated duration of the absence. Provided that such advice other than in extraordinary circumstances shall be given to the employer within 24 hours of the commencement of the absence.

(4) No employee shall be entitled to the benefit of this clause unless he/she produces proof to the satisfaction of the employer or his/her representative of such sickness provided that the employer shall accept as satisfactory proof a statutory declaration or like proof where by reason of remoteness from medical facilities it is impractical to procure a medical certificate for absences of less than three consecutive working days unless the total of such absences exceeds five days in any one accruing year.

(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/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/her 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 he/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/she is unable to attend for work on the working day next following his/her 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) and (b) 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 the, be paid for in accordance with the provisions of clause 11.—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 11.—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 Assistance Act 1981* nor to employees whose injury or illness is the result of the employee's own misconduct.

(7) The provisions of this clause do not apply to casual employees.

(8) An employee shall continue to accrue an entitlement to an accrued day off whilst on paid sick leave.

The employee's sick leave entitlement will be debited by 8 hours.

(9) Where an employee is on an accrued day(s) off he/she shall not be entitled to claim for sick leave in substitution for the accrued day(s) off.

14.—CONDITIONS AND ALLOWANCES

(1) The provisions of the *Miscellaneous Government Conditions and Allowances Award No. A 4 of 1992* shall apply mutatis mutandis to all employees covered by this award.

(2) Subject to the provisions of this award, the provisions of the Public Service Award 1992 PSA No.4 of 1989 at—

- (a) Clause 30.—Camping Allowance and Schedule C—Camping Allowance; and

- (b) Clause 33.—Diving Allowance, Clause 34.—Flying Allowance and Schedule K—Diving, Flying and Seagoing Allowance

as amended from time to time, shall apply mutatis mutandis to employees covered by this award.

(3) A Park Maintenance Employee who is the holder of an approved First Aid Certificate shall, in addition to his/her normal rate of pay, be paid an additional allowance of \$1.47 per week. This allowance shall be paid to Park Maintenance Employees on their accrued days off.

(4) Mobile Rangers shall, in addition to their normal rate of pay, be paid an allowance of \$76.02 per week to offset the costs associated with living in and maintaining a caravan in accordance with an annual review operative from 1st January, 1990.

(5) All employees, excluding Ranger classifications whose rates of pay are specified in subclause (1) of Clause 17.—Wages of this Award, shall be paid an allowance of \$17.18 per week to compensate for the disabilities associated with the construction and maintenance industry.

(6) The following conditions shall apply to Park Maintenance Employees on vermin, plant or noxious weed control who are required to use a toxic substance.

(a) The employee shall be informed by the employer of the health hazards involved and instructed in the correct and necessary safeguards which must be observed in the use of such materials.

(b) The employee using such materials shall be provided with, and shall use, all safeguards as are required by the appropriate government authority or, in the absence of such requirement, such safeguards as are defined by a competent authority or person chosen by the union and the employer.

(c) The employee using toxic substances or materials of a like nature shall be paid 47 cents per hour extra. Employees working in close proximity to employees so engaged shall be paid 38 cents per hour extra.

(d) For the purposes of this subclause toxic substances shall include epoxy based materials and all materials which include or require the addition of a catalyst hardener and reactive additives or two pack catalyst system shall be deemed to be materials of a like nature.

(7) (a) An employer who requires a Park Maintenance Employee to use a pesticide shall—

- (i) Inform the employee of any known health hazards involved; and
(ii) Ascertain from the Department of Health and Medical Services whether and, if so, what protective clothing or equipment should be worn during its use.

(b) Pending advice from that department the employer may require the pesticide to be used if the employer informs the employee of any safety precautions specified by the manufacturer of the pesticide and instructs the employee to follow those precautions.

(c) The employer shall supply the employee with any protective clothing or equipment required pursuant to paragraphs (a) and (b) of this subclause and, where necessary, instruct the employee in its use.

(d) An employee required to wear protective clothing or equipment for the purpose of this subclause shall be paid 47 cents per hour or part thereof while doing so unless the Union and the employer agree that by reason of the nature of the protective clothing or equipment the employee does not suffer discomfort or inconvenience while wearing it or, in the event of disagreement, the Western Australian Industrial Relations Commission so determines.

(e) An allowance is not payable under this clause if the Department of Health and Medical Services advises the employer in writing that protective clothing or equipment is not necessary.

(8) All Park Maintenance Employees called upon to clean toilet closets shall receive an allowance of 47 cents per closet per week and for these purposes one metre of urinal shall count as one closet and three urinal stalls shall count as one closet.

(9) Where agreement is reached between the employer and the employee, payment of wages may be made in cash and a

signature of the employee shall be obtained for such cash payment.

15.—LONG SERVICE LEAVE

(1) The conditions governing the granting of long service leave to Government wages employees generally shall apply to employees covered by this Award.

(2) When an employee proceeds on long service leave, there shall be no accrual towards an accrued day off in accordance with the provisions of subclause (2) of clause 7.—Hours of this Award.

16.—NO REDUCTION

Nothing contained herein shall in itself operate so as to reduce the wages of any employee who at the date of this award is being paid above the minimum rate prescribed for his/her class of work.

17.—WAGES

(1) (a) The minimum weekly rate of wage payable to employees covered by this award shall be as follows in accordance with the employee's classification—

	\$ per Week	Arbitrated Safety Net Adjustments \$ per week	Total \$ per Week
(i) Ranger Classifications			
Trainee Ranger			
1st year of training	414.70	75.00	489.70
2nd year of training	427.10	75.00	502.10
Ranger Grade 1			
Year 1	439.60	75.00	514.60
Year 2	452.00	75.00	527.00
Year 3	466.40	73.00	539.40
Year 4	476.30	73.00	549.30
Year 5	491.00	73.00	564.00
Ranger Grade 2			
Year 1	508.60	73.00	581.60
Year 2	522.10	71.00	593.10
Year 3	536.40	71.00	607.40
Year 4	551.20	71.00	622.20
Year 5	567.00	71.00	638.40
Senior Ranger			
Year 1	588.50	73.00	659.50
Year 2	605.20	73.00	676.20
Year 3	623.10	73.00	694.10
Year 4	640.30	73.00	711.30
(ii) Park Maintenance Employees			
Grade 1			
1st year of employment	357.90	75.00	432.90
2nd year of employment	361.50	75.00	436.50
3rd year of employment and thereafter	365.30	75.00	440.30
Grade 2			
1st year of employment	360.30	75.00	435.30
2nd year of employment	363.80	75.00	438.80
3rd year of employment and thereafter	367.40	75.00	442.40
Grade 3			
1st year of employment	379.40	75.00	454.40
2nd year of employment	382.80	75.00	457.80
3rd year of employment and thereafter	386.60	75.00	461.60
Power Driven Portable Saw Operator and Vermin, Plant or Noxious Weed Employee			
1st year of employment	380.90	75.00	455.90
2nd year of employment	384.60	75.00	459.60
3rd year of employment and thereafter	388.20	75.00	463.20

	\$ per Week	Arbitrated Safety Net Adjustments \$ per week	Total \$ per Week
(iii) <u>Drivers of Motor Vehicles</u>			
Not exceeding 1.2 tonne Capacity			
1st year of employment	398.70	75.00	473.70
2nd year of employment	401.80	75.00	476.80
3rd year of employment and thereafter	405.50	75.00	480.50
Exceeding 1.2 tonne capacity but not exceeding 3 tonne Capacity			
1st year of employment	402.00	75.00	477.00
2nd year of employment	405.70	75.00	480.70
3rd year of employment and thereafter	411.80	75.00	486.80
Exceeding 3 tonne capacity but under 6 tonne capacity			
1st year of employment	411.80	75.00	486.80
2nd year of employment	415.50	75.00	490.50
3rd year of employment and thereafter	419.10	75.00	494.10

(b) Employees with No Fixed Hours

The rate of pay referred to in this clause shall increase by 25% for any employee whose ordinary rostered hours of work are worked over five days of the week subject to subclause (3) of clause 7.—Hours of this award.

(c) Casual employees shall be paid 20% in addition to the rates otherwise payable under this award.

(d) The rates of pay in this award include arbitrated safety net adjustments available since December 1993, under the Arbitrated Safety Net Adjustment Principle.

These arbitrated safety net adjustments may be offset against any equivalent amount in the rate of pay received by employees since 1 November 1991 above the rate prescribed in the Award, except where such absorption is contrary to the terms of an industrial agreement.

Increases in rates of pay otherwise made under the State Wage Case Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

(2) A Park Maintenance Employee placed in charge of others shall, in addition to his/her ordinary rate, be paid the following weekly allowance—

In charge of—	\$
less than three other employees	13.00
three to six other employees	22.75
more than six other employees	28.00

(3) Rangers

(a) A Ranger-in-Charge who does not supervise but has responsibility for a park shall receive a rate of wage one increment higher than the rate of wage he/she ordinarily would receive to a maximum wage equivalent to a Senior Ranger Year One.

(b) A Ranger-in-Charge who has responsibility for a park in addition to supervising the equivalent of one full-time person shall receive a rate of wage two increments higher than the rate he/she ordinarily would receive to a maximum wage equivalent to a Senior Ranger, Year Two.

(c) To be eligible for payment in accordance with paragraph (b) of subclause (3) of this clause where a Ranger-in-Charge supervises the equivalent of one full-time person over a 12 month period, rather than one full-time person on a regular and continuing basis, the following formula will be applied—

(i) Payment at the rate of two increments higher than the Ranger's own substantive wage as prescribed in

paragraph (b) of subclause (3) of this clause will be calculated on an annual basis commencing from the first pay period on or after 20 September 1990 or commencing from the date of appointment as Ranger-in-Charge, where the appointment is subsequent to the date prescribed in this paragraph.

(ii) Notwithstanding some short-term supervisory responsibilities, payment at the higher level will not commence until the supervisory responsibilities of the Ranger-in-Charge are in accordance with the definition of "the equivalent of one full-time person over a 12 month period" and, accordingly the rate of wage will be increased from one increment above the Ranger-in-Charge's substantive rate of wage to two increments above that rate of wage and will be paid from the dates as prescribed in sub-paragraph (i) of paragraph (c) of subclause (3) of this clause.

18—TRANSFERS AND TERMINATION

(1) An employee, promoted or transferred by the employer in the normal course of his employment shall be reimbursed for all reasonable expenses actually incurred in connection with such transfer or promotion.

(2) An employee transferred at his own request, or for disciplinary reasons, will be responsible for his own removal expenses.

(3) An employee, whose services are terminated by the employer through no fault of the employee shall be reimbursed for reasonable removal expenses incurred in returning from the place of employment to his original place of engagement.

(4) All travelling time in connection with promotion, transfer or termination pursuant to subclauses (1) and (3) of this clause shall be paid for at a maximum travelling time per day of eight hours at the rate applicable to the time of day and the day of the week.

19.—HIGHER DUTIES

(1) Park Maintenance Employees

(a) Where a Park Maintenance Employee is required to do, and does on any one day for a time exceeding two hours in the aggregate, work for which a higher rate is prescribed than for other work done on that day, the Park Maintenance Employee shall be paid at not less than such higher rate for all work done on that day.

(b) In all other cases where a Park Maintenance Employee does more than one class of work the employee shall be paid for each class proportionately to the time he/she works thereat.

(2) Rangers

(a) Where a Ranger is required to take charge of a National Park in the absence of the regular Ranger in Charge for a minimum period of five days, the Ranger shall be referred to as the Acting Ranger in Charge and be paid one increment higher than he/she would otherwise receive in recognition of the responsibility being accepted or in the case of a Ranger Grade 2 Year 5, an increment equal to the difference between the 4th and 5th year increment level.

(b) Where a Ranger is required to act in the position of Senior Ranger for a minimum period of five days, the Ranger shall be paid at the Senior Ranger rate.

(c) Where a Ranger who is in receipt of an allowance granted under this clause and has been so for a continuous period of twelve months or more proceeds on—

- (i) a period of normal annual leave;
- (ii) a period of any other approved leave of absence of not more than one calendar month;

the Ranger shall continue to receive the allowance for the period of leave; provided that this subclause shall also apply to a Ranger who has been in receipt of an allowance for less than twelve months if during the Ranger's absence no other Ranger acts in the office in which the Ranger was acting immediately prior to proceeding on leave and the Ranger resumes in the office immediately after the Ranger's leave.

(d) Where a Ranger who is in receipt of an allowance granted under this clause proceeds on—

- (i) a period of annual leave in excess of the normal;
- (ii) a period of any other approved leave of absence of more than one calendar month;

the Ranger shall not be entitled to receive payment of such allowance for the whole or any part of the period of such leave.

The effect of the amendment allows periods of one month's long service leave to form part of any other approved leave of absence as set out in paragraphs (c)(ii) and (d)(ii) of this subclause.

(3) No Higher Duties Allowances will be payable to employees covered by this Award when required to act in another position whilst the permanent occupant is on a rostered day off duty.

20—PROTECTIVE CLOTHING AND EQUIPMENT

(1) Goggles, safety helmets, climbing boots, respirators, oilskins, gumboots, sou' westers, wet weather clothing, suitable gloves and any other such clothing and equipment deemed necessary by the employer shall be supplied to employees covered by this award where the nature of the employment is such as to warrant their respective use.

(2) The clothing and equipment issued pursuant to this clause shall remain the property of the employer and shall be replaced on a fair wear and tear basis.

(3) Safety boots and safety helmets issued pursuant to this clause shall be worn at all times deemed necessary by the employer. Any employee not wearing safety boots or safety helmets at times deemed necessary by the employer will not be allowed to commence work and will not be paid for any time lost as a result.

(4) All employees called upon to clean toilets shall on request be supplied with rubber gloves.

(5) All materials, appliances and tools required in connection with the performance of the employee's duties shall be supplied to such employee by the employer without charge.

(6) In every case where the employer requires an employee to wear a uniform for his/her work the uniform shall be supplied by the employer.

21.—DISPUTE SETTLEMENT PROCEDURE

(1) In the event of any proposed change in employment conditions or terms of the Award, or in the event of any dispute arising, the parties will consult together to reach a settlement.

(2) The principle of conciliation and direct negotiation shall be adopted for the purpose of prevention and settlement of any industrial dispute that may arise.

(3) The parties shall take an early and active part in discussion and negotiations aimed at preventing or settling disputes in accordance with the agreed procedure set out hereunder.

(4) Procedure of Settlement of Disputes

(a) The employee and the employee's supervisor should confer, clearly identify the facts and where possible, resolve the issue.

(b) If not resolved, the employee, the union representative, the supervisor and the Department Manager shall confer and, where possible, resolve the issue.

(c) If not resolved the union shall confer with the Personnel and Industrial Relations Manager on the matter, and where possible, resolve the issue.

(d) If the matter is still not settled, either party may submit the matter for conciliation/arbitration by the Western Australian Industrial Relations Commission.

(5) Until the matter is resolved in accordance with the above procedure, the status quo shall remain. While the above procedure is being followed, no party shall be prejudiced as to the final settlement by the continuation of work in accordance with this procedure.

22.—CHANGE ROOMS AND MESS FACILITIES

(1) Suitable dressing accommodation shall be provided by the employer where employees may change their clothes. Tools and appliances shall not be kept in the dressing room.

(2) All employees shall be provided with facilities for boiling water.

(3) Employees shall be permitted to eat their meals in a convenient and clean place, protected from the weather, and each such employee shall remove all litter and foodstuff after use.

(4) Where practicable the employer shall provide suitably equipped messing and toilet facilities.

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 A—PARTIES TO THE AWARD

The following are parties to this award—

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

The Chief Executive Officer (Executive Director) of the Department of Conservation and Land Management.

AWARDS/AGREEMENTS— Application for variation of— No variation resulting—

BUILDING TRADES AWARD 1968. No. A31 of 1966.

2001 WAIRC 01985

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION	
PARTIES	THE WESTERN AUSTRALIAN BUILDERS' LABOURERS, PAINTERS & PLASTERERS UNION OF WORKERS, APPLICANT -v- BROWNES DAIRY LTD & OTHERS, RESPONDENT
CORAM	COMMISSIONER S J KENNER
DELIVERED	TUESDAY, 6 FEBRUARY 2001
FILE NO/S	APPLICATION 348 OF 2000
CITATION NO.	2001 WAIRC 01985

Result	Application withdrawn.
Representation	
Applicant	Ms J Harrison
Respondent	Mr K Dwyer as agent

Order.

HAVING heard Ms J Harrison on behalf of the applicant and Mr K Dwyer 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 withdrawn by leave.

[L.S.] (Sgd.) S.J. KENNER,
Commissioner.

NOTICES— Award/Agreement matters—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Application No. 1431 of 1998

APPLICATION FOR VARIATION OF AWARD
ENTITLED "CONTRACT CLEANERS (MINISTRY OF
EDUCATION) AWARD 1990"

Notice is given that an application has been made to the Commission by the Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch under the Industrial Relations Act 1979 for a variation of the above Award.

As far as relevant, those parts of the proposed variation that relate to area of operation or scope are published hereunder.

Schedule B—Respondents: Add to this schedule the following employers—

Airlite Cleaning Pty Ltd
Allclean Services
Arix Services
Bancrofts Cleaning Service
Biniris (Aust) Pty Ltd
Charles Cleaning Service
Cleandustrial Services
Coltton Property Services
Decco's Property Service
Delron Property Albany
Delron Cleaning Bunbury
Delron Cleaning City North
Delron Cleaning Geraldton
Dew Cleaning Services
Du Cleaning Cleaning Service Pty Ltd
Expert Domestic & Commercial Cleaning
Expo Commercial Cleaning Services
GMS Cleaning
Golden West Commercial & Retail Cleaning
Heaton Enterprises Pty Ltd
Intercity Cleaning Services
Linfoot Cleaning Service
Luke's Cleaning Service
Mastercare Property Services
Neatclean
Night Owl Services Pty Ltd
P & O Catering & Services Pty Ltd
Prestige Property Services Pty Ltd
Primary School Cleaning Company
Quantum Contract Service
Slav's Cleaning Service
Southern Cross Cleaning Service
Spotless Services Ltd
Sunray Services
Tempo Services Pty Ltd

A copy of the proposed variation may be inspected at my office at the AXA Centre, 111 St George's Terrace, Perth.

14 February 2001 (Sgd.) J.A. SPURLING,
Registrar.

PUBLIC SERVICE ARBITRATOR— Matters Dealt With—

2001 WAIRC 01998

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES THE CIVIL SERVICE ASSOCIATION
OF WESTERN AUSTRALIA
(INCORPORATED), APPLICANT
v.
DIRECTOR GENERAL,
DEPARTMENT OF TRANSPORT,
RESPONDENT
CORAM COMMISSIONER P E SCOTT
DELIVERED WEDNESDAY, 7 FEBRUARY 2001
FILE NO/S P 41 OF 1998
CITATION NO. 2001 WAIRC 01998

Result Application pursuant to Section 80 E
dismissed

Order:

WHEREAS this is an application pursuant to Section 80E of the Industrial Relations Act 1979; and

WHEREAS on the 14th and 28th days of January 1999 and the 31st day of October 2000 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 27th and 28th days of February 2001; and

WHEREAS on the 2nd day of February 2001 the Commission convened a report back conference at which the Applicant advised that it would seek to discontinue the application; and

WHEREAS on the 7th day of February 2001 the Applicant filed a Notice of Discontinuance in respect of the application;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders—

THAT this application be, and is hereby dismissed.

[L.S.] (Sgd.) P.E. SCOTT,
Commissioner/
Public Service Arbitrator.

WHETHER OR NOT REGULATION 11 OF THE PUBLIC SECTOR MANAGEMENT.

2001 WAIRC 01841

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES NANETTE CONSTANT, APPLICANT
v.
REGISTRAR, WESTERN
A U S T R A L I A N
INDUSTRIAL RELATIONS
COMMISSION., RESPONDENT
CORAM COMMISSIONER J F GREGOR
DELIVERED THURSDAY, 18 JANUARY 2001
FILE NO/S P 19 OF 1999
CITATION NO. 2001 WAIRC 01841

Result Discontinued

Order:

WHEREAS on 7 October 1999, Nanette Constant applied to the Public Service Arbitrator in pursuant to s.29(b) to

determine whether or not Regulation 11 of the Public Sector Management (Redeployment Redundancy Regulations) has been fairly and properly applied; and

WHEREAS the Commission conducted conferences on this matter; and

WHEREAS on 18 December 2000, the Commission gave notice to the Applicant giving notice that it intended by the close of business on 21st of December 2000 to discontinue the application; and

WHEREAS by 20 January 2001, nothing was heard from the Applicant and the Commission decided to discontinue the application.

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Commission hereby orders—

THAT the application be and is hereby discontinued.

(Sgd.) J.F. GREGOR,

Commissioner.

[L.S.]

WHETHER OR NOT REGULATION 11 OF THE PUBLIC SECTOR MANAGEMENT.

2001 WAIRC 01844

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

PARTIES CHERYL PHILOMENA D’SOUZA, APPLICANT
 v.
 REGISTRAR, WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION., RESPONDENT
CORAM COMMISSIONER J F GREGOR
DELIVERED FRIDAY, 19 JANUARY 2001
FILE NO/S P 20 OF 1999
CITATION NO. 2001 WAIRC 01844

Result Discontinued

Order.

WHEREAS on 7 October 1999, Cheryl Philomena D’souza applied to the Public Service Arbitrator in pursuant to s.29(b) to determine whether or not Regulation 11 of the Public Sector Management (Redeployment Redundancy Regulations) has been fairly and properly applied; and

WHEREAS the Commission conducted conferences on this matter; and

WHEREAS on 18 December 2000, the Commission gave notice to the Applicant giving notice that it intended by the close of business on 21st of December 2000 to discontinue the application; and

WHEREAS by 20 January 2001, nothing was heard from the Applicant and the Commission decided to discontinue the application.

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Commission hereby orders—

THAT the application be and is hereby discontinued.

(Sgd.) J.F. GREGOR,

Commissioner .

[L.S.]

WHETHER OR NOT REGULATION 11 OF THE PUBLIC SECTOR MANAGEMENT.

2001 WAIRC 01845

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

PARTIES JASMINE JAYANTHA RICHARDS, APPLICANT
 v.
 REGISTRAR, WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION, RESPONDENT
CORAM COMMISSIONER J F GREGOR
DELIVERED FRIDAY, 19 JANUARY 2001
FILE NO/S P 21 OF 1999
CITATION NO. 2001 WAIRC 01845

Result Discontinued

Order.

WHEREAS on 7 October 1999, Jasmine Jayantha Richards applied to the Public Service Arbitrator in pursuant to s.29(b) to determine whether or not Regulation 11 of the Public Sector Management (Redeployment Redundancy Regulations) has been fairly and properly applied; and

WHEREAS the Commission conducted conferences on this matter; and

WHEREAS on 18 December 2000, the Commission gave notice to the Applicant giving notice that it intended by the close of business on 21st of December 2000 to discontinue the application; and

WHEREAS by 20 January 2001, nothing was heard from the Applicant and the Commission decided to discontinue the application.

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Commission hereby orders—

THAT the application be and is hereby discontinued.

(Sgd.) J.F. GREGOR,

Commissioner.

[L.S.]

**INDUSTRIAL MAGISTRATE—
Complaints before—**

THE INDUSTRIAL MAGISTRATE’S COURT OF WESTERN AUSTRALIA.
 HELD AT PERTH

Complaint No. 324 of 2000
 Date Heard: 11 January 2001
 BEFORE: G. Cicchini I.M.

BETWEEN—

Justin Sabastian Strange

Complainant

and

Moonstar Nominees Pty Ltd

Defendant

Appearances—

Mr G McCorry appeared for the Complainant.

Mr PG Kennard (of Counsel) appeared for the Defendant.

Reasons for Decision.

(Given extemporaneously at the conclusion of the hearing, extracted from the transcript of proceedings and edited by His Worship)

HIS WORSHIP: In this matter the complainant claims against the defendant the amount of \$1279.08 plus interest with

respect to annual leave entitlements and further an order that payment be made with respect to unpaid wages for the period ending 27 November 2000. That amount has been amended today by virtue of a concession made by his agent. The amount sought is \$545.49. Furthermore, an amount is sought with respect to unpaid overtime for the period 7 April 2000 to 26 November 2000, plus interest thereon.

In support of the summary judgment application the Court has received the affidavit of Justin Sabastian Strange and earlier today received the affidavit of Dale James Wiley. The affidavit of Benny Peter Roncio has been received by the Court, he being the director and part owner of the defendant company, and he has given evidence on affidavit in relation to the issues raised by the complainant in this matter.

This is a summary judgment application and the Court must be acutely aware of the circumstances in which summary judgment may be entered. Summary judgment is usually ordered if the complainant can show that he has a strong claim and the defendant fails to show that the application is either irregular or that the defendant has an arguable defence. It is implicit that the Court will only enter judgment for the complainant if it is clear that there is really no question to be tried.

The circumstances justifying the entering of summary judgment were discussed in *Australian Can Co Pty Ltd v Levin & Co Pty Ltd* (1947) VLR 332. The Court said that one description of the test is that judgment may be given summarily where there is no real substantial question to be tried, or no reasonable doubt that the plaintiff is entitled to judgment. A defendant may show cause against summary judgment if he discloses a triable issue or an arguably good defence, or the defendant may discharge the onus on him by proving that he has a plausible ground of defence or show facts that lead to the inference that at the trial of the action he may be able to establish a defence.

What emerges is that leave to defend should be given where there is a case, either of fact or law, to be investigated. In this case, in my view, there are certain grounds that have to be treated independently in an assessment in relation to that consideration.

In relation to the claim with respect to overtime, it has become apparent, and clearly so, that the matter simply cannot be determined on the affidavits that are before me. There are clearly questions of fact to be resolved and, simply put, the defendant has, through Mr Roncio, provided evidentiary material to the Court which puts in issue the matters claimed by the complainant. There are factual matters that can only be resolved in the course of the hearing and I accept Mr Kennard's submissions that the position is that the defendant, at least, ought to be given the opportunity to cross-examine the complainant and his witnesses in relation to the matter. There can be no doubt that the issue must go to trial.

As to the question of leave, again there are questions to be resolved as to the factual circumstances and, whether those factual circumstances, as a matter of law, constitute a dismissal of the complainant by virtue of misconduct or alternatively an abandonment. They are live issues of both fact and law to be determined and it is inappropriate for this Court, on the basis of the material that it has before it, to determine that issue at this stage. It simply is a question of further evidence and determination both as to fact and law and the matter must proceed further in my view.

As to the issue of the final week's pay, again there is a question of fact and law regarding the actual hours worked during that week and Mr Kennard quite appropriately drew my attention to the inconsistency in the evidence before the Court in respect to that issue alone, and to that extent it is a matter that needs further determination and cannot be determined finally upon the evidence as it is before me.

Over and above all of those matters, there is a real question of law to be determined, following argument, as to whether or not it is appropriate that a counterclaim or set-off apply. I appreciate that I have heard argument on both sides in relation to this matter today, but that argument has not been fully developed and it is a matter that can be developed at a hearing in relation to whether or not there is power within this Court to enable a counterclaim or set-off to take effect. It can be seen from what I have said that there are a number of issues

relating to both fact and law that really require further consideration and determination.

At the end of the day what emerges having heard the submissions from the parties and having considered the evidence, is that there are questions of fact and questions of law to be investigated and determined. Accordingly this is not a case where the situation is such that judgment ought to be entered for the complainant on the basis that the defendant has absolutely no defence to the matter.

The situation is such that the defendant has discharged the onus that it has, by showing that there is a plausible ground of defence or, at the very least, that the facts show that there is an inference to be drawn that, at the trial, it may be able to establish a defence in relation to the matter. Accordingly, I move to grant the defendant unconditional leave to defend.

G. CICHINI, Industrial Magistrate.

LONG SERVICE LEAVE— Boards of Reference—Special—

2001 WAIRC 02000

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	BROWN & ROOT ENERGY SERVICES PTY LTD, APPLICANT
	v.
	CONSTRUCTION INDUSTRY LONG SERVICE LEAVE PAYMENTS BOARD, RESPONDENT
CORAM	COMMISSIONER J H SMITH
DELIVERED	THURSDAY, 8 FEBRUARY 2001
FILE NO	BOR 7 OF 2000
CITATION NO.	2001 WAIRC 02000

Result	Applicant an employer in the "construction industry" within the meaning of the Construction Industry Portable Paid Long Service Leave Act 1985
Representation Applicant	Mr C Milne as agent
Respondent	Ms Saraceni as counsel

Determination.

- 1 Pursuant to an application made under s.50 of the Construction Industry Portable Paid Long Service Leave Act 1985 ("the Act") a Board of Reference constituted by a single Commissioner is constituted under s.48(8), (9), (10), (11), (12) of the Industrial Relations Act 1979, to determine a claim arising out of a requirement that Brown & Root Energy Services Pty Ltd ("the Applicant") register under the Act.
- 2 Section 30(1) of the Act provides, *inter alia*, that every body corporate that is an employer in the construction industry (whether or not it carries on any other business) shall register as an employer under the Act.
- 3 In a letter to Brown & Root Engineering Pty Ltd dated 26 May 2000 the Chief Executive Officer of the Construction Industry Long Service Leave Payments Board ("the Board") advised that it was the Board's view that Brown & Root Engineering Pty Ltd is an employer within the construction industry and accordingly is required to register in accordance with s.30 of the Act.

Background

- 4 On 19 October 1995, the Applicant entered into a contract to supply and perform all work associated with the

operation, maintenance and support services for the Naval Communication Station-Harold E. Holt ("the Communication Station") as specified in the Statement of Requirement contained in Attachment A of the contract ("the contract").

- 5 The Applicant is a registered corporation (ACN 009 091 105) whose registered office is at Perth in Western Australia. At the time of entering into the contract the Applicant's name was Dawson Group Pty Ltd. Dawson Group Pty Ltd is wholly owned by Brown & Root (Australia) Pty Ltd. In about 1996, the Applicant notified the Australian Securities and Investment Commission of a resolution to change the Applicant's company name from Dawson Group Pty Ltd to Brown & Root Engineering Pty Ltd.
- 6 In 1997, Brown & Root (Australia) Pty Ltd acquired Kinhill Pty Ltd. The Brown & Root company then had two streams of business in Australia. One being oil and gas. In 1999, Kinhill Pty Ltd changed its name to Brown & Root Services Asia Pacific Pty Ltd. Further at about the same time the Applicant changed its name from Brown & Root Engineering Pty Ltd to Brown & Root Energy Services Pty Ltd.
- 7 The Applicant took over the oil and gas industry contracts from Brown & Root (Australia) Pty Ltd and all work that was not associated with the oil and gas industry was transferred from the Applicant to Brown & Root Services Asia Pacific Pty Ltd on 24 June 2000.
- 8 Mr Milne informed the Commission that following the assignment of the contract and transmission of business from the Applicant to Brown & Root Services Asia Pacific Pty Ltd, the Applicant's employees were transferred to Brown & Root Services Asia Pacific Pty Ltd and there has been no change in the work carried out by the latter at the Communication Station. It was clear from the submissions made on behalf of the parties that this determination will determine whether Brown & Root Services Asia Pacific Pty Ltd are required to register under s.30 of the Act.
- 9 At the time the application was made the Applicant employed approximately 300 persons in consulting engineering and approximately 120 employees in maintenance engineering. The only project in dispute in this matter is the contract at the Communication Station at Exmouth in Western Australia.
- 10 The Communication Station provides communication services for the Navies of the United States, the Commonwealth of Australia and other allied nations. The main business of the Communication Station is to transmit very low frequency and high frequency radio signals to naval vessels.
- 11 The Communication Station comprises three major areas. The first area contains a very low frequency transmitting site, power plant, a fuel farm and a navy pier. The transmitters and the very low frequency antenna array cover approximately 405 hectares. The second area contains the station headquarters and the high frequency transmitter site. The third area contains a high frequency receiver site which has been closed and is in caretaker status.
- 12 Most of the transmitting facilities were constructed in the late 1960s. The only construction since that time was a 10-bed hospital in the late 1960s, a gymnasium in the early 1970s and motel style accommodation in the mid 1970s.
- 13 Attachment A of the contract provides that the Statement of Requirement comprises of Annexes 1 to 20. The services required to be provided can be broadly summarised as follows—
 - Maintenance repairs;
 - Janitorial services;
 - Grounds and ground structures maintenance;
 - Pest control;
 - Waste collection and disposable services—
 - Power generation and distribution facilities;
 - Auxiliary power and portable machinery;

Water;

Salt water wells and sewerage systems;

Emergency and fire protection services; and

The operation and maintenance of petroleum storage facilities and the associated distribution system.

- 14 Mr Robert Mummery, the Operations, Maintenance, Logistics Manager for Brown & Root Services Asia Pacific Pty Ltd, gave evidence that maintenance work is the major activity performed at the Communication Station. Further that following maintenance activities were carried out at the Communication Station by the Applicant and are now carried out by Brown and Root Services Asia Pacific Pty Ltd in accordance with the express terms of the contract.

(a) INACTIVE FACILITIES

There are approximately 30 to 35 buildings which are inactive facilities classified as inactive facilities and in caretaker status at the Communications Station (See Annex 1-Appendix 4). Inspections are done to determine whether the vacated facilities are deteriorating or not. For example, the chilled water systems are inspected for leaks, so too are the portable water systems and sewerage treatment systems. In addition the buildings are inspected for deterioration and for pests. When deterioration is found repairs are undertaken to restore the buildings and structures to a safe condition.

When repairs are required, depending upon the nature of the work required the work is carried out by persons employed as metal tradespersons, pest control persons or building tradespersons.

Mr Mummery gave evidence that since the Applicant entered into the contract one or two minor buildings have been demolished by the Applicant's employees and those employees were employed in classifications applicable to building trades.

(b) PUBLIC WORKS FACILITIES MAINTENANCE AND REPAIR

Annex 5 of the contract requires the provision of maintenance, repair, alteration and construction of all "active" buildings and structures and installed equipment at the Communication Station. Further, it is also a requirement that maintenance, repair, replacement and installation of all appliances be provided including but not limited to: air conditioners; refrigerators; ice machines; and other non-installed equipment. Although repair is not defined in the contract, maintenance is defined in Clause 3.4 of Annex 5 as "the recurring day-to-day, periodic or scheduled work required to preserve or restore a real property facility to such a condition that it may be effectively utilised for its designated purpose. The term includes work undertaken to prevent damage to a facility that otherwise would be more costly to restore and includes repair by replacement when necessary."

Mr Mummery testified that inspection, maintenance, repairs constitutes the majority of the work undertaken. He said however that alterations sometimes occur because equipment fits and obsolescence cause something to be altered.

He testified no construction work is carried out and generally no installation of equipment was carried out by the Applicant. Further that if any installation of equipment is required it is carried out by subcontractors to Boeing Pty Ltd and other main contractors at the Communication Station. Although he said that minor installation work was carried out by qualified tradesperson employed by the Applicant, including plumbing and pipe fitting by qualified plumbers.

(c) WHARF/PIER

Remedial work was and is carried out to the wharf/pier including minor repairs to corrosion

and electric light replacement and to other structures of that nature by employees.

(d) **MAINTENANCE AND REPAIR WORK TO ANTENNAS AND TOWERS**

The low frequency antenna is approximately one and half miles in diameter and a height of 900 feet. It has in its antenna a length of approximately 70 miles of cabling. Riggers, scaffolders and antenna maintainers are employees who carry out preventative maintenance to the antennas and the towers. Employees engaged as painters also undertake painting to the tower. Annex 6 of the contract requires the provision of preventative maintenance and inspection of antenna, antenna systems, grounds, structures, cables and all support and auxiliary equipment for mechanical and structural deterioration. The program of maintenance includes an inspection in maintaining wood poles for deterioration, infestation by termites and other pests and moisture in pole caps; inspect and maintain rotatable log periodic antennas; tower painting and satcom dish and pedestal painting.

(e) **GROUNDS AND GROUND STRUCTURES MAINTENANCE**

Annex 8 requires the removal of obstructions to surface drainage, erosion control, watering, grass cutting, edging, trimming and pruning of shrubs and trees. It is also a requirement to maintain and repair asphalt and gravel roads and control vegetation growth on road shoulders; and to provide maintenance and incidental repairs to fences, including painting and other repairs. Footpaths and kerbs are also to be maintained and repaired.

Mr Mummery testified that the gravel roads which surround the premises of the antenna systems require maintenance on a regular basis as they are regularly washed away by the rain and that the work is carried out by employees engaged as equipment operators and trades assistants. He also said that if significant damage is done to a asphalt road that work is carried out by a subcontractor experienced in road repairs. In relation to sidewalks and footpaths, Mr Mummery testified that about three or four kilometres of sidewalks and footpaths are made of concrete and that in the past five years repair or maintenance to those structures have not been necessary.

(f) **ELECTRICAL POWER PRODUCTION**

Annex 12 required the Applicant to operate and maintain all equipment related to the electrical power production such that an uninterrupted supply of power is available to meet the Communication Station's requirements. Preventative maintenance is required such as, engine and generator overhauls, services on engines and service and maintenance of auxiliary plant. The Applicant was also required to carry out routine tests and inspections and provide a repair service for all equipment. Mr Mummery testified that the Applicant's employees undertook this work routinely throughout the year by appropriately qualified employees.

Pursuant to Annex 13, work is also required to operate and maintain the electrical distribution system and ensure that the power station requirements are met. To do so the development and execution of periodic maintenance to the power plant, all transformer stations, street lighting system and associated distribution lines and manholes is required.

(g) **MECHANICAL PLANT**

Under Annex 14 auxiliary and portable machinery units are required to be maintained. Mr Mummery testified there are series of auxiliary and portable machinery on site such as pumps (which are used when flooding occurs), portable welding plant and portable air-compressor plant and the like.

Annex 15 requires the operation and maintenance of the fixed central mechanical plant. Mr Mummery testified the central mechanical plant supplies chilled water, air conditioning, refrigeration and compressed air.

(h) **WATER SYSTEMS**

Annex 16 requires the operation of the entire water system including fresh water wells, reservoirs, pumps, water treating equipment and interconnecting pipes, valves, fittings and other water distribution equipment associated with the systems to meet the Communication Station's usage demands. Part of the contractual obligations require the maintenance and repair of the water treatment plant particularly to maintain and exercise on a periodic basis, all system pumps, valves, storage tanks, chlorinators, chemical feeders, electro-dialysis plants and appurtenances. Further the maintenance of water meters, fresh water wells and cleaning and maintaining of storage tanks and the repair of leaks and all parts of the watering systems is required. Pursuant to Annex 17, the salt water well system which supports the very low frequency cooling system is required to be maintained. Part of those duties requires the performance of periodic maintenance repair of wells, pumps, motors and the distribution system. Mr Mummery testified that the salt water well system cools the transmitter building.

(i) **SEWERAGE SYSTEMS.**

Pursuant to Annex 18 the maintenance and operation of the sewerage system for the Communication Station is required.

(j) **OPERATION OF PETROL OIL AND LUBRICANT SYSTEM**

Pursuant to Annex 20 the operation, maintenance and repair of pumps and accessory equipment used for the receipt, storage, and issue of petroleum products including the actual loading and off-loading of petrols, oils and lubricants, is required.

Terms and Conditions of Employment

15 At all material times the terms and conditions of employment of the employees employed by the Applicant at the Communication Station were regulated by a certified agreement in Print P9083, an agreement certified under s.170LT of the Workplace Relations Act 1996 (Cth) ("the certified agreement").

16 On 4 March 1998, Commissioner O'Connor made an order to certify the agreement. His order provides that the certified agreement shall come into force from 3 March 1998 and remain in force until 17 January 2001. The material clauses of the certified agreement are as follows—

"3. Incidence and Parties Bound

This Agreement applies to those employees, employed by, Boeing Australia Limited, Brown & Root Engineering Pty Ltd or Jennis & LeBlanc Communications Pty Ltd, who work in the classifications detailed in Schedule 1 in this Agreement, acting as a common enterprise at a single place of work being the Naval Communication Station Harold E Holt (NCS HEH) Exmouth hereafter known as "the base".

This Agreement shall be binding upon—

- The employers Boeing Australia Limited, Brown & Root Engineering Pty Ltd and Jennis & LeBlanc Communications Pty Ltd;
- The union (The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union), and
- All employees employed in the classifications detailed in Schedule 1 whether members of the union or not.

Schedule 1

No.	Position	NCS HEH Agreement 1996 Level	Increment Levels	Hourly Rate as per NCS HEH Agreement 1996	50% increase figure of Re-classification Review (\$0.00 cents)	100% increase figure of Re-classification Review (\$0.00 cents)
1.	VLF Shift Technician	1	1.5	18.9803	0.00	0.00
2.	VLF Day Technician	1	1.5	18.9803	0.00	0.00
3.	SATCOM Shift Technician	1	1.5	18.9803	0.00	0.00
4.	TCF Shift Technician	1	1.5	18.9803	0.00	0.00
5.	HFT Shift Technician	1	1.5	18.9803	0.00	0.00
6.	Shift Supervisor	2	2.5	17.914	0.00	0.00
7.	Senior Fire Fighter	4	2.5	15.724	1.0950	2.1900
8.	Instrumentation/ Electrical Fitter	4	3.2	15.724	0.6380	1.2760
9.	Admin Assistant, Accounts	3	3.3	16.6786	0.00	0.00
10.	VLF Shift Operator	4	4.2	15.724	0.2030	0.4060
11.	TCF Shift Operator	4	4.2	15.724	0.2030	0.4060
12.	HFT Shift Operator	4	4.2	15.724	0.2030	0.4060
13.	SATCOM Shift Operator	4	4.2	15.724	0.2030	0.4060
14.	Electrical Fitter	4	4.3	15.724	0.1730	0.3460
15.	A/C & Refrig Mechanic	4	4.3	15.724	0.1730	0.3460
16.	Mechanic	4	4.6	15.724	0.1130	0.2260
17.	Carpenter	4	4.6	15.724	0.1130	0.2260
18.	Fitter	4	4.6	15.724	0.1130	0.2260
19.	Fitter/Welder	4	4.6	15.724	0.1130	0.2260
20.	Fitter/Turner	4	4.6	15.724	0.1130	0.2260
21.	Plumber	4	4.6	15.724	0.1130	0.2260
22.	Fire Fighter	6	4.6	14.4319	0.7590	1.5181
23.	Water Treatment Operator/ Technician	4	4.6	15.724	0.1130	0.2260
24.	Engine Driver	4	4.7	15.724	0.0530	0.1060
25.	Painter	4	4.8	15.724	0.00	0.00
26.	Crane Driver	4	4.8	15.724	0.00	0.00
27.	Storesperson/POL Operator	4	4.8	15.724	0.00	0.00
28.	Antenna Maintainer	4	4.8	15.724	0.00	0.00
29.	Tower Painter	4	4.8	15.724	0.00	0.00
30.	Trades Assistant	6	5.3	14.4319	0.4846	0.9691
31.	Trades Asst. (GHS)	8	6.2	13.0281	0.7019	1.4038
32.	Groundsperson/ Trades Asst.	8	6.5	13.0281	0.5057	1.0113
33.	Trades Asst/POL Attd.	6	6.5	14.4319	*0.00	*0.00
34.	Janitor	9	7.3	12.3538	0.4481	0.8962
35.	Trainee Fire Fighter (Entry Level)	8	7.6	13.0281	0.00	0.00
36.	Trades Asst. (Entry Level)	6	7.6	14.4319	*0.00	*0.00
37.	Trainee Antenna Maintainer (Entry Level)	6	7.6	14.4319	*0.00	*0.00
38.	Janitor (Entry Level)	9	7.9	12.3538	0.00	0.00

4. Supersession

Except as specifically provided below the terms of this Agreement shall cover exhaustively the subject matter concerned and exclude State law, Awards and Agreements.

From the date of operation of this Agreement the employers and their employees at the base are excluded from coverage of any other Award or Determination which might otherwise be binding.

Except as expressly provided for in this Agreement the provision of the Long Service Leave Act 1958 (WA), the WA Occupational Safety & Health Act (1984), the Workers Compensation and Assistance Act 1981 (WA) and the Industrial Training Act 1975 (WA) (the "Acts") as amended from time to time, shall have full effect and nothing in this Agreement shall operate to affect vary or exclude the operations of the Acts in so far as they apply to the work covered by this Agreement.

8.6 Long Service Leave

The provisions of the Long Service Leave Act 1958 (WA) are hereby incorporated in and shall be deemed to be part of this Agreement. The employer shall contribute to the Construction Industry Portable Long Service Leave Scheme

on behalf of all employees, subject to acceptance by the Board."

Issues in Dispute

17 Section 3(1) of the Act provides—

"In this Act unless the contrary intention appears—

'construction industry' means the industry—

- (a) of carrying out on a site the construction, erection, installation, reconstruction, re-erection, renovation, alteration, demolition or maintenance of or repairs to any of the following—
 - (i) buildings;
 - (ii) roads, railways, airfields or other works for the passage of persons, animals or vehicles;
 - (iii) breakwaters, docks, jetties, piers, wharves or works for the improvement or alteration of any harbour, river or water-course for the purposes of navigation;
 - (iv) works for the storage or supply of water or for the irrigation of land;

- (v) works for the conveyance, treatment or disposal of sewage or of the effluent from any premises;
- (vi) works for the extraction, refining, processing or treatment of materials or for the production or extraction of products and by-products from materials;
- (vii) bridges, viaducts, aqueducts or tunnels;
- (viii) chimney stacks, cooling towers, drilling rigs, gas-holders or silos;
- (ix) pipelines;
- (x) navigational lights, beacons or markers;
- (xi) works for the drainage of land;
- (xii) works for the storage of liquids (other than water) or gases;
- (xiii) works for the generation, supply or transmission of electric power;
- (xiv) works for the transmission of wireless or telegraphic communications;
- (xv) pile driving works;
- (xvi) structures, fixtures or works for the use on any buildings or works of a kind referred to in subparagraphs (i) to (xv);
- (xvii) works for the preparation of sites for any buildings or works of a kind referred to in subparagraphs (i) to (xvi); and
- (xviii) fences, other than fences on farms;
- (b) of carrying out of works on a site of the construction, erection, installation, reconstruction, re-erection, renovation, alteration or demolition of any buildings or works of a kind referred to in paragraph (a) for the fabrication, erection or installation of plant, plant facilities or equipment for those buildings or works;
- (c) of carrying out of work performed by employees engaged in the work referred to in paragraph (a) or (b) and that is normally carried out on site but which is not necessarily carried out on site,
but does not include—
- (d) the carrying out of any work on ships;
- (e) the maintenance of or repairs or minor alterations to lifts or escalators; or
- (f) the carrying out of maintenance or repairs of a routine or minor nature by employees for an employer who is not substantially engaged in the industry described in this interpretation;”
- 18 The Board contends that the evidence adduced in these proceedings proves that at the material time the Applicant was an employer in the construction industry in that (within the meaning of s.3(1) of the Act), it carried out—
- (a) on a site the ... installation ... maintenance of or repairs to ...
- (i) buildings;
- (ii) roads, ... works for the passage of persons ... or vehicles;
- (iii) ... jetties, piers, wharves ...;
- (iv) works for the storage or supply of water or for the irrigation of land;
- (v) works for the conveyance, treatment or disposal of sewage or of the effluent from any premises;
- (xiii) works for the generation, supply or transmission of electric power;
- (xiv) works for the transmission of wireless or telegraphic communications;
- (xvi) structures, fixtures or works for the use on any buildings or works of a kind referred to in subparagraphs (i) to (xv); and
- (xviii) fences, other than fences on farms;
- (b) of carrying out works on a site of the...installation, reconstruction, re-erection, renovation, alteration...of any buildings or works referred to above, for the fabrication, erection or installation of plant, plant facilities or equipment for those buildings or works.
- 19 The Board further contends that at the material time the Applicant engaged persons who fall within the definition of employee under the Act who are employees in the construction industry.
- 20 An employee is defined in s.3(1) of the Act to mean:
“... a person who is employed under contract of service or apprenticeship in a classification of work referred to in a prescribed award relating to the construction industry that is a prescribed classification.”
- 21 The Applicant contends that at the material time it was not an employer in the construction industry in that it did not carry out work of the kind described in the definition of “construction industry” within the meaning of s.3(1) of the Act, in particular the Communication Station is not a construction site.
- 22 The Applicant concedes that some of its employees at the Communication Station could be said to be engaged in a classification of work referred to in a prescribed award relating to the construction industry that is a prescribed classification within the meaning of the definition of employee in s.3(1) of the Act. However it is contended on behalf of the Applicant that its employees were not engaged in the construction industry and that none of the prescribed awards prescribed under the Construction Industry Portable Paid Long Service Leave Regulations 1986 could apply to terms and conditions of employment of the Applicant’s employees because of the operation of the terms of the certified agreement. Further that in absence of the provisions of the certified agreement the provisions of Metal, Engineering and Associated Industries Award 1998 (“the Award”) covered the employees’ classifications of work. It is also argued that the terms of the certified agreement and the Award are not instruments that cover construction work.
- 23 Notwithstanding the submissions made on behalf of the Applicant, it is conceded that the following classifications are classifications of work referred to in a prescribed award relating to the construction industry that is a prescribed classification—
- Apprentice Electrician;
Apprentice Painter;
Carpenter;
Crane Operator;
Electrical Fitter;
Electrician;
Fitter;
Fitter/Turner;
Mechanical Fitter;
Painter;
Plumber;
Refrigeration/Air Conditioning Mechanic;
Refrigeration Mechanic;
Technician;
Tower Painter;
Trades Assistant;
Trainee Tower Painter;
Foreman;
Engine Driver;
Mechanic;
Welder; and
Plant Operator
Legal Principles

- 24 In *Aust-Amec Pty Ltd t/a Metlab Mapel & SRC Laboratories and Others v Construction Industry Long Service Leave Payments Board* (1995) 62 IR 412 (“Aust-Amec”) Ipp J pointed out that the scheme of the Act covers a wider class of employees in the construction industry than employers. At 413 he observed—
- “... while employees are defined by reference to prescribed awards “relating to the construction industry”, the definition of “employer” imports the additional qualification that the employees must be “in the construction industry”. The definition of “employee” therefore has a different ambit to that of “employer”. The consequence of this is that there may be persons who are “employees” within the meaning of the Act who are not employed by “employers” within the meaning of the Act.”
- 25 Further at 420 he stated—
- “The requirement to register is, by s.30(1), imposed on an employer “in the construction industry (whether or not he or it carries on any other business)”. I have italicised the word “in” as it seems to me to have a narrower meaning than the words “relating to” which are contained in the definition of “employee”. The difference in wording is, in my view, significant. The former phrase is of wider import than the latter. This is an important guide to the construction of the Act on this question. It indicates that the legislature intended that the obligation to register would be imposed on a more limited class of persons than those whose business merely *relates* to the construction industry. It seems to me that the requirement to register is imposed only on employers, as defined, whose business can be classified as falling within the construction industry itself.”
- 26 It is contended on behalf of the Applicant that s.3(1)(a) of the Act defines the “construction industry” to include maintenance or repairs only where the maintenance or repairs are carried out on a site where construction work is carried out.
- 27 The definition is as Ipp J in *Aust-Amec* at 419 points out, complex. However the construction suggested by the Applicant of the definition of “construction industry” is in my view erroneous. The opening words of s.3(1)(a) are plain and unambiguous. The opening words are plainly expressed as disjunctive, so that a “site” is to be construed as a place where any activities are carried out, that can be characterised as, construction, erection, installation, reconstruction, re-erection, renovation, alteration, demolition or maintenance of or repairs to any of the categories in subparagraphs (i) to (xviii) of s.3(1)(a) of the Act.
- 28 Further that although this issue was not directly raised in *Aust-Amec*, the construction contended on behalf of the Applicant is inconsistent with the reasoning of Ipp J in *Aust-Amec*. At 420 Ipp J observed in relation to a number of plaintiffs who provide engineering testing and other testing and monitoring services for the mining industry—
- “... the issue whether the plaintiffs are in the construction industry falls to be determined by reference to whether the work done by them, generally, is to be classified as “maintenance” as this term is used in the definition of construction industry.”
- 29 Having considered all of the evidence in this matter it is clear that the Applicant at the material time carried out maintenance and repair to works within the meaning of subparagraphs (i)-(v), (xiii)-(xiv), (xvi) and (xviii) of s.3(1)(a) of the Act. I am not however satisfied that it carried out installation work which can be described as installation work within the meaning of s.3(1)(a) or (b) of the Act.
- Effect of Federal Instruments**
- 30 Prima facie I am satisfied after having regard to all of the evidence that the Applicant was at the material time an employer who engaged persons who fall within the definition of employee within the meaning of s.3 of the Act.
- 31 However the question arises is whether the provisions of s.170LZ(1) of the Workplace Relations Act 1996, s.109 of the Commonwealth Constitution and the certified agreement have the effect to render inoperative the provisions of the Act.
- 32 Section 170LZ(1) of the Workplace Relations Act 1996 provides—
- “Subject to this section, a certified agreement prevails over terms and conditions of employment specified in a State law, State award or State employment agreement, to the extent of any inconsistency.”
- 33 The question of inconsistency between a Federal award and a State law arises not because a Federal instrument is “a law of the Commonwealth” within the meaning of s.109 of the Constitution, but because it derives its force from such a law, namely the Workplace Relations Act (*Clyde Engineering Co Ltd v Cowburn* (1926) 37 CLR 466; *Ex Parte McLean* (1930) 43 CLR 472; *Ansett Transport Industries (Operations) Pty Ltd v Wardley* (1980) 142 CLR 237 per Barwick CJ at 243, Stephen J at 253, Aitken J at 274-5 and Wilson J at 282; *Metal Trades Industry Association v Amalgamated Metal Worker’s & Shipwrights’ Union* (1983) 152 CLR 633 per Mason, Brennan and Deane JJ at 648 (“Metal Trades Case”); *City of Mandurah v Hull* (2000) 80 WAIG 4319; [2000] WASCA 216 per Anderson J at [21] and cases cited therein).
- 34 Direct inconsistency arises when the relevant laws collide in their operation: that is where both regulate the same subject, in such a way that one explicitly removes or modifies a right or obligation created by the other. This includes, but is not limited to, situations where simultaneous obedience of the law is impossible (*Clyde Engineering v Cowburn*; *Colvin v Bradley Bros Pty Ltd* (1943) 68 CLR 151 and *R v Loewenthal*; *Ex parte, Blacklock* (1974) 131 CLR 338).
- 35 Covering of the field inconsistency arises where the Commonwealth law manifests an intent to regulate a particular subject exhaustively (*Ex parte McLean*).
- 36 The critical question in considering whether an inconsistency arises is: what is the conduct or matter with which the relevant Federal industrial instrument deals with (Metal Trades Case per Mason, Brennan and Deane JJ at 649).
- 37 It is rare that a Federal industrial instrument will evince an intention to exhaustively cover the field of employment. The contract of employment is the most obvious illustration. To the extent that it is not varied by an award, its obligations will ultimately derive from State law. The question will often be whether the Award provisions are intended to supplement or modify rather than supplant State law (Metal Trades Case per Gibbs CJ Wilson and Dawson JJ at 642).
- 38 Paragraph 1 of Clause 4 of the certified agreement provides that: “Except as specifically provided below the terms of this agreement shall cover exhaustively the subject matter concerned and excludes State law, Awards and Agreements.” Paragraph 3 of Clause 4 provides that the provisions of the Long Service Leave Act 1958 (WA) shall have full effect and nothing in this agreement shall operate to affect, vary or exclude the operation of that Act in so far as it applies to the work covered by the certified agreement.
- 39 Although there is no specific reference to the Construction Industry Portable Paid Long Service Leave Act 1985 in the certified agreement, Clause 8.6 provides that the provisions of the Long Service Leave Act are incorporated and be deemed part of the agreement, further that the employer shall contribute to the Construction Industry Portable Long Service Leave Scheme on behalf of all employees, subject to acceptance by the Board.
- 40 Section 8 of the Long Service Leave Act provides that an employee is entitled to long service leave after 15 years service on ordinary pay in respect of continuous employment with same employer or transmittee. Further after 10 years continuous service, on termination by death or for circumstances otherwise than by serious misconduct an employee is entitled pro-rata long service leave on the

- basis of 13 weeks for 15 years service. Section 4(1) of the Long Service Leave Act defines an employee, *inter alia*, to include any person whose usual status is that of an employee. Section 4(3) of the Long Service Leave Act provides that where a person is, by virtue of an enactment of the State, the Commonwealth or of another State or Territory entitled to, or eligible to become entitled to, long service leave at least equivalent to the entitlement to long service leave under the Long Service Leave Act, that person is not within the definition of employee in s.4 (1).
- 41 Under s.21 of the Act, a person registered as an employee is entitled to 13 weeks long service leave after completing 15 years service in the construction industry and 8²/₃ weeks after completing 10 years service in the construction industry subsequent to completing 15 years service in the construction industry. Section 22(1) of the Act provides for payment of a lump sum after 10 years service if an employee terminates his employment in the construction industry.
- 42 It is apparent from s.21 of the Act that persons who are registered as employees under the Act are entitled to, or are eligible to become entitled to, long service leave that is at least equivalent to or better than the entitlement to long service leave under the Long Service Leave Act, as there is no requirement that service be continuous with an employer or transmittee. In particular s.21(2)(c) of the Act provides that service in the construction industry is not required to be continuous and shall be included whether or not service is with more than one employer. Further, after 25 years service in the construction industry a person registered under the Act is entitled to 8²/₃ weeks long service leave.
- 43 In light of the provisions of s.s.21 and 22 of the Act and s.4(3) of the Long Service Leave Act, if at the material time employees of the Applicant were registered as an employee under the Act, those employees were expressly excluded from the operation of the provisions of the Long Service Leave Act.
- 44 The question is, what is the meaning of the second sentence in Clause 8.6 of the certified agreement that provides an employer bound by the terms of the certified agreement to contribute to the Construction Industry Portable Long Service Leave Scheme subject to the acceptance by the Board.
- 45 It is not in dispute that the Scheme referred to is the Scheme established under the Act or that the Board referred to in clause 8.6 is the Respondent. It is conceded by the Respondent that there are a number of employees who at the material time were employed by the Applicant who are not employees within the meaning of the Act. Accordingly these employees are not entitled to make an application to the Board to register as an employee under s.30(4) of the Act. In particular the Respondent concedes that employees engaged in the classifications of Senior Fire Fighter, Janitor or in Administrative Work are not employees within the meaning of the Act. In respect of these employees (whose terms and conditions of employment are regulated by the terms of the certified agreement), the provisions of the Long Service Act apply to them.
- 46 In respect of the employees of the Applicant who at the material time were eligible to register as employees under the Act, the question is what is the effect of the second sentence in Clause 8.6 of the certified agreement.
- 47 Enterprise agreements certified under the Workplace Relations Act, like awards are statutory instruments and must be interpreted in light of the rules applicable to all statutory instruments (See *Re Clothing Trades Award* (1950) 68 CAR 597; *Norwest Beef Industries Ltd & Anor v Australian Meat Industry Employees Union (WA)* (1984) 64 WAIG 2124 and *Robe River Iron Associates v Amalgamated Metal Workers' and Shipwright's Union* (1987) 67 WAIG 1097).
- 48 In interpreting industrial instruments tribunals usually do not apply a literal approach, as awards and enterprise agreements may have been drafted by industrial rather than skilled draftsmen (*Robe River Iron Associates v Amalgamated Metal Workers' and Shipwrights' Union* per Kennedy J at 1100). This approach to interpretation was explained by Street J in *Geo A Bond and Co Ltd (in liq) v McKenzie* (1929) 28 AR 499 at 503-504—
- “Now, speaking generally, awards are to be interpreted as any other enactment is interpreted. They lay down the law affecting employers and employees in their relation as such, and they have to be obeyed to the same extent as any other statutory enactment. But at the same time, it must be remembered that awards are made for the various industries in the light of the customs and working conditions of each industry, and they frequently result, as this award in fact did, from an agreement between parties, couched in terms intelligible to themselves but often framed without that careful attention to form and draughtsmanship which one expects to find in an Act of Parliament. I think, therefore, in construing an award, one must always be careful to avoid a too literal adherence to the strict technical meaning of words, and must view the matter broadly, and after giving consideration and weight to every part of the award, endeavour to give it a meaning consistent with the general intention of the parties to be gathered from the whole award.”
- 49 It is argued on behalf of the Applicant that Clause 4 of the certified agreement excludes State law unless it is expressly mentioned in Clause 4. Whilst the first sentence expressly provides the terms of the certified agreement are to cover the field, the intention to do so is subject to the exception “Except as specifically provided below.” The question is whether the word “below” is paragraph 1 of Clause 4 should be construed as a reference to paragraph 3 of Clause 4 and not to Clause 8.6.
- 50 Having regard to generous construction of terms approach to construction of awards and agreements and to the fact that the opening words of paragraph 3 of Clause 4 provides “Except as expressly provided for in this agreement”, the meaning of “below” in paragraph 1 of Clause 4 in my view refers to any provision in the certified agreement that follows paragraph 1 of Clause 4.
- 51 In construing the second sentence in Clause 8.6 of the certified agreement, regard should be had to the generous construction approach to construction of terms and to the principle of statutory interpretation that the courts are not at liberty to consider any word or sentence as superfluous or insignificant. All words must prima facie be given some meaning and effect (Pearce and Geddes *Statutory Interpretation in Australia* 4th ed at para 2.12 and the cases cited therein).
- 52 Having regard to the fact that the provisions of the Long Service Leave Act are incorporated into the terms of the certified agreement, and in particular to s.4(3) of the Long Service Leave Act, it is my view that the meaning of the second sentence of Clause 8.6 of the certified agreement is that the employer is required to contribute to the Construction Industry Portable Long Service Scheme in accordance with the provisions of the Act.
- 53 It is argued on behalf of the Applicant that the employees at the Communication Station are covered by the terms of the certified agreement and in the absence of that agreement the provisions of the Award and not any award prescribed as a prescribed award under the Act. Accordingly it is argued that employees are not employees within the meaning of the Act, so that the Applicant at the material time was not an employer as it did not engage employees within the meaning of the Act. In support of its argument the Applicant points to paragraph 2 of Clause 4 of the certified agreement that provides that employers and employees at the Communication Station are excluded from coverage of any other award or determination which might otherwise be binding.
- 54 In *Construction Industry Long Service Leave Payments Board v Positron Pty Ltd* (1990) 70 WAIG 3062 at 3064 the Commission in Court Session found that it is not relevant whether an employee is employed by an employer who is bound by an award prescribed under the Act, as the definition of employee only uses the reference to the

prescribed award to identify a classification of work related to the construction industry. In my view it is clear that the definition of employee does not invoke coverage of any award prescribed under the Act.

- 55 In my opinion examination of the certified agreement reveals that no inconsistency arises between the certified agreement and the Act, so as to invoke the provisions of s.109 of the Commonwealth Constitution and s.170LZ(1) of the Workplace Relations Act 1996 to render the provisions of the Act invalid to the extent of the inconsistency.
- 56 In light of the foregoing it is the decision of this Board of Reference that at the material time the Applicant—
- was an employer who engaged persons as employees in the construction industry; and
 - was required to register under s.30 of the Act as an employer.

SECTION 23— Miscellaneous Matters —

2001 WAIRC 01972

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	THE STATE SCHOOL TEACHERS UNION OF W.A. (INCORPORATED), APPLICANT
	v.
	HON MIN FOR EDUCATION, RESPONDENT
CORAM	COMMISSIONER S J KENNER
DELIVERED	MONDAY, 5 FEBRUARY 2001
FILE NO/S	APPLICATION 1204 OF 2000
CITATION NO.	2001 WAIRC 01972

Result	Application dismissed.
Representation	
Applicant	Mr D Balfour
Respondent	Mr D Husdell

Reasons for Decision.

- This proceeding is an appeal by the applicant pursuant to s 23B of the Industrial Relations Act 1979 (“the Act”). The appeal seeks to reverse a decision of the respondent made on or about 7 July 2000 to the effect that the teacher concerned Mr Cable, have his salary grade as a teacher reduced from level 2.3 to level 2.1 and that he also be reprimanded. These penalties were imposed after a finding of misconduct made pursuant to the Education Act 1928 (“the ED Act”) following an inquiry under s 7C of that Act. Since the hearing of this matter, the Schools Education Act 1999 (“the SE Act”) has come into effect, which repealed the ED Act and s 23B of the Act however, by the transitional provisions of the SE Act, an appeal pursuant to the former s 23B of the Act, is to be heard and determined as if that section had not been repealed and remained in full force and effect.

Facts

- The allegations in relation to Mr Cable, leading to the penalty from which he now appeals, were set out in a letter to him of 29 May 2000 from the Acting Director-General of the Education Department of Western Australia which, formal parts omitted reads as follows—

“...It has been brought to my attention that you may have acted in a manner that constitutes misconduct. Specifically, it is alleged that—

On 16 March 2000, you grabbed X, a student at Wembley Downs Primary School, by the neck and lifted him from his chair and then proceeded to drag him from the classroom. I have been advised that Aaron may have

sustained bruising and soft tissue damage to the neck as a consequence.

Should the above allegation be found true, it may constitute misconduct in your employment under the Education Act 1928 (“the Act”). Specifically, the allegation may constitute misconduct under Section 7C(2)(b) and/or (e) of the Act and Regulation 32 of the Education Act Regulations 1960.

I will be requesting and authorising an independent inquirer to undertake an inquiry in accordance with Section 7C(3) of the Act into these matters, so that I may determine whether or not you are guilty of misconduct. You will be given an opportunity to furnish an explanation in relation to these matters in the course of the inquiry.

I must advise you that if, as a result of the inquiry into these matters, I am satisfied that you are guilty of misconduct, I may impose one or more punishments outlined in Section 7C(12)(a) of the Act, or recommend to the Minister for Education that you be dismissed in accordance with the provision of Section 7C(12)(b) of the Act. I have attached a copy of the relevant sections of the Education Act 1928 and Education Act Regulations 1960 for your information....” (my editing)

- In accordance with the provisions of s 7C(3) of the ED Act, an inquiry was undertaken into Mr Cable’s conduct by an independent inquirer, Ms Archibald. Ms Archibald gave evidence in these proceedings and outlined the process of the inquiry, which predominantly involved interviewing relevant parties, including student X, his mother, other students in X’s class, Mr Cable, the principal of the primary school and a medical practitioner who attended to X the day following the incident. Annexed to Ms Archibald’s witness statement, was a copy of her report following the inquiries undertaken by her. After having interviewed the relevant persons, Ms Archibald concluded in her report that Mr Cable probably pulled X out of his seat using the back of X’s collar, and pushed him from the room, again with his hand on X’s collar. This action was, in Ms Archibald’s view, the probable cause of some neck pain experienced by X and also the origin of red marks found by X’s family medical practitioner on the back of X’s neck.
- In her evidence, Ms Archibald testified that from her interviews with the relevant children, she was of the view that the incident alleged did take place, however concluded that X’s version was somewhat tinged with a dramatic flavour, but essentially considered the thrust of the allegation to be truthful. She conceded that it is natural for young children to have diverging impressions of an event, but was confident that from her interviews, the common thread outlined by them was consistent with the conclusions that she reached in her report.
- Also annexed to Ms Archibald’s witness statement, was a letter dated 20 June 2000 from Dr Cordell, X’s family medical practitioner. Whilst he was not called to give evidence, Ms Archibald said that in her discussions with him, she was advised that Dr Cordell thought that the red markings on the back of X’s neck and tenderness found in this area, was consistent with X’s description of the incident. Dr Cordell noted in his letter that X complained of some neck pain, however on examination, noted there was a full range of movement but some tenderness in the area of two red marks found on the back of X’s neck were consistent with a soft tissue injury in that area.
- Mr Cloghan was also called to give evidence on behalf of the respondent. He is the Director Workplace Relations of the department and gave evidence as to the process surrounding the s 7C inquiry, and subsequent recommendations for the imposition of a penalty in respect of Mr Cable’s conduct. I accept Mr Cloghan’s evidence as to the process undertaken. I also note that Mr Cloghan made reference to Mr Cable’s employment history with the respondent, when considering the

appropriate penalty to impose. In that connection, tendered as exhibit R 13, was a bundle of correspondence in relation to various allegations as to inappropriate conduct by Mr Cable, a number of which reminded Mr Cable of appropriate discipline pursuant to reg 32 under the Education Regulations 1960 ("the Regulations"). Whilst I am not in a position to make any findings in relation to these previous allegations, I am satisfied that these documents at least reminded Mr Cable of his obligations in relation to classroom discipline.

7. As to the incident on 16 March 2000, as noted, it was common ground that an incident did take place in which X was escorted from his classroom because of inappropriate conduct. The dispute revolved around the issue of whether physical contact occurred, and consequently, whether the injuries subsequently found on X, were attributable to Mr Cable's conduct.
8. X's version of the events was that whilst in class on that day in the morning, he was asked a couple of times by Mr Cable to pay attention. Mr Cable then got out of his chair and approached X and came up to his desk. He took X by the back of his neck with his right hand, which X said hurt him. X then said that Mr Cable lifted him from his chair until his feet were off the floor, then dropped him down. He took X's chair and threw it back over some desks in the classroom making a loud noise. Mr Cable then, holding X by the neck, dragged him from his desk to the classroom door, took him outside and put him on a bench.
9. X said that this gave him a sore neck and he was upset about the matter. He said that he did not tell his mother about the incident after school, but retreated into a large cardboard box at home and hid there for some time.
10. X's mother said that after school on 16 March she received a telephone call from the mother of another student, Y, who was in X's class that day. She was advised by Y's mother about the incident following which she questioned X. Her evidence as to what she was told was generally consistent with what X had said. A complaint was then lodged with the school, leading ultimately to these proceedings.
11. Y also said that on the day in question, he was located close to X in the classroom. He said that he saw Mr Cable down the aisle of the class to X's and pulled X's chair out from underneath him. Y said that Mr Cable was very angry and "had a bad frown on his face". Mr Cable then took X by the collar "in a nasty manner" with his whole hand. Y then said that Mr Cable took X's chair and threw it to the back of the classroom, making a loud noise. Mr Cable then, with his hand on the back of X's collar walked X to the classroom door. Y said that he clearly saw the incident and was upset by it as where a few of the other children, and told his mother about it after school.
12. Later that day, Y said that Mr Cable took the class into the assembly room to demonstrate what had occurred with X. Y said that the demonstration was not correct because it was considerably gentler than what had happened in the classroom.
13. Mr Cable's version of the events was somewhat different. He accepted that an incident occurred on 16 March, leading to X being put out of the classroom. However, his evidence was that he approached X's desk and was, on his own admission, upset with X's behaviour. He said that he went behind X and took hold of his shirt collar and instructed X to stand up, which he did. Mr Cable pushed X's chair away so that they could leave the desk area, however it fell over which made some noise. Mr Cable accepted that this may have caused other students some alarm. He then said that he told X he was being put out of the classroom and instructed him to walk which he did, whilst still holding X's collar. Mr Cable denied that he pushed or pulled X as X moved of his own volition.
14. As to the "re-enactment", it was Mr Cable's evidence that he observed that some of the other children were upset because as he understood it, rumours were being spread by X's brother, that X had sustained severe injuries. Mr Cable said that he only performed the re-enactment to calm the children and he said that student responses to the re-enactment confirmed his version of the events.

Conclusions

15. The evidence as to the incident was conflicting. I have considered the evidence carefully, and observed those giving evidence closely in these proceedings. I have also paid regard to the content of Ms Archibald's report as to her inquiries as to the incident. I accept Ms Archibald's evidence as to the process she undertook and what she was told by the various interviewees.
16. Caution needs to be exercised when considering the evidence of young children. As Ms Archibald said, young children tend to have different perception of events, and often their respective versions of what they see is different. This is in large part a result of their tender years, in relation to which the general view on the authorities in relation to evidence given by children is that there should be some corroborative evidence, before reliance is placed upon that evidence. That corroborative evidence may not necessarily be direct, and may be circumstantial. (See generally *Cross on Evidence* Australian Edition 1996 at para 15140).
17. On balance, having closely examined all of the evidence, I consider that it more likely than not, that the actions of Mr Cable did lead to physical contact with X, and it also is more likely than not in my view, that this led to the injury sustained by X on that day. I note the evidence of Mr Cable, and Mr Cross, the principal of the school, that Mr Cable told Mr Cross that he "grabbed X by the scruff of the neck" and marched him outside. From all of the evidence, I am satisfied and accept that Mr Cable was no doubt angry with X's behaviour, and responded. I do not accept that the incident occurred entirely as outlined by X, in that I do not accept that X was lifted off his feet during the incident, nor dragged as he said he was. However, I am persuaded on balance that the action of taking X's collar in the manner in which it was done, clearly in a rough fashion, would have more than likely led the knuckles of Mr Cable's right hand to come into contact with the back of X's neck.
18. In my opinion, in no circumstances is it justifiable for a student to be "man handled" by the grabbing of clothing, let alone physical contact associated with such action. Reg 32 of the Regulations permitted discipline to be enforced in a school in a manner that was "mild but firm", without any degrading or injurious punishment.
19. I would not consider that Mr Cable's conduct on this occasion could in any way be described as "mild but firm".
20. Furthermore, the "re-enactment" of the incident on 16 March, for whatever reason, was an error of judgement. Having witnessed what for some of the students was a traumatic event, to "re-enact" the incident, was not an appropriate response by the teacher, particularly when having regard to the impressionable ages of the children concerned.

Penalty

21. Accepting that Mr Cable did engage in an act of misconduct on the day in question, the issue of an appropriate penalty then arises. It was submitted by the applicant that the penalty imposed on Mr Cable was disproportionate to the offence, in the event of the Commission concluding that the misconduct occurred. The applicant said that the reduction in salary grade imposed by the respondent was a "blunt instrument", and taken cumulatively, would lead to a substantial financial impost on Mr Cable.
22. Having regard to the obligation on teachers to exercise restraint in the classroom and to set a leading example as to appropriate conduct and behaviour, in particular with young and impressionable children, I am not persuaded that on this occasion the penalty imposed upon Mr Cable was inappropriate, having regard to all of the circumstances of the case. Whilst the very long period of service of Mr Cable would be a relevant consideration, balanced against that is the conduct in question and, the fact that such a long serving and experienced teacher should have been more than well aware that such conduct was unacceptable. This should also be seen in the context of the prior notifications to Mr Cable as to appropriate disciplinary methods in the classroom.

23. Having said that, I accept however, that the regime of penalty options available under the repealed ED Act may have been somewhat rigid. It may well be the case that this issue is largely overcome with the enactment of the SE Act. Finally, as an aside, I note that from the materials before the Commission, it appeared that there was a considerable time lag between the incident on 16 March 2000, and the subsequent interviews with the relevant individuals. Whilst I acknowledge there may always be some delay inherent in any inquiry process, when recollection of events are in issue, in particular the recollection of young children, interviews with those affected should take place as soon as possible, having due regard to the obvious sensitivity in dealing with young students.
24. Accordingly, for all of the above reasons, the applicant's appeal is dismissed.

2001 WAIRC 01971

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES THE STATE SCHOOL TEACHERS
UNION OF W.A. (INCORPORATED),
APPLICANT
v.
HON MIN FOR EDUCATION,
RESPONDENT

CORAM COMMISSIONER S J KENNER

DELIVERED MONDAY, 5 FEBRUARY 2001

FILE NO/S APPLICATION 1204 OF 2000

CITATION NO. 2001 WAIRC 01971

Result Application dismissed.

Representation

Applicant Mr D Balfour

Respondent Mr D Husdell

Order.

HAVING heard Mr D Balfour on behalf of the applicant and Mr D Husdell 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.

UNFAIR DISMISSAL/ CONTRACTUAL ENTITLEMENTS—

2001 WAIRC 01891

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES BRUCE EDWARD CAMPIN,
APPLICANT
v.
AUTO AUCTIONS (WA) PTY LTD
T/A WA AUTO AUCTIONS,
RESPONDENT

CORAM COMMISSIONER A R BEECH

DELIVERED MONDAY, 29 JANUARY 2001

FILE NO APPLICATION 1591 OF 2000

CITATION NO. 2001 WAIRC 01891

Result Application alleging unfair dismissal struck out for want of jurisdiction.

Representation

Applicant Ms Y. Henderson (of counsel) on behalf of the applicant by way of written submissions.

Respondent Mr A. Burnett (as agent) on behalf of the respondent by way of written submissions.

Reasons for Decision.

Preliminary point—jurisdiction

- This is an application by Mr Campin claiming that he was unfairly dismissed. He believes his employment terminated on 11 September 2000. His application in this Commission was lodged on 9 October 2000. The respondent, however, maintains that Mr Campin's employment terminated on 28 August 2000 and that the application has been lodged outside the 28-day time limit provided for in section 29(2) of the *Industrial Relations Act 1979*.
- The Commission convened a conference of the parties at the conclusion of which the respondent pressed the point of jurisdiction. The parties agreed to allow the Commission to decide the point on the basis of written submissions.
- Mr Campin was employed as an Engineer's Assistant with the respondent. He commenced employment on 15 February 1999. Mr Campin maintains that on 28 August 2000 he was advised by the Managing Director of the respondent, Mr Fowler, that his employment was to be terminated in two week's time as a result of the manner in which he drove a black Porsche vehicle on 25 August 2000. Mr Campin states that he understood this verbal advice to mean that he was to attend at the respondent's premises and continue to work until close of business on a date two weeks hence, that is, 11 September 2000.
- Mr Campin then states that some one hour after that verbal advice, he was approached by Mr Shilling, the Human Resource Manager of the respondent, who advised him that he was required to leave the premises within an hour and Mr Campin then did so. On 31 August 2000 the respondent paid Mr Campin for accrued annual leave, gave him two weeks' pay and asked him to sign a form headed "Termination Advice". Mr Campin did so. The termination advice contains the heading "Date Terminating" followed by the date 28/8/2000.
- For the respondent, it is submitted that Mr Fowler met with Mr Campin on 28 August 2000 and informed Mr Campin that he was dismissed. Mr Fowler then said he would pay the applicant an amount of one week's salary in lieu of notice and that he could go. Mr Fowler then informed Mr Shilling that he was terminating Mr Campin's employment and that he was to be terminated at the end of the week. An hour later Mr Fowler stated to Mr Shilling that Mr Campin's employment was to be terminated immediately. There is no explanation for Mr Fowler's apparent change of intention.
- The respondent states that Mr Shilling then met with Mr Campin, wrote out the termination advice which was then signed by Mr Campin. The payments made to Mr Campin were made to him by bank transfer on 31 August 2000.
- The Commission notes that the written terms of the employment which are reflected in the employment offer of 15 February 1999 provide—
"The Employee's employment with the Employer will be ongoing from the commencement date of this agreement and the Employee will report to the Resident Engineer until this agreement is terminated by either the Employee or Employer on one week's written notice to the counter party."
- Under the heading of "Termination", it states that the agreement may be terminated by the employer without prior notice in the event of wilful misconduct, fraud or dishonesty or if the employee does not meet the

operational standards required or, if the employer terminates the agreement for any reason other than those stated reasons, the employer will pay in lump sum the balance of remuneration to which the employee is entitled under the agreement.

- 9 The principal submission made on behalf of Mr Campin is that he is entitled to rely upon the advice which he says was given to him by Mr Fowler that his employment was to be terminated in two weeks' time. This, it is said, represents the intention of the respondent. However, as the submissions from the respondent record, Mr Fowler does not agree that he told Mr Campin that his employment would be terminated in two weeks' time. Ordinarily, the Commission would have the opportunity to hear oral evidence from both Mr Fowler and Mr Campin in order to assess their credibility. However, in the circumstances of this case where both parties have agreed that the preliminary point may be decided on the basis of the written material before the Commission, the Commission will need to have recourse to other material in order to resolve the conflict in the submissions.
- 10 In that regard, the respondent has submitted a copy of the termination advice which it says was faxed to the respondent's head office on the day that it was signed, that being 28 August 2000. The copy bears the facsimile date of 28 August 2000 and confirms the respondent's submission that the termination advice was signed by Mr Campin at the meeting with Mr Shilling on 28 August 2000. Thus, I do not accept on this point Mr Campin's submission that it was on 31 August 2000 that the respondent paid the applicant and also presented him with the termination advice notice be signed.
- 11 It follows that I am not inclined on the material before me to find that on 28 August 2000 Mr Fowler did indicate that Mr Campin's employment would end in approximately two weeks. I note that it is a term of the employment contract between the parties that one week's notice is to be given in order to terminate the contract. It is more likely that Mr Fowler told Mr Campin that he was terminating his employment at the end of that week, that is 1 September 2000, as the respondent submits. That would be consistent with the terms of the written contract and what he originally told Mr Shilling. (I pause to note that if this conclusion is correct and I was to hold that Mr Campin is entitled to rely upon Mr Fowler's words and find that Mr Campin's employment terminated on 1 September 2000, Mr Campin's application to this Commission would still be out of time.)
- 12 Further, the submission of the respondent is that it was Mr Shilling who, after having being advised by Mr Fowler of Mr Campin's termination, sought advice as to the length of notice to be given and was told that the appropriate length of notice was two weeks. On the material before the Commission, that was information not known to Mr Fowler at the time he had the initial discussion with Mr Campin and terminated his employment. I therefore find it unlikely that Mr Fowler did say to Mr Campin that he was being given two weeks' notice of termination.
- 13 The fact that Mr Campin was subsequently paid two weeks' wages does not compel a different conclusion. Mr Campin's contract provided for the respondent to pay "in lump sum" the balance of any entitlement due. The respondent chose to dismiss Mr Campin with notice, as distinct from summarily dismissing him, and paid him in lieu of that notice (*Sanders v. Snell (1998) 72 ALJR 1508* at paragraph 19).
- 14 Even if I am incorrect in this conclusion, I find the termination advice signed by Mr Campin to be quite compelling. It does show in its terms that the date of termination was 28 August 2000 and Mr Campin signed it with that date written on it. This is in contrast to the written notification of dismissal given to the applicant in *Burton v. Tiwest (1996) 76 WAIG 435* to which reference was made. In that matter, Ms Burton's termination was confirmed in writing on 15 November 1993 and clearly stated that she had been given 30 day's notice of her employment being terminated effective 15 December

1993 and that during the period of notice she was not required to attend work but would be paid for the period. In my view, the correct approach is indicated in *Dedman v. British Building and Engineering Appliances Limited [1973] IRLR 379* where Mr Dedman was handed a letter saying "... we have, therefore, no alternative but to terminate your employment immediately" and which also notified him that he would be paid salary for the next month, with a further payment of one month in lieu of notice. The Court of Appeal in that matter held that the effective date of termination depended upon a true interpretation of the letter and the events of that day. It was held that any possible interpretation that Mr Dedman was employed for the month for which salary was paid was over-borne by the earlier words "terminate your employment immediately".

- 15 In this matter, the signing by Mr Campin of a termination advice giving the date of termination of 28 August 2000 overtakes any earlier words used by Mr Fowler and confirms that date as the date his employment terminated. I accept that Mr Campin wrote on the termination advice "I don't necessarily agree with this statement", however I find that the location on the document of that writing indicates that it was the reason Mr Shilling wrote for dismissing Mr Campin with which Mr Campin did not necessarily agree. That is, Mr Campin "did not necessarily agree" with the respondent stating that he had mishandled consignment vehicles whilst those vehicles were in the company's care. Mr Campin's writing did not apply to the termination advice generally.
- 16 For those reasons I find that Mr Campin's employment terminated on 28 August 2000 and that his application is out of time. An Order now issues striking out his application for want of jurisdiction.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	BRUCE EDWARD CAMPIN, APPLICANT
	v.
	AUTO AUCTIONS (WA) PTY LTD T/A WA AUTO AUCTIONS, RESPONDENT
CORAM	COMMISSIONER A R BEECH
DELIVERED	MONDAY, 29 JANUARY 2001
FILE NO	APPLICATION 1591 OF 2000
CITATION NO.	2001 WAIRC 01883

Result	Application alleging unfair dismissal struck out for want of jurisdiction.
Representation Applicant	Ms Y. Henderson (of counsel) on behalf of the applicant by way of written submissions.
Respondent	Mr A. Burnett (as agent) on behalf of the respondent by way of written submissions.

Order.

HAVING HEARD Ms Y. Henderson (of counsel) on behalf of the applicant by way of written submissions and Mr A. Burnett (as agent) on behalf of the respondent by way of written submissions, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders—

THAT the application be struck out for want of jurisdiction.

(Sgd.) A. R. BEECH,
Commissioner.

[L.S.]

2001 WAIRC 01766

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	MELINDA DARBY, APPLICANT v. ROCKET TRANSPORT SERVICES PTY LTD T/A ROCKET COURIERS, RESPONDENT
CORAM	COMMISSIONER A R BEECH
DELIVERED	FRIDAY, 12 JANUARY 2001
FILE NO/S	APPLICATION 1213 OF 2000
CITATION NO.	2001 WAIRC 01766

Result	Application alleging unfair dismissal granted.
Representation Applicant	Mr T. Crossley (as agent) on behalf of the applicant.
Respondent	Mr A. Randles (of counsel) on behalf of the respondent.

*Reasons for Decision.***Basis of employment**

- 1 Both the respondent and Ms Darby agree that Ms Darby had been employed as a casual employee. That is reflected in Ms Darby's own Application, the 2 Employment Declarations she signed and her acceptance on those days she did not work that that was the nature of her employment. However, the word casual is not a word of fixed meaning and it is necessary to examine the true nature of the employment relationship.
- 2 The history of the employment relationship with Rocket Couriers was that she would ask each afternoon whether, and at what time, she would be required for work the next day. She would then work that day unless she was contacted by telephone the next morning that she was not in fact required to work.
- 3 The period of her employment 27 March 2000 to 28 July 2000 shows 10 weeks when she worked less than a full week. Her starting and finishing times were not regular throughout the period of her employment.
- 4 I find her employment was on a daily contract basis. She would not know for certain on any given day whether or not she would be working the next day. There was, however, an expectation on both parties initially of regular work because of the need for her to fill-in to cover staff who otherwise were engaged on GST issues. There was no length of employment stipulated.

Was she dismissed?

- 5 On Friday 28 July Ms Darby commenced work at 10.00. At approximately 4:00pm she had a conversation with the manager Mr Bayliss as a result of which she, on Mr Bayliss' evidence, refused to ring back a client and inform the client that a job she accepted would be charged at the higher VIP rate and he said words to the effect that if she was not going to do what he told her to do, she was to go home. She left shortly afterwards.
- 6 I find from the evidence that the only reason Ms Darby went home when she did was because of the direction to do so from Mr Bayliss. He directed her to do so because of what he understood to be her refusal to do as she had been directed.
- 7 I reject any suggestion that by sending her home, her daily contract finished according to its terms. She was sent home because of the incident which occurred and the evidence strongly suggests that her work for the day had not otherwise finished.
- 8 I reach this conclusion in part because Mr Bayliss states that it was the busiest time of the day.
- 9 Also, if it is not clear from the oral evidence what time Ms Darby would have completed her day's contract otherwise, I find from the timesheets (exhibit C) that on the previous four Fridays she did not finish work before

6:00pm. On one of those Fridays she did not finish until 6:30pm. I find that if the incident at 4:00pm had not occurred, it is likely she would have worked until 6:00pm on 28 July.

- 10 Further, Mr Bayliss stated that "he would have had her back" after 28 July if the event had not occurred. That is, Mr Bayliss did not have her back because of the incident. His evidence is that although work in August was likely to be slow, he would have employed Ms Darby in the following weeks for at least some time.
- 11 The evidence on these issues leads me to conclude that he regarded the incident as sufficiently serious to warrant the ending of the employment relationship prior to the completion of Ms Darby's contract on that day.
- 12 I therefore find that Ms Darby was dismissed.

Was the dismissal unfair?

- 13 Ms Darby maintains that the incident involved her receiving a query from a staff member of a regular client. The query concerned the rates applicable for a package to be delivered to Fremantle. Ms Darby's evidence is that the customer stated that she would like the delivery to be made by 5:00 pm but that it was not essential and how long would it be before it was collected. Ms Darby put the customer on hold and asked Mr Bayliss, who was at a desk nearby, how long would it be before the package was collected. He informed her to charge the client at the VIP rate which she refused to do because the client had said it did not want the VIP rate.
- 14 Mr Bayliss' evidence is that the delivery to Fremantle by 5.00pm would automatically attract the VIP rate and that Ms Darby refused his direction to ring the client back and tell them they would be charged at the VIP rate.
- 15 There is some inconsistency between what Ms Darby says she asked Mr Bayliss and the response given by Mr Bayliss. It is not easy to resolve that difference. Although I was urged to regard Ms Darby's evidence as unreliable, I did not think her evidence was inherently incredible. Rather, I suspect that both Ms Darby and Mr Bayliss were slightly at cross-purposes. The evidence is that the office was busy and perhaps that assisted in the misunderstanding.
- 16 I find that Ms Darby did refuse a direction given to her by Mr Bayliss, and that his direction was lawful. However, I also accept Ms Darby's evidence that she understood the client had not specified delivery by 5pm, and that the VIP rate was not applicable. This is to be taken into account in assessing the seriousness of what occurred.
- 17 I also take into account that the respondent did not suffer any loss as a result of the incident: The job was done; the VIP rate was paid and the client is still a client.
- 18 Further, Mr Bayliss rates Ms Darby otherwise as a good employee, better than some other staff the respondent has had. Although Mr Bayliss referred to Ms Darby as perhaps having a bit of an attitude problem, there is no evidence that Ms Darby has previously refused a direction. Mr Bayliss rates her as good in 90% of her work.
- 19 Whether Ms Darby's refusal warranted her dismissal is to be judged in all of the circumstances. Wilful disobedience of a lawful and reasonable direction from an employer is a ground for dismissal. However there is no fixed rule of law defining the degree of misconduct which will justify dismissal. The nature and degree of the conduct concerned is relevant.
- 20 In this case I have already referred to what I find was some cross-purpose between Ms Darby's question to Mr Bayliss and his response. Ms Darby's refusal was also a single act, unpremeditated. Against the background of her work history, I consider that dismissal was too harsh a response. Even if there was a legal right to dismiss Ms Darby, in these circumstances it was a harsh exercise of that right. I record that even Mr Bayliss conceded that when he told Ms Darby to go home, he did not intend her not to come back at that stage.
- 21 Indeed, Mr Bayliss also gave evidence that one of the reasons why he did not again ask Ms Darby to return to employment was his understanding that after the event she had contacted two clients to inform them of

- overcharging. However, I find that Mr Bayliss was wrong in his belief. I accept Ms Darby's evidence that she contacted two of the respondent's clients to get statements for the purposes of her dismissal. That appears to be a quite understandable act on her part.
- 22 For those reasons. Ms Darby's dismissal was harsh and thus unfair.
- 23 Reinstatement is not sought and I find on the facts that it would be impracticable.
- 24 The issue of compensation raises the very issues referred to by Mr Randles during the hearing. Ms Darby claims that she suffered loss of wages for approximately 12 weeks after her dismissal. She found alternative employment after 12 weeks. However, on the evidence before me it is highly unlikely that if Ms Darby had not been dismissed she would have continued working for 12 weeks.
- 25 Mr Bayliss' evidence is that work for August is usually slow and there was only a possibility of work in October or November. Ms Darby brought no evidence to the contrary, and she herself admitted, Mr Bayliss would know.
- 26 Further, the respondent's evidence that Ms Darby's position was not replaced until mid-October was not challenged and I accept it. Accordingly, even if the incident had not occurred, it is likely that Ms Darby would only have worked "a day here, a day there, a bit more perhaps".
- 27 On that information, and even on Ms Darby's calculation of 12 weeks' loss, I find that her loss is no more than the balance of the day's work remaining for 28 July and a further 5 days' work.
- 28 I accept that Ms Darby did attempt to find alternative work in the courier industry without success.
- 29 I therefore order the respondent to pay Ms Darby a sum of money equivalent to 5 days' plus 2 hours' wages calculated as follows: the last two complete weeks worked by Ms Darby (weeks ending 18 and 25 July) average 7 hours per day. I therefore conclude that fair compensation for Ms Darby's loss is calculated at 35 hours, plus 2 hours, making 37 hours' pay at \$14.00 per hour = \$518.00.
- 30 A minute of proposed order now issues.

2001 WAIRC 01800

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	MELINDA DARBY, APPLICANT v. ROCKET TRANSPORT SERVICES PTY LTD T/A ROCKET COURIERS, RESPONDENT
CORAM	COMMISSIONER A R BEECH
DELIVERED	TUESDAY, 16 JANUARY 2001
FILE NO	APPLICATION 1213 OF 2000
CITATION NO.	2001 WAIRC 01800
Result	Application alleging unfair dismissal granted.
Representation	
Applicant	Mr T. Crossley (as agent) on behalf of the applicant.
Respondent	Mr A. Randles (of counsel) on behalf of the respondent.

Order.

HAVING HEARD Mr T. Crossley (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:

- (A) DECLARES—
- (1) THAT the dismissal of Melinda Darby by Rocket Transport Services Pty Ltd was unfair;
 - (2) THAT re-instatement is impracticable; and
- (B) ORDERS that Rocket Transport Services Pty Ltd forthwith pay Melinda Darby the sum of \$518.00 by way of compensation for the dismissal which occurred.

[L.S.]

(Sgd.) A.R. BEECH,
Commissioner.

2001 WAIRC 02027

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	CADE LAURENCE DONEGAN, APPLICANT v. CONCEPTUALIZE, RESPONDENT
CORAM	COMMISSIONER S WOOD
DELIVERED	TUESDAY, 13 FEBRUARY 2001
FILE NO	APPLICATION 1368 OF 2000
CITATION NO.	2001 WAIRC 02027

Result	Contractual benefits claim granted
Representation	
Applicant	Mr C L Donegan on his own behalf
Respondent	No appearance

Order.

WHEREAS this is an application pursuant to section 29(1)(b)(ii) of the *Industrial Relations Act 1979*; and

WHEREAS on 16 November 2000 the Commission convened a conference for the purpose of conciliating between the parties and in the absence of the respondent the matter was referred to hearing; and

WHEREAS the parties were duly advised that the matter was listed for hearing on 19 January 2001; and

WHEREAS there was no appearance by the respondent at the hearing; and

WHEREAS the respondent by letter dated 15 August 2000 admitted that \$2,218.00 was owing; and

WHEREAS the Commission having heard the applicant finds that the amounts as claimed are owed;

NOW THEREFORE the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders—

THAT the sum of \$2,018.33 be paid to Cade Donegan within 7 days by the respondent.

[L.S.]

(Sgd.) S. WOOD,
Commissioner.

2001 WAIRC 01818

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES KRISTY DUTTON, APPLICANT
v.
ADRIAN J DOMNEY T/A EURO
AUTOMOTIVE SERVICES
AUSTRALIA, RESPONDENT

CORAM COMMISSIONER A R BEECH

DELIVERED TUESDAY, 16 JANUARY 2001

FILE NO APPLICATION 1032 OF 2000

CITATION NO. 2001 WAIRC 01818

Result Application alleging unfair dismissal and contractual entitlements granted in part.

Representation Applicant Ms K. Dutton appeared on her own behalf as the applicant and with her Mr H. Dutton.

Respondent No appearance on behalf of the respondent.

Reasons for Decision.
(*Extemporaneous*)

- 1 I turn to the reasons for dismissal in this matter. I find that Ms Dutton's position as Service Manager was a position of trust and that for her to have created the invoice without reference to her new employer was certainly a bold move. She has stated that it was the practice of other employers for whom she has worked that staff rates were applicable. However, the Commission has no direct evidence of that and can place little weight on that statement.
- 2 In the view of the Commission, Mr Domney is entitled to run his business as he sees fit and if he has a practice of not allowing a staff discount or a staff rate then that is his prerogative and therefore Ms Dutton did do the wrong thing in the action that she took. However, as Ms Dutton has pointed out, Mr Domney did not then dismiss Ms Dutton. I suspect that if Mr Domney had dismissed Ms Dutton at that point then he would have been entitled to do so because of the position of trust held by Ms Dutton. However, Mr Domney did not then dismiss Ms Dutton and in fact he allowed the employment relationship to continue for a further eight days.
- 3 In the discussion that Mr Domney had with Ms Dutton at the time he became aware of the invoice, although on Ms Dutton's evidence he expressed his dissatisfaction and she was somewhat upset, Ms Dutton did nevertheless apologize and offer to pay for the difference, Mr Domney had replied that it wasn't the money, it was the fact that she had not asked for permission for a staff rate. However, the conversation apparently ended with Ms Dutton promising not to do such a thing again and this seemingly was accepted by Mr Domney or at least he does not, on her evidence, give any indication that the matter was not then closed and nothing further was said on that subject for a further eight days until Mr Domney dismissed her.
- 4 The right of an employer to dismiss an employee summarily, that is, without payment of any entitlements but merely with wages paid up to the point of dismissal, is a right that the employer has when misconduct warrants immediate dismissal. However, the employer is not bound to dismiss an employee who is guilty of some misconduct and the employer is able to elect, notwithstanding the knowledge of the misconduct, to continue to employ the employee. It is rightly said that if there is a delay in dealing with misconduct, that is not of itself condoning the misconduct that is, that it is a conscious decision on the part of the employer to waive the right that the employer then has to dismiss. However, if the employer does not act with reasonable despatch it may be inferred that the employer is waiving the right to dismiss.
- 5 In this case, the unfortunate absence of Mr Domney leaves the eight-day gap between his discovering Ms Dutton's

creation of the invoice until his decision to dismiss largely unexplained.

- 6 However, if I turn to the dismissal which occurred, Mr Domney dismissed Ms Dutton on 23 June 2000 at 5:30pm in the afternoon. He did so saying that the dismissal was because of the invoice and that he could no longer trust Ms Dutton, but he also indicated at that stage that he would pay her any bonuses that were due and her entitlements. She then left the premises. The next day when she arrived to pick up her cheque at approximately 12:30pm, Mr Domney informed her that he had sought advice and that because the dismissal was for reasons of misconduct he had no need to pay the entitlements that were due to be paid and Ms Dutton was therefore paid up to the day of dismissal plus a further one day.
- 7 The dismissal that occurred on 23 June 2000 was of itself a summary or immediate dismissal. Ms Dutton claims that the dismissal was unfair and after considering the matter I find that the dismissal was unfair but for the following reasons.
- 8 On the facts as I have it before me, Mr Domney did not apparently consider Ms Dutton's actions at the time warranted immediate dismissal otherwise he would have dismissed her at that stage. If the dismissal did not warrant an immediate dismissal when he first knew about it, it is difficult on the evidence before the Commission to understand why the misconduct then warranted an immediate dismissal some eight days later when the employment relationship had continued without any further discussion of the issue, without any other incidents at all (let alone going to the issue of trust) occurring and that on the evidence Ms Dutton's work was otherwise regarded as satisfactory.
- 9 Therefore, although, as I find, Mr Domney was entitled to dismiss Ms Dutton his entitlement to do so immediately and summarily was well and truly past some eight days later. I also take into account that at the time that he did eventually dismiss Ms Dutton he verbally advised that entitlements would be paid. Although he subsequently changed his mind he nevertheless did say something different the night before. Further, he allowed her to keep the mobile telephone handset that had been provided to her. The Commission understands that the mobile telephone account is in Ms Dutton's name. I also note that in his Notice of Answer and Counter Proposal Mr Domney, at least in his words, indicates that the mobile telephone handset was to be returned but I have no reason to doubt Ms Dutton's evidence that Mr Domney indicated that she was allowed to keep the handset. Further, at the time of dismissal Ms Dutton offered to have deducted \$200.00 from any entitlements, being the cost of the repair to a motor vehicle, and that Mr Domney said that she was not to worry about that. The mobile telephone handset and the waiving of the deduction of \$200.00 are two matters that are quite inconsistent with an employee being summarily dismissed for gross misconduct with a loss of all entitlements as Mr Domney now indicates in his Notice of Answer and Counter Proposal.
- 10 I therefore find in conclusion that for Mr Domney to have dismissed Ms Dutton summarily in all those circumstances some eight days later was somewhat harsh towards her and that therefore the dismissal was for that reason unfair. Nevertheless, as I find, Mr Domney was otherwise justified in the dismissal which occurred.
- 11 Having found for those reasons that the dismissal was unfair, the Commission turns to consider what is to be done about it. There is no suggestion that reinstatement is sought and indeed given the other information to the Commission, of which Ms Dutton is aware that the respondent is apparently no longer in business, reinstating Ms Dutton is therefore not practicable.
- 12 As to any issue of compensation, on the decision as I have made it, Ms Dutton's loss is the loss of the entitlements that would otherwise have been paid to her had the dismissal not been an attempted summary dismissal. She claims as part of those entitlements the loss of one week's wages and of any outstanding holiday pay. I accept that a fair measure of Ms Dutton's loss is as

she has quantified it and I reject the balance of her claim for any untaken sick leave and any loss of future income.

- 13 I therefore assess Ms Dutton's loss as follows. One week's wages being an amount of \$791.00. I note however in her evidence that the payments that have been made to her included one day in addition to the period to which she had worked. The loss therefore on a week's notice is in fact four days' wages. That amounts to a sum of \$592.00 and I have calculated the eight completed weeks' worth of annual leave as 3.07 days being an amount of \$485.00.
- 14 There has been no suggestion in any of Ms Dutton's evidence that there is any outstanding bonus as referred to by Mr Domney and therefore that is not taken into consideration.
- 15 Accordingly, I propose to make an Order in the following form. That having found that Ms Dutton's dismissal was unfair only for the reasons given, that Adrian Domney t/a Euro Automotive Services Australia forthwith pay Kristy Dutton the sum of \$592.00 being four days' wages and \$485.00 being 3.07 days annual leave entitlements.
- 16 Order accordingly.

2001 WAIRC 01819

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES KRISTY DUTTON, APPLICANT
v.
ADRIAN J DOMNEY T/A EURO
AUTOMOTIVE SERVICES
AUSTRALIA, RESPONDENT

CORAM COMMISSIONER A R BEECH

DELIVERED WEDNESDAY, 17 JANUARY 2001

FILE NO APPLICATION 1032 OF 2000

CITATION NO.

Result Application alleging unfair dismissal and contractual entitlements granted in part.

Representation

Applicant Ms K. Dutton appeared on her own behalf as the applicant and with her Mr H. Dutton.

Respondent No appearance on behalf of the respondent.

Order.

HAVING HEARD Ms K. Dutton on her own behalf as the applicant and with her Mr H. Dutton 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—

- (1) DECLARES that Kristy Dutton was unfairly dismissed by Adrian J Domney t/a Euro Automotive Services Australia;
- (2) DECLARES that reinstatement is impracticable;
- (3) ORDERS that Adrian J. Domney t/a Euro Automotive Services Australia forthwith pay Kristy Dutton the sum of \$592.00 being four days' wages;
- (4) ORDERS that Adrian J. Domney t/a Euro Automotive Services Australia forthwith pay Kristy Dutton the sum of \$485.00 being 3.07 days annual leave entitlements.

[L.S.]

(Sgd.) A.R. BEECH,
Commissioner.

2001 WAIRC 01852

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES MATTHEW JAMES EAST,
APPLICANT
v.
PICTON PRESS PTY LTD,
RESPONDENT

CORAM SENIOR COMMISSIONER G L
FIELDING

DELIVERED FRIDAY, 19 JANUARY 2001

FILE NO/S APPLICATION 1509 OF 2000

CITATION NO. 2001 WAIRC 01852

Result Application dismissed

Representation

Applicant Unrepresented

Respondent Mr R Dhue as agent

Reasons for Decision.

(Given extemporaneously at the conclusion of the submissions, taken from the transcript as edited by the Senior Commissioner)

- 1 The Applicant was employed by the Respondent from 10 July until 1 September 2000 as an account manager. It is common ground that his duties were to generate new business for the Respondent. The Applicant was, in essence, a salesman. The Respondent's business at all material times was that of a printer. The Applicant was employed on the basis of a salary of \$60,000 per annum. More importantly for the purposes of these proceedings, it was an express term of his contract of employment that "A period of three calendar months probation shall apply. At any time during this probationary period our employment relationship can be terminated with one weeks notice by either party." It is common ground that the Applicant was terminated by the Respondent with one weeks pay in lieu of notice on 1 September last; that is, approximately two months into the probation period.
- 2 The Applicant says, in short, that during those two months he performed satisfactorily, if not well. He says that he received no formal indication from the Respondent that his employment was to be terminated. Indeed, he says that approximately two or three weeks before he was dismissed, the sales manager said to him that he had the team he wanted and that the Applicant was "virtually guaranteed" his job. Furthermore, the Applicant says that on the evening before he was dismissed, he was, to use his words, "congratulated" by the owner of the business on getting a new \$40,000 contract. The Applicant says too that approximately two or three weeks before he was dismissed, he approached the sales manager about purchasing a new car. He says that the sales manager told him that that would be a good idea.
- 3 The Applicant's case is that he was dismissed without warning and that it was unfair because he needed at least another month to test whether he was capable of achieving the necessary sales figures to prove his worth. In short, he says that it was premature for him to be dismissed on that basis.
- 4 On the other hand the Respondent says that the Applicant was dismissed because it concluded that his employment was not going to work out. It says that he was not dismissed without warning but that he was repeatedly told, albeit informally, that there were concerns about his work ethic. In particular, the Respondent was concerned about the hours of his arrival at work in the morning and it was concerned also that he was spending too much time in the office and, as a result, not achieving the necessary figures. The Respondent says that the Applicant should have obtained sales figures in the order of \$100,000 a month, and on the basis of the figures achieved by the Applicant, coupled with his work ethic over the two months, it concluded that things were not going to work out, hence he was dismissed.

- 5 There is not great conflict in the evidence adduced in these proceedings, but where there is conflict I accept the evidence of Mr Dorr. I accept his evidence that at no time did he "guarantee", either virtually or otherwise, the Applicant continued employment. Indeed, I accept his evidence that during the period of probation such an undertaking would simply not be given, and in this case, moreover, was not given.
- 6 I am satisfied that there was mention of the need for sales staff, including the Applicant, to keep up their level of sales, given that it seems to have been the case that the Respondent acquired another business and that that required higher sales figures. Indeed, to his credit, the Applicant does not seriously dispute that need, but he suggests that he should have been given more time to prove his worth.
- 7 I accept too, and indeed there does not appear to be any dispute, that the Applicant was spoken to about the need to work longer hours and, in particular, to be out and about rather than spend as much time as he did in the office.
- 8 Having regard to the fact that the Applicant was on probation and to the fact that the terms of the contract clearly imply, if not expressly state, that employment could be terminated before the expiry of the three-month period, and having regard also to the reasons given by the sales manager for concluding, as he did, apparently with the support of the managing director, that the Applicant's appointment was not going to work out, on balance I am far from convinced that the right which the contract reserved to the employer to terminate the contract was abused. The Applicant having brought in only \$20,260-odd in business in two months, of which a small proportion, \$9,000, related to new business, I cannot think that the Respondent was irrational in concluding that the arrangement was not going to work out. Furthermore, that is reinforced by the evidence of Mr Dorr that the Applicant was spending too much time in the office, notwithstanding his earlier expressed concerns about the matter.
- 9 So it is that I am simply not convinced on the evidence that the Respondent abused its contractual right when it terminated the Applicant's employment. In the circumstances it follows that the application must be dismissed.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	MATTHEW JAMES EAST, APPLICANT v. PICTON PRESS PTY LTD, RESPONDENT
CORAM	SENIOR COMMISSIONER G L FIELDING
DELIVERED	FRIDAY, 19 JANUARY 2001
FILE NO/S	APPLICATION 1509 OF 2000
CITATION NO.	2001 WAIRC 01851
Result	Application Dismissed
Representation	
Applicant	Unrepresented
Respondent	Mr R Dhue as agent

Order.

HAVING heard the Applicant in person and Mr R Dhue 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,
Senior Commissioner.

[L.S.]

2001 WAIRC 01662

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	WENDY KATHLEEN FAULKNER, APPLICANT v. MANDURAH TOURIST BUREAU INC EXECUTIVE COMMITTEE, RESPONDENT
CORAM	COMMISSIONER S WOOD
DELIVERED	WEDNESDAY, 22 NOVEMBER 2000
FILE NO	APPLICATION 912 OF 2000
CITATION NO.	2000 WAIRC 01662

Result Applicant dismissed unfairly, contractual benefits awarded

Representation

Applicant Mr G Stubbs of Counsel

Respondent Mr E Rea as agent

Reasons for Decision.

(Given extemporaneously and subsequently edited by the Commissioner)

- 1 This is an application made pursuant to section 29(1)(b)(i) of the *Industrial Relations Act, 1979* (the Act), the application was effectively amended at hearing to include a claim for a denied contractual benefit for annual leave in excess of 90 hours.
- 2 The matter came on for conference and, having not been settled, was brought on for hearing. The matter at hearing was adjourned for the parties to discuss between themselves whether the matter could be settled. This was not successful and the matter was heard.
- 3 Firstly, in relation to the question of credibility of the witnesses, I have no issue with the credibility of the witnesses in general. The only characterisation would be that the witness, Mrs Judith Wickham, I would describe as a "reluctant witness". However, the parties, having agreed that the tape (of the mediation conducted by Ms Wickham) has no bearing on the matter, it has no consequence in my decision.
- 4 Secondly, albeit that the witnesses have come forward to give their versions of events honestly, there were certain concessions extracted in cross-examination from Mr Janiec, the then Acting Chairman of the Executive Board of the Mandurah Tourist Bureau, which I will cover in more detail.
- 5 Next, in relation to the evidence, I accept the point made on behalf of the applicant by Mr Stubbs. That the matters put by Mrs Faulkner in evidence were unchallenged, and the matters that may be of conflict were not put to her in any cross-examination, hence the evidence of Mrs Faulkner stands and must be treated as such.
- 6 I come then to the issue about whether there is a real redundancy or otherwise. The evidence is clear that from 4 May 2000 the executive committee had made a decision, a conclusive decision, to make redundant Mrs Faulkner's position, ie Manager of the Mandurah Tourist Bureau. I find that Mrs Faulkner was made redundant.
- 7 The evidence of Mr Janiec and also of Mr Hancock, the now Chairman of the Executive Board of the Mandurah Tourist Bureau, which I accept, is that the operation of the Bureau is now different from what it was when it was managed by the applicant, Mrs Faulkner. The funds for marketing have been taken away by the Mandurah Council. The Bureau has been scaled down in many respects. It has been scaled down in respect of hours. It has been scaled down in respect of contracts; the cleaners contract having been ceased. It has been scaled down in respect of the accounting arrangements and in respect of a sub-committee which now manages the place. I am convinced on the evidence of Mr Janiec that that was all in consideration at the time the decision was made on 4 May 2000. So for those reasons I do not accept the

- proposition that this is not a true redundancy. The respondent has discharged their onus in that respect.
- 8 Mr Stubbs, for the applicant, has covered the ground in respect of what I would put as "conjecture" about whether the decision was made prior to 4 May 2000 in relation to discussions with Mr Goode, the Chief Executive Officer of the City of Mandurah, but I am not convinced that this point has been made out or that as a result there has not been a true redundancy.
- 9 Having said that, I am convinced, and I would find, that Mrs Faulkner was dismissed unfairly. The unfair dismissal has effectively been conceded by the respondent in relation to procedural grounds, and there are many aspects in the procedure of this termination which are unfair. I do not accept the proposition that, albeit this being a Board, it is consequently inexperienced. I have evidence that at least some are business people, and certainly Mr Janiec is an experienced businessman.
- 10 The procedures in terms of unfairness are many. On the evidence of Mrs Faulkner there was no consultation. There were no alternatives offered. The set-up for the meetings of 12 May 2000 and 16 May 2000 were not adequate. With the history of this matter and the concerns and grievances that Mrs Faulkner had, the sensitivity required of that meeting was lacking. To be presented with an option of "No taping, no notes," is not adequate, given the sheer press coverage that this matter had received previously.
- 11 But more importantly, it was clear on the evidence of Mrs Faulkner and Mr Janiec under cross-examination, that really the termination decision had been made, and the meeting of 12 May 2000 was only to deal with matters to do with pay and any other matters that Mrs Faulkner wished to discuss. Albeit the discussion may have taken some time and addressed Mrs Faulkner's concerns in relation to letters of reference, or, alternatively, how the matter would be handled in the press, it did not deal with the substantive point about what was to happen with her job; whether she in fact could continue in a reduced role, or other such matters. Clearly, the concession of procedural unfairness made by Mr Rea on behalf of the respondent, is a wise concession. The evidence is obvious that the procedure adopted by the Board was lacking fairness in its entirety.
- 12 That being said, I would then address the issue of the practicability of reinstatement. I find that reinstatement is not practicable. This is a true redundancy, there is no job for Mrs Faulkner to go back to. The Bureau is now managed differently and has substantially less money. I do not consider that it would be viable for Mrs Faulkner to take on a much lesser role in the Bureau. Even if that were not so, the history of this matter is such that reinstatement would not be practical and both parties effectively concede that.
- 13 To come to the issue of compensation, I will deal firstly with the question of injury. The lack of procedural fairness in this and the stress that it has caused Mrs Faulkner, is not simply by virtue of the grievances that were carried through over a number of months from effectively about February of this year. It was exacerbated by the way in which the meetings were conducted, and I accept, which is unchallenged, Mrs Faulkner's evidence in that regard.
- 14 Her evidence is that she lived for the position. Her evidence is that she felt she could not go outside and socialise in the environment of Mandurah. Her evidence is that it would be difficult for her to get a job in Mandurah and that she received psychological support as a result of this. That being the case I would award a sum of \$3,000.00 by way of injury in this matter (see *Ramsay Bogunovich v Bayside Western Australia Pty Ltd* 79 WAIG 8 & *James A Capewell v Cadbury Schweppes Australia Ltd* 78 WAIG 299).
- 15 I come then to the question of calculation of loss. It is clear from the documents, in particular [Exhibit WF12], that a redundancy payment of 4 weeks was paid, and that is unchallenged by the applicant. There is nothing inadequate in this payment and no unfairness arising from it (see *Frederick John Rogers v Leighton Contractors Pty*

Ltd 79 WAIG 3551). Mrs Faulkner having been properly made redundant received an appropriate redundancy payment.

- 16 I refer to a recent decision of the Full Bench in relation to *WA Access Pty Ltd v Mark Robert Vaughan (unreported)*, in part, to say that there being a true redundancy the employment would not have continued, and the payment having been made and it being adequate, there is no further calculation of loss I would make in respect of this application. Mrs Faulkner was paid two weeks notice in lieu plus an additional 8 hours [Exhibit WF12] which was adequate notice. Certainly the adequacy or otherwise of the notice period was not argued. Mrs Faulkner was aware from the meeting of 12 May 2000 that she was to be made redundant and the matter was not finalised then as several issues had to be settled between the parties. These matters were settled at the meeting of 16 May 2000 and whilst the discussions should have been handled more sensitively, there was nothing to be gained for either party from further delay. In view of all of this I would not award any additional sum.
- 17 I then come to the final point, the final point being the issue to do with, in effect, the amended application for denied contractual benefits, which would be under section 29(1)(b)(ii). The [Exhibit WF15] shows an amount of 75 hours worth of annual leave, which has been shown in contrast to [Exhibit WF12] to have been taken as sick leave rather than annual leave. Albeit the evidence of Mrs Faulkner must stand unchallenged, the applicant's own exhibits take me only to 75 hours worth of annual leave, and I find that 75 hours of annual leave is payable by way of a denied contractual entitlement, and so order, that this be paid to the applicant. This is a sum of \$1,807.50 which I would award the applicant.

2001 WAIRC 01762

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

PARTIES	WENDY KATHLEEN FAULKNER, APPLICANT
	v.
	MANDURAH TOURIST BUREAU INC EXECUTIVE COMMITTEE, RESPONDENT
CORAM	COMMISSIONER S WOOD
DELIVERED	THURSDAY, 11 JANUARY 2001
FILE NO	APPLICATION 912 OF 2000
CITATION NO.	2001 WAIRC 01762

Result	Applicant dismissed unfairly, contractual benefits awarded
Representation	
Applicant	Mr G Stubbs of Counsel
Respondent	Mr E Rea as agent

Order.

HAVING heard Mr G Stubbs of counsel on behalf of the applicant and Mr E Rea for the respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby—

- (1) DECLARES that the applicant, Wendy Kathleen Faulkner, was harshly, oppressively or unfairly dismissed by the above named respondent.
- (2) ORDERS that the said respondent do hereby pay within seven days of the date of this order, as and by way of injury, the amount of \$3,000.00 to Wendy Kathleen Faulkner, less any taxation that may be payable to the Commissioner of Taxation.
- (3) ORDERS that the said respondent do hereby pay within seven days of the date of this order, as and by way of denied contractual benefits, the amount of

\$1,807.50 to Wendy Kathleen Faulkner, less any taxation that may be payable to the Commissioner of Taxation.

[L.S.] (Sgd.) S. WOOD,
Commissioner.

2000 WAIRC 00156

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

PARTIES MICHAEL FORGIONE V
CHOCOLATE GRAPHICS (WA) PTY
LTD, ROBERT MCKENZIE MARTIN
T/AS MARTYN'S CHOCOLATES

CORAM COMMISSIONER J F GREGOR

DELIVERED TUESDAY, 25 JULY 2000

FILE NO/S APPLICATION 1676 OF 1999

Result Motion to dismiss referred. Robert McKenzie Martin deleted as respondent

Representation

**Applicant/
Appellant** Mr B Stokes appeared on behalf of the applicant

Respondent Mr C Keys appeared on behalf of the respondent

Reasons for Decision.

- 1 On the 2 November 1999, Michael Forgoine filed an application seeking orders pursuant to Section 29 for unfair dismissal and contractual entitlements. The Notice of Application was addressed to Chocolate Graphics (WA) Pty Ltd and to Robert McKenzie Martin. When the matter came on for hearing on 20 June 2000, Mr Keys, who entered an appearance for 'the respondent' submitted to the Commission as a preliminary point, that the application should be dismissed. The ground for the motion is that the application names two respondents and in doing so, does not conform with the statutory prerequisite that an unfair dismissal proceeding under section 29 of the *Industrial Relations Act 1979*, (the Act) can only be against one respondent. Because there are two respondents named, in effect the proceedings were never commenced and therefore, the application has no substance and by implication is a nullity. Mr Keys submitted that his motion was in a similar but limited sense, the same as one would put for a 'misdescription or misnaming' of the respondent but it is completely different in the sense that there is no mistake in this case. The applicant has deliberately named two respondents.
- 2 Mr Keys said the application should be dismissed and added the submission that "*any new application should only be made at the whim of the applicant so to speak*". In respect of this last submission I admit I do not understand what it means.
- 3 Mr Stokes who appeared for the applicant says that, from March 1998 through to the incorporation of the corporate respondent, that is Chocolate Graphics (WA) Pty Ltd, the applicant had worked for Robert McKenzie Martin, the other named respondent. From the 24 March 1998 which was the day the first named respondent was incorporated the applicant says he worked for that respondent. The applicant submits that the first named respondent did not exist until and therefore, for the initial period the second named respondent was the employer. It is common in such circumstances to have two employers to the application.
- 4 The matter was adjourned to allow the Commission to consider the issues raised but was unable to be completed on the date of the hearing and the decision was reserved.
- 5 In *Parveen Kaur Rai -v- Dogrin Pty Ltd (2000) 80 WAIG 1375*, the Full Bench dealt with issues arising when there

had been a mis-naming of the respondent. While the matter before the Commission is not precisely the same, the Full Bench has given some guidance which is applicable.

- 6 With respect the comments of his Honour the President, at 178 of the Reasons for Decision are apposite. His Honour said—

"First, the effect of s.26(2) of the Act should be considered. That enables a remedy to be ordered other than that applied for and may not, therefore, assist in this case.

*Once an "industrial matter" is referred to the Commission, as this was, then it may be dealt with in accordance with s.27 of the Act (see *Old Ferry Company Pty Ltd v Bertelli (FB) (op cit)* at page 3748).*

Further, s.27(1)(1) and (m) of the Act should be considered as giving wider powers than Rule 36 of the Rules of the Supreme Court of Victoria (see, also, Rule 21 of the Rules of the Supreme Court of Western Australia, and Order 21.5.3 in particular).

The proper application was for the name to be corrected to provide the name of the employer. As a matter of principle, such an application could not be used to defeat the limitation provisions. However, as a matter of equity, good conscience and the substantial merits of the case, where the application was made against the applicant's employer, then, if it were a misdescription, it should be remedied.

- 7 This is a case where the defect in the application should not be used to defeat the limitation provisions. Clearly at the time of the applicant's dismissal he was in the employ of Chocolate Graphics (WA) Pty Ltd.
- 8 In order that the application might proceed, I intend to amend the application by deleting the name of the second named respondent, Robert McKenzie Martin, this will leave intact the application against Chocolate Graphics (WA) Pty Ltd both in respect to an unfair dismissal and any contractual benefits claim.
- 9 Section 29(2) does not apply in respect to applications made under Section 29(1)(b)(ii). There is no bar therefore to the applicant filing a fresh application against Robert McKenzie Martin if he so wishes. The applicant can then move that the two applications be dealt with jointly.
- 10 An order will issue that issues the motion that the application be dismissed will be dismissed. The second named respondent will be deleted.

2000 WAIRC 00155

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

PARTIES MICHAEL FORGIONE V
CHOCOLATE GRAPHICS (WA) PTY
LTD, ROBERT MCKENZIE MARTIN
T/AS MARTYN'S CHOCOLATES

CORAM COMMISSIONER J F GREGOR

DELIVERED TUESDAY, 25 JULY 2000

FILE NO/S APPLICATION 1676 OF 1999

Result Motion to dismiss referred. Robert McKenzie Martin deleted as respondent.

Representation

**Applicant/
Appellant** Mr B Stokes appeared on behalf of the applicant.

Respondent Mr C Keys appeared on behalf of the respondent

Order.

HAVING heard Mr B Stokes on behalf of the applicant and Mr C Keys on behalf of the respondent, the Commission

pursuant to the powers vested in it by the *Industrial Relations Act 1979*, hereby orders—

THAT—

- (1) The motion by the respondent that the application be dismissed is dismissed.
- (2) The second named respondent be deleted from the application.

[L.S.]

(Sgd.) J. F. GREGOR,
Commissioner.

2001 WAIRC 01856

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

PARTIES ANNA EVELISA GALIPO,
APPLICANT
v.
MINISTER FOR EDUCATION,
RESPONDENT

CORAM COMMISSIONER J H SMITH

DELIVERED MONDAY, 22 JANUARY 2001

FILE NO APPLICATION 972 OF 2000

CITATION NO. 2001 WAIRC 01856

Result Applicant awarded contractual benefits

Representation

Applicant Mr T Kucera of counsel

Respondent Mr J Ayling

Reasons for Decision.

- 1 This is an application made under s.29(1)(b)(ii) of the Industrial Relations Act 1979 (“the Act”). Anna Evelisa Galipo (“the Applicant”) claims that she is owed the sum of \$15,028 being a benefit to which she is entitled under her contract of employment, not being a benefit under an award or order.
- 2 At the outset of the hearing a formal application to amend the name of the Respondent from the Director-General, Education Department of Western Australia to the Minister for Education was made by the Applicant. The application was not opposed by the Respondent.

Background

- 3 The parties tendered a statement of agreed facts. The facts agreed are as follows—
 1. Evelisa Galipo (the Applicant) is and was at all material times, a teacher employed by the Minister for Education.
 2. The Applicant commenced employment as a teacher on 1 February 1980 and has continuously been employed by the Minister for Education since this date.
 3. On 26 June 1998 the Director General, Education Department of Western Australia, (the Respondent) offered the Applicant a secondment to a level 5 “Curriculum Support Officer”, from 28 April 1998 to 31 December 2000 (the secondment).
 4. For the term of the secondment, the Applicant was required to work in the District Support Centre. The Applicant was to be engaged under similar terms and conditions to those applicable to a public service officer, including a starting salary at Level 5 Point 3 of \$49,737.00 per annum (the secondment agreement).
 5. Upon the completion of the secondment the Applicant was to resume service as a teacher with the Minister for Education. As a result the Respondent did not, for the term of the secondment, appoint the Applicant as a public servant. The

Applicant’s contract of employment with the Minister for Education was not terminated, remaining on foot throughout the term of the secondment.

6. To meet the operational requirements of the Respondent, a decision was made by the Respondent to close the District Service Centre on 31 December 1999. As a result of this decision, all of the teachers who had been seconded to District Service Centre, including the Applicant, were directed to resume service with the Minister for Education.
 7. When the decision to close the District Support Centre was effected, the Applicant had reached the top salary point in her Level 5 Curriculum Support Officer position, that being a salary of \$53,684.01 per annum, which included the annualisation into a normal fortnightly salary of annual leave loading.
 8. On 1 January 2000 The Applicant commenced work as a teacher of languages other than English LTOE (sic), at the Schools of Isolated and Distant Education (SIDE) on a full time equivalent salary of \$48,264.00 per annum.
- 4 The terms of the secondment agreement were as follows—
“Curriculum Support Officer, Level 5, P3000413 District Service Centre (Curriculum)
I am pleased to offer you a secondment to the above office on the following conditions—
1. Your secondment will commence on 28 April 1998 and cease on 31 December 2000.
 2. The terms and conditions of your secondment are those applicable to a permanent officer of the Public Service. All the provisions of the Public Sector Management Act 1994, Public Sector Management (General) Regulations 1994, the Public Service Award 1992 and approved procedures, including the disciplinary provisions EDWA (CSA) Enterprise Agreements or Workplace Agreements apply to your service as an officer of the Public Service.
 3. You will accrue all entitlements under the terms and conditions applicable to the Public Service Award 1992.
 4. During this secondment you will accrue annual leave which must be cleared, by negotiation with your supervisor, during your period of secondment. An Application for Leave must be submitted before this leave is taken.
 5. At the completion of your secondment all entitlements (other than annual leave) accrued under the Public Service Award 1992 shall be credited to your Education Act position.
 6. Your salary on appointment will be \$49,737.00 gross per annum and will be adjusted from time to time in accordance with salary movements for State Public Service Classification Level 5 Year 3 as contained in the Public Service Award, 1992 and EDWA (CSA) Enterprise Agreements or EDWA Workplace Agreement.
 7. Should you wish to accept this secondment on the conditions outlined above could you please sign this offer and return it to this office within seven (7) days.”
- 5 The secondment agreement was terminated on behalf of the Respondent by a letter dated 17 September 1999. The letter stated as follows—

“It is with regret that the District Service Centre: Curriculum, will close at the end of the year. Consequently, your position of Curriculum Support Officer will cease on the 31 December 1999.

The decision to close the District Service Centre is in no way a reflection of the contribution you have

made to the Department during the time you have occupied the position of Curriculum Support Officer for LOTE-Italian.

You are to be congratulated on the very professional approach you adopt to all undertakings of your portfolio. Your willingness to support Department initiatives by taking on additional responsibilities of delivering the Leaders' Strategy is appreciated. During your time in the District Service Centre you have made a very valuable contribution to the teaching profession, offering effective professional development programs and advice tailored to the varied needs of schools.

Your return to a school position will be most advantageous to the school. I have no doubt that school staff will wish to avail themselves of the expertise you have to offer in assisting them in developing a greater understanding of the Curriculum Framework.

Please be assured that every effort will be made to provide any assistance you require to support your transition from the District Service Centre to your new placement in the year 2000.

Thank you for your contribution during the past two years, I wish you every success in your future endeavours."

- 6 The Applicant obtained and commenced a part-time position on 1 January 2000 at SIDE. The position was .8 of a full-time equivalent position. The Applicant seeks an order that the Respondent pay her \$15,028, being the balance of the salary she would have earned pursuant to the terms of the secondment agreement and the amount she received as salary for the position at SIDE from 1 January 2000 to 31 December 2000.

Issues in Dispute

- 7 The Applicant claims that the secondment agreement was a contract for a fixed term, the term of which cannot be unfixed by the giving of notice. The Applicant also contends that a contract containing a termination provision cannot as a matter of law be characterised as a contract for a fixed term.
- 8 The Respondent contends that the nature of a secondment arrangement is an arrangement where an employer agrees to loan an employee to another employer and such arrangements may be terminated on grounds of operational requirements. The Respondent also contends the statement in clause 1 of the secondment agreement that provides the secondment is to commence on 28 April 1998 and cease on 31 December 2000 is a statement that is not binding on the parties, as the intention of the clause is to indicate how long it is anticipated at the time of entering into the agreement, that the secondment arrangement is to last. Further, it is contended on behalf of the Respondent that the provisions of the Education Act and the Public Sector Management Act do not authorise the Respondent or the Chief Executive Officer of the Department to enter into a secondment arrangement that cannot be terminated on grounds of structural change.

Intention to Create Legal Relations

- 9 At common law it is presumed in commercial agreements that the parties intend to create legal relations and thus make a contract, whereby the onus of proof is on the party asserting rights to displace the presumption (*Cheshire and Fifoot's Law of Contract* (7th Australian ed) Seddon and Ellinghaus at para 5.11).
- 10 Pursuant to s.5 of the Education Act 1928 the Respondent is a body corporate. At the material time under s.7 of the Education Act, the Respondent was empowered to appoint teachers.
- 11 It was common ground that the secondment agreement was entered into on behalf of the Respondent whereby the Applicant, the Respondent and the Director-General of the Education Department of Western Australia agreed that for the period referred to in the secondment agreement the Applicant would work in the District Support Centre under the terms and conditions applicable to an officer of the public service.

- 12 At the material time there were no provisions in the Education Act that dealt with secondment arrangements.
- 13 Section 66 of the Public Service Management Act provides—

"An employing authority of a department or organisation (in this section referred to as "the seconding authority") may, if it considers it to be in the public interest to do so and the public service officer concerned consents, enter into an arrangement in writing with another such employing authority or with an employer outside the Public Sector for the secondment of a public service officer (other than an executive officer) in the department or organisation of the seconding authority to perform functions or services for, or duties in the service of, the other department or organisation or that employer during such period as is specified in that arrangement."

- 14 Whilst the secondment agreement was not made under s.66 of the Public Service Management Act, it is clear that in respect of secondment arrangements made pursuant to s.66, it is a requirement that such arrangements are to be entered into for a specified time, that is, for a fixed period.
- 15 Accordingly there is nothing in the Education Act or the Public Service Management Act that prohibits the Respondent, the Applicant and the Director-General of the Education Department from entering into a secondment arrangement for a fixed period that is enforceable at law. Further the words in clause 1 of the secondment agreement are plain and unambiguous. Clause 1 provides the secondment agreement is to be for a fixed period of time.

Can the secondment agreement be terminated by the giving of Notice?

- 16 Clause 2 of the secondment agreement expressly not only incorporates all of the provisions of the Public Sector Management Act, but also the Public Sector Management (General) Regulations 1994, the Public Service Award 1992 and approved procedures into the terms of the contract.
- 17 Clause 7(5) of the Public Service Award 1992 provides—
- (a) Notwithstanding the other provisions contained in this clause, the chief executive officer may employ officers on a fixed term contract to the extent of the provisions of the Administrative Instructions.
- (b) Officers appointed for a fixed term shall be advised in writing of the terms of the appointment and such advice shall specify the dates of commencement and termination of employment.
- (c) The provisions of subclause (2) and (3) of this clause shall also apply to officers employed on a fixed term contract."
- 18 Clause 7(3) (b) of the Public Service Award relevantly provides—
- "Where an officer's services are terminated for any reason other than dismissal, that officer shall be given written notice of—
- (i) one month, or
- (ii) such other period as specified in a contract of service, where applicable."
- 19 On its face, the effect of Clause 7(3)(b) and (5) of the Public Service Award is to empower the appointment of an officer for a fixed term to the extent provided for in the Administrative Instructions. Further, when so appointed the fixed term contract can be terminated by the giving of notice of one month to the officer or such other period as specified in the contract of service.
- 20 The first question that arises in this case is whether Clause 7(5) of the Public Service Award applies to the secondment agreement. At the time of entering into the secondment agreement no Administrative Instructions were in existence that provided for appointment of officers for a fixed term. However prior to the making of the Public Sector Management (Repeal of Administrative

Instructions) Regulations 1995, Administrative Instruction 203 provided—

“(a) Where an officer is to be appointed from outside the public sector to an office on a contract basis, the officer is not to be appointed as a permanent officer.

The chief executive officer will appoint on a contract basis under the provisions of Section 30(1)(a) of the Public Service Act as required. Such contracts shall be between the Chief Executive Officer and the officer concerned, for a term and on conditions agreed between the Chief Executive Officer and that officer according to the following schedule.

Class	Type of Employment	JDF Reqd	Approval	Authority
L1	contract < 6 months	no		
L 1	contract > 6 months	yes*		
L 1	permanent	no		
L 2-6	contract < 6 months	no	CEO	SSM 7.6.1
L 2-6	contract 6-12 months	yes	CEO	SSM 7.6.3
L 2-6	contract > 12 months	yes	PSC	AI: 203
L 2-6	permanent	yes	CEO	CCEO 14/89
L 7-8	contract < 12 months	yes	CEO	CCEO 2/90
L 7-8	contract > 12 months	yes	PSC	CCEO 2/90
L 7-8	permanent	yes	CEO	CCEO 7/90
L 8-SES	contract < 6 months	yes	PSC	SSM 7.6.2
L 8-SES	contract > 6 months	yes	PSC	SSM 7.6.3
L 8-SES	permanent	yes	PSC	CCEO 14/89

*In the case level 1 contract employment over six months a statement of duties is required, but no a JDF.

(b) Persons engaged on a fixed term contract basis are not to be converted to Public Service Act officers unless they are the recommended applicant for an advertised vacancy.

EFFECTIVE FROM JULY 10, 1990.”

- 21 Administrative Instruction 203 was repealed on the coming into operation of the Public Sector Management (Repeal of Administrative Instructions) Regulations 1995 on 22 December 1995. The consequence of the repeal is that Clause 7(5)(a) of Public Service Award has been rendered inoperative.
- 22 The procedures provided for in Administrative Instruction 203 were replaced by approved procedures made under s.3(2) and s.64(1) of the Public Sector Management Act 1994. Section 64(1)(b) provides public service officers may be appointed for a term not exceeding five years as is specified in the instrument of his or her appointment in accordance with approved procedures. At the time of entering into the secondment agreement, *Approved Procedures—Schedule 4-Fixed Term Contract Appointments* were in force as approved procedures under section 64(1)(b) of the Public Sector Management Act. Those procedures are silent in respect of the question whether a fixed term contract can be terminated by the giving of notice.
- 23 There are no provisions in Public Sector Management Act (Public Sector Management) (General) Regulations 1994 which deal with termination of a fixed term contract appointment.
- 24 Having regard to the provisions of the Public Sector Management Act, the Regulations, the approved procedures and the Public Service Award, it is apparent that no provision was expressly incorporated into the secondment agreement which provided for the secondment agreement to be terminated prior to 31 December 2000.
- 25 The question then arises whether a secondment agreement is in the nature of an arrangement to act in a higher position. Pursuant to Clause 14(1) of the Public Service Award public service officers can be directed to act in an office that is classified higher than the officers own substantive position. Such an arrangement is well known in the public sector and other public sector industrial instruments contain similar provisions. A direction to act takes effect unilaterally and is a different arrangement to a secondment agreement.
- 26 At common law the nature of the fixed term contract is that such a contract cannot be terminated by giving of

notice, except where there is an express provision empowering the parties to terminate by the giving of notice.

- 27 Whilst it has been held in the context of the Workplace Relations Act 1996 (Clth) in respect of federal unlawful termination provisions that a contract is not a contract for specified period, if the contract may be terminated on notice before the expiry of the period specified in the contract, all of the relevant decisions are directed to specific provisions of the Workplace Relations Act. (see *Anderson v Umbakumba Community Council* (1994) 1 IRCR 457; 56 IR 102; *Cooper v Darwin Rugby League Club Inc* (1994) 1 IRCR 130; 57 IR 238; See also *D’lima v Board of Management, Princess Margaret Hospital for Children* (1995) 64 IR 19; see also *Ferry v Minister for Health, Western Australia* (1995) 64 IR 28 at 31; and on appeal *Minister for Health v Ferry* (1996) 65 IR 374 at 380).
- 28 In England, the Court of Appeal in *Dixon v BBC* [1979] 2 All ER 112 held that a contract for a specified period was for a fixed term, even if it was subject to earlier termination by notice.
- 29 Even if a fixed term contract is not expressly subject to earlier termination by notice, the law is clear that there is no scope for implying a term of reasonable notice into a contract for a fixed term period.
- 30 In *Perth Finishing College Pty Ltd v Watts* (1989) 9 WAIG 2307 the Full Bench unanimously observed at page 2316—

“... it has long been the case relating to fixed term contracts of service not subject to termination by notice (which the Commission at first instance correctly held this contract to be), that damages will be equivalent to the salary over the entire period, subject to reduction for likelihood of re-employment within the remaining contractual period [see *Re English Joint Stock Bank; Yelland’s Case* (1867) LR 4 EQ 350]. That was the remedy available at law.

The letter evidencing the contract of service evidences that this was a fixed term contract of service, not subject to notice of termination.”

- 31 Further the Full Bench also held at page 2316—
 “Thus, quite clearly, the right to enforce a claim for wages by a claim for liquidated damages at law arising from a fixed term contract is easily identifiable as a benefit to which a person is entitled under his contract of service, as is the agreed provision of work for a fixed period under a fixed term contract. If a person were entitled to work and to be paid under a contract of service for the fixed term, then that clearly is a benefit. It matters not that the amount claimable is called “damages”. It is the recovery of remuneration which he/she was entitled to be paid. Damages is what the amount might be called at law. It is still a benefit to which an employee is entitled as defined by Johnson C. in *Balfour v. Travelstrength Ltd* (op. cit.), and of the same genus as those benefits under the contract referred to by Macken, McCarry and Sappideen (op. cit.)”

Conclusion

- 32 I am satisfied that the Applicant has been denied a benefit under the terms of the secondment agreement. The benefit is, that she was entitled to work and to be paid pursuant to the terms of the secondment agreement until 31 December 2000. The reason why the contract was terminated has not been challenged but this does not mean that the Applicant cannot recover remuneration that she is entitled under a contract of service.
- 33 The Respondent claims that the Applicant failed to mitigate her loss by taking up a lower paid position at SIDE. The duty to mitigate requires a claimant to diligently seek suitable alternative employment and the onus of proof of failure to mitigate loss is on the Respondent (see *Brace v Calder* [1895] 2 QB 253 applied by the Full Bench in *Growers Market Butchers v Backman* (1999) 79 WAIG 1313 at 1316).

- 34 Mr Ayling on behalf of the Respondent contended that the Applicant could have been placed in full-time teaching position in 2000 if she wished. However there was no evidence that there were any full-time positions available to the Applicant. The Applicant gave uncontradicted evidence that she had been out of the classroom for five years and that she applied for the position at SIDE on the understanding that it may become full-time after she commenced work. She said it was advertised as a .8 of a full-time equivalent position, but that she was informed that the position may become full-time if enrolments were high enough. However that did not occur. She also gave uncontradicted evidence that when she applied for the position at SIDE there were no other available positions that she was qualified for. She also testified that she had been given priority by the Department for a position, but that when she was informed that her position at the District Support Centre would cease, it was towards the end of the school year and many teaching positions had been filled for the year 2000.
- 35 I am satisfied that the Applicant has diligently sought suitable alternative employment. Accordingly I will make an order that the Respondent pay the Applicant the sum of \$15,028.

2001 WAIRC 01890

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES ANNA EVELISA GALIPO,
APPLICANT
v.
HON MINISTER FOR EDUCATION,
RESPONDENT

CORAM COMMISSIONER J H SMITH
DELIVERED MONDAY, 29 JANUARY 2001
FILE NO APPLICATION 972 OF 2000
CITATION NO. 2001 WAIRC 01890

Result Applicant awarded contractual benefits
Representation
Applicant Mr T Kucera of counsel
Respondent Mr J Ayling

Order.

Having heard Mr T Kucera of counsel on behalf of the applicant and Mr J Ayling on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby—

1. Declares that the Applicant has not been allowed by the Respondent a benefit, not being a benefit under an award or order, to which she is entitled under her contract of service.
2. Orders that the Respondent pay the Applicant the sum of \$15028.00 within 10 days of the date of this Order.

[L.S.]

(Sgd.) J. H. SMITH,
Commissioner.

2000 WAIRC 00055

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES ALAN P GILBRIDE V NEIL TUCKER
AND ADRIAN SCOTT THOMPSON
TRADING AS FASTNET
PUBLISHERS
SHARYN HAMILTON V NEIL
TUCKER AND ADRIAN SCOTT
THOMPSON TRADING AS FASTNET
PUBLISHERS
TIM SMITH V NEIL TUCKER AND
ADRIAN SCOTT THOMPSON
TRADING AS FASTNET
PUBLISHERS
KARINA SMITH V NEIL TUCKER
AND ADRIAN SCOTT THOMPSON
TRADING AS FASTNET
PUBLISHERS

HEARD COMMISSIONER P E SCOTT
DELIVERED THURSDAY, 13 JULY 2000
FILE NO/S APPLICATIONS 94 OF 2000; 177 OF
2000, 231 OF 2000 AND 232 OF 2000

Result Application for contractual benefits
allowed

Representation
**Applicant/
Appellant** The applicants appeared on their own
behalf
Respondent There was no appearance on behalf of the
respondents

Reasons for Decision.

- 1 The applicants each seek payment of retainer for a period of just over a week, and two weeks' pay in lieu of notice. Each says that these are entitlements arising from contracts of employment with the respondent.
- 2 There was no appearance or representation of the respondent and no evidence has been called to support the respondents' position set out in a Notice of Answer and Counter Proposal filed in response to application no. 94 of 2000 by Mr Gilbride. In respect of the remaining applications, no answers were filed by the respondent.
- 3 Each of the applicants has given evidence as to the circumstances under which he or she was engaged by the respondents, the work undertaken, the benefits of the contracts and that no payments were ever received from the respondents. Having heard the applicants and observed them as they have given their evidence, I have no reason to doubt that each of them has given evidence which is true and correct to the best of their knowledge.
- 4 The Notice of Answer and Counter Proposal filed in response to Mr Gilbride's application stated "The Western Australian State Manager contracted Alan P Gilbride under her own company name and therefore assumed the role of Principal. The WA State Manager was Sharyn Hamilton of Insurance Inventory Solution Pty Ltd ACN 078 033 888 located at 26 Valleyview Road Roleystone WA 6111".
- 5 The evidence of the applicants is consistent. The applicants commenced their arrangements with the respondents in the following circumstances. They had all been working together for another company and had come across Adrian Thompson, one of the respondents. Ms Hamilton contacted Mr Thompson asking him how she could contact a particular person known to him. He was unable to assist but said that he and another person had set up the "Chefs' Good Food Guide" and indicated that this was to be published in some of the eastern states. Ms Hamilton asked if he had thought about setting up in Perth and they discussed this. Ms Hamilton advised that she had three very good sales representatives in Perth and Mr Thompson indicated that he and his partner may be

interested in putting the Chefs' Good Food Guide out in Perth also, and he discussed at length arrangements for other publications. Having contacted his partner, Mr Thompson advised Ms Hamilton that they would be interested in setting up in Perth but that they would want her to go to Sydney to make the arrangements.

- 6 Ms Hamilton travelled to Sydney and met the respondents. She met Mr Thompson (who subsequently used a different name) and also met his partner, Neil Tucker. She says that part of her purpose in attending the meeting in Sydney was to satisfy herself that this was a bona fide organisation and from what she observed it appeared to be. Ms Hamilton and Mr Thompson had lengthy discussions as to the nature of the product and how the arrangement would operate within Western Australia, the role she was to play and her duties and responsibilities, and the role of sales personnel she would be instructed to engage. She was to be the manager of the operation in Western Australia and her role included employing the staff, setting up an office and being generally in charge of the Western Australian operation. Ms Hamilton was to be reimbursed for any costs incurred by her.
- 7 The arrangements they discussed included that telemarketers based in New South Wales would contact restaurants in Western Australia, indicate that the restaurant upon which they were calling had been nominated for inclusion in the Chefs' Good Food Guide and that this good food guide was somehow endorsed by the Chefs' Association of Western Australia. They would make appointments with these restaurants. Each day Ms Hamilton would be provided with lists of appointments which had been made for herself and the other Perth personnel. They were to attend these appointments. The meetings were to have been arranged with decision makers, and the sales personnel were instructed that they were to make a sale on the day of the appointment; there were to be no repeat appointments; they were to obtain a commitment and a deposit from the customer wishing to include their restaurant in the Chefs' Good Food Guide. It was suggested to Ms Hamilton that there be regular meetings with sales personnel. Ms Hamilton was to undertake approximately 4-6 appointments each day, and the other staff were to have at least 6-8 appointments each day. Ms Hamilton advised, though, that on one occasion at least she had something like 9 appointments made for her. At the end of each day, the sales personnel were to report back to her as to what had occurred in respect of each of the appointments, whether there was success and if not why not. She was to fax these daily reports to Sydney. She was to collect and bank cheques received from customers. She was also to prepare what was in effect a manual for each of the sales personnel. This manual included extracts from the 1997 edition of "The Official Restaurant Guide of the Sydney Chefs (sic) Association". Also included were proforma order documents, examples of advertising layout within the magazine, advertising rates, questionnaire, booking order forms and other relevant material.
- 8 The arrangement was for Ms Hamilton to be paid \$650.00 per week as a retainer and the sales personnel \$400 per week, and bonuses were to apply to sales. Ms Hamilton says that each of the applicants was to look after his/her own tax. She raised with the respondents the issue of superannuation and workers compensation and was told that those things would be subject to discussion later after they had seen how things had settled down. All of the above arrangements were resolved with Mr Thompson prior to Ms Hamilton leaving Sydney.
- 9 Whilst in Sydney she visited a number of restaurants as a means of familiarising herself with the work to be done.
- 10 Ms Hamilton returned to Perth and commenced to set up the operation in Western Australia. She gave evidence of work she undertook in attempting to find a suitable serviced office in accordance with instructions which she received. She met with the other 3 applicants who were to become the sales personnel, and all 4 of them signed contracts which had been provided by the respondents, and these were returned to Sydney. The contracts which

each of the applicants signed are in identical terms except that the contract signed by Ms Hamilton provided for a higher retainer due to her being required to undertake additional administrative and managerial duties. The terms of the contract, in so far as they are relevant, are as follows—

"AGENT CONTRACT OF SERVICE

This contract of service is made on the date shown in Item 1 of the Schedule between *FASTNET PUBLISHERS GROUP* herein after described as "the principals" of 351 New South Head Road, Double Bay 2028 and the contractor/agent as described in Item 2 of the Schedule.

WHEREBY it is agreed as follows—

POSITION

1. The contractor/agent shall be engaged in the position set out in Item 3 of the Schedule from the commencement date specified in Item 4 of the Schedule.

DUTIES

2. The contractor/agent's duties are those which are set out in item 5 of the Schedule and such other duties as the principals may allocate from time to time.

...

HOURS OF DUTY

4. The contractor/agent shall devote substantially the whole of his or her time and attention during the ordinary business hours of the principals to the discharge of his or her duties and shall conform to such hours of work as may be from time to time reasonably required of him or her.

REMUNERATION

5. The contractor/agent shall be paid commissions weekly in arrears, in the percentage amount shown in Item 7 of the Schedule

6. The principals shall review the contractor/agent's commissions at the start of each new project.

DURATION

7. The contractor/agent's engagement shall continue until determined by notice in accordance with the provisions of this agreement.

...

PROBATIONARY PERIOD

11. The contractor/agent's engagement shall be on a probationary basis for three months from the commencement date specified in Item 4 of the Schedule. Either the principals or the contractor/agent may give 24 hours' notice of termination of the engagement during the probationary period.

TERMINATION

12. The principals may terminate this agreement at anytime without prior notice if the contractor/agent shall—

- (a) commit any serious or persistent breach of any of the provisions of this agreement;
- (b) be guilty of any grave misconduct or wilful neglect in the discharge of his or her duties;
- (c) be convicted of any criminal offence other than an offence which in the reasonable opinion of the principals does not affect his or her position as a contractor/agent of the principals;
- (d) become permanently incapacitated by reason of accident or illness from performing his or her duties under this agreement and for the purposes of this clause incapacity in excess of 90 consecutive days or for an aggregate period of 90 days in any period of 12 months shall be deemed to be permanent incapacity.

...

RELATIONSHIP OF PARTIES

15. The parties hereby specifically agree that it is intended that this agreement shall create the relationship of principal and contractor.

...

GOVERNING LAW

19. This agreement shall be governed by and interpreted in accordance with the laws of the Western Australia, Australia

SCHEDULE.

- Item 1 The date of this agreement is 1999.
- Item 2 The contractor/agent is M of
- Item 3 The contractor/agents position is that of sales for projects run by Fastnet Publishing Group.
- Item 4 The contractor/agent's commencement date will be 1999.
- Item 5 The contractor/agent's duties include but are not limited to sales for projects run by Fastnet Publishing Group.
- Item 6 The person to whom the contractor/agent is immediately responsible is Mr Adrian Levier.
- Item 7 The amount of the contractor/agent's remuneration is a retainer of per week plus first bonus of \$200 for reaching the target of \$4,500.00 in sales on a weekly sales cycle period plus a second bonus of \$270.00 for reaching the target of \$6,300.00 in sales on a weekly sales cycle period. \$400.00 for reaching the target of \$9,000.00 in sales on a weekly sales cycle period and a fourth bonus of \$800.00 for reaching the target of \$12,600.00 in sales on a weekly sales cycle period.
- Item 9 A Publishing Company
- Item 10 This agreement may be terminated by either party giving to the other notice in writing of 2 weeks."
- 11 I note at this point that the notice of termination by the respondents to Mr and Ms Smith, does not indicate that Ms Hamilton was their employer. On the contrary, the relationship Mr and Mrs Smith entered into was with Fastnet Publishers. This is confirmed by the contracts signed by each of the applicants.
- 12 Each of the applicants say that notwithstanding that this document purports to be a contract for a contractor/agent, the reality of their working arrangements was that the relationship was that of an employer and employee. They each cite the directions given to them by the respondents as to the manner in which they were to work and the circumstances under which the work was undertaken. The work undertaken by the applicants proceeded for a week in the manner discussed between Ms Hamilton and Mr Thompson set out above.
- 13 Ms Hamilton's situation is slightly different to the others for a particular reason. I say this on the basis that each of the other applicants was engaged in his or her own name and the bank account details provided by each of them to the respondents for payment were personal bank account details. In Ms Hamilton's case however, the schedule to her contract was filled out in the name of "Insurance Inventory Solutions Pty Ltd". It is noted that Ms Hamilton's application is made in the name of Sharon Hamilton and Insurance Inventory Solutions. Ms Hamilton has given evidence that it was at her instigation that any payments were to be made through Insurance Inventory Solutions Pty Ltd. She says that this was simply for taxation purposes. She is not a director of the company—she says that it is her son's company. The respondents were simply to pay all of her earnings into her son's company and her son would pay her.
- 14 The first question to be answered is what was the nature of the relationships between the applicants and the

respondents. The law with regard to determining the proper relationship between the parties is well known. In the analysis of the relationship between the parties there are a number of tests to be applied, but as noted by Mason J. in *Stevens v Brodribb Sawmilling Co. Pty Ltd (1985-86) 160 CLR 16 at 29* "it is the totality of the relationship between the parties" which is used to distinguish between a contract of service and a contract for services. The issue of whether the employer had ultimate authority over the person in the performance of his work, so that he was subject to the employer's rights to exercise control, is a significant indicia. The decision in *Zuijs v Wirth Bros Pty Ltd (1995) 93 CLR at page 571* notes that the control test refers to the right to control, so far as there is scope for it, even if that is "only in incidental or collateral matters." Having noted the importance of the control test, it is also worth noting that in *Queensland Stations Pty Ltd v Federal Commissioner of Taxations (1945) 70 CLR 539 at 552* Dixon J. observed that the reservation of the right to direct or superintend the performance of the task cannot transform into a contract of service what in essence is an independent contract. In *Stevens v Brodribb (op cit)* Mason J. noted that the control test is not the sole criterion to be applied, but is merely one of a number of indicia. "Other relevant matters include, but are not limited to, the mode of remuneration, the provision and maintenance of equipment, the obligation to work, the hours of work and provision for holidays, the deduction of income tax and the delegation of work by the putative employee" (page 24).

- 15 Having observed the applicants as they gave their evidence, having considered that evidence and the contract which each of them has signed, I come to the conclusion that the relationships between the applicants and the respondents were those of employee and employers respectively. This is notwithstanding that the contract which they signed indicates that the relationship was to be one of "principal and contractor". One cannot change the nature of a relationship by calling it something which it is not. (*AMP Society v Allan and Another (1978) 52 ALJR 407 at 409 (PC)* and *Massey v Crown Life Insurance Co. (1978) 2 AIER 576 at 579*). It was quite clear that the respondents reserved to themselves the right to direct the applicants in the way in which they performed their work and did so direct their work. There is evidence that appointments were made for each of the applicants and they were expected to attend for those appointments. Where they would be unavailable for attendance, they were expected to seek approval for their absences in advance. As to the hours of duty, the contract refers to them devoting "substantially the whole of (the) time and attention during the ordinary business hours of the principals to discharge (their) duties and to conform to those hours of work as may be reasonably required of (them)". They were to be paid a fixed weekly retainer and bonuses on top of this. I note that no taxation was to be deducted from the amounts paid to them and no arrangements were made for workers compensation or superannuation. This does not seem to me to be indicative of a genuine subcontract arrangement but rather an intention to avoid obligations, or alternatively it was simply a slipshod or unresolved method of working and administering the business.
- 16 There is no evidence that any of the applicants were engaged in business for themselves, they had no opportunity to make a profit or a loss. They were each to be paid a weekly retainer and each to receive bonuses on reaching particular sales targets each week. Their pay week was supposed to be Monday to Friday with payment being made the following Wednesday into their bank accounts.
- 17 As to the proposed arrangement for Ms Hamilton's pay to be made through her son's business, that arrangement for payment, of itself, does not change the true nature of the employment relationship. The Notice of Application filed by Ms Hamilton is in her own name and that of Insurance Inventory Solutions. Section 29 of the Industrial Relations Act 1979 allows an employee to make the type of claim made in this application. There is no ability for

- any other body or person to make such a claim. Accordingly, the name of the applicant in that matter can only be Sharyn Hamilton.
- 18 Accordingly, I find that the applicants were each employees of the respondents.
- 19 The course of the employment relationships is that Ms Hamilton and the others each signed their contracts at Ms Hamilton's home on Monday, 29 November 1999. They then commenced work. It soon became clear to the applicants, in attending for appointments, that something was amiss. A number of things occurred regularly. The first was that a number of them were being directed to the same businesses. Secondly, those people with whom they met were questioning the genuineness of the advice they had received from the telemarketer to the effect that they had been nominated by anyone at all, and challenged as to whether there was any Chefs' Association in Western Australia. Thirdly, some of the businesses to which they were directed seemed quite inappropriate for inclusion in a fine dining guide. For example, some of the appointments being made for them were with fish and chip shops or small cafés. Some of the people with whom they had appointments expressed surprise about this. On this basis, the applicants started asking questions. They received no satisfactory responses from the respondent. Following this, Ms Smith attempted to make contact with the chef whose name and photograph were included within the forward to the 1997 New South Wales guide which Ms Hamilton had been provided with. This chef was a Mr James Mussak whose title was recorded in that guide as General Manager, Pro-Chef International, Hospitality Consultants, Honorary President of the Sydney Chefs' Association. Ms Smith eventually managed to get hold of Mr Mussak, having been told by a number of persons that they were unaware of any Sydney Chefs' Association. At this point, I note that the other applicants had also attempted to find out if there was a Perth or Western Australian Chefs' Association, without success. Ms Smith gave evidence that when she spoke to Mr Mussak he advised her that there was no Sydney Chefs' Association and that there had been no guide put out for a couple of years at least. This was contrary to the advice that they had previously received, which was that the guide had been produced in consecutive years for a number of years. With all of these questions arising in their minds, the applicants, each in their own ways, became concerned.
- 20 On Friday, 3 December 1999 Ms Hamilton was instructed by Mr Thompson to dismiss Mr and Ms Smith on the basis that they were asking too many questions. She telephoned them and advised them of this. However, they refused to accept the termination and asked for it to be put in writing. A letter dated 3 December 1999 was faxed to Ms Hamilton on what would appear to be 6 December 1999. This letter had been forwarded to Ms Hamilton for her signature, she then signed it and forwarded it to Mr and Ms Smith. Mr and Ms Smith received it by fax on the following day, 7 December 1999. This letter says, in its relevant parts—
- “Dear Tim and Carina (sic) Smith,
- Please be advised that your contract with Fastnet Publishers has been terminated. Please return all material owned by Fastnet Publishers as soon as possible.”
- 21 On Wednesday, 8 December 1999, which should have been the day on which payments went into their bank accounts, no payments were recorded.
- 22 Ms Hamilton's resignation came about when she did not receive satisfactory responses or any responses to queries she had raised and when no payment was received when it was due. She resigned by letter transmitted to the respondents on 8 December 1999. Mr Gilbride's resignation was for the same reasons and on the same date.
- 23 As to whether or not Mr Gilbride and Ms Hamilton are entitled to pay in lieu of notice on the basis that they resigned, I am satisfied that they entered into their contracts of employment, and the work which they were required to do, based on false and misleading information. There was serious question about the propriety of the information they were required to provide to potential clients or customers. They were entitled to query whether there was a Chefs' Association in Western Australia, whether they were being sent on appointments which did not fit within the reasonable parameters which they were entitled to assume would apply to the type of publication they were engaged in promoting and whether the information they had received was true and correct. They were entitled, on the basis of a lack of answers provided to them in response to reasonable questions to assume that their employers had breached their contracts of employment by their conduct. Accordingly, I am satisfied that Mr Gilbride and Ms Hamilton are entitled to pay in lieu of notice.
- 24 Mr and Ms Smith are also entitled to pay in lieu of notice on the basis that their employment contracts were terminated by the respondent.
- 25 The question arises as to what entitlement to notice each applicant has. I note the terms of the contract which each of them signed and that clause 11 provides for a probationary period of three months from the commencement date. Either party could give 24 hours' notice of termination during the probationary period. As the applicants' employment did not go beyond a week and a half, they were each clearly within the probationary period of three months. Twenty four hours notice is the amount of notice prescribed for the probationary period by the contract. Accordingly, each of the applicants is entitled to one fifth of their week's retainer as pay in lieu of notice.
- 26 As to the retainers which should have been paid for the period of 29 November 1999 until the date of termination, I am satisfied that each of the applicants is entitled to the appropriate amount. In the case of Ms Hamilton, this is from 29 November until 8 December 1999 being the period of 1 week and 2 days. Her entitlement would then be her retainer of \$650.00 for one week plus two fifths of \$650.00. In Mr Gilbride's case his dates of employment were the same as Ms Hamilton's and he is entitled to \$400.00 plus two fifths of \$400.00. In the case of Mr and Ms Smith, their terminations of employment did not take effect until 7 December 1999 which was the date upon which they received written notice of termination. Accordingly, they are each entitled to a retainer for one week and one day being \$400.00 plus one fifth of \$400.00.
- 27 In addition, in Ms Hamilton's case, because of her responsibilities as a manager, she was required to purchase stationery and she was advised that she would be reimbursed the amount expended. She has provided a receipt from Office Works which demonstrates that she spent \$149.54 on 27 November 1999. I am satisfied that this is a reimbursable expense and an order shall be made that she be paid the full sum. Further, she claims “\$120.00 approximately” for telephone calls. I am satisfied that Ms Hamilton has made a significant number of telephone calls in her capacity as manager, however she has produced nothing to verify any particular amount of expenditure and accordingly this claim must fail.
- 28 Order accordingly.

2000 WAIRC 00139

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	ALAN P GILBRIDE V Neil Tucker and Adrian Scott Thompson trading as Fastnet Publishers
HEARD	COMMISSIONER P E SCOTT
DELIVERED	FRIDAY, 21 JULY 2000
FILE NO/S	APPLICATION 94 OF 2000

Result Application for contractual benefits allowed

Representation

Applicant/

Appellant Mr A P Gilbride

Respondent No appearance

Order.

HAVING heard the Applicant on his own behalf 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—

1. THAT the Respondent shall pay to the Applicant the following amounts which arise from the Applicant's contract of employment with the Respondents—
 - (a) \$560.00 being retainer owed for 1 week and 2 days.
 - (b) \$80.00 being pay in lieu of notice.
2. THE payments referred to in Order 1 shall be made no later than 10 days from the date of this Order.

(Sgd.) P. E. SCOTT,
Commissioner.

[L.S.]

2000 WAIRC 00142

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES SHARYN HAMILTON v Neil Tucker and Adrian Scott Thompson trading as Fastnet Publishers

HEARD COMMISSIONER P E SCOTT

DELIVERED FRIDAY, 21 JULY 2000

FILE NO/S APPLICATION 177 OF 2000

Result Application for contractual benefits allowed

Representation

Applicant/

Appellant Ms S Hamilton

Respondent No appearance

Order.

HAVING heard the Applicant on her own behalf 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—

1. THAT the Respondent shall pay to the Applicant the following amounts which arise from the Applicant's contract of employment with the Respondents—
 - (a) \$910.00 being retainer owed for 1 week and 2 days.
 - (b) \$130 being pay in lieu of notice.
 - (c) \$149.54 being reimbursement of expenses.
2. THE payments referred to in Order 1 shall be made no later than 10 days from the date of this Order.

(Sgd.) P. E. SCOTT,
Commissioner.

[L.S.]

2000 WAIRC 00141

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES TIM SMITH v Neil Tucker and Adrian Scott Thompson trading as Fastnet Publishers

HEARD COMMISSIONER P E SCOTT

DELIVERED FRIDAY, 21 JULY 2000

FILE NO/S APPLICATION 231 OF 2000

Result Application for contractual benefits allowed

Representation

Applicant/

Appellant Mr T Smith

Respondent No appearance

Order.

HAVING heard the Applicant on his own behalf 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—

1. THAT the Respondent shall pay to the Applicant the following amounts—
 - (a) \$480.00 being retainer owed for 1 week and 2 days.
 - (b) \$80.00 being pay in lieu of notice.
2. THE payments referred to in Order 1 shall be made no later than 10 days from the date of this Order.

(Sgd.) P. E. SCOTT,
Commissioner.

[L.S.]

2000 WAIRC 00140

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES KARINA SMITH v Neil Tucker and Adrian Scott Thompson trading as Fastnet Publishers

HEARD COMMISSIONER P E SCOTT

DELIVERED FRIDAY, 21 JULY 2000

FILE NO/S APPLICATION 232 OF 2000

Result Application for contractual benefits allowed

Representation

Applicant/

Appellant Ms K Smith

Respondent No appearance

Order.

HAVING heard the Applicant on her own behalf 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—

1. THAT the Respondent shall pay to the Applicant the following amounts—
 - (a) \$480.00 being retainer owed for 1 week and 2 days.
 - (b) \$80.00 being pay in lieu of notice.
2. THE payments referred to in Order 1 shall be made no later than 10 days from the date of this Order.

(Sgd.) P. E. SCOTT,
Commissioner.

[L.S.]

2001 WAIRC 01869

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	RAY BASSIN HANSEN, APPLICANT v. NOONGAR ENTERPRISE ABORIGINAL CORPORATION trading as UNITY OF FIRST PEOPLE OF AUSTRALIA, RESPONDENT
CORAM	COMMISSIONER J F GREGOR
DELIVERED	24 JANUARY 2001
FILE NO/S	APPLICATION 601 OF 2000
CITATION NO.	2001 WAIRC 01869

Result Applicant unfairly dismissed. Awarded compensation of \$5,540.00

Representation

Applicant Mr G Patrick of Counsel
Respondent No appearance

Reasons for Decision.
(Ex tempore)

- When the hearing of this application commenced on 16 January 2001, there was no appearance on behalf of the Noongar Enterprise Aboriginal Corporation trading as Unity of First People of Australia (the Respondent). The hearing was adjourned while enquiries were made to ascertain the intentions of the Respondent. No information could be obtained and on resumption of the proceedings, Mr Patrick, Counsel for the Applicant moved that the Commission should hear the application in the absence of the Respondent, exercising the powers vested in it by s.27(1)(d) of the Industrial Relations Act, 1979 (the Act).
- The response of the Commission is contained on pages 3 or 4 of the transcript of proceedings and an edited note follows—

“This matter is resumed, Mr Patrick, my Associate has reported there is no response from the Respondent. There is a motion from you that I hear the matter in the absence of the Respondent. The Commission, pursuant to s.27(1)(d) of the Act, is empowered to hear a matter, in the absence of a Respondent—

“To proceed and herein determine the matter or any part thereof in the absence of any party thereto who has been duly summoned to appear or duly served with notice of proceedings.”

The relevant history of this matter is as follows. The application was filed on the 27th of April 2000. A Notice of Answer was filed by one Leslie James Hansen on the 19th of May 2000 rejecting the claim of unfair dismissal on the basis, as I understand from the Answer, that there was an abandonment of contract on behalf of the Applicant.

The matter was listed for conference first on the 21st of July 2000. A proper notice was sent of that conference on the 13th of July 2000 by way of a letter from my Associate addressed to James Hansen, care of the Koomal Aboriginal Corporation, 57 Greenough Way, Gosnells. There was contact between my Associate and Mr Hansen, who rang to advise that he did not wish to attend a conference in this building as he has a phobia of heights and requested that the conference be convened on a ground floor location. In response, the Commission convened a conference to be held at the Richard Rushton meeting room in Barron Way, Gosnells. A Notice of Hearing formally notifying the change in venue was sent to the Respondent on the 13th of July 2000. The first Notice of Hearing had been sent on the 25th of May 2000. The conference was attended by Mr Patrick of Counsel, who appeared for the Applicant in this matter, however the Respondent did not

attend at the appointed time and place, and the conference was abandoned.

There was a further attempt to deal with the matter when on the 4th of August 2000 there was a communication between the Commission and the Respondent through Mr James Hansen. The purpose of the notice was to convene a further conference. The notice drew to the attention of the Respondent, which was then known as the Koomal Aboriginal Corporation, that there had been a previous conference listed at a place and time to suit Mr James Hansen but at which he did not attend.

The Respondent failed to attend a conference on the 30th of August 2000 and at that conference Mr Patrick moved for substitution of the name of the Unity of First People of Australia, care of Koomal Aboriginal Corporation as Respondent. That motion was granted and an Order issued identifying the Respondent as the Unity of First People of Australia. That Order was deposited in the Office of the Registrar on the 30th of August 2000 and was served upon the Respondent at the postal address given in the application. On the 8th of September 2000 the Commission issued a Notice of Hearing, the copy of which bears the stamp of the Registrar and served it upon the Unity of First People, 7 Havelock Street, Perth. It is good service that documents of the Commission be sent by prepaid post. The Notice of Hearing has been sent by that means. The Commission is entitled to conclude that it has been served in accordance with the Act.

In this matter there is a substantial history of the Respondent failing to attend upon proceedings of the Commission, even when those proceedings were altered to meet the wishes and special requests of the Respondent.

There has been considerable inconvenience to the Applicant and to the Commission in trying to meet the Respondent's wishes. On four occasions the Commission has convened conciliation proceedings but the Respondent but has not availed itself of the opportunity to be heard on any one of those occasions. This is an instance in which the power vested in to the Commission under section 27(1)(d) should be issued. To further delay the matter creates the potential to prejudice the Applicant and, for the reasons that I have set out, I will proceed to hear the matter in the absence of the Respondent.

- This is an application by James Hansen (the Applicant) for orders pursuant to section 29 of the Industrial Relations Act, 1979 on the grounds that he was unfairly dismissed from employment with the Respondent.
- The relationship between the parties commenced on 20 January 2000 and came to an end on 6 April 2000. There is a concession in the Notice of Answer and Counter-proposal filed by the Respondent, that the relationship was a full time traineeship, working 40 hours per week. Weekly pay was in the sum of \$420.00 and the Applicant received some other moneys under the CDEP scheme.
- The duties of the Applicant were to provide assistance to Aboriginal persons, either juveniles or adults, who were at harm or who risked being at harm or arrest. This was done by patrolling problem areas such as shopping centres, parks, railway stations and hotels. The Applicant says, and this is confirmed by the evidence of Pamela Kaye Jones, who is an industry training scheme consultant, that he raised issues of safety in the workplace and a lack of equipment. Ms Jones convened a meeting on or about 3 March 2000 with the Respondent represented by Mr James Hansen, and attended by other trainees. The result of the meeting was that Ms Jones concluded that the equipment, which had been issued to the trainees, was “totally inadequate for the work”. The trainees had been denied essential protective equipment and means of communication which should have been supplied at the commencement of the training programme. There are other deficiencies which, in the opinion of Ms

- Jones, produced reasonable grounds for the Applicant to raise questions of safety.
- 6 He claims as a result, he was thereafter victimised by the Respondent. That he most likely was is confirmed in the evidence of Ms Jones who told the Commission that soon after the meeting, that the Applicant telephoned and told her that victimisation was occurring.
- 7 The Applicant says that on 6 April 2000, he attended for work as usual and was told that "[your] resignation had been accepted by the programme manager, [John Bridge], and [that] your job is no longer here". He took that to be a dismissal because he had not offered a resignation to Mr Bridge or to any other person from the Respondent. His evidence of this event is corroborated by the evidence of Ms Jones who told the Commission that soon after 6 April 2000, the Applicant rang her and told her he had been dismissed.
- 8 In those circumstances, it is open to conclude that the Applicant's version of events is, on the balance of probabilities, correct. His own evidence about the events is corroborated in significant measure by the evidence of Ms Jones, particularly as to when crucial events occurred and also as to the truth of his assertions that he had made complaints about safety and had thereafter been victimised.
- 9 In those circumstances, the action of James Hansen on 6 April 2000, if not a real dismissal is tantamount to dismissal. The Applicant was told he no longer had his job, even though Mr Hansen says, according to the Applicant, he acted upon information given to him by John Bridge that the Applicant had offered his resignation. That information was wrong, and, in fact, the Respondent terminated the contract of employment. It is open to conclude that the Applicant's raising of safety issues may have affected the feelings of the Respondent towards the him, and those feelings are, in some measure, reflected in the response in the notice of answer and counter-proposal which was filed in the Commission by the Respondent.
- 10 The Commission has to determine whether in this dismissal there has been a fair go all round (see *Undercliff Nursing Home v Federated Miscellaneous Workers Union of Australia* (1985) 65 WAIG 385). The test is whether the employer has breached its right to terminate the contract of employment in such a way as amounts to an abuse of that right. The evidence in this matter show that such abuse has occurred and the dismissal is therefore unfair.
- 11 The question of remedy needs to be determined. It is more likely than not that there never was a formal traineeship. Therefore there is no position to which reinstatement could be ordered. Compensation should be considered I therefore need to fix the quantum. The method of fixing compensation is described in *Ramsay Bogunovich v. Bayside Western Australia Pty Ltd* (1999) 79 WAIG 8 where his Honour the President has established the rules to be applied. I apply those here.
- 12 There are two significant issues to be determined. Mr Patrick urges me to conclude that the training agreement was for a fixed term of 12 months and that the Applicant should be paid the balance of the training period. He relies upon the provision of a traineeship training agreement (Exhibit P1) entered as evidence which does not relate to the employment of the applicant. It is said to be similar to that he would have signed if the traineeship had been formally executed. As it relates to the duration of the training period the document provides—

"The nominal training period is as determined at the time when the particular traineeship is established."

- 13 The Applicant claims a period of 12 months is the normal training period. However, the agreement also provides that—

"The actual length of the training period is ultimately determined according to the rate at which competencies, or the ability to perform a task at the workplace are attained by the trainee."

- 14 Ms Jones mentioned this provision in her evidence. I find that this agreement is not one which rigidly establishes 12 months as a term. The term can be 12 months but that period of time is nominal only. The actual length is governed by the achievement of competencies by the trainee. This can occur and normally does before the completion of 12 months. This traineeship agreement does not erect the right to payment for 12 months. The agreement is capable of being ended at any time by either party giving the appropriate notice under the relevant award or employment agreement. This means the agreement is not akin to a fixed term contract.
- 15 In his evidence the Applicant told the Commission that within 2 to 3 months of the dismissal he had intended to establish his own business. This intention provides a guide as to the loss suffered by the Applicant because it provides a good indicator of the potential duration of the arrangement.
- 16 In the circumstances, I conclude that the damage he would have suffered is equivalent to 3 months' pay. That means 3 months at \$420 per week, and such an amount will be awarded to the Applicant.
- 17 The Applicant has suffered in the ways described in his evidence and I will award a further \$500 for injury.
- 18 The total sum to be awarded will be \$5040 for loss and \$500 for injury, making a total of \$5540.

2001 WAIRC 01934

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

PARTIES RAY BASSIN HANSEN, APPLICANT
v.
NOONGAR ENTERPRISE
ABORIGINAL CORPORATION
TRADING AS UNITY OF FIRST
PEOPLE OF AUSTRALIA,
RESPONDENT

CORAM COMMISSIONER J F GREGOR

DELIVERED WEDNESDAY, 31 JANUARY 2001

FILE NO/S APPLICATION 601 OF 2000

CITATION NO. 2001 WAIRC 01934

Result Unfair dismissal/Compensation awarded

Order.

HAVING heard Mr G Patrick (of Counsel) 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—

1. The Applicant was unfairly dismissed.
2. Reinstatement would be unavailing.
3. The Respondent to pay the Applicant the sum of \$5,540.00 compensation.

[L.S.] (Sgd.) J. F. GREGOR,
Commissioner.

2001 WAIRC 02010

	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
PARTIES	WILLIAM HULL, APPLICANT v. CITY OF MANDURAH, RESPONDENT
CORAM	COMMISSIONER S J KENNER
DELIVERED	FRIDAY, 9 FEBRUARY 2001
FILE NO/S	APPLICATION 706 OF 1998
CITATION NO.	2001 WAIRC 02010

Result	Application granted. Order issued.
Representation	
Applicant	Mr D Howlett of counsel
Respondent	Mr A Randles of counsel

Reasons for Decision.

1. William Hull ("the applicant") was at all material times employed by the City of Mandurah ("the respondent") as a truck driver. His employment commenced in or about October 1994. The employment came to an end by summary dismissal, on 27 March 1998. The applicant brings this application pursuant to s 29(1)(b)(i) of the Industrial Relations Act 1979 ("the Act") alleging that the respondent dismissed him harshly, oppressively and unfairly and seeks an order of reinstatement pursuant to s 23A of the Act.
2. The reason that the respondent summarily dismissed the applicant on 27 March 1998 was because he engaged in an altercation with another employee of the respondent.

Factual Background**The Incident**

3. There was a considerable amount of evidence adduced in this matter. However, the essential issue to be determined in this application is whether the applicant's conduct as a consequence of an incident occurring on or about 18 March 1998 with a another employee, was sufficient to warrant the applicant's summary dismissal and whether, for any other reasons, the respondent exercised its right to terminate the applicant's employment harshly, oppressively or unfairly.
4. It was common ground that on 18 March 1998, two work crews, they being the construction drainage crew and the maintenance drainage crew, were located at a large drainage construction site in Gordon Road, Mandurah. The project involved the laying of heavy concrete pipes into a trench approximately 2 metres in depth.
5. It was also common ground that on this morning, the applicant and Mr Keeble, a labourer on the maintenance drainage crew, came into contact on two occasions. There were also a number of other persons present at the site that morning including Mr Galetti, a concreter, Mr Wren, a relatively new employee, Mr Glennon, the acting drainage supervisor, Mr Bassett, an experienced pipe layer and a backhoe operator, who was a contractor.
6. The applicant testified that on the first occasion of contact with Mr Keeble that morning, he noticed that Mr Keeble was in the trench and was "packing" the first pipe to be laid. Apparently, this involves placing sand at the sides of the concrete pipe to settle it into place. The applicant told Mr Keeble that the pipe was out of alignment, leading to Mr Keeble shifting the pipe and consequently, disturbing a laser alignment device which was in place. The applicant said that it was apparent from Mr Keeble's demeanour, that Mr Keeble did not appreciate the applicant's assistance.
7. The second point of contact between the applicant and Mr Keeble occurred when Mr Keeble was involved in the laying of a second pipe in the trench, using what is known as a "shoring" box, which is a metal structure designed to prevent soil from falling into the trench during pipe laying operations. It was this second point of contact

that led to the altercation, ultimately resulting in the applicant's summary dismissal.

8. The applicant testified that as the second pipe was being lowered by the backhoe operator, into the trench, Mr Bassett saw that Mr Keeble had his hands inside the pipe which pipe was within the shoring box, which was a dangerous situation. Mr Bassett told Mr Keeble to move his hands in response to which, Mr Keeble said words to the effect "I am not a 13 year old kid". Mr Bassett's evidence was that Mr Keeble also told him to "bugger off".
9. The applicant said that he was very close to the location of Mr Keeble at this point, although he was standing on the surface at the top of the trench. He said that he also warned Mr Keeble to not put his hands in the pipe, to which Mr Keeble replied in words to the effect "why should I f..... listen to you". This was repeated several times. On the applicant's testimony, Mr Keeble then jumped up onto the shoring box and started shouting to Mr Glennon, the supervisor. The applicant said that Mr Keeble said something to the effect "get this arrogant c.... out of here, the dickhead is interfering already". The applicant's evidence was that at this point, Mr Keeble was very agitated and animated. I note that Mr Bassett also confirmed in his evidence that he heard Mr Keeble begin shouting loudly to the supervisor to remove Mr Hull from the area, and referred to some of the colourful language mentioned by the applicant in his evidence.
10. Following this, the applicant testified that Mr Glennon then appeared from the man hole in the trench and told the applicant in words to the effect as follows "just f.... off down the other end and mind your own business". It was the applicant's evidence that he told Mr Glennon that he considered Mr Keeble's hands being in the pipe to be a serious safety issue in response to which, Mr Glennon repeated his earlier direction. The applicant said that he warned Mr Keeble of the danger of this because of the use of the shoring box, which if the pipe suddenly dropped, could lead to a very severe injury to Mr Keeble's hands. I note at this point that it was common ground that the applicant was experienced in the use of a shoring box, whereas Mr Keeble was using one for only the second time on the morning in question.
11. At this point, the applicant testified that Mr Keeble was still shouting at him and was swearing at him. His evidence was that Mr Bassett was still reasonably close, but had started to walk away from the trench. Mr Wren was standing on the road next to the pipes. Mr Glennon had returned down the manhole. Mr Galetti was still in the trench at the other end of the first pipe next to the manhole. The backhoe operator, who was the contractor, was still in his machine at the other end of the trench.
12. The applicant said that he then began walking back towards his truck, which was parked on the road. He testified that he intended to go about his business to deliver pipes elsewhere. He said that Mr Keeble was still abusing him, and at that point he lost control and climbed into the trench and wrestled Mr Keeble down onto the sand. He testified that he took Mr Keeble by both wrists, which were up near his face, and Mr Keeble was on his back facing him. The applicant pushed him back into the soft sand several times. The applicant strongly denied striking Mr Keeble. He said that his action was a spur of the moment event, provoked by Mr Keeble's conduct and he severely regretted it. He denied he ever had any intention to inflict harm on Mr Keeble. The next thing that occurred was Mr Glennon was pulling both he and Mr Keeble apart. The applicant testified that he stood up and backed away. Mr Glennon was between he and Mr Keeble, and Mr Keeble kicked his legs out at the applicant several times.
13. The applicant testified that he then got out of the trench, and Mr Keeble followed him. Mr Keeble was said to still be abusing the applicant and said words to the effect "get back to Manjimup with the rest of the failures"; "you're just a failed backhoe operator"; "goodbye; you've got no job"; "you're a dickhead to do it in front of the boss". The applicant said there was a little more jostling between them before he got into his vehicle and drove to the

location at which the construction crew were having their “smoko” break. Later that day after lunch, the applicant said that he heard Mr Keeble on the two-way radio requesting Mr Glennon to pick him up to take him to the doctor because he had a sore shoulder.

14. Evidence given by other witnesses as to the incident in the trench was generally as follows. Mr Galetti, whilst not having a good recollection of the events when he gave evidence, said in an earlier statement provided to the respondent as part of a subsequent inquiry, (exhibit A4) that he heard words between the applicant and Mr Keeble. He also testified that the work involving putting a pipe into the trench using a shoring box was a dangerous job. He did not see how the applicant got into the trench. He did however observe Mr Glennon separate the applicant and Mr Keeble after the initial incident. Whilst a Mr Mostachetti, another employee of the respondent, was not called to give evidence, he noted in a statement (exhibit R14) that the applicant and Mr Keeble were arguing over a safety issue and that Mr Keeble had not used a shoring box before. He noted that “Bill was trying to explain to him how to put the pipes into the box. They were shouting at each other”. Mr Wren, also in a statement (exhibit R13) observed that both the applicant and Mr Keeble were “having words”.
15. In his evidence, and also in a statement provided to the respondent following the incident (exhibit R9) Mr Glennon said that he “heard an argument brewing and returned to the surface to find a well advanced verbal brawl”. He gave evidence that because of comments made by Mr Keeble, he was aware of “a situation” arising. Mr Glennon testified that shortly after hearing the exchange he saw the applicant “drop off” the top of the trench and he saw him on Mr Keeble’s back. He subsequently separated both of them and they were still having a verbal exchange and engaging in some pushing and shoving.
16. I now turn to Mr Keeble’s evidence about this incident. His version of the events as to what occurred immediately prior to and in the trench stood in stark contrast to the version given by the applicant, and indeed, a number of the respondent’s own witnesses. Mr Keeble said that when Mr Bassett warned him to look out for his hands in the pipe, he said to Mr Bassett “fine no worries”. When the applicant repeated the earlier warning given by Mr Bassett, Mr Keeble said he replied that “I’m not a 13 year old kid”. He then called out to Mr Mostachetti “to remove the applicant” which request was ignored. Mr Keeble denied having an argument with the applicant and using any profane language directed at him. Mr Keeble testified that after requesting the removal of the applicant, the next he knew was he thought the trench had collapsed because of a large weight on his back pushing him down, accompanied by yelling and screaming. He said that he was pinned, and started to yell for assistance. I pause to note that there was also no reference to any verbal altercation or any suggestion of provocation by him, in any of Mr Keeble’s statements given to the respondent, upon investigating the incident.
17. Once the applicant was separated from him, Mr Keeble testified that he got to the top of the trench however the applicant was still shoving and abusing him. Mr Keeble said he then told the applicant “you’re gone mate you will drive taxis for the rest of your life”. Mr Keeble said that he had a few small cuts to his face and nose and a cut inside his lip. He testified that he also had a torn chest muscle, and as a consequence of the incident, suffered post-traumatic stress. He said that he had a fear of confined spaces, but admitted that none of his work mates or the respondent was ever made aware of this.

Events after the incident

18. The following day, on 19 March 1998, a number of meetings took place to discuss the incident, involving the applicant and representatives of the respondent. The applicant was requested by the respondent to provide a statement as to his version of the events. The applicant indicated that he would do so but would obtain advice from his union and legal advice as necessary. A representative of the applicant’s union was present. During

these meetings, the applicant told representatives of the respondent that he knew that he had done something wrong and said that he was prepared to accept some punishment for his conduct. Mr Brindley, (now deceased), the operations manager, indicated that he wanted to sort the matter out internally. The applicant was advised that nothing would be done until his statement, as to his version of the events, was received.

19. An “off the record” meeting took place on 20 March 1998 between the applicant and representatives of the respondent, at which the applicant said that he wished to make it clear that he understood that Mr Keeble had not been hurt in the incident, and also, that both Mr Keeble and Mr Glennon were friends. The applicant reiterated his preparedness to accept some punishment for his conduct.
20. The applicant was then suspended on full pay from this time. The respondent advised the applicant that a full inquiry would take place into the incident.
21. The next that the applicant heard of the matter was on 27 March 1998, when he was requested to attend a meeting with Mr Brindley. The applicant attended at this meeting at approximately 4.30 pm and was provided with a letter, advising him that he was summarily dismissed for misconduct. Formal parts omitted, this letter relevantly provided as follows—

“...This letter advises that you are summarily dismissed for gross misconduct as from 27 March 1998. The seriousness of the fight. It is revealed that you started the fight by jumping into the two metre deep trench to attack Robert Keeble. The City does not condone fighting under any circumstance.(please consider second and third paragraphs of letter).

The fight occurred within a potentially dangerous area—the bottom of a two metre trench which could have collapsed causing further injury or even death. This was an extremely serious breach of safety.”
22. The applicant testified that he was never warned about being dismissed because of not having provided his statement. He said no one put to him that he was in any way obstructing the inquiry process. No one from the respondent put to him other options to summary dismissal. He said that the reason why the respondent had not received a statement by that time was that he had not received advice from his union. It appears that a draft statement was prepared by the applicant shortly after the incident and provided to the union shop steward. However, it appears that it was then not ultimately provided to the respondent, due to some delay in receiving advice from the union about the matter.
23. I pause to note that there was some controversy as to the content of this statement, which was exhibit R16, in terms of variances from the applicant’s witness statement filed in these proceedings. The statement refers to the applicant telling Mr Bassett, prior to the altercation, in response to Mr Keeble ignoring his warning, for Mr Keeble to “go ahead and cut his hands off” and that the applicant reciprocated to Mr Keeble’s abuse. However, I am not of the view that there was such a variance between them to cause me to take the view that the applicant’s evidence in these proceedings was in any way inherently unreliable, given the passage of time between the events in question and these proceedings.
24. The applicant testified that he had never seen a policy from the respondent regarding fighting or incidents of that nature at work. He did say however, that he had seen the respondent’s safety policy, which was a safety handbook, tendered as exhibit R1.
25. Officers of the respondent conducted an investigation into the incident. Mr Brindley raised the matter with Mr Claydon, the respondent’s director of works and services. When he was told of the incident, his reaction was that this was a case of “instant dismissal”. It was clear from the tenor of his evidence, that Mr Claydon had a very strong view about any form of altercation in the workplace. He relayed his views about the incident to Ms Bushby, the respondent’s then human resources

manager. A matter of major concern for Mr Claydon, was that the incident occurred in a confined space. Mr Claydon conceded in his evidence that prior to any investigation being undertaken, he had formed these views about the incident, based upon what he was advised.

26. Mr Brindley, following interviews with relevant personnel, prepared a report as to the incident dated 23 March 1998, a copy of which was tendered as exhibit R12. In that report, Mr Brindley recommended that both the applicant and Mr Keeble be allowed back into the workforce, but be placed on probation, pending the resolution of an assault complaint to the Police that had been initiated apparently, by Mr Keeble. He recommended that they not be permitted to work in the same section. Mr Brindley took the view that the only alternative to this option was the dismissal of both the applicant and Mr Keeble. I pause to note that despite this report, it appeared that Mr Claydon's views had not changed in any respect and his evidence was that the action of the throwing of punches in his view, led to the respondent's decision to dismiss the applicant. This was based on what Mr Brindley had told him. He took the view at the end of the investigation process that punches were thrown by the applicant, despite only Mr Keeble saying this of all those interviewed in the inquiry, and that mitigating circumstances did not matter, in his opinion. Mr Claydon was quite emphatic about these matters in his evidence. He was also concerned as to the precedent that would be set if the applicant was not dismissed. I also pause to note that Mr Claydon had been advised that Mr Keeble was a provocative and difficult person. Mr Claydon said that he recommended to the chief executive of the respondent that the applicant be dismissed, after having been briefed by Ms Bushby. Importantly, he testified that his mind was made up based upon the occurrence of physical contact in the trench and he said that nothing was going to change his mind in relation to that decision. These are important matters that I will return to in considering my conclusions.
27. It was not apparent from the evidence of Mr Claydon, that any issue of mitigation by way of provocation by Mr Keeble, was considered in his conclusions to summarily dismiss the applicant.
28. Ms Bushby became involved in the matter by way of the provision of human resources advice in relation to the incident. She acknowledged in her evidence that Mr Claydon expressed a very strong view that the incident was a "sackable offence". She reiterated what she understood to be his view that if there is a fight in the workplace than "people should be sacked". Ms Bushby did say however, that this was not necessarily her view.
29. As to her review of the inquiry, Ms Bushby testified that she had no doubt that Mr Keeble had something to do with the incident and she did not accept Mr Keeble's statement that he did not provoke the applicant. She testified that Mr Thurley, the principal works supervisor of the respondent, had told her that Mr Keeble was a "trouble maker" and that Mr Thurley had wanted to keep the applicant in employment. Ms Bushby also said in evidence that she considered that Mr Keeble had substantially toned down his statements given to the respondent, by omitting any reference to obscene language used in the exchange. Furthermore, and importantly, Ms Bushby did not accept Mr Keeble's statements that the applicant punched him in the trench. Additionally, Ms Bushby said she did not see the injuries alleged to have been on Mr Keeble's forehead, nose or both cheeks, as variously described by Mr Keeble in his evidence, but referred to a swollen lip and a mark on one cheek.
30. It appeared to be Ms Bushby's overriding concern, that it was the potential danger in the trench that was the significant factor in the respondent's decision to dismiss the applicant. She said that this conduct could not be condoned and a message had to be sent to the workforce. Not insignificantly, Ms Bushby also testified that she was aware that Mr Keeble did not like the applicant and accepted that he could be "a smart arse", as it was put to

her in her evidence. Ms Bushby also testified to there being some rivalry between the two drainage gangs, which evidence was supported by other testimony. It would appear that this was more from the maintenance crew to the construction crew, rather than equally.

Findings and Conclusions

31. There was a marked contrast between the evidence given by the applicant and Mr Keeble's evidence, as to the events in question on the morning of 18 March 1998. During the course of the proceedings in this matter, I carefully observed the witnesses as they gave their evidence. I have also carefully considered all of the relevant documentary evidence.
32. Having regard to all of these issues, where there was a conflict in the evidence, without any hesitation, I prefer the evidence of the applicant to that of Mr Keeble. I found Mr Keeble to be an unreliable witness in many respects. Mr Keeble's evidence was not only internally inconsistent, for example his evidence as to the various locations that he described the place of his alleged injuries, but I note also the glaring inconsistencies between his evidence and earlier statements as to his conduct towards the applicant in the trench, and evidence called on behalf of the respondent, which was also supported by statements made by persons present at the incident.
33. There is no doubt in my mind that the incident occurred following substantial provocation by Mr Keeble, in the form of verbal abuse of the applicant. This is entirely consistent with the version of events given by others, and uncontradicted evidence before the Commission as to Mr Keeble's propensity to engage in such behaviour. It is also somewhat remarkable, that Ms Bushby to her credit in her testimony said that she simply did not believe many aspects of Mr Keeble's version of the events. In my opinion, Ms Bushby, who I found to be an impressive witness, gave evidence on this issue that speaks volumes as to the credibility of Mr Keeble's evidence.
34. I am also far from persuaded that the injuries alleged to have been sustained by Mr Keeble were as extensive as he would have the Commission believe. I accept that he may have suffered some bruising, a soft tissue injury in terms of a cut inside his lip and a sore chest, as noted in the medical report. I also accept that he may have suffered some post traumatic stress after the incident, however it would appear that this was due more to Mr Keeble's hitherto undisclosed fear of confined spaces than the applicant's conduct alone. Nor am I persuaded that Mr Keeble was so afraid of the applicant after the event, as he made out the position to be. Mr Keeble did not strike me as a person easily intimidated. In my view, Mr Keeble had a distinct tendency to dramatize events, as he saw them through his own eyes. There were also a number of other inconsistencies in Mr Keeble's evidence dealing with for example, his movements immediately after the incident and his attendance at his medical practitioner at approximately 3.30 p.m. on the afternoon of 18 March. His attempts to explain these matters were less than convincing, to say the least.
35. I am therefore satisfied and I find that on the morning in question there was a verbal altercation between Mr Keeble and the applicant, following the applicant's raising with Mr Keeble a legitimate concern as to a safety issue. I find that this altercation was initiated by Mr Keeble, in the form of his profane abuse of the applicant. I find also that as a result of this exchange, and an earlier passage of verbal abuse involving Mr Keeble, that the applicant did indeed enter the trench and wrestle Mr Keeble to the ground. I do not accept, and I find accordingly, that the applicant threw any punches at Mr Keeble. To that extent, I do not find that a "fight" occurred, in the sense that both of them came to blows. The only person who said this occurred was Mr Keeble, there being no other independent witnesses to this event as alleged by him. I do accept however, that it more likely than not that Mr Keeble was pushed down either to his side or face down, leading to the abrasions he suffered.
36. As to the events immediately thereafter, I accept that there was some ongoing verbal exchange between the applicant

- and Mr Keeble, and some pushing and shoving between the two of them. I also accept on the evidence, that Mr Keeble made it plain that he thought there and then, that the applicant should be dismissed. I am also of the view, having regard to inferences that are open to be drawn from all of the evidence, and which I do draw, that many of Mr Keeble's subsequent actions were designed to procure that very outcome, that being the dismissal of Mr Hull. In short, I am very far from persuaded that Mr Keeble was in any way an innocent victim of the applicant's conduct, as he attempted to portray to both the respondent and to the Commission in his evidence. That is not to say that the applicant's conduct can be condoned. It cannot. I deal with this aspect further below.
37. As to the subsequent investigation, I am of the view that Mr Keeble substantially embellished the incident, when giving his version of the events to the respondent. Not only does this go to the question of the actual conduct in the trench that morning, but also to Mr Keeble's alleged injuries, having regard to the discrepancy in his evidence as to the location of these injuries, and his medical report.
 38. I also find on the evidence that the nature of the work environment in which the outside work force of the respondent operate is a robust one. That is, strong language is used from time to time and indeed, Ms Bushby conceded that altercations have occurred in the workplace in the past.
 39. On the evidence, I also find that the respondent, in particular through Mr Claydon, reached a view very early after the incident that the applicant should be dismissed, even prior to any substantive investigation. Additionally, I find on the evidence that the decision to dismiss was in large part motivated by Mr Claydon's belief that the applicant had thrown punches at Mr Keeble. This was despite Ms Bushby's evidence that she did not accept this to be the case. I also find that a significant factor in the respondent's decision to dismiss the applicant was the location of the incident, that being in a trench.
 40. As to events after the suspension of the applicant on 20 March, I am satisfied and I find that there was no further contact between the respondent and the applicant, prior to the applicant being told of his summary dismissal. Despite there being some delays in the provision of the applicant's statement due to events from the applicant's union, the respondent's decision appears to have been taken without the benefit of the applicant's detailed written response. I also find that the respondent did not take into account relevant mitigating circumstances in its decision to dismiss the applicant, the most obvious one being that Mr Keeble provoked the applicant on the morning in question.
 41. I also accept on the evidence that there did not, at the material time, exist any formal policy at the respondent as to fighting or other such conduct in the workplace. However I note the terms of exhibit R1, the respondent's safety handbook, which makes reference to "*horse play, fighting, practical jokes, throwing of material or any object that can result in an injury will not be accepted*" and that "*any breach of these requirements may lead to disciplinary procedures*".
 42. There was some evidence and submissions put as to whether the trench at which the incident occurred on 16 March was unsafe by reason of the work practices adopted by the respondent. Mr Galletti had previously been involved in a trench collapse whilst working at the respondent. On the evidence in these proceedings, I am not able to make any positive findings as to the safety of the trench on the day in question. Whilst Worksafe WA prepared a report into the pipe-laying operations of the respondent (exhibit R10), this was based on in part, the observation of pipe-laying operations subsequent to the incident.
 43. The law in relation to these matters is well settled. An employer has the legal right to terminate the employment of an employee, the question for the Commission however is whether that right has been exercised so harshly or oppressively such as to amount to an abuse of that right: *Undercliffe Nursing Home v FMWU* (1985) 75 WAIG 385 at 388. As the applicant's employment was terminated summarily for misconduct, the respondent bears the evidential burden to establish the conduct complained of: *Newmont Ltd v AWU WA Branch* (1988) 68 WAIG 677 at 679. Additionally, in cases of summary dismissal for misconduct, there is an obligation on the employer to conduct as full and extensive an investigation as the circumstances reasonably permit and to have regard to all relevant factors, including any mitigating factors associated with the circumstances of the employee affected: *Bi Lo Pty Ltd v Hooper* (1992) 53 IR 224 at 229-230; *Western Mining Corporation Ltd v The Australian Workers Union WA Branch* (1997) 77 WAIG 1079.
 44. As to cases involving fighting in the workplace, it is the case that there was once a line of authority that fighting at work was sufficient cause of itself, for summary dismissal. However, more recent decisions of the Commission make it clear that there is not an inviolable rule that fighting in the workplace automatically leads to a right to summarily dismiss: *Mt Newman Mining Co Pty Ltd v The Australia Workers Union, Western Australian Branch, Industrial Union of Workers* (1983) 63 WAIG 2397. Indeed, if such an approach did exist, this would have the effect of rendering s 26 of the Act, obliging the Commission to have regard to all of the circumstances of the case, not just some of them, almost nugatory.
 45. It is also the case that the rigid and inflexible application of a policy or rule by an employer may also lead to unfairness in a dismissal case: *Bostik (Australia) Pty Ltd v Gorgevski* (1992) 41 IR 452.
 46. Having regard to all of the circumstances of this case and the findings I have made above, in my view the respondent has not discharged the burden upon it of establishing all of the facts upon which the applicant's summary dismissal was founded. I do not consider that the respondent could have held a genuine belief, based on reasonable grounds, that the applicant struck blows upon Mr Keeble, in particular in view of Ms Bushby's evidence.
 47. Furthermore, the dismissal of the applicant occurred before he had provided his written version of the events to the respondent. Additionally, there appears to have been little real consideration of the mitigating circumstance of the provocation by Mr Keeble, in the decision to dismiss the applicant.
 48. Whilst fighting or any other form of physical altercation cannot be condoned in the workplace by any means, regard must be had to the relevant circumstances when an employer comes to assess its response. Clearly, the case of an unprovoked physical attack on a co-employee would no doubt, without more, constitute conduct warranting summary dismissal. However, as in the present case, where there existed significant provocation, the conduct of the employee must be assessed in that light. Furthermore, in this case, I have found that there were no blows inflicted on Mr Keeble by the applicant. At its highest, there was an incident involving the applicant wrestling Mr Keeble to the ground. This must be seen in the context of the provocation by Mr Keeble, and the applicant's response that was one in the heat of the moment, following which the applicant on the evidence was contrite and was prepared to accept an appropriate punishment. There was no suggestion on the evidence that the incident was the result of any pre-meditated course of conduct by the applicant.
 49. Moreover, in my opinion, the respondent took a decision at the very earliest stage of this matter, that the applicant was to be dismissed, which decision was based upon an erroneous view of the facts, that is a conclusion that the applicant had struck Mr Keeble in the trench. The absence of any consideration of a mitigating circumstance by reason of provocation was not only clear in the evidence, but also from the plain terms of the applicant's letter of dismissal, referring to the applicant having "started the fight by jumping into the trench and attacking Mr Keeble". In my view, the respondent largely pre-judged the applicant's conduct and this pre-judgement coloured its ultimate decision to summarily dismiss him. This was

- particularly so in the case of the evidence from Mr Claydon, who was in a position of substantial authority and who recommended the summary dismissal of the applicant to the respondent's CEO.
50. It was also the case that the respondent dismissed the applicant, without the benefit of his statement as to his version of the events. Whilst this should have been provided earlier, I am not of the view that the applicant deliberately impeded the inquiry process in any way, as the respondent's counsel suggested. Mr Brindley had already interviewed him by this time, as reflected in Mr Brindley's report. The respondent did not notify the applicant of its intention to summarily dismiss the applicant, having not received his written response. It is significant to note that there were important areas of disputed fact, even at this late stage. This added to the procedural unfairness of the dismissal in my view: *Shire of Esperance v Mouritz* (1991) 71 WAIG 891; *Miskiewicz v City of Belmont* (1995) 75 WAIG 1811.
51. In coming to my conclusions in this matter, I certainly have not disregarded the fact that it was a material circumstance that the incident occurred in a trench, that being a confined space. Occupational health and safety is a matter of paramount importance to both employer and employee alike. However, the respondent's conclusions in this regard as to the applicant's conduct, in my view overlooked the fact that the reason that the applicant entered the trench was in response, albeit in error, to the provocation of Mr Keeble, who was himself in the trench when he engaged in the course of verbal abuse of the applicant. Whilst this does not by any means excuse the applicant's conduct, it is a matter of significant mitigation, in weighing up all of the relevant factors. In my opinion, other more reasonable responses to the applicant's conduct were open, including the first recommendation made by Mr Brindley, shortly after interviewing those concerned.
52. Therefore, I am not persuaded that it has been established by the respondent that the conduct of which it complained occurred in its entirety, to discharge the evidential burden upon it. Moreover, the decision of the respondent to summarily dismiss the applicant, as reflected in Mr Claydon's evidence did in my view, demonstrate a somewhat inflexible application of policy and rule in relation to fighting in the workplace, to the extent that exhibit R1 can be taken to express such a policy. Of relevance also in this regard, was the fact that the applicant's initial intervention leading to the incident did in my view, relate to a legitimate concern as to workplace safety. That is not to say of course, that health and safety matters are to be resolved in the manner adopted by the applicant.
53. Having regard to all of the circumstances, I am of the view that the applicant's summary dismissal was harsh, oppressive and unfair.
54. In terms of relief, the applicant seeks reinstatement. The onus is on the respondent in matters such as these to establish that reinstatement is impracticable: *Gilmore v Cecil Bros* (1996) 76 WAIG 4434 at 4446. Having regard to the provisions of s 23A of the Act, it is clear that reinstatement or re-employment is the primary remedy that the Commission should consider in a case where unfairness has been found. Mere embarrassment, discomfort and the like will not be sufficient to resist a reinstatement order: *Nicholson v Heaven and Earth Gallery* 126 ALR 233 at 234. There needs to be evidence of substantial disruption or disharmony to resist such an order. Whilst the respondent in its closing submissions said that it would agree to pay compensation instead of reinstating the applicant in the event unfairness was found by the Commission, for the reasons that I expressed in *The Australian Workers Union, West Australian Branch, Industrial Union of Workers v Cockburn Cement Limited* (1999) 79 WAIG 1227, I am not persuaded that this offer extinguishes the power or removes the discretion of the Commission to reinstate an applicant in an appropriate case, it not otherwise being impracticable. I am not persuaded that it would be impracticable to reinstate in the present circumstances.
55. Whilst there appeared to be some animosity from Mr Keeble to the applicant, the applicant bore no resentment to the respondent or Mr Keeble on the evidence. I am of the view that given the nature of the nature and size of the respondent's outside workforce, that the applicant could be reinstated by the respondent without imposing upon it unacceptable burdens in terms of its operations. It would be prudent however, to as far as possible, structure work arrangements such that the applicant and Mr Keeble do not work closely together. Whilst a substantial period of time has elapsed from the applicant's dismissal, that delay has not been any fault of the applicant, it largely being the result of the course this matter has taken through appellate processes. There was no submission from the respondent that the lapse of time would make reinstatement impracticable. There was no submission, and indeed no evidence, that there would not be work available to the applicant in the classification he formerly occupied with the respondent.
56. For all of these reasons, I am of the view that the respondent should reinstate the applicant.
57. Following the decision of the Industrial Appeal Court in *City of Geraldton v Cooling* (2000) 80 WAIG 5341, no order as to loss of remuneration suffered by the applicant can be made, as such an order has been held to be beyond power.
58. I order accordingly.

2001 WAIRC 02054

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	WILLIAM HULL, APPLICANT
	v.
	CITY OF MANDURAH, RESPONDENT
CORAM	COMMISSIONER S J KENNER
DELIVERED	WEDNESDAY, 14 FEBRUARY 2001
FILE NO/S	APPLICATION 706 OF 1998
CITATION NO.	2001 WAIRC 02054

Result	Application granted. Order issued.
Representation	
Applicant	Mr D Howlett of counsel
Respondent	Mr A Randles of counsel

Order.

HAVING heard Mr D Howlett of counsel 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—

1. Declares that Mr W Hull was harshly, oppressively and unfairly dismissed from his employment by the respondent on or about 27 March 1998.
2. Orders that the respondent within 21 days of the date hereof shall reinstate Mr Hull in its employment, as a truck driver, as if the contract of employment had not been terminated on 27 March 1998.

(Sgd.) S.J. KENNER,
Commissioner.

[L.S.]

2001 WAIRC 02028

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES DARREN SEAN HULME,
APPLICANT
v.
CONCEPTUALIZE, RESPONDENT

CORAM COMMISSIONER S WOOD

DELIVERED TUESDAY, 13 FEBRUARY 2001

FILE NO APPLICATION 1424 OF 2000

CITATION NO. 2001 WAIRC 02028

Result Contractual benefits claim granted

Representation

Applicant Mr D S Hulme on his own behalf

Respondent No appearance

Order.

WHEREAS this is an application pursuant to section 29(1)(b)(ii) of the Industrial Relations Act 1979; and

WHEREAS on 16 November 2000 the Commission convened a conference for the purpose of conciliating between the parties and in the absence of the respondent the matter was referred to hearing; and

WHEREAS the parties were duly advised that the matter was listed for hearing on 19 January 2001; and

WHEREAS there was no appearance by the respondent at the hearing; and

WHEREAS the Commission having heard the applicant finds that the amounts as claimed are owed;

NOW THEREFORE the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders—

THAT the sum of \$2,018.33 be paid to Darren Hulme within 7 days by the respondent.

[L.S.]

(Sgd.) S. WOOD,
Commissioner.

2001 WAIRC 01965

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES JAMES JOSEPH KELLY, APPLICANT
v.
AHERNS (SUBURBAN) PTY LTD,
RESPONDENT

CORAM COMMISSIONER S J KENNER

DELIVERED MONDAY, 5 FEBRUARY 2001

FILE NO/S APPLICATION 500 OF 2000

CITATION NO. 2001 WAIRC 01965

Result Application dismissed.

Representation

Applicant Mr D Clarke as agent

Respondent Mr A Lucev of counsel and with him Mr D Fletcher of counsel

Reasons for Decision.

1. At all material times the applicant was employed by the respondent as an internal auditor. The period of the applicant's employment with the respondent was from on or about 3 March 1981 to on or about 30 June 2000. By this application pursuant to s 29(1)(b)(ii) of the Industrial Relations Act 1979 ("the Act"), the applicant claims the sum of \$17,273.72 by way of an alleged denied contractual benefit in the form of superannuation contributions from the respondent.

2. The respondent denied the applicant's claim and said that he had been paid by it all of the entitlements due to him under his contract of employment.

Evidence

3. The facts of this matter are relatively straightforward and may be summarised as follows. Following the commencement of his employment with the respondent, the applicant became a member of the Aherns Superannuation Fund ("the Fund") in or about July 1982. The applicant's application for membership of and an explanatory book for the Fund were tendered as exhibits A2 and A3. The applicant testified that at this time the respondent made a contribution into the Fund of 10% per annum with the applicant contributing 5% per annum. In 1985, because of changes in relation to the effect of fringe benefits tax on expense allowances, the respondent increased its contribution to the Fund to 15% and the applicant was no longer required to make a contribution. From this point on, the scheme was non-contributory as far as the applicant was concerned.

4. By a memorandum of December 1987 (exhibit A5) the respondent agreed to pay two additional amounts of 1.5% of salary into the Fund from 1 December 1987, with a further additional 1.5% contribution from 1 October 1988, leading to a total additional contribution of 3% from this time. The respondent stated this at this time, in exhibit A5, to reflect recognition by it of the "occupational superannuation scheme" which was introduced on 1 October 1997 for all staff not then in receipt of superannuation contributions. Exhibit A5 noted that the additional 3% contribution into the applicant's staff superannuation arrangements in the Fund, were subject to preservation until retirement or at least the age of 55.

5. The applicant testified that the respondent's contribution of 18% to the Fund was maintained to the termination of his employment on 30 June 2000. A bundle of executive remuneration advices were tendered as exhibit A6 covering the period November 1993 through to November 1995, and which refer to, as "special notes", that the respondent's contribution to the Fund in respect of the applicant as being 18% of the applicant's salary, at least as at 1 July 1995, in respect of the November 1995 remuneration advice. No other remuneration advices were before the Commission in evidence.

6. Also tendered through the applicant, were bundles of what were purportedly superannuation contribution statements, covering the period July 1993 to April 2000, apparently prepared by Sedgwick Noble Lowndes Ltd for the respondent, in respect of the Fund.

7. Other evidence was tendered by the applicant by way of various items of correspondence between him and the respondent, commencing in about November 1997 (exhibit A9), to the effect that the applicant was concerned that the respondent had apparently chosen to absorb the "superannuation guarantee charge" contribution arising under the Superannuation Guarantee Administration Act 1992 (Cth) ("the SGA Act"). The applicant complained to the respondent that he was concerned that his company contribution to his superannuation account had been apparently "capped" at 18% and that no "increases" under the SGA Act had been credited to his account. In exhibit A9 letter, the applicant summarised his position in the final paragraph as follows—

"To sum up from my review of the documents that I have kept pertaining to my employment since 3 March 1981 I am of the opinion that based upon my contract of employment linked with my entry into the senior Aherns Superannuation Fund that my member credit is currently understated by \$13,212.26 (refer to spreadsheet attached) as a result of SGC increases not being credited to my account..."

8. The applicant also gave evidence that he understood that superannuation guarantee charge contributions under the SGA Act were required to be paid in addition to other contributions made by the respondent.

9. I find accordingly.

Conclusions

10. At the close of the evidence lead by the applicant, counsel for the respondent moved the Commission for an order that the applicant's claim be dismissed pursuant to s 27(1) of the Act. In effect, the respondent put a "no case" submission to the Commission. It was submitted that the evidence established that the applicant had as an entitlement under his contract of employment a benefit in the form of superannuation contributions in the amount of 18% of his salary. That the applicant had on his own admission, received in total over his employment such a contribution and in effect, the applicant was claiming that he should be paid an additional amount representing the respondent's obligation under the SGA Act, in relation to which there was no jurisdiction in the Commission to award. Alternatively, the applicant was claiming an amount in excess of the agreed sum under his contract, with no evidence to support it.
11. Furthermore and in any event, the respondent submitted there was no evidence before the Commission as to the payments actually made by the respondent to the applicant, to enable the Commission to make any positive findings of fact as to entitlements already received by the applicant, to found any further findings as to entitlements alleged to have been denied.

Conclusions on "No Case" Submission

12. In my view, for the following reasons the respondent's submissions should be upheld.
13. Accepting that the applicant has established the superannuation contributions allegedly made of his behalf to the Fund, and it appears that the respondent has, by para 2 of its amended notice of answer and counter proposal, admitted that such contributions were made on his behalf, then it is clear that in the final analysis the applicant has received his contractual entitlement of 18% of his income over the relevant claim period. There was no evidence that there was at any time, an agreement between the applicant and the respondent to vary the terms of his contract of employment, to increase his superannuation contributions above 18%. In effect the applicant, despite the denials of this by his industrial agent, was claiming the employer contribution under the SGA Act, which is a course beyond the Commission's jurisdiction: *Keane v Lombar Pty Ltd* (1998) 78 WAIG 810; *Thompson v Gregmaun Farms Pty Ltd* (2000) 80 WAIG 1733. This is supported by the correspondence from the applicant to the respondent, which, in effect, complained that those employees who were receiving the benefit of superannuation contributions under the SGA Act since about July 1992, were better off than the applicant, because he had not received those same contributions, in addition to what he was entitled to under his contract of employment with the respondent. Furthermore, in all the circumstances of the case, there would be no basis to imply such a term into the applicant's contract, in relation to additional employer contributions.
14. I note also, that some of the documents before the Commission reflect that the Fund manager has appeared to have expressed in separate amounts, the apparent superannuation guarantee charge amount, and another amount, totalling 18% of the applicant's salary throughout the material times. This is a matter of the manner of expression by the Fund Manager of contributions in the Fund and not evidence of how the contributions were made by the respondent. Furthermore, I note the provisions of s 23(3) of the SGA Act, permitting an employer to effectively absorb the superannuation guarantee charge contribution, into superannuation contributions made by an employer under existing superannuation arrangements. In such cases, effectively, no superannuation charge contribution is payable as long as the employer contribution to superannuation is in excess of the minimum contribution rate.
15. The statutory regime under the SGA Act, provides for a minimum level of superannuation support by employers to employees, and was designed to underpin arrangements then in existence, by way of minimum award contributions, to complying superannuation funds. This

was made clear in the second reading speech of the then Commonwealth Treasurer, when introducing the SGA Bill into the House of Representatives in 1992. There was no statutory obligation on an employer to do more than this and it was clear in the Treasurer's second reading speech, and indeed the plain words of the statute, that it was not the intention of the legislature to increase superannuation support for those employees already in receipt of more than the minimum prescribed level.

16. For all of these reasons I would dismiss the applicant's claim and I so order.

2001 WAIRC 01963WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES JAMES JOSEPH KELLY, APPLICANT
v.
AHERNS (SUBURBAN) PTY LTD,
RESPONDENT

CORAM COMMISSIONER S J KENNER
DELIVERED MONDAY, 5 FEBRUARY 2001
FILE NO/S APPLICATION 500 OF 2000
CITATION NO. 2001 WAIRC 01963

Result Application dismissed.

Representation

Applicant Mr D Clarke as agent
Respondent Mr A Lucev of counsel and with him Mr D Fletcher of counsel

Order.

HAVING heard Mr D Clarke as agent on behalf of the applicant and Mr A Lucev of counsel and with him Mr D Fletcher 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,
Commissioner.

[L.S.]

2001 WAIRC 01966WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES AUSTRALIAN LIQUOR,
HOSPITALITY AND
MISCELLANEOUS WORKERS
UNION, WESTERN AUSTRALIAN
BRANCH, APPLICANT
v.
BURSWOOD RESORT
(MANAGEMENT) LTD,
RESPONDENT

CORAM COMMISSIONER S WOOD
DELIVERED FRIDAY, 2 FEBRUARY 2001
FILE NO CR 350 OF 2000
CITATION NO. 2001 WAIRC 01966

Result Finding that termination at this time would be unfair

Representation

Applicant Mr J Rosales-Castaneda, of Counsel
Respondent Mr D Jones

Reasons for Decision.

- 1 This is an application made pursuant to section 44 of the *Industrial Relations Act, 1979* (the Act). The matter came on for conference on 21 December 2000 and the dispute

not having been resolved in conciliation was referred for hearing and determination.

- 2 The terms of the memorandum of matters for hearing and determination are—

“The respondent has made a decision to terminate the employment of Derek Mitchell on 3 January 2001 unless an alternate position is found. The respondent has now given an undertaking not to effect any termination of employment prior to the hearing of the matter on 15 January 2001. The applicant claims in all the circumstances that any termination would be unfair. The applicant seeks an order preventing a termination taking place.

The respondent opposes the claims”.

- 3 The application relates to Mr Derek Keith Mitchell who was a union delegate at the Burswood Resort, and is in fact president of the Burswood Resort Union of Employees (BRUE), ie the section of the applicant union which represents members employed by the respondent. The union alleges that at a meeting on 13 December 2000, Mr Mitchell was advised by the company that his services would be terminated on 10 January 2001 unless he could find an alternate suitable position prior to that date. Mr Mitchell had applied for leave over the Christmas period and on advice from the union requested that this leave be cancelled. The union says that upon this request the company cancelled the leave but, according to the union’s claim, brought forward the date for termination to 3 January 2001.
- 4 The respondent agrees with the dates but says that no decision to terminate Mr Mitchell has been taken. They say that there was to be a meeting on 10 January 2001, the date later revised to 3 January 2001, to review Mr Mitchell’s employment situation in light of whether alternative positions had been found. They say the application and Commission proceedings intervened in this process.
- 5 It is common ground that Mr Mitchell was employed as an Environmental Services Attendant in late 1994. He was first employed as a casual and then on a permanent basis. His duties were general cleaning duties in the casino area. In June of 1995 he suffered an accident, injured his knee and was consequently off work for a period. On return to work he was placed on alternative duties as part of the rehabilitation program. It is common ground that Mr Mitchell has not been able to perform fully as an Environmental Services Attendant doing cleaning duties since that time. This is not to say that Mr Mitchell has not performed some cleaning duties at times. Mr Mitchell suffered a further injury on 22 May 2000 and a recurrence of that second injury in November 2000.
- 6 Following the conference of 21 December 2000 the respondent agreed to continue the employment of Mr Mitchell until the conclusion of hearing on 16 January 2001. As that matter had to be adjourned part heard, the respondent agreed on subsequent occasions to continue the employment of Mr Mitchell until 2 February 2001, ie the date of this decision.
- 7 The union claims that the termination of Mr Mitchell would be unfair, harsh or oppressive as
1. the action of the company is taken substantially because Mr Mitchell is president of BRUE and is being discriminated against;
 2. a decision to terminate Mr Mitchell would be contrary to the *Workers Compensation Act*, as the injury suffered by Mr Mitchell in May 2000 is a new injury and the employer is not entitled pursuant to s.84AA of that Act to terminate Mr Mitchell within 12 months from the date of injury;
 3. the termination of Mr Mitchell would be contrary to s.41 of the *Minimum Conditions of Employment Act* as the union was not consulted during the process of gathering all the information necessary to decide on the termination of Mr Mitchell;
 4. the termination would be contrary to clause 34 of the Burswood International Resort Casino

Employees Industrial Agreement 2000 in that the union was not notified of the intended dismissal of the union delegate; and

5. the process and planning for the termination of Mr Mitchell was flawed in that it was not shared with him, he was not trained to apply for other positions nor did the company seek to find him an alternative position and other factors.
- 8 The respondent’s claims that the union’s case substantially relies on alleged discrimination of Mr Mitchell due to his union involvement. The company disputes this and claims that Mr Mitchell’s contracted position of Environmental Services Attendant never changed from the date of his engagement until now. At all times post his injury in June 1995 he was on alternative duties to encourage him back into suitable employment. The respondent says that none of these duties were permanent. The Respondent says that due to the arrival of a new CEO, and constraints on budget, the managers were required to review their operations. In doing so Mr Michael Carton, the Manager Environmental Services requested the return of Mr Mitchell to his department in July 1999 and subsequently made changes to his operations which impacted on Mr Mitchell’s duties. The respondent says that following advice in November/ December 2000 confirming that Mr Mitchell could not again perform the role of an Environmental Services Attendant, and given the absence of full time duties for Mr Mitchell, Mr Mitchell was advised on 13 December 2000 that his services would be reviewed and may be terminated unless he found an alternate position, either internally or externally, prior to that date. The respondent says that no final decision to terminate Mr Mitchell has been taken, that a review of Mr Mitchell’s situation was to occur on 3 January 2001 and that the union will be advised when the decision to terminate is taken.
- 9 Mr David Kelly, Assistant Secretary, Australian Liquor, Hospitality and Miscellaneous Workers’ Union, Western Australian Branch gave evidence regarding the history of relations between the company and the union. Without reciting the evidence in detail it goes to various actions by the company to prevent representation or coverage by the union of workers at Burswood Resort Casino. The union outlined in exhibits through Mr Kelly various decisions of the Commission and agreements reflecting the history between the parties. Specifically Mr Kelly referred to a dispute between the parties over the number and location of delegates under the Enterprise Agreement to which they are both parties. This matter came on before myself in conference and subsequently the parties settled the issues prior to hearing. They agreed to 12 delegates. These delegates were recognised in August 2000 by the company including an agreement on which work areas they were to come from. Mr Kelly complained that the company did things to the letter of the law and in his view extended the letter of the law. He complained that the company treated employees differently in terms of representation for those under the Enterprise Agreement, as opposed to those under Australian workplace agreements, and that employees were often only allowed a support person rather than a representative when problems arose.
- 10 Mr Kelly says that Mr Mitchell was known to be the President of BRUE since the second half of 1999 and was an active representative of the union in the Environmental Services Area and helped members generally. Mr Kelly says that Mr Mitchell told him of the meeting of 13 December 2000 and advised him that the company had said that they would terminate his employment if he had not found another position by 10 January 2001. This was changed to 3 January 2001. He says the company has not advised the union of this meeting and referenced clause 34(3) of the enterprise agreement whereby the company must advise the union where there is to be dismissal of the delegate. He says this clause is because there was always a feeling that a delegate might be sacked because they are a delegate. He says that Mr Paul Justice of the union wrote to the company seeking clarification following the meeting of 13 December 2000 and received a reply saying that Mr

- Mitchell was advised of all matters at the meeting. Mr Kelly further complained that at the meeting of 8 January 2001, which was to execute mutual discovery, Mr Carton who was Mr Mitchell's Manager in Environmental Services advised that there was no documentation regarding the restructure of Environmental Services. Under cross-examination Mr Kelly agreed that the company conformed with the wording of the agreements and had done nothing illegal but indicated that he believed the company's strategy was to limit the effectiveness of delegates and had concluded that the Australian workplace agreements were there to exclude union rights.
- 11 Ms Janine Freeman, an advocate for the union in the workers compensation jurisdiction gave evidence that she had been dealing with Mr Mitchell's workers compensation claim. She said he has two claims, one for the original injury on 1 June 1995 and the second injury on 22 May 2000. Both of these injuries have been covered by the insurer. She says that Mr Mitchell has had four surgical procedures on his knee and has taken time off with each procedure. She made reference to a post-it note on a workers compensation form which says "29/11/99 Rod, Derek was/is involved in current Industrial issues, and there was a strike on Friday 26/11 Started at 0900-1600 Co-incident!!!! PTO". She said she considered this to be the writing of Ann Alexander, the Manager of Occupational, Health and Safety at the Casino. She says that Mr Mitchell was ordered to attend the medical with Dr Connaughton and during this medical further injured his knee performing a squat test. Under cross-examination she gave evidence that she considered that if Mr Mitchell was supernumery then he should get workers compensation payments.
 - 12 Mr Mitchell gave evidence that he first injured his knee in an accident on night shift in June 1995 when he was taking out rubbish. Since that time he has done a variety of duties including assisting the Training Officer Andrew Lindsey. He had hoped that job would develop into something more. He says he was asked by Ann Alexander and Margaret Russell, Manager of Environmental Services to assist in the Purchasing Office in November 1998 and was advised that there was a job coming up permanently in that area and if he went to work there and if he was capable, he had a good chance of getting it. He says his duties were to relieve the purchasing officers of more mundane duties in purchasing. He says in May 1999 he became a member of the union and at that stage was working in the Purchasing Office. He was told confidentially by Jeff Carter the second in charge of the Purchasing Office in July 1999 that Jeanette Anderson, the Manager, Purchasing, had told Mr Carter that she had been instructed by Derek John, who had advice from Paul Kennedy, the Human Resources Manager, that they wanted Mr Mitchell out of the office as he was with the union. He says he did not advise anyone of this as the information was given to him in confidence. He says that two days later Mike Carton called him to his office. Pam Donald, the Rehabilitation Co-Ordinator was there and he was asked to go back to Environmental Services to assist the Supervisor, Syd Capper. He says he did not want to go back to Environmental Services as it was a made up position and he had a good chance of getting a full time position in the Purchasing Office. He says he accepted the position in Environmental Services because it would be a full time permanent position and because of Mr Carter's comments. He says his duties on return to Environmental Services were minor repairs, stocktaking orders and general duties as requested. He says he was not given a list of duties.
 - 13 Mr Mitchell says that Mr Syd Capper changed jobs and went to assist on the supervisors rotation. At this time Mr Mitchell says that he was doing most of Mr Capper's work except for certain supervisory duties in the car park and the budgeting. He said he asked for higher wages in this role but his request was rejected. On 22 May 2000 Mr Mitchell says he had another accident in the operations area and he took four weeks off as a result. On his return to work he says some duties were removed from him and were never returned.
 - 14 He says that in September 2000, Pam Donald asked if he objected to speaking to Workfocus to assess his work capacities. He says he was concerned by the request and queried why he would need to provide a resume. He says he also raised this query with Mr Carton and was advised it would be in his best interest to go. He says he was also advised by the union to go. He says he also raised his concerns about matters arising from the Workfocus assessment with Ann Alexander and she confirmed for him that he had nothing to worry about. He says on 7 November 2000 he went to see Dr Connaughton, the medical practitioner for the insurance company and during that assessment he damaged his knee during a squat test. He later saw Dr Tony Robinson and says that he was advised by Dr Robinson that he could go back to work for four hours a day.
 - 15 On 12 December 2000 Mr Mitchell says that Mr Carton contacted him and told him to be at work at 8am the next day. This was later than his normal starting time. He says he attended a meeting with Mr Carton, Ms Clare Ryan, the Human Resources Officer and Ms Pam Donald. He found out just before the meeting who was attending and arranged for Mr Stuart Smith to come as his witness. At that meeting he says he was told that he needed to find another position within a month as due to medical advice he could not again work as an Environmental Services Attendant and if he did not find a position within that time he would be terminated. He says that two positions were offered to him at the meeting, neither of which were suitable. Mr Mitchell says that the company knew for some years that he could not return to his duties as Environmental Services Attendant and that he was not provided with training even though this was promised. He agrees that job notices were sent to him whilst he was being paid, but not at work, at the company's request. He further complains that on 23 December 2000 whilst in the queue in the Canteen he was told by Ms Ryan that he was not allowed to be there. He says this was preceded by an incident on 5 December 2000 when Mr Carton told him that he was not allowed to be in the Canteen. Under cross-examination Mr Mitchell agreed that he had always been paid the same rate of pay and had not received a new badge since his initial badge on first engagement. He says that the person who took over from him in purchasing was on light duties and was promised a full time job.
 - 16 Mr Mitchell complained that his duties were being restructured to diminish his responsibilities and that his access to external telephone calls was cut off. He says he believes that one of the main reasons for his alleged removal is because he is a union delegate. He said that the company did not stop him from doing his duties as a delegate or as a support person. In relation to his performance appraisals Mr Mitchell said that Jeanette Anderson had advised Syd Capper regarding performance appraisal comments in [Exhibit DMR 6]. Mr Mitchell says that he is not adept with computers and was not properly trained in computers.
 - 17 The evidence of Mr Paul Justice, an organiser for the union with responsibilities for the union at the Burswood Resort, is that he has had to rely on delegates as he has never been allowed to represent members properly. He says that Mr Mitchell is a very effective delegate respected by his peers and that the resort was notified that Mr Mitchell was a delegate but not that he is President of BRUE, although this was posted on notice boards. He says he was not notified of the intention to dismiss Mr Mitchell and said that Mr Mitchell told him of the events of the meeting of 13 December 2000 following that meeting. Mr Justice complained about the removal of telephone access for Mr Mitchell but says that Mr Mitchell has not been denied his role as a delegate by the company.
 - 18 Mr Michael Carton gave evidence that he has been the Environmental Services Manager at Burswood Resort Casino since July 1999 and was previously Assistant Manager of Environmental Services. He says he has known Mr Mitchell for some time and has had a good relationship with him. He says that he asked Mr Mitchell to return to Environmental Services in July 1999 as he

was concerned about his budget and wanted Mr Mitchell to work for him again as he was paying for him. He says that Mr Mitchell, since his first injury, has always been on modified duties and more latterly in the Environmental Services Area has been assisting various people including Mr Carton, a trainer, leading hands and supervisors. Mr Carton says that due to pressures from the CEO he had to do a further review and restructuring of his area in mid 2000. He says he also reviewed all those people on workers compensation and got advice from the medical department. He says that now Mr Mitchell has only about 15 hours of required work per week. Mr Carton says that he implemented restrictions on telephone use of two telephone lines, including the one used by Mr Mitchell, as he was concerned that he was over budget in this area. Mr Carton says that he met with Pam Donald and Clare Ryan on 17 August 2000 at which time he discussed the abilities of Mr Mitchell to return to his duties. He says he did not know at that time that Mr Mitchell could not return to any cleaning duties and tried to get him to do some of these duties. He says that he was always actively looking for tasks for Mr Mitchell to perform to be fully engaged. Mr Carton says it had come to the point where there were no duties to be reallocated to Mr Mitchell and the job is not there. He says he asked Mr Mitchell to leave the canteen on 5 December 2000, after being approached by Ms Ryan, as he believed he was on the premises unlawfully and was using a meal voucher when not entitled to. Under cross-examination Mr Carton agreed that Mr Mitchell was not happy with the return to Environmental Services and had wanted to stay in the Purchasing Office. He agreed that at the meeting of 17 August 2000 that he had considered termination of Mr Mitchell as a possibility but Mr Mitchell was not advised at that stage. He says that until he was advised of Dr Connaughton's report, he was not aware that Mr Mitchell could not do any cleaning duties at all. He confirmed that Mr Mitchell was concerned about going to Workforce and that he had reassured him about that.

- 19 Mr Ian Ellison, Health and Safety Manager gave evidence that there was no time limit placed on rehabilitation in Burswood and sometimes rehabilitation goes for as long as it takes. He says he knew that Mr Mitchell was in the Purchasing Office at one stage and that he assisted in that area. He says that he knew Mr Mitchell was on light duties for 4 ½ years and that this is a long time albeit the philosophy is to provide meaningful work within the capabilities of the employee.
- 20 Evidence was also given by Ms Pamela Donald who is currently the Rehabilitation Co-ordinator at Burswood Resort Casino. She says she did not have the case management of Mr Mitchell, that was done by Ann Alexander. She confirmed that the writing on the post-it tab [Exhibit JF1(5)] was that of Ann Alexander. She says she was not aware of any promises of permanency in the Purchasing Office and the assistance in the Purchasing Office is usually given to people who are in rehabilitation. She says she did not believe that the jobs offered to Mr Mitchell at the meeting of 13 December 2000 were ones that were suitable for him. The evidence of Ms Jeanette Anderson, the Purchasing Manager for Burswood was that the duties which Mr Mitchell performed in her area were modified duties assisting other staff within the area. She says she had about 20 people through her area on modified duties in recent years. There are currently two employees on rehabilitation currently in her area. She says that she is aware of a conversation with Mr Carter regarding concerns of Mr Kennedy that Mr Mitchell had access to confidential files particularly in relation to use of legal assistance. She says that on the arrival of the new CEO, she has had to seek to reduce cost and there has been a job freeze imposed. She says there has been an increasing level of computerisation of procedures in her area.
- 21 The evidence of Ms Clare Ryan, the Human Resource Officer at Burswood Resort Casino is that she had a discussion with Mr Paul Kennedy and Ms Kathleen Drimatis, Workplace Relations Officer regarding the termination of Mr Mitchell in early December 2000. She

says she advised Mr Carton on 5 December 2000 that she thought that Mr Mitchell was unfit for work and so could not use the facilities. She says again on 23 December 2000 she was in the queue by Mr Mitchell and queried whether he was entitled to be there. She says she did this in a quiet voice and did not tell him to leave. She says that at the meeting of 17 August 2000 between herself, Mr Carton, Ann Alexander and Pam Donald they discussed workers compensation issues in general and how various individuals may be managed. She says that [Exhibit DK3.12] is an accurate record of the meeting. She says that a follow up meeting on 4 September 2000 to assess progress with follow up actions, Mr Carton raised problems with Mr Mitchell's duties, namely that he had difficulty finding duties for Mr Mitchell. She says there are other people on workers compensation on modified duties who are also being assessed currently.

- 22 This does not cover all of the evidence given. In particular it does not cover all of the medical reports or the recollections of the discussion of 13 December 2000. However it is sufficient to elaborate on the versions of the events which are said to have occurred. Additionally, I would say of the evidence given that the credibility of the numerous witnesses is not an issue for me in this matter. I do not quibble or challenge the honesty of any of the witnesses. I would though qualify this comment by referring to Mr Carton, in the giving of evidence, as a cautious witness in relation to his use of terminology, namely that Mr Mitchell was always on 'modified' duties.
- 23 I will deal firstly with the claims of the union in respect of breaches of clause 34 of the enterprise agreement and s.41 of the *Minimum Conditions of Employment Act 1993*. Clause 34—Union Delegates and Meetings at subclause 3 states:
- “Prior to the intended dismissal of the Union delegate the Company shall notify the Union accordingly of the reasons for such dismissal”.
- It is clear from the evidence, that Mr Mitchell had the firm view and, in my opinion, correct impression from the meeting of 13 December 2000 that his employment would be terminated firstly on 10 January 2001 and then revised to 3 January 2001 should he not be successful in gaining alternate employment prior to that date. I so find. I say this because whilst it is clear that no final decision to dismiss Mr Mitchell has been taken, it is also clear that Mr Mitchell was to be dismissed on 3 January 2001 unless he found a suitable alternative position. The company claims that no final decision had been taken to dismiss Mr Mitchell and hence clause 34(3) is not relevant and they are not in breach of any obligations pursuant to that agreement. They say that there was to be a meeting on 3 January 2001 to review Mr Mitchell's status. What is clear, in my view, is that the inevitable result if Mr Mitchell did not find a position was that he would be terminated. This was told to him on 13 December 2000 after being in various positions for several years. Mr Mitchell quite rightly took the view that his employment was very likely going to finish.
- 24 This point must be seen in conjunction with clause 39—Resolution of Disputes in the agreement. I quote this clause in full. It says—
- “Any problem or dispute arising under the agreement during the currency of the agreement shall be dealt with as follows—
- The matter should first be discussed between the employee concerned and their immediate Supervisor with the view to resolution of the matter in question.
 - If at this point the matter is not resolved to the satisfaction of the employee concerned, the matter shall be referred to a Human Resources Officer or other appropriate officer of the Company for further investigation and discussion.
 - If the matter should still not be settled, the employee concerned shall be referred to the Human Resources Manager for further discussion.

- (d) Should the employee concerned so desire, the appropriate Union delegate may accompany such employee and participate in any discussions or investigations prescribed in sub-clauses (b) and (c) of this sub-clause. If for any reason it is the intention of the Company to give an employee a written warning, such employee shall have the right to have a Union delegate present at such time as the written warning is issued.
- (e) If the matter is still not satisfactorily resolved, it shall be formally submitted by the Secretary or other official of the Union to the Company for consideration and resolution. Provided that persons involved in the problem or dispute will confer among themselves and make reasonable attempts to resolve problems or disputes before taking those matters to the Western Australian Industrial Relations Commission. Should the matter, after this, still not be satisfactorily resolved, it may be referred to the Western Australian Industrial Relations Commission.
- (f) Until the matter is determined in accordance with the above procedures, work shall continue normally. All parties to the agreement, the Company, its officials, the Union and its members will take all possible action to settle any dispute within 7 days of notification of the dispute to the Human Resources Manager.
- (g) No party shall be prejudiced as to the final settlement by continuance of work in accordance with this clause."

In short the parties should seek to settle the matter prior to it coming to the Western Australian Industrial Relations Commission pursuant to clause 39. [Exhibits PJ2 and PJ3] show that the union raised the issue of whether Mr Mitchell could have been properly sent home with pay and whether the employer needed to keep his position open for 12 months. The respondent in response queried the union's suggestion of recourse to the Commission and advised Mr Mitchell was given full details of his options at the meeting of 13 December 2000. The company provided no further advice to the union. In summary, I do not consider the company complied with clause 34(3) of the agreement in that they did not advise the union albeit they had taken the view that they would dismiss Mr Mitchell subject to certain conditions. At the same time all that is required in clause 39—Resolution of Disputes was not complied with prior to bringing the matter to the Western Australian Industrial Relations Commission. That is reasonable steps to confer and resolve the matter were not taken prior to the application.

25 I have no further regard for either argument. There is clearly a dispute between the parties as to whether it is fair for Mr Mitchell in all the circumstances to be terminated. The matter was urgent in that Mr Mitchell expected to lose his job just after the new year and the issue arose just prior to Christmas. This is a matter properly referred for hearing and determination and Mr Mitchell is still employed and has not received formal notification of termination, albeit the employer could have issued this at any time during the hearing.

26 Section 41 of the *Minimum Conditions of Employment Act 1993* states—

"41. Employee to be informed

- (1) Where an employer has decided to —
- (a) take action that is likely to have a significant effect on an employee; or
- (b) make an employee redundant, the employee is entitled to be informed by the employer, as soon as reasonably practicable after the decision has been made, of the action or the redundancy, as the case may be, and discuss with the employer the matters mentioned in subsection (2).

(2) The matters to be discussed are —

- (a) the likely effects of the action or the redundancy in respect of the employee; and
- (b) measures that may be taken by the employee or the employer to avoid or minimize a significant effect,

as the case requires."

The respondent does not say that Mr Mitchell is to be made redundant. The respondent says that Mr Mitchell is to be terminated unless he finds suitable alternative position, as he cannot fulfil the requirements of his original contract as an Environmental Systems Attendant due to his injury. It is clear that the employer received further medical advice regarding Mr Mitchell's recurrence of injury in November 2000 and having decided to terminate Mr Mitchell, subject to conditions, advised him of this at the meeting of 13 December 2000. Likewise it is clear that at that meeting they advised him of the actions they would take regarding his alternate employment. The actions were namely to provide him with copies of internal vacancies as they arose. I find that the respondent has complied with s.41 of the *Minimum Conditions of Employment Act 1993*.

27 The applicant union brought forward considerable evidence in relation to allegations that Mr Mitchell had been discriminated against due to his position as President of BRUE. They assert that if not for this he would not have been chosen for termination. Mr Kelly's evidence of the history of relationship between the union and the company stands for just that. By that I mean it is no more or less than a backdrop to and recital of events in their relationship. It does not go to how Mr Mitchell was treated. The main complaint from Mr Kelly and Mr Justice is that they consider that the company has a strategy to limit the effectiveness of delegates. These delegates are only allowed to be support persons or observers in initial discussions with supervisors where members are in dispute. Mr Kelly under cross-examination conceded that there is nothing illegal about the company's approach albeit he complained that they operated to the letter of the law or in fact sought to extend that. Of more relevance is that there was nothing in the evidence of Mr Kelly or Mr Justice to sustain a complaint of discrimination against Mr Mitchell above simply suspicions that he may have been discriminated against.

28 The evidence of Mr Mitchell is that his suspicions of being discriminated against due to his union activities stem from a conversation he had with Jeff Carter in July 1999 whereby Mr Carter approached him and advised him confidentially that Jeanette Anderson had told him that she had been instructed by Derek Jones who had been instructed by Paul Kennedy that they wanted Mr Mitchell out of the Purchasing Office as he was an active union member. This evidence of a conversation is not disputed except that the interpretation by Ms Anderson is that the concern related to access to confidential information regarding legal expenses. Mr Mitchell says that two days later Mr Carton approached him seeking his return to the Environmental Services Area. Mr Mitchell complained that his change of duties following his injury in May 2000 and the redirection of his calls were also evidence of him being discriminated against and attempts to curtail his union activities. In addition to this are the complaints about his treatment in the canteen by Ms Ryan and Mr Carton, and there is the issue of monitoring sheets of delegate activities. Under cross-examination Mr Mitchell said in response to the monitoring sheets as exhibited at [DK3(10A-D)] that he had on many occasions taken up matters with Mr Carton which were concerns of members. Mr Carton's evidence supports this. He conceded that he was given messages if the union rang, this was following the redirection of the phone calls and that he was able to return these calls albeit in a more restricted manner. The impression gained from this is that even though Mr Mitchell's activities were monitored as were the activities of other delegates, his activities were not monitored fully nor was he obstructed in his role as a union delegate. On

all of the evidence given on behalf of the applicant union, I do not find that Mr Mitchell was discriminated against by virtue of his union membership or his role as a union delegate. The applicant union has simply failed to sustain this part of their case. The highest point of the evidence comes to is one of suspicion and some insensitive treatment of Mr Mitchell in the canteen, and this is to be weighed against the concession by Mr Kelly, Mr Mitchell and Mr Justice that Mr Mitchell was able to get on with his business as a union delegate. The history of relations between the company and the union has no specific relevance to this matter other than the company has opposed and not encouraged the involvement of the union. Whilst the relations between the company and the union are not harmonious, the evidence does not go so far as to sustain an allegation of discrimination of Mr Mitchell due to union activity. I will return to this issue of his reduction in duties.

- 29 The next issue to address is whether by virtue of s.84AA of the *Workers Compensation Act 1981*, the company is restricted from terminating Mr Mitchell in any way. That Act states:

“84AA. Employer to keep position available during worker’s incapacity

- (1) Where a worker who has been incapacitated by disability attains partial or total capacity for work in the 12 months from the day the worker becomes entitled to receive weekly payments of compensation from the employer, the employer shall provide to the worker—

- a. the position the worker held immediately before that day if it is reasonably practicable to provide that position to the worker; or
- b. if the position is not available, or if the worker does not have the capacity to work in that position, a position—
 - (i) for which the worker is qualified; and
 - (ii) that the worker is capable of performing,

most comparable in status and pay to the position mentioned in paragraph (a).

Penalty: \$5000.

- (2) The requirement to provide a position mentioned in subsection (1)(a) or (b) does not apply if the employer proves that the worker was dismissed on the ground of serious or wilful misconduct.
- (3) Where, immediately before the day mentioned in subsection (1), the worker was acting in, or performing on a temporary basis the duties of, the position mentioned in paragraph (a) of that subsection, that subsection applies only in respect of the position held by the worker before taking the acting or temporary position.
- (4) For the purpose of calculating the 12 months mentioned in subsection (1), any period of total capacity for work is not to be included.”

- 30 The company referred to two decisions of Beech C (*Raymond John Stockwin v Cable Sands Pty Ltd* 77 WAIG 509 and *Michael Geoffrey Pacey v Modular Masonry (WA) Pty Ltd* 78 WAIG 1421) to support their case. Beech C at 77 WAIG 509 states—

“Prior to the insertion of s84AA there was no statutory restriction on terminating the employment of an employee who is absent from work on workers’ compensation. Termination of employment could occur provided the relevant notice period was given (*HEIU v St George’s Hospital* (1975) 55 WAIG 1053). Section 84AA makes it an offence to dismiss an employee for the first 12 months while the employee is absent on workers’ compensation unless the dismissal is for serious and wilful misconduct. But in Mr Stockwin’s case he was not absent from

work on workers’ compensation when he was dismissed. He had been certified fit for either partial or full employment and was actually at work (although not required to attend pending the company’s consideration of his action) when he was dismissed.

If indeed an employee absent on workers’ compensation is dismissed so that the employer, in breach of s84AA, does not offer the employee his or her previous job back upon attaining partial or total capacity for work in the 12 months from the day the employee becomes entitled to receive weekly payments of compensation from the employer, the breach renders the employer liable to a penalty under that Act. Although Mr Clohessy argued that s84AA prevented Mr Stockwin’s dismissal from happening that is not the case. As the High Court recently observed, the fact that a statute prohibits the doing of an act does not show that the act cannot be done (per Latham CJ in *Automatic Fire Sprinklers v Watson* as cited with approval by Brennan CJ, Dawson and Toohey JJ in *Byrne v Australian Airlines Ltd* (1995) 69 ALJR 797 at 804). The question whether Mr Stockwin was dismissed on the 5th March is thus a question of fact. A dismissal which is in breach of the *Workers’ Compensation and Rehabilitation Act 1981* may of itself also be unfair although the fact of the breach will be simply one factor to be taken into account in the overall circumstances (*Newmont Australia v AWU* (1988) 68 WAIG 677 at 679).”

I agree with these views. Section 84AA does not prevent dismissal and cannot be read as simply excluding a dismissal for misconduct for 12 months from the date of injury

- 31 It is not disputed that Mr Mitchell sustained a second injury in May 2000 to his knee. He suffered a recurrence of the injury in November 2000. I do not seek to go through all the medical evidence other than to say it is clear and it is common ground between the parties that Mr Mitchell is at least now incapable of fully returning to his position as Environmental Services Attendant. It is common ground that Mr Mitchell has at all times, irrespective of the duties he has performed, been paid the rate of pay for an Environmental Services Attendant. The argument therefore relies on whether s.84AA applies so as to obligate the employer to provide, within a 12 month period, a position for which Mr Mitchell is qualified and is capable of performing. The 12 months would effectively date from the date of the second injury on 22 May 2000. Exhibit JF1(8) is a record of proceedings and review for Workcover Western Australia for 31 October 2000 and references the finding of fresh disability for Mr Mitchell on 22 May 2000. Mr Mitchell did return to full duties after this injury. A position was kept available for him, albeit modified duties, and he returned to it. The obligation of the employer under s.84AA was satisfied at that stage.
- 32 Mr Mitchell’s evidence is that on two occasions he was offered permanent employment. Firstly in November 1998 in the Purchasing Office assisting other purchasing officers with their work, and secondly in July 1999 when he moved back to the Environmental Services Area and undertook work assisting Mr Syd Capper and then took over a substantial part of the duties of Mr Capper. Mr Mitchell gave evidence that he had hopes that an earlier position in 1996 assisting the training officer in Environmental Services Area might have developed into something more. However, his evidence does not go to a suggestion that he was offered a permanent position in this area.
- 33 Mr Mitchell gave evidence that in November 1998 he was approached by Ann Alexander the Rehabilitation Coordinator and Margaret Russell the then Manager of Environmental Services and asked whether he wanted to take up duties in the Purchasing Office. This is not disputed. He says he was advised that there was a full time vacancy coming up and that if he went to the Purchasing Office and if he was capable he had a good chance of getting a position permanently when it came

- up. This is not disputed. He says his duties were to relieve the purchasing officers of the mundane aspects of their duties. He says when he moved from that position back to Environmental Services his duties were taken over by another person by the name of Shelley. Again the evidence of the respondent supports this, although the duties may not be like for like. That is not the essential issue. The issue is whether this was a permanent position and on the weight of evidence for Ms Anderson and Ms Donald it would seem to be a temporary position for rehabilitation purposes. Indeed Mr Mitchell's evidence when viewed closely is that he hoped to get a permanent position, and was told he would have a good chance of getting one that was coming up. He was not promised a permanent position and it did not come up. At least it has not been finally filled on Ms Anderson's evidence which I consider plausible. I find that Mr Mitchell did not have a permanent position in the Purchasing Office. This has relevance to s.84AA(3).
- 34 There is no suggestion that Mr Mitchell would not have continued in the Purchasing Office awaiting the permanent position to be advertised and filled but for Mr Carton's budgetary inspired constraints. It is Ms Anderson's evidence that Shelley now has a good chance of obtaining that position as she has been there for sometime and she is good at computing. It is also clear from the evidence that Mr Mitchell did a very good job whilst in the Purchasing Office. On his own evidence he is not particularly computer literate. I should add that I was impressed with Mr Mitchell as a witness and the impression gained from his own evidence, and that of Mr Carton and the performance appraisal, is that he was a keen and able worker within his capabilities.
- 35 The other claim Mr Mitchell makes is that he had a permanent position on return to the Environmental Services Area. The evidence of Mr Mitchell is that he went to the Purchasing Office for an indefinite time with the promise, I would characterise it as an aspiration or hope, of getting the permanent job once advertised. The fact is Mr Mitchell only left because Mr Carton asked him to. This is common ground. I accept as the most plausible case that Mr Carton wanted Mr Mitchell back due to budgetary pressures. I do not find that Mr Mitchell was given a permanent position in Environmental Services on his return in July 1999. I find that the respondent has not breached s.84AA of the *Workers Compensation and Rehabilitation Act 1981*.
- 36 I do not doubt Mr Carton's evidence that he had to restructure the Environmental Services Area to gain more efficiencies. This had an impact on Mr Mitchell's duties. I find that it is plausible and more likely that Mr Mitchell's duties were diminished due to a legitimate drive for efficiency. As stated, I do not find that there has been discrimination due to Mr Mitchell being a delegate, and I do not consider that the evidence proves that his duties have been cut because of this.
- 37 I do not challenge the employer's right to run their business efficiently and for Mr Carton as part of that operation to restructure his department to gain additional efficiencies. In so doing he has reduced the demand on Mr Mitchell's time. It is clear that Mr Mitchell is a good and competent employee who has for more than 5 years continued to be employed by the respondent albeit for the majority of time on modified duties but also having performed competently for the respondent during this time. Having said this it is not clear to me why the respondent having on their own evidence, accommodated Mr Mitchell for more than 5 years in rehabilitation and alternative duties that following further medical advice in November 2000 they should then call him and on the basis of this advice and give him one month to find an alternative position. The respondent says that the line needed to be drawn somewhere. It has been clear for many years that Mr Mitchell was not going to be able to return to normal duties as a cleaner. Mr Carton says this was not clear to him until Dr Connaughton's report but the actions of the employer, the weight of evidence, and their argument that he was always on modified duties speaks against this. There is no real evidence of issue between the parties in respect of that. The only real issue is that his duties continue to diminish courtesy of restructuring the employer sought to undertake. This occurred over a number of months from May 2000.
- 38 One view is that section 84AA of the *Workers Compensation and Rehabilitation Act 1981* means Mr Mitchell could reasonably be expected to be in employment at least to 22 May 2001. I do not take this view, in a strict legal sense. However, Mr Mitchell is 59 years of age and has given good service to the respondent albeit within his capabilities due to his two injuries. He was simply called in one day and given one month to find himself an alternative position. The employer decided in early December 2000 that termination was an option, and I would say the most probable option. This is my finding on the evidence. Mr Mitchell was to be on leave and when he asked for his leave to be cancelled this was reduced to approximately 3 weeks.
- 39 In accordance with the *Industrial Relations Act 1979* I am required to exercise my judgement according to equity, good conscience and the substantial merits of the case and I find it would be harsh and unfair, particularly given the spirit of s.84AA, and in all the circumstances of the history of rehabilitation for Mr Mitchell his age and his good service, to so swiftly terminate Mr Mitchell's employment if he himself does not find an alternative position. The respondent should engage in a fuller exploration of options for Mr Mitchell and I recommend that this take some months including appropriate training.
- 40 These are my findings and reasons in this matter. I intend to invite the parties, once they have digested these, to make submissions at hearing on the terms of the Order which should issue in this dispute. This hearing will not be listed for at least seven days from the date of this decision to allow the parties to discuss what arrangements may be able to be negotiated to accommodate Mr Mitchell and to attempt to agree on the terms of an Order that may issue. I strongly recommend that the parties use this time wisely to seek to agree on the most productive use of Mr Mitchell's services.

2001 WAIRC 02051

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	AUSTRALIAN LIQUOR, HOSPITALITY AND MISCELLANEOUS WORKERS UNION, WESTERN AUSTRALIAN BRANCH, APPLICANT
	v.
	BURSWOOD RESORT (MANAGEMENT) LTD, RESPONDENT
CORAM	COMMISSIONER S WOOD
DELIVERED	WEDNESDAY, 14 FEBRUARY 2001
FILE NO	CR 350 OF 2000
CITATION NO.	2001 WAIRC 02051

Representation

Applicant	Mr J Rosales Castaneda of Counsel and Mr D Kelly
Respondent	Mr D Jones and Mr G Blyth

Order.

WHEREAS the matter came on for conference on 21 December 2000 at the conclusion of which the dispute could not be resolved; and

WHEREAS following the hearing of the matter the Commission issued reasons for decision and, having regard for the reasons, requested the parties negotiate the most productive use of Mr Mitchell's services and the terms of an order; and

WHEREAS the parties have advised the Commission that they have been unable to reach agreement on the issues; and

HAVING heard Mr J Rosales Castaneda of counsel and Mr D Kelly on behalf of the applicant and Mr D Jones and Mr G Blyth for the respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

1. THAT the respondent allocate forthwith duties to Mr Mitchell in the Environmental Services Area compatible with his capabilities and skills.
2. THAT the respondent engage in a full exploration, in consultation with Mr Mitchell, of options for his employment with the respondent, including any appropriate training relevant to available positions with the respondent, that are compatible with his capabilities and skills.
3. THAT in light of point 2 of the order, the respondent not terminate the employment of Mr Mitchell as an Environmental Services Attendant prior to 3 calendar months from the date of this order, for reasons to do with his inability for medical reasons to perform duties as an Environmental Services Attendant.

(Sgd.) S. WOOD,
Commissioner.

[L.S.]

2001 WAIRC 01940

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

PARTIES	PHILLIP MANVELL, APPLICANT v. TRANSFIELD PTY LTD, RESPONDENT
CORAM	SENIOR COMMISSIONER G L FIELDING
DELIVERED	TUESDAY, 30 JANUARY 2001
FILE NO/S	APPLICATION 961 OF 2000
CITATION NO.	2001 WAIRC 01940

Result	Application dismissed
Representation	
Applicant	Unrepresented
Respondent	Ms J A Wesley as agent

Reasons for Decision.

(Given extemporaneously at the conclusion of the submissions, taken from the transcript as edited by the Senior Commissioner)

- 1 The Applicant was employed by the Respondent from on or about 18 March 1998 until 26 May 2000. Specifically, he was employed as a facility manager for the strategic buildings occupied by Telstra. I should interpose to say that he was one of a number of persons employed by the Respondent as part of what the Respondent chooses to call the Telstra facility management alliance. Under that arrangement, as is common ground, the Respondent had a contract, in effect, to maintain most of the facilities, in particular the buildings which Telstra used and occupied throughout the nation. For his work the Applicant was paid a salary of \$61,000 per annum, at least at all material times; he started on a somewhat lower salary, but it is not relevant for these purposes. His employment was terminated by the Respondent because of a restructure carried out in or about April of last year which resulted in three persons being removed from the manning levels of the Respondent in this State. The Respondent determined that it should introduce a flatter organisational structure than had existed previously. The indications are that the Respondent, if not losing money on the contract, was barely making any money and it needed to improve its efficiencies if it was to survive.

- 2 The Applicant was dismissed at relatively short notice with approximately 14 weeks pay. He complains that his dismissal was unfair and he now seeks, by way of compensation, a further three months salary, another \$6,000 or thereabouts, said to be for the loss of use of a company car which the Respondent provided him, and approximately \$3,000, he says, for a bonus which was not paid to him. As I understand it, he asserts that the dismissal was unfair because, he says, the job which he was performing previously still exists and is being performed by someone else who I understand him to say is less qualified than he. He says that at all times he was a competent employee, was never criticised, save and except for a final appraisal conducted some months before he was dismissed, which appraisal he says was not an accurate appraisal of his performance and was carried out improperly.
- 3 The Respondent for its part denies that the dismissal was unfair. It asserts that the restructure was a *bona fide* restructure carried out because the Respondent was making little or no money out of its contract with Telstra. It also asserts that the Applicant was spoken to individually and told that, in effect, he was surplus to requirements. The Respondent took steps to find alternative employment for the Applicant, which regrettably proved fruitless. It says, moreover, that in deciding who was to be regarded as being surplus it carried out an objective assessment based on a range of requirements associated with a new organisation. The Applicant was found to be one of the two lowest scorers in that regard. Consequently, he was dismissed with five and a half weeks pay in lieu of notice and eight and three quarter weeks redundancy pay which the Respondent says was fair and equitable in all the circumstances.
- 4 Fortunately there is minimal conflict of evidence adduced in these proceedings. Of all the witnesses Mr Cassian impressed me as being the most credible. Where his evidence conflicts with that of the Applicant and others, I prefer that of Mr Cassian. Where the evidence of the Applicant conflicts with that of Mr Davis I prefer the evidence of the Applicant. In that respect I am satisfied and find that the second appraisal of which the Applicant complains so much was carried out in the manner he suggests rather than in the manner Mr Davis suggests. The only other person to give evidence was Mr Underhill. Nothing he had to say was, in the final analysis, relevant.
- 5 I am satisfied and find that the restructure which led to the Applicant's dismissal was indeed a *bona fide* restructure, as the Respondent suggests. The unchallenged evidence is that the Respondent was losing money, that the contract was reviewed from time to time and that it had a component requiring the Respondent to reduce the costs to Telstra as time went by. I accept, as Mr Cassian has said, that there was a need to be more cost-effective and that it was necessary, at least in this State, for the Respondent to take steps to reduce staff numbers in the way he said. I accept also that the Applicant was rightly included in that group. I am satisfied and find that in selecting the staff who were to be dismissed as being surplus the Respondent adopted objective criteria, which criteria I am satisfied were applied objectively.
- 6 I unreservedly accept the evidence of Mr Cassian that he went about the exercise without any preconceived ideas, based on his own observations. I accept that he was in a position to make reliable observations of the competing employees notwithstanding the proposition put to him to the contrary in cross-examination by the Applicant. Although the appraisal made by Mr Davis, that is to say the second appraisal of which the Applicant complains, was taken into account, Mr Cassian left me with the impression that that was but one factor to be taken into account, and that by no means was it the principal factor. He left me with the impression that he knew enough of the needs of the Respondent and of the Applicant's capabilities to make an accurate assessment himself. The Respondent might be criticised for not having discussed its assessment with the Applicant, but I accept Mr Cassian's evidence that, even if that had occurred, it would not have made any difference.

- 7 I am far from convinced that the dismissal was unfair. Once the Respondent had decided to terminate the Applicant's employment, it discussed the matter with him. The Respondent, through Mr Cassian, spoke to the Applicant individually, gave him the opportunity to continue in employment for a short time, and indeed helped him to attempt to obtain alternative employment. As well as that, the Applicant, in my view, was given an adequate redundancy payment. He was given what is in effect a payment equivalent to four weeks pay for each year of service. It is clear that he was given also his contractual entitlement as to notice.
- 8 As I indicated to the Applicant, even if it were the case that I was satisfied that the dismissal was unfair, I would be far from convinced that he has suffered any loss. During the period of notice or shortly thereafter he obtained an alternative job, albeit at a lower rate of remuneration. The redundancy payment made to him effectively underwrites the loss of that reduced income, at least for approximately 10 months. In the circumstances it is difficult to see what loss he has sustained. In this respect, this case has some likeness with *The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers — Western Australian Branch v. Goldfields Contractors Pty Ltd* (2000) 80 WAIG 5346, although I hasten to say that each case should be decided on its own merits.
- 9 I feel bound to say to the Applicant that his assertion that people are entitled to six months pay when made redundant is not the law. The six months pay is the limit on compensation that may be awarded as relief for an unfair dismissal, and in any event it is a maximum, not a minimum, as he seeks to imply.
- 10 So far as the Applicant's claim for loss of a company car is concerned, that is taken into account by reason of the fact that his salary package at all material times inclusive of the car was \$61,000. His notice payment and his redundancy payment were paid at that rate. Insofar as he claims that his wife might have been inconvenienced because of the need to purchase a car, the law is clear that in a case such as this it is the Applicant's loss, not his spouse's loss, which is material. Finally, the Applicant's claim for a bonus, although in fairness not advanced vigorously by him, must fail because the evidence is that there was in fact no such bonus in place.
- 11 In my view the application should be dismissed, in short because I am far from convinced that the dismissal was unfair. If it was unfair, which is not the case, there would in any event be no loss.

2001 WAIRC 01930

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES PHILLIP MANVELL, APPLICANT
v.
TRANSFIELD PTY LTD,
RESPONDENT

CORAM SENIOR COMMISSIONER G L
FIELDING

DELIVERED TUESDAY, 30 JANUARY 2001

FILE NO/S APPLICATION 961 OF 2000

CITATION NO.

Result Application dismissed

Representation

Applicant Unrepresented

Respondent Ms JA Wesley as agent

Order.

HAVING heard the Applicant in person and Ms JA Wesley 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,
Senior Commissioner.

[L.S.]

2001 WAIRC 01943

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES LOUISE CAROLINE MEYERS,
APPLICANT
v.
LYRICAL HOLDINGS PTY LTD,
RESPONDENT

CORAM COMMISSIONER P E SCOTT

DELIVERED THURSDAY, 1 FEBRUARY 2001

FILE NO APPLICATION 1025 OF 2000

CITATION NO. 2001 WAIRC 01943

Result Application alleging unfair dismissal dismissed.

Representation

Applicant Appeared on her own behalf

Respondent Mr A Smetana (of counsel)

Reasons for Decision.

- 1 The applicant claims that she was harshly, oppressively or unfairly dismissed from her employment with the respondent by way of, what she has described as, a constructive dismissal.
- 2 The respondent says that it was not the applicant's employer, rather her employer was Vista Investments Pty Ltd ("Vista"). In any event, the respondent says that the applicant was not dismissed, either constructively or otherwise.
- 3 The evidence regarding the identity of the applicant's employer is conflicting. From that evidence it appears that the original dealings for the applicant's engagement in September 1998 were by the respondent (Exhibits 3, 22 and 23). The respondent says that those references to the respondent being the employer were either in error or were not written by the respondent and therefore cannot be relied upon. By letter dated 25 February 1999, the applicant's manager, Mr Anthony Michael Murphy ("Tony Murphy") recorded that the applicant had been employed by the respondent, however Mr Murphy says that this was in error. Mr Wayne Teo has given evidence that initially the applicant's employer was the respondent. There is other evidence to the contrary, being that the applicant was employed by Vista, and her group certificates for the two years of her employment (Exhibit 15), letters regarding pay rises (Exhibits 16 and 17) and her employment declaration (Exhibit 14) all indicate this.
- 4 The applicant was employed as Assistant Property Manager/Receptionist at the Colonnade Shopping Centre ("the Centre"). The Business Names Extract from the Ministry of Fair Trading records that the Colonnade Shopping Centre Management is a business name of the respondent, and the nature of the business for that business name is "Centre Management of Shopping Centre". Yet other evidence indicates that the Centre's Property Manager, Tony Murphy, who commenced employment around the same time as the applicant was always employed by Vista.
- 5 On the balance of probabilities, I find that the applicant's employer was more likely to have been Vista than the respondent. Her group certificates and some correspondence addressed to her confirm this. There was sufficient opportunity for the applicant to have been aware of the name of her employer for some time prior to the hearing of this matter through those documents provided

to her by the respondent in the course of her employment. The Notice of Answer and Counter Proposal filed by the respondent on 9 August 2000 identified the issue. There was no application to amend the name of the respondent to include Vista Investments Pty Ltd. Accordingly, the application ought to be dismissed on the grounds of the respondent not being the employer. If I am wrong in this then the merits of the matter need to be considered.

- 6 The Commission has heard evidence from: the applicant; Julian Bennett Stawell, the applicant's current employer; Chiang Howe Wayne Teo, ("Wayne Teo") a director of the respondent and of Vista and who appears to be the Chief Executive of the Centre's operations; Anthony Michael Murphy, the Centre Manager; Kevin Chiang Jin Teo, who oversees the accounting and legal matters for the business; Sarah Michelle Black, the Centre's receptionist; Helen Louise Rae, who is responsible for the Centre's marketing and is also the personnel assistant to Wayne Teo; and David Francis Spencer, a security consultant who provides security services to the "Teo group".
- 7 The applicant claims that the conduct of Wayne Teo towards her over a period of time was such that it became intolerable for her to continue to work in her job. Accordingly, she advised Tony Murphy of her intention to resign, and following discussion with him and with Wayne Teo, completed certain tasks over a period of 4 days or so and then left on Saturday, 1 July 2000.
- 8 There is very little dispute as to the facts surrounding this case, although there is some dispute as to the context of particular comments and conversations. The real issue is whether Wayne Teo's conduct towards the applicant was such as to constitute a fundamental breach of the contract of employment or to evince an intention no longer to be bound by the contract of employment such as to warrant the applicant accepting that breach and terminating the employment. This issue then revolves around Wayne Teo's conduct towards the applicant, the reasonableness or otherwise of that conduct in the context of the employment relationship, and the applicant's response to that conduct and whether this amounts to a dismissal.
- 9 A number of instances of this allegedly unreasonable behaviour were cited by the applicant. The applicant says that on at least one unidentified occasion, Wayne Teo told her that she "looked like shit". Mr Teo, however, does not recall saying this.
- 10 Another instance cited by the applicant occurred around March/April 2000. The applicant had initiated the production and distribution of a newsletter as a means of improving communication and good will within the Centre. She has given evidence that there was a culture of gossip within the Centre and that she hoped to overcome some of this by improving communication. (It will also be noted later that part of the applicant's concerns relate to the effect of her employer's actions on her by reference to gossip which caused her considerable distress). In any event, the applicant was responsible for the content and presentation of a newsletter. The document was then reviewed by Tony Murphy and subsequently by Wayne Teo who approved the publication of the newsletter. The first issue was then distributed. In a staff meeting held in the boardroom, the next issue of the newsletter was discussed. Wayne Teo made a comment that the last issue had been "fucked", and "was shit", so why not do a second one. His comments appear to have been viewed by others in the meeting, except the applicant, as jovial, joking and facetious, particularly bearing in mind that the first newsletter had been approved by him, and that he was giving approval for the second newsletter to proceed. The evidence is that the applicant did not hear the comment that it "was shit" and another member of staff called it out to her, repeating the comment. Some in the meeting actually laughed or smiled at Wayne Teo's comments. The applicant became upset and left the office and went home. She telephoned Kevin Teo and told him of her distress and of her intention not to return. Her memory of this conversation is not entirely clear but she acknowledges, as does Kevin Teo, that the discussion continued for a period of time. She indicated an intention not to return and he encouraged her to return to work. They talked for some time and she returned to work. She then went to Kevin Teo's office and they had further discussions about the matter. During these discussions Kevin Teo explained to the applicant that his brother had an unusual sense of humour and that the sense of humour had taken him some time to get used to himself, and that he had previously been hurt by comments that his brother had made. He told the applicant that Wayne Teo actually valued her work and urged her to ignore the comments. He suggested that he speak to Wayne about it and she said no, to leave it. He also said to her that if ever she was upset again by anything Wayne said then she was to come to him and he would speak to Wayne, however, as she got to know him, she would see that he was a really nice guy.
- 11 Wayne Teo gave evidence that when he made the comments relating to the newsletter, which offended the applicant, he had been joking. They were made in a lighthearted manner. At the time he was not aware that the applicant was offended and in cross-examination said "I do apologise".
- 12 The applicant says that she was also hurt by comments made to her at Sarah Black's birthday party. The party was fancy dress and the guests were expected to dress as something beginning with the letter C. The applicant dressed as a corpse. She says that Wayne Teo told her that she looked better than she did at work and that she should dress like that for work. She says that during the course of the evening when there was work related conversation, he ridiculed her suggestions as to potential tenants and was having a dig about her leaving the office after the incident regarding the newsletter.
- 13 Wayne Teo does not recall making the latter comments but says that he made jovial conversation with other party-goers regarding their costumes, and acknowledges saying to the applicant that she looked good and should dress like that at work.
- 14 A further incident arose in May 2000 when the applicant, with a group of others associated with her employer, attended Fashion Week in Sydney. Her invitation to participate had been extended by Wayne Teo during the previous staff Christmas party when he had thanked her for her efforts during the year, as well as thanking other members of staff, and said that as recognition or reward for her good work she was invited to join the group for the Fashion Week trip.
- 15 The group on the trip was made up of Wayne Teo, Kevin Teo, another member of staff, Helen Rae, and the Retail Manager of one of the retail shops which the employer operates within the Centre, John-Alex Tanner. In addition David Spencer, the group's security advisor, also attended. There was evidence of a security briefing provided to those attending to advise them of expectations regarding their conduct; that they were to act in accordance with any directions which might be given by the security personnel; reiterating that the purpose of the trip was essentially a business one; that they should keep any alcohol drinking in check, and that the use of narcotics was prohibited. They were reminded that they were there in a work capacity as representatives of the Teo group and were to behave accordingly. The applicant gave evidence of being uncomfortable about going on this trip and of not wanting to go for a variety of reasons. She feared that if she refused, she would offend Wayne and he would step up his nastiness towards her so she attended.
- 16 There was evidence that the members of the party arrived in Sydney at various times. The applicant was collected from the Ritz Carlton Hotel where the group was staying and taken to Fox Studios where the Fashion Week event was being held. The applicant was collected by David Spencer who gave evidence that during the trip to the Fox Studios, the applicant indicated to him that she would be resigning in the near future and that it was pointless her being there. He asked her how she would go for money and she said that she had paid a surplus amount into her home loan and would be ok for some time.

- 17 One evening, as part of the business trip, the group went to dinner and then to a nightclub. The group was accompanied by David Spencer and another security person from Sydney. During the evening, Wayne Teo was making business contacts. There is evidence of security concerns being raised by the two security personnel. David Spencer gave evidence about being concerned about some men the applicant was talking to. He urged Wayne Teo to either move the group into a private booth or to leave the nightclub. Wayne Teo decided that they should leave. The applicant acknowledges that she was tipsy but not drunk. Evidence suggests that on two occasions Helen Rae was asked to ask her to come back into the group because they were leaving but in the end because of her failure to comply, David Spencer had to take action. The applicant described herself as almost being dragged away. On the way out David Spencer spoke sharply to her. He says that she was asking why they had to leave. According to the applicant he said to her "if I fucking tell you we are leaving, we are leaving". She was offended by this.
- 18 During the evening at the nightclub, another more serious incident occurred. At one point David Spencer noticed that Helen Rae and John-Alex Tanner were not visible to him and he asked the applicant if she would go into the female toilets and check if they were there. She says that she went in and found the two of them very happy and giggly and jumping about. They told her that they had taken speed and asked if she wanted any. The applicant declined and reported the matter to David Spencer and then to Kevin Teo.
- 19 When the group, minus Rae and Tanner, arrived back at their hotel, Wayne Teo had been told of the report that the two had been engaged in taking drugs and he spoke to Kevin Teo about the matter. They agreed that drug taking in those circumstances might warrant instant dismissal and Kevin Teo left the matter to Wayne. The two employees concerned had not returned from the nightclub and Wayne Teo requested that David Spencer return to the night club and direct them to see him. The two saw him separately. It is clear that he gave them each a lengthy and serious counselling, warning that the conduct was totally unacceptable and could jeopardise the company's image. He told them that any future such incident would see them sacked. They appear to have apologised and undertaken to conduct themselves appropriately in the future. The applicant appears disgruntled that Wayne Teo did not dismiss Helen Rae and John-Alex Tanner in Sydney, or did not issue them with a formal written warning.
- 20 The next morning the applicant telephoned Wayne Teo in his room and advised him that she wanted to leave and go back to Perth. He went to her room and the two of them had a very lengthy discussion, such that the group missed the flight to Melbourne. The applicant advised Wayne Teo that she was very upset, that she could not take the nasty treatment which she was receiving from Helen Rae and John-Alex Tanner, that she wanted to go home and that she did not care if it meant that she left her employment. He said to her that he would speak to the two concerned. There is some question as to whether he advised her that she should not have told Kevin Teo and David Spencer about the drug taking or whether he was suggesting to her that as it was his group and that she should have come to him first. In any event, he urged her to come to Melbourne with the rest of the group and see if things could be improved. There is dispute as to whether he said that Kevin had wanted the two sacked or that Kevin had approved of sacking if that was what Wayne decided in his handling of the matter.
- 21 During the conversation, the applicant and Wayne Teo discussed difficulties which the applicant believed she was having because Helen Rae was giving her a hard time in the office and he said that she did it to all of them. She told him that she wanted the trip to be over and was happy to walk away from the job. He asked her if she was happy with her job and she said that she had been enjoying it but was not now. She said that she was looking for a bit of a challenge and wanted to get into the leasing side of things. He advised her that she was a valuable member of the team, that he wanted her to go to Melbourne with the rest of the group and said that if she was still unhappy in Melbourne, that she could go then, but he urged her to see how things turned out in Melbourne.
- 22 The applicant complains that once in Melbourne she was left straggling behind while Helen Rae and John-Alex Tanner were together and that David Spencer and Wayne Teo were together. This is contrary to other evidence, particularly of David Spencer, who says that it appeared quite natural for Rae and Tanner to spend time together however, he had the impression that the applicant was accompanying Wayne Teo and that they went to the same shops together, and that as security consultant to Mr Teo, he was, of course, there to accompany Wayne Teo.
- 23 There is also evidence that the party went to the Crown Casino to look at the retail operations amongst other things, and at some time the applicant and Tanner spent some time together looking at shops.
- 24 While in Melbourne, the party went to dinner with a group of business associates and after the dinner, the applicant thanked Wayne Teo for convincing her to go to Melbourne.
- 25 On the Tuesday night in Melbourne, Wayne Teo gave each of the members of the group a gift in recognition of them working as a team again. The applicant was included in this.
- 26 The applicant claims that on that night she was invited to Wayne's room with the other members of the group and as she walked up the hallway, she could hear voices from Wayne's room. She believes that it was David Spencer who said "God, she is hard work" and others laughing. She said that she knocked on the open door and that they could see that she was stunned and asked if she was sick. It was at this gathering that the members of the group were given the gifts by Mr Teo. The applicant says that this was too little too late. As scheduled, the applicant returned to Perth the next day.
- 27 The applicant claims that when she returned to Perth, she was subject to gossip and labelled as a "dobber" by tenants at the Centre because of her telling her employer about the two employees engaging in drug use. She says that the Centre was very prone to the circulation of gossip. She is critical of Wayne Teo for disclosing that it was she who informed on the other two. She says that from the time she returned from Melbourne, life at work became intolerable because of the attitude displayed towards her by others, in particular the tenants. She is also critical of Wayne Teo in those weeks because she said that he raised the subject of other peoples' drug use and she did not want to hear any more about it.
- 28 The applicant says that she had had a cold for some considerable time before she went to Sydney and Melbourne and although it seemed to have improved by the time she went on the trip, it returned once she got back to work.
- 29 The applicant says that as the situation had become intolerable for her, on the Tuesday or the Wednesday of the last week of her employment, being around the 27 or 28 June 2000, she indicated to Tony Murphy her intention to resign. He spent some time talking with her and urging her not to leave, to take some annual leave and think about the situation, or alternatively to stay until he could take some much needed leave and find a replacement for her. He was of the view that at some point she agreed to remain in the short term but changed her mind. Kevin Teo also attempted to convince the applicant to remain in employment with her employer. Although Kevin Teo does not recall the conversation, the applicant says that he also asked her not to leave. He asked if she would stay at least until Tony Murphy had had a holiday and she said that she could not stay working there with the other people and that their relationship had become strained because they had been told that she had doxed them in. Soon after, Wayne Teo sought to speak to her about her decision however, she was busy at the time and she closed her office door and continued to work. He later came to her

office saying that he wanted to talk about the matter. I accept Wayne Teo's denial that during this discussion he said that he knew everyone was talking about her and calling her names. In regard to the trip to Sydney, he said that everyone makes mistakes and learns by them. He said that the other employees had apologised.

- 30 Wayne Teo says that he discussed with the applicant options of himself and Helen Rae taking additional time away from the office to enable the applicant to sort herself out, or of having the applicant work from a different location so that she did not have to deal with them. However, the applicant was adamant that she was going to leave notwithstanding his attempts to have her stay even for a short time at least to enable Tony Murphy to take some leave. She told Wayne Teo that she blamed him for the attitude taken towards her by the tenants in the Centre and her being labelled a dobber. He says that he flippantly asked her what she expected him to do, "empty the Colonnade and start again?"
- 31 While the applicant says that Wayne Teo was flippant and giggling during this discussion, I am satisfied that if Wayne Teo's attitude was in any way displayed in this manner it was not intended to convey that he did not take the matter seriously. On the contrary he made efforts to accommodate and appease the applicant so as to enable her employment to continue. With there being no resolution and with the applicant clearly blaming Wayne Teo, he left her office.
- 32 The applicant worked out the remainder of that week including Saturday, preparing for the implementation of the Goods and Services Tax and the end of financial year requirements, then she left. The remainder of her notice period was encompassed by annual leave. A few days later, the applicant returned to collect her pay.
- 33 The applicant says that she was so affected by the distress and the circumstances of her employment terminating that she was unable to look for alternative employment for some months. When she did seek employment, it did not take long for her to obtain work. The first job advertisement she responded to was in late August, and by mid September she was employed. The applicant says that she has suffered loss for the intervening period and also has a diminished income on account of the respondent's refusal to provide her with a reference.
- 34 The applicant has also given evidence of other occasions upon which she took offence at Wayne Teo's lack of consideration towards her. She says there were two occasions when people were introduced by Wayne Teo yet he made no effort to introduce her, and this made her feel uncomfortable.
- 35 On another occasion, he told her off for allowing her brother to use the office telephone. She says that he was within his rights. She apologised to him and said that it would not happen again.
- 36 There was also evidence of acts of generosity by Wayne Teo such as loaning the applicant the business's four wheel drive vehicle for a camping holiday with her son, and then offering the use of the vehicle at other times. Of this issue, the applicant says she did not want to take the vehicle in case there were problems with it and she filled the tank and cleaned it before returning it.
- 37 There is evidence of consideration and flexibility allowed to the applicant, and evidence of her work being appreciated, and of her being considered a loyal and well regarded employee. She respected the members of the Teo family other than Wayne. She says that Wayne Teo had no respect for her, that he masterminded her termination and "threw (her) to the dogs".
- 38 There was evidence of difficulties in the applicant's relationship with Sarah Black early in the latter's employment. Those difficulties appear to have been resolved through mediation by Tony Murphy.
- 39 There was evidence from Sarah Black of the applicant scanning the newspapers looking for another job in around February 2000, however, the applicant denies this.
- 40 The tests to be applied in a matter such as this are set out in a number of decisions including *Western Excavating*

(*ECC Ltd v Sharp (1979) QB 761*, the *Attorney General v Western Australian Prison Officers Union of Western Australia (1995) 75 WAIG 3166* and in *Macken, J "The Law of Employment"*, 4th Edition at page 225. The question to be answered is who really terminated the employment, and whether the employee willingly resigned or was in effect forced to do so solely by the conduct of the employer. The authorities also say that if the resignation was effected as a direct result of the employer's conduct rather than the employer's conduct merely being a catalyst for resignation without being a genuine reason for it, the aggrieved employee must promptly resign for it to constitute a dismissal. Otherwise the employee's motives may be open to question or he or she may be seen to have waived the right to rely on the conduct of the employer.

- 41 I have observed the witnesses as they gave their evidence. The applicant gave honest evidence to the best of her recollection, which she acknowledged as being somewhat unclear as to certain occasions such as during discussion with Mr Kevin Teo after the newsletter incident. However, during her evidence the applicant demonstrated that she was particularly, if not overly, sensitive to issues and comments where others in normal circumstances would not have taken offence or become as upset as the applicant has. Kevin Teo was an honest and credible witness. I am satisfied from his evidence that there were considerable efforts to overcome the applicant's concerns. Wayne Teo gave evidence in an honest and straightforward manner and I accept that evidence. I also accept the evidence of Tony Murphy and David Spencer as being reliable.
- 42 Where there is conflict between the applicant's evidence and the respondent's evidence, particularly of Wayne Teo, Kevin Teo, Tony Murphy and David Spencer, as to the context of comments and discussions, I prefer the latter evidence as being more objective and thus accurate as to the interpretation to be placed upon it.
- 43 I have considered all of the evidence in this matter, and conclude that the employer, through Wayne Teo, did not conduct itself, in any one or all of the incidents described in the evidence, in such a way as to breach its obligations to the applicant. From my observations of him as he gave his evidence, it is clear that Wayne Teo was genuinely mystified at the effect that his comments have had on the applicant and has expressed his regret that his comments regarding the newsletter were misconstrued. He valued the applicant's work and viewed her as a loyal and worthy employee. On occasions where the applicant expressed her desire to leave her employment on account of his conduct, or the conduct of others associated with her work, Wayne Teo did his best to overcome any difficulties including making suggestions to enable her to continue in employment. At least on the last occasion on which there was difficulty, he suggested taking additional leave himself or, alternatively, of placing the applicant in a different location so that she could continue in employment.
- 44 As to Wayne Teo's particular conduct and whether it constituted such a fundamental breach of the contract of employment as to allow the applicant to rely on it for the purposes of bringing the employment to an end, I make the following comments. The comments, if made, as to the applicant's appearance and his failure to introduce the applicant, matters about which Mr Wayne Teo either had no recollection or was not asked, were of a very minor, if not trivial, nature. Wayne Teo's comments regarding the newsletter were crude, however, the comments were clearly made in a jovial manner and were treated as such by other employees. This too, was not a serious matter when taken in context. However, if the applicant had intended to rely on that action, she should have done so forthwith. She expressed her intention to Kevin Teo to leave, however, she changed her mind and in accordance with the words used by Mr Smetana, she affirmed her ongoing employment with her employer.
- 45 During the Fashion Week trip, in Sydney, the applicant became upset at others' conduct towards her as a result of it being disclosed by Wayne Teo that she had been the

source of the information regarding their drug taking. She indicated her intention to leave and was not concerned that it might mean the end of her employment. After a long discussion with Wayne Teo, she decided to remain in employment and proceeded to participate in the rest of the trip to Melbourne. While in Melbourne, she thanked Wayne Teo for convincing her to stay and indicated that she was enjoying the rest of the trip. Once again at this point, the applicant affirmed her intention to remain in employment and thereby waived her right to rely on Mr Teo's conduct if that conduct had been improper and went to the root of the contract. However, it is not my view that Mr Teo's conduct breached his obligations to her. Had he not told Rae and Tanner that it was the applicant who informed on them they might reasonably have come to that conclusion themselves. In any event, there was no obligation on Mr Teo to not disclose the source of his information. It is true that it may have been more sensitive towards her not to have disclosed it however, his action in making the disclosure did not go to the heart of her contract of employment.

46 It was unfortunate that upon her return to work the applicant was upset by what she says were unpleasant comments. These comments appear to have come from tenants at the Centre albeit that there was no specific evidence given by the applicant of the particular occasions or comment or by whom they were made. Although it is clear that the applicant was upset by comments made either to her or about her, the employer could not be held responsible for the tenants of the Centre and their conduct towards the applicant. In any event, once the applicant expressed her desire and intention to leave, a month after her return from the Fashion Week trip, more than reasonable efforts were made to convince her to stay.

47 In all of the circumstances, I am not satisfied that the employer, through Wayne Teo, so conducted itself as to entitle the applicant to claim that it was the employer who really terminated the employment. Even if that were so, then I am satisfied that the applicant failed at the appropriate time, to take the necessary steps to rely upon the employer's conduct.

48 Even if all of the events are taken together, and that the decision to resign was the culmination of a series of behaviours by Wayne Teo, I am not satisfied that together they constitute a serious breach, or any breach at all, of the contract of employment to enable the applicant to rely on them all taken together. In addition, the efforts of the employer through Wayne and Kevin Teo and Tony Murphy for her to remain in employment were considerable. Had the applicant taken the suggestions made, including taking some leave to think about the situation and/or other options presented to her, then I am satisfied that in all likelihood no termination of employment would have eventuated.

49 There is one final matter and that is the question of the applicant claiming that the respondent's failure to provide her with a reference has been injurious to her. An employee has no entitlement to a reference from an employer. In fact, in today's climate of litigation and of employers being extremely cautious as to committing themselves in commenting on former employees, it is my experience that many are prepared to offer statements of service but few are prepared to comment on qualitative matters relating to an employee's employment. Furthermore, it is hardly surprising that the employer in this case should refuse to provide the applicant with a reference once having been made aware that she had made a claim of unfair dismissal against it. In both of those circumstances, had I found that she had been unfairly dismissed, I would not find that the applicant had been disadvantaged by the employer in its refusal to provide her with a reference.

50 In all of the circumstances the application is to be dismissed.

2001 WAIRC 01942

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES LOUISE CAROLINE MEYERS,
APPLICANT
v.
LYRICAL HOLDINGS PTY LTD,
RESPONDENT
CORAM COMMISSIONER P E SCOTT
DELIVERED THURSDAY, 1 FEBRUARY 2001
FILE NO/S APPLICATION 1025 OF 2000
CITATION NO. 2001 WAIRC 01942

Result Application alleging unfair dismissal dismissed.

Representation
Applicant Appeared on her own behalf
Respondent Mr A Smetana (of counsel)

Order.

HAVING heard the applicant on her own behalf and Mr A Smetana 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.

[L.S.] (Sgd.) P.E. SCOTT,
Commissioner.

2001 WAIRC 01853

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES TO QUANG TRAN, APPLICANT
v.
SHALIMAR TRADING,
RESPONDENT
CORAM COMMISSIONER A R BEECH
DELIVERED TUESDAY, 23 JANUARY 2001
FILE NO APPLICATION 1082 OF 2000
CITATION NO. 2001 WAIRC 01853

Result Application alleging unfair dismissal dismissed.

Representation
Applicant Mr P. McGarry (as agent) on behalf of the applicant.
Respondent Mr D. Clarke (as agent) on behalf of the respondent.

Reasons for Decision.

- 1 This is an application by Mr Tran that he was unfairly dismissed by the respondent, Shalimar Trading, on 7 July 2000. The respondent is an importer and wholesaler of manchester and other fabric products. The respondent has a warehouse in Osborne Park. Mr Tran was employed for 4½ years as a storeperson. Mr Tran worked with the owner of the business, Mr Singh. There was also a third employee in the warehouse who worked part-time.
- 2 The facts surrounding the dismissal are as follows. Mr Tran had a very good work record and was trusted by Mr Singh. On Monday, Tuesday and Wednesday the 3rd, 4th and 5th of July 2000 Mr Tran was absent from work due to illness. On the first day of the absences, Mr Tran's wife telephoned the respondent and informed Mr Singh that Mr Tran was sick. This was accepted by Mr Singh. On the Tuesday, Mr Tran rang at 11.00am and informed Mr Singh that he would be ill that day and the next day.

Mr Singh asked Mr Tran to ring him by 8:30 in the morning if he is going to be absent from work and that they would talk further on Thursday.

- 3 On Thursday, 6 July 2000, Mr Singh's evidence is that Mr Tran came into his office at approximately 9:00am and "threw" the doctor's certificate for the three-days' absence on Mr Singh's desk. Mr Singh asked Mr Tran to please ring in at 8:30 in the morning if Mr Tran is going to be absent because Mr Singh was often the only other employee in the warehouse and it significantly affected his workload.
- 4 Mr Tran's evidence is that he placed the medical certificate on Mr Singh's desk. However, both Mr Singh and Mr Tran agree in their evidence that they then had something of an argument. Mr Singh indicated towards the end of the argument that Mr Tran should not talk to him in that way and if Mr Tran did not want to work there, he could leave at any time. After that discussion Mr Singh spoke to his wife and told her of the incident. Mrs Singh gave evidence and corroborated Mr Singh's evidence in this regard.
- 5 Shortly after the incident Mr Tran returned to Mr Singh's office and stated that he was very sorry for what happened and he apologized. Both men shook hands and work continued as normal.
- 6 Mr Singh was away from the warehouse on business for the rest of the day until 3:00pm when he returned. Shortly after he returned Mr Tran made two cups of coffee (or tea, the evidence is not clear) and gave one to Mr Singh. The Commission was informed that it was part of Mr Tran's duties to make cups of tea or coffee for his employer and he had made two or three cups of coffee on most days that he had worked there.
- 7 After Mr Singh had drunk most of his coffee he noticed a sediment in the bottom of the cup. He asked Mr Tran what it was and Mr Tran replied "he did not know, it could be anything". Mr Singh states that Mr Tran suggested it might be soap. Mr Singh's evidence is that he touched the residue with his finger and tasted it and said that it was not soap. Mr Singh's evidence is that he thought that the residue looked suspiciously like a pellet of rat poison. Mr Tran asked if he could wash the cup up. Indeed, Mr Singh says that Mr Tran made the request in an unusually hasty fashion and that although it was Mr Tran's practice to wash up the cups, he was normally not so prompt with his request. Mr Tran's evidence does not comment upon this evidence.
- 8 In any event, Mr Singh refused and kept the cup. He went to the kitchen and made another cup of coffee, took a pellet of rat poison from the floor and put it into the cup. He then examined the residue left after approximately 12 to 15 minutes and believed it looked the same as the residue in the cup given to him by Mr Tran. Mr Singh telephoned his wife to tell her of his fears, but was unable to contact her.
- 9 Mr Singh's evidence is that he wanted to make sure of his suspicions and he therefore did nothing further for the rest of the day and at 5:00pm Mr Tran left the premises. Mr Tran shook his hand and indicated he was sorry for the morning's argument. Mr Singh then went home, taking both cups with him and informed his wife of what occurred.
- 10 Mrs Singh's evidence corroborates the evidence of her husband. I accept Mrs Singh's evidence that she became extremely apprehensive. She was aware that her husband had suffered a heart attack in August 1999 and takes tablets which thin his blood. She was concerned at the possible interaction between the medicine and the residue at the bottom of the cup. She therefore insisted that she and Mr Singh went to their local doctor and from there they went to Sir Charles Gairdner Hospital. A copy of the doctor's report from Sir Charles Gairdner Hospital was tendered in evidence. I accept that Mr Singh was informed that it was most unlikely he would suffer any ill effects if at all because the pellet had not wholly dissolved and its quantity was not such as to cause immediate concern.
- 11 Mr and Mrs Singh then discussed the situation. They concluded that they could not trust Mr Tran anymore.

The evidence is that they looked at all of the possible explanations for the residue in the cup. They took into consideration that Mr Tran was in charge of the distribution of rat poison in the warehouse. Pellets are kept on the floor and "cannot fly" into a cup by themselves. The rat poison is not distributed on high shelves in such a way as they could drop into the cup. They concluded therefore that Mr Tran would be dismissed the next day.

- 12 The next day Mr Singh asked Mr Tran what did he put into the coffee? Mr Tran said that he did not know anything. Mr Singh reminded Mr Tran that the previous day Mr Tran had suggested it was soap, and Mr Tran denied that he had said those words. Mr Tran became excited and questioned what proof Mr Singh had of any misdemeanour on his part. He said that if there was evidence it should be in the hands of the police. Mrs Singh offered to call the police but Mrs Tran, who was present, stated that it was not necessary. Ultimately the police were not called. Mr Tran was shouting and insisted that if he had intended to kill Mr Singh he would do so in a far more direct way.
- 13 Mr Tran was then dismissed. A letter carrying that date and carrying with it a termination payout advice was forwarded to Mr Tran. The termination payout paid him to 7 July 2000 and gave him three weeks' pay in lieu of notice and his outstanding holiday entitlements which amounted to a payment of \$2,235.25. This was offset against a personal loan of \$2,500.00 which had been made by the respondent to Mr Tran on 3 May 2000 with a result that the respondent believed Mr Tran owed the respondent \$264.25.
- 14 It is a matter of record that on 11 July 2000 Mr Tran wrote to Mr Singh contesting the reason for his dismissal and that he believed he had been unfairly dismissed due to concerns Mr Tran had of "unsafe work practices". He believed that he should be able to continue to pay back the personal loan on a monthly basis and therefore requested payment of his entitlements.
- 15 This in turn prompted a further letter from the respondent to Mr Tran dated 19 July 2000 which stated that although the letter of 7 July 2000 referred to "irreconcilable personal differences" as reason for the dismissal, this was a reference to "the attempt by you to poison your employer ... with rat poison obtained from the warehouse". The letter noted that the respondent had now reported the matter to the police as it seemed inevitable that Mr Tran intended on trying to use "some type of coercion to force us to give you entitlements that you are not lawfully entitled to". The letter continued that Mr Tran's actions on Thursday, 6 July 2000 amounted to gross misconduct and therefore "we were and are entitled at law to terminate your employment without prior notice and immediately".

Conclusions

- 16 The decision in this matter is relatively straightforward. Mr Tran's Notice of Application to the Commission states that he believes his dismissal was unfair because of Mr Tran's concerns regarding unsafe work practices and his absence with a medical certificate earlier in the week. It can be quite shortly stated that Mr Tran gave no evidence in the Commission of unsafe work practices. Some two years prior to the dismissal, Mr Tran had raised some matter concerning a forklift however there was no other issue referred to in the Commission. To the extent that Mr Tran's evidence before the Commission does not deal with the matters raised in his Notice of Application, Mr Tran's application must fail.
- 17 Furthermore, on the evidence, I am quite satisfied that Mr Tran was not dismissed due to his absence on the three previous days. Mr Singh's concern had not been due to the absence of itself but rather the timing of any notification from Mr Tran to Mr Singh that he would not be coming to work. As the events of Thursday, 6 July 2000 clearly showed, there was no problem whatever regarding Mr Tran's continuing to be employed following his return to work from the illness. Therefore, Mr Tran's claim is not made out for that reason also, and it must fail.

- 18 Indeed, Shalimar Trading has substantiated the reasons it gave for dismissing Mr Tran. Those reasons relate to the discovery by Mr Singh of residue of rat poison in the cup of hot drink made for him by Mr Tran. I unhesitatingly reject any suggestion that Mr and Mrs Singh fabricated the entire story. It was never suggested to either of them in their evidence that they were fabricating their evidence. Nor could it have been, for I am quite satisfied having observed both Mr and Mrs Singh in their evidence that they were both careful and patently straightforward in their relation of the events that occurred.
- 19 There is every reason in the evidence for concluding that Mr Singh had no ulterior motive in wishing to dismiss Mr Tran. Mr Singh had given Mr Tran a pay rise and an adjustment to his superannuation. He had extended personal loans to him on two occasions. He relied on Mr Tran's presence in the warehouse to reduce his workload and I accept Mr Singh's evidence that he found his workload somewhat excessive following the departure of Mr Tran.
- 20 Further, Mr Tran himself acknowledges that Mr Singh came to him after drinking the tea or coffee and pointed to the residue and Mr Tran noticed the residue in the bottom of the cup. Therefore there was indeed residue in the bottom of the cup. The tendering by Mr Singh of the doctor's notes from the visit to Sir Charles Gairdner Hospital, and the Forensic Science Laboratory report of 7 September 2000 confirming the consistency between the residue and the ratsak pellet dispel any doubt. There was residue of rat poison in the drink which had been made by Mr Tran for his employer.
- 21 It is not for the Commission to judge whether or not there was an attempt by Mr Tran to poison his employer. In a matter such as this where Mr Tran has been dismissed for alleged misconduct the employer will satisfy the evidentiary onus which is cast upon it if it demonstrates that insofar as was within its power, before dismissing the employee, it conducted as full and extensive investigation into all of the relevant matters surrounding the alleged misconduct as was reasonable in the circumstances; it gave the employee every reasonable opportunity and sufficient time to answer all allegations and respond thereto; and that having done those things the employer honestly and genuinely believed and had reasonable grounds for believing on the information available at that time that the employee was guilty of the misconduct alleged; and that, taking into account any mitigating circumstances either associated with the misconduct or the employee's work record, such misconduct justified dismissal (*Western Mining Corporation v. AWU* (1997) 77 WAIG 1079 at 1084 citing *Bi-Lo Pty Ltd v. Hooper* (1992) 53 IR 224 at 229).
- 22 The evidence before the Commission is that a pellet of rat poison was found in Mr Singh's cup of hot drink. Even if Mr Tran did not deliberately place the pellet into the cup, as the employee responsible for making his employer's drink, he must bear the ultimate responsibility for the pellet having being in the cup even if it was there without his knowledge. It states the obvious to say that Mr Tran could be expected to ensure the cleanliness of the cup prior to its use.
- 23 I am satisfied that Mr Singh properly investigated the matter. He did so by giving Mr Tran two opportunities to explain the residue. His suspicions regarding the residue were ultimately confirmed. Although the confirmation that the residue was rat poison came after the dismissal, it is quite clear that an employer may rely upon facts which came to light after the dismissal to justify the dismissal which occurred: *Byrne and Frew v. Australian Airlines* (1995) 185 CLR 410. The evidence is that Mr Tran was responsible for the distribution of rat poison and that Mr Singh had no involvement in the distribution. There is no suggestion in the evidence, including the evidence of Mr Tran, that there had been a more vigorous distribution of rat pellets recently such that pellets may have lodged on upper surfaces. Furthermore, the evidence is that the mugs used for staff tea or coffee were either kept in the refrigerator or stored facedown.
- 24 In the absence of any other rational explanation, Mr Tran bears the responsibility for the residue being in the cup,

even if he did not put it there. I quite accept Mr Singh's evidence that in the context of the argument which had occurred earlier in the day, he believed he could no longer trust Mr Tran.

- 25 I do not overlook the fact that Mr Tran's evidence is that he was unemployed for the 12 months prior to him finding employment with the respondent and that he has been unable to find employment since. Nevertheless, that fact of its own is not sufficient to render the dismissal of Mr Tran unfair.
- 26 An issue arose during the proceedings about whether Mr Tran was summarily dismissed for gross misconduct. That is what the respondent says in its Notice of Answer, and what it purported to do in its letter to Mr Tran of 19 July 2000. I find as a matter of fact that Mr Tran was dismissed on 7 July 2000. That is, Mr Tran was not dismissed summarily, he was dismissed with three weeks' pay in lieu of notice and his outstanding holiday entitlements. (I suspect that Mr McGarry is correct in his assertion that Mr Tran would have been entitled to four weeks' notice pursuant to the operation of s.170CM of the *Workplace Relations Act* 1996 because of his length of service and age.)
- 27 The point to be made is that Mr Tran was dismissed on 7 July 2000. That dismissal brought about the end of the employment relationship. It was simply not possible in law for the respondent to dismiss him again 12 days later on the 19 July 2000. It states the obvious to say that on 19 July 2000, Mr Tran was not an employee. If he was not an employee, Mr Singh could not dismiss him on 19 July 2000. It is not possible for the purported dismissal on 19 July 2000, as reflected in the Notice of Answer, to "supersede" the fact of what indeed occurred. It makes no difference whether or not at the time of the dismissal Mr and Mrs Singh, as Directors of the respondent, knew their rights, or whether by the time of 19 July 2000 they had received legal advice and believed they then understood their rights. Mr and Mrs Singh are bound by their actions on 7 July 2000. They dismissed Mr Tran then and that is the dismissal which occurred and it is the dismissal which now stands. It is that dismissal which the Commission finds was justified and which was not unfair.
- 28 It follows that an Order now issues dismissing Mr Tran's application.

2001 WAIRC 01854

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES TO QUANG TRAN, APPLICANT
v.
SHALIMAR TRADING,
RESPONDENT

CORAM COMMISSIONER A R BEECH

DELIVERED TUESDAY, 23 JANUARY 2001

FILE NO APPLICATION 1082 OF 2000

CITATION NO.

Result Application alleging unfair dismissal dismissed.

Representation Applicant Mr P. McGarry (as agent) on behalf of the applicant.

Respondent Mr D. Clarke (as agent) on behalf of the respondent.

Order.

HAVING HEARD Mr P. McGarry (as agent) on behalf of the applicant and Mr D. Clarke (as agent) on behalf of the respondent, the Commission, pursuant to the powers conferred in it under the *Industrial Relations Act 1979* hereby orders—

THAT the application is hereby dismissed.

(Sgd.) A. R. BEECH,
Commissioner.

[L.S.]

2001 WAIRC 01888

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	STEPHEN MAURICE WHITE, APPLICANT v. TERENCE RUSH TRADING AS ROY WESTON BELMONT, RESPONDENT
CORAM	COMMISSIONER J H SMITH
DELIVERED	THURSDAY, 25 JANUARY 2001
FILE NO	APPLICATION 1196 OF 2000
CITATION NO.	2001 WAIRC 01888
Result	Application for unfair dismissal dismissed
Representation	
Applicant	in person
Respondent	in person

Reasons for Decision.

- 1 The Applicant, Stephen Maurice White, ("the Applicant") made an application under s.29(1)(b)(i) of the Industrial Relations Act 1979 ("the Act") on 3 August 2000. The Applicant claims that he was unfairly dismissed by Terence Rush trading as Roy Weston Belmont ("the Respondent") on 18 July 2000.
- 2 The Respondent's employment of the Applicant came to an end following an absence by the Applicant from his employment, commencing in the first week of July 2000 for a period of over two weeks.

Background

- 3 In early February 2000 the Applicant obtained an offer of employment from the Respondent to work as a real estate sales representative at the Respondent's office. The Applicant then enrolled in the Real Estate Institute of Western Australia Real Estate Agents course and successfully completed the course on 3 March 2000.
- 4 The Applicant commenced employment as a real estate sales representative ("sales agent") at the Respondent's office, Roy Weston Belmont, on about 7 or 8 March 2000. The terms of engagement were that the Applicant would be paid commission on properties that were listed by him and sold by another agent, properties listed by other agents and sold by him, and properties listed and sold by him. The Respondent offered to pay Mr White a retainer of \$18,000 per annum as an advance against future commission earned, however the Applicant advised the Respondent that he did not wish to be paid a retainer as he had some savings that he could rely upon until he could achieve a sufficient income from commission payments.
- 5 The Applicant worked long hours in the first three months of his employment. He testified that he often worked from 7.00 o'clock in the morning until 11.00 o'clock at night.
- 6 The Applicant was allocated an area in Kewdale to canvas for work. The area contained approximately 1,000 houses. In the first few months of the Applicant's employment he spent much of his time preparing a business development area plan for his area. The Applicant testified that the development of a business development area plan was necessary to enable him to build a comprehensive knowledge of all of the properties in his area. He prepared an extensive business development area plan, comprising 26 lever-arch folders of information containing tax maps and the sales history of properties. He also carried out a large number of appraisals of properties in his area. As a result of his efforts he was able to list a number of properties for sale.
- 7 It was apparent from the evidence that the sales agents employed by the Respondent were able to set their own office hours and were free to pursue listings and sales in the way they thought fit. However it was common ground that the Applicant and all other sales agents were required to carry out rostered office duties and to attend two office

sales meetings a week. The compulsory sales meetings were conducted each week on Tuesday morning and Friday morning, and one sales agent was rostered to work in the morning or in the afternoon each day between Monday and Friday and on Saturday mornings. The roster was set monthly. The roster for July 2000 required the Applicant ("Steve") and the other sales agents to work at the Belmont office as follows:

"JULY 2000	AM	PM
Saturday 1	Rowan	
Monday 3	Steve	Stuart
Tuesday 4	Julia	Stuart
Wednesday 5	Peter G	Rowan
Thursday 6	Sue	Lesley
Friday 7	Peter B	Lilly
Saturday 8	Steve	
Monday 10	Stuart	Peter G
Tuesday 11	Lesley	Stuart
Wednesday 12	Julia	Rowan
Thursday 13	Sue	Peter G
Friday 14	Peter B	Lilly
Saturday 15	Steve	
Monday 17	Stuart	Peter G
Tuesday 18	Lesley	Steve
Wednesday 19	Julia	Rowan
Thursday 20	Sue	Peter G
Friday 21	Peter B	Lilly
Saturday 22	Stuart	
Monday 24	Stuart	Peter B
Tuesday 25	Steve	Stuart
Wednesday 26	Julia	Rowan
Thursday 27	Sue	Peter G
Friday 28	Lesley	Lilly
Saturday 29	Peter B	
Monday 31	Steve	Lesley"

- 8 Despite the Applicant's diligent efforts in the first months of his employment, at the end of June 2000, he had only been paid commission on two properties.

Issues in Dispute

- 9 The Applicant says that he was ill with influenza and migraines from 5 July 2000 to 17 July 2000 and that without warning or cause, on about 21 July 2000 he received a letter from the Respondent terminating his employment.
- 10 The Respondent says that the Applicant did not attend work on 3 July 2000. The Respondent also says that he was satisfied that the Applicant was ill until 11 July 2000. The Respondent contends that he attempted to contact the Applicant on a number of occasions after 10 July 2000 but the Applicant did not return his calls, nor did he report for work. Further the Applicant did not attend a sales meeting on Friday, 14 July 2000, or attend work in accordance with the roster on Saturday, 15 July 2000 and on Tuesday, 18 July 2000, or attend a sales meeting on 18 July 2000.
- 11 The Respondent says that after the Applicant did not attend the sales meeting on 18 July 2000 he concluded that the Applicant had abandoned his employment. The Respondent also says he accepted the Applicant's repudiation of the contract of employment and sent him a letter dated 18 July 2000 stating that his employment was terminated.

The Applicant's Evidence

- 12 The Applicant testified that after working long hours in the first three months of his employment he was run down. He said he contracted influenza on or about 3 July 2000 and was ill from 5 July 2000 until 17 July 2000. He said he had never really been ill before and had always been a very fit person. He did not however attend a doctor whilst absent from work.
- 13 The Applicant initially said in his evidence that he was off sick from Monday, 5 July 2000, to Monday, 17 July 2000. However he also testified that during his absence he went into the office twice at night-time to clear his desk. He said the first occasion was either on Tuesday,

4 July 2000, or Wednesday, 5 July 2000. He said on the first occasion he came into the office the Respondent arrived as he was leaving but he did not have a conversation with him (the Respondent) as such. The Applicant said his wife later rang the office on Thursday, 6 July 2000, and advised the Respondent's secretary that he was ill. He said he telephoned another sales agent, Mr Stuart Smyth, and informed him he was ill and asked him to cover his roster for Saturday, 8 July 2000, and for the following Saturday, 15 July 2000.

- 14 The Applicant testified that another sales agent, Mr Peter Gorski, telephoned him on Tuesday, 11 July 2000. The Applicant said that he informed Mr Gorski that he was still ill and he should be back in the office in a couple of days. The Applicant said that he received a telephone message from the Respondent and he returned his call and spoke to the Respondent and informed him that he was ill. However, he did not say when that telephone conversation occurred. He also said that he received a further message on his answering machine from the Respondent and he returned the call but the Respondent was not in the office when he telephoned, so he left a message for the Respondent to say that he had returned his call. It appears all of these calls occurred prior to 11 July 2000, as the Applicant conceded that he had had no contact with the Respondent or with any other of the Respondent's employees after 11 July 2000.
- 15 On Sunday, 16 July 2000, the Applicant said he went into the office in the evening for the second time to pick up some material from his desk and found a note on the whiteboard in the office which read "Welcome home, Murray".

- 16 On about Friday, 21 July 2000, the Applicant received a letter from the Respondent advising him that his employment had been terminated. The letter was dated 18 July 2000 and was addressed to the Applicant and signed by the Respondent. The letter states—

"RE: EMPLOYMENT WITH ROY WESTON BELMONT

I refer initially to our conversation on the night of Tuesday July 4th when I requested that you attend meetings and to inform the office of any absences.

Because of your continued and prolonged absence without any reasonable explanation or communication other than a vague message via another staff member, I have decided to terminate your employment effective immediately.

Your entry code has been disabled and I would appreciate your returning the front door key and MLS Super Key during business hours without delay."

- 17 The Applicant said that after he received the termination letter he thought the Respondent had decided to terminate him because he had engaged a new sales agent. It was his view that the office was already very crowded and there was insufficient room for another desk to be placed in the room for another sales agent.

The Respondent's evidence

- 18 The Respondent gave evidence that the Applicant was absent from work from Monday, 3 July 2000, and that he did not report for work when rostered on 3 July 2000, nor did he attend the sales meeting on Tuesday morning on 4 July 2000. The Respondent testified that on the evening of 4 July 2000, he went into the office after the office alarm was activated. He said when he arrived the Applicant was leaving. He said he asked him why he was not at the sales meeting that morning to which the Applicant replied that he had been ill. He (the Respondent) explained to the Applicant that he needed to know what he was doing at all times and that he needed to contact him (the Respondent) if he was going to be absent for any reason. He testified that the Applicant smiled as if "he wasn't taking my slight reprimand seriously, and I said to him, 'No, Steve, I am very serious about that. I do need to know where you are'".

- 19 The Respondent said that on Thursday, 6 July 2000, the Applicant's wife called into the office to return a property folder after another sales agent telephoned the Applicant

and asked for the folder to be returned. Whilst at the office the Respondent spoke to the Applicant's wife who informed him that her husband was ill and may not be able to attend the sales meeting scheduled for the next day.

- 20 The Respondent testified that at the sales meeting on Tuesday, 11 July 2000, he was informed that Mr Smyth had covered the Applicant's roster on Saturday, 8 July 2000. He said he was also informed by Mr Gorski that he had spoken to the Applicant a couple of days previously and that the Applicant had informed him (Mr Gorski) that he was still ill and would be back to work in a couple of days.
- 21 The Respondent said he made several attempts to telephone the Applicant on Monday, 10 July 2000, Tuesday, 11 July 2000 and on Wednesday, 12 July 2000, without success. He said he left messages on his mobile telephone voice mail and on his answering machine, but received no response from the Applicant or his wife.
- 22 By Tuesday, 18 July 2000, the Applicant had missed five sales meetings. The Respondent testified that by that time he suspected that the Applicant had become disillusioned with selling real estate and concluded he had abandoned his employment. He said he formed this view after speaking to other staff members. In particular, Mr Smyth informed him that the Applicant became disillusioned when he recently attended a training course, as the trainer was not personally using the "sales system" advocated in the course. He said that after considering all of these matters and the fact that, in his view, the Applicant had not been very successful in selling real estate industry, he concluded that the Applicant was not ill.
- 23 The Respondent said that although he concluded the Applicant had abandoned his employment, he sent the letter of termination because he needed to get the office keys back. The Respondent said that if after he had sent the letter the Applicant had picked up the telephone and spoken to him, he would have overlooked his absence and re-employed him. However, the Applicant did not do so.
- 24 The Respondent also testified that the engagement of another sales agent was unrelated to the reason why he sent the Applicant a letter of termination. He said the number of sales agents he employees fluctuates all the time and that although he had recently engaged another sales agent called Murray, Murray had commenced work in the first week of the Applicant's absence. He said Murray had worked for him before and had resigned because he was unsuccessful, but that he wished to try again.
- 25 Several of the Respondent's employees were called by the Respondent to give evidence.
- 26 The first was Mr Smyth who testified that he recalled covering the Applicant's roster one day in July, that day being the day before he had a boating accident in which he fractured a vertebrae in his back. He said as a consequence of the injury he was off work for three weeks. He said prior to his accident he recalled the Applicant asked him to cover for him on the Saturday but he could not recall the Applicant asking him to cover for him for two consecutive Saturdays. Further he could not recall the reason why the Applicant asked him to work his roster. Mr Smyth said whilst he was recovering from his injury, he reported to his employer almost every day.
- 27 Ms Susan Taylor testified that during the Applicant's first week of absence she telephoned the Applicant at home to see how he was and he returned her call. She said that he told her that he was fine but that he found being in the office distracting and that he was not getting much work done. She also said that he had informed her that he was doing his work in the evenings and that he had been in the office the night before and tripped off the alarm. Further she said that he said that the Respondent had given him a "bullocking" about missing sales meetings and now he knew not to miss future sales meetings.
- 28 Two other sales agents, Ms Julia Famlonga and Ms Lesley Bastion, gave evidence in respect of peripheral issues.

However their evidence did not directly address the Applicant's absence in July 2000 or the reason why he was absent.

Conclusion

- 29 The onus is on the Applicant to demonstrate that the dismissal was unfair on the balance of probabilities.
- 30 The Applicant strongly contends that the Commission should reject the evidence given by the Respondent and his employees on grounds that they did not give their evidence truthfully. Further that the Commission should find that each of the employees could not be considered to be an unbiased witness as each of them are still employed by the Respondent.
- 31 The Applicant contends that the Respondent's business was run like a family and there was sufficient information conveyed to the Respondent that he was not attending work because he was ill.
- 32 The Respondent pointed out that it is the Applicant's evidence that he was ill until 17 July 2000, but that he did not report for work on that day, or on 18, 19, 20 or 21 July 2000.
- 33 The Applicant's own evidence establishes that he was not ill on 18, 19, 20 or 21 July 2000, yet he did not report for work on those days. Further his evidence establishes that he did not make any attempt to contact the Respondent or any other person at the Respondent's office after 11 July 2000 despite the fact that he was aware that he was rostered to work on Saturday, 15 July 2000, and Tuesday, 18 July 2000.
- 34 As Commissioner Scott in *Brown v F & C Dall trading as The Toodyay Junction* (2000) 80 WAIG 4415 at 4418 pointed out—
- “Abandonment of employment is often defined as being the failure of the employee to attend for work over a period of days. It usually involves the employee's failure to advise the employer of his/her absence and leaving the employer uncertain as to the intentions of the employee over a significant period of time.”
- 35 If regard is had only to the Applicant's evidence, his evidence establishes that he abandoned his employment.
- 36 In any event to the extent that it is necessary to determine whether the Applicant was aware that he was required to keep the Respondent regularly informed as to the likely duration of his incapacity of work, I make the following findings—
- (a) I find that some aspects of the Applicant's evidence were unsatisfactory. In particular, his evidence of the conversation he had with the Respondent on the night the Respondent came into the office was vague and unconvincing. I do not find Mr Smyth's evidence reliable, as his recollection of events was vague. The Respondent and Ms Taylor gave their evidence in a straightforward manner and their evidence was not broken down in cross-examination.
- (b) After having regard to the evidence given by the Respondent and Ms Taylor, and to the statement in the termination letter dated 18 July 2000 that refers to the warning given to the Applicant by the Respondent on 4 July 2000, I find that the Applicant was instructed by the Respondent on 4 July 2000 that he was required to attend all sales meetings and inform him (the Respondent) of all absences.
- 37 Having regard to all of the foregoing the application is dismissed.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES STEPHEN MAURICE WHITE,
APPLICANT

v.

TERENCE RUSH TRADING AS ROY
WESTON BELMONT, RESPONDENT

CORAM COMMISSIONER J H SMITH

DELIVERED THURSDAY, 25 JANUARY 2001

FILE NO APPLICATION 1196 OF 2000

CITATION NO. 2001 WAIRC 01878

Result Application for unfair dismissal dismissed

Representation

Applicant in person

Respondent in person

Order.

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.) J. H. SMITH,
Commissioner.

[L.S.]

2001 WAIRC 01815

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES YONG YEE (DESMOND) YAP,
APPLICANT

v.

PARAGON MARKETING PTY LTD,
RESPONDENT

CORAM COMMISSIONER A R BEECH

DELIVERED TUESDAY, 19 DECEMBER 2000

FILE NO APPLICATION 1233 OF 2000

CITATION NO. 2001 WAIRC 01815

Result Application for denied contractual entitlements granted.

Representation

Applicant Mr Y. Yap on his own behalf as the applicant.

Respondent No appearance on behalf of the respondent.

Reasons for Decision.

(Extemporaneous)

- 1 I am satisfied from Mr Yap's evidence that he has a truthful recollection of what has occurred and his evidence is supported by the exhibit that has been tendered and I find that Mr Yap was indeed employed on a commission basis by Paragon Marketing Pty Ltd at the rates of commission, depending upon the customer, that are set out in exhibit 1. I also accept that Mr Yap has done the calculations necessary to reconcile the amounts that he is owed and the amounts that he has been paid and that the balance between the two is \$484.50. I am therefore satisfied that Paragon Marketing Pty Ltd owes Mr Yap that sum of money. I am also satisfied that Mr Yap has taken all steps appropriate to retrieve or to receive that money from Paragon Marketing Pty Ltd and that it just has not been paid. Indeed, from Mr Yap's evidence he has just been ignored, as indeed this Commission has just been ignored by Paragon Marketing Pty Ltd.

- 2 The circumstances where what is a relatively minor sum of money remains outstanding for this period of time and the respondent company makes no effort to defend itself makes this quite an unusual and, I think extreme case. It reflects all credit on Mr Yap that he has taken these steps and it reflects most poorly on Paragon Marketing Pty Ltd.
- 3 I have no doubt that an Order should now issue that requires Paragon Marketing Pty Ltd to forthwith pay Mr Yap the sum of \$484.50.
- 4 The final matter that I wish to raise is that ordinarily this Commission does not award costs. However, it is able to do so if the circumstances are of such an unusual or extreme nature, and in this case, in all of the circumstances, I think that this fits that description.
- 5 On the limited information that I have before me, it does not seem unreasonable in this case that costs of \$110.00 be awarded against Paragon Marketing Pty Ltd in favour of Mr Yap. The Order therefore will include not only that Paragon Marketing pay \$484.50 but it also pays Mr Yap's costs of having pursued this matter and the costs that effectively he is responsible for his mother taking these steps because of Mr Yap's age and it seems to be therefore that an Order also ought to issue providing for a further \$110.00.
- 6 Order accordingly.

2000 WAIRC 00923

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES YONG YEE (DESMOND) YAP,
APPLICANT
v.
PARAGON MARKETING PTY LTD,
RESPONDENT

CORAM COMMISSIONER A R BEECH

DELIVERED WEDNESDAY, 18 OCTOBER 2000

FILE NO APPLICATION 1233 OF 2000

CITATION NO. 2000 WAIRC 00923

Result Interlocutory Order Issued.

Representation Applicant Mr Y. Yap appeared on his own behalf as the applicant.

Respondent No appearance on behalf of the respondent.

Order.

WHEREAS at a conference held before the Commission pursuant to s.32 of the *Industrial Relations Act 1979* it became apparent to the Commission that the terms of employment

between the applicant and the respondent are set out in a written contract signed by the applicant;

AND WHEREAS the applicant informed the Commission that he does not have a copy of that contract;

AND WHEREAS the Commission is of the opinion that a copy of the contract should be produced to Mr Yap in order to allow him to properly present his claim in the Commission;

NOW THEREFORE, I the undersigned, pursuant to the powers conferred on me under s.27(1)(o) of the *Industrial Relations Act 1979*, hereby order—

THAT Paragon Marketing Pty Ltd supply Desmond Yap with a copy of the contract between it and Mr Yap within 7 days of the date of this Order.

[L.S.] (Sgd.) A. R. BEECH,
Commissioner.

2000WAIRC 01660

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES YONG YEE (DESMOND) YAP,
APPLICANT
v.
PARAGON MARKETING PTY LTD,
RESPONDENT

CORAM COMMISSIONER A R BEECH

DELIVERED WEDNESDAY, 20 DECEMBER 2000

FILE NO APPLICATION 1233 OF 2000

CITATION NO.

Result Application for denied contractual entitlements granted.

Representation Applicant Mr Y. Yap on his own behalf as the applicant.

Respondent No appearance on behalf of the respondent.

Order.

HAVING HEARD Mr Y.Y. Yap on his own behalf as 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—

1. THAT Paragon Marketing Pty Ltd forthwith pay Yong Yee Yap the sum of \$484.50.
2. THAT Paragon Marketing Pty Ltd forthwith pay Yong Yee Yap the sum of \$110.00 for costs incurred.
3. THAT liberty be reserved to the applicant to apply to amend the name of the respondent.

[L.S.] (Sgd.) A. R. BEECH,
Commissioner.

SECTION 29 (1)(b)—Notation of—

Applicant	Respondent	Number	Commissioner	Result
Allen DR	Rural Traders Company Ltd T/As RTC	2050/2000	Beech C	Discontinued
Baines R	Boral Formwork and Scaffolding Pty Ltd	1220/2000	Fielding SC	Discontinued by leave
Bassett MI	Rookleys	1737/2000	Gregor C	Consent Order
Bellantone G	Kim Hutchins—Drake Jobseek	1904/2000	Coleman CC	Discontinued
Beresford JL	IQ One Hundred Pty Ltd	861/2000	Gregor C	Discontinued
Bishop B	Spencer Signs (Derek Spencer-Manager)	1224/2000	Coleman CC	Dismissed
Blackaby DE	J Blackwood & Son Ltd	1219/2000	Coleman CC	Discontinued

Applicant	Respondent	Number	Commissioner	Result
Bliss K	Gilmac (W.A.) Pty Ltd	1642/2000	Scott C	Dismissed
Bobardt K	Florides Technologies Pty Ltd Trading As Seed & Grain Technology	1923/2000	Gregor C	Consent Order
Bosch S	Harry Tan Electronics T/A Tang Professional Computers	2147/2000	Scott C	Withdrawn by leave
Botes D	Infosci Pty Ltd	1109/2000	Scott C	Dismissed
Brown BJ	Kapiris Bros (WA) P/L	1852/2000	Coleman CC	Discontinued
Burdett JJ	Daimler Chrysler Australia Pacific Pty	1539/2000	Fielding SC	Discontinued
Busfy M	Bateman Mixtec Pty Ltd AN 081 516 190	1565/2000	Smith C	Dismissed
Cain IF	Fleetwood Corporation	1594/2000	Scott C	Dismissed
Campbell T	Red Bear	2156/2000	Coleman CC	Discontinued
Carter BP	Tree Top Walk Motel & Restaurant	1666/2000	Gregor C	Discontinued
Cordes DJ	Eftus Management Pty Ltd T/A Securus and Securus, Darowa Corporation	1364/2000	Gregor C	Discontinued
Cripps BA	Rowson's Plumbing Services Pty Ltd	1116/2000	Scott C	Dismissed
Crump CP	Hans Vogels	1782/2000	Smith C	Dismissed
Curtis JR	Panos Safety	2110/2000	Fielding SC	Discontinued
Cutting KL	Burns & Baker Accountants Pty Ltd	2026/2000	Gregor C	Discontinued
Depierre J	Antonietta Pedersen T/As The Bell House Café	1243/2000	Smith C	Discontinued by leave
Deugd N	Golden Silk Pty Ltd t/a Classique Imports Guildford	1971/2000	Beech C	Withdrawn by leave
Doktorovich A	Central Metropolitan College of TAFE	1111/2000	Scott C	Dismissed
Dunham MS	Riberi Joinery	1696/2000	Smith C	Discontinued
Dunning PV	Hedland First National	1485/2000	Kenner C	Discontinued
Eric S	Woods Watts & Associates	2146/2000	Fielding SC	Discontinued
Erol C	South West Irrigation Management Cooperative Ltd Geoff Calder—General Manager	466/2000	Gregor C	Discontinued
Ferguson PA	Limestone Resources Australia Pty Ltd	1468/2000	Fielding SC	Discontinued
Fitzgerald RE for	Bradken WA (Part of Smorgan Steel Group)	1850/1999	Smith C	Dismissed want of prosecution
Fletcher BJ	Precision Cabinets	1398/2000	Beech C	Discontinued
Fredericks PL	Dealand Holdings P/L	1829/2000	Coleman CC	Discontinued
Freeman LC	Port Developments Pty Ltd	1992/2000	Gregor C	Granted
Gamir TG	Welcome Realty	1469/2000	Beech C	Discontinued
Gasson A	Bright Blue Holdings Pty Ltd t/a Cambuild	1769/2000	Beech C	Discontinued
Gleeson RJ	Boral Asphalt	1918/2000	Fielding SC	Discontinued
Goswami M	Infosci Pty Ltd	1108/2000	Scott C	Dismissed
Green D	SFM Engineering Pty Ltd	1370/2000	Smith C	Discontinued by leave
Griffiths OW	Western Mining Company Resources Pty Ltd	1663/2000	Smith C	Dismissed
Griniunas R	Marie Stopes International Midland W.A.	1/2001	Fielding SC	Discontinued
Hadjimihalakis B	Perth Football Club	608/2000	Smith C	Discontinued by leave
Harding RA	Jazzstar Investments Pty Ltd T/A Dependable Roofing	1876/2000	Beech C	Discontinued
Harress P	Baroid Australia Pty Ltd (CAN 000 708 510)	988/2000	Fielding SC	Discontinued by leave
Harrison SE	Piperlea Pty Ltd	1648/2000	Beech C	Discontinued
Hastie K	Kingfisher (WA) Pty Ltd	1933/1999	Beech C	Discontinued
Healy BJ	Spotless Services Australia Limited Trading As SSL Nationwide Facilities Management	1562/2000	Scott C	Dismissed
Heaney AN	Melville Motors Pty Ltd	1793/2000	Coleman CC	Discontinued
Hernandez R	Health Benefit Fund of Western Australia Inc (CAN 009 268 277)	1560/2000	Smith C	Discontinued by leave
Hill WD	Ilec Enterprises Pty Ltd CAN 086 869 696, Ilec Investments Pty Ltd CAN 087 187 915by leave	915/2000	Smith C	Discontinued
Hitsert LS	Northam Share & Care (Inc.)	1192/2000	Fielding SC	Discontinued by leave
Howarth GA	Demilo Resources Trust	1465/2000	Coleman CC	Discontinued
Johnson KI	Tyre Marketer (Aust.)	1959/2000	Scott C	Dismissed
Jones D	Inghams Enterprises Pty Ltd	1585/2000	Beech C	Discontinued
Kendall JA	Tasty Meals Lunch Bar	1773/2000	Gregor C	Dismissed
Kitchen S	Ikea	1957/2000	Gregor C	Discontinued

Applicant	Respondent	Number	Commissioner	Result
Knowles L	Dunsborough Bakery Dunsborough	2067/2000	Scott C	Dismissed
Lane SC	System Holdings Pty Ltd	2124/2000	Gregor C	Discontinued
Lebeidi K	Crystal Lake Holdings Pty Ltd T/A Millennium Fine Food Café Restaurant	945/2000	Kenner C	Dismissed
Lewis SP	Tree Top Walk Motel & Restaurant	1667/2000	Gregor C	Discontinued
Logan M	Mr S Irvine Monsoon Architectural	1900/1998	Smith C	Dismissed for want of prosecution
Lowenhoff A	Irvine Holdings Pty Ltd t/a Road Tested Transmissions	1728/1996	Beech C	Discontinued
Lypka NL	Pierponte Pty Ltd	1494/2000	Gregor C	Discontinued
Maffina JF	J.D. Milner and Associates	1812/2000	Beech C	Discontinued
Mazzucato PD	Keel Security Services	1760/2000	Scott C	Withdrawn by leave
McCartney S	Ebridal.com Ltd	2064/2000	Fielding SC	Discontinued
McManus BEG	Industrial Galvanizers Corporation Pty Ltd T/A Industrial Galvanizers (WA)	1584/2000	Beech C	Struck out for want of prosecution
McNeill SL	Multifax Copiers Pty Ltd	1961/2000	Scott C	Withdrawn by leave
Mueller O	Warren F Johnson	1357/1999	Coleman CC	Discontinued
Murphy BJ	T & J Burke Pty Ltd (084 557 602) T/A Burkeair, K & G Webb Pty Ltd T/A Burkeair	228/2000	Gregor C	Discontinued
Murray MJ	Exosteel Holdings Pty Ltd (CAN 091 954 442)	1480/2000	Fielding SC	Discontinued
Murrell C	Gosnells Pharmacy	1681/2000	Fielding SC	Discontinued
Nardi B	Ballajura Community College P & C Association Inc.	2142/2000	Fielding SC	Discontinued
Newman SB	City of Wanneroo	1647/2000	Scott C	Withdrawn by leave
Nissen AJ	Shire of Bridgetown-Greenbushes	1629/1999	Beech C	Discontinued
Ohm K	Cable Sands (WA) Pty Ltd	1643/2000	Scott C	Dismissed
Ong P	AHS Management Services Pty Ltd CAN 093 177 550	1470/2000	Wood C	Discontinued
Orchard J	York & Districts Co-operative Ltd	812/2000	Coleman CC	Discontinued
Pascoe M	DMR Consulting Group (Australia) Pty Ltd	1588/2000	Beech C	Discontinued
Patten MI	(David Shaw) Agriculture of Western Australia	1687/2000	Scott C	Dismissed
Pitts M	Fiore Giovannangelo SODEXHO	2066/2000	Coleman CC	Discontinued
Poulson CW	Chipper & Son Pty Ltd (ACN 008 676 971)	2115/2000	Smith C	Discontinued by leave
Price JRH	Trading Mastery Pty Ltd	1415/2000	Fielding SC	Discontinued by leave
Puki T-J	Kapiris Bros (WA) P/L	1838/2000	Coleman CC	Discontinued
Redfern M	Glen Park Engineering Pty Ltd	1389/2000	Wood C	Consent Order
Richards TM	Renatas Café Restaurant	1580/2000	Kenner C	Discontinued
Richardson NJ	Smith Thornton Accountants	1487/2000	Gregor C	Consent Order
Robertson J	State School Teachers Union of WA (Inc)	1507/2000	Coleman CC	Discontinued
Robinson SS	Aalto Colar	1716/2000	Gregor C	Dismissed
Rogers DY	D & P Rose Auto Repairs	1542/2000	Coleman CC	Discontinued
Rowlands K	Sostat Pty Ltd and the Rong Family Trust T/a Austin Computers	1510/2000	Coleman CC	Discontinued
Rundell AJ	Caesars Continental Lunches	1383/2000	Coleman CC	Discontinued
Sanusi TY	Integrated Workforce WA	1772/2000	Gregor C	Discontinued
Shafraz EA	MJS Business & Financial Services	1775/2000	Scott C	Dismissed
Sheehan RE	Bright Blue Holdings Pty Ltd t/a Cambuild	1731/2000	Beech C	Discontinued
Simeon LJ	K Mart Australia Ltd	1826/2000	Scott C	Dismissed
Steele MJ	Things Cards & Gifts	1886/2000	Coleman CC	Dismissed
Stevens JA	Fleetwood Homes	1962/2000	Beech C	Discontinued
Stevens JM	Belalie Holdings Pty Ltd t/a Cummings Bros	1077/2000	Coleman CC	Dismissed
Stone KJ	Slateblue Nominees Pty Ltd	2021/2000	Scott C	Dismissed
Studsor CC	Kwik & Swift Co. Pty Ltd T/F NWG Trust	1943/2000	Scott C	Consent Order
Sullivan M	Elmerside Pty Ltd 057 042 583 T/A Hotel Alexander	1569/2000	Smith C	Discontinued by leave
Symonds WR	Collier Homes Pty Ltd	456/2000	Beech C	Discontinued
Tarrant GL	Star Distributor in Partnership Tesdan Pty Ltd	1606/2000	Gregor C	Discontinued
Tatham MP	RCR Tomlinson CAN 008898486	1411/2000	Smith C	Dismissed for want of prosecution

Applicant	Respondent	Number	Commissioner	Result
Thomas DK	The Western Australian Club Inc.	1688/2000	Beech C	Discontinued
Threadgold M	Diesel Motors	1750/2000	Beech C	Discontinued
Trask JF	Project Services Australia Pty Ltd	92/2001	Fielding SC	Discontinued
Tremenheere GS	Eurest (Australia) Pty Ltd	1514/2000	Coleman CC	Discontinued
Varga ES	The Shorter Group Pty Ltd	1102/2000	Beech C	Discontinued
Wann JA	Wila Gutharra Community Aboriginal Corporation	1781/2000	Coleman CC	Discontinued
Warr-Hassall PM	Spartan Freightliners	1933/2000	Gregor C	Dismissed for want of prosecution
Watson TM	B Digital Limited	1020/2000	Coleman CC	Discontinued
White GP	Spahn Pty Ltd t/a Lakewood Logistics Group	2052/2000	Beech C	Withdrawn by leave
Whyte HM	Kapiris Bros (WA) P/L	1849/2000	Coleman CC	Discontinued
Wiles G	Jazzstar Investments Pty Ltd T/A Dependable Roofing	1523/2000	Gregor C	Discontinued
Williamson TG	Shire of Dalwallinu	534/1999	Coleman CC	Discontinued
Wilson AR	Leitz Tooling Systems Pty Ltd	1754/2000	Smith C	Discontinued by leave
Wilson EL	Ken Durrant of Marco's Pizza's	1221/2000	Scott C	Dismissed
Wilson L	Ballajura Community College P & C Association Inc	2143/2000	Fielding SC	Discontinued
Yates B	RDG Corporation Pty Ltd	1709/2000	Scott C	Dismissed
Young A	Minister for Environmental Protection	93/2001	Fielding SC	Discontinued
Young MC	Stangold Investments Pty Ltd—Blockbuster Video	57/2001	Scott C	Dismissed
Yovich AJ	Merrick Nominees Pty Ltd t/a Keysbrook General Store	1717/2000	Beech C	Discontinued
Zaffino D	Stan Bates and Stephen Nicolaou t/a Steers Roast	1988/2000	Beech C	Withdrawn by leave

CONFERENCES— Matters arising out of—

2001 WAIRC 01913

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	THE CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA (INCORPORATED), APPLICANT
	v.
	COMMISSIONER OF POLICE, RESPONDENT
CORAM	COMMISSIONER P E SCOTT
DELIVERED	TUESDAY, 30 JANUARY 2001
FILE NO/S	PSAC 26 OF 2000
CITATION NO.	2001 WAIRC 01913

Result Consent Order Issued

Order.

WHEREAS this is an application pursuant to Section 44 of the Industrial Relations Act 1979; and

WHEREAS on the 21st day of December 2000 and the 22nd day of January 2001 the Commission convened conferences for the purpose of conciliating between the parties; and

WHEREAS an agreement was reached in respect of the application and the parties sought to have that agreement reflected in a consent order;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, by consent, hereby orders—

That the part-time working arrangements for Radio Operators within the Police Communications Branch of the Police Operations Centre shall be in accordance with the attached schedule.

[L.S.]

(Sgd.) P. E. SCOTT,
Commissioner/
Public Service Arbitrator.

Schedule.

Part-Time Working Arrangements For Radio Operators Within The Police Communications Branch Of The Police Operations Centre

(1) 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.

(b) The conversion of a full-time employee to part-time employment may 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 or her prior agreement.

(2) Hours of Duty

(a) Permanent part-time employment arrangements worked within the Police

Communications Centre is regular and continuing employment based on an equitable distribution of shifts averaging twenty (20) hours per week in accordance with the full-time roster. Part-time hours worked are averaged to facilitate the 12 hour shift line roster that currently exists with the Police Operations Centre.

(b) The Commissioner shall specify in writing before a part-time employee commences duty, the prescribed average weekly hours of duty for the employee.

(c) Employees shall be allowed to exchange shifts or days off with other employees provided the approval of the Commissioner has been obtained and provided further that any excess hours worked shall not involve the payment of overtime.

(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 the average weekly hours worked. The salary shall be calculated in the following manner—

$$\frac{\text{average hours worked per fortnight}}{80} \times \frac{\text{full-time fortnightly salary}}{1}$$

(b) A part-time employee shall be entitled to annual increments in accordance with Clause 23.—Annual Increments of the Western Australia Police Service Enterprise Agreement for Public Service Officers 2000 subject to meeting the usual performance criteria.

(4) Operation

The following arrangements shall apply to part-time employees employed as Radio Operators undertaking shiftwork in the Police Communications Branch.

(a) Shifts of twelve (12) hours may be rostered and worked by the part-time employee in a manner agreed by the Commissioner and the employee subject to the number of ordinary hours worked over the agreed period averaging the approved pro rata hours of forty (40) per week.

(b) In addition to subclause (a) of this clause, where the Commissioner and the employee agree, the employee may work additional hours in excess of the ordinary rostered hours in each fortnight.

(c) Shift allowance and any additional days off in lieu for afternoon, night, Saturday, Sunday and public holiday shifts shall not be paid and to compensate a commuted allowance shall be paid on a pro rata basis fortnightly with salary.

(d) The quantum of commuted allowance shall be—

\$10060 per annum based on the full-time working arrangement of an average of 80 hours per fortnight.

(e) The quantum of commuted allowance for part-time working arrangements shall be paid on the same proportionate basis of the average full-time equivalent, based on the average hours worked per fortnight.

(f) The commuted allowance shall be paid during periods of annual leave in lieu of the leave loading prescribed in this Agreement and during any period of paid sick leave but will not be paid during any periods of long service leave.

(g) Overtime shall not be payable unless the total time worked is in excess of twelve (12) hours worked in any one shift or is in excess of an average of 80 hours in a fortnight.

(h) When additional work is performed in accordance with subclause (b) of this clause shift penalties will be paid as appropriate in accordance with subclauses (1), (2) and (3) of Clause 35—Shift Work Allowance of the Enterprise Agreement for Public Service Officers 2000 in lieu of the commuted allowance prescribed in subclause (c) to (f) of this clause.

(5) Relationship to Enterprise Agreement for Public Service Officers 2000

This order shall operate in conjunction with the Western Australia Police Service Enterprise Agreement for Public Service Officers 2000. In the event of any inconsistency between the provisions contained in this order and those contained within the Western Australia Police Service Enterprise Agreement for Public Service Officers 2000, the provisions contained in this order shall prevail to the extent of any such inconsistency.

(6) Period of Effect

This order shall operate for a period of twelve months or until a replacement Enterprise Agreement for Public Service Officers is registered with the Western Australian Industrial Relations Commission, whichever is the earlier.

CONFERENCES— Matters referred—

2001 WAIRC 01894

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES	THE AUSTRALIAN WORKERS' UNION, WEST AUSTRALIAN BRANCH, INDUSTRIAL UNION OF WORKERS, APPLICANT
	v.
	BHP IRON ORE LTD, RESPONDENT
CORAM	COMMISSIONER S J KENNER
DELIVERED	MONDAY, 29 JANUARY 2001
FILE NO/S	CR 308 OF 2000
CITATION NO.	2001 WAIRC 01894

Result	Declaration issued
Representation Applicant	Mr M Llewellyn

Respondent	Mr H Downes as agent and with him Mr D Berg of counsel
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Reasons for Decision.

1. The matter before the Commission is one referred pursuant to s 44 (9) of the Industrial Relations Act 1979 ("the Act") in relation to a dispute between the applicant and the respondent regarding a decision by the respondent to contract out certain works at its Mt Newman mining operations.
2. The terms of the dispute are set out in the memorandum of matters referred for hearing and determination as follows—

"On 22 September 2000 the respondent gave notice to the relevant unions pursuant to clause 29(5) of the Iron Ore Production and Processing (Mt Newman Mining Company Pty Ltd) Award No A29 of 1984 ("the Award") that it intended that the job of maintaining and cleaning signs and reflectors at the mine would in future be performed by a contractor.

The applicant opposes the utilisation of a contractor on the basis that it considers it will detrimentally affect the availability of reasonable hours of work of its members contrary to the terms of clause 29 of the Award.

The respondent claims that the introduction of a contractor to do the work—

will not be on a "side by side" basis and, therefore, clause 29(1)(b) of the Award does not apply; and

in any event, will not have a detrimental effect on the available reasonable hours of work of the applicant's members

and says that the work should proceed accordingly".

3. The nub of the applicant's argument was that the course proposed by the respondent was not consistent with clause 29—Utilisation of Contractors of the Iron Ore Production and Processing (Mt Newman Mining Company Pty Ltd) Award Number A 29 of 1984 ("the Award"). Not surprisingly, the respondent contended that the contracting out of maintaining and cleaning signs and reflectors at the mine was consistent with this provision of the Award and the work should proceed. There was no other ground advanced by the applicant as to why the work should not be performed by a contractor.
4. Mr Llewellyn represented the applicant and Mr Downes as agent and with him Mr Berg of counsel, represented the respondent.

Facts

5. The facts are relatively straightforward and may be shortly stated as follows.
6. Reflectors, flashing lights and signs are located in the mining operations area on all roads, ramps, benches and dumps, to ensure that there is a safe and productive traffic flow around the mining area. These items need to be maintained and cleaned to ensure that they remain in optimum safe condition. The placement of reflectors, flashing lights and signs, their maintenance and cleaning, is the subject of a work instruction issued by the respondent's mining department, the latest version of which dated March 2000, was tendered in evidence as exhibit A3. This work instruction provides that the signs and reflectors should be cleaned every "pay Friday" or as required, to help provide effective delineation of haul roads. This work instruction replaced an earlier work instruction dated May 1999, which provided that the frequency of cleaning should be once every four shifts for each shift. This work instruction was exhibit A2.
7. Mr Kumeroa, a convener for the applicant, was and is employed by the respondent as a production worker level 4. He said that his duties included operating trucks, plant, dozers and shovels and labouring work. The latter work involved cleaning of signs and reflectors, the subject of the present dispute. The uncontroverted evidence was that employees of the respondent engaged in mine worker

classification levels 1-4 have traditionally done the cleaning of signs and reflectors as a part of the general labouring duties required of these classifications. However, the evidence was, through both Mr Kumeroa and Mr Spoonheim, the respondent's mining manager, that the work of cleaning signs and reflectors forms only a small portion of the duties of these employees, with the dominant duty being the driving of trucks and other equipment.

8. In about mid 1999, discussions took place between the applicant and the respondent in relation to a "90 day notice" issued by the respondent under the Award, proposing that the work of signs and reflector maintenance be contracted out. Following discussions between the applicant and the respondent, changes were made to the then system of sign and reflector maintenance, to accommodate the respondent's then concerns. As a result, the contracting out proposal did not proceed and it was agreed that the new arrangements would be put in place on a trial basis, with a further review to take place in the future. This was set out in a memorandum from the acting manager mining, to the various union conveners dated 6 August 1999 and tendered as exhibit A4.
9. It was common ground that in the past, mineworker classification employees did this particular work during ordinary hours, and machine operators were brought in on an overtime basis, to supplement production time necessary as a result. According to the evidence, this practice had been so for a number of years. Mr Kumeroa testified that in about 1998 however, the respondent introduced a number of efficiency changes. One of these was the almost total elimination of overtime. He said that he personally has not performed work on overtime since about 1996. Nor has anyone else as far as he could say, since these changes were made. Since in or about the time of these changes, employees have only generally worked their normal hours of 42.5 per week or thereabouts. This was confirmed in Mr Spoonheim's evidence where he said that the respondent took a decision at about this time to as far as possible, eliminate the working of overtime. He testified that employees now had no real choice but to work the normal hours of work.
10. By memorandum dated 22 September 2000 (exhibit A5), the respondent notified the various union conveners that in accordance with clause 29 of the Award, the respondent intended to contract out the maintenance of signs and reflectors in the mine. The contract works were to commence on 22 December 2000 or earlier if by agreement. It was foreshadowed that discussions between the parties would take place prior to the implementation date. The contractor would be required to work an estimated 24 hours per week cleaning reflectors and signs, however, this could be more or less hours depending upon the respondent's requirements.
11. A number of meetings took place between the applicant and the respondent at site level, to discuss the proposed contracting out during which, the applicant attempted to persuade the respondent to keep the work "in-house". The respondent was not persuaded by these discussions and intends to proceed with the work, however agreed to defer the implementation of same, pending the hearing and determination of this application by the Commission.
12. The evidence from Mr Spoonheim was that the rationale for the use of a contractor for this work was to better utilise the respondent's mine worker classification employees on their principal tasks, involving the operation of equipment, rather than cleaning reflectors and signs. The respondent estimated that the efficiency savings for it would be in the order of some \$650,000 net per annum.
13. It was common ground on the evidence that the introduction of a contractor for this work would lead to no diminution in normal working hours or earnings for mine worker employees. That is, employees would continue to work 42.5 hours per week and earn the same remuneration as they have done previously. However, it was the evidence that the respondent did advise the applicant and other unions during discussions on this issue, that from time to time there might be still a need

for employees of the respondent to clean signs and reflectors. It was also accepted by Mr Spoonheim that the contractor's employees would be working in and around employees of the respondent in the mining operations area.

14. I find accordingly.

Consideration

15. The applicant submitted that in effect, since its decision in or about 1998 to cease offering overtime to employees, the respondent has applied a "reverse overtime ban" of its own, preventing any employee of the respondent from accessing overtime. It was therefore submitted by Mr Llewellyn, that the decision by the respondent to introduce a contractor into this area, would lead to employees suffering a detrimental effect in terms of available reasonable hours of work, contrary to clause 29(1)(b) of the Award. It was further submitted by the applicant, that the contractor's employees will be working on a "side by side" basis in that its employees will work in or around mine worker employees who have been trained in and have the expertise to perform this type of work and will be required to perform it from time to time, thereby satisfying the requirements of clause 29(1)(c) of the Award.
16. On the other hand, Mr Downes submitted that the "available reasonable hours of work" in the context of the respondent's present operations, are 42.5 per week and that the evidence demonstrated that no employee would suffer any detriment as a result of the introduction of a contractor on this work. Furthermore, the submission was that in any event, the "side by side" requirement contained in clause 29(1)(c) of the Award was not met on this occasion, because this requires a "like with like" classification comparison between the work done by the contractor and that performed by an employee. In the present context, whilst the respondent's mine worker classification employees were trained and had expertise to do the work in question, the contractor's employees were not trained and experienced truck drivers and therefore no such "similar expertise" existed to satisfy this requirement. The respondent therefore submitted that the terms of clause 29 of the Award was no impediment to it proceeding with the contracting out of the work in question.
17. Clause 29—Utilisation of Contractors of the Award relevantly provides as follows—
 - (1) (a) *When it is necessary for the employer to retain the services of a contractor, the employer shall give prior notice to the union or unions concerned through the conveners of the nature of the work to be performed, the name of the contractor, standard hours to operate during the contract and the likely duration of the contract.*
 - (b) *No employee to whom this Award applies shall suffer any detrimental effect in respect of his normal earnings, job security or available reasonable hours of work by reason of the employment of contractors' employees on a "side by side" basis.*
 - (c) *A "side by side" basis shall mean that those employees and employees having similar expertise are working together on the same work in the same work section, location and locale.*
- (2) *No employee to whom this award applies shall be retrenched because of the employment of contractors.*
- (3) *The provisions of this clause shall not act in a manner prejudicial to the employer's operations in the event of an emergency circumstance arising e.g. railway wash-away or substantial mechanical failure to plant or equipment beyond the normal and immediate manning resources of the employer.*
- (4) *Contractors will generally be employed for construction, modification and project work. Contractors may, however, be necessary to perform in-plant maintenance under warranty arrangements or to meet*

requirements for specialised equipment or specialised services. Where in particular circumstances it is proposed to utilise contractors to meet requirements for specialised equipment or specialised services, the employer will notify, and if requested discuss the matter with, representatives of the union or unions concerned prior to any commencement of the work by the said contractors.

- (5) *Where a particular job is usually performed by employees to whom this award applies, and it is intended that such job will in the future be performed by contractors, the employer shall give to representatives of the union or unions concerned notice of the matter not less than three months prior to the date on which it is intended that contractors commence work on that job. If requested, the employer shall discuss the matter with representatives of the union or unions concerned prior to any commencement of work on that job by the said contractors.*
18. There are essentially two issues for resolution in this matter. The first issue is whether, in this case, the employees of the contractor will be working "side by side" with employees of the respondent. In my opinion, consideration of this issue is a condition precedent to considering the second issue, that is whether there flows any "detrimental effect" for the purposes of clause 29(1)(b), because unless it is established that there will be employment on a "side by side" basis, the trigger for considering any detrimental effect for the purposes of clause 29(1)(b), does not arise.
19. After having considered the matter in light of the evidence I am of the view that employees of the proposed contractor will, if required, work "side by side" employees of the respondent. The evidence was that the contractor's employees would be working in and around the mining operations and furthermore, the uncontroverted evidence was that the respondent may also require its own employees to perform sign and reflector cleaning and maintenance from time to time. I am therefore satisfied that the requirements as to employees working together on the same work in the same section, location and locale would be satisfied. The next element is what is meant by "similar expertise".
20. I was initially attracted in these proceedings, to the proposition that this meant that there needed to be comparability between the occupations of the contractor's employees and those of the employer that is, a one for one comparison for example, boiler maker/welders and boiler maker/welders etc. However, on further reflection I am of the view that this construction is too narrow, having regard to the intention of the clause when read as a whole. In my opinion, the focus of the inquiry should be on whether the employees in question have, by reason of training and experience, competency to perform the particular work in issue that is proposed to be contracted out. This is supported by the succeeding words in the paragraph that refer to the work to be done. Furthermore, an example serves to illustrate this issue. Take the case of a very skilled tradesperson who performs, as a substantial part of his or her duties, work of an unskilled or semi-skilled nature, because of circumstances pertaining at that point in time. The employer then proposes to contract out that work. Those persons, who it is proposed will perform such work employed by a contractor, are not skilled tradespersons, but are adequately trained to undertake the semi-skilled work. Clearly, the skilled tradesperson would suffer a very significant detriment by reason of contracting out, assuming there are no other options open to gainfully employ that person elsewhere.
21. If the narrow construction were adopted, then the clause would be devoid of any meaningful effect in such circumstances. I do not consider that this was, from an examination of the clause as a whole, the intention of the draftsman of the Award. Thus in my view, the focus should be on the expertise to perform the work to be contracted out and not a comparison of the total expertise of the employees of both the contractor and the employer, assessed in a vacuum without regard to the particular work to be done.
22. Adopting this broader approach to construction, I am therefore satisfied that for the purposes of clause 29(1)(c), the "similar expertise" criteria would be met on this occasion.
23. The next issue is whether, on the evidence, any employee of the respondent will suffer any "detrimental effect", in respect of his "available reasonable hours of work", by reason of the engagement of the contractor to perform the sign and reflector cleaning and maintenance.
24. "Detrimental" in terms of the Concise Oxford Dictionary, means "harmful, causing loss". The evidence was, including the applicant's, that by reason of the engagement of the contractor, there would be no diminution in terms of earnings or any effect on the normal working hours of employees, which have been 42.5 per week since about 1998. As noted, the evidence was that the respondent, in about 1998, took a decision to reduce costs by the effective elimination of regular overtime work. This has clearly not been a recent phenomenon. Indeed, as I have already noted, Mr Kumeroa's evidence was that he personally had not worked overtime since in or about 1996. There was no suggestion on the evidence that the respondent's decision to eliminate overtime in this context, was for the express purpose of engaging contractors.
25. Whilst the apparent policy position adopted by the respondent in relation to not offering employees work on overtime may have other consequences, given the terms of clause 10 — Overtime of the Award, in the context of the facts as I have found them to be in this case, I am not able to conclude that the respondent's employees will suffer any "detrimental effect" by reason of the engagement of a contractor for sign and reflector cleaning and maintenance. In the absence of evidence as to any detrimental effect on the relevant employees, it is not necessary for me to conclusively determine on this occasion, what is meant by the phrase "available reasonable hours of work", as to whether it is referable to availability in terms of actual hours worked or some other concept. On any basis, on the facts of this case, the first limb has not been established.
26. However as an aside, I consider that there is substance to the applicant's argument that the concept of "available reasonable hours of work" means something other than normal hours of work provided by the employer, given that there is reference to "normal earnings" in clause 29(1)(b) of the Award, expressed disjunctively to both job security and available reasonable hours of work. Accordingly, my conclusions in relation to this particular application are based on the facts as I have found them to be on this occasion.
27. Therefore, in the absence of there being any other reason why the work should not be performed by a contractor, I am compelled to the conclusion that the work proposed to be contracted out by the respondent should proceed and a declaration will issue to that effect.

2001 WAIRC 01895

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES THE AUSTRALIAN WORKERS' UNION, WEST AUSTRALIAN BRANCH, INDUSTRIAL UNION OF WORKERS, APPLICANT
v.
BHP IRON ORE LTD, RESPONDENT

CORAM COMMISSIONER S J KENNER

DELIVERED MONDAY, 29 JANUARY 2001

FILE NO/S CR 308 OF 2000

CITATION NO. 2001 WAIRC 01895

Result Declaration issued.

Representation

Applicant Mr M Llewellyn

Respondent Mr H Downes as agent and with him Mr D Berg of counsel

Declaration.

HAVING heard Mr M Llewellyn on behalf of the applicant and Mr H Downes as agent and with him Mr D Berg of counsel for the respondent the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby declares—

THAT the work of the cleaning and maintenance of reflectors and signs at the respondent's Mt Newman mining operations as proposed to be performed by a contractor commencing 22 December 2000 should proceed.

(Sgd.) S. J. KENNER,
Commissioner.

[L.S.]

2001 WAIRC 01907

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES THE AUSTRALIAN WORKERS' UNION, WEST AUSTRALIAN BRANCH, INDUSTRIAL UNION OF WORKERS, APPLICANT
v.
BHP IRON ORE PTY LTD, RESPONDENT

CORAM COMMISSIONER S J KENNER

DELIVERED MONDAY, 29 JANUARY 2001

FILE NO/S CR 5 OF 2001

CITATION NO. 2001 WAIRC 01907

Result Direction issued.

Representation

Applicant Mr M Llewellyn
Respondent Mr R Lilburne of counsel

Direction.

HAVING heard Mr M Llewellyn on behalf of the applicant and Mr R Lilburne of counsel for 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 particulars of claim by 1 February 2001.
- (2) THAT the respondent file and serve particulars of its answer by 7 February 2001.

(Sgd.) S. J. KENNER,
Commissioner.

[L.S.]

2001 WAIRC 02024

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES THE AUSTRALIAN WORKERS' UNION, WEST AUSTRALIAN BRANCH, INDUSTRIAL UNION OF WORKERS, APPLICANT
v.
BHP IRON ORE PTY LTD, RESPONDENT

CORAM COMMISSIONER S J KENNER

DELIVERED THURSDAY, 15 FEBRUARY 2001

FILE NO/S CR 5 OF 2001

CITATION NO. 2001 WAIRC 02024

Result Direction issued.

Representation

Applicant Mr M Llewellyn
Respondent Mr H Downes as agent

Direction.

HAVING heard Mr M Llewellyn on behalf of the applicant and Mr H Downes 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 parties exchange and file a list of relevant documents upon which they intend to rely at the hearing of this matter by 14 February 2001.
- (2) THAT the parties file an agreed statement of facts (if any) by 14 February 2001.
- (3) THAT the leading of evidence in relation to the issues in application no. CR 5 of 2001 will precede the leading of evidence in application no. CR 18 of 2001.

(Sgd.) S.J. KENNER,
Commissioner.

[L.S.]

2001 WAIRC 01866**EMPLOYMENT OF MS C FEDERICI**

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES CYNTHIA GAIL FEDERICI, THE AUSTRALIAN WORKERS' UNION, WEST AUSTRALIAN BRANCH, INDUSTRIAL UNION OF WORKERS, APPLICANT
v.
SHEARBODY, METRO SHEARS, SHEARBODY AND METRO SHEARS, RESPONDENT

CORAM COMMISSIONER S WOOD

DELIVERED TUESDAY, 23 JANUARY 2001

FILE NO/S APPLICATION 1586 OF 2000, CR 12 OF 2001

CITATION NO. 2001 WAIRC 01866

Result Direction issued

Representation

Applicants Mr D H Schapper of Counsel
Respondents Mr J Flanigan of Counsel

Direction.

HAVING heard Mr D Schapper of counsel on behalf of the applicants and Mr J Flanigan of counsel on behalf of the respondents, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby directs—

1. THAT in respect of matter CR 12 of 2001 the applicant file and serve written submission on whether the applicant can properly make the application by 25 January 2001; and
2. THAT in respect of matter CR 12 of 2001 the respondents file and serve written submission in reply by 1 February 2001;
3. THAT in respect of both applications the respondents discover to the applicants by 29 January 2001 the following information:
 1. The number of sheep shorn by the respondents and the sites at which they were shorn since 19 September 2000.
 2. The number of fleeces classed by the respondents since 19 September 2000 and the persons who classed these fleeces, the dates and sites at which they were classed.
 3. The record of Ms Federici's earnings with the respondents for the six months to 5 September 2000; and

4. THAT in respect of both applications the applicants discover to the respondents by 29 January 2001 the following information:
 1. A quantification of the applicants claim
 2. All earnings earned by Ms Federici in her own name or in partnership with her husband since 5 September 2000
 3. Correspondence between Ms Federici and Wellard Rural of September 2000; and
5. THAT the parties mutually discover by 29 January 2001 all other relevant documents; and
6. THAT the parties have liberty to apply at short notice.

[L.S.] (Sgd.) S. WOOD,
Commissioner.

2001 WAIRC 01900

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES COMMUNICATIONS, ELECTRICAL,
ELECTRONIC, ENERGY,
INFORMATION, POSTAL,
PLUMBING, AND ALLIED
WORKERS UNION OF AUSTRALIA,
ENGINEERING & ELECTRICAL
DIVISION, WA BRANCH,
APPLICANT

v.

BHP IRON ORE PTY LTD,
RESPONDENT

CORAM COMMISSIONER S J KENNER
DELIVERED MONDAY, 29 JANUARY 2001
FILE NO/S CR 18 OF 2001
CITATION NO. 2001 WAIRC 01900

Result Direction issued.
Representation
Applicant Mr M Llewellyn
Respondent Mr R Lilburne of counsel

Direction.

HAVING heard Mr M Llewellyn on behalf of the applicant and Mr R Lilburne of counsel for 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 particulars of claim by 1 February 2001.
- (2) THAT the respondent file and serve particulars of its answer by 7 February 2001.

[L.S.] (Sgd.) S. J. KENNER,
Commissioner.

TERMINATION OF EMPLOYMENT

2001 WAIRC 01773

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES AUSTRALIAN LIQUOR,
HOSPITALITY AND
MISCELLANEOUS WORKERS
UNION, WESTERN AUSTRALIAN
BRANCH, APPLICANT

v.

BURSWOOD RESORT
(MANAGEMENT) LTD,
RESPONDENT

CORAM COMMISSIONER S WOOD

DELIVERED FRIDAY, 12 JANUARY 2001
FILE NO CR 350 OF 2000
CITATION NO. 2001 WAIRC 01773

Result Direction issued
Representation
Applicant Mr J Rosales Castaneda of Counsel
Respondent Mr D Jones

Direction.

HAVING heard Mr J Rosales Castaneda 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 directs—

- (1) THAT the respondent provide to the applicant by 9am Monday 15 January 2001 any documents that record or comment on the activities of Mr Mitchell as a union delegate, or on behalf of the union.

[L.S.] (Sgd.) S. WOOD,
Commissioner.

2001 WAIRC 01968

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES AUSTRALIAN LIQUOR,
HOSPITALITY AND
MISCELLANEOUS WORKERS
UNION, WESTERN AUSTRALIAN
BRANCH, APPLICANT

v.

CLIFTON NOMINEES PTY LTD,
RESPONDENT

CORAM COMMISSIONER S WOOD
DELIVERED MONDAY, 5 FEBRUARY 2001
FILE NO CR 310 OF 2000
CITATION NO. 2001 WAIRC 01968

Result Direction issued
Representation
Applicant Mr J Rosales Castaneda of Counsel
Respondent Mr D Clarke

Direction.

HAVING heard Mr J Rosales Castaneda of counsel on behalf of the applicant and Mr D Clarke on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby directs—

1. THAT evidence-in-chief be given by witness statements; and
2. THAT the parties do file and serve witness statements by 13 March 2001; and
3. THAT any documents which any party intends to adduce in evidence shall be annexed in copy form to the statement of the witness through whom it is to be tendered; and
4. THAT no evidence-in-chief may be adduced which is not contained in the said witness statements without leave of the Commission; and
5. THAT the parties have liberty to apply at short notice.

[L.S.] (Sgd.) S. WOOD,
Commissioner.

CONFERENCES—Notation of—

Parties	Commissioner /Conference Number	Date	Matter	Result	
Australian Manufacturing Workers Union	Neverfail WA Pty Ltd	Beech C C338/2000	13/12/00 & 17/01/01	Industrial issues	Concluded
Australian Workers Union	BHP Iron Ore Ltd	Kenner C C308/2000	05/12/00	Contracting out of work	Referred
Australian Workers Union	BHP Iron Ore Ltd	Kenner C C332/2000	15/12/00	Right of site access	Discontinued
Automotive, Food, Metals, Engineering, Printing & Kindred Industries Union	Advantage Air Pty Ltd	Gregor C C7/2001	18/12/00	Alleged unfair dismissal	Concluded
Automotive, Food, Metals, Engineering, Printing & Kindred Industries Union	St John of God	Scott C C351/2000	15/01/01	Dispute on how employees are assessed for their classification	Concluded
Automotive, Food, Metals, Engineering, Printing & Kindred Industries Union	West Australian Newspapers Ltd	Wood C C11/2001	19/01/01 & 23/01/01	Alleged refusal to allow an employee to work overtime	Concluded
Builders' Labourers, Painters and Plasterers Union	Interceramics	Gregor C	29/11/00	Dispute with accessing time and wage records negotiation of entitlements	Concluded
Builders' Labourers, Painters and Plasterers Union	Novacoat Pty Ltd	Gregor C	28/11/00 & 15/12/00	Termination of employment	Concluded
Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing & Allied Workers' Union	Bentley Hospital	Gregor C C19/2001	—	Treatment of member	Concluded
Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing & Allied Workers' Union	BHP Iron Ore Ltd and Other	Kenner C C17/2001	—	Alleged Introduction of Contractors	Discontinued
Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing & Allied Workers' Union	Kone Elevators Pty Ltd	Gregor C C31/2001	—	Industrial Action	Concluded
Hospital Salaried Officers Association	Metropolitan Health Service Board	Scott C PSAC13/2000	20/09/00 & 06/11/00	Negotiations re: Agreement	Concluded
Hospital Salaried Officers Association	Metropolitan Health Service Board at Fremantle Hospital and Health Service	Scott C PSAC21/2000	—	Relief of the harassment of Ms Elliott by Management of the Hospital	Concluded
Hospital Salaried Officers Association	Rocky Bay Incorporated	Scott C C325/2000	19/12/00	Dismissal	Referred
Independent Schools Salaried Officers' Association	Penrhos College Inc	Kenner C C194/2000	03/10/00	Termination of Employment	Discontinued
Independent Schools Salaried Officers' Association	Santa Maria College	Kenner C C312/2000	21/12/00	Alleged Unfair Treatment of an Employee	Discontinued
Liquor, Hospitality and Miscellaneous prosecution Workers' Union	Bowra and O'Dea	Smith C CR111/2000	16/01/01	Dismissal	Dismissed for want of
Liquor, Hospitality and Miscellaneous Workers' Union	Burswood Resort (Management) Limited	Wood C C203/2000	16/08/00	Alleged Unfair Dismissal	Referred
Liquor, Hospitality and Miscellaneous Workers' Union	Burswood Resort (Management) Ltd	Wood C C350/2000	21/12/01	Termination	Referred
Liquor, Hospitality and Miscellaneous Workers' Union	Ed McCaffren/Joy Lemon Heaton Enterprises Pty Ltd	Beech C C327/2000	—	Dismissal	Concluded

Parties	Commissioner /Conference Number	Date	Matter	Result
Liquor, Hospitality and Miscellaneous Workers' Union	Minister for Education Kenner C C185/2000	24/08/00	Alleged Unfair Dismissal	Referred
Liquor, Hospitality and Miscellaneous Workers' Union	Minister for Education Kenner C CR185/2000	24/08/01	Unfair Dismissal	Discontinued
Liquor, Hospitality and Miscellaneous Workers' Union	Minister for Education Kenner C CR185/2000	05/02/01	Unfair Dismissal	Discontinued by leave
Liquor, Hospitality and Miscellaneous Workers' Union	Mundella Foods Pty Ltd Scott C C2/2001	08/01/01	Dismissal	Referred
Liquor, Hospitality and Miscellaneous Workers' Union	Shearbody and Metro Shears Wood C C12/2001	18/01/01	Employment of Ms C Federici	Referred
Liquor, Hospitality and Miscellaneous Workers' Union	Southern Caterers WA Wood C C340/2000	24/01/01	Alleged Unfair Dismissal	Discontinued
Liquor, Hospitality and Miscellaneous Workers' Union	The Hotel Grande Chancellor Scott C C356/2000	—	Termination	Concluded
Liquor, Hospitality and Miscellaneous Workers' Union	Tick Tock Watch Repairs Pty Ltd Wood C C324/2000	18/01/01	Alleged Unfair Dismissal	Discontinued
Police Union	Commissioner of Police Fielding SC PSAC25/2000	24/01/01	Effective date of reversion to full time employment	Discontinued
Prison Officers' Union	Hon. Attorney General Beech C C176/2000	18/07/00 & 24/08/00	Negotiations re staffing arrangements	Concluded

CORRECTIONS—

COUNTRY HIGH SCHOOL HOSTELS AWARD, 1979.

No. R 7A of 1979.

2001 WAIRC 01894

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES AUSTRALIAN LIQUOR, HOSPITALITY AND MISCELLANEOUS WORKERS UNION, WESTERN AUSTRALIAN BRANCH, APPLICANT

v.

COUNTRY HIGH SCHOOL HOSTELS AUTHORITY, RESPONDENT

CORAM COMMISSIONER S J KENNER

DELIVERED FRIDAY, 19 JANUARY 2001

FILE NO/S APPLICATION 681 OF 2000

CITATION NO. 2001 WAIRC 01849

Result Variation of the Country High School Hostels Award, 1979

Representation

Applicant Mr J Ridley

Respondent Ms A Davison

Amending Order.

HAVING heard Mr J Ridley on behalf of the applicant and Ms A Davison on behalf of the respondent and by consent the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Country High School Hostels Award, 1979 be varied in accordance with the following Schedule and

that such variation shall have effect from the beginning of the first pay period commencing on or after 12 December 2000.

[L.S.]

(Sgd.) S.J. KENNER,
Commissioner.

Schedule.

1. Clause 9—Overtime: Delete subclause (6) of this clause and insert the following in lieu thereof—

(6) Where an employee has not been notified the previous day or earlier that they are required to work overtime the employer shall ensure that employees working such overtime for an hour or more shall be provided with any of the usual meals occurring during such overtime or be paid \$7.40 each meal.

2. Clause 20—Meal Money: Delete subclause (1) of this clause and insert the following in lieu thereof—

(1) An employee required to work overtime for more than two hours, without being notified on the previous day or earlier that they will be so required to work, shall be supplied with a meal by the employer or paid \$7.40 for a meal.

3. Clause 21—Special Rates and Provisions: Delete paragraph (a) of subclause (1) of this clause and insert the following in lieu thereof—

(1) (a) All employees called upon to clean closets, connected with septic tanks or sewerage shall receive an allowance of 53 cents per closet per week.

4. Clause 22—Supported Wage System: Delete paragraph (b) of subclause (3) of this clause and insert the following in lieu thereof—

(b) Provided that the minimum amount payable shall not be less than \$47.70 per week.

5. Clause 22—Supported Wage System: Delete paragraph (c) of subclause (9) of this clause and insert the following in lieu thereof—

(c) The minimum amount payable to the employee during the trial period shall be no less than \$47.70 per week.

6. Clause 24—Wages: Delete paragraphs (a) and (b) of subclause (2) of this clause and insert the following in lieu thereof—

(2) General Conditions—

(a) Senior employees appointed as such by the employer shall be paid \$17.35 per week in addition to the rates prescribed herein.

(b) A leading hand placed in charge of not less than three other employees shall be paid \$17.35 per week extra.

7. Schedule A—Parties to the Award: Delete this schedule and insert the following in lieu thereof—

SCHEDULE A—PARTIES TO THE AWARD

The following organisation is a party to this award—

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

PROCEDURAL DIRECTIONS AND ORDERS—

2001 WAIRC 01832

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES ROBERT NEWTON, APPLICANT
v.
ROMAN CATHOLIC BISHOP OF
BUNBURY, ST JOSEPH'S COLLEGE,
RESPONDENT

CORAM COMMISSIONER J H SMITH
DELIVERED THURSDAY 18 JANUARY 2001
FILE NO APPLICATION 18 OF 2000
CITATION NO. 2001 WAIRC 01832

Representation

Applicant Mr A Gill of counsel
Respondent Mr G Bartlett of counsel

Order.

HAVING heard Mr A Gill of counsel on behalf of the applicant and Mr G Bartlett of counsel on behalf of the respondent the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

1. That St Joseph's College be struck out as a party to the application for want of jurisdiction;
2. The witness statements filed by the parties prior to 10 July 2000 do stand as the evidence in chief of the maker of each statement and any additional evidence to be adduced or any amended statements are to be filed and served by each party by 26 January 2001;
3. Each party to confirm in writing to each other by 29 January 2001 the names of the other party's witnesses they require to be produced for cross-examination;
4. If the Applicant intends to make an application to adjourn or vacate the dates for hearing, that application shall be made by 19 January 2001;
5. The Respondent's application for an order that the Commission refrain from hearing this matter pursuant to s.27(1)(a) of the Industrial Relations Act 1979 be adjourned sine die.

[L.S.]

(Sgd.) J.H. SMITH,
Commissioner.

2001 WAIRC 01897

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES NIGEL WILLIAM LORD, APPLICANT
v.
WESTPOINT CORPORATION PTY
LTD, RESPONDENT

CORAM COMMISSIONER S J KENNER
DELIVERED THURSDAY, 25 JANUARY 2001
FILE NO/S APPLICATION 1184 OF 2000
CITATION NO. 2001 WAIRC 01897

Result Direction issued.
Representation
Applicant Ms M Quai of counsel
Respondent Mr S A Sirett of counsel

Direction.

HAVING heard Ms M Quai of counsel for the applicant and Mr S A Sirett of counsel for 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 12 February 2001.
- (2) THAT inspection of documents shall be completed by 19 February 2001.
- (3) THAT evidence in chief in this matter be adduced by way of signed witness statements which will stand as the evidence in chief of the maker. Evidence in chief other than that contained in the witness statements may only be adduced by leave of the Commission.
- (4) THAT the applicant file and serve any signed witness statements upon which they intend to rely no later than 14 days prior to the date of hearing.
- (5) THAT the respondent file and serve any signed witness statements upon which they intend to rely no later than 7 days prior to the date of hearing.
- (6) THAT the matter be listed for hearing for 2 days.
- (7) THAT the parties have liberty to apply on short notice.

[L.S.]

(Sgd.) S. J. KENNER,
Commissioner.

2001 WAIRC 02022

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES SANDRA HOARE, APPLICANT
v.
WOMENS LEGAL SERVICES
INCORPORATED (WA),
RESPONDENT

CORAM COMMISSIONER S J KENNER
DELIVERED WEDNESDAY, 7 FEBRUARY 2001
FILE NO/S APPLICATION 1216 OF 2000
CITATION NO. 2001 WAIRC 02022

Result Direction issued.
Representation
Applicant Mr S Bibby
Respondent Mr D Howlett of counsel

Direction.

HAVING heard Mr S Bibby 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 directs—

- (1) THAT the respondent file and serve written submissions as to the capacity of Mr Bibby to represent the applicant by 12 February 2001.
- (2) THAT the applicant file and serve written submissions in reply by 19 February 2001.
- (3) THAT the applicant and respondent file an agreed statement of facts (if any) by 19 February 2001.

(Sgd.) S.J. KENNER,
Commissioner.

[L.S.] _____

2001 WAIRC 01813

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

PARTIES MARK JOSEPH CARBERRY,
APPLICANT
v.
TJ & HP ABBOTT TRANSPORT,
RESPONDENT

CORAM COMMISSIONER A R BEECH
DELIVERED TUESDAY, 16 JANUARY 2001
FILE NO APPLICATION 1403 OF 2000
CITATION NO. 2001 WAIRC 01813

Result An application for production of documents dismissed.

Representation Applicant Mr G. McCorry (as agent) on behalf of the applicant by way of written submissions.

Respondent Ms F. Askew (of counsel) on behalf of the respondent by way of written submissions.

Reasons for Decision.

- 1 The substantive application before the Commission from Mr Carberry is that he has been unfairly dismissed by the respondent on 28 August 2000 and that he is entitled to reasonable pay in lieu of notice if not re-employed.
- 2 By letter dated 4 January 2001 the respondent sought discovery of certain documents. Mr Carberry has agreed to discover all but two of those documents. The respondent has requested that the Commission issue an Order requiring Mr Carberry to produce to the respondent—
 - (1) Copies of Mr Carberry's taxation returns for the tax years ended 1998, 1999 and 2000.
 - (2) Copy of Mr Carberry's résumé.
- 3 Mr Carberry maintains his opposition and the Commission have received brief submissions in writing from each party.
- 4 The documents which the Commission will order to be produced must be of a nature capable of being relevant to an issue which might legitimately arise on the hearing of the matters in dispute. The identification of the issues that might arise in the cause of determining the dispute can be found from an examination of the Notice of Application and the Notice of Answer and Counter Proposal. The Notice of Application states that Mr Carberry seeks both reinstatement and compensation for loss of income until he is re-employed. He also seeks as a contractual entitlement reasonable pay in lieu of notice if not re-employed. He claims that the reason why his dismissal was unfair was because he was dismissed for not signing a workplace agreement. The Notice of Answer and Counter Proposal reveals the respondent's position that Mr Carberry was dismissed for matters which arose regarding the manner of the performance of his work as a truck driver.
- 5 Neither the Notice of Application nor the Notice of Answer and Counter Proposal raise any issues regarding Mr Carberry's financial circumstances. It is implicit that

upon a finding of unfair dismissal, the wages Mr Carberry would have earned had he not been dismissed, less any income earned by him by way of mitigation of loss, would become a relevant issue. As to this, the respondent advises by way of letter that the respondent's business closed in about October 2000 due to the loss of a truck involved in a motor vehicle accident. On that information, even if Mr Carberry had not been dismissed, it is likely that his employment with the respondent would not have continued past the date of the closure of the business, a period of little longer than two months approximately.

- 6 It is difficult then to see how copies of Mr Carberry's taxation returns for the tax years ended 1998, 1999 and 2000, together with a copy of Mr Carberry's résumé are capable of being relevant to an issue which might legitimately arise on the hearing of Mr Carberry's application. Therefore, the application for Orders requiring Mr Carberry to produce those documents to the respondent are refused and an Order will issue dismissing that particular application.

2001 WAIRC 01814

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

PARTIES MARK JOSEPH CARBERRY,
APPLICANT
v.
TJ & HP ABBOTT TRANSPORT,
RESPONDENT

CORAM COMMISSIONER A R BEECH
DELIVERED TUESDAY, 16 JANUARY 2001
FILE NO APPLICATION 1403 OF 2000
CITATION NO.

Result An application for production of documents dismissed.

Representation Applicant Mr G. McCorry (as agent) on behalf of the applicant by way of written submissions.

Respondent Ms F. Askew (of counsel) on behalf of the respondent by way of written submissions.

Order.

HAVING HEARD Mr G. McCorry (as agent) on behalf of the applicant by way of written submissions and Ms F. Askew (of counsel) on behalf of the respondent by way of written submissions, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders—

THAT the application requesting discovery of the applicant's taxation returns and résumé is hereby dismissed.

(Sgd.) A.R. BEECH,
Commissioner.

[L.S.] _____

2001 WAIRC 01802

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

PARTIES ANDRE LEONARD PUSHONG,
APPLICANT
v.
PERTH RJV PTY LTD, RESPONDENT

CORAM COMMISSIONER S WOOD
DELIVERED TUESDAY, 16 JANUARY 2001
FILE NO APPLICATION 1462 OF 2000
CITATION NO. 2001 WAIRC 01802

Result Direction issued
Representation
Applicant Mr D Howlett of Counsel
Respondent Mr B Walker

Direction.

HAVING heard Mr D Howlett of counsel on behalf of the applicant and Mr B Walker 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 parties file and serve a list of discoverable documents by 7 February 2001; and
2. THAT the parties exchange discoverable documents by 14 February 2001; and
3. THAT evidence in chief be given by witness statements; and
4. THAT the parties do file and serve witness statements by 28 February 2001; and
5. THAT the parties do file and serve any witness statements in reply by 8 March 2001; and
6. THAT the parties have liberty to apply at short notice.

[L.S.] (Sgd.) S. WOOD,
Commissioner.

2001 WAIRC 01898

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES TERRENCE DOHERTY, APPLICANT
 v.
 GERALDTON BUILDING COMPANY
 PTY LTD ACN 008 637 103,
 RESPONDENT
CORAM COMMISSIONER S J KENNER
DELIVERED THURSDAY, 25 JANUARY 2001
FILE NO/S APPLICATION 1527 OF 2000
CITATION NO. 2001 WAIRC 01898

Result Direction issued.
Representation
Applicant Ms E Peak of counsel
Respondent Mr K Richardson as agent

Direction.

HAVING heard Ms E Peak of counsel for the applicant and Mr K Richardson as agent for the respondent the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby directs—

- (1) THAT the parties file and serve upon one another any signed witness statements upon which they intend to rely no later than 14 days prior to the date of hearing.
- (2) THAT the respondent file and serve an outline of submissions no later than 10 days prior to the date of hearing.
- (3) THAT the applicant file and serve an outline of submissions no later than 7 days prior to the date of hearing.
- (4) THAT the matter be listed for hearing for 1 day in Geraldton.
- (5) THAT the parties have liberty to apply on short notice.

[L.S.] (Sgd.) S. J. KENNER,
Commissioner.

2001 WAIRC 01863

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES ALAN STEWART HARROD,
APPLICANT
 v.
 SILVICULTURE MANAGEMENT PTY
 LTD, RESPONDENT
CORAM COMMISSIONER J H SMITH
DELIVERED MONDAY, 22 JANUARY 2001
FILE NO APPLICATION 1854 OF 2000 and
 APPLICATION 31 OF 2001
CITATION NO. 2001 WAIRC 01863

Representation
Applicant Mr L Pilgrim as agent
Respondent Mr P Williams of counsel

Order.

HAVING heard Mr L Pilgrim as agent on behalf of the applicant and Mr P Williams of counsel 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 31 of 2001 be consolidated with Application 1854 of 2000;
- (2) The parties shall give discovery on affidavit annexing a list of all documents which are or have been in the parties possession, custody or power relating to any matter in question in application 31 of 2001 and 1854 of 2000 by 12 February 2001.

[L.S.] (Sgd.) J.H. SMITH,
Commissioner.

2001 WAIRC 01865

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES SUSAN JOY EYERS, APPLICANT
 v.
 SILVICULTURE MANAGEMENT PTY
 LTD, RESPONDENT
CORAM COMMISSIONER J H SMITH
DELIVERED MONDAY, 22 JANUARY 2001
FILE NO APPLICATION 1865 OF 2000
CITATION NO. 2001 WAIRC 01865

Representation
Applicant Mr L Pilgrim as agent
Respondent Mr P Williams of counsel

Order.

HAVING heard Mr L Pilgrim as agent on behalf of the applicant and Mr P Williams of counsel 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 parties shall give discovery on affidavit annexing a list of all documents which are or have been in the parties possession; custody or power relating to any matter in question by 12 February 2001.

[L.S.] (Sgd.) J.H. SMITH,
Commissioner.

NOTICES— Appointments—

NOTICE OF APPOINTMENT

In accordance with the requirements of section 81D(1) of the Industrial Relations Act 1979

ARTHUR WILLIAM WILSON

Is hereby appointed as the CLERK OF THE INDUSTRIAL MAGISTRATE'S COURT, with effect from 18 JANUARY, 2001.

[L.S.] (Sgd.) JOHN SPURLING,
Chief Executive Officer.

PUBLIC SERVICE APPEAL BOARD—

2001 WAIRC 02055

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES JON KIERAN ROBERTS,
APPELLANT

v.

SPEAKER OF LEGISLATIVE
ASSEMBLY AND PRESIDENT OF
LEGISLATIVE COUNCIL,
RESPONDENTS

CORAM PUBLIC SERVICE APPEAL BOARD
SENIOR COMMISSIONER G L
FIELDING
MR E SCHIJF
MR R TEYMANT

DELIVERED WEDNESDAY, 14 FEBRUARY 2001
FILE NO/S PSAB 6 OF 2000
CITATION NO. 2001 WAIRC 02055

Result Discontinued by leave
Representation
Appellant Mr BG Cusack as agent
Respondent Mr S Heathcote as agent

Order.

HAVING heard Mr B G Cusack as agent on behalf of the Applicant and Mr S Heathcote as agent on behalf of the Respondents, the Commission constituted by a Public Service Appeal Board, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders—

THAT by leave the appeal be and is hereby discontinued.

[L.S.] (Sgd.) G.L. FIELDING,
Chairman.

RECLASSIFICATION APPEALS—

2001 WAIRC 01896

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

PARTIES MICHELE CLARE GRUMONT,
APPLICANT

v.

DIRECTOR GENERAL, EDUCATION
DEPARTMENT OF WA,
RESPONDENT

CORAM COMMISSIONER S J KENNER

DELIVERED MONDAY, 29 JANUARY 2001
FILE NO/S PSA 31 OF 2000
CITATION NO. 2001 WAIRC 01896

Result Application granted.
Representation
Applicant Mr K Trainer as agent
Respondent Mr J Schokker as agent

Order.

HAVING heard Mr K Trainer as agent on behalf of the applicant and Mr J Schokker 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 position of Administrative Assistant classified at Level 2 within the Human Resources Division of the respondent (position number P0064488) be re-classified to Level 3 and the position be re-titled Finance and Administration Officer.

[L.S.] S. J. KENNER,
Commissioner/
Public Service Arbitrator.

COAL INDUSTRY TRIBUNAL— Disputes—Matters referred—

**GRIFFIN COAL (PRODUCTION) ENTERPRISE
AGREEMENT 1996-2001.**

No. 2 of 2001.

THE COAL INDUSTRY TRIBUNAL OF WESTERN
AUSTRALIA

Held before the Chairman at Perth on the
9th day of February 2001

No. 2 of 2001

BETWEEN

COAL MINERS INDUSTRIAL UNION OF WORKERS
OF WESTERN AUSTRALIA

Applicant

and

THE GRIFFIN COAL MINING COMPANY PTY LTD
Respondent.

Order.

WHEREAS the Applicant is in dispute with the Respondent regarding action taken by the Respondent to change some of the arrangements under which work is performed at its workplace, which new arrangements are set out in a letter from the Respondent to the Applicant dated 31 January 2001;

AND WHEREAS negotiations between the parties regarding the new arrangements have ceased and the Respondent, on or about 5 February 2001, in purported exercise of its managerial prerogative, introduced the changes without the consent of the Applicant and on or about the same day members of the Applicant employed by the Respondent commenced and continue to engage in industrial action in protest, resulting in a disruption to the workplace;

AND WHEREAS the disputants are parties to an industrial agreement known as the *Griffin Coal (Production) Enterprise Agreement 1996—2001*, which makes provision for the orderly resolution of disputes, the spirit, if not the letter, of which is that matters in dispute are to be resolved either by conciliation or by arbitration and pending the outcome of that process the *status quo*, being the historic position, shall continue in an endeavour to ensure work continues as normal without prejudice to the outcome of any arbitrated resolution of the matters in dispute;

AND WHEREAS the dispute was the subject of a conference before the Chairman of the Tribunal on 6 February 2001 and on this day without any satisfactory progress being made towards an orderly resolution of the dispute;

AND WHEREAS so long as the present state of affairs continues there is little, if any, prospect of an orderly resolution of the dispute and the likelihood of a serious deterioration of industrial relations in respect of the matter;

AND WHEREAS it is desirable that this state of affairs be brought to an end immediately and that the disputants resolve their differences in a proper and orderly manner as contemplated by the industrial agreement to which the disputants are parties and also by the *Coal Industry Tribunal of Western Australia Act 1992*;

NOW THEREFORE, having heard Mr T H F Caspersz of counsel for the Applicant and Mr D H Shapper of counsel for the Respondent, pursuant to the powers vested in me under the *Coal Industry Tribunal of Western Australia Act 1992*, I hereby direct—

1. That as soon as practicable, but in any event no later than 6 pm on Monday 12 February 2001 there be a return to the *status quo*, being the historic position which existed prior to 5 February 2001, pending determination of the matters in dispute (identified by a letter dated 31 January 2001 from the Respondent to the Applicant) by the Tribunal unless determined earlier by conciliation.
2. That the parties recommence discussions as soon as practicable, with a view to resolving the matters in dispute, recognising the need for flexible working practices in a successful commercial enterprise.
3. That either party, on giving the other 24 hours notice, have liberty to apply to vary or cancel the provisions of this order.

By Order

G. L. FIELDING,
Chairman.

NOTICES— Union matters—

FBM 1 of 2001.

NOTICE is given of an application by “The Master Plumbers’ and Mechanical Services Association of Western Australia (Union of Employers)” to the Full Bench of the Western Australian Industrial Relations Commission for the substitution of a new set of rules for the registered rules of the Association that relate to its name and eligibility for membership. The new substitute rules are rule 1—Name, rule 3—Constitution, rule 4—Scope and Extent of the Plumbing and Mechanical Services Industry and rule 6—Membership.

The current rules and the proposed new substitute rules, with respect to rules 1, 3, 4, and 6, are set out below.

Current Rules

1.—NAME

The Association shall be known as “The Master Plumbers & Mechanical Services Association of Western Australia (Union of Employers)” hereinafter referred to as “The Association”.

3.—CONSTITUTION

The Association shall comprise an unlimited number of persons, firms, companies and corporations who or which have been admitted as members in accordance with the Rules of the Association.

4.—SCOPE AND EXTENT OF THE PLUMBING AND MECHANICAL SERVICES INDUSTRY

Plumbing and Mechanical Services work shall deem to be the work and processes as described in the following clauses but shall not be limited to or by these clauses.

Plumbing work or Plumbing trade shall also mean all workmanship skills, trades expertise, applicable technology and

materials currently used or which may in the future be used in connection with the design, fabrication, installation, commissioning, alteration, repair and maintenance of the following services—

- (a) General plumbing, sanitary plumbing, water supply plumbing, domestic and industrial gas fitting.
- (b) Drainage—storm water sub-soil, trade waste, sewer, nuclear waste treatment and disposal.
- (c) Septic Tanks—construction and installation.
- (d) Services embracing water heating, chilled water, steam and condensate, high temperature hot water, hot water, compressed air, oil, solar heating, condenser water, medical and industrial gases, vacuum, soap, sterile-water installations and recirculated water.
- (e) General roof work, including roof and wall claddings, gutters, downpipes and flashings.
- (f) Commercial and Industrial Fire Protection.
- (g) Chemical, product, commercial and industrial pipe and ductwork installations.
- (h) Ventilation, air conditioning and Refrigeration installations.
- (i) Laying, altering and/or repair of mains such as water, sewer, gas and oil reticulation.
- (j) Installation and services to Industrial, Hospital, Commercial and Restaurant equipment (other than electrical services).
- (k) Manufacture, installation and repair of tanks.
- (l) Plumbing work shall be classed as such, wherever it is carried out; whether in employer’s workshops, in any class of building or structure; in construction and development sites; in mines, ships, barges; oil rigs and platforms; in air, space and land vehicles.
- (m) As plumbing work covers such a broad spectrum of work and the technological changes in materials and methods, this clause can only be considered a guide and in no way shall limit the scope of the work.

6.—MEMBERSHIP

6.1 Eligibility

Any person, firm, company or corporation who, or which, is or is usually an employer within the meaning of the Industrial Relations Act 1979, or a sole trader working in, or in connection with all or any facet of the Plumbing Industry described in Rule 4 of these Rules, shall be eligible for membership.

6.2 Classes of Membership

There shall be classes of membership of the Association as follows—

- Ordinary Members
- Country Members
- Industry Members
- Life Members
- Teaching Members
- Retired Members

all of whom shall, unless the context otherwise requires, be included in any reference to “member” wherever appearing in these Rules and Constitution.

6.3 Ordinary Members

Ordinary members of the Association shall comprise those individuals, sole traders, partnerships, companies or other legal entities carrying on a bona fide plumbing, roofing, gas installation, plumbing consulting, draining and/or mechanical contracting business and the proprietor/principal/nominee of which shall hold a license or certificate where applicable issued by the appropriate statutory authority.

Such members may be admitted to the Association upon the endorsement of the Executive Committee.

6.4 Country Members

Country members of the Association shall comprise those individuals, sole traders, partnerships or other legal entities who or which meet the criteria for ordinary membership defined in Clause 6.3 but whose business is operated outside the boundaries of the 26 Perth Metropolitan Regional Shires.

Such members may be admitted to the Association upon the endorsement of the Executive Committee.

6.5 Industry Members

Industry members of the Association shall comprise those individuals, sole traders, partnerships, companies or other legal entities carrying on a bona fide business actively engaged in manufacture, distribution and/or servicing of the plumbing industry interpreted in its broadest sense, and on the endorsement of the Executive Committee, may be admitted to the Association as Industry Members.

Industry members shall be ineligible to hold office, exercise voting rights or display emblems of the Association.

6.6 Life Members

In recognition of faithful services rendered to the Association and/or the plumbing industry by an ordinary member, a General Meeting may elect such a member as a Life Member of the Association.

Every nomination for the appointment of a Life Member shall be submitted to the Executive Committee in writing and accompanied by not less than three testimonials in support of such application.

Because Life Membership is the highest honour which the Association may bestow upon a member, the conferring of Life Membership shall be restricted to not more than one nominee per annum and such nomination must be submitted to the Annual General Meeting of members each year for approval by that meeting.

Life Membership shall entail all the privileges and rights of ordinary membership of the Association without payment of fees, subscriptions, due or levies.

6.7 Teaching Members

Any person who is an approved instructor, teacher or lecturer in the School of Plumbing and Sheetmetal of the W.A. Department of Technical & Further Education or any person holding a similar position at any private institution either secondary or tertiary in nature, may apply to the Association for teacher membership. Every application for teacher membership shall include details of the qualifications held, and the establishment or establishments at which tuition is currently being given.

Upon endorsement by the Executive Committee such persons may be admitted to membership as Teaching Members.

Teaching members shall be ineligible to hold office or exercise voting rights.

6.8 Retired Members

For the purposes of this clause a Retired Member is a person, sole trader, nominee of a company or other legal entity who has sold or otherwise relinquished control or has ceased to exercise control of a plumbing contracting organisation previously enrolled with the Association as an Ordinary member. An application for retired membership must be made in writing to the Executive Committee and subject to a recommendation from that Committee to the General Meeting may be admitted to the Association as a Retired Member.

6.9 Admission to Membership

Admission to membership of the Association shall be conditional upon compliance with the following—

- (a) Members of the Association as at present constituted at the time of the meeting adopting these Rules creating the classes of membership shall be and subject to these rules shall continue to be members of the Association in the applicable category for such membership.
- (b) All new applicants for membership shall lodge with the Director, a signed application on an approved form together with a nomination fee (if applicable) and subscription. The Director shall submit every application received to the Executive Committee which shall review the suitability of the applicant and shall—
 - (i) Accept the application
 - (ii) Reject the application
 - (iii) Defer action in terms of (i) and (ii) pending further enquiries being made except that action in terms of (i) and (ii) shall not be delayed

beyond the next scheduled meeting of the Executive Committee.

- (c) An application by a firm, company or corporation shall nominate a representative to the Association who shall be a person acceptable to the Executive Committee. The person so nominated shall represent the firm, company or corporation if admitted to membership. The representative shall attend meetings and vote as for the firm, company or corporation he represents and the term Member shall also mean the representative ceasing to represent the firm or company a further representative acceptable to the committee shall be nominated by the firm, company or corporation.

6.10 Members Bound by the Rules and Constitution

Every applicant for membership shall, on acceptance as a member of the Association, be bound by the Rules and Constitution of the Association in force from time to time and until he shall have formally resigned his membership in terms of rule 6.12 or his membership terminated in terms of rule 6.13.

6.11 Violation of the Rules and Penalties Therefor

- (a) The Executive Committee shall be empowered to recommend to General Meeting, supported by reasons in writing, the expulsion, suspension or fine of any member on proof to the satisfaction of the Committee that such member has been guilty of—
 - (i) Failing to observe, or the commission, of any breach of any of these Rules or of the Code of Conduct or refusal to carry out any order or direction of the Committee or of any General Meeting in accordance with these Rules.
 - (ii) Divulging or making known or making use of correspondence, business, or information gained in a privileged position either as a member or officer of the Association to the advantage of the member or officer to the detriment of the Association or any members.
- (b) The Procedure for dealing with charges against a member for violation of the Rules shall be as follows—
 - (i) Any charge against any member shall be in writing signed by the person laying the charge, or by the Director acting on behalf of a member or members at his or their request.
 - (ii) Upon notification by the Director that a charge has been laid against a member, the Executive Committee shall cause a notice to be sent by Certified Mail to the member complained against at his address as shown in the Register of Members, ordering him to attend before the Executive Committee to answer the charge at a Meeting of the Executive Committee called for that purpose and shall also send a copy of such notice to the person laying the charge if other than the Director and such notice shall be sent not less than 7 clear days before the time appointed for the meeting.
 - (iii) The Director shall upon application by either party send a notice to any other member to appear and give evidence providing that such application is made 3 clear days before the date of the hearing of the charge. Should either of the two parties fail to attend, the Committee shall take evidence and decide the case as if all parties were present. The member charged shall remain in attendance while all evidence given against him is taken and shall be given full and complete opportunity to answer the same and to ask questions of all witnesses.
 - (iv) If after hearing the evidence the Committee shall be of the opinion that the charge is sustained, it shall recommend such penalty as it thinks fit to the next General Meeting or to a Special General Meeting, convened (inter alia) for the purpose of considering the Executive Committee recommendation.

- (v) Upon the resolution of General Meeting to approve, amend or reject the recommendation of the Executive Committee in respect of penalty the Director shall thereupon cause notices of such resolution to be sent to the member charged at the said address by Certified Mail.
- (c) Effect of Expulsion and Suspension or Fine—
 - (i) Any expelled member shall forfeit all claims he may have upon the funds or property of the Association and shall remain liable for all subscriptions or other monies due by him to the date of his expulsion.
 - (ii) No member expelled, suspended or fined shall be entitled to take any action or proceeding whatsoever against the Association for or in respect of any such fine, suspension or expulsion.

(Rule 6.12 is hereby disallowed as from 22/1/96 Appl 1326/95 Order of the President)

6.12 Resignation of Membership¹

Any member shall be entitled to resign from membership of the Association upon giving at least three months written notice to the Director, or by payment of three months membership fees in lieu of notice, but such resignation shall not be effective until such member has paid all fees, fines, levies or other dues payable by him under these rules to the end of the period covered by such notice and obtains a clearance in writing which thereupon shall be issued by the Director. Upon his resignation taking effect a member shall cease to be bound by and to have any rights under these Rules and must forthwith remove all emblems or other indication of membership from vehicles, documentation, advertising or wherever elsewhere displayed.

6.13 Termination of Membership

- (a) If a member ceases to be eligible as a member of the Association his membership shall be terminated.
- (b) Where there is a reported alteration in the constitution of a member whether it be the formation or dissolution of a partnership or the formation or winding up of a company the Director shall make appropriate investigations and recommend—
 - (i) that existing membership or memberships should continue in changed nomenclature (or)
 - (ii) that existing membership or memberships be terminated.
- (c) If any member becomes bankrupt assigns his estate for the benefit of his creditors (or in the case of a partnership is dissolved or in the case of a company is wound up except for the purpose of reconstruction or amalgamation) such membership shall be terminated.
- (d) If any member fails to pay all outstanding dues by the last day of the Association's Financial Year such membership shall be terminated without prejudice to any action initiated in terms of Rule 7.5.
- (e) Recommendations for termination of membership in terms of Rule 6.13 (a)—(d) shall be submitted by the Director to the Executive Committee for approval and the decision of the Executive Committee shall be recorded in the Minutes of such Executive Committee Meeting.

6.14 Expulsion from Membership

Any member committing an offence against these Rules as herein provided may be expelled after such notice and upon such conditions as are set out in Rule 6.11.

6.15 Register of Members

The Director shall cause to be kept in one or more books a register of the members of the Association with relevant particulars thereof including the name and address of the member and the name of the representative.

Proposed New Substitute Rules

(Note: Proposed new substitute rules shown in bold characters refer to those matters that are material to the Full Bench)

1.—NAME

The name of the Association is "The Master Plumbers and Gasfitters Association of Western Australia (Union of Employers)".

3.—CONSTITUTION

The Association will be made up of an unlimited number of persons, firms, associations, joint ventures, companies and corporations who or which have been admitted as members in accordance with these Rules.

4.—SCOPE AND EXTENT OF THE PLUMBING AND MECHANICAL SERVICES INDUSTRY

Plumbing and Mechanical Services work shall be deemed to be the work and processes as described in the following clauses but shall not be limited to or by these clauses.

Plumbing work or Plumbing trade shall also mean all workmanship skills, trades expertise, applicable technology and materials currently used or which may in the future be used in connection with the design, fabrication, installation, commissioning, alteration, repair and maintenance of the following services—

- (a) General plumbing, sanitary plumbing, water supply plumbing, domestic and industrial gas fitting.
- (b) Drainage, storm water, sub-soil drainage, trade waste, sewer, nuclear waste treatment and disposal.
- (c) Septic Tanks—construction and installation.
- (d) Services embracing water heating, chilled water, steam and condensate, high temperature hot water, hot water, compressed air, oil, solar heating, condenser water, medical and industrial gases, vacuum, soap, sterile-water installations and recirculated water.
- (e) General roof work, including roof and wall claddings, gutters, downpipes and flashings.
- (f) Domestic, residential, commercial and industrial fire protection.
- (g) Chemical, product, commercial and industrial pipe and ductwork installations.
- (h) Ventilation, air conditioning and refrigeration installations.
- (i) Laying, altering and/or repair of mains such as water, sewer, gas and oil reticulation.
- (j) Installation and services to industrial, hospital, commercial and restaurant equipment (other than electrical services).
- (k) Manufacture, installation and repair of tanks.
- (l) Plumbing work shall be classed as such, wherever it is carried out; whether in employer's workshops, in any class or building or structure; in construction and development sites; in mines, ships, barges; oil rigs and platforms; in air, space and land vehicles.
- (m) As plumbing work covers such a broad spectrum of work and the technological changes in materials and methods, this clause can only be considered a guide and in no way shall limit the scope of the work.

6.—MEMBERSHIP

6.1 Eligibility

Any person, firm, company or corporation who, or which, is or is usually an employer within the meaning of the Act, or a sole trader working in, or in connection with all or any facet of the Plumbing Industry described in Rule 4 of this Constitution, will be eligible for membership.

6.2 Classes of Membership

The Association will have the following classes of membership—

- Ordinary members
- Country members
- Associate members
- Life members
- Teaching members

Student members**Retired members**

all of whom will, unless the context otherwise requires, be included in any reference to “member” wherever appearing in this Constitution.

6.3 Ordinary Members

Ordinary Members of the Association will consist of those persons, firms, associations, joint ventures, companies and corporations or other legal entities carrying on a bona fide plumbing, roofing, gas installation, plumbing consulting, draining and/or mechanical contracting business and the proprietor/principal/nominee of which shall hold a license or certificate where applicable issued by the appropriate statutory authority.

Ordinary Members may be admitted to the Association upon the endorsement of the Executive Committee.

6.4 Country Members

Country Members of the Association will consist of those persons, firms, associations, joint ventures, companies and corporations or other legal entities who or which meet the criteria for ordinary membership defined in Clause 6.3 but whose business is operated outside a 58 kilometre radius of the Registered Office of the Association.

Country Members may be admitted to the Association upon the endorsement of the Executive Committee.

6.5 Associate Members

Associate Members of the Association will consist of those persons, firms, associations, joint ventures, companies and corporations or other legal entities carrying on a bona fide business actively engaged in manufacture, distribution and/or servicing of the plumbing industry, and on the endorsement of the Executive Committee, may be admitted to the Association as Associate Members.

Associate members will be ineligible to hold office or exercise voting rights but will be eligible to display emblems of the Association as Associate Members.

6.6 Life Members

- (a) An Annual General Meeting may elect a member as a Life Member of the Association in recognition of faithful service rendered to the Association by that member.
- (b) Every nomination for the appointment of a Life Member must be submitted to the Executive Committee in writing and accompanied by not less than three testimonials in support.
- (c) The conferring of Life Membership will be restricted to not more than one nominee per annum. Nomination must be submitted to the Annual General Meeting of members each year for approval by that meeting.
- (d) Life Membership will entail all the privileges and rights of Ordinary Membership of the Association without payment of fees, subscriptions, dues or levies.

6.7 Teaching Members

- (a) Any person who is an approved instructor, teacher or lecturer in plumbing, gasfitting and sheetmetal at any training institution either secondary or tertiary in nature, may apply to the Association for Teacher Membership. Every application for Teacher Membership must include details of the qualifications held, and the establishment or establishments at which tuition is currently being given.
- (b) Teaching Members may be admitted to the membership of the Association upon endorsement by the Executive Committee.
- (c) Teaching Members shall be ineligible to hold office or exercise voting rights.

6.8 Student Members

- (a) Any person studying to complete his or her training in plumbing at any training institution may apply to the Association for Student Membership. Every application for Student Membership must include details of the type of training being

undertaken and the establishment or establishments at which it is being undertaken.

- (b) Student Members may be admitted to membership of the Association upon endorsement by the Executive Committee.
- (c) Student members shall be ineligible to hold office or exercise voting rights.

6.9 Retired Members

For the purposes of this clause a Retired Member is a person, sole trader, nominee of a company or other legal entity, previously enrolled with the Association as an Ordinary Member, who has sold or otherwise relinquished control or has ceased to exercise control of a plumbing contracting organisation. Such a person may be admitted to the Association as a Retired Member.

6.10 Admission to Membership

- (a) Admission to membership of the Association will be conditional on compliance with the following—
- (b) Members of the Association as it is constituted at the time of the meeting adopting this Constitution creating the classes of membership shall be, subject to these rules and shall continue to be members of the Association in the applicable category for such membership.
- (c) All new applicants for membership must lodge with the Executive Director, a signed application agreeing to be bound by the Association’s Rules and Code of Conduct. This application must be on an approved form and must be lodged with a nomination fee (if applicable) and subscription. The Executive Director will submit every application received to the Executive Committee which will review the suitability of the applicant and may—
 - (1) Accept the application; or
 - (2) Reject the application; or
 - (3) Defer making a decision to accept or reject the application until further enquires have been made so long as a decision is not delayed beyond the next scheduled meeting of the Executive Committee.
- (c) An application by a firm, company or corporation must nominate to the Association a representative who must be a person acceptable to the Executive Committee. The person so nominated will represent the firm, company or corporation if it is admitted to membership. The representative will attend meetings and vote as for the member he or she represents and the term “member” will also mean the representative of the member. If a representative ceases to represent a member a further representative acceptable to the Executive Committee must be nominated by that member.

6.11 Members Bound by the Rules and Constitution

When an applicant for membership is accepted as a member of the Association he or she will be bound by the Rules and Constitution of the Association in force from time to time until he or she resigns from membership in accordance with rule 6.13 or has his or her membership terminated in accordance with rule 6.14.

6.12 Violation of the Rules and Penalties Therefore

- (a) If the Executive Committee is satisfied that a member has been guilty of misconduct including—
 - (1) Failing to observe these Rules or the Code of Conduct;
 - (2) The commission of any breach of these Rules or of the Code of Conduct;
 - (3) Refusal to carry out any order or direction of the Executive Committee or of any General Meeting in accordance with these Rules;
 - (4) Conduct which may reduce the standing of the Association in the community;
 - (5) Conduct which may bring the Association into disrepute
 - (6) Divulging or making known or making use of correspondence, business, or information

gained in a privileged position either as a member or officer of the Association to the advantage of the member or officer to the detriment of the Association or any members.

The Committee may recommend to the General Meeting that the member be expelled, suspended or fined. When it makes a recommendation, the Committee must provide the General Meeting with a written statement of its reasons.

(b) The procedure for dealing with charges against a member for violation of the Rules shall be as follows—

- (1) Any charge against any member must be in writing signed by the person laying the charge, or by the Executive Director acting on behalf of and at the request of a member or members.
- (2) When it is notified by the Executive Director that a charge has been laid against a member, the Executive Committee must cause a notice to be sent by Certified Mail to the member complained against at his or her address as shown in the Register of Members, ordering that member to appear before the Executive Committee to answer the charge at a Meeting of the Executive Committee called for that purpose. If the person laying the charge is someone other than the Executive Director, the Executive Director must also send a copy of the notice to that person at least 7 clear days before the time appointed for the meeting.
- (3) Either party may apply to the Executive Director at least three clear days before the hearing of the charge for a notice to be sent to any other member to appear and give evidence.
- (4) If either of the two parties fails to attend, the Executive Committee will take evidence and decide the case as if all parties were present.
- (5) The member charged must remain in attendance while all evidence given against him or her is taken and must be given full and complete opportunity to answer the evidence and to ask questions of all witnesses.
- (6) If after hearing the evidence the Executive Committee is satisfied that the charge is sustained, it will recommend such penalty as it thinks fit to the next General Meeting or to a Special General Meeting convened (inter alia) for the purpose of considering the Executive Committee recommendation.
- (7) The General Meeting may make a resolution to approve, amend or reject the recommendation of the Executive Committee in respect of penalty. The Executive Director must then cause notices of this resolution to be sent by Certified Mail to the member charged at his or her address as shown in the Register of Members.

(c) Any expelled member shall forfeit all claim he may have upon the funds or property of the Association and shall remain liable for all subscriptions or other monies due by him to the date of his expulsion.

6.13 Resignation of Membership

- (a) Any member of the Association may resign by giving written notice of resignation addressed to the Association.
- (b) The notice of resignation in (a) must be given to the Association by—
 - (1) delivering it personally to the Association's office at the Association's registered address; or
 - (2) sending it by certified mail to the registered address or the address of the Association shown in the Perth "White Pages" telephone directory.

(c) A member's notice of resignation takes effect on the day on which it is served on the Association or on a later day specified in the notice but the member remains responsible for any subscriptions, fees, levies or fines owing up to and including the date of termination of membership.

(d) Where a member's subscription has expired and has not been renewed, on expiration of a period of three months, the membership expires but the member shall be responsible for any subscriptions, fees, levies or fines owing up to and including the date of termination of membership.

(e) Where a member's notice of resignation takes effect, the member will cease to be bound by and have any rights under these Rules and must immediately remove all symbols or other indication of membership from vehicles, documentation, advertising or wherever else it is displayed by the member and immediately pay all arrears in membership.

6.14 Termination of Membership

(a) The membership of any member who ceases to be eligible as a member of the Association will be terminated immediately.

(b) Where there is a reported alteration in the constitution of a member whether it be the formation or dissolution of a partnership or the formation or winding up of a company the Executive Director must make appropriate investigations and recommend to the Executive Committee—

- (1) that existing membership or memberships should continue in changed nomenclature; or
- (2) that existing membership or memberships be terminated.

(c) The membership of any member who becomes bankrupt, assigns his or her estate for the benefit of his or her creditors, is dissolved or wound up (except for the purpose of reconstruction or amalgamation) will terminate immediately.

6.15 Register of Members

The Executive Director shall cause to be kept a register of members of the Association showing the name and residential address of each member and details of the financial status of each member in respect of his or her membership.

The register of members of the Association is to be made available by the Association for inspection by such persons as are authorised by the Registrar, at such times as are appointed by the Registrar, at the office of the Association.

The Executive Director shall cause the register of members of the Association to be purged on not less than 4 occasions in each year by striking off the names of members whose membership has ended under section 64A or 64B of the Act or under these Rules.

6.16 List of Office Bearers

The Executive Director shall cause to be kept a list of the names, residential addresses and occupations of persons holding office in the Association.

The matter has been listed before the Full Bench on 2 April 2001.

A copy of the rules of the Association and the proposed new substitute rules may be inspected at my office, 16th floor, Axa 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 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.

R.C. LOVEGROVE,
Deputy Registrar.

2 February 2001