

CUMULATIVE DIGEST HEADINGS

Denotes New Heading

- Absence Without Leave
- Act—Interpretation of
- Allowances—See also specific heading, e.g. Isolation Allowance, Industry Allowance, Meal Money—(Includes Special Rates and Provisions)
- Annual Leave—(Includes Annual Leave Loading)
- Appeal
- Apprentices and Juniors
- Awards—(Includes specified sub-headings, First Awards, New Awards, Area, Scope, Coverage, Cancellations, Award-Free, Respondency)
- Board of Reference
- Board and Lodging—(Includes Accommodation)
- Bonus—(Includes Incentive Payments)
- Breach of Acts/Award/Orders
- Capacity to Pay—Includes Inability to Pay
- Casual Work—(Includes loadings applicable to such work and nature of casual employment)
- Classification—(Includes Reclassification)
- Clothing—(Used when clothing is/is not provided and for clothing allowances)
- Common Rule—(Used in relation to Awards being or becoming Common Rule awards)
- Comparative Wage Justice—See also Nexus—(Includes Relativities)
- Compassionate Leave—(Includes Bereavement Leave)
- Compensation—See also specific heading, e.g. Redundancy, Long Service Leave—(Includes compensation for unfair dismissals)
- Conference—(Includes such matters as jurisdiction arising out of)
- Confined Space
- Consumer Price Index
- Contract of Service—(Used in relation to Section 29 (2) applications)
- Contract out of Award
- *Costs (Matters pertaining to)
- Custom and Practice
- Dangerous Work
- Date of Operation—(Includes Retrospectivity, Prospectivity)
- Demarcation
- Dirt Money
- Disabilities
- Discrimination
- Employee—(Used in such cases as whether person is an employee or independent contractor or agent)
- Enforcement of Acts/Awards/Orders
- Entry: Right of
- Hours of Work
- Industrial Action—(Includes Work-to-Rule, Picketing, Stop Work Meeting, Strike, Bans, Lockouts)
- Industrial Matter
- Industry—(Used re questions of extent and meaning of specified industry)
- Industry Allowance
- Interpretation—Words and Phrases
- Intervention
- Isolation Allowance
- Jurisdiction
- Jury Service
- Leave Without Pay
- Living Away From Home Allowance
- Long Service Leave
- Managerial Prerogative
- Manning
- Maternity Leave
- Meal Breaks
- Meal Money
- Misconduct
- Mixed Functions—(Includes Higher Duties)
- Natural Justice
- Nexus
- Night and Weekend Work
- On Call—(Includes Stand by)
- Order—(Includes Cancellation of Order)
- Over Award Payment
- Overtime—(Includes Call Back, Recall)
- Part-Time
- Penalty Rates
- Piecework
- Preference—(Includes Compulsory Unionism)
- Principles (Wage Fixing)
- Procedural Matters (e.g. Standards of evidence)
- Promotion Appeals
- Public Holidays
- Public Interest
- Redundancy/Retrenchment—(Includes Severance Pay)
- Reinstatement
- Registration—See Unions
- Rest Periods—(Includes Smokos)
- Safety
- Shift Work
- Sick Leave
- Standdown
- Stay of Proceedings
- Superannuation
- Supplementary and Service Payments
- Tallies
- Technological Change
- Termination—(Includes Dismissal, Wrongful/Unfair Dismissal)
- Training
- Transfer
- Travelling—(Includes Travelling Allowance and Travelling Time)
- Unfair Discrepancy
- Unions—(Includes Direction for Observance of Rules, Registration, Rules, Enforcement of Rules, Coverage/Constitutional Coverage, Dues, Membership, Cancellations, Exemptions)
- Utilisation of Contractors
- Victimisation
- Wages—(Includes Catch-up Margins, Payment by Results, Piece Work, Minimum Wage)
- Work Value
- Worker Participation
- Workers Compensation
- Workplace Agreement

CUMULATIVE DIGEST

MATTERS REFERRED TO IN DECISIONS OF THE INDUSTRIAL APPEAL COURT, INDUSTRIAL RELATIONS COMMISSION AND INDUSTRIAL MAGISTRATES COURT CONTAINED IN VOL. 82 PART 1, SUB PART 1-6.

NOTE: ¹ Denotes Industrial Appeal Court Decision ³ Denotes Commission in Court Session Decision
² Denotes Full Bench Decision ⁴ Denotes Decision of President

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ACT - INTERPRETATION OF—	
Complaint re breach of award - Complainant argued that as a result of the award breach, he has been underpaid \$14,775.92 - Defendant denied the allegations and argued that there was no underpayment - Further, Defendant counterclaims the amount of \$13,036.33, which it said was overpaid to the Complainant and that the overpayment arose as a consequence of the Complainant's breach of duty of fidelity and good faith - Preliminary Issue re jurisdiction to deal with the Respondent's counterclaim - IM reviewed Acts, Regulations and authorities and found that the Industrial Magistrate Court had jurisdiction to deal with the counterclaim - Further, IM reviewed relevant sections of the Award, evidence and found that Defendant had breached the award, and as a result of the breaches Complainant suffered a total underpayment of \$14,775.92 - As for the Defendant's counterclaim, IM found that it was without merit and not proven - Reasons for Decision Issued - Mr S Kennedy - v- DPH Nominees T/A Ausmic Environmental Industries WA - CP 263 of 1998 - Industrial Magistrate - Cicchini IM - 02/08/00 - Other Business Services.....	115
¹ Appeal against decision of Full Bench (81WAIG3026) re jurisdiction of Public Service Arbitrator to deal with a claim of unfair treatment of an officer on temporary deployment due to a restructure - IAC reviewed 80E(7) of the IR Act 1979 and s97(1)(a) of the PSM Act 1994 - IAC found that the case appeared to be about whether there was a legitimate expectation that the officer would continue to be paid at a higher level and would not raise an issue about the compliance with the Public Sector Standards as to temporary deployment - Dismissed - Commissioner of Police -v- Civil Service Association of Western Australia Incorporated - IAC 9 of 2001 - Industrial Appeal Court - 01/02/02 - Community Services.....	207
¹ Appeal against decision of Full Bench (81WAIG2537) re amount of compensation paid for loss or injury due to unfair dismissal - IAC found question was whether when assessing the monetary compensation which may be awarded under s23A(1)(ba) of the IR Act 1979 the Commission should discount the amount awarded, if an Applicant has commenced proceedings in a common law court for damages which may result in a monetary award - IAC found that there was nothing in the IR ACT, including the requirement to act according to equity, good conscience and the substantial merits of the case that required the Commission to take into account the fact that the Applicant may have other monetary remedies or has commenced proceedings to enforce those remedies - Dismissed - Q-Vis Limited (ACN 009 234 173) -v- Mr SD Gordon - IAC 5 of 2001 - Industrial Appeal Court - 01/01/02 - Machinery & Equipment Mfg.....	210
Complaint re breach of award - Complainant Union argued that Defendant breached the Building Trades (Construction) Award 1987 and contended that its member was at all material times Defendant's employee - Defendant denied that union member was its employee, and conducted maintenance work for it under a contract of services - Defendant made application to limit hearing to one issue only that being whether he was an employee of Defendant - Complainant opposed application and argued that this Court has the ability to determine the matters raised by Defendant in its pleadings - Defendant contended that the general jurisdiction of this Court was limited to specific statutory provisions and wanted that this Court not determine any factual or legal issues going to promissory estoppel or other equitable defences raised - Industrial Magistrate found that this Court had jurisdiction to deal with the enforcement of the award pursuant IR Act and that it would be inappropriate to split the issues and have separate hearings in relation to award coverage and the other matters - Reasons for Decision Issued - CONSTRUCTION, MINING, ENERGY -v- Pace Construction Pty Ltd t/a Pace and Brian Master Builders - CP 157 of 1999; CP 306 of 2000 - Industrial Magistrate - Cicchini IM - 24/01/02 - Construction Trade Services.....	324
Application re transfer of member - Applicant Union argued that the decision of Respondent to transfer member from the position of Prison Support Officer in Broome Regional Prison to Prisoner Support officer at Hakea Prison in Canning Vale be quashed and that Respondent be made to return member to work at the Broome Regional Prison or transfer her to suitable alternative employment in Broome - Respondent argued that it had the right to transfer the member after considering the situation that had arisen - Public Service Arbitrator found that it had exclusive jurisdiction to enquire into and deal with any industrial matter relating to government officers which was subject to the Industrial Relations Act, however, a Public Service Arbitrator did not have jurisdiction to enquire into or deal with any matter in respect to a procedure referred to in the Public Sector Management Act 1994 - Public Service Arbitrator also found that matters which were allegations of breaches of the relevant public sector standard were not within the jurisdiction of the Arbitrator - Arbitrator concluded that it did not have the jurisdiction to deal with the Union's application to enquire and deal with the decision of Respondent to transfer and thus, with some reluctance the application was dismissed for want of jurisdiction - Dismissed for want of jurisdiction - Civil Service Association of Western Australia Incorporated -v- Director General, Ministry of Justice - P 2 of 2001 - Public Service Arbitrator - BEECH SC - 14/03/02 - Other Services.....	596
Complaint re breach of Workplace Agreement - Complainant argued that Respondent had failed to comply with the terms of the workplace agreement and that the claim did not include a certificate as required by Section 54 of WPA Act and that the requirement for a certificate to be given was no more than an administrative obligation that once given at any time after initiating process has been lodged - Respondent argued that there was no breach and the Court did not have the jurisdiction to hear the complaint, to the extent that the Court may have jurisdiction, it could not grant the relief sought against Respondent - Industrial Magistrate found that the provision of the certificate was more than a mere administrative requirement, its provision was a mandatory initiating requirement which enlivened this Court - Further Magistrate found that this Court had no jurisdiction to hear and determine this matter and struck out the claim for want of jurisdiction - Mr DF Halpin -v- Western Australian Mint - M 397 of 2001 - Industrial Magistrate - Cicchini IM - 13/03/02 - Metal Product Manufacturing.....	611
Application re unfair dismissal - Preliminary issue to determine whether matter should proceed - Applicant argued that application should proceed because the prejudice would be the denial of Applicant to bring his claim before the Commission for determination and that documentation requested from Respondent were not forthcoming - Respondent argued that Applicant had not complied with Regulation 89, that Applicant had not been unfairly dismissed and that Applicant had not provided sufficient grounds for an unfair dismissal case - Commission found that there would be prejudice to Applicant by the application being dismissed and thus the application was not dismissed - Application to proceed - Mr DT Gould -v- Commissioner for Police - APPL 132 of 2002 - SCOTT C - 05/04/02 - Police.....	624

CUMULATIVE DIGEST—*continued*

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ACT - INTERPRETATION OF— <i>continued</i>	
² Cross Appeals against decision of Public Service Arbitrator (82WAIG104) re declaration of jurisdiction to hear and determine claim for redress, compensation or damages over a discontinued disciplinary action - Applications for adjournment of hearing - Appellant Employer argued that as the appeal required consideration of the limits of the Commission's jurisdiction it was in the public interest - Appellant Union argued, inter-alia, that the hearing should be adjourned because it would be inconvenient, there were no established facts and discovery was incomplete in the substantive matter, it would not inconvenience the Appellant Employer and the President had dismissed the application for a stay of the declaration - Full Bench found one application for adjournment was incompetent as it was made before the appeal was listed and that the approaches to the Registrar for an adjournment were unsatisfactory Full Bench reviewed authorities and found many of the issues raised were irrelevant and matters for the appeal and that refusing an adjournment would not result in a serious injustice to the Appellant Union - However an adjournment was subsequently granted due to the indisposition of an advocate - Full Bench found that the issues in one appeal were not of such importance that an appeal should lie and gave reasons therefore - Appellant Union conceded in the second appeal that one cannot appeal against reasons for decision and sought leave to discontinue - Full Bench found neither appeal warranted an order for costs - Dismissed, Discontinued and procedural orders issued accordingly - Civil Service Association of Western Australia Incorporated -v- Director General, Department of Justice - FBA 3,4 of 2002 - Full Bench - SHARKEY P/COLEMAN CC/BEECH SC - 07/05/02 - Government Administration.....	752
² Appeal against Decision of Industrial Magistrate (unreported) re dismissed application for enforcement of an order of the Commission and order for costs - Appellant Union argued IM erred in finding that it was barred from pursuing the claim against the Respondent because a Union delegate had entered into a deed of settlement with the Respondent excluding the Union from negotiations - Full Bench found that the complaint was dismissed before the Applicant Union could properly proceed with its case notwithstanding prima-facie evidence of a breach - Full Bench found IM erred entirely by not adverting to the clear terms of s83 of the IR Act 1979 and misapprehended the nature of enforcement proceedings - It simply did not set out to exercise its jurisdiction - Full Bench found that the Deed of Release was entirely irrelevant to whether there was a breach or non-compliance with an order of the Commission made under s 44 - Full Bench found there was no question of estoppel or privity of contract, but enforcing orders of the Commission was a matter of public interest - Full Bench found that finding that the claim was frivolous and vexatious was entirely erroneous and there was no basis for costs - Upheld and Remitted - Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch -v- Burswood Resort (Management) Limited - FBA 1 of 2002 - Full Bench - SHARKEY P/COLEMAN CC/BEECH SC - 26/04/02 - Accommodatn, Cafes&Restaurants	773
ALLOWANCES—	
¹ Appeal against decision of Full Bench (81WAIG3026) re jurisdiction of Public Service Arbitrator to deal with a claim of unfair treatment of an officer on temporary deployment due to a restructure - IAC reviewed 80E(7) of the IR Act 1979 and s97(1)(a) of the PSM Act 1994 - IAC found that the case appeared to be about whether there was a legitimate expectation that the officer would continue to be paid at a higher level and would not raise an issue about the compliance with the Public Sector Standards as to temporary deployment - Dismissed - Commissioner of Police -v- Civil Service Association of Western Australia Incorporated - IAC 9 of 2001 - Industrial Appeal Court - 01/02/02 - Community Services.....	207
Application to vary the Licensed Establishments (Retail & Wholesale) Award 1979, Shop & Warehouse (Wholesale & Retail Establishments) State Award 1977, Storemen Independent Wooldumpers Pty Ltd Award 1982 and Wool, Hide & Skin Store Employee's Award No. 8 of 1966 - The difference between the Applicant Union and the Respondents who appeared was the way in which the CPI was calculated to increase the meal money allowance - Commissioner found the use of the eight capital cities index was consistent with the State Wage Principles - Granted - The Shop, Distributive and Allied Employees' Association of Western Australia -v- Independent Wooldumpers - APPL 1609,1610,1611,2123 of 2001 - BEECH C - 10/01/02 - Personal & Household Good W/sg.....	283
² Appeal against Decision of Industrial Magistrate (81WAIG2893 & 3093) - Appellant argued that the Industrial Magistrate erred in facts and law on numerous grounds, in particular regarding that the set-off and estoppel does not apply, that in the alternative, it was permissible to plead a breach of a federal and state award and by imposing the penalties for the breaches - Full Bench found that no set-off could apply, there was no basis to find an estoppel and no miscarriage in the exercise of discretion by the Magistrate - No grounds of appeal were made out - Dismissed - James Turner Roofing Pty Ltd -v- Mr CL Peters - FBA 53 of 2001 - Full Bench - SHARKEY P/COLEMAN CC/WOOD C - 29/04/02 - Construction Trade Services.....	765
³ State Review of National Wage Decision - CICS considered whether to give effect to the 2001 Federal Safety Net Review - Wages Case (Living Wage Claim) - CCIWA argued that the amendments to the awards should be the sole province of the parties - AMMA sought variation to State Wage Principles to allow for amendment and substitution of enterprise awards by consent - CICS stated that awards, unlike agreements, were the creation of the Commission and in the case of common rule awards covered more people than the parties - CICS found no good reason not to implement the National Wage Decision by general order amending all State awards for the same reasons as the previous State Wage Case - CICS also found it unnecessary to make any modification to enable awards variations prior to the expiry of at least 12 months since the last adjustment or amend the Test Case Standard Principle - Statement and General Order Issued Accordingly - (Commission's own motion) -v- Trades and Labor Council of Western Australia & Others - APPL 752 of 2001 - Commission in Court Session - COLEMAN CC/FIELDING C/GREGOR C - 01/06/01	885
Application to vary the Transport Workers' (General) Award No. 10 of 1961 - Applicant Union sought to amend allowances in the Award pursuant to Principle 2 and Principle 5 of the Statement of Principles 2001 and also to vary various other clauses - Respondents sought to vary Clause 15(1) of the Award and argued that the variation was deleted by mistake when the Award was varied on 19 February 1986 - Commission was not satisfied that Respondents had made out a case that any error was made when Award was varied in 1986 - Commission declared that the amendment sought by the Respondent (if allowed) would be to reduce the Award Safety Net and accordingly referred the Respondent's application to the Chief Commissioner under Principle 10 of the Statement of Principles - Declaration Issued - Transport Workers' Union of Australia, Industrial Union of Workers, Western Australian Branch -v- Gordon & Gotch (Australasian) Ltd & Others - APPL 83 of 2002 - SMITH C/WOOD C/HARRISON C - 30/05/02 - Road Transport	1008
ANNUAL LEAVE—	
Application re unfair dismissal and contractual entitlements - Applicant argued that dismissal was unfair and that he had been denied contractual entitlements under his contract of service - Applicant argued that the reason for the dismissal stemmed from something of an abusive attitude on the part of employer on that day and that he was ordered to leave the premises - No appearance from Respondent - Commission found that in the absence of Respondent there was no countervailing evidence and found that the dismissal was unfair and awarded compensation - Unfair dismissal claim granted and contractual entitlements claim dismissed - Mr TP Bartell -v- Outdoor Shades Wangara - APPL 1998 of 2001 - BEECH C - 05/03/02 - Building Structure Services.....	470
Application re contractual entitlements - Applicant argued that he was owed benefits accrued as compensation for time not worked as his contract guaranteed him employment until 16 October 2002 - Respondent argued the agreement only created a salary guarantee - Commission found that clauses 4.3 and 4.4 of the agreement were ambiguous and the Applicant was unable to make out his claim for leave and that superannuation did not form part of the Applicant's salary within the meaning of the agreement - Dismissed - Mr NL Knight -v- Alinta Gas Limited - APPL 1248 of 2001 - SMITH, C - 15/02/02 - Electricity and Gas Supply	478
Application re contractual entitlements - Applicant claimed contractual benefits for accrued annual leave and pay in lieu of notice - Applicant terminated his employment and gave two week's notice as he had secured employment with a competitor of the Respondent - Respondent opposed the claims indicating there was a practice within the motor industry that when a salesman resigned to take up a position with a competitor they leave immediately - Commission found the Applicant's claim for two week's notice pay was made out, but the claim for annual leave to be paid at a higher rate of pay failed - Granted in Part - Mr MA Barratt -v- Robert Bryce - APPL 1314 of 2001 - SMITH C - 07/03/02 - Machining and Motor Veh Whlslg.....	615

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Application re unfair dismissal - Applicant argued he was unfairly dismissed and sought the maximum amount compensation in the alternative that reinstatement was impracticable - Respondent argued that Applicant was not a target for the dismissal, that he had previously considered terminating him to cut costs because his business was not performing well - Commission found on evidence that Respondent had previously considered terminating Applicant because its business was not performing well, therefore, Commission did not believe that Applicant was a target - Further, Commission found that Applicant was unfairly dismissed; that it doubt that a successful working relationship could be re-established and that it was satisfied that Applicant had sought to mitigate his loss and awarded compensation - Ordered Accordingly - Mr PM Kerr -v- Retch Rubber Pty Ltd - APPL 1303 of 2001 - WOOD C - 22/03/02 - Other Services.....	625
Application re unfair dismissal - Applicant argued that Respondent had dismissed her unfairly, that an agreement had been reached in the Commission and that Respondent had not complied fully with the agreement that was reached - No appearance from Respondent - Commission found that an agreement had been reached and made an order in terms of that agreement - Ordered Accordingly - Ms NM Lucanus -v- Cuddles Childcare Group - APPL 1719 of 2001 - SMITH C - 05/04/02 - Community Services	634
Application re unfair dismissal and contractual entitlements - Applicant argued he was unfairly dismissed, and owed annual leave, pay in lieu of notice, redundancy pay and compensation on the basis that he had been continually employed in the Respondent's business - Respondent argued that Applicant was terminated because the business was closing down as it was likely to become insolvent - Commission found that Applicant was unfairly dismissed and awarded compensation in lieu of notice, one day's pay and accrued annual leave - A separate award for redundancy was not made out nor was the transmission of business argument - Granted in Part - Mr PJ Hasler -v- LP Maintenance Pty Ltd ACN 094 805 366 - APPL 167 of 2001 - SMITH C - 16/04/02 - Construction Trade Services	850
Application re contractual entitlements - Applicant claimed he was owed benefits to which he was entitled to under his contract of employment - Applicant claimed he was owed wages, leave entitlements, superannuation, petty cash and mobile phone expenses, accommodation and fuel entitlements - Respondents opposed the claim and counter claimed with a list of expenses paid by the Respondents for the Applicant - Commissioner found that all claim except the petty cash were made out by the Applicant - Respondents counter claims that the Applicant owed the Respondent money were not made out - Commissioner ordered the Applicant to return the computer tower in working order to the Respondents before the Respondents were required to pay the outstanding amounts - Granted in part - Mr DJ Jackson -v- Warrayu Aboriginal Corporation - APPL 431,432 of 2000 - SMITH C - 03/05/02 - General Construction.....	1032
Application re contractual entitlements - Applicant sought denied salary, salary in lieu of notice, annual leave and superannuation entitlements due under his contract of service - Respondent's notice of answer and counter proposal did not comply with the Commission's direction or regulations - Respondent advised the Commission that it would not appear at the hearing as it had no assets - Commission awarded the Applicant salary payments due under the contract of service, but denied the claims for salary in lieu of notice, annual leave and superannuation - Granted in Part - Mr MJ Radford -v- Coinstar Pty Ltd - APPL 1855 of 2001 - KENNER C - 21/05/02 - Finance.....	1049
APPEAL—	
¹ Appeal against Decision of Full Bench (80WAIG4326) re dismissed application for unfair dismissal - Appellant argued the Full Bench erred in law in not taking cognisance of the legal significance of a cross appeal, by finding the Appellant was satisfied with the Commission's order and by not granting an extension of time - Industrial Appeal Court found the grounds of appeal for an extension of time was without merit and should not be granted - Dismissed - Mr M Cousins -v- YMCA of Perth - IAC 6 of 2000 - Industrial Appeal Court - Kennedy J./Scott J./Parker J. - 28/11/01 - Community Services.....	5
² Appeal against Decision of Commission (Public Service Arbitrator) (81WAIG2887) re Order pursuant to Section 80E - Appellant argued against the application by Respondent as it was premature and that it would lose its right of appeal - Respondent argued that the appeal by Appellant had no prospect of success and it was baseless - Full Bench found that the submissions concerning the merits of the appeal were premature and there would be an injustice to Appellant and that Respondent was left with the opportunity to answer the appeal in any event - Orders Issued - Director General of the Department of Community Development -v- Civil Service Association of Western Australia Incorporated - FBA 55 of 2001 - Full Bench - SHARKEY P/COLEMAN CC/WOOD,C - 18/12/01 - Government Administration.....	16
² Appeal against Decision of Commission (81WAIG1616) re unfair dismissal and contractual entitlements - Appellant argued the Commissioner erred in law and fact regarding the no period of notice to terminate within the employment contract and the Appellant's work performance, and sought an order that the decision be overturned - An application for an extension of time to lodge appeal books was granted and application to adduce fresh evidence was dismissed - Full Bench found that there was no concluded written agreement nor was an offer of employment accepted which contained an agreed term of notice of termination - Dismissed - Dayman Holdings Pty Ltd ABN 009 309 468 Trading as Reynolds & Associates -v- Mr MRS Barnes - FBA 41 of 2001 - Full Bench - SHARKEY P/COLEMAN CC/BEECH C - 17/12/01 - Business Services	17
² Appeal against Decision of Commission (81WAIG1632) re quantum of compensation and contractual benefits - Appellant argued that the Commissioner erred on a number of grounds regarding compensation, superannuation, entitlements and redundancy payment - There was no cross appeal - Full Bench found that the Appellant was not entitled to claim an amount equal to superannuation contributions as a contractual benefit, and had received a reasonable redundancy payment - Dismissed - Mr P Dellys -v- Elderslie Finance Corporation Limited - FBA 42 of 2001 - Full Bench - SHARKEY P/SCOTT C./SMITH, C - 18/12/01 - Finance	24
² Appeal against Decision of Commission (81WAIG1646) re unfair dismissal - Appellant argued the Commissioner had erred in law and fact on numerous grounds relating to the contract of service - Full Bench found there was no jurisdiction to hear and determine an application claiming relief for harsh, oppressive and unfair dismissal, and the claim for contractual benefits was not established at first instance - Dismissed - Mr CJ Fox -v- News Illustrated Pty Ltd - FBA 46 of 2001 - Full Bench - SHARKEY P/COLEMAN CC/BEECH C - 20/12/01 - Printng, Publishg & Recdd Media	35
² Appeal against Decision of Commission (81WAIG2446) re unfair dismissal - Appellant appealed against the Commission's "findings" on various issues relating to his claim - Further, Appellant sought six months compensation for his unfair dismissal, and for an ancillary order to be issued for the Respondent to provide him with a statement of duties, and that the Commission's decision be set aside - Full Bench reviewed various authorities and evidence and found that no ground of appeal was made out and that there was no miscarriage of the exercise of the discretion, at first instance, established and dismissed the appeal - Dismissed - Mr S LaRose -v- Kiam Corporation Limited - FBA 47 of 2001 - Full Bench - SHARKEY P/COLEMAN CC/SCOTT C. - 11/12/01 - Other Services.....	44
² Appeal against Decision of Commission (81WAIG2596) re unfair dismissal - Appellant argued that in relation to the written warning issued, the Commissioner erred in concluding that it was unfairly issued, that on various other issues such as health and safety, the relationship between Applicant and the Head Department, the Applicant's performance and compensation, the Commissioner failed to give proper weight to the evidence - Further, Appellant sought that the Commission's order be quashed - Full Bench reviewed evidence, authorities and found on various reasons, that the Commissioner was entitled to find and correct in finding that the dismissal was unfair, that it was quite clear that the exercise of the discretion at first instance did not miscarry as alleged in the grounds of appeal and that the appeal was not made out, therefore dismissed the appeal - Dismissed - Penrhos College (Inc) -v- Mrs M Muggeridge - FBA 52 of 2001 - Full Bench - SHARKEY P/COLEMAN CC/WOOD,C - 07/12/01 - Education.....	49

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¹ Appeal against decision of Full Bench (81WAIG3026) re jurisdiction of Public Service Arbitrator to deal with a claim of unfair treatment of an officer on temporary deployment due to a restructure - IAC reviewed 80E(7) of the IR Act 1979 and s97(1)(a) of the PSM Act 1994 - IAC found that the case appeared to be about whether there was a legitimate expectation that the officer would continue to be paid at a higher level and would not raise an issue about the compliance with the Public Sector Standards as to temporary deployment - Dismissed - Commissioner of Police -v- Civil Service Association of Western Australia Incorporated - IAC 9 of 2001 - Industrial Appeal Court - 01/02/02 - Community Services.....	207
¹ Application for stay of order for reinstatement pending appeal to Full Bench - Applicant argued employee ordered to be reinstated would require retraining and offered to continue salary payments until the appeal was disposed - IAC found that it had the power to stay the order pending the appeal and that there were no exceptional circumstances in the case - Dismissed - BHP Iron Ore Pty Ltd -v- CONSTRUCTION, MINING, ENERGY - IAC 10 of 2001 - Industrial Appeal Court - 04/02/02 - Metal Ore Mining.....	209
¹ Appeal against decision of Full Bench (81WAIG2537) re amount of compensation paid for loss or injury due to unfair dismissal - IAC found question was whether when assessing the monetary compensation which may be awarded under s23A(1)(ba) of the IR Act 1979 the Commission should discount the amount awarded, if an Applicant has commenced proceedings in a common law court for damages which may result in a monetary award - IAC found that there was nothing in the IR Act, including the requirement to act according to equity, good conscience and the substantial merits of the case that required the Commission to take into account the fact that the Applicant may have other monetary remedies or has commenced proceedings to enforce those remedies - Dismissed - Q-Vis Limited (ACN 009 234 173) -v- Mr SD Gordon - IAC 5 of 2001 - Industrial Appeal Court - 01/01/02 - Machinery & Equipment Mfg.....	210
² Appeal against decision of Commission (81WAIG1206) - Appellant argued that the learned Commissioner erred in law and fact on several grounds regarding procedural fairness and failing to consider a number of matters and facts - A submission that the Appeal was incompetent as being out time was dismissed - Full Bench found that the exercise of discretion at the first instance was not miscarried and no ground of appeal was made out - Dismissed - Mr GE Garbett -v- Midland Brick Co Pty Ltd - FBA 28 of 2001 - Full Bench - SHARKEY P/COLEMAN CC/SMITH, C - 06/02/02 - Other Manufacturing.....	212
Appeal against decision of the Respondent re alleged misconduct - Appellant argued the alleged misconduct, which was denied, was not undertaken in the course of performance of her duties or related to her employment with the Respondent, and that she was denied natural justice and procedural fairness during the investigation - Respondent denied any flaws in the investigation's procedures and claimed the Appellant's conduct involved a breach of her contract of employment - Public Service Appeal Board found there were significant and substantive flaws in the disciplinary process and as a result the findings are unsustainable and the finding of the disciplinary process and penalty imposed should be quashed - Granted - Ms TR Cull -v- Commissioner, State Revenue Department - PSAB 3 of 2001 - Public Service Appeal Board - SCOTT C. - 04/02/02 - Government Administration.....	377
¹ Appeal against Decision of Commission in Court Session (81WAIG1162) re an application to vary an award - Appellant argued the Commission in Court Session erred in law in finding that there was an industrial matter in the case, and was in excess of jurisdiction in its decision to allow the Applicant Union's "freedom of choice" clause to be inserted into the award - Industrial Appeal Court found the Commission erred in the exercise of its discretion to grant the application by giving significant weight to the effects of workplace agreements on terms and conditions of the cleaning industry, and to the diminution of employment under the award. The appeals were allowed, the decision of the Commission in Court Session set aside, and the original application of the union was dismissed - Upheld - Chamber of Commerce & Industry of Western Australia -v- Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch - IAC 3 of 2001 & IAC 4 of 2001 - Industrial Appeal Court - 15/02/02 - Property Services.....	405
² Appeal against Decision of Commission (81WAIG3079) re variation of the Malting Industry Award 1993 - Appellant argued the Commission erred in the exercise of its discretion on a number of grounds, including that it gave no weight to the scheme of the Act/or the Wage Fixing Principles - Full Bench reviewed Act, authorities, Wage Fixing Principles and found that the Commission at first instance had erred in making findings in error and in not having regard to a number of relevant matters and therefore, upheld the appeal, suspended the decision at first instance and remitted the matter back to the Commission at first instance - Upheld - The Breweries and Bottleyards Employees' Industrial Union of Workers of Western Australia -v- Kirin Australia Pty Ltd - FBA 56 of 2001 - Full Bench - SHARKEY P/GREGOR C/SMITH, C - 13/03/02 - Food, Beverage and Tobacco Mfg.....	412
² Appeal against Decision of Commission (81WAIG2772) re unfair dismissal - Applications to extend time to institute the appeal were granted and fresh evidence was admitted - Appellant appealed against the original order striking out the application due to no attendance on behalf of the application at the first hearing - Full Bench found the failure of the Appellant's solicitor to attend the hearing was the fault of the Solicitor and suspended the order and remitted the matter back to the Commission - Costs for the Respondent's inconvenience was awarded - Upheld and decision at first instance suspended and remitted back to the Commission - Mr AA Cheesman -v- Jamco Nominees Pty Ltd - FBA 54 of 2001 - Full Bench - SHARKEY P/COLEMAN CC/WOOD,C - 28/02/02 - Other Services.....	422
² Appeal against Decision of Commission (Public Service Arbitrator) (81WAIG2887) re Order pursuant to Section 80E - Appellant argued against the decision of the learned Commissioner in that the Arbitrator erred in law in finding that the Respondent's alleged conduct did not touch Respondent's members employment - Appellant further argued that it should have been allowed to enquire into Respondent's alleged conduct because depending on the factual findings made there was a potential for a finding that Respondent's conduct was improper as to render him unfit for work with Appellant and there was the potential for a finding that Respondent had committed a breach of discipline given the role of the Department of Community Development and as a manager - Respondent argued and file a notice of contention that the conduct of any investigations which might be initiated by Appellant were not at all relevant to the grounds of appeal - Full Bench found that the crux of the appeal was that there was a potential for a finding that the member's alleged conduct was so intrinsically improper that it rendered him unfit to work with Appellant, as well as, a potential for findings of the breaches of discipline - Further, Full Bench found that the Arbitrator erred in finding that there was an allegation of misconduct constituting a breach of discipline and that all grounds of the appeal were made out - Appeal Upheld - Director General of the Department of Community Development -v- Civil Service Association of Western Australia Incorporated - FBA 55 of 2001 - Full Bench - SHARKEY P/COLEMAN CC/WOOD,C - 05/03/02 - Government Administration.....	425
² Appeal against Decision of Commission (unreported) re unfair dismissal - An application to extend time to institute the appeal was granted - Appellant argued the Commissioner erred in exercising his discretion to make an order discontinuing matter No. 1039/2000 - Respondent argued there was no material put forward to support the application - Full Bench found that the Commissioner had erred in the exercise of his discretion and quashed the order made at the first instance - Upheld and Quashed - Mr J Lane -v- Aussie Online Limited (ACN 004 160 927) - FBA 50 of 2001 - Full Bench - SHARKEY P/COLEMAN CC/GREGOR C - 20/02/02.....	430
¹ Application for stay of order of Decision of Commission in Court Session in Matter No. A4 of 2001 - The main ground of appeal was that the CICS justified the making of the award on the basis that the Applicant had been incorporated so as to avoid the binding effect of the Burswood Resort Management Ltd agreement - Industrial Appeal Court was not impressed with the force of the argument that the new award will cause the Applicant to suffer irremediable losses in the form of lost business opportunities if a stay was not granted - IAC concluded that this case did not present exceptional circumstances such as to justify an order that the award made by CICS be stayed pending the appeal - Dismissed - Burswood Catering and Entertainment Pty Ltd -v- Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch - IAC 5 of 2002 - Industrial Appeal Court - - 23/04/02 - Accommodatn, Cafes&Restaurants.....	741

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² Appeal against Decision of the Commission (81WAIG3112) - Appellant argued that the Commissioner erred in law and fact on a number of grounds in finding that the applicants were not unfairly dismissed - Applications to adjourn proceedings and to substantially amend the grounds of appeal were dismissed - Appellant made an application that Commissioner Kenner disqualify himself from hearing the appeal - Commissioner Kenner declined to disqualify himself and his reasons are provided in the decisions - Full Bench found that the grounds of the appeal were not made out as the grounds did not disclose any error on the part of the Commission at first instance - Dismissed - Mr D Bucu & Others -v- Midland Brick Co Pty Ltd - FBA 59 of 2001 - Full Bench - SHARKEY P/BEECH SC/KENNER C - 02/05/02 - Non -Metallic Min Product Mfg.....	743
² Cross Appeals against decision of Public Service Arbitrator (82WAIG104) re declaration of jurisdiction to hear and determine claim for redress, compensation or damages over a discontinued disciplinary action - Applications for adjournment of hearing - Appellant Employer argued that as the appeal required consideration of the limits of the Commission's jurisdiction it was in the public interest - Appellant Union argued, inter-alia, that the hearing should be adjourned because it would be inconvenient, there were no established facts and discovery was incomplete in the substantive matter, it would not inconvenience the Appellant Employer and the President had dismissed the application for a stay of the declaration - Full Bench found one application for adjournment was incompetent as it was made before the appeal was listed and that the approaches to the Registrar for an adjournment were unsatisfactory Full Bench reviewed authorities and found many of the issues raised were irrelevant and matters for the appeal and that refusing an adjournment would not result in a serious injustice to the Appellant Union - However an adjournment was subsequently granted due to the indisposition of an advocate - Full Bench found that the issues in one appeal were not of such importance that an appeal should lie and gave reasons therefore - Appellant Union conceded in the second appeal that one cannot appeal against reasons for decision and sought leave to discontinue - Full Bench found neither appeal warranted an order for costs - Dismissed, Discontinued and procedural orders issued accordingly - Civil Service Association of Western Australia Incorporated -v- Director General, Department of Justice - FBA 3,4 of 2002 - Full Bench - SHARKEY P/COLEMAN CC/BEECH SC - 07/05/02 - Government Administration	752
² Appeal against Decision of the Commission (81WAIG3135) re unfair dismissal - Appellant appealed the decision on a number of grounds relating to the amount of compensation awarded for loss and redundancy pay - Full Bench found that the Appellant was made redundant but the award precludes any obligation to pay redundancy as the Appellant was a part time employee and the Respondent employed less than 15 employees - Further, the claim for compensation for loss was not established - Dismissed - Mrs DE Harley -v- Jasgold Holdings T/A Ringcraft Jewellers - FBA 60 of 2001 - Full Bench - SHARKEY P/COLEMAN CC/KENNER C - 23/04/02 - Personal & Household Good Rtlg.....	761
² Appeal against Decision of Industrial Magistrate (81WAIG2893 & 3093) - Appellant argued that the Industrial Magistrate erred in facts and law on numerous grounds, in particular regarding that the set-off and estoppel does not apply, that in the alternative, it was permissible to plead a breach of a federal and state award and by imposing the penalties for the breaches - Full Bench found that no set -off could apply, there was no basis to find an estoppel and no miscarriage in the exercise of discretion by the Magistrate - No grounds of appeal were made out - Dismissed - James Turner Roofing Pty Ltd -v- Mr CL Peters - FBA 53 of 2001 - Full Bench - SHARKEY P/COLEMAN CC/WOOD C - 29/04/02 - Construction Trade Services	765
² Appeal against Decision of Industrial Magistrate (unreported) re dismissed application for enforcement of an order of the Commission and order for costs - Appellant Union argued IM erred in finding that it was barred from pursuing the claim against the Respondent because a Union delegate had entered into a deed of settlement with the Respondent excluding the Union from negotiations - Full Bench found that the complaint was dismissed before the Applicant Union could properly proceed with its case notwithstanding prima-facie evidence of a breach - Full Bench found IM erred entirely by not advertng to the clear terms of s83 of the IR Act 1979 and misapprehended the nature of enforcement proceedings - It simply did not set out to exercise its jurisdiction - Full Bench found that the Deed of Release was entirely irrelevant to whether there was a breach or non-compliance with an order of the Commission made under s.44 - Full Bench found there was no question of estoppel or privity of contract, but enforcing orders of the Commission was a matter of public interest - Full Bench found that finding that the claim was frivolous and vexatious was entirely erroneous and there was no basis for costs - Upheld and Remitted - Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch -v- Burswood Resort (Management) Limited - FBA 1 of 2002 - Full Bench - SHARKEY P/COLEMAN CC/BEECH SC - 26/04/02 - Accommodatn, Cafes&Restaurants	773
⁴ Application for stay of operation of the Order of the Commission (unreported) re unfair dismissal and contractual entitlements pending the hearing and determination of Appeal to Full Bench - Appellants Employer argued that Commissioner erred in law and fact in making the Order as there was no basis for making the Order because the claim was one of contractual benefits and for unfair dismissal and that the documents ordered were excessively broad - Respondent argued that there was no justification for an order for stay of operation to be made - President found that Appellants had not made or established that they were entitled to an order for a stay of operation - Dismissed - Mr Ron Stanley/Mr Peter Stanley, Westlaw Securities P/L T/as Communique Communications -v- Mr MK Bryant - PRES 8 of 2002 - President - SHARKEY P - 30/04/02 - Communication Services	785
Appeal against the Decision of Respondent re gross misconduct - Appellant argued that alleged dismissal regarding gross misconduct was unfair and submitted that the PSAB had jurisdiction to hear the appeal - Respondent argued that Appellant's employment was subject to a workplace agreement pursuant to the Workplace Agreement Act 1993 and that the PSAB did not have the jurisdiction to deal with this matter - PSAB found that it did not have the jurisdiction to deal with this matter on the basis that there was no industrial matter - Dismissed for want of jurisdiction - Mr P Henley -v- Geraldton Health Service - PSAB 1 of 1999 - Public Service Appeal Board - SCOTT C - 23/04/02 - Government Administration	882
² Appeal against Decision of Commission (81WAIG3107) re dismissed unfair dismissal and denied contractual entitlements claim - Appellant argued that the Commission did not apply the correct test to determine whether she was an employee and sought to introduce new evidence - Appellant sought compensation and pay in lieu of notice - Respondent argued that the Appellant was not an employee, but had been in a defacto or domestic relationship - Full Bench found that it was not clear that the extra evidence could not have been obtained before the matter was first heard or was likely to have altered the outcome of the decision - Full Bench found that the claim for contractual entitlements under an award should not have been made - Further, Full Bench reviewed authorities and found that the Commission had erred in failing to find on evidence that there was a contract of service between the Appellant and the Respondent company and dismissed the Appeal - Upheld and Remitted - Ms JE Augustyn -v- Vistadale Pty Ltd As Trustee For The Ranger Family Trust Trading As Ranger Contracting - FBA 61 of 2001 - Full Bench - SHARKEY P/COLEMAN CC/BEECH SC - 07/06/02 - Construction Trade Services	939
² Appeal against Decision of Public Service Arbitrator (82WAIG463) re dismissed application for interim order in Matter No. P2/2002 - Appellant Union argued that the Arbitrator had erred in law and failed to exercise her discretion in dismissing a request for interim orders regarding the continuance of disciplinary action against the union member - Full Bench emphasised that the fundamental question was whether the matter was of such importance that in the public interest an appeal should be made - Full Bench found that it had not been established that the matter was of such importance and that the appeal was premature - Dismissed - Civil Service Association of Western Australia Incorporated -v- Chief Executive Officer, Water and Rivers Commission - FBA 16 of 2002 - Full Bench - SHARKEY P/COLEMAN CC/KENNER C - 16/05/02 - Government Administration	947
² Appeal against Decision of the Public Service Arbitrator (82WAIG456) re dismissed claim in relation of disciplinary proceedings taken against an employee - Appellant Union argued that the Public Service Arbitrator had erred in law and fact by dismissing the original application prior to its substantive hearing on the basis that it was contrary to the public interest - Full Bench found the Arbitrator did not err in the exercise of discretion and no grounds of appeal were made out - Full bench found the whole process of investigation as conceded was "void" or a "nullity", a finding which was at least recognised by the correct observation by the Arbitrator that the matter was dead - Dismissed - Civil Service Association of Western Australia Incorporated -v- Director General, Department of Consumer and Employment Protection - FBA 13 of 2002 - Full Bench - SHARKEY P/COLEMAN CC/KENNER C - 24/05/02 - Government Administration	952

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² Appeal against Decision of Commission (81WAIG3151) re dismissed unfair dismissal claim - Appellant appealed on numerous grounds regarding the Commissioner's finding that there was a valid reason to terminate the Appellant's employment - Full Bench found as the Commissioner had found, that the Appellant had not established that the allegations against him were untrue, and that there was unfairness in his dismissal - Full Bench also found the Commissioner had not misused the advantage that she had in seeing the witnesses, and it was not established that the exercise of discretion was miscarried - Dismissed - Mr AD Tasker -v- Sinogal Pty Ltd trading as Rockingham Auto Electrics & Mechanical Services - FBA 57 of 2001 - Full Bench - SHARKEY P/COLEMAN CC/WOOD C - 09/05/02 - Motor Vehicle Rtlg & Services	957
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³ Application for registration of a new award - Application by Respondent for an adjournment - Applicant Union opposed the adjournment as Respondent was well acquainted with the subject matter of the application and that it would have a detrimental effect on the potential employees of the new award - Respondent argued that the time to prepare for the court hearing would be inadequate and that December and January were notoriously the busiest times of the business cycle for the hospitality industry - Commission found that the decision whether to grant or refuse was a matter for the discretion of the Commission and that there would be a serious injustice to the Applicant Union and its potential members if the application for an adjournment was granted and were against granting the adjournment - Refused - Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch -v- Burswood Catering and Entertainment Pty Ltd - A 4 of 2001 - Commission in Court Session - BEECH C/SMITH, C/WOOD,C - 11/12/01 - Hospitality.....	59
Application to vary the Licensed Establishments (Retail & Wholesale) Award 1979, Shop & Warehouse (Wholesale & Retail Establishments) State Award 1977, Storemen Independent Wooldumpers Pty Ltd Award 1982 and Wool, Hide & Skin Store Employee's Award No. 8 of 1966 - The difference between the Applicant Union and the Respondents who appeared was the way in which the CPI was calculated to increase the meal money allowance - Commissioner found the use of the eight capital cities index was consistent with the State Wage Principles - Granted - The Shop, Distributive and Allied Employees' Association of Western Australia -v- Balcatta Liquor Store - APPL 1609,1610,1611,2123 of 2001 - BEECH C - 10/01/02 - Personal & Household Good W/sg.....	283
¹ Appeal against Decision of Commission in Court Session (81WAIG1162) re an application to vary an award - Appellant argued the Commission in Court Session erred in law in finding that there was an industrial matter in the case, and was in excess of jurisdiction in its decision to allow the Applicant Union's "freedom of choice" clause to be inserted into the award - Industrial Appeal Court found the Commission erred in the exercise of its discretion to grant the application by giving significant weight to the effects of workplace agreements on terms and conditions of the cleaning industry, and to the diminution of employment under the award. The appeals were allowed, the decision of the Commission in Court Session set aside, and the original application of the union was dismissed - Upheld - Chamber of Commerce & Industry of Western Australia -v- Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch - IAC 3 of 2001 & IAC 4 of 2001 - Industrial Appeal Court - 15/02/02 - Property Services.....	405
³ Application for registration of a new award - Application by the Union for the making of a new award governing employees employed by Burswood Catering and Entertainment Pty Ltd at the new facilities at the Burswood Island Resort which will replace the existing award and agreement - Respondent opposed the issuance of the award and argued that the company must have a wages and labour structure that allowed it to be competitive - Commission in Court Session found that the company created was in reality a labour hire company, which did not operate as an independent business, that effectively Burswood Ltd was contracting to itself and this has resulted in an inequality of wages - CICS reviewed various authorities and were of the view that an award should issue substantially in the terms claimed by the Union as they reflect the industrial agreement in order to remedy the inequity - New award issued - Granted - Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch -v- Burswood Catering and Entertainment Pty Ltd - A 4 of 2001 - Commission in Court Session - BEECH SC/SMITH C/WOOD C - 12/02/02 - Accommodatn, Cafes&Restaurants.....	544
³ Application for joinder to an award - Applicant Union sought to join a number of employers as Respondents to the Contract Cleaners(Ministry of Education) Award - Applicant Union claimed the award was regarded as the benchmark for the cleaning industry involved in contract cleaning of government schools - Respondents opposed the claim stating that cleaning in government schools is no different from cleaning generally - Commission in Court Session found that the award was not universally observed and did not see it as appropriate to extend the coverage of the award - Dismissed - Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch -v- Berkeley Challenge Pty Ltd & Others - APPL 1431 of 1998;APPL 1191 of 2001 - Commission in Court Session - BEECH SC/SCOTT C/KENNER C - 08/04/02 - Business Services.....	570
Conference referred re interpretation of Gaol Officers' Award 1998 No. 12 of 1968 - Hours of Duty - Applicant Union argued that the wording to clause 10 - Hours of Duty allowed a prison officer to take a meal break away from his or her place of work and if that did not occur, the clause entitled the officer to either cease duty thirty minutes before the conclusion of the rostered shift or take the thirty minutes as time off in lieu - Respondent did not agree with that interpretation and stated that the clause did not provide for a meal break to occur away from the place of work as claimed - Commission found that the principles to be applied in interpreting an award are that the meaning of a provision in an award was to be obtained by considering the terms of the award as a whole - Commission found that the proper interpretation of clause 10 - Hours of Duty of the award was that a prison officer was entitled to either cease duty for thirty minutes before the conclusion of the rostered shift or take the thirty minutes as time off in lieu only when the officer was required for duty during his/her meal break and his/her meal break was delayed beyond 5.5 hours from commencement of work - Declaration Issued - Western Australian Prison Officers' Union of Workers -v- The Hon. Attorney General - CR 222 of 2001 - BEECH SC - 15/03/02 - Other Services.....	693
¹ Application for stay of order of Decision of Commission in Court Session in Matter No. A4 of 2001 - The main ground of appeal was that the CICS justified the making of the award on the basis that the Applicant had been incorporated so as to avoid the binding effect of the Burswood Resort Management Ltd agreement - Industrial Appeal Court was not impressed with the force of the argument that the new award will cause the Applicant to suffer irremediable losses in the form of lost business opportunities if a stay was not granted - IAC concluded that this case did not present exceptional circumstances such as to justify an order that the award made by CICS be stayed pending the appeal - Dismissed - Burswood Catering and Entertainment Pty Ltd -v- Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch - IAC 5 of 2002 - Industrial Appeal Court - - 23/04/02 - Accommodatn, Cafes&Restaurants	741
² Appeal against Decision of Industrial Magistrate (81WAIG2893 & 3093) - Appellant argued that the Industrial Magistrate erred in facts and law on numerous grounds, in particular regarding that the set-off and estoppel does not apply, that in the alternative, it was permissible to plead a breach of a federal and state award and by imposing the penalties for the breaches - Full Bench found that no set -off could apply, there was no basis to find an estoppel and no miscarriage in the exercise of discretion by the Magistrate - No grounds of appeal were made out - Dismissed - James Turner Roofing Pty Ltd -v- Mr CL Peters - FBA 53 of 2001 - Full Bench - SHARKEY P/COLEMAN CC/WOOD C - 29/04/02 - Construction Trade Services.....	765
³ State Review of National Wage Decision - CICS considered whether to give effect to the 2001 Federal Safety Net Review - Wages Case (Living Wage Claim) - CCIWA argued that the amendments to the awards should be the sole province of the parties - AMMA sought variation to State Wage Principles to allow for amendment and substitution of enterprise awards by consent - CICS stated that awards, unlike agreements, were the creation of the Commission and in the case of common rule awards covered more people than the parties - CICS found no good reason not to implement the National Wage Decision by general order amending all State awards for the same reasons as the previous State Wage Case - CICS also found it unnecessary to make any modification to enable awards variations prior to the expiry of at least 12 months since the last adjustment or amend the Test Case Standard Principle - Statement and General Order Issued Accordingly - (Commission's own motion) -v- Trades and Labor Council of Western Australia & Others - APPL 752 of 2001 - Commission in Court Session - COLEMAN CC/FIELDING C/GREGOR C - 01/06/01	885

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Application to vary the Transport Workers' (General) Award No. 10 of 1961 - Applicant Union sought to amend allowances in the Award pursuant to Principle 2 and Principle 5 of the Statement of Principles 2001 and also to vary various other clauses - Respondents sought to vary Clause 15(1) of the Award and argued that the variation was deleted by mistake when the Award was varied on 19 February 1986 - Commission was not satisfied that Respondents had made out a case that any error was made when Award was varied in 1986 - Commission declared that the amendment sought by the Respondent (if allowed) would be to reduce the Award Safety Net and accordingly referred the Respondent's application to the Chief Commissioner under Principle 10 of the Statement of Principles - Declaration Issued - Transport Workers' Union of Australia, Industrial Union of Workers, Western Australian Branch -v- Gordon & Gotch (Australasian) Ltd & Others - APPL 83 of 2002 - SMITH C/WOOD C/HARRISON C - 30/05/02 - Road Transport	1008
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Application re contractual entitlements - Applicant argued that Respondent had underpaid him for his work as a Chef at the Natraj Indian Restaurant and that the contract had been breached - No appearance from Respondent - Commission found that the evidence of Applicant was inconsistent, unreliable and inconclusive and that it was difficult to make findings as to what payments were in fact made - Further, Commission found that the case was not made out and therefore application was dismissed - Dismissed - Mr D Sharma -v- Mr AK Billimoria - APPL 1415 of 2001 - WOOD C - 28/02/02 - Restaurant.....	651
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Complaint re breach of award - Complainant Union argued that pursuant to Clause 28(6) of the Building Trades (Construction) Award 1987, the Defendant failed to make available copies of the time and wage records relating to their member - Defendant argued that union's member was not employed on construction work as defined in the award, nor was he employed in any of the callings set out in Clause 8 of the award - Further, Defendant maintained that all material times the union's member was employed as and performed the work of a cabinet maker, therefore he was subject to the provisions of the Furniture Trades Industry Award - Industrial Magistrate reviewed evidence, authorities and relevant sections of the Award and concluded that Defendant was bound by the award, and that pursuant to the provisions of the award, Defendant failed to provide copies of the time and wage records relating to the union member - Proven - CONSTRUCTION, MINING, ENERGY -v- Kernaghan's Joinery Cabinet Makers - CP 240 of 2000 - Industrial Magistrate - Cicchini IM - 11/01/01 - Wood and Paper Product Mfg.....	109
Complaint re breach of award - Complainant argued that as a result of the award breach, he has been underpaid \$14,775.92 - Defendant denied the allegations and argued that there was no underpayment - Further, Defendant counterclaims the amount of \$13,036.33, which it said was overpaid to the Complainant and that the overpayment arose as a consequence of the Complainant's breach of duty of fidelity and good faith - Preliminary Issue re jurisdiction to deal with the Respondent's counterclaim - IM reviewed Acts, Regulations and authorities and found that the Industrial Magistrate Court had jurisdiction to deal with the counterclaim - Further, IM reviewed relevant sections of the Award, evidence and found that Defendant had breached the award, and as a result of the breaches Complainant suffered a total underpayment of \$14,775.92 - As for the Defendant's counterclaim, IM found that it was without merit and not proven - Reasons for Decision Issued - Mr S Kennedy -v- DPH Nominees T/A Ausmic Environmental Industries WA - CP 263 of 1998 - Industrial Magistrate - Cicchini IM - 02/08/00 - Other Business Services.....	115
Complaint re breach of award - Complainant Union argued that Defendant breached the Building Trades (Construction) Award 1987 and contended that its member was at all material times Defendant's employee - Defendant denied that union member was its employee, and conducted maintenance work for it under a contract of services - Defendant made application to limit hearing to one issue only that being whether he was an employee of Defendant - Complainant opposed application and argued that this Court has the ability to determine the matters raised by Defendant in its pleadings - Defendant contended that the general jurisdiction of this Court was limited to specific statutory provisions and wanted that this Court not determine any factual or legal issues going to promissory estoppel or other equitable defences raised - Industrial Magistrate found that this Court had jurisdiction to deal with the enforcement of the award pursuant IR Act and that it would be inappropriate to split the issues and have separate hearings in relation to award coverage and the other matters - Reasons for Decision Issued - CONSTRUCTION, MINING, ENERGY -v- Pace Construction Pty Ltd t/a Pace and Brian Master Builders - CP 157 of 1999; CP 306 of 2000 - Industrial Magistrate - Cicchini IM - 24/01/02 - Construction Trade Services.....	324
Complaint re breach of award - Complainant argued that Defendant breached the Hairdressers Award No.A32 of 1998 by failing to maintain a time and wages record for two employees employed with Defendant - Defendant argued that a time and wages book was provided but the time and wages records were not maintained by employees or relied on as wages were calculated on the computer at home -Industrial Magistrate found that the obligation was clearly on Respondent to ensure the records were maintained and if the records were not kept he was in breach of the award - Reasons for Decision Issued - Tara Jane Zeid, Department of Productivity and Labour Relations -v- New Wave Nominees Pty Ltd T/As New Wave Hair Care Unisex - M 169,170 of 2001 - Industrial Magistrate - Tarr IM - 20/12/01 - Hairdressing and Beauty Salons.....	327
Complaint re breach of state agreement - Claimant Union contends that their member was entitled to be paid for the full 3 hours during which the union meeting took place, that she was entitled to have her lunch break following the meeting and that Defendant's refusal to let her have her lunch break resulted in her working the full day without a lunch break - Further, that their member was entitled to be paid penalty rates in accordance with clause 16(1)(a) of the agreement - Defendant denied that it had breached the agreement, that it was liable to pay the amount claimed and rejected the claim on a number of grounds - Industrial Magistrate reviewed the relevant clauses of the agreement and found that the union meeting did not fall within the auspices of clause 34 of the agreement, that on the material date the union member took her lunch break prior to returning to work and accordingly she was not entitled to another lunch break - Further, IM found that clause 34(4)(c) did not permit the interpretation sought by the Claimant Union and that the Claimant Union had failed to prove its claim - Decision Issued - Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch -v- Burswood Resort (Management) Ltd - M 284 of 2001 - Industrial Magistrate - Cicchini IM - 07/03/02 - Personal and Other Services.....	612
Conference referred re discrimination against member on the basis of involvement in the Union - Applicant Union argued that their member was unfairly terminated from the position of Doughmaker on 28 March 2001 and had been penalised for being active in Union claims - Respondent argued that the member was at all material times employed under the classification of Baker under the Award and accordingly opposed the Union's claim that the member was unfairly terminated from a position of Doughmaker - Further, Respondent stated that it did not employ persons as Doughmakers - Commission found that the demotion of the member was unfair and that reinstatement to the position of Doughmaker be remedied and that payment be reinstated to that of Doughmaker - Ordered Accordingly - Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch -v- Tip Top Bakeries - CR 93 of 2001 - WOOD C - 08/03/02 - Food, Beverage and Tobacco Mfg ..	689
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¹ Appeal against decision of Full Bench (81WAIG3026) re jurisdiction of Public Service Arbitrator to deal with a claim of unfair treatment of an officer on temporary deployment due to a restructure - IAC reviewed 80E(7) of the IR Act 1979 and s97(1)(a) of the PSM Act 1994 - IAC found that the case appeared to be about whether there was a legitimate expectation that the officer would continue to be paid at a higher level and would not raise an issue about the compliance with the Public Sector Standards as to temporary deployment - Dismissed - Commissioner of Police -v- Civil Service Association of Western Australia Incorporated - IAC 9 of 2001 - Industrial Appeal Court - 01/02/02 - Community Services	207

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³ State Review of National Wage Decision - CICS considered whether to give effect to the 2001 Federal Safety Net Review - Wages Case (Living Wage Claim) - CCIWA argued that the amendments to the awards should be the sole province of the parties - AMMA sought variation to State Wage Principles to allow for amendment and substitution of enterprise awards by consent - CICS stated that awards, unlike agreements, were the creation of the Commission and in the case of common rule awards covered more people than the parties - CICS found no good reason not to implement the National Wage Decision by general order amending all State awards for the same reasons as the previous State Wage Case - CICS also found it unnecessary to make any modification to enable awards variations prior to the expiry of at least 12 months since the last adjustment or amend the Test Case Standard Principle - Statement and General Order Issued Accordingly - (Commission's own motion) -v- Trades and Labor Council of Western Australia & Others - APPL 752 of 2001 - Commission in Court Session - COLEMAN CC/FIELDING C/GREGOR C - 01/06/01	885
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Application re contractual entitlements - Applicant argued that he was owed benefits to which he was entitled under his contract of employment and sought claim for underpayment of wages for a specific period of time, leave entitlements, superannuation, petty cash and mobile phone expenses, accommodation and fuel entitlements - Respondents opposed the claim and counter claimed with a list of expenses paid by the Respondents for the Applicant - Commission found that all claim except the petty cash were made out by the Applicant - Respondents counter claims that the Applicant owed the Respondent money were not made out - Commission ordered the Applicant to return the computer tower in working order to the Respondents before the Respondents were required to pay the outstanding amounts - Granted in Part - Mr DJ Jackson -v- Guda Guda Aboriginal Corporation - APPL 431,432 of 2000 - SMITH C - 03/05/02 - General Construction	1032
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² Appeal against Decision of Commission (81WAIG1616) re unfair dismissal and contractual entitlements - Appellant argued the Commissioner erred in law and fact regarding the no period of notice to terminate within the employment contract and the Appellant's work performance, and sought an order that the decision be overturned - An application for an extension of time to lodge appeal books was granted and application to adduce fresh evidence was dismissed - Full Bench found that there was no concluded written agreement nor was an offer of employment accepted which contained an agreed term of notice of termination - Dismissed - Dayman Holdings Pty Ltd ABN 009 309 468 Trading as Reynolds & Associates -v- Mr MRS Barnes - FBA 41 of 2001 - Full Bench - SHARKEY P/COLEMAN CC/BEECH C - 17/12/01 - Business Services.....	17
² Appeal against Decision of Commission (81WAIG1632) re quantum of compensation and contractual benefits - Appellant argued that the Commissioner erred on a number of grounds regarding compensation, superannuation, entitlements and redundancy payment - There was no cross appeal - Full Bench found that the Appellant was not entitled to claim an amount equal to superannuation contributions as a contractual benefit, and had received a reasonable redundancy payment - Dismissed - Mr P Delllys -v- Elderslie Finance Corporation Limited - FBA 42 of 2001 - Full Bench - SHARKEY P/SCOTT C./SMITH, C - 18/12/01 - Finance	24
Application re unfair dismissal - Applicant argued that she was not provided with definitive reason why the Respondent was unhappy with her performance, nor was she given any opportunity to rectify the situation, that the Respondent's instructions were unclear and erratic and she had no idea she would be dismissed - Respondent argued that Applicant started well and seemed interested in her job at first but then her attitude declined, she was unwilling to communicate, lack initiative and her attitude was defiant and recalcitrant when counselled leaving Respondent no alternative but to dismiss her - Commission found based on the evidence provided that after the warning, Applicant had not been given the opportunity to improve, therefore her dismissal was unfair and ordered Respondent to pay Applicant the sum equivalent to 2 week's wages as compensation for the dismissal - Granted - Ms SE Anderson -v- Eastern Goldfields Medical Division of General Practice - APPL 958 of 2001 - BEECH C - 21/12/01 - Metal Ore Mining.....	127
Application re unfair dismissal - Applicant argued she had been harshly, oppressively or unfairly dismissed - Respondent denied the claim - Commission found based on the evidence presented that Applicant had made out her claim that she was dismissed and that it was harsh, oppressive or unfair, and ordered that as reinstatement was impracticable, that Respondent pay compensation to the Applicant for the dismissal - Granted - Ms KJ Williams -v- Havencourt ATF Richard Strutt FT t/a Helena Valley Pharmacy - APPL 928 of 2001 - BEECH C - 21/12/01 - Personal & Household Good Rtlg.....	130
Application re unfair dismissal and contractual entitlements - Applicant argued that redundancy was not genuine because the work that she performed was being done by a person who was recruited as a new staff member - Respondent argued that Applicant was terminated on the grounds of a genuine redundancy as her position was a luxury and there were no other suitable alternative duties within Respondent's organisation that could be allocated to her as it faced significant downturn in work and cost pressures required it to downsize - Commission found that the decision to make position redundant was genuine but the termination of Applicant's employment was unfair as there was no discussion in respect to the opportunity of reducing her hours of work - Order Issued - Ms PL Harben -v- Buckeridge Nominees Pty Ltd T/A BGC Windows ACN 008 849 581 - APPL 319 of 2001 - SMITH, C - 21/12/01 - Basic Material Wholesaling.....	142
Application re unfair dismissal - Applicant argued that dismissal was unfair because there was no warnings given to her before she was dismissed, the procedure used to terminate her services was unfair, she received no counselling or other opportunity to identify the employer's complaints about her or to remedy them - Respondent argued that Applicant was terminated after a sequence of events - Further the principle reason for dismissal was her poor performance and that she failed to follow directions - Commission found that Respondent did not give Applicant the opportunity to explain what she had done and Respondent could not have legitimately reached a conclusion that failure to carry out instructions justified termination instead she was dismissed forthwith and thus dismissal was unfair - Order Issued - Mrs SM Parker -v- Mary-Anne Kenworthy - Image International Pty Ltd - APPL 955 of 2001 - GREGOR C - 23/11/01 - Recreation	156
Application re unfair dismissal - Applicant argued that she viewed her position as long term, there was never any dissatisfaction expressed with her work at any time and that Respondent repudiated the contract of employment - Respondent argued that its action did not constitute a termination of employment, therefore the Commission lacked jurisdiction to determine the claim - Commission found based on the evidence presented that the Respondent had repudiated the contract of employment because Applicant was asking for more money and had been consistent in her demands to that extent, and the Respondent incorrectly concluded that at the end of the 12 months period the contract would come to an end - Further, Commission found that reinstatement was impracticable and ordered that compensation be paid to Applicant for a period of 10 weeks and four days - Granted - Ms SL Semple -v- Pro Subi Limited - APPL 910 of 2001 - GREGOR C - 20/12/01 - Other Services.....	159
Application re unfair dismissal and contractual entitlements - Applicant argued that she was summarily dismissed in that she was required to leave Respondent's employment immediately upon termination without reasonable notice and that Respondent breached the contract of employment - Respondent argued that Applicant was made redundant due to restructure and Applicant did not hold the necessary qualifications required and there was no alternative employment available - Commission found that Applicant was unfairly dismissed in many ways and where a fair go all round did not enter the equation and her position was not made redundant and that Applicant was terminated without warning or prior notice - Further, Commission found that Applicant was unfairly dismissed, reinstatement was impracticable and awarded compensation - Order Issued - Ms DM Smith -v- Nutricia Australia Pty Limited - APPL 640 of 2001 - WOOD, C - 07/12/01 - Health Services	162
Application re unfair dismissal and contractual entitlements - Applicant argued that she has been harshly, oppressively or unfairly dismissed - Claim for contractual entitlements was not pursued at the hearing - Respondent argued that Applicant had breached the Company's Casual Employment Contract by providing false information in relation to criminal history - Commission found on evidence that Respondent had failed to satisfy the onus to demonstrate the summary dismissal was fair, however, Commission was of the view that the Respondent was entitled to dismiss the Applicant by giving her notice - Further, Commission ordered that 1 months pay be paid to Applicant as compensation in accordance with her contract of employment - Ordered Accordingly - Ms D Churchill -v- Pharmacia and UpJohn (Perth) Pty Limited - APPL 2077 of 2000 - SMITH, C - 06/12/01 - Petroleum Coal Chemical Assoc	172

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1 Appeal against decision of Full Bench (81WAIG2537) re amount of compensation paid for loss or injury due to unfair dismissal - IAC found question was whether when assessing the monetary compensation which may be awarded under s23A(1)(ba) of the IR Act 1979 the Commission should discount the amount awarded, if an Applicant has commenced proceedings in a common law court for damages which may result in a monetary award - IAC found that there was nothing in the IR Act, including the requirement to act according to equity, good conscience and the substantial merits of the case that required the Commission to take into account the fact that the Applicant may have other monetary remedies or has commenced proceedings to enforce those remedies - Dismissed - Q-Vis Limited (ACN 009 234 173) -v- Mr SD Gordon - IAC 5 of 2001 - Industrial Appeal Court - 01/01/02 - Machinery & Equipment Mfg.....	210
Application re unfair dismissal - Applicant argued that he was harshly, oppressively or unfairly dismissed by the Respondent - Respondent claimed that Applicant was dismissed because of poor performance and the company had lost a major contract which resulted in the reduction in the number of employees - Commissioner found the Applicant had been unfairly dismissed and he had diligently sought alternative employment and awarded compensation - Granted - Mr K Chopra -v- Kwik & Swift Co Pty Ltd trading as Kwik & Swift Couriers - APPL 1813 of 2000 - SMITH, C - 01/02/02 - Road Transport	329
Application re unfair dismissal and contractual entitlements - Applicant argued that her resignation was really a constructive dismissal because she was left with no other alternative other than to resign and that there was no training or assistance provided and she was punctual during her period of employment - Respondent argued that Applicant had tendered her resignation and that she did have an alternative to resignation and her attitude did not change whilst her resignation was put on hold for a period of two weeks - Commission found that Applicant did tender her resignation and that she agreed to put it on hold for a two week period at the conclusion of which Respondent could, if it wished accept it - Dismissed - Ms AL Green -v- Ballajura Properties Pty Ltd - APPL 1454 of 2001 - BEECH C - 07/02/02 - Property and Business Services.....	335
Application re unfair dismissal and contractual entitlements - Applicant argued that she did not resign but was dismissed by Respondent and was employed as a permanent employee not as a casual and had not been paid all her contractual entitlements as a full time employee - Respondent argued that Applicant had verbally tendered her resignation which was accepted by the Directors and that in her final week she was place on casual hours and was paid out all contractual entitlements - Commission found that it was Respondent that decided that Applicant's employment should end and was therefore dismissed and that it was Respondent that instituted the casual hours only after Applicant's employment ceased - Further, Commission found however that Applicant by her own actions in offering to leave and seeking the meeting had to take responsibility for her actions and that payments made were paid for previous work and as a goodwill gesture - Dismissed - Ms JS Monteith -v- Saruman Holdings Pty Ltd & Other - APPL 1285 of 2001 - WOOD, C - 11/01/02 - Restaurant	345
Application re unfair dismissal and contractual benefits - Applicant argued that he was harshly, oppressively and unfairly dismissed from his employment and sought compensation - Respondent argued the Applicant was not an employee, had relinquished day to day involvement in the business and that the application was lodged out of time - Commissioner found the Applicant was paid wages and was an employee and a Director of the company, and was unfairly dismissed but reinstatement was impracticable - Claims for contractual benefits and costs dismissed - Granted in part - Mr N Polra -v- Chesterfield Child Care Centre Pty Ltd - APPL 1016 of 1999 - SCOTT C. - 25/01/02 - Community Services.....	351
Application re unfair dismissal and contractual entitlements - Applicant alleged she was dismissed because she would not apologise to the Respondent's daughter and son in law, and sought compensation for dismissal and outstanding benefits - Respondent claimed that tension had developed in the workplace caused by the Applicant's conduct, and there was no dismissal as the Applicant removed herself from the workplace - Commission found the Applicant had brought the contract of employment to an end at her behest and there was no jurisdiction for unfair dismissal for the Commission - Claim for contractual benefits was made out in part for payment of notice - Granted - Ms RV Adamiak -v- All Things X-Ray Pty Ltd - APPL 472 of 2001 - GREGOR C - 01/03/02 - Health Services.....	467
Application re unfair dismissal and contractual entitlements - Applicant argued that dismissal was unfair and that he had been denied contractual entitlements under his contract of service - Applicant argued that the reason for the dismissal stemmed from something of an abusive attitude on the part of employer on that day and that he was ordered to leave the premises - No appearance from Respondent - Commission found that in the absence of Respondent there was no countervailing evidence and found that the dismissal was unfair and awarded compensation - Unfair dismissal claim granted and contractual entitlements claim dismissed - Mr TP Bartell -v- Outdoor Shades Wangara - APPL 1998 of 2001 - BEECH C - 05/03/02 - Building Structure Services	470
Application re unfair dismissal and contractual entitlements - Applicant argued that dismissal was unfair because he was not given the opportunity to explain his actions and was denied natural justice - Respondent argued that Applicant had been dismissed for misconduct and that the breach of trust had warranted the termination - Commission found that there were different accounts of what had taken place and that those circumstances alone did not warrant the summary dismissal and that Applicant did not have any opportunity to defend himself or provide an explanation thus, the dismissal was substantively and procedurally harsh and unfair - Further Commission found that the employee/employer relationship had broken down so that reinstatement was impractical and awarded compensation - Ordered Accordingly - Mr CV Caldwell -v- P.Brown - Cloveroaks Pty Ltd - APPL 1421 of 2001 - WOOD C - 18/03/02 - Agriculture.....	617
Application re unfair dismissal - Applicant argued he was unfairly dismissed and sought the maximum amount compensation in the alternative that reinstatement was impracticable - Respondent argued that Applicant was not a target for the dismissal, that he had previously considered terminating him to cut costs because his business was not performing well - Commission found on evidence that Respondent had previously considered terminating Applicant because its business was not performing well, therefore, Commission did not believe that Applicant was a target - Further, Commission found that Applicant was unfairly dismissed; that it doubt that a successful working relationship could be re-established and that it was satisfied that Applicant had sought to mitigate his loss and awarded compensation - Ordered Accordingly - Mr PM Kerr -v- Retch Rubber Pty Ltd - APPL 1303 of 2001 - WOOD C - 22/03/02 - Other Services.....	625
Application re unfair dismissal - An application by Applicant for adjournment was granted and an application for leave to amend the Notice of Application was dismissed - Applicant argued he was harshly oppressively or unfairly dismissed, that he was not given reasons for his dismissal and sought three months' lost earnings and the costs involved in the closing and re-opening of his own private business - Respondent argued Applicant was on three months probation, that during that period he was incapable of performing basic duties of estimating and site measurement, that he was advised he was unsuitable for the position and was provided with the full reasons why - Further, Applicant was offered an alternative position within the company which he rejected - Commission found that it was a term of Applicant's contract of employment that it would be subject to review and that no specific period of time for the review was agreed too - Further, Commission found on evidence that Applicant was not given a "fair go" and accordingly his dismissal was unfair, that reinstatement was impracticable and ordered compensation - Ordered Accordingly - Mr SJ O'Brien -v- Perth Metalwork Co. Pty Ltd - APPL 778 of 2001 - BEECH SC - 18/09/01 - Construction Trade Services.....	642
Application re unfair dismissal and contractual entitlements - Applicant argued she was harshly, oppressively and unfairly dismissed and sought contractual benefits in respect to a fixed term contract - Respondent argued that as a result of certain difficulties they did not want the Applicant to return to teaching and attempted to negotiate a separation agreement - A preliminary issue was raised and the Commission determined that the application was lodged within time - Commission found the Applicant was harshly, oppressively and unfairly dismissed and that reinstatement was impracticable and compensation for loss and injury was awarded, but the Applicant's claim for contractual benefits was denied - Granted in Part - Ms BA Smith -v- Penrhos College (Inc) - APPL 1302 of 2000 - KENNER C - 22/02/02 - Education.....	652

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- Application re unfair dismissal - Applicant argued that due to the lack of any warnings and the fact that he was not told he was doing anything wrong, his dismissal was unfair and sought 10 weeks compensation - In its notice of answer and counter proposal, Respondent stated that Applicant was on three month's probation and that his work performance was inadequate - On the day of the hearing, there was no appearance by the Respondent - A copy of the transcript of the proceedings with a covering letter was forwarded to the Respondent on 22/3/2002 by Commission advising them that if any submission was to be made it should be done by COB Friday 8/3/2002 and Commission did not receive a response from the company - Commission accepted the Applicant's evidence and found that he was dismissed unfairly without any prior warning or any reason given and awarded compensation - Ordered Accordingly - Mr AS Tilley -v- ABACUS Computers and Technology - APPL 1623,1888 of 2001 - WOOD C - 27/03/02 - Other Services..... 663
- Conference referred re unfair dismissal - Applicant Union argued its member was harshly, oppressively and unfairly dismissed - Respondent argued the Applicant was dismissed for misconduct and for providing her son lunch from the canteen without paying for items provided - Commission found that the Applicant's actions of providing free lunch to her son constituted misconduct and that the Respondent was entitled to take into account the Applicant's prior conduct in relation to teaching staff - Respondent's application for reimbursement of expenses was dismissed - Dismissed - Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch -v- Cannington Community College P & C Association Inc - CR 158 of 2001 - SMITH C - 22/03/02 - Accommodatn, Cafes&Restaurants..... 677
- Conference referred re unfair dismissal - Applicant Union argued the Applicant was harshly, oppressively and unfairly dismissed as the employer had not raised any issues of work performance and that the dismissal was motivated by a claim for workers compensation - Respondent argued the Applicant was dismissed for poor work performance and traffic infringement notices - Commission found the Applicant was not given any warning re his work performance and allegations against him contained in his letter of termination have not been substantiated - Further, the Applicant was unfairly dismissed, that reinstatement was not practicable as the relationship had broken down and awarded compensation - Application for cost was dismissed - Granted - Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch -v- Heaton Cleaning Pty Ltd - CR 219 of 2001 - WOOD C - 15/02/02 - Other Business Services..... 686
- ²Cross Appeals against decision of Public Service Arbitrator (82WAIG104) re declaration of jurisdiction to hear and determine claim for redress, compensation or damages over a discontinued disciplinary action - Applications for adjournment of hearing - Appellant Employer argued that as the appeal required consideration of the limits of the Commission's jurisdiction it was in the public interest - Appellant Union argued, inter-alia, that the hearing should be adjourned because it would be inconvenient, there were no established facts and discovery was incomplete in the substantive matter, it would not inconvenience the Appellant Employer and the President had dismissed the application for a stay of the declaration - Full Bench found one application for adjournment was incompetent as it was made before the appeal was listed and that the approaches to the Registrar for an adjournment were unsatisfactory Full Bench reviewed authorities and found many of the issues raised were irrelevant and matters for the appeal and that refusing an adjournment would not result in a serious injustice to the Appellant Union - However an adjournment was subsequently granted due to the indisposition of an advocate - Full Bench found that the issues in one appeal were not of such importance that an appeal should lie and gave reasons therefore - Appellant Union conceded in the second appeal that one cannot appeal against reasons for decision and sought leave to discontinue - Full Bench found neither appeal warranted an order for costs - Dismissed, Discontinued and procedural orders issued accordingly - Civil Service Association of Western Australia Incorporated -v- Director General, Department of Justice - FBA 3,4 of 2002 - Full Bench - SHARKEY P/COLEMAN CC/BEECH SC - 07/05/02 - Government Administration..... 752
- Application re unfair dismissal and contractual entitlements - Applicant argued he was unfairly dismissed, and owed annual leave, pay in lieu of notice, redundancy pay and compensation on the basis that he had been continually employed in the Respondent's business - Respondent argued that Applicant was terminated because the business was closing down as it was likely to become insolvent - Commission found that Applicant was unfairly dismissed and awarded compensation in lieu of notice, one day's pay and accrued annual leave - A separate award for redundancy was not made out nor was the transmission of business argument - Granted in Part - Mr PJ Hasler -v- LP Maintenance Pty Ltd ACN 094 805 366 - APPL 167 of 2001 - SMITH C - 16/04/02 - Construction Trade Services..... 850
- Application re unfair dismissal - Applicant argued that dismissal was unfair because she was offered a continuing position with Respondent instead of redundancy yet without consultation was made redundant - No appearance from Respondent at hearing however Respondent contacted Commission after hearing to indicate that he had no knowledge and was not notified of the hearing - Commission verified firstly that Respondent had been notified and advised correctly at correct address and that no response had been received - Further, Commission found that Applicant had been dismissed unfairly and that reinstatement was impractical and awarded compensation - Order Issued - Ms R Twyford -v- Travel Central Pty Ltd ABN 22 095 851 675 - APPL 1623,1888 of 2001 - WOOD C - 27/03/02 - Other Services..... 868
- Application re unfair dismissal - Applicant argued he was dismissed in a harsh, oppressive and unfair manner and sought compensation as the opportunity for reinstatement was unavailing - Respondent argued that at the time he was in the process of selling the business and was having relationship difficulties with the Applicant, and as there was no position for the Applicant in the new company the Respondent decided to make the Applicant redundant - Commission found the Applicant was unfairly dismissed because the job he was doing continued to be performed by someone until the business was taken over by the purchaser and awarded compensation - Granted - Mr A Cokic -v- Graeme Wheildon Pty Ltd - APPL 1901 of 2001 - GREGOR C - 03/05/02 - Other Services 1014
- Application re unfair dismissal - Applicant argued she was summarily dismissed and that her dismissal was unfair, and sought reinstatement - Respondent argued that it was unable to continue to sponsor the Applicant in relation to a visa application due to the Department of Immigration's rules, and had no alternative but to terminate the contract - Commission found that the termination of employment was not effected in accordance with the Applicant's contract of employment and to that extent the dismissal was unfair - Reinstatement was sought but Commission was of the view there was a valid reason for the termination and reinstatement was impracticable, and awarded compensation for insufficient notice of termination - Granted in Part - Mrs IE GAULT -v- Mr Mike Smith Principal of Winthrop Baptist College - APPL 254 of 2002 - HARRISON C - 17/05/02 - Education 1017
- Application re unfair dismissal - Applicant argued that he was unfairly dismissed - Respondent argued that Applicant was an independent contractor and the Commission had no jurisdiction to hear the unfair dismissal application - Commission found that the most significant elements of the employment relationship point to a contract of service and that Applicant was an employee of Respondent - Further, Commission found that Applicant had been unfairly dismissed, that reinstatement was impracticable and thus awarded compensation - Granted - Mr MG Halligan -v- Bamboo Holdings Pty Ltd - APPL 1624 of 2001 - HARRISON C - 08/05/02 - Other Services..... 1025
- Application re unfair dismissal - Applicant argued she was unfairly dismissed and was given notice of her dismissal on 23 November 2001 - Respondent stated that on that day, he reduced the Applicant's hours but did not dismiss the Applicant - Respondent admitted dismissing the Applicant half way through her shift on 29 November 2001 as he believed the Applicant was tarnishing the Respondent's reputation - Commission found that the Respondent gave notice to the Applicant that her employment would end the following Friday and that prior to that event occurring, the Respondent dismissed the Applicant with immediate effect - Commission found the dismissal was unfair and that reinstatement was impracticable and awarded compensation - Granted - Mrs LL Wherry -v- K Hu Pty Ltd t/a Manning Fresh - APPL 2243 of 2001 - BEECH SC - 05/05/02 - Food Retailing 1089

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Conference referred re unfair dismissal and contractual entitlements - Applicant Union argued both Applicants were unfairly dismissed and sought denied contractual benefits relating to the final week of work - Respondent opposed the claim arguing the Applicants were terminated as permanent employees from other sites had to be placed, displacing the Applicants who were employed on a casual part time basis - Commission found the Applicant's dismissal to be unfair and reinstatement not practicable, awarded compensation but denied the claims for outstanding entitlements - Granted in Part - The Australian Workers' Union, West Australian Branch, Industrial Union of Workers -v- Goldfields Contractors - CR 265 of 2001 - WOOD C - 03/04/02 - Construction Trade Services	1102
Conference referred re unfair dismissal - Applicant Union argued that the employee had been unfairly excluded from the shearing workforce because of a dispute between the Respondent and the employee's spouse - Applicant Union argued this to be harsh and unfair and sought compensation - Respondent opposed the claim arguing the Applicant was never dismissed - Commission found the Applicant's approach to his employment was not adequate to justify a finding of unfair dismissal or dismissal at all - Application by the Respondent for costs was denied - Dismissed - The Australian Workers' Union, West Australian Branch, Industrial Union of Workers -v- Mr Leo Cattalini T/as Metro Shears - CR 287 of 2000 - WOOD C - 14/05/02 - Services to Agric/Hunt/Trappg	1104
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Conference re dismissal - Applicant Union argued the Applicant had been dismissed because he had complained about late payments - During the conference an issue arose as to the status of the employment contract - Respondent argued the Applicant had been employed as a subcontractor - Commission found the employment relationship was one of an independent contractor and declined to refer the matter for a hearing as there was no jurisdiction - Declaration Issued - The Western Australian Builders' Labourers, Painters & Plasterers Union of Workers -v- Geltray Pty Ltd trading as Reofast Steel Fixing - C 156 of 2001 - GREGOR C - 12/02/02 - Construction Trade Services	489
Conference referred re redundancy - Applicant Union argued that member had received insufficient redundancy payments on termination of his contract of employment - Respondent argued that the detailed and extensive provisions of the ABB Service Agreement had been complied with - Commission found that the ABB Service Agreement contained crucial provisions that included a dispute procedure which required unresolved matters to be referred to the Australian Industrial Relations Commission and that it had provisions which dealt with redundancies - Commission found that it was unable to exercise any powers in the matter and application was dismissed for want of jurisdiction - Dismissed for want of jurisdiction - CONSTRUCTION, MINING, ENERGY -v- ABB Engineering Construction Pty Ltd - CR 115 of 2001 - GREGOR C - 12/03/02 - Engineering	492
Conference referred re termination - Applicant Union sought an order for compensation to the maximum available under the Act - Applicant argued that whilst not in any way seeking to derogate from the importance of safety in the mining industry, if the Commission were to accept that its member was working too far out from safe ground, the circumstances of this matter did not warrant his dismissal - Respondent objected to and opposed the claim, arguing that union member had breached the Mines Safety and Inspection Regulations 1985 and the Respondent's policy in relation to the same - Further, it was the other safety breaches that was apparent in his employment record that contributed to its decision to dismiss him - Commission found based on the evidence presented that union member was working in an area of unsupported ground which was prohibited under the Regulation and the Respondent's policy and this was a serious and potentially fatal safety breach - Further, Commission reviewed test cases, the prior incident that occurred and was of the opinion that the union member's dismissal was not harsh, oppressive or unfair, and on all of the evidence in the matter, he had been given a fair go all round - Dismissed - The Australian Workers' Union, West Australian Branch, Industrial Union of Workers -v- Henry Walker Eltin Pty Ltd - CR 203 of 2001 - KENNER C - 08/04/02 - Metal Ore Mining	673
Conference referred re unfair dismissal - Applicant Union argued its member was harshly, oppressively and unfairly dismissed - Respondent argued the Applicant was dismissed for misconduct and for providing her son lunch from the canteen without paying for items provided - Commission found that the Applicant's actions of providing free lunch to her son constituted misconduct and that the Respondent was entitled to take into account the Applicant's prior conduct in relation to teaching staff - Respondent's application for reimbursement of expenses was dismissed - Dismissed - Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch -v- Cannington Community College P & C Association Inc - CR 158 of 2001 - SMITH C - 22/03/02 - Accommodatn, Cafes&Restaurants	677
Conference referred re unfair dismissal - Applicant Union argued the Applicant was harshly, oppressively and unfairly dismissed as the employer had not raised any issues of work performance and that the dismissal was motivated by a claim for workers compensation - Respondent argued the Applicant was dismissed for poor work performance and traffic infringement notices - Commission found the Applicant was not given any warning re his work performance and allegations against him contained in his letter of termination have not been substantiated - Further, the Applicant was unfairly dismissed, that reinstatement was not practicable as the relationship had broken down and awarded compensation - Application for cost was dismissed - Granted - Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch -v- Heaton Cleaning Pty Ltd - CR 219 of 2001 - WOOD C - 15/02/02 - Other Business Services	686
Conference referred re discrimination against member on the basis of involvement in the Union - Applicant Union argued that their member was unfairly terminated from the position of Doughmaker on 28 March 2001 and had been penalised for being active in Union claims - Respondent argued that the member was at all material times employed under the classification of Baker under the Award and accordingly opposed the Union's claim that the member was unfairly terminated from a position of Doughmaker - Further, Respondent stated that it did not employ persons as Doughmakers - Commission found that the demotion of the member was unfair and that reinstatement to the position of Doughmaker be remedied and that payment be reinstated to that of Doughmaker - Ordered Accordingly - Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch -v- Tip Top Bakeries - CR 93 of 2001 - WOOD C - 08/03/02 - Food, Beverage and Tobacco Mfg ..	689
Conference referred re interpretation of Gaol Officers' Award 1998 No. 12 of 1968 - Hours of Duty - Applicant Union argued that the wording to clause 10 - Hours of Duty allowed a prison officer to take a meal break away from his or her place of work and if that did not occur, the clause entitled the officer to either cease duty thirty minutes before the conclusion of the rostered shift or take the thirty minutes as time off in lieu - Respondent did not agree with that interpretation and stated that the clause did not provide for a meal break to occur away from the place of work as claimed - Commission found that the principles to be applied in interpreting an award are that the meaning of a provision in an award was to be obtained by considering the terms of the award as a whole - Commission found that the proper interpretation of clause 10 - Hours of Duty of the award was that a prison officer was entitled to either cease duty for thirty minutes before the conclusion of the rostered shift or take the thirty minutes as time off in lieu only when the officer was required for duty during his/her meal break and his/her meal break was delayed beyond 5.5 hours from commencement of work - Declaration Issued - Western Australian Prison Officers' Union of Workers -v- The Hon. Attorney General - CR 222 of 2001 - BEECH SC - 15/03/02 - Other Services	693
Application for an Order pursuant to Section 80E of the I.R. Act re perceived bias - Applicant Union argued that Respondent had refused member's application for leave without pay and for permission to undertake other work - Applicant Union sought interim orders to enable member to take leave without pay and to be able to undertake work outside his employment - Applicant Union also sought to have matter referred to Chief Commissioner for re-allocation on the basis of a perception of bias - Respondent argued that the authorities submitted did not support any finding of perceived bias in respect to these matters - Public Service Arbitrator found that it had an obligation to proceed with matters which arise before it, it had an obligation to ensure that it was not diverted by applications that are not of substance and that it should not disqualify itself from proceeding without reason - Dismissed - Civil Service Association of Western Australia Incorporated -v- Director General Department of Consumer and Employment Protection - P 57 of 2001 - Public Service Arbitrator - SCOTT C - 19/03/02 - Government Administration	591

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Conference referred re unfair dismissal - Applicant Union argued the Applicant was unfairly dismissed and denied the allegation made against him that he had been selling drugs - Respondent argued that the Applicant was dismissed for disciplinary reasons - Commission was not satisfied that any deficiency in the Respondent's process meant that the Applicant's dismissal was unfair, and that the Applicant's evidence did not show his dismissal was unfair - Commission also stated that its decision did not indicate in any way that the Applicant was involved in offering drugs for sale - Dismissed - Construction, Forestry, Mining and Energy Union (Federal Union) -v- Fieldway Enterprises Pty Ltd - CR 277 of 2001 - BEECH SC - 17/04/02 - General Construction.....	873
Conference referred re unfair dismissal - Applicant Union argued the employee had been unfairly dismissed and sought compensation - Respondent argued the Applicant had been dismissed due to a deterioration in his standard of work and that he had received warnings concerning his work performance - Commission found that there were difficulties with the Applicant's performance which were raised with him over a period of 2 years and that the Respondent had done everything they had to do in executing a termination of an employee - Dismissed - AUTO, FOOD, METAL, ENGIN UNION -v- Parins - CR 280 of 2001 - GREGOR C - 15/05/02 - Motor Vehicle Rtlg & Services	1109
Conference referred re unfair dismissal - There was no appearance by either the Applicant or the Respondent - Commission dismissed the application for want of prosecution - Dismissed - The Construction, Forestry, Mining and Energy Union of Workers -v- C.E.C.K. Pty Ltd - CR 278 of 2001 - GREGOR C - 17/05/02 -	1113
Conference referred re payment of long service leave - Applicant sought the payment of 13 weeks' pay as payment for accrued long service leave - Respondent opposed the claim stating the Commission did not have jurisdiction to hear the claim for long service leave - Commission was of the view that an employee was entitled to long service leave if they complete 15 years of service, even if they are then subsequently terminated for misconduct, but dismissed the application for want of jurisdiction - Dismissed - Mr IR Davies -v- Youngs WA Pty Ltd - APPL 1570 of 2001;CR 23 of 2002 - SMITH C - 17/05/02 - --	1114
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² Appeal against Decision of Commission (81WAIG1616) re unfair dismissal and contractual entitlements - Appellant argued the Commissioner erred in law and fact regarding the no period of notice to terminate within the employment contract and the Appellant's work performance, and sought an order that the decision be overturned - An application for an extension of time to lodge appeal books was granted and application to adduce fresh evidence was dismissed - Full Bench found that there was no concluded written agreement nor was an offer of employment accepted which contained an agreed term of notice of termination - Dismissed - Dayman Holdings Pty Ltd ABN 009 309 468 Trading as Reynolds & Associates -v- Mr MRS Barnes - FBA 41 of 2001 - Full Bench - SHARKEY P/COLEMAN CC/BEECH C - 17/12/01 - Business Services.....	17
² Appeal against Decision of Commission (81WAIG1646) re unfair dismissal - Appellant argued the Commissioner had erred in law and fact on numerous grounds relating to the contract of service - Full Bench found there was no jurisdiction to hear and determine an application claiming relief for harsh, oppressive and unfair dismissal, and the claim for contractual benefits was not established at first instance - Dismissed - Mr CJ Fox -v- News Illustrated Pty Ltd - FBA 46 of 2001 - Full Bench - SHARKEY P/COLEMAN CC/BEECH C - 20/12/01 - Printng, Publishg & Rcd Media.....	35
Application re unfair dismissal and contractual entitlements - Applicant argued that she was unfairly dismissed and not paid benefits including overtime under her contract of employment and that she would have been paid overtime for hours greater than 37.5 hours per week - Respondent argued that Applicant was not entitled to any overtime and that it was not expressed in the contract of employment and was never claimed or paid during six years of employment - Commission found that the contract of employment did not contain any provisions that she would be paid overtime and that she never claimed overtime in the six years of employment was a strong suggestion that she believed that she was not entitled to it and thus had difficulty in proving the claim - Order Issued - Ms SR Corcoran -v- Gibson Quai Pty Ltd ACN (009 323 620) - APPL 1716 of 2001 - BEECH C - 12/12/01 - Other Services	137
Application re unfair dismissal and contractual entitlements - Applicant argued that redundancy was not genuine because the work that she performed was being done by a person who was recruited as a new staff member - Respondent argued that Applicant was terminated on the grounds of a genuine redundancy as her position was a luxury and there were no other suitable alternative duties within Respondent's organisation that could be allocated to her as it faced significant downturn in work and cost pressures required it to downsize - Commission found that the decision to make position redundant was genuine but the termination of Applicant's employment was unfair as there was no discussion in respect to the opportunity of reducing her hours of work - Order Issued - Ms PL Harben -v- Buckeridge Nominees Pty Ltd T/A BGC Windows ACN 008 849 581 - APPL 319 of 2001 - SMITH, C - 21/12/01 - Basic Material Wholesaling.....	142
Application re unfair dismissal - Applicant argued that dismissal was unfair because the status of employment was permanent as had been promised and thus able to have the necessary time off - Respondent argued that Applicant was employed as a permanent employee in the first period and a casual employee in the second period of employment - Further, support was offered to Applicant to assist with his rehabilitation and had been told on a number of occasions that his behaviour was unacceptable and was sufficiently warned about the viability of his job - Commission found that Applicant was given a fair go all round, had become less cooperative and had a poor attitude and performance towards his work - Dismissed - Mr BA Johnston -v- Diasson Holdings Pty Ltd The Lonie Family Trust t/as R. H. Trotter & Co - APPL 415 of 2001 - GREGOR C - 20/12/01 - Horticulture & Fruit Growing.....	146
Application re contractual entitlements - Applicant argued that benefits due to him were deducted from his final pay without his consent and contrary to the Minimum Conditions of Employment Act - Respondent argued that Commission did not have jurisdiction to deal with this matter - Commission found that there was no entitlement to the money claimed as the money claimed was not a benefit in contravention of a provision of the contract of service and that matter was dismissed - Further, Commission found that this was not a case that warranted an order for costs against Applicant - Dismissed for want of jurisdiction - Mr I MacFarlane -v- Halperin Fleming & Meertens - APPL 1499 of 2001 - SMITH, C - 21/12/01 - Other Services.....	150
Application re unfair dismissal - Applicant argued that dismissal was unfair because there was no warnings given to her before she was dismissed, the procedure used to terminate her services was unfair, she received no counselling or other opportunity to identify the employer's complaints about her or to remedy them - Respondent argued that Applicant was terminated after a sequence of events - Further the principle reason for dismissal was her poor performance and that she failed to follow directions - Commission found that Respondent did not give Applicant the opportunity to explain what she had done and Respondent could not have legitimately reached a conclusion that failure to carry out instructions justified termination instead she was dismissed forthwith and thus dismissal was unfair - Order Issued - Mrs SM Parker -v- Mary-Anne Kenworthy - Image International Pty Ltd - APPL 955 of 2001 - GREGOR C - 23/11/01 - Recreation	156
Application re unfair dismissal and contractual entitlements - Applicant argued that she was summarily dismissed in that she was required to leave Respondent's employment immediately upon termination without reasonable notice and that Respondent breached the contract of employment - Respondent argued that Applicant was made redundant due to restructure and Applicant did not hold the necessary qualifications required and there was no alternative employment available - Commission found that Applicant was unfairly dismissed in many ways and where a fair go all round did not enter the equation and her position was not made redundant and that Applicant was terminated without warning or prior notice - Further, Commission found that Applicant was unfairly dismissed, reinstatement was impracticable and awarded compensation - Order Issued - Ms DM Smith -v- Nutricia Australia Pty Limited - APPL 640 of 2001 - WOOD,C - 07/12/01 - Health Services	162

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Application re contractual entitlements - Applicant argued that Respondent unilaterally altered the contract of employment without his acceptance, and sought the difference in earnings between reduced levels of income - Respondent argued that because Applicant had remained working under the new arrangements, he had therefore accepted its offer to employ him on new terms of employment, and to pay him the difference between the reduced levels of income would be to "re-instate" him as assistant manager - Commission found on evidence that although Applicant had not accepted the change of his contract, his duties had changed, and his continuation with the Respondent was that of a sales assistant or sales consultant, in a relieving capacity, therefore, his claim that he was entitled a benefit under his contract of employment was not made out - Dismissed - Mr T Tran -v- Boutique Consolidated Pty Ltd t/as Tony Barlow Menswear - APPL 925 of 2001 - BEECH C - 03/01/02 - Textile, Clothing, Footwear.....	169
Application re unfair dismissal and contractual entitlements - Applicant argued that she has been harshly, oppressively or unfairly dismissed and she was owed benefits entitled to her under her contract of employment - Respondent argued that Applicant resigned after it lost the agency for products it was intended that Applicant would promote and sell - Commission, having considered all of the evidence, found that Applicant resigned without duress and dismissed her claim for harsh, oppressive or unfair dismissal - Claim for contractual benefit - Upheld - Mrs KM Zuglian -v- Ordberg Nominees P/L T/as Western Biomedical - APPL 1806 of 2000 - SMITH, C - Health Services.....	177
Complaint re Long Service Leave Act - Claimant argued that he was employed by Defendant and sought the payment of long service leave entitlements - Defendant argued that Claimant was employed as a sub-contractor and thus did not qualify for long service leave entitlements - Industrial Magistrate found that the method of remuneration was for the purpose of tax minimisation and was for that purpose described as a sub-contractor but Claimant was in fact an employee and thus entitled to long service leave pursuant to the Act - Reasons for Decision Issued - Mr J Birghitti -v- United Construction Pty Ltd - M 120 of 2001 - Industrial Magistrate - Tarr IM - 10/01/02 - Construction Trade Services.....	322
Application re unfair dismissal and contractual entitlements - Applicant argued that her resignation was really a constructive dismissal because she was left with no other alternative other than to resign and that there was no training or assistance provided and she was punctual during her period of employment - Respondent argued that Applicant had tendered her resignation and that she did have an alternative to resignation and her attitude did not change whilst her resignation was put on hold for a period of two weeks - Commission found that Applicant did tender her resignation and that she agreed to put it on hold for a two week period at the conclusion of which Respondent could, if it wished accept it - Dismissed - Ms AL Green -v- Ballajura Properties Pty Ltd - APPL 1454 of 2001 - BEECH C - 07/02/02 - Property and Business Services.....	335
Application re unfair dismissal and contractual entitlements - Applicant argued that she did not resign but was dismissed by Respondent and was employed as a permanent employee not as a casual and had not been paid all her contractual entitlements as a full time employee - Respondent argued that Applicant had verbally tendered her resignation which was accepted by the Directors and that in her final week she was placed on casual hours and was paid out all contractual entitlements - Commission found that it was Respondent that decided that Applicant's employment should end and was therefore dismissed and that it was Respondent that instituted the casual hours only after Applicant's employment ceased - Further, Commission found however that Applicant by her own actions in offering to leave and seeking the meeting had to take responsibility for her actions and that payments made were paid for previous work and as a goodwill gesture - Dismissed - Ms JS Monteith -v- Saruman Holdings Pty Ltd & Other - APPL 1285 of 2001 - WOOD, C - 11/01/02 - Restaurant.....	345
Application re unfair dismissal and contractual entitlements - Applicant alleged she was dismissed because she would not apologise to the Respondent's daughter and son in law, and sought compensation for dismissal and outstanding benefits - Respondent claimed that tension had developed in the workplace caused by the Applicant's conduct, and there was no dismissal as the Applicant removed herself from the workplace - Commission found the Applicant had brought the contract of employment to an end at her behest and there was no jurisdiction for unfair dismissal for the Commission - Claim for contractual benefits was made out in part for payment of notice - Granted - Ms RV Adamiak -v- All Things X-Ray Pty Ltd - APPL 472 of 2001 - GREGOR C - 01/03/02 - Health Services.....	467
Application re unfair dismissal and contractual entitlements - Applicant argued that dismissal was unfair and that he had been denied contractual entitlements under his contract of service - Applicant argued that the reason for the dismissal stemmed from something of an abusive attitude on the part of employer on that day and that he was ordered to leave the premises - No appearance from Respondent - Commission found that in the absence of Respondent there was no countervailing evidence and found that the dismissal was unfair and awarded compensation - Unfair dismissal claim granted and contractual entitlements claim dismissed - Mr TP Bartell -v- Outdoor Shades Wangara - APPL 1998 of 2001 - BEECH C - 05/03/02 - Building Structure Services.....	470
Application re contractual entitlements - Superannuation - Applicant argued that she was to be paid at a rate of 50% of gross earnings of sales, not reducible by any deductions made by employer for superannuation or any other reason, her superannuation entitlements were additional to the payments - Respondent argued that it made superannuation contributions in accordance with the Superannuation Guarantee Administration Act 1992 and when the Act prescribed higher contributions her rate of commission was decreased to take into account those higher contributions - Commission found that there was a variation to the contract of service and that the claim had not been made out - Dismissed - Ms LD Davis -v- Blaxland Pty Ltd - APPL 1074 of 2001 - GREGOR C - 08/03/02 - Real Estate Agency.....	475
Application re contractual entitlements - Applicant sought payment of four months salary and bonus payments that had not been paid by the Respondent - There was no appearance by or for the Respondent - Commission found that Applicant was an employee of the Respondent, that it was satisfied with the Applicant's evidence of non payment of salary and bonus and that his claim was made out - Granted - Mr S Hitchman -v- Robert Leslie Liuzzi, 986 Corporation Pty Ltd - APPL 1198 of 2001 - BEECH C - 21/02/02 - Other Services.....	477
Application re contractual entitlements - Applicant argued that he was owed benefits accrued as compensation for time not worked as his contract guaranteed him employment until 16 October 2002 - Respondent argued the agreement only created a salary guarantee - Commission found that clauses 4.3 and 4.4 of the agreement were ambiguous and the Applicant was unable to make out his claim for leave and that superannuation did not form part of the Applicant's salary within the meaning of the agreement - Dismissed - Mr NL Knight -v- Alinta Gas Limited - APPL 1248 of 2001 - SMITH, C - 15/02/02 - Electricity and Gas Supply.....	478
Application re unfair dismissal and contractual entitlements - Applicant argued that he was unfairly dismissed and denied benefits for a period of employment that was denied - This period of employment was an extension of what was otherwise a fixed term arrangement - Respondent argued the Applicant's contract of employment ended with the expiry of a fixed term contract - Commission found that despite the expectations from the meeting on 26 February 2001 no written approval or funding was forthcoming to extend the contract of employment, and the Applicant was not unfairly dismissed - Dismissed - Mr R Williamson -v- Yulella Fabrications Aboriginal Corporation - APPL 746 of 2001 - KENNER C - 04/02/02 - Government Administration.....	483
Conference re dismissal - Applicant Union argued the Applicant had been dismissed because he had complained about late payments - During the conference an issue arose as to the status of the employment contract - Respondent argued the Applicant had been employed as a subcontractor - Commission found the employment relationship was one of an independent contractor and declined to refer the matter for a hearing as there was no jurisdiction - Declaration Issued - The Western Australian Builders' Labourers, Painters & Plasterers Union of Workers -v- Geltray Pty Ltd trading as Reofast Steel Fixing - C 156 of 2001 - GREGOR C - 12/02/02 - Construction Trade Services.....	489

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Application re unfair dismissal and contractual entitlements - Application for an Order for discovery considered - Applicant lodged an application for general discovery to substantiate application re unfair dismissal and contractual entitlements - Respondent argued that the Order for general discovery may be oppressive given that the documents covered by such an Order would go back possibly some 20 years - Commission considered that an Order for general discovery would be refused, however, an Order for discovery of documents that were relevant or related to the substantive application would be considered - Ordered Accordingly - Ms P Alderson -v- St Columba - Kingswood College - APPL 901 of 2001 - GREGOR C - 06/03/02 - Education - (Note: Further Reasons for Decision in this matter published in April WAIG, Vol. 82, Part 1, Subpart 4 at page 696)	501, 696
Application re contractual entitlements - Applicant claimed contractual benefits for accrued annual leave and pay in lieu of notice - Applicant terminated his employment and gave two week's notice as he had secured employment with a competitor of the Respondent - Respondent opposed the claims indicating there was a practice within the motor industry that when a salesman resigned to take up a position with a competitor they leave immediately - Commission found the Applicant's claim for two week's notice pay was made out, but the claim for annual leave to be paid at a higher rate of pay failed - Granted in Part - Mr MA Barratt -v- Robert Bryce - APPL 1314 of 2001 - SMITH C - 07/03/02 - Machining and Motor Veh Whlslg.....	615
Application re unfair dismissal and contractual entitlements - Applicant argued that dismissal was unfair because he was not given the opportunity to explain his actions and was denied natural justice - Respondent argued that Applicant had been dismissed for misconduct and that the breach of trust had warranted the termination - Commission found that there were different accounts of what had taken place and that those circumstances alone did not warrant the summary dismissal and that Applicant did not have any opportunity to defend himself or provide an explanation thus, the dismissal was substantively and procedurally harsh and unfair - Further Commission found that the employee/employer relationship had broken down so that reinstatement was impractical and awarded compensation - Ordered Accordingly - Mr CV Caldwell -v- P.Brown - Cloveroaks Pty Ltd - APPL 1421 of 2001 - WOOD C - 18/03/02 - Agriculture	617
Application re contractual entitlements - Respondent sought an Order pursuant to s.27(1)(a) of the I.R. Act, that application be dismissed - Respondent argued that Applicant had acted frivolously and vexatiously in lodging application in this jurisdiction and the Industrial Magistrate's Court; that the course of action adopted by Applicant was beyond what was reasonable and that there was no clarity to Applicant's claim before the Commission - Applicant argued that he should have the right to seek redress with respect to his claim as provided by the Act and to withdraw that right by dismissing an application was a serious matter and the power to dismiss an application should not be exercised lightly - Having carefully considered the arguments of both parties, Commission was of the view the public interest was not served if the application was to be dismissed - Further, to deny an Applicant the right to pursue a claim for denied contractual entitlements at this point would result in an injustice to Applicant - Commission also found that Respondent in this application was currently only subject to one application that the Commission was aware of, and that was the matter currently before the Commission as constituted - Dismissed - Mr PJ Leafe -v- The Calix Group - APPL 2000 of 2001 - HARRISON C - 05/04/02 - Other Services.....	629
Application re unfair dismissal - Application to amend name of Respondent - Applicant Union argued that the Industrial Officer had wrongly named the CEO as Respondent and as the employer even though no instructions were given to do so and to amend the Respondent's name would cause no prejudice as the error was brought to the attention of Respondent at an early stage of the proceedings - Respondent argued that Respondent was not Applicant's employer and that Applicant ought to have been aware of the correct Respondent because the identity of her employer was readily apparent from all of her employment documents and that Applicant had vexatiously named the wrong entity - Commission found the naming of Respondent as the employer was an error which could be described as a clerical error or misnomer and thus amended the name of Respondent to reflect correct employer - Order issued - Ms P Levaci -v- Canning Division of General Practice Ltd - APPL 601 of 2001 - SMITH C - 08/03/02 - Education.....	630
Application re unfair dismissal - Applicant argued that Respondent had dismissed her unfairly, that an agreement had been reached in the Commission and that Respondent had not complied fully with the agreement that was reached - No appearance from Respondent - Commission found that an agreement had been reached and made an order in terms of that agreement - Ordered Accordingly - Ms NM Lucanus -v- Cuddles Childcare Group - APPL 1719 of 2001 - SMITH C - 05/04/02 - Community Services	634
Application re unfair dismissal and contractual entitlements - Applicant argued that Respondent had dismissed him unfairly and denied him contractual entitlements including wages, superannuation, annual leave and mileage/vehicle allowance - Respondent argued that it had no case to answer because there had been no agreement or contract with Applicant - Commission found that there was not enough detail to establish the any terms of employment and thus application dismissed for want of jurisdiction - Dismissed for want of jurisdiction - Mr DT McMaugh -v- Health Professionals Agency Pty Ltd ACN 096 981 556 - APPL 1863 of 2001 - BEECH SC - 12/03/02 - Health and Community Services	635
Application re contractual entitlements - Applicant argued that Respondent had underpaid him for his work as a Chef at the Natraj Indian Restaurant and that the contract had been breached - No appearance from Respondent - Commission found that the evidence of Applicant was inconsistent, unreliable and inconclusive and that it was difficult to make findings as to what payments were in fact made - Further, Commission found that the case was not made out and therefore application was dismissed - Dismissed - Mr D Sharma -v- Mr AK Billimoria - APPL 1415 of 2001 - WOOD C - 28/02/02 - Restaurant	651
Application re unfair dismissal and contractual entitlements - Preliminary issue to be decided was whether or not Applicant was an employee for the purposes of the Industrial Relations Act 1979 - Applicant argued that he was a valuer and employed to be the director in charge of the valuation department of Respondent and he worked fulltime and did not undertake other paid work on his own right whilst working for Respondent - Further he was a director of his family company which held units in Respondent's company - Respondent argued that he was a director and shareholder in Respondent and that he did not personally receive a salary but was paid into his own company - Commission found that Applicant was an employee of Respondent for the purposes of the IR Act on the balance that the control, the personal service, the remuneration based upon his work as a valuer, the payment of PAYG tax, the benefits and entitlements paid revealed that Applicant was an employee - Declaration Issued - Mr BR Worthington -v- Falkirk Nominees Pty Ltd T/A Ross Hughes and Company and Australian Property Consultants - APPL 1577 of 2001 - BEECH SC - 15/03/02 - Property and Business Services	667
Application re Order pursuant to Section 80E - Applicant Union argued that the Respondent had refused to allow a Union member to undertake private employment in her own time - The private activity to be undertaken was to operate as a sole trader providing consultancy in ornamental horticulture - Respondent opposed and argued against her requests in particular that the proposed consultancy would be in the same area of activity as Respondent and that there would be the perception of a conflict of interest - Commission found and accepted Respondent's evidence that there would be a potential conflict of interest by having an employee actively promoting her private consultancy in that same industry as the Department - Dismissed - Civil Service Association of Western Australia Incorporated -v- Chief Executive Officer, Department of Agriculture - P 25 of 2001 - Public Service Arbitrator - BEECH SC - 23/04/02 - Government Administration.....	838
Application re unfair dismissal and contractual entitlements - Applicant argued that he has been harshly, oppressively and unfairly dismissed and sought unpaid wages and two weeks' pay in lieu of notice which he claimed has been denied to him under his contract of employment - There was no appearance for or on behalf of the Respondent - Commission found that Applicant's claim for harsh, oppressive or unfair dismissal was filed out of time and heard the claim for contractual entitlements ex-parte - Commission was satisfied based on the evidence presented that Applicant had made out a case that Respondent owed him wages pursuant to his contract of employment and as for the claim for pay in lieu of notice, that Applicant was engaged to work on an ongoing basis, irrespective of the number of hours per week worked by him, therefore, Respondent was ordered to pay the Applicant \$2,828.57 being an award for wages and one week's pay in lieu of notice - Ordered Accordingly - Mr S Dwyer -v- Aurora Information Systems - APPL 1842 of 2001 - SMITH C - 10/04/02 - Other Services	844

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Application re contractual entitlements - Applicant argued that he had not been paid for 147 hours which he had worked for and a locality allowance that he was entitled to - Respondent argued that the company was no longer operating and disputed the hours of work claimed - Commission found that an investigation of the Australian Securities and Investment Commission record's show that Gemstone Exploration Pty Ltd as a registered company had a change of name to Gemstone Mining Ltd and award part of the claim of contractual entitlements - Granted in part - Mr JS Gallop -v- Gemstone Drilling Pty of Gemstone Exploration - APPL 1630,2003 of 2001 - WOOD C - 11/04/02 - Other Mining.....	846
Application re unfair dismissal and contractual entitlements - Applicant argued he was unfairly dismissed, and owed annual leave, pay in lieu of notice, redundancy pay and compensation on the basis that he had been continually employed in the Respondent's business - Respondent argued that Applicant was terminated because the business was closing down as it was likely to become insolvent - Commission found that Applicant was unfairly dismissed and awarded compensation in lieu of notice, one day's pay and accrued annual leave - A separate award for redundancy was not made out nor was the transmission of business argument - Granted in Part - Mr PJ Hasler -v- LP Maintenance Pty Ltd ACN 094 805 366 - APPL 167 of 2001 - SMITH C - 16/04/02 - Construction Trade Services.....	850
Application re unfair dismissal and contractual entitlements - Applicant argued she was dismissed without prior warnings or cause, and denied contractual benefits, and sought reinstatement - Respondent argued that due to low sales, they had intended to make some staff, including the Applicant, redundant but had changed their mind and gave the Applicant a chance to improve her performance, but she instead resigned - Commission found that Applicant had resigned her own employment and was not dismissed, that her action resulted in at least two if not three of the properties being removed from the Respondent company's listing, therefore Applicant could not be entitled to the commission as a denied contractual benefits - Dismissed - Ms AD Patterson -v- Calold (WA) Pty Ltd - APPL 1270 of 2001 - WOOD C - 26/04/02 - Property Services.....	853
Application re unfair dismissal - Applicant alleged that the dismissal was unfair because he was replaced by someone else without notice and that he was not unreliable - Respondent argued that Applicant had resigned to go work for another employer - Commission found that Applicant had chosen to take up employment elsewhere and that the claim for unfair dismissal was dismissed for want of jurisdiction - Dismissed for want of jurisdiction - Mr RA Richardson -v- Goldfields Contractors - APPL 1630,2003 of 2001 - WOOD C - 11/04/02 - Other Services.....	856
Application re contractual entitlements - Applicant argued that at the end of his contract he was owed an amount in the sum of \$944.21 for "accommodation charges" - Respondent argued that Applicant was not an employee but a subcontractor - Commission applied tests case and found that Applicant was more likely than not a subcontractor, and was therefore unable to enliven the jurisdiction set out in s.29(1)(b)(ii) of the I.R. Act - Commission further concluded that Applicant had not established that the Respondent was liable to pay him for accommodation allowance, and therefore the application was dismissed - Dismissed - Mr CL Roberts -v- Greenfield Project Development Services Pty Ltd - APPL 2042 of 2001 - GREGOR C - 24/04/02 - Other Services.....	858
Application re contractual entitlements - Applicant argued she has not been paid her final wages of \$1000 - Commission found on evidence in favour of the Applicant and an Order was issued that Respondent pay the Applicant the sum of \$1000 net by way of wages due to her under her contract of employment - Granted - Ms KJ Speedy -v- Airpro 2000 Pty Ltd - APPL 40 of 2002 - BEECH SC - 08/04/02 - Other Services.....	860
Application re contractual entitlements - Applicant argued he was due unpaid salary increments which the Respondent conceded it did owe the Applicant - Applicant also sought redundancy pay and payment in lieu of notice - Respondent argued the position had not been made redundant while the Applicant was on long service leave but was part of a genuine restructure - Commission found the Applicant's duties were substantially restructured and he was given notice that his contract would terminate but Respondent did not make an offer of work that could be viewed as adequate alternative employment - Commission awarded redundancy pay but denied the application for pay in lieu of notice - Granted in Part - Mr DG Swingler -v- Methodist Ladies College - APPL 1525 of 2001 - SMITH C - 05/04/02 - Education.....	861
Application re unfair dismissal - Applicant argued that dismissal was unfair because she was offered a continuing position with Respondent instead of redundancy yet without consultation was made redundant - No appearance from Respondent at hearing however Respondent contacted Commission after hearing to indicate that he had no knowledge and was not notified of the hearing - Commission verified firstly that Respondent had been notified and advised correctly at correct address and that no response had been received - Further, Commission found that Applicant had been dismissed unfairly and that reinstatement was impractical and awarded compensation - Order Issued - Ms R Twyford -v- Travel Central Pty Ltd ABN 22 095 851 675 - APPL 1623,1888 of 2001 - WOOD C - 27/03/02 - Other Services.....	868
² Appeal against Decision of Commission (81WAIG3107) re dismissed unfair dismissal and denied contractual entitlements claim - Appellant argued that the Commission did not apply the correct test to determine whether she was an employee and sought to introduce new evidence - Appellant sought compensation and pay in lieu of notice - Respondent argued that the Appellant was not an employee, but had been in a defacto or domestic relationship - Full Bench found that it was not clear that the extra evidence could not have been obtained before the matter was first heard or was likely to have altered the outcome of the decision - Full Bench found that the claim for contractual entitlements under an award should not have been made - Further, Full Bench reviewed authorities and found that the Commission had erred in failing to find on evidence that there was a contract of service between the Appellant and the Respondent company and dismissed the Appeal - Upheld and Remitted - Ms JE Augustyn -v- Vistadale Pty Ltd As Trustee For The Ranger Family Trust Trading As Ranger Contracting - FBA 61 of 2001 - Full Bench - SHARKEY P/COLEMAN CC/BEECH SC - 07/06/02 - Construction Trade Services.....	939
Application re unfair dismissal and contractual entitlements - Applicant argued he was harshly, oppressively and unfairly dismissed by reason of redundancy and sought denied benefits entitled under his contract of employment - Commission found that the Applicant was made redundant for genuine reasons as the Respondent's business was going through a difficult time - Commission was not satisfied that entitlements from a draft workplace agreement were entitlements of the Applicant's contract of employment, and was of the view that the Applicant's claim was not made out - Dismissed - Mr M Boronovskis -v- Milne Feeds Pty Ltd - APPL 2329 of 2001 - BEECH SC - 14/05/02 - Services to Agric/Hunt/Trappg.....	1011
Application re unfair dismissal - Applicant argued that he was unfairly dismissed - Respondent argued that Applicant was an independent contractor and the Commission had no jurisdiction to hear the unfair dismissal application - Commission found that the most significant elements of the employment relationship point to a contract of service and that Applicant was an employee of Respondent - Further, Commission found that Applicant had been unfairly dismissed, that reinstatement was impracticable and thus awarded compensation - Granted - Mr MG Halligan -v- Bamboo Holdings Pty Ltd - APPL 1624 of 2001 - HARRISON C - 08/05/02 - Other Services.....	1025
Application re contractual entitlements - Applicant claimed he was owed benefits to which he was entitled to under his contract of employment - Applicant claimed he was owed wages, leave entitlements, superannuation, petty cash and mobile phone expenses, accommodation and fuel entitlements - Respondents opposed the claim and counter claimed with a list of expenses paid by the Respondents for the Applicant - Commissioner found that all claim except the petty cash were made out by the Applicant - Respondents counter claims that the Applicant owed the Respondent money were not made out - Commissioner ordered the Applicant to return the computer tower in working order to the Respondents before the Respondents were required to pay the outstanding amounts - Granted in part - Mr DJ Jackson -v- Warrayu Aboriginal Corporation - APPL 431,432 of 2000 - SMITH C - 03/05/02 - General Construction.....	1032
Application re unfair dismissal and contractual entitlements - Applicant argued his dismissal was harsh, oppressive and unfair, and that he was owed outstanding benefits under his contract of employment - Respondent argued the Applicant had been made redundant due to the business's financial difficulties and the Applicant had refused offers to discuss the redundancy - Commission found that the Applicant was not dismissed but made redundant - Dismissed - Mr AJ Nieuwendyk -v- Mr W Heggors & Other - APPL 732 of 2001 - GREGOR C - 17/05/02 - Agriculture.....	1045

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Application re contractual entitlements - Applicant sought denied salary, salary in lieu of notice, annual leave and superannuation entitlements due under his contract of service - Respondent's notice of answer and counter proposal did not comply with the Commission's direction or regulations - Respondent advised the Commission that it would not appear at the hearing as it had no assets - Commission awarded the Applicant salary payments due under the contract of service, but denied the claims for salary in lieu of notice, annual leave and superannuation - Granted in Part - Mr MJ Radford -v- Coinstar Pty Ltd - APPL 1855 of 2001 - KENNER C - 21/05/02 - Finance	1049
Application re unfair dismissal and contractual entitlements - Applicant argued he was harshly, oppressively and unfairly dismissed, denied the payment of one year's remuneration in lieu of notice and sought compensation for loss and injury - Respondent argued the Applicant was terminated due to serious breaches of his employment agreement which were not capable of rectification - Commission found that the Applicant was not unfairly dismissed, that Respondent was entitled to take into account the history of the Applicant's employment relating to misconduct, and that the summary dismissal was justified - Respondent's application to delay delivery of reasons for decision was dismissed - Dismissed - Mr RJH Smith -v- Saracen Management Pty Limited ACN 079 747 452 - APPL 138 of 2001 - SMITH C - 24/05/02 - Metal Ore Mining	1050
Conference referred re unfair dismissal and contractual entitlements - Applicant Union argued both Applicants were unfairly dismissed and sought denied contractual benefits relating to the final week of work - Respondent opposed the claim arguing the Applicants were terminated as permanent employees from other sites had to be placed, displacing the Applicants who were employed on a casual part time basis - Commission found the Applicant's dismissal to be unfair and reinstatement not practicable, awarded compensation but denied the claims for outstanding entitlements - Granted in Part - The Australian Workers' Union, West Australian Branch, Industrial Union of Workers -v- Goldfields Contractors - CR 265 of 2001 - WOOD C - 03/04/02 - Construction Trade Services	1102
COSTS—	
Application re contractual entitlements - Applicant argued that benefits due to him were deducted from his final pay without his consent and contrary to the Minimum Conditions of Employment Act - Respondent argued that Commission did not have jurisdiction to deal with this matter - Commission found that there was no entitlement to the money claimed as the money claimed was not a benefit in contravention of a provision of the contract of service and that matter was dismissed - Further, Commission found that this was not a case that warranted an order for costs against Applicant - Dismissed for want of jurisdiction - Mr I MacFarlane -v- Halperin Fleming & Meertens - APPL 1499 of 2001 - SMITH, C - 21/12/01 - Other Services	150
Application re unfair dismissal and contractual entitlements - Application for adjournment by Applicant - Applicant's agent argued that Applicant had moved to Queensland and had employment that did not allow for time off until February 2002 and that Respondent had provided documents at the last minute that had not been put to Applicant - Respondent opposed application for adjournment and argued that Applicant was self employed and doubted not being able to take time off in advance - Further, Respondent reserves the right to claim costs - Commission found that Applicant had moved to Queensland and was prepared to accept in principle that a person who found new employment may not be able to take time off in the first few months and finally if the adjournment was not granted Applicant would suffer a serious injustice - Adjudgment Granted - Ms JA Morrison -v- Suzanne Grae Corporation Pty Ltd - APPL 467 of 2001 - BEECH C - 10/12/01 - Personal & Household Good Rtlg	154
⁴ Application re a stay of operation of orders made in the Industrial Magistrates Court - Applicant Union sought that the application be stayed as there was a serious question to be tried as to whether the Magistrate erred in law in dismissing the claim and that the balance of convenience favoured the Applicant - There was also an application to adjourn the proceedings on behalf of the Respondent which was not pressed - President found that there was no power or jurisdiction for the President to grant the stay of an order made by Industrial Magistrates Court or Magistrate pending the hearing and determination of an appeal against that decision or order - Dismissed - Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch -v- Burswood Resort (Management) Limited - PRES 1 of 2002 - President - SHARKEY P - 16/01/02 - Accommodatn, Cafes&Restaurants	222
Application re unfair dismissal and denial of contractual entitlements - Applicant sought an adjournment on a number of grounds including, illness, being an unrepresented party and the delay in providing discovery of documents - Respondent submitted that the injustice in granting an adjournment arose from the inconvenience and the question of cost - Commissioner granted an adjournment for one day - Granted in part - Mr R Jeeves -v- Brett Martin Plastics Pty Ltd - APPL 1370 of 2001 - BEECH C - 30/01/02 - Other Manufacturing	339
² Appeal against Decision of Commission (81WAIG2772) re unfair dismissal - Applications to extend time to institute the appeal were granted and fresh evidence was admitted - Appellant appealed against the original order striking out the application due to no attendance on behalf of the application at the first hearing - Full Bench found the failure of the Appellant's solicitor to attend the hearing was the fault of the Solicitor and suspended the order and remitted the matter back to the Commission - Costs for the Respondent's inconvenience was awarded - Upheld and decision at first instance suspended and remitted back to the Commission - Mr AA Cheesman -v- Jamco Nominees Pty Ltd - FBA 54 of 2001 - Full Bench - SHARKEY P/COLEMAN CC/WOOD,C - 28/02/02 - Other Services	422
Conference referred re unfair dismissal - Applicant Union argued the Applicant was harshly, oppressively and unfairly dismissed as the employer had not raised any issues of work performance and that the dismissal was motivated by a claim for workers compensation - Respondent argued the Applicant was dismissed for poor work performance and traffic infringement notices - Commission found the Applicant was not given any warning re his work performance and allegations against him contained in his letter of termination have not been substantiated - Further, the Applicant was unfairly dismissed, that reinstatement was not practicable as the relationship had broken down and awarded compensation - Application for cost was dismissed - Granted - Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch -v- Heaton Cleaning Pty Ltd - CR 219 of 2001 - WOOD C - 15/02/02 - Other Business Services	686
² Cross Appeals against decision of Public Service Arbitrator (82WAIG104) re declaration of jurisdiction to hear and determine claim for redress, compensation or damages over a discontinued disciplinary action - Applications for adjournment of hearing - Appellant Employer argued that as the appeal required consideration of the limits of the Commission's jurisdiction it was in the public interest - Appellant Union argued, inter-alia, that the hearing should be adjourned because it would be inconvenient, there were no established facts and discovery was incomplete in the substantive matter, it would not inconvenience the Appellant Employer and the President had dismissed the application for a stay of the declaration - Full Bench found one application for adjournment was incompetent as it was made before the appeal was listed and that the approaches to the Registrar for an adjournment were unsatisfactory Full Bench reviewed authorities and found many of the issues raised were irrelevant and matters for the appeal and that refusing an adjournment would not result in a serious injustice to the Appellant Union - However an adjournment was subsequently granted due to the indisposition of an advocate - Full Bench found that the issues in one appeal were not of such importance that an appeal should lie and gave reasons therefore - Appellant Union conceded in the second appeal that one cannot appeal against reasons for decision and sought leave to discontinue - Full Bench found neither appeal warranted an order for costs - Dismissed, Discontinued and procedural orders issued accordingly - Civil Service Association of Western Australia Incorporated -v- Director General, Department of Justice - FBA 3,4 of 2002 - Full Bench - SHARKEY P/COLEMAN CC/BEECH SC - 07/05/02 - Government Administration	752
Application re costs - The substantive matter of this application is a claim for unfair dismissal - Applicant opposed the adjournment application as he was ready to proceed and had travelled to Kalgoorlie with his witness - Applicant argued that the Respondent had not attended the conference and had shown little regard for the hearing of the matter, and applied for an order for costs - Commission found the conduct of the Respondent to date warranted an order for costs - Granted - Mr RJ Hinkley -v- Eurest (Australia) Catering & Services - APPL 279 of 2002 - WOOD C - 17/05/02 - Other Services	1031

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Conference referred re unfair dismissal - Applicant Union argued that the employee had been unfairly excluded from the shearing workforce because of a dispute between the Respondent and the employee's spouse - Applicant Union argued this to be harsh and unfair and sought compensation - Respondent opposed the claim arguing the Applicant was never dismissed - Commission found the Applicant's approach to his employment was not adequate to justify a finding of unfair dismissal or dismissal at all - Application by the Respondent for costs was denied - Dismissed - The Australian Workers' Union, West Australian Branch, Industrial Union of Workers -v- Mr Leo Cattalini T/as Metro Shears - CR 287 of 2000 - WOOD C - 14/05/02 - Services to Agric/Huntg/Trappg	1104
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³ Application for registration of a new award - Application by the Union for the making of a new award governing employees employed by Burswood Catering and Entertainment Pty Ltd at the new facilities at the Burswood Island Resort which will replace the existing award and agreement - Respondent opposed the issuance of the award and argued that the company must have a wages and labour structure that allowed it to be competitive - Commission in Court Session found that the company created was in reality a labour hire company, which did not operate as an independent business, that effectively Burswood Ltd was contracting to itself and this has resulted in an inequality of wages - CICS reviewed various authorities and were of the view that an award should issue substantially in the terms claimed by the Union as they reflect the industrial agreement in order to remedy the inequity - New award issued - Granted - Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch -v- Burswood Catering and Entertainment Pty Ltd - A 4 of 2001 - Commission in Court Session - BEECH SC/SMITH C/WOOD C - 12/02/02 - Accommodatn, Cafes&Restaurants	544
DISCRIMINATION—	
Application re unfair dismissal - Applicant argued that termination was unfair because she was dismissed solely on the basis that she wanted to look over the workplace agreement before signing it and that Respondent was also in breach of its contract to employ her - Respondent argued that Applicant did not accept the offer of employment and therefore did not start work - Commission found that Respondent had not employed Applicant and thus application was dismissed - Dismissed for want of jurisdiction - Ms DF Tenthly -v- Airlite Group of Companies - APPL 2246 of 2001 - BEECH SC - 10/04/02 - Other Business Services	661
EMPLOYEE—	
Complaint re Long Service Leave Act - Claimant argued that he was employed by Defendant and sought the payment of long service leave entitlements - Defendant argued that Claimant was employed as a sub-contractor and thus did not qualify for long service leave entitlements - Industrial Magistrate found that the method of remuneration was for the purpose of tax minimisation and was for that purpose described as a sub-contractor but Claimant was in fact an employee and thus entitled to long service leave pursuant to the Act - Reasons for Decision Issued - Mr J Birighitti -v- United Construction Pty Ltd - M 120 of 2001 - Industrial Magistrate - Tarr IM - 10/01/02 - Construction Trade Services	322
Complaint re breach of award - Complainant Union argued that Defendant breached the Building Trades (Construction) Award 1987 and contended that its member was at all material times Defendant's employee - Defendant denied that union member was its employee, and conducted maintenance work for it under a contract of services - Defendant made application to limit hearing to one issue only that being whether he was an employee of Defendant - Complainant opposed application and argued that this Court has the ability to determine the matters raised by Defendant in its pleadings - Defendant contended that the general jurisdiction of this Court was limited to specific statutory provisions and wanted that this Court not determine any factual or legal issues going to promissory estoppel or other equitable defences raised - Industrial Magistrate found that this Court had jurisdiction to deal with the enforcement of the award pursuant IR Act and that it would be inappropriate to split the issues and have separate hearings in relation to award coverage and the other matters - Reasons for Decision Issued - CONSTRUCTION, MINING, ENERGY -v- Pace Construction Pty Ltd t/a Pace and Brian Master Builders - CP 157 of 1999;CP 306 of 2000 - Industrial Magistrate - Cicchini IM - 24/01/02 - Construction Trade Services	324
Application re unfair dismissal - Applicant argued that termination was unfair because she was dismissed solely on the basis that she wanted to look over the workplace agreement before signing it and that Respondent was also in breach of its contract to employ her - Respondent argued that Applicant did not accept the offer of employment and therefore did not start work - Commission found that Respondent had not employed Applicant and thus application was dismissed - Dismissed for want of jurisdiction - Ms DF Tenthly -v- Airlite Group of Companies - APPL 2246 of 2001 - BEECH SC - 10/04/02 - Other Business Services	661
Application re unfair dismissal and contractual entitlements - Preliminary issue to be decided was whether or not Applicant was an employee for the purposes of the Industrial Relations Act 1979 - Applicant argued that he was a valuer and employed to be the director in charge of the valuation department of Respondent and he worked fulltime and did not undertake other paid work on his own right whilst working for Respondent - Further he was a director of his family company which held units in Respondent's company - Respondent argued that he was a director and shareholder in Respondent and that he did not personally receive a salary but was paid into his own company - Commission found that Applicant was an employee of Respondent for the purposes of the IR Act on the balance that the control, the personal service, the remuneration based upon his work as a valuer, the payment of PAYG tax, the benefits and entitlements paid revealed that Applicant was an employee - Declaration Issued - Mr BR Worthington -v- Falkirk Nominees Pty Ltd T/A Ross Hughes and Company and Australian Property Consultants - APPL 1577 of 2001 - BEECH SC - 15/03/02 - Property and Business Services	667
Application re Order pursuant to Section 80E - Applicant Union argued that the Respondent had refused to allow a Union member to undertake private employment in her own time - The private activity to be undertaken was to operate as a sole trader providing consultancy in ornamental horticulture - Respondent opposed and argued against her requests in particular that the proposed consultancy would be in the same area of activity as Respondent and that there would be the perception of a conflict of interest - Commission found and accepted Respondent's evidence that there would be a potential conflict of interest by having an employee actively promoting her private consultancy in that same industry as the Department - Dismissed - Civil Service Association of Western Australia Incorporated -v- Chief Executive Officer, Department of Agriculture - P 25 of 2001 - Public Service Arbitrator - BEECH SC - 23/04/02 - Government Administration	838
² Appeal against Decision of Commission (81WAIG3107) re dismissed unfair dismissal and denied contractual entitlements claim - Appellant argued that the Commission did not apply the correct test to determine whether she was an employee and sought to introduce new evidence - Appellant sought compensation and pay in lieu of notice - Respondent argued that the Appellant was not an employee, but had been in a defacto or domestic relationship - Full Bench found that it was not clear that the extra evidence could not have been obtained before the matter was first heard or was likely to have altered the outcome of the decision - Full Bench found that the claim for contractual entitlements under an award should not have been made - Further, Full Bench reviewed authorities and found that the Commission had erred in failing to find on evidence that there was a contract of service between the Appellant and the Respondent company and dismissed the Appeal - Upheld and Remitted - Ms JE Augustyn -v- Vistadale Pty Ltd As Trustee For The Ranger Family Trust Trading As Ranger Contracting - FBA 61 of 2001 - Full Bench - SHARKEY P/COLEMAN CC/BEECH SC - 07/06/02 - Construction Trade Services	939
Application re unfair dismissal - Applicant argued that he was unfairly dismissed - Respondent argued that Applicant was an independent contractor and the Commission had no jurisdiction to hear the unfair dismissal application - Commission found that the most significant elements of the employment relationship point to a contract of service and that Applicant was an employee of Respondent - Further, Commission found that Applicant had been unfairly dismissed, that reinstatement was impracticable and thus awarded compensation - Granted - Mr MG Halligan -v- Bamboo Holdings Pty Ltd - APPL 1624 of 2001 - HARRISON C - 08/05/02 - Other Services	1025

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Application re contractual entitlements - Applicant argued that benefits due to him were deducted from his final pay without his consent and contrary to the Minimum Conditions of Employment Act - Respondent argued that Commission did not have jurisdiction to deal with this matter - Commission found that there was no entitlement to the money claimed as the money claimed was not a benefit in contravention of a provision of the contract of service and that matter was dismissed - Further, Commission found that this was not a case that warranted an order for costs against Applicant - Dismissed for want of jurisdiction - Mr I MacFarlane -v- Halperin Fleming & Meertens - APPL 1499 of 2001 - SMITH, C - 21/12/01 - Other Services.....	150
⁴ Application re a stay of operation of orders made in the Industrial Magistrates Court - Applicant Union sought that the application be stayed as there was a serious question to be tried as to whether the Magistrate erred in law in dismissing the claim and that the balance of convenience favoured the Applicant - There was also an application to adjourn the proceedings on behalf of the Respondent which was not pressed - President found that there was no power or jurisdiction for the President to grant the stay of an order made by Industrial Magistrates Court or Magistrate pending the hearing and determination of an appeal against that decision or order - Dismissed - Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch - v- Burswood Resort (Management) Limited - PRES 1 of 2002 - President - SHARKEY P - 16/01/02 - Accommodatn, Cafes&Restaurants.....	222
Complaint re breach of award - Complainant argued that Defendant breached the Hairdressers Award No.A32 of 1998 by failing to maintain a time and wages record for two employees employed with Defendant - Defendant argued that a time and wages book was provided but the time and wages records were not maintained by employees or relied on as wages were calculated on the computer at home -Industrial Magistrate found that the obligation was clearly on Respondent to ensure the records were maintained and if the records were not kept he was in breach of the award - Reasons for Decision Issued - Tara Jane Zeid, Department of Productivity and Labour Relations -v- New Wave Nominees Pty Ltd T/As New Wave Hair Care Unisex - M 169,170 of 2001 - Industrial Magistrate - Tarr IM - 20/12/01 - Hairdressing and Beauty Salons.....	327
² Appeal against Decision of Industrial Magistrate (unreported) re dismissed application for enforcement of an order of the Commission and order for costs - Appellant Union argued IM erred in finding that it was barred from pursuing the claim against the Respondent because a Union delegate had entered into a deed of settlement with the Respondent excluding the Union from negotiations - Full Bench found that the complaint was dismissed before the Applicant Union could properly proceed with its case notwithstanding prima-facie evidence of a breach - Full Bench found IM erred entirely by not advertng to the clear terms of s83 of the IR Act 1979 and misapprehended the nature of enforcement proceedings - It simply did not set out to exercise its jurisdiction - Full Bench found that the Deed of Release was entirely irrelevant to whether there was a breach or non-compliance with an order of the Commission made under s.44 - Full Bench found there was no question of estoppel or privity of contract, but enforcing orders of the Commission was a matter of public interest - Full Bench found that finding that the claim was frivolous and vexatious was entirely erroneous and there was no basis for costs - Upheld and Remitted - Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch -v- Burswood Resort (Management) Limited - FBA 1 of 2002 - Full Bench - SHARKEY P/COLEMAN CC/BEECH SC - 26/04/02 - Accommodatn, Cafes&Restaurants.....	773
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Application re unfair dismissal and contractual entitlements - Applicant argued that she was unfairly dismissed and not paid benefits including overtime under her contract of employment and that she would have been paid overtime for hours greater than 37.5 hours per week - Respondent argued that Applicant was not entitled to any overtime and that it was not expressed in the contract of employment and was never claimed or paid during six years of employment - Commission found that the contract of employment did not contain any provisions that she would be paid overtime and that she never claimed overtime in the six years of employment was a strong suggestion that she believed that she was not entitled to it and thus had difficulty in proving the claim - Order Issued - Ms SR Corcoran -v- Gibson Quai Pty Ltd ACN (009 323 620) - APPL 1716 of 2001 - BEECH C - 12/12/01 - Other Services.....	137
Application re unfair dismissal and contractual entitlements - Applicant argued that redundancy was not genuine because the work that she performed was being done by a person who was recruited as a new staff member - Respondent argued that Applicant was terminated on the grounds of a genuine redundancy as her position was a luxury and there were no other suitable alternative duties within Respondent's organisation that could be allocated to her as it faced significant downturn in work and cost pressures required it to downsize - Commission found that the decision to make position redundant was genuine but the termination of Applicant's employment was unfair as there was no discussion in respect to the opportunity of reducing her hours of work - Order Issued - Ms PL Harben -v- Buckeridge Nominees Pty Ltd T/A BGC Windows ACN 008 849 581 - APPL 319 of 2001 - SMITH, C - 21/12/01 - Basic Material Wholesaling.....	142
Application re unfair dismissal - Applicant argued that dismissal was unfair because the status of employment was permanent as had been promised and thus able to have the necessary time off - Respondent argued that Applicant was employed as a permanent employee in the first period and a casual employee in the second period of employment - Further, support was offered to Applicant to assist with his rehabilitation and had been told on a number of occasions that his behaviour was unacceptable and was sufficiently warned about the viability of his job - Commission found that Applicant was given a fair go all round, had become less cooperative and had a poor attitude and performance towards his work - Dismissed - Mr BA Johnston -v- Diasson Holdings Pty Ltd The Lonie Family Trust t/as R. H. Trotter & Co - APPL 415 of 2001 - GREGOR C - 20/12/01 - Horticulture & Fruit Growing.....	146
Application re contractual entitlements - Applicant argued that Respondent unilaterally altered the contract of employment without his acceptance, and sought the difference in earnings between reduced levels of income - Respondent argued that because Applicant had remained working under the new arrangements, he had therefore accepted its offer to employ him on new terms of employment, and to pay him the difference between the reduced levels of income would be to "re-instate" him as assistant manager - Commission found on evidence that although Applicant had not accepted the change of his contract, his duties had changed, and his continuation with the Respondent was that of a sales assistant or sales consultant, in a relieving capacity, therefore, his claim that he was entitled a benefit under his contract of employment was not made out - Dismissed - Mr T Tran -v- Boutique Consolidated Pty Ltd t/as Tony Barlow Menswear - APPL 925 of 2001 - BEECH C - 03/01/02 - Textile, Clothing, Footwear.....	169
Complaint re breach of award - Complainant argued that Defendant breached the Hairdressers Award No.A32 of 1998 by failing to maintain a time and wages record for two employees employed with Defendant - Defendant argued that a time and wages book was provided but the time and wages records were not maintained by employees or relied on as wages were calculated on the computer at home -Industrial Magistrate found that the obligation was clearly on Respondent to ensure the records were maintained and if the records were not kept he was in breach of the award - Reasons for Decision Issued - Tara Jane Zeid, Department of Productivity and Labour Relations -v- New Wave Nominees Pty Ltd T/As New Wave Hair Care Unisex - M 169,170 of 2001 - Industrial Magistrate - Tarr IM - 20/12/01 - Hairdressing and Beauty Salons.....	327
Application re unfair dismissal and contractual entitlements - Applicant argued that she did not resign but was dismissed by Respondent and was employed as a permanent employee not as a casual and had not been paid all her contractual entitlements as a full time employee - Respondent argued that Applicant had verbally tendered her resignation which was accepted by the Directors and that in her final week she was place on casual hours and was paid out all contractual entitlements - Commission found that it was Respondent that decided that Applicant's employment should end and was therefore dismissed and that it was Respondent that instituted the casual hours only after Applicant's employment ceased - Further, Commission found however that Applicant by her own actions in offering to leave and seeking the meeting had to take responsibility for her actions and that payments made were paid for previous work and as a goodwill gesture - Dismissed - Ms JS Monteith -v- Saruman Holdings Pty Ltd & Other - APPL 1285 of 2001 - WOOD,C - 11/01/02 - Restaurant.....	345

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HOURS OF WORK—<i>continued</i>	
Application re unfair dismissal - Applicant argued that he has been unfairly dismissed from the job he has held for at least seven years after he refused to sign a workplace agreement and sought an Order for compensation for the wages he had lost arising from that dismissal - Respondent's Agent opposed the claim, arguing that there was no case to answer, that the Commission lacked jurisdiction because the Applicant has not been dismissed and even if notice of dismissal had been given to Applicant, it was abandoned by mutual consent and there has been an agreed variation to the terms of employment, therefore there has been no dismissal but simply a variation of Applicant's contract of employment - Commission found that Applicant has not been dismissed but that his hours of work has been varied, that Applicant had been given notice of dismissal, but that notice was subsequently withdrawn, therefore his claim for unfair dismissal was dismissed - Dismissed - Mr BM Garie -v- Arrowglen Pty Ltd - APPL 1792 of 2001 - BEECH SC - 15/04/02 - Petroleum Coal Chemical Assoc.....	848
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Application re unfair dismissal and contractual entitlements - Application to amend the name of Respondent - Applicant argued that section 27 of the Act gave Commission the powers to correct, amend or waive any error and in this instance amend the name of Respondent - Respondent argued that although the Commission had powers to amend pursuant to section 27, it could not substitute a new party for the Respondent unless the party so substituted waived the irregularity and Respondent did not waive the irregularity - Commission found that it had powers in exercising its discretion to consider whether the circumstances warranted an amendment and found that there was insufficient evidence to explain why the error was made and any real efforts to remedy the situation and thus application dismissed - Dismissed - Ms JE Graham -v- Robert Waters - The Queens Hotel - APPL 699 of 2001 - SCOTT C. - 07/01/02 - Hotel.....	139
Complaint re breach of award - Complainant Union argued that Defendant breached the Building Trades (Construction) Award 1987 and contended that its member was at all material times Defendant's employee - Defendant denied that union member was its employee, and conducted maintenance work for it under a contract of services - Defendant made application to limit hearing to one issue only that being whether he was an employee of Defendant - Complainant opposed application and argued that this Court has the ability to determine the matters raised by Defendant in its pleadings - Defendant contended that the general jurisdiction of this Court was limited to specific statutory provisions and wanted that this Court not determine any factual or legal issues going to promissory estoppel or other equitable defences raised - Industrial Magistrate found that this Court had jurisdiction to deal with the enforcement of the award pursuant IR Act and that it would be inappropriate to split the issues and have separate hearings in relation to award coverage and the other matters - Reasons for Decision Issued - CONSTRUCTION, MINING, ENERGY -v- Pace Construction Pty Ltd t/a Pace and Brian Master Builders - CP 157 of 1999;CP 306 of 2000 - Industrial Magistrate - Cicchini IM - 24/01/02 - Construction Trade Services.....	324
¹ Appeal against Decision of Commission in Court Session (81WAIG1162) re an application to vary an award - Appellant argued the Commission in Court Session erred in law in finding that there was an industrial matter in the case, and was in excess of jurisdiction in its decision to allow the Applicant Union's "freedom of choice" clause to be inserted into the award - Industrial Appeal Court found the Commission erred in the exercise of its discretion to grant the application by giving significant weight to the effects of workplace agreements on terms and conditions of the cleaning industry, and to the diminution of employment under the award. The appeals were allowed, the decision of the Commission in Court Session set aside, and the original application of the union was dismissed - Upheld - Chamber of Commerce & Industry of Western Australia -v- Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch - IAC 3 of 2001 & IAC 4 of 2001 - Industrial Appeal Court - 15/02/02 - Property Services.....	405
⁴ Application for stay of operation of Decision of the Public Service Arbitrator in Matter No. P27/2001 (82WAIG194) re application pursuant to s.80E and s80F of the I.R. Act - Applicant argued that the PSA erred in law in finding jurisdiction to deal with the application and the application raised no industrial matter - President found the argument that there was no jurisdiction was not a strong one and on the balance of convenience of both the parties requires that the jurisdiction, having been determined, the matter should now proceed to determination without further unnecessary delay - Dismissed - Director General, Department of Justice -v- Civil Service Association of Western Australia Incorporated - PRES 3 of 2002 - President - SHARKEY P - 14/02/02 - Government Administration.....	437
² Cross Appeals against decision of Public Service Arbitrator (82WAIG104) re declaration of jurisdiction to hear and determine claim for redress, compensation or damages over a discontinued disciplinary action - Applications for adjournment of hearing - Appellant Employer argued that as the appeal required consideration of the limits of the Commission's jurisdiction it was in the public interest - Appellant Union argued, inter-alia, that the hearing should be adjourned because it would be inconvenient, there were no established facts and discovery was incomplete in the substantive matter, it would not inconvenience the Appellant Employer and the President had dismissed the application for a stay of the declaration - Full Bench found one application for adjournment was incompetent as it was made before the appeal was listed and that the approaches to the Registrar for an adjournment were unsatisfactory Full Bench reviewed authorities and found many of the issues raised were irrelevant and matters for the appeal and that refusing an adjournment would not result in a serious injustice to the Appellant Union - However an adjournment was subsequently granted due to the indisposition of an advocate - Full Bench found that the issues in one appeal were not of such importance that an appeal should lie and gave reasons therefore - Appellant Union conceded in the second appeal that one cannot appeal against reasons for decision and sought leave to discontinue - Full Bench found neither appeal warranted an order for costs - Dismissed, Discontinued and procedural orders issued accordingly - Civil Service Association of Western Australia Incorporated -v- Director General, Department of Justice - FBA 3,4 of 2002 - Full Bench - SHARKEY P/COLEMAN CC/BEECH SC - 07/05/02 - Government Administration.....	752
² Appeal against Decision of Commission (81WAIG3107) re dismissed unfair dismissal and denied contractual entitlements claim - Appellant argued that the Commission did not apply the correct test to determine whether she was an employee and sought to introduce new evidence - Appellant sought compensation and pay in lieu of notice - Respondent argued that the Appellant was not an employee, but had been in a defacto or domestic relationship - Full Bench found that it was not clear that the extra evidence could not have been obtained before the matter was first heard or was likely to have altered the outcome of the decision - Full Bench found that the claim for contractual entitlements under an award should not have been made - Further, Full Bench reviewed authorities and found that the Commission had erred in failing to find on evidence that there was a contract of service between the Appellant and the Respondent company and dismissed the Appeal - Upheld and Remitted - Ms JE Augustyn -v- Vistadale Pty Ltd As Trustee For The Ranger Family Trust Trading As Ranger Contracting - FBA 61 of 2001 - Full Bench - SHARKEY P/COLEMAN CC/BEECH SC - 07/06/02 - Construction Trade Services.....	939
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² Appeal against Decision of Commission (81WAIG2446) re unfair dismissal - Appellant appealed against the Commission's "findings" on various issues relating to his claim - Further, Appellant sought six months compensation for his unfair dismissal, and for an ancillary order to be issued for the Respondent to provide him with a statement of duties, and that the Commission's decision be set aside - Full Bench reviewed various authorities and evidence and found that no ground of appeal was made out and that there was no miscarriage of the exercise of the discretion, at first instance, established and dismissed the appeal - Dismissed - Mr S LaRose -v- Kiam Corporation Limited - FBA 47 of 2001 - Full Bench - SHARKEY P/COLEMAN CC/SCOTT C. - 11/12/01 - Other Services.....	44
² Appeal against Decision of Commission (81WAIG2596) re unfair dismissal - Appellant argued that in relation to the written warning issued, the Commissioner erred in concluding that it was unfairly issued, that on various other issues such as health and safety, the relationship between Applicant and the Head Department, the Applicant's performance and compensation, the Commissioner failed to give proper weight to the evidence - Further, Appellant sought that the Commission's order be quashed - Full Bench reviewed evidence, authorities and found on various reasons, that the Commissioner was entitled to find and correct in finding that the dismissal was unfair, that it was quite clear that the exercise of the discretion at first instance did not miscarry as alleged in the grounds of appeal and that the appeal was not made out, therefore dismissed the appeal - Dismissed - Penrhos College (Inc) -v- Mrs M Mugggeridge - FBA 52 of 2001 - Full Bench - SHARKEY P/COLEMAN CC/WOOD,C - 07/12/01 - Education.....	49

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INTERPRETATION-WORDS & PHRASES—continued

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- Complaint re breach of award - Complainant Union argued that pursuant to Clause 28(6) of the Building Trades (Construction) Award 1987, the Defendant failed to make available copies of the time and wage records relating to their member - Defendant argued that union's member was not employed on construction work as defined in the award, nor was he employed in any of the callings set out in Clause 8 of the award - Further, Defendant maintained that all material times the union's member was employed as and performed the work of a cabinet maker, therefore he was subject to the provisions of the Furniture Trades Industry Award - Industrial Magistrate reviewed evidence, authorities and relevant sections of the Award and concluded that Defendant was bound by the award, and that pursuant to the provisions of the award, Defendant failed to provide copies of the time and wage records relating to the union member - Proven - CONSTRUCTION, MINING, ENERGY -v- Kernaghan's Joinery Cabinet Makers - CP 240 of 2000 - Industrial Magistrate - Cicchini IM - 11/01/01 - Wood and Paper Product Mfg..... 109
- Complaint re breach of award - Complainant argued that as a result of the award breach, he has been underpaid \$14,775.92 - Defendant denied the allegations and argued that there was no underpayment - Further, Defendant counterclaims the amount of \$13,036.33, which it said was overpaid to the Complainant and that the overpayment arose as a consequence of the Complainant's breach of duty of fidelity and good faith - Preliminary Issue re jurisdiction to deal with the Defendant's counterclaim - IM reviewed Acts, Regulations and authorities and found that the Industrial Magistrate Court had jurisdiction to deal with the counterclaim - Further, IM reviewed relevant sections of the Award, evidence and found that Defendant had breached the award, and as a result of the breaches Complainant suffered a total underpayment of \$14,775.92 - As for the Defendant's counterclaim, IM found that it was without merit and not proven - Reasons for Decision Issued - Mr S Kennedy - v- DPH Nominees T/A Ausmic Environmental Industries WA - CP 263 of 1998 - Industrial Magistrate - Cicchini IM - 02/08/00 - Other Business Services 115
- Application re unfair dismissal and contractual entitlements - Application to amend the name of Respondent - Applicant argued that section 27 of the Act gave Commission the powers to correct, amend or waive any error and in this instance amend the name of Respondent - Respondent argued that although the Commission had powers to amend pursuant to section 27, it could not substitute a new party for the Respondent unless the party so substituted waived the irregularity and Respondent did not waive the irregularity - Commission found that it had powers in exercising its discretion to consider whether the circumstances warranted an amendment and found that there was insufficient evidence to explain why the error was made and any real efforts to remedy the situation and thus application dismissed - Dismissed - Ms JE Graham -v- Robert Waters - The Queens Hotel - APPL 699 of 2001 - SCOTT C. - 07/01/02 - Hotel..... 139
- Application re unfair dismissal - Applicant argued that she viewed her position as long term, there was never any dissatisfaction expressed with her work at any time and that Respondent repudiated the contract of employment - Respondent argued that its action did not constitute a termination of employment, therefore the Commission lacked jurisdiction to determine the claim - Commission found based on the evidence presented that the Respondent had repudiated the contract of employment because Applicant was asking for more money and had been consistent in her demands to that extent, and the Respondent incorrectly concluded that at the end of the 12 months period the contract would come to an end - Further, Commission found that reinstatement was impracticable and ordered that compensation be paid to Applicant for a period of 10 weeks and four days - Granted - Ms SL Semple -v- Pro Subi Limited - APPL 910 of 2001 - GREGOR C - 20/12/01 - Other Services..... 159
- Application re contractual entitlements - Applicant argued that Respondent unilaterally altered the contract of employment without his acceptance, and sought the difference in earnings between reduced levels of income - Respondent argued that because Applicant had remained working under the new arrangements, he had therefore accepted its offer to employ him on new terms of employment, and to pay him the difference between the reduced levels of income would be to "re-instate" him as assistant manager - Commission found on evidence that although Applicant had not accepted the change of his contract, his duties had changed, and his continuation with the Respondent was that of a sales assistant or sales consultant, in a relieving capacity, therefore, his claim that he was entitled a benefit under his contract of employment was not made out - Dismissed - Mr T Tran -v- Boutique Consolidated Pty Ltd t/as Tony Barlow Menswear - APPL 925 of 2001 - BEECH C - 03/01/02 - Textile, Clothing, Footwear..... 169
- Application re transfer to a full time position - Applicant Union sought an order that its member be transferred to a full-time permanent position in accordance with Clause 24(3)(c) of the Family and Children's Services Enterprise Bargaining Agreement 2000 - Respondent rejected the Applicant's arguments on a number of grounds and argued that the movement from part-time to full-time employment contained within the EBA relates to a "right of reversion" and that the award applicable to the employee's employment provides no "right of reversion" - Public Service Arbitrator reviewed relevant clauses of the EBA, PSA and GOSAC awards and concluded that in all circumstances, the employee should be entitled to apply and be considered for transfer to a full-time CSO position in which she has indicated an interest provided that she meets the criteria set out within the Human Resource Management Standards and Policies which it bound to apply - Order Issued - Civil Service Association of Western Australia Incorporated -v- Chief Executive Officer Family and Children's Services - P 12 of 2001 - SCOTT C. - 11/01/02 - Government Administration 315
- ²Appeal against Decision of Commission (81WAIG3079) re variation of the Malting Industry Award 1993 - Appellant argued the Commission erred in the exercise of its discretion on a number of grounds, including that it gave no weight to the scheme of the Act/or the Wage Fixing Principles - Full Bench reviewed Act, authorities, Wage Fixing Principles and found that the Commission at first instance had erred in making findings in error and in not having regard to a number of relevant matters and therefore, upheld the appeal, suspended the decision at first instance and remitted the matter back to the Commission at first instance - Upheld - The Breweries and Bottleyards Employees' Industrial Union of Workers of Western Australia -v- Kirin Australia Pty Ltd - FBA 56 of 2001 - Full Bench - SHARKEY P/GREGOR C/SMITH, C - 13/03/02 - Food, Beverage and Tobacco Mfg 412
- Application re unfair dismissal - Applicant contends that the dismissal was unfair and sought compensation - Commission, based on the evidence presented by both parties, applied the indicia set out in Vabu's case and found that Applicant was an independent contractor, that he was unable to access the Commission through s.29(b)(1) of the I.R. Act and that the Commission had no jurisdiction to deal with the claim - Dismissed for want of jurisdiction - Mr J Boyle -v- WA Fork Truck Distributors Pty Ltd - APPL 1195 of 2001 - GREGOR C - 13/03/02 - Road Transport 472
- ³Application for registration of a new award - Application by the Union for the making of a new award governing employees employed by Burswood Catering and Entertainment Pty Ltd at the new facilities at the Burswood Island Resort which will replace the existing award and agreement - Respondent opposed the issuance of the award and argued that the company must have a wages and labour structure that allowed it to be competitive - Commission in Court Session found that the company created was in reality a labour hire company, which did not operate as an independent business, that effectively Burswood Ltd was contracting to itself and this has resulted in an inequality of wages - CICS reviewed various authorities and were of the view that an award should issue substantially in the terms claimed by the Union as they reflect the industrial agreement in order to remedy the inequity - New award issued - Granted - Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch -v- Burswood Catering and Entertainment Pty Ltd - A 4 of 2001 - Commission in Court Session - BEECH SC/SMITH C/WOOD C - 12/02/02 - Accommodatn, Cafes&Restaurants..... 544
- Application for interpretation of Enterprise Agreement re Carer's Leave - Applicant sought orders that the carer's leave entitlements are not pro rated for "1.- the calendar year 2001" and "2.- employees who have reduced their hours to less than 80 per fortnight" - Public Service Arbitrator reviewed relevant clauses of the agreement and according to the authorities in respect of interpretation, applied the meaning of the words used in the agreement, and was not satisfied that there was ambiguity and, neither party argued that there was an absurdity, therefore, PSA declared that the true interpretation of the agreement was that carer's leave was "not to be pro rated for the calendar year 2001; and to be pro rated for part-time officers" - Reasons for Decision Issued - Western Australian Police Union of Workers -v- Commissioner of Police - P 52 of 2001 - Public Service Arbitrator - SCOTT C - 04/04/02 - Government Administration..... 603

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Application re unfair dismissal - Applicant argued he has been unfairly dismissed and that he had as a benefit under his employment an entitlement to six month's salary - Respondent stated that Commission did not have jurisdiction as such to hear the matter as Applicant was employed under an award of the Australian Industrial Relations Commission - Parties were invited to prepare written submissions for determination - On the grounds submitted in support of Applicant's claim, the only issue the Commission was asked to decide was the question of whether or not Applicant's employment had been subject to the terms and conditions of the federal award - Commission found on evidence that Respondent was the successor to Community Youth Support Scheme Scarborough for the purposes of s.149(1)(d) of that Act because the name of the body carrying on that business was the only thing that changed; there was no suggestion of any change whatsoever resulting from the change of name and accordingly, found that the Respondent was a Respondent to the Community Employment, Training and Support Services Award 1999 an award of the AIRC - Declaration Issued - Mr GJ Clarke -v- Stirling Skills Training Inc Trading as Jobwest - APPL 2112 of 2001 - BEECH SC - 04/04/02 - Other Business Services	621
Application re unfair dismissal - Applicant argued he was unfairly dismissed and sought the maximum amount compensation in the alternative that reinstatement was impracticable - Respondent argued that Applicant was not a target for the dismissal, that he had previously considered terminating him to cut costs because his business was not performing well - Commission found on evidence that Respondent had previously considered terminating Applicant because its business was not performing well, therefore, Commission did not believe that Applicant was a target - Further, Commission found that Applicant was unfairly dismissed; that it doubt that a successful working relationship could be re-established and that it was satisfied that Applicant had sought to mitigate his loss and awarded compensation - Ordered Accordingly - Mr PM Kerr -v- Retch Rubber Pty Ltd - APPL 1303 of 2001 - WOOD C - 22/03/02 - Other Services	625
Conference referred re termination - Applicant Union sought an order for compensation to the maximum available under the Act - Applicant argued that whilst not in any way seeking to derogate from the importance of safety in the mining industry, if the Commission were to accept that its member was working too far out from safe ground, the circumstances of this matter did not warrant his dismissal - Respondent objected to and opposed the claim, arguing that union member had breached the Mines Safety and Inspection Regulations 1985 and the Respondent's policy in relation to the same - Further, it was the other safety breaches that was apparent in his employment record that contributed to its decision to dismiss him - Commission found based on the evidence presented that union member was working in an area of unsupported ground which was prohibited under the Regulation and the Respondent's policy and this was a serious and potentially fatal safety breach - Further, Commission reviewed test cases, the prior incident that occurred and was of the opinion that the union member's dismissal was not harsh, oppressive or unfair, and on all of the evidence in the matter, he had been given a fair go all round - Dismissed - The Australian Workers' Union, West Australian Branch, Industrial Union of Workers -v- Henry Walker Eltin Pty Ltd - CR 203 of 2001 - KENNER C - 08/04/02 - Metal Ore Mining	673
Conference referred re interpretation of Gaol Officers' Award 1998 No. 12 of 1968 - Hours of Duty - Applicant Union argued that the wording to clause 10 - Hours of Duty allowed a prison officer to take a meal break away from his or her place of work and if that did not occur, the clause entitled the officer to either cease duty thirty minutes before the conclusion of the rostered shift or take the thirty minutes as time off in lieu - Respondent did not agree with that interpretation and stated that the clause did not provide for a meal break to occur away from the place of work as claimed - Commission found that the principles to be applied in interpreting an award are that the meaning of a provision in an award was to be obtained by considering the terms of the award as a whole - Commission found that the proper interpretation of clause 10 - Hours of Duty of the award was that a prison officer was entitled to either cease duty for thirty minutes before the conclusion of the rostered shift or take the thirty minutes as time off in lieu only when the officer was required for duty during his/her meal break and his/her meal break was delayed beyond 5.5 hours from commencement of work - Declaration Issued - Western Australian Prison Officers' Union of Workers -v- The Hon. Attorney General - CR 222 of 2001 - BEECH SC - 15/03/02 - Other Services	693
Application re contractual entitlements - Applicant argued that at the end of his contract he was owed an amount in the sum of \$944.21 for "accommodation charges" - Respondent argued that Applicant was not an employee but a subcontractor - Commission applied tests case and found that Applicant was more likely than not a subcontractor, and was therefore unable to enliven the jurisdiction set out in s.29(1)(b)(ii) of the I.R. Act - Commission further concluded that Applicant had not established that the Respondent was liable to pay him for accommodation allowance, and therefore the application was dismissed - Dismissed - Mr CL Roberts -v- Greenfield Project Development Services Pty Ltd - APPL 2042 of 2001 - GREGOR C - 24/04/02 - Other Services	858
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² Appeal against Decision of Commission (81WAIG1646) re unfair dismissal - Appellant argued the Commissioner had erred in law and fact on numerous grounds relating to the contract of service - Full Bench found there was no jurisdiction to hear and determine an application claiming relief for harsh, oppressive and unfair dismissal, and the claim for contractual benefits was not established at first instance - Dismissed - Mr CJ Fox -v- News Illustrated Pty Ltd - FBA 46 of 2001 - Full Bench - SHARKEY P/COLEMAN CC/BEECH C - 20/12/01 - Printg, Publishg & Rcd Media	35
Application for Orders pursuant sections 80E and 80F of the I.R. Act - Applicant Union sought copies of the Hedges Report, a written apology and damages in relation to disciplinary proceedings - Respondent argued that there was no industrial matter in relation to the Hedges Report and challenged the Arbitrator's jurisdiction to grant damages for breach of contract - Public Service Arbitrator found that it had no power to award damages but did have jurisdiction to enquire into disciplinary proceedings - Granted in Part - Civil Service Association of Western Australia Incorporated -v- Director General, Ministry of Justice - P 27 of 2001 - Public Service Arbitrator - SCOTT C. - 19/12/01 - Government Administration	104
Complaint re breach of award - Complainant argued that as a result of the award breach, he has been underpaid \$14,775.92 - Defendant denied the allegations and argued that there was no underpayment - Further, Defendant counterclaims the amount of \$13,036.33, which it said was overpaid to the Complainant and that the overpayment arose as a consequence of the Complainant's breach of duty of fidelity and good faith - Preliminary Issue re jurisdiction to deal with the Defendant's counterclaim - IM reviewed Acts, Regulations and authorities and found that the Industrial Magistrate Court had jurisdiction to deal with the counterclaim - Further, IM reviewed relevant sections of the Award, evidence and found that Defendant had breached the award, and as a result of the breaches Complainant suffered a total underpayment of \$14,775.92 - As for the Defendant's counterclaim, IM found that it was without merit and not proven - Reasons for Decision Issued - Mr S Kennedy -v- DPH Nominees T/A Ausmic Environmental Industries WA - CP 263 of 1998 - Industrial Magistrate - Cicchini IM - 02/08/00 - Other Business Services	115
Application re contractual entitlements - Applicant argued that benefits due to him were deducted from his final pay without his consent and contrary to the Minimum Conditions of Employment Act - Respondent argued that Commission did not have jurisdiction to deal with this matter - Commission found that there was no entitlement to the money claimed as the money claimed was not a benefit in contravention of a provision of the contract of service and that matter was dismissed - Further, Commission found that this was not a case that warranted an order for costs against Applicant - Dismissed for want of jurisdiction - Mr I MacFarlane -v- Halperin Fleming & Meertens - APPL 1499 of 2001 - SMITH, C - 21/12/01 - Other Services	150
Application re unfair dismissal - Applicant argued that she viewed her position as long term, there was never any dissatisfaction expressed with her work at any time and that Respondent repudiated the contract of employment - Respondent argued that its action did not constitute a termination of employment, therefore the Commission lacked jurisdiction to determine the claim - Commission found based on the evidence presented that the Respondent had repudiated the contract of employment because Applicant was asking for more money and had been consistent in her demands to that extent, and the Respondent incorrectly concluded that at the end of the 12 months period the contract would come to an end - Further, Commission found that reinstatement was impracticable and ordered that compensation be paid to Applicant for a period of 10 weeks and four days - Granted - Ms SL Semple -v- Pro Subi Limited - APPL 910 of 2001 - GREGOR C - 20/12/01 - Other Services	159

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¹ Appeal against decision of Full Bench (81WAIG3026) re jurisdiction of Public Service Arbitrator to deal with a claim of unfair treatment of an officer on temporary deployment due to a restructure - IAC reviewed 80E(7) of the IR Act 1979 and s97(1)(a) of the PSM Act 1994 - IAC found that the case appeared to be about whether there was a legitimate expectation that the officer would continue to be paid at a higher level and would not raise an issue about the compliance with the Public Sector Standards as to temporary deployment - Dismissed - Commissioner of Police -v- Civil Service Association of Western Australia Incorporated - IAC 9 of 2001 - Industrial Appeal Court - 01/02/02 - Community Services.....	207
¹ Appeal against decision of Full Bench (81WAIG2537) re amount of compensation paid for loss or injury due to unfair dismissal - IAC found question was whether when assessing the monetary compensation which may be awarded under s23A(1)(ba) of the IR Act 1979 the Commission should discount the amount awarded, if an Applicant has commenced proceedings in a common law court for damages which may result in a monetary award - IAC found that there was nothing in the IR Act, including the requirement to act according to equity, good conscience and the substantial merits of the case that required the Commission to take into account the fact that the Applicant may have other monetary remedies or has commenced proceedings to enforce those remedies - Dismissed - Q-Vis Limited (ACN 009 234 173) -v- Mr SD Gordon - IAC 5 of 2001 - Industrial Appeal Court - 01/01/02 - Machinery & Equipment Mfg.....	210
⁴ Application re a stay of operation of orders made in the Industrial Magistrates Court - Applicant Union sought that the application be stayed as there was a serious question to be tried as to whether the Magistrate erred in law in dismissing the claim and that the balance of convenience favoured the Applicant - There was also an application to adjourn the proceedings on behalf of the Respondent which was not pressed - President found that there was no power or jurisdiction for the President to grant the stay of an order made by Industrial Magistrates Court or Magistrate pending the hearing and determination of an appeal against that decision or order - Dismissed - Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch -v- Burswood Resort (Management) Limited - PRES 1 of 2002 - President - SHARKEY P - 16/01/02 - Accommodatn, Cafes&Restaurants.....	222
Complaint re breach of award - Complainant Union argued that Defendant breached the Building Trades (Construction) Award 1987 and contended that its member was at all material times Defendant's employee - Defendant denied that union member was its employee, and conducted maintenance work for it under a contract of services - Defendant made application to limit hearing to one issue only that being whether he was an employee of Defendant - Complainant opposed application and argued that this Court has the ability to determine the matters raised by Defendant in its pleadings - Defendant contended that the general jurisdiction of this Court was limited to specific statutory provisions and wanted that this Court not determine any factual or legal issues going to promissory estoppel or other equitable defences raised - Industrial Magistrate found that this Court had jurisdiction to deal with the enforcement of the award pursuant IR Act and that it would be inappropriate to split the issues and have separate hearings in relation to award coverage and the other matters - Reasons for Decision Issued - CONSTRUCTION, MINING, ENERGY -v- Pace Construction Pty Ltd t/a Pace and Brian Master Builders - CP 157 of 1999;CP 306 of 2000 - Industrial Magistrate - Cicchini IM - 24/01/02 - Construction Trade Services.....	324
² Appeal against Decision of Commission (Public Service Arbitrator) (81WAIG2887) re Order pursuant to Section 80E - Appellant argued against the decision of the learned Commissioner in that the Arbitrator erred in law in finding that the Respondent's alleged conduct did not touch Respondent's members employment - Appellant further argued that it should have been allowed to enquire into Respondent's alleged conduct because depending on the factual findings made there was a potential for a finding that Respondent's conduct was improper as to render him unfit for work with Appellant and there was the potential for a finding that Respondent had committed a breach of discipline given the role of the Department of Community Development and as a manager - Respondent argued and file a notice of contention that the conduct of any investigations which might be initiated by Appellant were not at all relevant to the grounds of appeal - Full Bench found that the crux of the appeal was that there was a potential for a finding that the member's alleged conduct was so intrinsically improper that it rendered him unfit to work with Appellant, as well as, a potential for findings of the breaches of discipline - Further, Full Bench found that the Arbitrator erred in finding that there was an allegation of misconduct constituting a breach of discipline and that all grounds of the appeal were made out - Appeal Upheld - Director General of the Department of Community Development -v- Civil Service Association of Western Australia Incorporated - FBA 55 of 2001 - Full Bench - SHARKEY P/COLEMAN CC/WOOD,C - 05/03/02 - Government Administration.....	425
Application re unfair dismissal and contractual entitlements - Applicant alleged she was dismissed because she would not apologise to the Respondent's daughter and son in law, and sought compensation for dismissal and outstanding benefits - Respondent claimed that tension had developed in the workplace caused by the Applicant's conduct, and there was no dismissal as the Applicant removed herself from the workplace - Commission found the Applicant had brought the contract of employment to an end at her behest and there was no jurisdiction for unfair dismissal for the Commission - Claim for contractual benefits was made out in part for payment of notice - Granted - Ms RV Adamiak -v- All Things X-Ray Pty Ltd - APPL 472 of 2001 - GREGOR C - 01/03/02 - Health Services.....	467
Application re unfair dismissal - Applicant contends that the dismissal was unfair and sought compensation - Commission, based on the evidence presented by both parties, applied the indicia set out in Vabu's case and found that Applicant was an independent contractor, that he was unable to access the Commission through s.29(b)(1) of the I.R. Act and that the Commission had no jurisdiction to deal with the claim - Dismissed for want of jurisdiction - Mr J Boyle -v- WA Fork Truck Distributors Pty Ltd - APPL 1195 of 2001 - GREGOR C - 13/03/02 - Road Transport.....	472
Application re unfair dismissal and contractual entitlements - Applicant argued that he was unfairly dismissed and denied benefits for a period of employment that was denied - This period of employment was an extension of what was otherwise a fixed term arrangement - Respondent argued the Applicant's contract of employment ended with the expiry of a fixed term contract - Commission found that despite the expectations from the meeting on 26 February 2001 no written approval or funding was forthcoming to extend the contract of employment, and the Applicant was not unfairly dismissed - Dismissed - Mr R Williamson -v- Yulella Fabrications Aboriginal Corporation - APPL 746 of 2001 - KENNER C - 04/02/02 - Government Administration.....	483
Conference re dismissal - Applicant Union argued the Applicant had been dismissed because he had complained about late payments - During the conference an issue arose as to the status of the employment contract - Respondent argued the Applicant had been employed as a subcontractor - Commission found the employment relationship was one of an independent contractor and declined to refer the matter for a hearing as there was no jurisdiction - Declaration Issued - The Western Australian Builders' Labourers, Painters & Plasterers Union of Workers -v- Geltray Pty Ltd trading as Reofast Steel Fixing - C 156 of 2001 - GREGOR C - 12/02/02 - Construction Trade Services.....	489
Conference referred re redundancy - Applicant Union argued that member had received insufficient redundancy payments on termination of his contract of employment - Respondent argued that the detailed and extensive provisions of the ABB Service Agreement had been complied with - Commission found that the ABB Service Agreement contained crucial provisions that included a dispute procedure which required unresolved matters to be referred to the Australian Industrial Relations Commission and that it had provisions which dealt with redundancies - Commission found that it was unable to exercise any powers in the matter and application was dismissed for want of jurisdiction -Dismissed for want of jurisdiction - CONSTRUCTION, MINING, ENERGY -v- ABB Engineering Construction Pty Ltd - CR 115 of 2001 - GREGOR C - 12/03/02 - Engineering.....	492

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Application re transfer of member - Applicant Union argued that the decision of Respondent to transfer member from the position of Prison Support Officer in Broome Regional Prison to Prisoner Support officer at Hakea Prison in Canning Vale be quashed and that Respondent be made to return member to work at the Broome Regional Prison or transfer her to suitable alternative employment in Broome - Respondent argued that it had the right to transfer the member after considering the situation that had arisen - Public Service Arbitrator found that it had exclusive jurisdiction to enquire into and deal with any industrial matter relating to government officers which was subject to the Industrial Relations Act, however, a Public Service Arbitrator did not have jurisdiction to enquire into or deal with any matter in respect to a procedure referred to in the Public Sector Management Act 1994 - Public Service Arbitrator also found that matters which were allegations of breaches of the relevant public sector standard were not within the jurisdiction of the Arbitrator - Arbitrator concluded that it did not have the jurisdiction to deal with the Union's application to enquire and deal with the decision of Respondent to transfer and thus, with some reluctance the application was dismissed for want of jurisdiction - Dismissed for want of jurisdiction - Civil Service Association of Western Australia Incorporated -v- Director General, Ministry of Justice - P 2 of 2001 - Public Service Arbitrator - BEECH SC - 14/03/02 - Other Services.....	596
Complaint re breach of Workplace Agreement - Complainant argued that Respondent had failed to comply with the terms of the workplace agreement and that the claim did not include a certificate as required by Section 54 of WPA Act and that the requirement for a certificate to be given was no more than an administrative obligation that once given at any time after initiating process has been lodged - Respondent argued that there was no breach and the Court did not have the jurisdiction to hear the complaint, to the extent that the Court may have jurisdiction, it could not grant the relief sought against Respondent - Industrial Magistrate found that the provision of the certificate was more than a mere administrative requirement, its provision was a mandatory initiating requirement which enlivened this Court - Further Magistrate found that this Court had no jurisdiction to hear and determine this matter and struck out the claim for want of jurisdiction - Mr DF Halpin -v- Western Australian Mint - M 397 of 2001 - Industrial Magistrate - Cicchini IM - 13/03/02 - Metal Product Manufacturing.....	611
Application re unfair dismissal - Applicant argued he has been unfairly dismissed and that he had as a benefit under his employment an entitlement to six month's salary - Respondent stated that Commission did not have jurisdiction as such to hear the matter as Applicant was employed under an award of the Australian Industrial Relations Commission - Parties were invited to prepare written submissions for determination - On the grounds submitted in support of Applicant's claim, the only issue the Commission was asked to decide was the question of whether or not Applicant's employment had been subject to the terms and conditions of the federal award - Commission found on evidence that Respondent was the successor to Community Youth Support Scheme Scarborough for the purposes of s.149(1)(d) of that Act because the name of the body carrying on that business was the only thing that changed; there was no suggestion of any change whatsoever resulting from the change of name and accordingly, found that the Respondent was a Respondent to the Community Employment, Training and Support Services Award 1999 an award of the AIRC - Declaration Issued - Mr GJ Clarke -v- Stirling Skills Training Inc Trading as Jobwest - APPL 2112 of 2001 - BEECH SC - 04/04/02 - Other Business Services	621
Application re unfair dismissal and contractual entitlements - Applicant argued that Respondent had dismissed him unfairly and denied him contractual entitlements including wages, superannuation, annual leave and mileage/vehicle allowance - Respondent argued that it had no case to answer because there had been no agreement or contract with Applicant - Commission found that there was not enough detail to establish the any terms of employment and thus application dismissed for want of jurisdiction - Dismissed for want of jurisdiction - Mr DT McMaugh -v- Health Professionals Agency Pty Ltd ACN 096 981 556 - APPL 1863 of 2001 - BEECH SC - 12/03/02 - Health and Community Services	635
Application re unfair dismissal - Applicant argued that termination was unfair because she was dismissed solely on the basis that she wanted to look over the workplace agreement before signing it and that Respondent was also in breach of its contract to employ her - Respondent argued that Applicant did not accept the offer of employment and therefore did not start work - Commission found that Respondent had not employed Applicant and thus application was dismissed - Dismissed for want of jurisdiction - Ms DF Tenthly -v- Airlite Group of Companies - APPL 2246 of 2001 - BEECH SC - 10/04/02 - Other Business Services	661
Application re unfair dismissal and contractual entitlements - Preliminary issue to be decided was whether or not Applicant was an employee for the purposes of the Industrial Relations Act 1979 - Applicant argued that he was a valuer and employed to be the director in charge of the valuation department of Respondent and he worked fulltime and did not undertake other paid work on his own right whilst working for Respondent - Further he was a director of his family company which held units in Respondent's company - Respondent argued that he was a director and shareholder in Respondent and that he did not personally receive a salary but was paid into his own company - Commission found that Applicant was an employee of Respondent for the purposes of the IR Act on the balance that the control, the personal service, the remuneration based upon his work as a valuer, the payment of PAYG tax, the benefits and entitlements paid revealed that Applicant was an employee - Declaration Issued - Mr BR Worthington -v- Falkirk Nominees Pty Ltd T/A Ross Hughes and Company and Australian Property Consultants - APPL 1577 of 2001 - BEECH SC - 15/03/02 - Property and Business Services.....	667
² Cross Appeals against decision of Public Service Arbitrator (82WAIG104) re declaration of jurisdiction to hear and determine claim for redress, compensation or damages over a discontinued disciplinary action - Applications for adjournment of hearing - Appellant Employer argued that as the appeal required consideration of the limits of the Commission's jurisdiction it was in the public interest - Appellant Union argued, inter-alia, that the hearing should be adjourned because it would be inconvenient, there were no established facts and discovery was incomplete in the substantive matter, it would not inconvenience the Appellant Employer and the President had dismissed the application for a stay of the declaration - Full Bench found one application for adjournment was incompetent as it was made before the appeal was listed and that the approaches to the Registrar for an adjournment were unsatisfactory Full Bench reviewed authorities and found many of the issues raised were irrelevant and matters for the appeal and that refusing an adjournment would not result in a serious injustice to the Appellant Union - However an adjournment was subsequently granted due to the indisposition of an advocate - Full Bench found that the issues in one appeal were not of such importance that an appeal should lie and gave reasons therefore - Appellant Union conceded in the second appeal that one cannot appeal against reasons for decision and sought leave to discontinue - Full Bench found neither appeal warranted an order for costs - Dismissed, Discontinued and procedural orders issued accordingly - Civil Service Association of Western Australia Incorporated -v- Director General, Department of Justice - FBA 3,4 of 2002 - Full Bench - SHARKEY P/COLEMAN CC/BEECH SC - 07/05/02 - Government Administration	752
² Appeal against Decision of Industrial Magistrate (unreported) re dismissed application for enforcement of an order of the Commission and order for costs - Appellant Union argued IM erred in finding that it was barred from pursuing the claim against the Respondent because a Union delegate had entered into a deed of settlement with the Respondent excluding the Union from negotiations - Full Bench found that the complaint was dismissed before the Applicant Union could properly proceed with its case notwithstanding prima-facie evidence of a breach - Full Bench found IM erred entirely by not advertng to the clear terms of s83 of the IR Act 1979 and misapprehended the nature of enforcement proceedings - It simply did not set out to exercise its jurisdiction - Full Bench found that the Deed of Release was entirely irrelevant to whether there was a breach or non-compliance with an order of the Commission made under s.44 - Full Bench found there was no question of estoppel or privity of contract, but enforcing orders of the Commission was a matter of public interest - Full Bench found that finding that the claim was frivolous and vexatious was entirely erroneous and there was no basis for costs - Upheld and Remitted - Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch -v- Burswood Resort (Management) Limited - FBA 1 of 2002 - Full Bench - SHARKEY P/COLEMAN CC/BEECH SC - 26/04/02 - Accommodatn, Cafes&Restaurants	773
Application re unfair dismissal - Interlocutory application - Applicant had lodged an interlocutory application re an order for production of documents - No appearance from Respondent - Commission found that application was not filed in accordance with Commission's regulations and was inadequately and inaccurately worded and also was a grave breach of natural justice if application was to proceed - Further, Commission found that application was incompetent and should never had been lodged - Dismissed - Mr CA Bowen -v- Prestige Protection Services Pty Ltd ACN 079 276 323 - APPL 1835 of 2001 - BEECH SC - 01/05/02 - Other Services	843

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Application re unfair dismissal - Applicant argued that he has been unfairly dismissed from the job he has held for at least seven years after he refused to sign a workplace agreement and sought an Order for compensation for the wages he had lost arising from that dismissal - Respondent's Agent opposed the claim, arguing that there was no case to answer, that the Commission lacked jurisdiction because the Applicant has not been dismissed and even if notice of dismissal had been given to Applicant, it was abandoned by mutual consent and there has been an agreed variation to the terms of employment, therefore there has been no dismissal but simply a variation of Applicant's contract of employment - Commission found that Applicant has not been dismissed but that his hours of work has been varied, that Applicant had been given notice of dismissal, but that notice was subsequently withdrawn, therefore his claim for unfair dismissal was dismissed - Dismissed - Mr BM Garie -v- Arrowglenn Pty Ltd - APPL 1792 of 2001 - BEECH SC - 15/04/02 - Petroleum Coal Chemical Assoc	848
Application re contractual entitlements - Applicant argued that at the end of his contract he was owed an amount in the sum of \$944.21 for "accommodation charges" - Respondent argued that Applicant was not an employee but a subcontractor - Commission applied tests case and found that Applicant was more likely than not a subcontractor, and was therefore unable to enliven the jurisdiction set out in s.29(1)(b)(ii) of the I.R. Act - Commission further concluded that Applicant had not established that the Respondent was liable to pay him for accommodation allowance, and therefore the application was dismissed - Dismissed - Mr CL Roberts -v- Greenfield Project Development Services Pty Ltd - APPL 2042 of 2001 - GREGOR C - 24/04/02 - Other Services	858
Appeal against the Decision of Respondent re gross misconduct - Appellant argued that alleged dismissal regarding gross misconduct was unfair and submitted that the PSAB had jurisdiction to hear the appeal - Respondent argued that Appellant's employment was subject to a workplace agreement pursuant to the Workplace Agreement Act 1993 and that the PSAB did not have the jurisdiction to deal with this matter - Public Service Appeal Board found that it did not have the jurisdiction to deal with this matter on the basis that there was no industrial matter - Dismissed for want of jurisdiction - Mr P Henley -v- Geraldton Health Service - PSAB 1 of 1999 - Public Service Appeal Board - SCOTT C - 23/04/02 - Government Administration	882
² Appeal against Decision of Commission (81WAIG3107) re dismissed unfair dismissal and denied contractual entitlements claim - Appellant argued that the Commission did not apply the correct test to determine whether she was an employee and sought to introduce new evidence - Appellant sought compensation and pay in lieu of notice - Respondent argued that the Appellant was not an employee, but had been in a defacto or domestic relationship - Full Bench found that it was not clear that the extra evidence could not have been obtained before the matter was first heard or was likely to have altered the outcome of the decision - Full Bench found that the claim for contractual entitlements under an award should not have been made - Further, Full Bench reviewed authorities and found that the Commission had erred in failing to find on evidence that there was a contract of service between the Appellant and the Respondent company and dismissed the Appeal - Upheld and Remitted - Ms JE Augustyn -v- Vistadale Pty Ltd As Trustee For The Ranger Family Trust Trading As Ranger Contracting - FBA 61 of 2001 - Full Bench - SHARKEY P/COLEMAN CC/BEECH SC - 07/06/02 - Construction Trade Services	939
⁴ Application for stay of operation of Order in Matter No.1624/2001 (82WAIG1025) pending appeal to Full Bench - Appellant sought that the Order be stayed on the grounds that the Commissioner at first instance erred on a number of issues relating to jurisdiction and that the appeal was in respect to an order requiring a substantial amount of money to be paid - President found that the Appellant had not established that it had a strong case on appeal and that there were no exceptional circumstances established requiring the Order to be made - Dismissed - Bamboo Holdings Pty Ltd -v- Mr MG Halligan - PRES 20 of 2002 - President - SHARKEY P - 06/06/02 - Other Services	966
Application re unfair dismissal - Applicant claimed harsh, oppressive and unfair dismissal and argued that as a matter of law at the date of his dismissal his employment was governed by the original employment contract in addition to the workplace agreement - Respondent argued the Applicant was party to a workplace agreement and that the workplace agreement takes precedent by virtue of the statute - Commissioner found the Applicant & Respondent were parties to a workplace agreement over which the Commission has no jurisdiction, and dismissed the application for want of jurisdiction - Dismissed - Mr BW Girdwood -v- Surtron Technologies Pty Ltd ACN 009 253 338 - APPL 2344 of 2001 - BEECH SC - 15/05/02 - Services to Mining	1024
Application re unfair dismissal - Applicant argued that he was unfairly dismissed - Respondent argued that Applicant was an independent contractor and the Commission had no jurisdiction to hear the unfair dismissal application - Commission found that the most significant elements of the employment relationship point to a contract of service and that Applicant was an employee of Respondent - Further, Commission found that Applicant had been unfairly dismissed, that reinstatement was impracticable and thus awarded compensation - Granted - Mr MG Halligan -v- Bamboo Holdings Pty Ltd - APPL 1624 of 2001 - HARRISON C - 08/05/02 - Other Services	1025
Conference referred re unfair dismissal - There was no appearance by either the Applicant or the Respondent - Commission dismissed the application for want of prosecution - Dismissed - The Construction, Forestry, Mining and Energy Union of Workers -v- C.E.C.K. Pty Ltd - CR 278 of 2001 - GREGOR C - 17/05/02 -	1113
Conference referred re payment of long service leave - Applicant sought the payment of 13 weeks' pay as payment for accrued long service leave - Respondent opposed the claim stating the Commission did not have jurisdiction to hear the claim for long service leave - Commission was of the view that an employee was entitled to long service leave if they complete 15 years of service, even if they are then subsequently terminated for misconduct, but dismissed the application for want of jurisdiction - Dismissed - Mr IR Davies -v- Youngs WA Pty Ltd - APPL 1570 of 2001;CR 23 of 2002 - SMITH C - 17/05/02 -	1114
LEAVE WITHOUT PAY—	
Application for interim orders re leave without pay and permission to undertake other employment - Applicant Union sought orders to void the Respondent's decision to deny Applicant permission to take leave without pay and undertake employment in the private sector until final determination of the matter - Public Service Arbitrator was not satisfied that the interim orders sought were appropriate to be issued given the Applicant's failure to address the merits of his application, and his unwillingness to undertake a medical examination after his employer refused his request - Dismissed - Civil Service Association of Western Australia Incorporated -v- Director General Department of Consumer and Employment Protection - P 57 of 2001 - Public Service Arbitrator - SCOTT C. - 15/02/02 - Government Administration	458
Application for an Order pursuant to Section 80E of the I.R. Act re perceived bias - Applicant Union argued that Respondent had refused member's application for leave without pay and for permission to undertake other work - Applicant Union sought interim orders to enable member to take leave without pay and to be able to undertake work outside his employment - Applicant Union also sought to have matter referred to Chief Commissioner for re-allocation on the basis of a perception of bias - Respondent argued that the authorities submitted did not support any finding of perceived bias in respect to these matters - Public Service Arbitrator found that it had an obligation to proceed with matters which arise before it, it had an obligation to ensure that it was not diverted by applications that are not of substance and that it should not disqualify itself from proceeding without reason - Dismissed - Civil Service Association of Western Australia Incorporated -v- Director General Department of Consumer and Employment Protection - P 57 of 2001 - Public Service Arbitrator - SCOTT C - 19/03/02 - Government Administration	591
LONG SERVICE LEAVE—	
Complaint re Long Service Leave Act - Claimant argued that he was employed by Defendant and sought the payment of long service leave entitlements - Defendant argued that Claimant was employed as a sub-contractor and thus did not qualify for long service leave entitlements - Industrial Magistrate found that the method of remuneration was for the purpose of tax minimisation and was for that purpose described as a sub-contractor but Claimant was in fact an employee and thus entitled to long service leave pursuant to the Act - Reasons for Decision Issued - Mr J Birighitti -v- United Construction Pty Ltd - M 120 of 2001 - Industrial Magistrate - Tarr IM - 10/01/02 - Construction Trade Services	322

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LONG SERVICE LEAVE—<i>continued</i>	
Application re contractual entitlements - Applicant argued that he was owed benefits accrued as compensation for time not worked as his contract guaranteed him employment until 16 October 2002 - Respondent argued the agreement only created a salary guarantee - Commission found that clauses 4.3 and 4.4 of the agreement were ambiguous and the Applicant was unable to make out his claim for leave and that superannuation did not form part of the Applicant's salary within the meaning of the agreement - Dismissed - Mr NL Knight -v- Alinta Gas Limited - APPL 1248 of 2001 - SMITH, C - 15/02/02 - Electricity and Gas Supply.....	478
Conference referred re payment of long service leave - Applicant sought the payment of 13 weeks' pay as payment for accrued long service leave - Respondent opposed the claim stating the Commission did not have jurisdiction to hear the claim for long service leave - Commission was of the view that an employee was entitled to long service leave if they complete 15 years of service, even if they are then subsequently terminated for misconduct, but dismissed the application for want of jurisdiction - Dismissed - Mr IR Davies -v- Youngs WA Pty Ltd - APPL 1570 of 2001;CR 23 of 2002 - SMITH C - 17/05/02 -	1114
MANAGERIAL PREROGATIVE—	
Conference referred re discrimination against member on the basis of involvement in the Union - Applicant Union argued that their member was unfairly terminated from the position of Doughmaker on 28 March 2001 and had been penalised for being active in Union claims - Respondent argued that the member was at all material times employed under the classification of Baker under the Award and accordingly opposed the Union's claim that the member was unfairly terminated from a position of Doughmaker - Further, Respondent stated that it did not employ persons as Doughmakers - Commission found that the demotion of the member was unfair and that reinstatement to the position of Doughmaker be remedied and that payment be reinstated to that of Doughmaker - Ordered Accordingly - Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch -v- Tip Top Bakeries - CR 93 of 2001 - WOOD C - 08/03/02 - Food, Beverage and Tobacco Mfg ..	689
MEAL BREAKS—	
Complaint re breach of state agreement - Claimant Union contends that its member was entitled to be paid for the full 3 hours during which the union meeting took place, that she was entitled to have her lunch break following the meeting and that Defendant's refusal to let her have her lunch break resulted in her working the full day without a lunch break - Further, that its member was entitled to be paid penalty rates in accordance with clause 16(1)(a) of the agreement - Defendant denied that it had breached the agreement, that it was liable to pay the amount claimed and rejected the claim on a number of grounds - Industrial Magistrate reviewed the relevant clauses of the agreement and found that the union meeting did not fall within the auspices of clause 34 of the agreement, that on the material date the union member took her lunch break prior to returning to work and accordingly she was not entitled to another lunch break - Further, IM found that clause 34(4)(c) did not permit the interpretation sought by the Claimant Union and that the Claimant Union had failed to prove its claim - Decision Issued - Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch -v- Burswood Resort (Management) Ltd - M 284 of 2001 - Industrial Magistrate - Cicchini IM - 07/03/02 - Personal and Other Services.....	612
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Application to vary the Licensed Establishments (Retail & Wholesale) Award 1979, Shop & Warehouse (Wholesale & Retail Establishments) State Award 1977, Storemen Independent Wooldumpers Pty Ltd Award 1982 and Wool, Hide & Skin Store Employee's Award No. 8 of 1966 - The difference between the Applicant Union and the Respondents who appeared was the way in which the CPI was calculated to increase the meal money allowance - Commissioner found the use of the eight capital cities index was consistent with the State Wage Principles - Granted - The Shop, Distributive and Allied Employees' Association of Western Australia -v- Independent Wooldumpers - APPL 1609,1610,1611,2123 of 2001 - BEECH C - 10/01/02 - Personal & Household Good W/sg	283
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Application for Orders pursuant sections 80E and 80F of the I.R. Act - Applicant Union sought copies of the Hedges Report, a written apology and damages in relation to disciplinary proceedings - Respondent argued that there was no industrial matter in relation to the Hedges Report and challenged the Arbitrator's jurisdiction to grant damages for breach of contract - Public Service Arbitrator found that it had no power to award damages but did have jurisdiction to enquire into disciplinary proceedings - Granted in Part - Civil Service Association of Western Australia Incorporated -v- Director General, Ministry of Justice - P 27 of 2001 - Public Service Arbitrator - SCOTT C. - 19/12/01 - Government Administration	104
Application re unfair dismissal - Applicant argued that dismissal was unfair because the status of employment was permanent as had been promised and thus able to have the necessary time off - Respondent argued that Applicant was employed as a permanent employee in the first period and a casual employee in the second period of employment - Further, support was offered to Applicant to assist with his rehabilitation and had been told on a number of occasions that his behaviour was unacceptable and was sufficiently warned about the viability of his job - Commission found that Applicant was given a fair go all round, had become less cooperative and had a poor attitude and performance towards his work - Dismissed - Mr BA Johnston -v- Diasson Holdings Pty Ltd The Lonie Family Trust t/as R. H. Trotter & Co - APPL 415 of 2001 - GREGOR C - 20/12/01 - Horticulture & Fruit Growing	146
Application re unfair dismissal - Applicant argued that dismissal was unfair because there was no warnings given to her before she was dismissed, the procedure used to terminate her services was unfair, she received no counselling or other opportunity to identify the employer's complaints about her or to remedy them - Respondent argued that Applicant was terminated after a sequence of events - Further the principle reason for dismissal was her poor performance and that she failed to follow directions - Commission found that Respondent did not give Applicant the opportunity to explain what she had done and Respondent could not have legitimately reached a conclusion that failure to carry out instructions justified termination instead she was dismissed forthwith and thus dismissal was unfair - Order Issued - Mrs SM Parker -v- Mary-Anne Kenworthy - Image International Pty Ltd - APPL 955 of 2001 - GREGOR C - 23/11/01 - Recreation.....	156
Application re unfair dismissal and contractual entitlements - Applicant argued that she has been harshly, oppressively or unfairly dismissed - Claim for contractual entitlements was not pursued at the hearing - Respondent argued that Applicant had breached the Company's Casual Employment Contract by providing false information in relation to criminal history - Commission found on evidence that Respondent had failed to satisfy the onus to demonstrate the summary dismissal was fair, however, Commission was of the view that the Respondent was entitled to dismiss the Applicant by giving her notice - Further, Commission ordered that 1 months pay be paid to Applicant as compensation in accordance with her contract of employment - Ordered Accordingly - Ms D Churchill -v- Pharmacia and UpJohn (Perth) Pty Limited - APPL 2077 of 2000 - SMITH, C - 06/12/01 - Petroleum Coal Chemical Assoc.....	172
Application re unfair dismissal and denial of contractual entitlements - Applicant sought an adjournment on a number of grounds including, illness, being an unrepresented party and the delay in providing discovery of documents - Respondent submitted that the injustice in granting an adjournment arose from the inconvenience and the question of cost - Commissioner granted an adjournment for one day - Granted in part - Mr R Jeeves -v- Brett Martin Plastics Pty Ltd - APPL 1370 of 2001 - BEECH C - 30/01/02 - Other Manufacturing	339
Application re unfair dismissal and contractual benefits - Applicant argued that he was harshly, oppressively and unfairly dismissed from his employment and sought compensation - Respondent argued the Applicant was not an employee, had relinquished day to day involvement in the business and that the application was lodged out of time - Commissioner found the Applicant was paid wages and was an employee and a Director of the company, and was unfairly dismissed but reinstatement was impracticable - Claims for contractual benefits and costs dismissed - Granted in part - Mr N Polra -v- Chesterfield Child Care Centre Pty Ltd - APPL 1016 of 1999 - SCOTT C. - 25/01/02 - Community Services.....	351

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Appeal against decision of the Respondent re alleged misconduct - Appellant argued the alleged misconduct, which was denied, was not undertaken in the course of performance of her duties or related to her employment with the Respondent, and that she was denied natural justice and procedural fairness during the investigation - Respondent denied any flaws in the investigation's procedures and claimed the Appellant's conduct involved a breach of her contract of employment - Public Service Appeal Board found there were significant and substantive flaws in the disciplinary process and as a result the findings are unsustainable and the finding of the disciplinary process and penalty imposed should be quashed - Granted - Ms TR Cull -v- Commissioner, State Revenue Department - PSAB 3 of 2001 - Public Service Appeal Board - SCOTT C. - 04/02/02 - Government Administration.....	377
² Appeal against Decision of Commission (Public Service Arbitrator) (81WAIG2887) re Order pursuant to Section 80E - Appellant argued against the decision of the learned Commissioner in that the Arbitrator erred in law in finding that the Respondent's alleged conduct did not touch Respondent's members employment - Appellant further argued that it should have been allowed to enquire into Respondent's alleged conduct because depending on the factual findings made there was a potential for a finding that Respondent's conduct was improper as to render him unfit for work with Appellant and there was the potential for a finding that Respondent had committed a breach of discipline given the role of the Department of Community Development and as a manager - Respondent argued and file a notice of contention that the conduct of any investigations which might be initiated by Appellant were not at all relevant to the grounds of appeal - Full Bench found that the crux of the appeal was that there was a potential for a finding that the member's alleged conduct was so intrinsically improper that it rendered him unfit to work with Appellant, as well as, a potential for findings of the breaches of discipline - Further, Full Bench found that the Arbitrator erred in finding that there was an allegation of misconduct constituting a breach of discipline and that all grounds of the appeal were made out - Appeal Upheld - Director General of the Department of Community Development -v- Civil Service Association of Western Australia Incorporated - FBA 55 of 2001 - Full Bench - SHARKEY P/COLEMAN CC/WOOD,C - 05/03/02 - Government Administration.....	425
Application for orders re the substandard performance and disciplinary proceedings taken against an employee of the Respondent - Applicant Union sought several orders to void the report and processes completed by the Respondent - Respondent conceded the processes were discontinued because of concerns that not all procedural steps under the Public Sector Management Act had been complied with - Public Service Arbitrator concluded that the substance of the application had been met and the application be dismissed - Dismissed in the public interest - Civil Service Association of Western Australia Incorporated -v- Director General, Department of Consumer and Employment Protection - P 43 of 2001 - Public Service Arbitrator - SCOTT C. - 18/02/02 - Government Administration.....	456
Application re unfair dismissal and contractual entitlements - Applicant argued that dismissal was unfair because he was not given the opportunity to explain his actions and was denied natural justice - Respondent argued that Applicant had been dismissed for misconduct and that the breach of trust had warranted the termination - Commission found that there were different accounts of what had taken place and that those circumstances alone did not warrant the summary dismissal and that Applicant did not have any opportunity to defend himself or provide an explanation thus, the dismissal was substantively and procedurally harsh and unfair - Further Commission found that the employee/employer relationship had broken down so that reinstatement was impractical and awarded compensation - Ordered Accordingly - Mr CV Caldwell -v- P.Brown - Cloveroaks Pty Ltd - APPL 1421 of 2001 - WOOD C - 18/03/02 - Agriculture.....	617
Application re unfair dismissal - Applicant argued that dismissal was unfair because she had not committed the acts of alleged misconduct and did not divulge any information received by her under the Anti Corruption Commission Act 1988 - Respondent argued that it had conducted an investigation and that it had reasonable grounds that Applicant was guilty of misconduct and that misconduct justified dismissal - Commission found that Respondent had conducted a full and extensive investigation into the allegation of misconduct and that Respondent had reasonable grounds to terminate Applicant for misconduct - Dismissed - Ms NM Whittle -v- Anti-Corruption Commission - APPL 1331 of 2001 - BEECH SC - 19/03/02 - Police.....	664
Conference referred re unfair dismissal - Applicant Union argued its member was harshly, oppressively and unfairly dismissed - Respondent argued the Applicant was dismissed for misconduct and for providing her son lunch from the canteen without paying for items provided - Commission found that the Applicant's actions of providing free lunch to her son constituted misconduct and that the Respondent was entitled to take into account the Applicant's prior conduct in relation to teaching staff - Respondent's application for reimbursement of expenses was dismissed - Dismissed - Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch -v- Cannington Community College P & C Association Inc - CR 158 of 2001 - SMITH C - 22/03/02 - Accommodatn, Cafes&Restaurants.....	677
Conference referred re unfair dismissal - Applicant Union argued the Applicant was unfairly dismissed and denied the allegation made against him that he had been selling drugs - Respondent argued that the Applicant was dismissed for disciplinary reasons - Commission was not satisfied that any deficiency in the Respondent's process meant that the Applicant's dismissal was unfair, and that the Applicant's evidence did not show his dismissal was unfair - Commission also stated that its decision did not indicate in any way that the Applicant was involved in offering drugs for sale - Dismissed - Construction, Forestry, Mining and Energy Union (Federal Union) -v- Fieldway Enterprises Pty Ltd - CR 277 of 2001 - BEECH SC - 17/04/02 - General Construction.....	873
Appeal against the Decision of Respondent re gross misconduct - Appellant argued that alleged dismissal regarding gross misconduct was unfair and submitted that the PSAB had jurisdiction to hear the appeal - Respondent argued that Appellant's employment was subject to a workplace agreement pursuant to the Workplace Agreement Act 1993 and that the PSAB did not have the jurisdiction to deal with this matter - PSAB found that it did not have the jurisdiction to deal with this matter on the basis that there was no industrial matter - Dismissed for want of jurisdiction - Mr P Henley -v- Geraldton Health Service - PSAB 1 of 1999 - Public Service Appeal Board - SCOTT C - 23/04/02 - Government Administration.....	882
² Appeal against Decision of the Public Service Arbitrator (82WAIG456) re dismissed claim in relation of disciplinary proceedings taken against an employee - Appellant Union argued that the Public Service Arbitrator had erred in law and fact by dismissing the original application prior to its substantive hearing on the basis that it was contrary to the public interest - Full Bench found the Arbitrator did not err in the exercise of discretion and no grounds of appeal were made out - Full bench found the whole process of investigation as conceded was "void" or a "nullity", a finding which was at least recognised by the correct observation by the Arbitrator that the matter was dead - Dismissed - Civil Service Association of Western Australia Incorporated -v- Director General, Department of Consumer and Employment Protection - FBA 13 of 2002 - Full Bench - SHARKEY P/COLEMAN CC/KENNER C - 24/05/02 - Government Administration.....	952
Application re unfair dismissal and contractual entitlements - Applicant argued he was harshly, oppressively and unfairly dismissed, denied the payment of one year's remuneration in lieu of notice and sought compensation for loss and injury - Respondent argued the Applicant was terminated due to serious breaches of his employment agreement which were not capable of rectification - Commission found that the Applicant was not unfairly dismissed, that Respondent was entitled to take into account the history of the Applicant's employment relating to misconduct, and that the summary dismissal was justified - Respondent's application to delay delivery of reasons for decision was dismissed - Dismissed - Mr RJH Smith -v- Saracen Management Pty Limited ACN 079 747 452 - APPL 138 of 2001 - SMITH C - 24/05/02 - Metal Ore Mining.....	1050
Conference referred re payment of long service leave - Applicant sought the payment of 13 weeks' pay as payment for accrued long service leave - Respondent opposed the claim stating the Commission did not have jurisdiction to hear the claim for long service leave - Commission was of the view that an employee was entitled to long service leave if they complete 15 years of service, even if they are then subsequently terminated for misconduct, but dismissed the application for want of jurisdiction - Dismissed - Mr IR Davies -v- Youngs WA Pty Ltd - APPL 1570 of 2001;CR 23 of 2002 - SMITH C - 17/05/02 -	1114

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Application re unfair dismissal and denial of contractual entitlements - Applicant sought an adjournment on a number of grounds including, illness, being an unrepresented party and the delay in providing discovery of documents - Respondent submitted that the injustice in granting an adjournment arose from the inconvenience and the question of cost - Commissioner granted an adjournment for one day - Granted in part - Mr R Jeeves -v- Brett Martin Plastics Pty Ltd - APPL 1370 of 2001 - BEECH C - 30/01/02 - Other Manufacturing	339
Appeal against decision of the Respondent re alleged misconduct - Appellant argued the alleged misconduct, which was denied, was not undertaken in the course of performance of her duties or related to her employment with the Respondent, and that she was denied natural justice and procedural fairness during the investigation - Respondent denied any flaws in the investigation's procedures and claimed the Appellant's conduct involved a breach of her contract of employment - Public Service Appeal Board found there were significant and substantive flaws in the disciplinary process and as a result the findings are unsustainable and the finding of the disciplinary process and penalty imposed should be quashed - Granted - Ms TR Cull -v- Commissioner, State Revenue Department - PSAB 3 of 2001 - Public Service Appeal Board - SCOTT C. - 04/02/02 - Government Administration	377
² Appeal against Decision of Commission (81WAIG3079) re variation of the Malting Industry Award 1993 - Appellant argued the Commission erred in the exercise of its discretion on a number of grounds, including that it gave no weight to the scheme of the Act/or the Wage Fixing Principles - Full Bench reviewed Act, authorities, Wage Fixing Principles and found that the Commission at first instance had erred in making findings in error and in not having regard to a number of relevant matters and therefore, upheld the appeal, suspended the decision at first instance and remitted the matter back to the Commission at first instance - Upheld - The Breweries and Bottleyards Employees' Industrial Union of Workers of Western Australia -v- Kirin Australia Pty Ltd - FBA 56 of 2001 - Full Bench - SHARKEY P/GREGOR C/SMITH, C - 13/03/02 - Food, Beverage and Tobacco Mfg.....	412
Application re fairness and equity of treatment of a union member - Parties provided Commission with agreed fact - Public Service Arbitrator found that due to the restructure of the Bike Education Area and the incumbent's situation, there was no longer a Level 3 position of Bike Area Manager in which union member could act - PSA was not satisfied based on the information before it, that Respondent had acted in any way unfairly or unreasonably because union member was forewarned of the changes that was to come, that he was given 3 months' notice of the change in his income and provided with an opportunity for assistance in the pursuit of bettering his qualifications and an opportunity for him to act in a Level 2 position was made available - Further, PSA was not satisfied that Respondent had treated the union member in a way that means this Commission ought intervene to provide a remedy to him - Dismissed - Civil Service Association of Western Australia Incorporated -v- Commissioner of Police - P 6 of 2001 - Public Service Arbitrator - SCOTT C - 14/03/02 - Government Administration	589
Application re unfair dismissal and contractual entitlements - Applicant argued that dismissal was unfair because he was not given the opportunity to explain his actions and was denied natural justice - Respondent argued that Applicant had been dismissed for misconduct and that the breach of trust had warranted the termination - Commission found that there were different accounts of what had taken place and that those circumstances alone did not warrant the summary dismissal and that Applicant did not have any opportunity to defend himself or provide an explanation thus, the dismissal was substantively and procedurally harsh and unfair - Further Commission found that the employee/employer relationship had broken down so that reinstatement was impractical and awarded compensation - Ordered Accordingly - Mr CV Caldwell -v- P.Brown - Cloveroaks Pty Ltd - APPL 1421 of 2001 - WOOD C - 18/03/02 - Agriculture.....	617
Application re unfair dismissal - Preliminary issue to determine whether matter should proceed - Applicant argued that application should proceed because the prejudice would be the denial of Applicant to bring his claim before the Commission for determination and that documentation requested from Respondent were not forthcoming - Respondent argued that Applicant had not complied with Regulation 89, that Applicant had not been unfairly dismissed and that Applicant had not provided sufficient grounds for an unfair dismissal case - Commission found that there would be prejudice to Applicant by the application being dismissed and thus the application was not dismissed - Application to proceed - Mr DT Gould -v- Commissioner for Police - APPL 132 of 2002 - SCOTT C - 05/04/02 - Police.....	624
Application re unfair dismissal - Applicant argued she has been harshly, oppressively or unfairly dismissed on the grounds that her employment contract was unilaterally varied by the employer so as to give her a workload that was unreasonable and failure to complete that workload was a ground for dismissal; that the review process undertaken by Respondent prior to the dismissal was unfair and denied her natural justice and the performance of her contractual duties was reasonable and not such to warrant dismissal - Respondent argued that appraisals of Applicant's skill and work had a number of deficiencies; that Applicant was counselled; there were errors in her work; there were questions of competence and timeliness of work which were brought to her attention many times and attempts were made to assist her to improve - Commission found based on the evidence presented that in all circumstances, Applicant's failure and her refusal to accept that there was a problem meant that there was no real prospect of resolution, therefore, the employer was left with no alternative but to bring the employment to an end - Further, that in all of the circumstances, the Respondent has been very fair to Applicant and that she has no cause for complaint and that Respondent has used the lawful right to terminate - Dismissed - Mrs B Naso -v- The Roman Catholic Archbishop of Perth (Inc) & Other - APPL 1158 of 2001 - SCOTT C - 02/04/02 - Education	637
Application re unfair dismissal - Interlocutory application - Applicant had lodged an interlocutory application re an order for production of documents - No appearance from Respondent - Commission found that application was not filed in accordance with Commission's regulations and was inadequately and inaccurately worded and also was a grave breach of natural justice if application was to proceed - Further, Commission found that application was incompetent and should never had been lodged - Dismissed - Mr CA Bowen -v- Prestige Protection Services Pty Ltd ACN 079 276 323 - APPL 1835 of 2001 - BEECH SC - 01/05/02 - Other Services	843
ORDER—	
Application for Orders pursuant sections 80E and 80F of the I.R. Act - Applicant Union sought copies of the Hedges Report, a written apology and damages in relation to disciplinary proceedings - Respondent argued that there was no industrial matter in relation to the Hedges Report and challenged the Arbitrator's jurisdiction to grant damages for breach of contract - Public Service Arbitrator found that it had no power to award damages but did have jurisdiction to enquire into disciplinary proceedings - Granted in Part - Civil Service Association of Western Australia Incorporated -v- Director General, Ministry of Justice - P 27 of 2001 - Public Service Arbitrator - SCOTT C. - 19/12/01 - Government Administration	104
⁴ Application re a stay of operation of orders made in the Industrial Magistrates Court - Applicant Union sought that the application be stayed as there was a serious question to be tried as to whether the Magistrate erred in law in dismissing the claim and that the balance of convenience favoured the Applicant - There was also an application to adjourn the proceedings on behalf of the Respondent which was not pressed - President found that there was no power or jurisdiction for the President to grant the stay of an order made by Industrial Magistrates Court or Magistrate pending the hearing and determination of an appeal against that decision or order - Dismissed - Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch -v- Burswood Resort (Management) Limited - PRES 1 of 2002 - President - SHARKEY P - 16/01/02 - Accommodatn, Cafes&Restaurants	222
Application re transfer to a full time position - Applicant Union sought an order that its member be transferred to a full-time permanent position in accordance with Clause 24(3)(c) of the Family and Children's Services Enterprise Bargaining Agreement 2000 - Respondent rejected the Applicant's arguments on a number of grounds and argued that the movement from part-time to full-time employment contained within the EBA relates to a "right of reversion" and that the award applicable to the employee's employment provides no "right of reversion" - Public Service Arbitrator reviewed relevant clauses of the EBA, PSA and GOSAC awards and concluded that in all circumstances, the employee should be entitled to apply and be considered for transfer to a full-time CSO position in which she has indicated an interest provided that she meets the criteria set out within the Human Resource Management Standards and Policies which it bound to apply - Order Issued - Civil Service Association of Western Australia Incorporated -v- Chief Executive Officer Family and Children's Services - P 12 of 2001 - SCOTT C. - 11/01/02 - Government Administration	315

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ORDER—continued	
² Appeal against Decision of Commission (81WAIG2772) re unfair dismissal - Applications to extend time to institute the appeal were granted and fresh evidence was admitted - Appellant appealed against the original order striking out the application due to no attendance on behalf of the application at the first hearing - Full Bench found the failure of the Appellant's solicitor to attend the hearing was the fault of the Solicitor and suspended the order and remitted the matter back to the Commission - Costs for the Respondent's inconvenience was awarded - Upheld and decision at first instance suspended and remitted back to the Commission - Mr AA Cheesman -v- Jamco Nominees Pty Ltd - FBA 54 of 2001 - Full Bench - SHARKEY P/COLEMAN CC/WOOD,C - 28/02/02 - Other Services.....	422
² Appeal against Decision of Commission (unreported) re unfair dismissal - An application to extend time to institute the appeal was granted - Appellant argued the Commissioner erred in exercising his discretion to make an order discontinuing matter No. 1039/2000 - Respondent argued there was no material put forward to support the application - Full Bench found that the Commissioner had erred in the exercise of his discretion and quashed the order made at the first instance - Upheld and Quashed - Mr J Lane -v- Aussie Online Limited (ACN 004 160 927) - FBA 50 of 2001 - Full Bench - SHARKEY P/COLEMAN CC/GREGOR C - 20/02/02.....	430
⁴ Application for stay of operation of Decision of the Public Service Arbitrator in Matter No. P27/2001 (82WAIG194) re application pursuant to s.80E and s80F of the I.R. Act - Applicant argued that the PSA erred in law in finding jurisdiction to deal with the application and the application raised no industrial matter - President found the argument that there was no jurisdiction was not a strong one and on the balance of convenience of both the parties requires that the jurisdiction, having been determined, the matter should now proceed to determination without further unnecessary delay - Dismissed - Director General, Department of Justice -v- Civil Service Association of Western Australia Incorporated - PRES 3 of 2002 - President - SHARKEY P - 14/02/02 - Government Administration.....	437
Application for orders re the substandard performance and disciplinary proceedings taken against an employee of the Respondent - Applicant Union sought several orders to void the report and processes completed by the Respondent - Respondent conceded the processes were discontinued because of concerns that not all procedural steps under the Public Sector Management Act had been complied with - Public Service Arbitrator concluded that the substance of the application had been met and the application be dismissed - Dismissed in the public interest - Civil Service Association of Western Australia Incorporated -v- Director General, Department of Consumer and Employment Protection - P 43 of 2001 - Public Service Arbitrator - SCOTT C. - 18/02/02 - Government Administration.....	456
Application for interim orders re leave without pay and permission to undertake other employment - Applicant Union sought orders to void the Respondent's decision to deny Applicant permission to take leave without pay and undertake employment in the private sector until final determination of the matter - Public Service Arbitrator was not satisfied that the interim orders sought were appropriate to be issued given the Applicant's failure to address the merits of his application, and his unwillingness to undertake a medical examination after his employer refused his request - Dismissed - Civil Service Association of Western Australia Incorporated -v- Director General Department of Consumer and Employment Protection - P 57 of 2001 - Public Service Arbitrator - SCOTT C. - 15/02/02 - Government Administration.....	458
Application re contractual entitlements - Applicant sought payment of four months salary and bonus payments that had not been paid by the Respondent - There was no appearance by or for the Respondent - Commission found that Applicant was an employee of the Respondent, that it was satisfied with the Applicant's evidence of non payment of salary and bonus and that his claim was made out - Granted - Mr S Hitchman -v- Robert Leslie Liuzzi, 986 Corporation Pty Ltd - APPL 1198 of 2001 - BEECH C - 21/02/02 - Other Services.....	477
Application re unfair dismissal and contractual entitlements - Application for an Order for discovery considered - Applicant lodged an application for general discovery to substantiate application re unfair dismissal and contractual entitlements - Respondent argued that the Order for general discovery may be oppressive given that the documents covered by such an Order would go back possibly some 20 years - Commission considered that an Order for general discovery would be refused, however, an Order for discovery of documents that were relevant or related to the substantive application would be considered - Ordered Accordingly - Ms P Alderson -v- St Columba - Kingswood College - APPL 901 of 2001 - GREGOR C - 06/03/02 - Education - (Note: Further Reasons for Decision in this matter published in April WAIG, Vol. 82, Part 1, Subpart 4 at page 696).....	501, 696
Application for an Order pursuant to Section 80E of the I.R. Act re perceived bias - Applicant Union argued that Respondent had refused member's application for leave without pay and for permission to undertake other work - Applicant Union sought interim orders to enable member to take leave without pay and to be able to undertake work outside his employment - Applicant Union also sought to have matter referred to Chief Commissioner for re-allocation on the basis of a perception of bias - Respondent argued that the authorities submitted did not support any finding of perceived bias in respect to these matters - Public Service Arbitrator found that it had an obligation to proceed with matters which arise before it, it had an obligation to ensure that it was not diverted by applications that are not of substance and that it should not disqualify itself from proceeding without reason - Dismissed - Civil Service Association of Western Australia Incorporated -v- Director General Department of Consumer and Employment Protection - P 57 of 2001 - Public Service Arbitrator - SCOTT C - 19/03/02 - Government Administration.....	591
Conference referred re alleged dispute re safety issues - Applicant Union sought an order that Aboriginal Police Liaison Officers be provided with firearm training and authority to use firearms as mainstream police officers - Respondent opposed the order sought as the issue to carry firearms is a matter to be determined by the Commissioner for Police based on operational requirements - Public Service Arbitrator found that Aboriginal aides should be provided with training and authority to use firearms in the same manner and in the same circumstances as applied immediately prior to 1 March 2002 -Further, that Order 1 should remain in operation until a range of issues associated with the role of Aboriginal aides is dealt with - Granted - Western Australian Police Union of Workers -v- Commissioner of Police - PSACR 4 of 2002 - Public Service Arbitrator - SCOTT C - 05/04/02 - Other Services.....	605
² Appeal against Decision of Industrial Magistrate (unreported) re dismissed application for enforcement of an order of the Commission and order for costs - Appellant Union argued IM erred in finding that it was barred from pursuing the claim against the Respondent because a Union delegate had entered into a deed of settlement with the Respondent excluding the Union from negotiations - Full Bench found that the complaint was dismissed before the Applicant Union could properly proceed with its case notwithstanding prima-facie evidence of a breach - Full Bench found IM erred entirely by not advertng to the clear terms of s83 of the IR Act 1979 and misapprehended the nature of enforcement proceedings - It simply did not set out to exercise its jurisdiction - Full Bench found that the Deed of Release was entirely irrelevant to whether there was a breach or non-compliance with an order of the Commission made under s.44 - Full Bench found there was no question of estoppel or privity of contract, but enforcing orders of the Commission was a matter of public interest - Full Bench found that finding that the claim was frivolous and vexatious was entirely erroneous and there was no basis for costs - Upheld and Remitted - Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch -v- Burswood Resort (Management) Limited - FBA 1 of 2002 - Full Bench - SHARKEY P/COLEMAN CC/BEECH SC - 26/04/02 - Accommodatn, Cafes&Restaurants.....	773
³ State Review of National Wage Decision - CICS considered whether to give effect to the 2001 Federal Safety Net Review - Wages Case (Living Wage Claim) - CCIWA argued that the amendments to the awards should be the sole province of the parties - AMMA sought variation to State Wage Principles to allow for amendment and substitution of enterprise awards by consent - CICS stated that awards, unlike agreements, were the creation of the Commission and in the case of common rule awards covered more people than the parties - CICS found no good reason not to implement the National Wage Decision by general order amending all State awards for the same reasons as the previous State Wage Case - CICS also found it unnecessary to make any modification to enable awards variations prior to the expiry of at least 12 months since the last adjustment or amend the Test Case Standard Principle - Statement and General Order Issued Accordingly - (Commission's own motion) -v- Trades and Labor Council of Western Australia & Others - APPL 752 of 2001 - Commission in Court Session - COLEMAN CC/FIELDING C/GREGOR C - 01/06/01.....	885

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² Appeal against Decision of Public Service Arbitrator (82WAIG463) re dismissed application for interim order in Matter No. P2/2002 - Appellant Union argued that the Arbitrator had erred in law and failed to exercise her discretion in dismissing a request for interim orders regarding the continuance of disciplinary action against the union member - Full Bench emphasised that the fundamental question was whether the matter was of such importance that in the public interest an appeal should be made - Full Bench found that it had not been established that the matter was of such importance and that the appeal was premature - Dismissed - Civil Service Association of Western Australia Incorporated -v- Chief Executive Officer, Water and Rivers Commission - FBA 16 of 2002 - Full Bench - SHARKEY P/COLEMAN CC/KENNER C - 16/05/02 - Government Administration	947
⁴ Application for stay of operation of Order in Matter No.1624/2001 (82WAIG1025) pending appeal to Full Bench - Appellant sought that the Order be stayed on the grounds that the Commissioner at first instance erred on a number of issues relating to jurisdiction and that the appeal was in respect to an order requiring a substantial amount of money to be paid - President found that the Appellant had not established that it had a strong case on appeal and that there were no exceptional circumstances established requiring the Order to be made - Dismissed - Bamboo Holdings Pty Ltd -v- Mr MG Halligan - PRES 20 of 2002 - President - SHARKEY P - 06/06/02 - Other Services.....	966
Application re unfair dismissal seeking orders for discovery - Applicant sought three separate orders for discovery of books, papers and other documents in the power, possession or control of the Respondent - Commission declined to issue the orders as it considered there was sufficient information available for this case to be properly argued by both parties, and stated that if additional information was required both parties do not need the liberty of the Commission to ask for orders - Dismissed - Mr GM Cann -v- Blackburne Properties Limited - APPL 936,937 of 2000 - GREGOR C - 15/05/02 - Property and Business Services	1013
Application re costs - The substantive matter of this application is a claim for unfair dismissal - Applicant opposed the adjournment application as he was ready to proceed and had travelled to Kalgoorlie with his witness - Applicant argued that the Respondent had not attended the conference and had shown little regard for the hearing of the matter, and applied for an order for costs - Commission found the conduct of the Respondent to date warranted an order for costs - Granted - Mr RJ Hinkley -v- Eurest (Australia) Catering & Services - APPL 279 of 2002 - WOOD C - 17/05/02 - Other Services	1031
Application re unfair dismissal seeking interlocutory order - Substantive matter before the Commission was set for a hearing on 13 June 2002 - Respondent has not filed a notice of answer and counter proposal nor attended a previous conference and hearing on the matter - Applicant sought an order requiring the Respondent to provide further and better particulars for an answer - Commission dismissed the application for such an order stating that in such circumstances the Respondent's non compliance with the regulations means that if the Respondent attends the hearing, he shall be heard only in response to matters raised by the Applicant's notice of application - Dismissed - Mrs NJ Hribar -v- Doug Millar - Millar Management Services - APPL 239 of 2002 - BEECH SC - 24/05/02 - Finance	1032
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Application re unfair dismissal and contractual entitlements - Applicant argued that she was unfairly dismissed and not paid benefits including overtime under her contract of employment and that she would have been paid overtime for hours greater than 37.5 hours per week - Respondent argued that Applicant was not entitled to any overtime and that it was not expressed in the contract of employment and was never claimed or paid during six years of employment - Commission found that the contract of employment did not contain any provisions that she would be paid overtime and that she never claimed overtime in the six years of employment was a strong suggestion that she believed that she was not entitled to it and thus had difficulty in proving the claim - Order Issued - Ms SR Corcoran -v- Gibson Quai Pty Ltd ACN (009 323 620) - APPL 1716 of 2001 - BEECH C - 12/12/01 - Other Services.....	137
PART-TIME—	
Application for interpretation of Enterprise Agreement re Carer's Leave - Applicant sought orders that the carer's leave entitlements are not pro rated for "1.- the calendar year 2001" and "2.- employees who have reduced their hours to less than 80 per fortnight" - Public Service Arbitrator reviewed relevant clauses of the agreement and according to the authorities in respect of interpretation, applied the meaning of the words used in the agreement, and was not satisfied that there was ambiguity and, neither party argued that there was an absurdity, therefore, PSA declared that the true interpretation of the agreement was that carer's leave was "not to be pro rated for the calendar year 2001; and to be pro rated for part-time officers" - Reasons for Decision Issued - Western Australian Police Union of Workers -v- Commissioner of Police - P 52 of 2001 - Public Service Arbitrator - SCOTT C - 04/04/02 - Government Administration	603
Application re unfair dismissal - Applicant argued she was unfairly dismissed and was given notice of her dismissal on 23 November 2001 - Respondent stated that on that day, he reduced the Applicant's hours but did not dismiss the Applicant - Respondent admitted dismissing the Applicant half way through her shift on 29 November 2001 as he believed the Applicant was tarnishing the Respondent's reputation - Commission found that the Respondent gave notice to the Applicant that her employment would end the following Friday and that prior to that event occurring, the Respondent dismissed the Applicant with immediate effect - Commission found the dismissal was unfair and that reinstatement was impracticable and awarded compensation - Granted - Mrs LL Wherry -v- K Hu Pty Ltd t/a Manning Fresh - APPL 2243 of 2001 - BEECH SC - 05/05/02 - Food Retailing	1089
PENALTY RATES—	
Complaint re breach of state agreement - Claimant Union contends that its member was entitled to be paid for the full 3 hours during which the union meeting took place, that she was entitled to have her lunch break following the meeting and that Defendant's refusal to let her have her lunch break resulted in her working the full day without a lunch break - Further, that its member was entitled to be paid penalty rates in accordance with clause 16(1)(a) of the agreement - Defendant denied that it had breached the agreement, that it was liable to pay the amount claimed and rejected the claim on a number of grounds - Industrial Magistrate reviewed the relevant clauses of the agreement and found that the union meeting did not fall within the auspices of clause 34 of the agreement, that on the material date the union member took her lunch break prior to returning to work and accordingly she was not entitled to another lunch break - Further, IM found that clause 34(4)(c) did not permit the interpretation sought by the Claimant Union and that the Claimant Union had failed to prove its claim - Decision Issued - Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch -v- Burswood Resort (Management) Ltd - M 284 of 2001 - Industrial Magistrate - Cicchini IM - 07/03/02 - Personal and Other Services.....	612
PRINCIPLES—	
⁷ Appeal against Decision of Commission (81WAIG3079) re variation of the Malting Industry Award 1993 - Appellant argued the Commission erred in the exercise of its discretion on a number of grounds, including that it gave no weight to the scheme of the Act/or the Wage Fixing Principles - Full Bench reviewed Act, authorities, Wage Fixing Principles and found that the Commission at first instance had erred in making findings in error and in not having regard to a number of relevant matters and therefore, upheld the appeal, suspended the decision at first instance and remitted the matter back to the Commission at first instance - Upheld - The Breweries and Bottleyards Employees' Industrial Union of Workers of Western Australia -v- Kirin Australia Pty Ltd - FBA 56 of 2001 - Full Bench - SHARKEY P/GREGOR C/SMITH, C - 13/03/02 - Food, Beverage and Tobacco Mfg.....	412

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- Conference referred re redundancy - Applicant Union argued that member had received insufficient redundancy payments on termination of his contract of employment - Respondent argued that the detailed and extensive provisions of the ABB Service Agreement had been complied with - Commission found that the ABB Service Agreement contained crucial provisions that included a dispute procedure which required unresolved matters to be referred to the Australian Industrial Relations Commission and that it had provisions which dealt with redundancies - Commission found that it was unable to exercise any powers in the matter and application was dismissed for want of jurisdiction - Dismissed for want of jurisdiction - CONSTRUCTION, MINING, ENERGY -v- ABB Engineering Construction Pty Ltd - CR 115 of 2001 - GREGOR C - 12/03/02 - Engineering 492
- ³Application for registration of a new award - Application by the Union for the making of a new award governing employees employed by Burswood Catering and Entertainment Pty Ltd at the new facilities at the Burswood Island Resort which will replace the existing award and agreement - Respondent opposed the issuance of the award and argued that the company must have a wages and labour structure that allowed it to be competitive - Commission in Court Session found that the company created was in reality a labour hire company, which did not operate as an independent business, that effectively Burswood Ltd was contracting to itself and this has resulted in an inequality of wages - CICS reviewed various authorities and were of the view that an award should issue substantially in the terms claimed by the Union as they reflect the industrial agreement in order to remedy the inequity - New award issued - Granted - Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch -v- Burswood Catering and Entertainment Pty Ltd - A 4 of 2001 - Commission in Court Session - BEECH SC/SMITH C/WOOD C - 12/02/02 - Accommodatn, Cafes&Restaurants..... 544
- Application re transfer of member - Applicant Union argued that the decision of Respondent to transfer member from the position of Prison Support Officer in Broome Regional Prison to Prisoner Support officer at Hakea Prison in Canning Vale be quashed and that Respondent be made to return member to work at the Broome Regional Prison or transfer her to suitable alternative employment in Broome - Respondent argued that it had the right to transfer the member after considering the situation that had arisen - Public Service Arbitrator found that it had exclusive jurisdiction to enquire into and deal with any industrial matter relating to government officers which was subject to the Industrial Relations Act, however, a Public Service Arbitrator did not have jurisdiction to enquire into or deal with any matter in respect to a procedure referred to in the Public Sector Management Act 1994 - Public Service Arbitrator also found that matters which were allegations of breaches of the relevant public sector standard were not within the jurisdiction of the Arbitrator - Arbitrator concluded that it did not have the jurisdiction to deal with the Union's application to enquire and deal with the decision of Respondent to transfer and thus, with some reluctance the application was dismissed for want of jurisdiction - Dismissed for want of jurisdiction - Civil Service Association of Western Australia Incorporated -v- Director General, Ministry of Justice - P 2 of 2001 - Public Service Arbitrator - BEECH SC - 14/03/02 - Other Services 596
- Application re unfair dismissal - Applicant argued that dismissal was unfair because she had not committed the acts of alleged misconduct and did not divulge any information received by her under the Anti Corruption Commission Act 1988 - Respondent argued that it had conducted an investigation and that it had reasonable grounds that Applicant was guilty of misconduct and that misconduct justified dismissal - Commission found that Respondent had conducted a full and extensive investigation into the allegation of misconduct and that Respondent had reasonable grounds to terminate Applicant for misconduct - Dismissed - Ms NM Whittle -v- Anti-Corruption Commission - APPL 1331 of 2001 - BEECH SC - 19/03/02 - Police 664
- Application re unfair dismissal and contractual entitlements - Preliminary issue to be decided was whether or not Applicant was an employee for the purposes of the Industrial Relations Act 1979 - Applicant argued that he was a valuer and employed to be the director in charge of the valuation department of Respondent and he worked fulltime and did not undertake other paid work on his own right whilst working for Respondent - Further he was a director of his family company which held units in Respondent's company - Respondent argued that he was a director and shareholder in Respondent and that he did not personally receive a salary but was paid into his own company - Commission found that Applicant was an employee of Respondent for the purposes of the IR Act on the balance that the control, the personal service, the remuneration based upon his work as a valuer, the payment of PAYG tax, the benefits and entitlements paid revealed that Applicant was an employee - Declaration Issued - Mr BR Worthington -v- Falkirk Nominees Pty Ltd T/A Ross Hughes and Company and Australian Property Consultants - APPL 1577 of 2001 - BEECH SC - 15/03/02 - Property and Business Services 667
- Conference referred re interpretation of Gaol Officers' Award 1998 No. 12 of 1968 - Hours of Duty - Applicant Union argued that the wording to clause 10 - Hours of Duty allowed a prison officer to take a meal break away from his or her place of work and if that did not occur, the clause entitled the officer to either cease duty thirty minutes before the conclusion of the rostered shift or take the thirty minutes as time off in lieu - Respondent did not agree with that interpretation and stated that the clause did not provide for a meal break to occur away from the place of work as claimed - Commission found that the principles to be applied in interpreting an award are that the meaning of a provision in an award was to be obtained by considering the terms of the award as a whole - Commission found that the proper interpretation of clause 10 - Hours of Duty of the award was that a prison officer was entitled to either cease duty for thirty minutes before the conclusion of the rostered shift or take the thirty minutes as time off in lieu only when the officer was required for duty during his/her meal break and his/her meal break was delayed beyond 5.5 hours from commencement of work - Declaration Issued - Western Australian Prison Officers' Union of Workers -v- The Hon. Attorney General - CR 222 of 2001 - BEECH SC - 15/03/02 - Other Services 693
- ⁴Application for stay of operation of the Order of the Commission (unreported) re unfair dismissal and contractual entitlements pending the hearing and determination of Appeal to Full Bench - Appellants Employer argued that Commissioner erred in law and fact in making the Order as there was no basis for making the Order because the claim was one of contractual benefits and for unfair dismissal and that the documents ordered were excessively broad - Respondent argued that there was no justification for an order for stay of operation to be made - President found that Appellants had not made or established that they were entitled to an order for a stay of operation - Dismissed - Mr Ron Stanley/Mr Peter Stanley, Westlaw Securities P/L T/as Communique Communications -v- Mr MK Bryant - PRES 8 of 2002 - President - SHARKEY P - 30/04/02 - Communication Services..... 785
- ⁴Application for an order pursuant to s.66 of the I.R. Act - Applicant sought an interim order in the form of extending the time for notifying the Registrar of objections to proposed rule changes - Respondent argued that there was no unfairness in the manner in which notice was given or in the amount of notice given - President found that Applicant had failed to establish a case for an interim order and dismissed application - Dismissed - Ms K Luby -v- The Australian Nursing Federation, Industrial Union of Workers Perth - PRES 11 of 2002 - President - SHARKEY P - 07/05/02 - Health Services 790
- ³State Review of National Wage Decision - CICS considered whether to give effect to the 2001 Federal Safety Net Review - Wages Case (Living Wage Claim) - CCIWA argued that the amendments to the awards should be the sole province of the parties - AMMA sought variation to State Wage Principles to allow for amendment and substitution of enterprise awards by consent - CICS stated that awards, unlike agreements, were the creation of the Commission and in the case of common rule awards covered more people than the parties - CICS found no good reason not to implement the National Wage Decision by general order amending all State awards for the same reasons as the previous State Wage Case - CICS also found it unnecessary to make any modification to enable awards variations prior to the expiry of at least 12 months since the last adjustment or amend the Test Case Standard Principle - Statement and General Order Issued Accordingly - (Commission's own motion) -v- Trades and Labor Council of Western Australia & Others - APPL 752 of 2001 - Commission in Court Session - COLEMAN CC/FIELDING C/GREGOR C - 01/06/01 885

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² Appeal against Decision of Commission (Public Service Arbitrator) (81WAIG2887) re Order pursuant to Section 80E - Appellant argued against the application by Respondent as it was premature and that it would lose its right of appeal - Respondent argued that the appeal by Appellant had no prospect of success and it was baseless - Full Bench found that the submissions concerning the merits of the appeal were premature and there would be an injustice to Appellant and that Respondent was left with the opportunity to answer the appeal in any event - Orders Issued - Director General of the Department of Community Development -v- Civil Service Association of Western Australia Incorporated - FBA 55 of 2001 - Full Bench - SHARKEY P/COLEMAN CC/WOOD,C - 18/12/01 - Government Administration.....	16
³ Application for registration of a new award - Application by Respondent for an adjournment - Applicant Union opposed the adjournment as Respondent was well acquainted with the subject matter of the application and that it would have a detrimental effect on the potential employees of the new award - Respondent argued that the time to prepare for the court hearing would be inadequate and that December and January were notoriously the busiest times of the business cycle for the hospitality industry - Commission found that the decision whether to grant or refuse was a matter for the discretion of the Commission and that there would be a serious injustice to the Applicant Union and its potential members if the application for an adjournment was granted and were against granting the adjournment - Refused - Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch -v- Burswood Catering and Entertainment Pty Ltd - A 4 of 2001 - Commission in Court Session - BEECH C/SMITH, C/WOOD,C - 11/12/01 - Hospitality.....	59
Application for Orders pursuant sections 80E and 80F of the I.R. Act - Applicant Union sought copies of the Hedges Report, a written apology and damages in relation to disciplinary proceedings - Respondent argued that there was no industrial matter in relation to the Hedges Report and challenged the Arbitrator's jurisdiction to grant damages for breach of contract - Public Service Arbitrator found that it had no power to award damages but did have jurisdiction to enquire into disciplinary proceedings - Granted in Part - Civil Service Association of Western Australia Incorporated -v- Director General, Ministry of Justice - P 27 of 2001 - Public Service Arbitrator - SCOTT C. - 19/12/01 - Government Administration	104
Application re unfair dismissal and contractual entitlements - Application for adjournment by Applicant - Applicant's agent argued that Applicant had moved to Queensland and had employment that did not allow for time off until February 2002 and that Respondent had provided documents at the last minute that had not been put to Applicant - Respondent opposed application for adjournment and argued that Applicant was self employed and doubted not being able to take time off in advance - Further, Respondent reserves the right to claim costs - Commission found that Applicant had moved to Queensland and was prepared to accept in principle that a person who found new employment may not be able to take time off in the first few months and finally if the adjournment was not granted Applicant would suffer a serious injustice - Adjournment Granted - Ms JA Morrison -v- Suzanne Grae Corporation Pty Ltd - APPL 467 of 2001 - BEECH C - 10/12/01 - Personal & Household Good Rtlg	154
Application re unfair dismissal - Applicant argued that she viewed her position as long term, there was never any dissatisfaction expressed with her work at any time and that Respondent repudiated the contract of employment - Respondent argued that its action did not constitute a termination of employment, therefore the Commission lacked jurisdiction to determine the claim - Commission found based on the evidence presented that the Respondent had repudiated the contract of employment because Applicant was asking for more money and had been consistent in her demands to that extent, and the Respondent incorrectly concluded that at the end of the 12 months period the contract would come to an end - Further, Commission found that reinstatement was impracticable and ordered that compensation be paid to Applicant for a period of 10 weeks and four days - Granted - Ms SL Semple -v- Pro Subi Limited - APPL 910 of 2001 - GREGOR C - 20/12/01 - Other Services	159
Application re unfair dismissal - Applicant argued that his dismissal was unfair as it was a summary dismissal - Respondent argued that Applicant's behaviour and the burning out of the intercom incident had serious adverse effect on the employer's business - Commission was not persuaded on the evidence that it was unfair to dismiss Applicant when these things had occurred in the first weeks of his employment - Dismissed - Mr MJ Jolly -v- ABA Automatic Gates (W.A) - APPL 839 of 2001 - BEECH C - 22/01/02 - Construction Trade Services	340
² Appeal against Decision of Commission (Public Service Arbitrator) (81WAIG2887) re Order pursuant to Section 80E - Appellant argued against the decision of the learned Commissioner in that the Arbitrator erred in law in finding that the Respondent's alleged conduct did not touch Respondent's members employment - Appellant further argued that it should have been allowed to enquire into Respondent's alleged conduct because depending on the factual findings made there was a potential for a finding that Respondent's conduct was improper as to render him unfit for work with Appellant and there was the potential for a finding that Respondent had committed a breach of discipline given the role of the Department of Community Development and as a manager - Respondent argued and file a notice of contention that the conduct of any investigations which might be initiated by Appellant were not at all relevant to the grounds of appeal - Full Bench found that the crux of the appeal was that there was a potential for a finding that the member's alleged conduct was so intrinsically improper that it rendered him unfit to work with Appellant, as well as, a potential for findings of the breaches of discipline - Further, Full Bench found that the Arbitrator erred in finding that there was an allegation of misconduct constituting a breach of discipline and that all grounds of the appeal were made out - Appeal Upheld - Director General of the Department of Community Development -v- Civil Service Association of Western Australia Incorporated - FBA 55 of 2001 - Full Bench - SHARKEY P/COLEMAN CC/WOOD,C - 05/03/02 - Government Administration	425
Application re unfair dismissal and contractual entitlements - Application for an Order for discovery considered - Applicant lodged an application for general discovery to substantiate application re unfair dismissal and contractual entitlements - Respondent argued that the Order for general discovery may be oppressive given that the documents covered by such an Order would go back possibly some 20 years - Commission considered that an Order for general discovery would be refused, however, an Order for discovery of documents that were relevant or related to the substantive application would be considered - Ordered Accordingly - Ms P Alderson -v- St Columba - Kingswood College - APPL 901 of 2001 - GREGOR C - 06/03/02 - Education - (Note: Further Reasons for Decision in this matter published in April WAIG, Vol. 82, Part 1, Subpart 4 at page 696)	501, 696
³ Application for registration of a new award - Application by the Union for the making of a new award governing employees employed by Burswood Catering and Entertainment Pty Ltd at the new facilities at the Burswood Island Resort which will replace the existing award and agreement - Respondent opposed the issuance of the award and argued that the company must have a wages and labour structure that allowed it to be competitive - Commission in Court Session found that the company created was in reality a labour hire company, which did not operate as an independent business, that effectively Burswood Ltd was contracting to itself and this has resulted in an inequality of wages - CICS reviewed various authorities and were of the view that an award should issue substantially in the terms claimed by the Union as they reflect the industrial agreement in order to remedy the inequity - New award issued - Granted - Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch -v- Burswood Catering and Entertainment Pty Ltd - A 4 of 2001 - Commission in Court Session - BEECH SC/SMITH C/WOOD C - 12/02/02 - Accommodatn, Cafes&Restaurants	544
Application re alleged unfairness for the refusal to allow member to undertake private employment - Application for production of documents - Union argued that the production of documents were required for comparison with other members of staff who had been given permission and approval to undertake private employment - Respondent argued that it was prepared to provide some documents but did not embrace providing all the documents - Commission found that the discovery of documents be confined to what was the issues in the Application and Notice of Answer and Counter Proposal and required that a list be made available for the parties - Order Issued - Civil Service Association of Western Australia Incorporated -v- Chief Executive Officer, Department of Agriculture - P 25 of 2001 - Public Service Arbitrator - BEECH SC - 11/03/02 - Agriculture	588

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- Application for an Order pursuant to Section 80E of the I.R. Act re perceived bias - Applicant Union argued that Respondent had refused member's application for leave without pay and for permission to undertake other work - Applicant Union sought interim orders to enable member to take leave without pay and to be able to undertake work outside his employment - Applicant Union also sought to have matter referred to Chief Commissioner for re-allocation on the basis of a perception of bias - Respondent argued that the authorities submitted did not support any finding of perceived bias in respect to these matters - Public Service Arbitrator found that it had an obligation to proceed with matters which arise before it, it had an obligation to ensure that it was not diverted by applications that are not of substance and that it should not disqualify itself from proceeding without reason - Dismissed - Civil Service Association of Western Australia Incorporated -v- Director General Department of Consumer and Employment Protection - P 57 of 2001 - Public Service Arbitrator - SCOTT C - 19/03/02 - Government Administration..... 591
- Application re unfair dismissal - Applicant argued he has been unfairly dismissed and that he had as a benefit under his employment an entitlement to six month's salary - Respondent stated that Commission did not have jurisdiction as such to hear the matter as Applicant was employed under an award of the Australian Industrial Relations Commission - Parties were invited to prepare written submissions for determination - On the grounds submitted in support of Applicant's claim, the only issue the Commission was asked to decide was the question of whether or not Applicant's employment had been subject to the terms and conditions of the federal award - Commission found on evidence that Respondent was the successor to Community Youth Support Scheme Scarborough for the purposes of s.149(1)(d) of that Act because the name of the body carrying on that business was the only thing that changed; there was no suggestion of any change whatsoever resulting from the change of name and accordingly, found that the Respondent was a Respondent to the Community Employment, Training and Support Services Award 1999 an award of the AIRC - Declaration Issued - Mr GJ Clarke -v- Stirling Skills Training Inc Trading as Jobwest - APPL 2112 of 2001 - BEECH SC - 04/04/02 - Other Business Services..... 621
- Application re unfair dismissal - No appearance from Applicant - No appearance from Respondent - Commission found that there had been a continuing lack of attention by Applicant to the requirements of the Regulations and the need to attend to responses to various advices from the Commission and therefore Commission exercised the powers vested in it by s27 of the Act and dismissed the application - Dismissed - Mr DR Germano -v- Gryphon Garage Doors - APPL 103 of 2002 - GREGOR C - 26/03/02 - Metal Product Manufacturing..... 623
- Application re unfair dismissal - Preliminary issue to determine whether matter should proceed - Applicant argued that application should proceed because the prejudice would be the denial of Applicant to bring his claim before the Commission for determination and that documentation requested from Respondent were not forthcoming - Respondent argued that Applicant had not complied with Regulation 89, that Applicant had not been unfairly dismissed and that Applicant had not provided sufficient grounds for an unfair dismissal case - Commission found that there would be prejudice to Applicant by the application being dismissed and thus the application was not dismissed - Application to proceed - Mr DT Gould -v- Commissioner for Police - APPL 132 of 2002 - SCOTT C - 05/04/02 - Police..... 624
- Application re contractual entitlements - Respondent sought an Order pursuant to s.27(1)(a) of the I.R. Act, that application be dismissed - Respondent argued that Applicant had acted frivolously and vexatiously in lodging application in this jurisdiction and the Industrial Magistrate's Court; that the course of action adopted by Applicant was beyond what was reasonable and that there was no clarity to Applicant's claim before the Commission - Applicant argued that he should have the right to seek redress with respect to his claim as provided by the Act and to withdraw that right by dismissing an application was a serious matter and the power to dismiss an application should not be exercised lightly - Having carefully considered the arguments of both parties, Commission was of the view the public interest was not served if the application was to be dismissed - Further, to deny an Applicant the right to pursue a claim for denied contractual entitlements at this point would result in an injustice to Applicant - Commission also found that Respondent in this application was currently only subject to one application that the Commission was aware of, and that was the matter currently before the Commission as constituted - Dismissed - Mr PJ Leafe -v- The Calix Group - APPL 2000 of 2001 - HARRISON C - 05/04/02 - Other Services..... 629
- Application re unfair dismissal - Application to amend name of Respondent - Applicant Union argued that the Industrial Officer had wrongly named the CEO as Respondent and as the employer even though no instructions were given to do so and to amend the Respondent's name would cause no prejudice as the error was brought to the attention of Respondent at an early stage of the proceedings - Respondent argued that Respondent was not Applicant's employer and that Applicant ought to have been aware of the correct Respondent because the identity of her employer was readily apparent from all of her employment documents and that Applicant had vexatiously named the wrong entity - Commission found the naming of Respondent as the employer was an error which could be described as a clerical error or misnomer and thus amended the name of Respondent to reflect correct employer - Order issued - Ms P Levaci -v- Canning Division of General Practice Ltd - APPL 601 of 2001 - SMITH C - 08/03/02 - Education..... 630
- Application re unfair dismissal - Applicant argued that Respondent had dismissed her unfairly, that an agreement had been reached in the Commission and that Respondent had not complied fully with the agreement that was reached - No appearance from Respondent - Commission found that an agreement had been reached and made an order in terms of that agreement - Ordered Accordingly - Ms NM Lucanus -v- Cuddles Childcare Group - APPL 1719 of 2001 - SMITH C - 05/04/02 - Community Services..... 634
- Application re unfair dismissal - Applicant argued that due to the lack of any warnings and the fact that he was not told he was doing anything wrong, his dismissal was unfair and sought 10 weeks compensation - In its notice of answer and counter proposal, Respondent stated that Applicant was on three month's probation and that his work performance was inadequate - On the day of the hearing, there was no appearance by the Respondent - A copy of the transcript of the proceedings with a covering letter was forwarded to the Respondent on 22/3/2002 by Commission advising them that if any submission was to be made it should be done by COB Friday 8/3/2002 and Commission did not receive a response from the company - Commission accepted the Applicant's evidence and found that he was dismissed unfairly without any prior warning or any reason given and awarded compensation - Ordered Accordingly - Mr AS Tilley -v- ABACUS Computers and Technology - APPL 1623,1888 of 2001 - WOOD C - 27/03/02 - Other Services..... 663
- ²Cross Appeals against decision of Public Service Arbitrator (82WAIG104) re declaration of jurisdiction to hear and determine claim for redress, compensation or damages over a discontinued disciplinary action - Applications for adjournment of hearing - Appellant Employer argued that as the appeal required consideration of the limits of the Commission's jurisdiction it was in the public interest - Appellant Union argued, inter-alia, that the hearing should be adjourned because it would be inconvenient, there were no established facts and discovery was incomplete in the substantive matter, it would not inconvenience the Appellant Employer and the President had dismissed the application for a stay of the declaration - Full Bench found one application for adjournment was incompetent as it was made before the appeal was listed and that the approaches to the Registrar for an adjournment were unsatisfactory Full Bench reviewed authorities and found many of the issues raised were irrelevant and matters for the appeal and that refusing an adjournment would not result in a serious injustice to the Appellant Union - However an adjournment was subsequently granted due to the indisposition of an advocate - Full Bench found that the issues in one appeal were not of such importance that an appeal should lie and gave reasons therefore - Appellant Union conceded in the second appeal that one cannot appeal against reasons for decision and sought leave to discontinue - Full Bench found neither appeal warranted an order for costs - Dismissed, Discontinued and procedural orders issued accordingly - Civil Service Association of Western Australia Incorporated -v- Director General, Department of Justice - FBA 3,4 of 2002 - Full Bench - SHARKEY P/COLEMAN CC/BEECH SC - 07/05/02 - Government Administration..... 752
- ⁴Application for an order pursuant to s.66 of the I.R. Act - Applicant sought an interim order in the form of extending the time for notifying the Registrar of objections to proposed rule changes - Respondent argued that there was no unfairness in the manner in which notice was given or in the amount of notice given - President found that Applicant had failed to establish a case for an interim order and dismissed application - Dismissed - Ms K Luby -v- The Australian Nursing Federation, Industrial Union of Workers Perth - PRES 11 of 2002 - President - SHARKEY P - 07/05/02 - Health Services..... 790

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PROCEDURAL MATTERS— <i>continued</i>	
Application re unfair dismissal - Interlocutory application - Applicant had lodged an interlocutory application re an order for production of documents - No appearance from Respondent - Commission found that application was not filed in accordance with Commission's regulations and was inadequately and inaccurately worded and also was a grave breach of natural justice if application was to proceed - Further, Commission found that application was incompetent and should never have been lodged - Dismissed - Mr CA Bowen -v- Prestige Protection Services Pty Ltd ACN 079 276 323 - APPL 1835 of 2001 - BEECH SC - 01/05/02 - Other Services	843
Application re unfair dismissal - Applicant argued that he has been unfairly dismissed from the job he has held for at least seven years after he refused to sign a workplace agreement and sought an Order for compensation for the wages he had lost arising from that dismissal - Respondent's Agent opposed the claim, arguing that there was no case to answer, that the Commission lacked jurisdiction because the Applicant has not been dismissed and even if notice of dismissal had been given to Applicant, it was abandoned by mutual consent and there has been an agreed variation to the terms of employment, therefore there has been no dismissal but simply a variation of Applicant's contract of employment - Commission found that Applicant has not been dismissed but that his hours of work has been varied, that Applicant had been given notice of dismissal, but that notice was subsequently withdrawn, therefore his claim for unfair dismissal was dismissed - Dismissed - Mr BM Garie -v- Arrowglan Pty Ltd - APPL 1792 of 2001 - BEECH SC - 15/04/02 - Petroleum Coal Chemical Assoc.....	848
Application re contractual entitlements - Applicant argued that at the end of his contract he was owed an amount in the sum of \$944.21 for "accommodation charges" - Respondent argued that Applicant was not an employee but a subcontractor - Commission applied tests case and found that Applicant was more likely than not a subcontractor, and was therefore unable to enliven the jurisdiction set out in s.29(1)(b)(ii) of the I.R. Act - Commission further concluded that Applicant had not established that the Respondent was liable to pay him for accommodation allowance, and therefore the application was dismissed - Dismissed - Mr CL Roberts -v- Greenfield Project Development Services Pty Ltd - APPL 2042 of 2001 - GREGOR C - 24/04/02 - Other Services.....	858
Application re contractual entitlements - Applicant argued she has not been paid her final wages of \$1000 - Commission found on evidence in favour of the Applicant and an Order was issued that Respondent pay the Applicant the sum of \$1000 net by way of wages due to her under her contract of employment - Granted - Ms KJ Speedy -v- Airpro 2000 Pty Ltd - APPL 40 of 2002 - BEECH SC - 08/04/02 - Other Services.....	860
² Appeal against Decision of Commission (81WAIG3107) re dismissed unfair dismissal and denied contractual entitlements claim - Appellant argued that the Commission did not apply the correct test to determine whether she was an employee and sought to introduce new evidence - Appellant sought compensation and pay in lieu of notice - Respondent argued that the Appellant was not an employee, but had been in a defacto or domestic relationship - Full Bench found that it was not clear that the extra evidence could not have been obtained before the matter was first heard or was likely to have altered the outcome of the decision - Full Bench found that the claim for contractual entitlements under an award should not have been made - Further, Full Bench reviewed authorities and found that the Commission had erred in failing to find on evidence that there was a contract of service between the Appellant and the Respondent company and dismissed the Appeal - Upheld and Remitted - Ms JE Augustyn -v- Vistadale Pty Ltd As Trustee For The Ranger Family Trust Trading As Ranger Contracting - FBA 61 of 2001 - Full Bench - SHARKEY P/COLEMAN CC/BEECH SC - 07/06/02 - Construction Trade Services	939
Application re unfair dismissal seeking orders for discovery - Applicant sought three separate orders for discovery of books, papers and other documents in the power, possession or control of the Respondent - Commission declined to issue the orders as it considered there was sufficient information available for this case to be properly argued by both parties, and stated that if additional information was required both parties do not need the liberty of the Commission to ask for orders - Dismissed - Mr GM Cann -v- Blackburne Properties Limited - APPL 936,937 of 2000 - GREGOR C - 15/05/02 - Property and Business Services	1013
Application re interlocutory order - The substantive claim in this matter was an application for unfair dismissal - Applicant sought leave to amend the Respondent's name on the unfair dismissal application - Commission was satisfied that the Applicant had made a genuine mistake when incorrectly naming the Respondent and had taken immediate steps to rectify the matter, and was granted leave to amend the application - Granted - Mrs J Meier -v- CVCS Pty Ltd t/a Canningvale Convenience Store - APPL 2214 of 2001 - KENNER C - 24/05/02 - Food Retailing	1043
PUBLIC INTEREST—	
¹ Application for stay of operation of Decision of the Public Service Arbitrator in Matter No. P27/2001 (82WAIG194) re application pursuant to s.80E and s80F of the I.R. Act - Applicant argued that the PSA erred in law in finding jurisdiction to deal with the application and the application raised no industrial matter - President found the argument that there was no jurisdiction was not a strong one and on the balance of convenience of both the parties requires that the jurisdiction, having been determined, the matter should now proceed to determination without further unnecessary delay - Dismissed - Director General, Department of Justice -v- Civil Service Association of Western Australia Incorporated - PRES 3 of 2002 - President - SHARKEY P - 14/02/02 - Government Administration	437
Application for orders re the substandard performance and disciplinary proceedings taken against an employee of the Respondent - Applicant Union sought several orders to void the report and processes completed by the Respondent - Respondent conceded the processes were discontinued because of concerns that not all procedural steps under the Public Sector Management Act had been complied with - Public Service Arbitrator concluded that the substance of the application had been met and the application be dismissed - Dismissed in the public interest - Civil Service Association of Western Australia Incorporated -v- Director General, Department of Consumer and Employment Protection - P 43 of 2001 - Public Service Arbitrator - SCOTT C. - 18/02/02 - Government Administration	456
Application re contractual entitlements - Respondent sought an Order pursuant to s.27(1)(a) of the I.R. Act, that application be dismissed - Respondent argued that Applicant had acted frivolously and vexatiously in lodging application in this jurisdiction and the Industrial Magistrate's Court; that the course of action adopted by Applicant was beyond what was reasonable and that there was no clarity to Applicant's claim before the Commission - Applicant argued that he should have the right to seek redress with respect to his claim as provided by the Act and to withdraw that right by dismissing an application was a serious matter and the power to dismiss an application should not be exercised lightly - Having carefully considered the arguments of both parties, Commission was of the view the public interest was not served if the application was to be dismissed - Further, to deny an Applicant the right to pursue a claim for denied contractual entitlements at this point would result in an injustice to Applicant - Commission also found that Respondent in this application was currently only subject to one application that the Commission was aware of, and that was the matter currently before the Commission as constituted - Dismissed - Mr PJ Leafe -v- The Calix Group - APPL 2000 of 2001 - HARRISON C - 05/04/02 - Other Services	629
² Cross Appeals against decision of Public Service Arbitrator (82WAIG104) re declaration of jurisdiction to hear and determine claim for redress, compensation or damages over a discontinued disciplinary action - Applications for adjournment of hearing - Appellant Employer argued that as the appeal required consideration of the limits of the Commission's jurisdiction it was in the public interest - Appellant Union argued, inter-alia, that the hearing should be adjourned because it would be inconvenient, there were no established facts and discovery was incomplete in the substantive matter, it would not inconvenience the Appellant Employer and the President had dismissed the application for a stay of the declaration - Full Bench found one application for adjournment was incompetent as it was made before the appeal was listed and that the approaches to the Registrar for an adjournment were unsatisfactory Full Bench reviewed authorities and found many of the issues raised were irrelevant and matters for the appeal and that refusing an adjournment would not result in a serious injustice to the Appellant Union - However an adjournment was subsequently granted due to the indisposition of an advocate - Full Bench found that the issues in one appeal were not of such importance that an appeal should lie and gave reasons therefore - Appellant Union conceded in the second appeal that one cannot appeal against reasons for decision and sought leave to discontinue - Full Bench found neither appeal warranted an order for costs - Dismissed, Discontinued and procedural orders issued accordingly - Civil Service Association of Western Australia Incorporated -v- Director General, Department of Justice - FBA 3,4 of 2002 - Full Bench - SHARKEY P/COLEMAN CC/BEECH SC - 07/05/02 - Government Administration	752

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PUBLIC INTEREST— <i>continued</i>	
² Appeal against Decision of Public Service Arbitrator (82WAIG463) re dismissed application for interim order in Matter No. P2/2002 - Appellant Union argued that the Arbitrator had erred in law and failed to exercise her discretion in dismissing a request for interim orders regarding the continuance of disciplinary action against the union member - Full Bench emphasised that the fundamental question was whether the matter was of such importance that in the public interest an appeal should be made - Full Bench found that it had not been established that the matter was of such importance and that the appeal was premature - Dismissed - Civil Service Association of Western Australia Incorporated -v- Chief Executive Officer, Water and Rivers Commission - FBA 16 of 2002 - Full Bench - SHARKEY P/COLEMAN CC/KENNER C - 16/05/02 - Government Administration	947
² Appeal against Decision of the Public Service Arbitrator (82WAIG456) re dismissed claim in relation of disciplinary proceedings taken against an employee - Appellant Union argued that the Public Service Arbitrator had erred in law and fact by dismissing the original application prior to its substantive hearing on the basis that it was contrary to the public interest - Full Bench found the Arbitrator did not err in the exercise of discretion and no grounds of appeal were made out - Full bench found the whole process of investigation as conceded was "void" or a "nullity", a finding which was at least recognised by the correct observation by the Arbitrator that the matter was dead - Dismissed - Civil Service Association of Western Australia Incorporated -v- Director General, Department of Consumer and Employment Protection - FBA 13 of 2002 - Full Bench - SHARKEY P/COLEMAN CC/KENNER C - 24/05/02 - Government Administration	952
Application re unfair dismissal - Applicant argued he was unfairly dismissed and sought reinstatement - Respondent argued that the Applicant's time had lapsed and the application should be closed - Commission noted the delay regarding the application had been inordinate and the explanation for the delay was inadequate, and that the Applicant had failed to attend the proceedings - Commission found that it was no longer in the public interest for the matter to be pursued and that the matter be discontinued - Dismissed - Mr MA Wilson -v- Timberlook Blinds Pty Ltd - APPL 1935 of 2001 - BEECH SC - 08/05/02 - Community Services	1092
REDUNDANCY/RETRENCHMENT—	
² Appeal against Decision of Commission (81WAIG1632) re quantum of compensation and contractual benefits - Appellant argued that the Commissioner erred on a number of grounds regarding compensation, superannuation, entitlements and redundancy payment - There was no cross appeal - Full Bench found that the Appellant was not entitled to claim an amount equal to superannuation contributions as a contractual benefit, and had received a reasonable redundancy payment - Dismissed - Mr P Dellys -v- Elderslie Finance Corporation Limited - FBA 42 of 2001 - Full Bench - SHARKEY P/SCOTT C./SMITH, C - 18/12/01 - Finance	24
Application re unfair dismissal and contractual entitlements - Applicant argued that redundancy was not genuine because the work that she performed was being done by a person who was recruited as a new staff member - Respondent argued that Applicant was terminated on the grounds of a genuine redundancy as her position was a luxury and there were no other suitable alternative duties within Respondent's organisation that could be allocated to her as it faced significant downturn in work and cost pressures required it to downsize - Commission found that the decision to make position redundant was genuine but the termination of Applicant's employment was unfair as there was no discussion in respect to the opportunity of reducing her hours of work - Order Issued - Ms PL Harben -v- Buckeridge Nominees Pty Ltd T/A BGC Windows ACN 008 849 581 - APPL 319 of 2001 - SMITH, C - 21/12/01 - Basic Material Wholesaling	142
Application re unfair dismissal and contractual entitlements - Applicant argued that she was summarily dismissed in that she was required to leave Respondent's employment immediately upon termination without reasonable notice and that Respondent breached the contract of employment - Respondent argued that Applicant was made redundant due to restructure and Applicant did not hold the necessary qualifications required and there was no alternative employment available - Commission found that Applicant was unfairly dismissed in many ways and where a fair go all round did not enter the equation and her position was not made redundant and that Applicant was terminated without warning or prior notice - Further, Commission found that Applicant was unfairly dismissed, reinstatement was impracticable and awarded compensation - Order Issued - Ms DM Smith -v- Nutricia Australia Pty Limited - APPL 640 of 2001 - WOOD,C - 07/12/01 - Health Services	162
² Appeal against decision of Commission (81WAIG1206) - Appellant argued that the learned Commissioner erred in law and fact on several grounds regarding procedural fairness and failing to consider a number of matters and facts - A submission that the Appeal was incompetent as being out time was dismissed - Full Bench found that the exercise of discretion at the first instance was not miscarried and no ground of appeal was made out - Dismissed - Mr GE Garbett -v- Midland Brick Co Pty Ltd - FBA 28 of 2001 - Full Bench - SHARKEY P/COLEMAN CC/SMITH, C - 06/02/02 - Other Manufacturing	212
Application re redundancy payment - Applicant sought additional payment to her redundancy payment based on equity regarding recent redundancy payments to other staff - Respondent argued that an error was made with other employees payments - Commissioner found that the Applicant had received no offer of a redundancy package above the award and had received the same package as employees covered by the award made redundant in housekeeping at the same time, and found the termination payment to be fair - Dismissed - Mrs E Warner -v- Burswood Hotel Pty Ltd - APPL 1533 of 2001 - WOOD,C - 23/01/02 - Accommodatn, Cafes&Restaurants	364
Conference referred re redundancy - Applicant Union argued that member had received insufficient redundancy payments on termination of his contract of employment - Respondent argued that the detailed and extensive provisions of the ABB Service Agreement had been complied with - Commission found that the ABB Service Agreement contained crucial provisions that included a dispute procedure which required unresolved matters to be referred to the Australian Industrial Relations Commission and that it had provisions which dealt with redundancies - Commission found that it was unable to exercise any powers in the matter and application was dismissed for want of jurisdiction -Dismissed for want of jurisdiction - CONSTRUCTION, MINING, ENERGY -v- ABB Engineering Construction Pty Ltd - CR 115 of 2001 - GREGOR C - 12/03/02 - Engineering	492
² Appeal against Decision of the Commission (81WAIG3112) - Appellant argued that the Commissioner erred in law and fact on a number of grounds in finding that the applicants were not unfairly dismissed - Applications to adjourn proceedings and to substantially amend the grounds of appeal were dismissed - Appellant made an application that Commissioner Kenner disqualify himself from hearing the appeal - Commissioner Kenner declined to disqualify himself and his reasons are provided in the decisions - Full Bench found that the grounds of the appeal were not made out as the grounds did not disclose any error on the part of the Commission at first instance - Dismissed - Mr D Bucu & Others -v- Midland Brick Co Pty Ltd - FBA 59 of 2001 - Full Bench - SHARKEY P/BEECH SC/KENNER C - 02/05/02 - Non-Metallic Min Product Mfg	743
² Appeal against Decision of the Commission (81WAIG3135) re unfair dismissal - Appellant appealed the decision on a number of grounds relating to the amount of compensation awarded for loss and redundancy pay - Full Bench found that the Appellant was made redundant but the award precludes any obligation to pay redundancy as the Appellant was a part time employee and the Respondent employed less than 15 employees - Further, the claim for compensation for loss was not established - Dismissed - Mrs DE Harley -v- Jasgold Holdings T/A Ringcraft Jewellers - FBA 60 of 2001 - Full Bench - SHARKEY P/COLEMAN CC/KENNER C - 23/04/02 - Personal & Household Good Rtlg	761
Application re unfair dismissal and contractual entitlements - Applicant argued she was dismissed without prior warnings or cause, and denied contractual benefits, and sought reinstatement - Respondent argued that due to low sales, they had intended to make some staff, including the Applicant, redundant but had changed their mind and gave the Applicant a chance to improve her performance, but she instead resigned - Commission found that Applicant had resigned her own employment and was not dismissed, that her action resulted in at least two if not three of the properties being removed from the Respondent company's listing, therefore Applicant could not be entitled to the commission as a denied contractual benefits - Dismissed - Ms AD Patterson -v- Calold (WA) Pty Ltd - APPL 1270 of 2001 - WOOD C - 26/04/02 - Property Services	853

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REDUNDANCY/RETRENCHMENT— <i>continued</i>	
Application re contractual entitlements - Applicant argued he was due unpaid salary increments which the Respondent conceded it did owe the Applicant - Applicant also sought redundancy pay and payment in lieu of notice - Respondent argued the position had not been made redundant while the Applicant was on long service leave but was part of a genuine restructure - Commission found the Applicant's duties were substantially restructured and he was given notice that his contract would terminate but Respondent did not make an offer of work that could be viewed as adequate alternative employment - Commission awarded redundancy pay but denied the application for pay in lieu of notice - Granted in Part - Mr DG Swingler -v- Methodist Ladies College - APPL 1525 of 2001 - SMITH C - 05/04/02 - Education	861
Application re unfair dismissal and contractual entitlements - Applicant argued he was harshly, oppressively and unfairly dismissed by reason of redundancy and sought denied benefits entitled under his contract of employment - Commission found that the Applicant was made redundant for genuine reasons as the Respondent's business was going through a difficult time - Commission was not satisfied that entitlements from a draft workplace agreement were entitlements of the Applicant's contract of employment, and was of the view that the Applicant's claim was not made out - Dismissed - Mr M Boronovskis -v- Milne Feeds Pty Ltd - APPL 2329 of 2001 - BEECH SC - 14/05/02 - Services to Agric/Hungt/Trappg	1011
Application re unfair dismissal - Applicant argued he was dismissed in a harsh, oppressive and unfair manner and sought compensation as the opportunity for reinstatement was unavailing - Respondent argued that at the time he was in the process of selling the business and was having relationship difficulties with the Applicant, and as there was no position for the Applicant in the new company the Respondent decided to make the Applicant redundant - Commission found the Applicant was unfairly dismissed because the job he was doing continued to be performed by someone until the business was taken over by the purchaser and awarded compensation - Granted - Mr A Cokic -v- Graeme Wheildon Pty Ltd - APPL 1901 of 2001 - GREGOR C - 03/05/02 - Other Services	1014
Application re unfair dismissal and contractual entitlements - Applicant argued his dismissal was harsh, oppressive and unfair, and that he was owed outstanding benefits under his contract of employment - Respondent argued the Applicant had been made redundant due to the business's financial difficulties and the Applicant had refused offers to discuss the redundancy - Commission found that the Applicant was not dismissed but made redundant - Dismissed - Mr AJ Nieuwendyk -v- Mr W Heggars & Other - APPL 732 of 2001 - GREGOR C - 17/05/02 - Agriculture	1045
REINSTATEMENT—	
¹ Appeal against Decision of Full Bench (80WAIG4326) re dismissed application for unfair dismissal - Appellant argued the Full Bench erred in law in not taking cognisance of the legal significance of a cross appeal, by finding the Appellant was satisfied with the Commission's order and by not granting an extension of time - Industrial Appeal Court found the grounds of appeal for an extension of time was without merit and should not be granted - Dismissed - Mr M Cousins -v- YMCA of Perth - IAC 6 of 2000 - Industrial Appeal Court - Kennedy J./Scott J./Parker J. - 28/11/01 - Community Services.....	5
Complaint re breach of Workplace Agreement - Complainant argued that she had been unfairly dismissed because at the time of termination she was on sick leave - Further, Complainant sought reinstatement, unpaid sick leave and a finding that the termination was in breach of a workplace agreement and in contravention of the Workplace Agreements Act 1993 - Defendant argued Complainant repudiated the contract of employment and that its acceptance of that repudiation terminated the employment - Industrial Magistrate found that Defendant was justified, in all circumstances, in coming to a decision that Complainant had no intention of returning to work in the foreseeable future and had repudiated the contract of employment which led to her lawful termination - Dismissed - NL Medwid -v- Central Metropolitan College of TAFE - CP 129,251 of 2000 - Industrial Magistrate - Tarr IM - 13/12/01 - Education	124
¹ Application for stay of order for reinstatement pending appeal to Full Bench - Applicant argued employee ordered to be reinstated would require retraining and offered to continue salary payments until the appeal was disposed - IAC found that it had the power to stay the order pending the appeal and that there were no exceptional circumstances in the case - Dismissed - BHP Iron Ore Pty Ltd -v- CONSTRUCTION, MINING, ENERGY - IAC 10 of 2001 - Industrial Appeal Court - 04/02/02 - Metal Ore Mining	209
Application re unfair dismissal and contractual entitlements - Applicant argued she was dismissed without prior warnings or cause, and denied contractual benefits, and sought reinstatement - Respondent argued that due to low sales, they had intended to make some staff, including the Applicant, redundant but had changed their mind and gave the Applicant a chance to improve her performance, but she instead resigned - Commission found that Applicant had resigned her own employment and was not dismissed, that her action resulted in at least two if not three of the properties being removed from the Respondent company's listing, therefore Applicant could not be entitled to the commission as a denied contractual benefits - Dismissed - Ms AD Patterson -v- Calold (WA) Pty Ltd - APPL 1270 of 2001 - WOOD C - 26/04/02 - Property Services.....	853
Application re unfair dismissal - Applicant alleged that the dismissal was unfair because he was replaced by someone else without notice and that he was not reliable - Respondent argued that Applicant had resigned to go work for another employer - Commission found that Applicant had chosen to take up employment elsewhere and that the claim for unfair dismissal was dismissed for want of jurisdiction - Dismissed for want of jurisdiction - Mr RA Richardson -v- Goldfields Contractors - APPL 1630,2003 of 2001 - WOOD C - 11/04/02 - Other Services.....	856
Application re unfair dismissal - Applicant argued she was summarily dismissed and that her dismissal was unfair, and sought reinstatement - Respondent argued that it was unable to continue to sponsor the Applicant in relation to a visa application due to the Department of Immigration's rules, and had no alternative but to terminate the contract - Commission found that the termination of employment was not effected in accordance with the Applicant's contract of employment and to that extent the dismissal was unfair - Reinstatement was sought but Commission was of the view there was a valid reason for the termination and reinstatement was impracticable, and awarded compensation for insufficient notice of termination - Granted in Part - Mrs IE GAULT -v- Mr Mike Smith Principal of Winthrop Baptist College - APPL 254 of 2002 - HARRISON C - 17/05/02 - Education	1017
Application re unfair dismissal - Applicant argued he was unfairly dismissed and sought reinstatement - Respondent argued that the Applicant's time had lapsed and the application should be closed - Commission noted the delay regarding the application had been inordinate and the explanation for the delay was inadequate, and that the Applicant had failed to attend the proceedings - Commission found that it was no longer in the public interest for the matter to be pursued and that the matter be discontinued - Dismissed - Mr MA Wilson -v- Timberlook Blinds Pty Ltd - APPL 1935 of 2001 - BEECH SC - 08/05/02 - Community Services	1092
SAFETY—	
² Appeal against Decision of Commission (81WAIG2596) re unfair dismissal - Appellant argued that in relation to the written warning issued, the Commissioner erred in concluding that it was unfairly issued, that on various other issues such as health and safety, the relationship between Applicant and the Head Department, the Applicant's performance and compensation, the Commissioner failed to give proper weight to the evidence - Further, Appellant sought that the Commission's order be quashed - Full Bench reviewed evidence, authorities and found on various reasons, that the Commissioner was entitled to find and correct in finding that the dismissal was unfair, that it was quite clear that the exercise of the discretion at first instance did not miscarry as alleged in the grounds of appeal and that the appeal was not made out, therefore dismissed the appeal - Dismissed - Penrhos College (Inc) -v- Mrs M Muggeridge - FBA 52 of 2001 - Full Bench - SHARKEY P/COLEMAN CC/WOOD,C - 07/12/01 - Education	49

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SAFETY—continued	
Conference referred re alleged dispute re safety issues - Applicant Union sought an order that Aboriginal Police Liaison Officers be provided with firearm training and authority to use firearms as mainstream police officers - Respondent opposed the order sought as the issue to carry firearms is a matter to be determined by the Commissioner for Police based on operational requirements - Public Service Arbitrator found that Aboriginal aides should be provided with training and authority to use firearms in the same manner and in the same circumstances as applied immediately prior to 1 March 2002 -Further, that Order 1 should remain in operation until a range of issues associated with the role of Aboriginal aides is dealt with - Granted - Western Australian Police Union of Workers -v- Commissioner of Police - PSACR 4 of 2002 - Public Service Arbitrator - SCOTT C - 05/04/02 - Other Services.....	605
Conference referred re termination - Applicant Union sought an order for compensation to the maximum available under the Act - Applicant argued that whilst not in any way seeking to derogate from the importance of safety in the mining industry, if the Commission were to accept that its member was working too far out from safe ground, the circumstances of this matter did not warrant his dismissal - Respondent objected to and opposed the claim, arguing that union member had breached the Mines Safety and Inspection Regulations 1985 and the Respondent's policy in relation to the same - Further, it was the other safety breaches that was apparent in his employment record that contributed to its decision to dismiss him - Commission found based on the evidence presented that union member was working in an area of unsupported ground which was prohibited under the Regulation and the Respondent's policy and this was a serious and potentially fatal safety breach - Further, Commission reviewed test cases, the prior incident that occurred and was of the opinion that the union member's dismissal was not harsh, oppressive or unfair, and on all of the evidence in the matter, he had been given a fair go all round - Dismissed - The Australian Workers' Union, West Australian Branch, Industrial Union of Workers -v- Henry Walker Eltin Pty Ltd - CR 203 of 2001 - KENNER C - 08/04/02 - Metal Ore Mining.....	673
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Complaint re breach of Workplace Agreement - Complainant argued that she had been unfairly dismissed because at the time of termination she was on sick leave - Further, Complainant sought reinstatement, unpaid sick leave and a finding that the termination was in breach of a workplace agreement and in contravention of the Workplace Agreements Act 1993 - Defendant argued Complainant repudiated the contract of employment and that its acceptance of that repudiation terminated the employment - Industrial Magistrate found that Defendant was justified, in all circumstances, in coming to a decision that Complainant had no intention of returning to work in the foreseeable future and had repudiated the contract of employment which led to her lawful termination - Dismissed - NL Medwid -v- Central Metropolitan College of TAFE - CP 129,251 of 2000 - Industrial Magistrate - Tarr IM - 13/12/01 - Education.....	124
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² Application for registration of a new award - Application by Respondent for an adjournment - Applicant Union opposed the adjournment as Respondent was well acquainted with the subject matter of the application and that it would have a detrimental effect on the potential employees of the new award - Respondent argued that the time to prepare for the court hearing would be inadequate and that December and January were notoriously the busiest times of the business cycle for the hospitality industry - Commission found that the decision whether to grant or refuse was a matter for the discretion of the Commission and that there would be a serious injustice to the Applicant Union and its potential members if the application for an adjournment was granted and were against granting the adjournment - Refused - Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch -v- Burswood Catering and Entertainment Pty Ltd - A 4 of 2001 - Commission in Court Session - BEECH C/SMITH, C/WOOD,C - 11/12/01 - Hospitality.....	59
¹ Application for stay of order for reinstatement pending appeal to Full Bench - Applicant argued employee ordered to be reinstated would require retraining and offered to continue salary payments until the appeal was disposed - IAC found that it had the power to stay the order pending the appeal and that there were no exceptional circumstances in the case - Dismissed - BHP Iron Ore Pty Ltd -v- CONSTRUCTION, MINING, ENERGY - IAC 10 of 2001 - Industrial Appeal Court - 04/02/02 - Metal Ore Mining.....	209
⁴ Application re a stay of operation of orders made in the Industrial Magistrates Court - Applicant Union sought that the application be stayed as there was a serious question to be tried as to whether the Magistrate erred in law in dismissing the claim and that the balance of convenience favoured the Applicant - There was also an application to adjourn the proceedings on behalf of the Respondent which was not pressed - President found that there was no power or jurisdiction for the President to grant the stay of an order made by Industrial Magistrates Court or Magistrate pending the hearing and determination of an appeal against that decision or order - Dismissed - Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch -v- Burswood Resort (Management) Limited - PRES 1 of 2002 - President - SHARKEY P - 16/01/02 - Accommodatn, Cafes&Restaurants.....	222
⁴ Application for stay of operation of Decision of the Public Service Arbitrator in Matter No. P27/2001 (82WAIG194) re application pursuant to s.80E and s80F of the I.R. Act - Applicant argued that the PSA erred in law in finding jurisdiction to deal with the application and the application raised no industrial matter - President found the argument that there was no jurisdiction was not a strong one and on the balance of convenience of both the parties requires that the jurisdiction, having been determined, the matter should now proceed to determination without further unnecessary delay - Dismissed - Director General, Department of Justice -v- Civil Service Association of Western Australia Incorporated - PRES 3 of 2002 - President - SHARKEY P - 14/02/02 - Government Administration.....	437
¹ Application for stay of order of Decision of Commission in Court Session in Matter No. A4 of 2001 - The main ground of appeal was that the CICS justified the making of the award on the basis that the Applicant had been incorporated so as to avoid the binding effect of the Burswood Resort Management Ltd agreement - Industrial Appeal Court was not impressed with the force of the argument that the new award will cause the Applicant to suffer irreparable losses in the form of lost business opportunities if a stay was not granted - IAC concluded that this case did not present exceptional circumstances such as to justify an order that the award made by CICS be stayed pending the appeal - Dismissed - Burswood Catering and Entertainment Pty Ltd -v- Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch - IAC 5 of 2002 - Industrial Appeal Court - 23/04/02 - Accommodatn, Cafes&Restaurants.....	741
² Cross Appeals against decision of Public Service Arbitrator (82WAIG104) re declaration of jurisdiction to hear and determine claim for redress, compensation or damages over a discontinued disciplinary action - Applications for adjournment of hearing - Appellant Employer argued that as the appeal required consideration of the limits of the Commission's jurisdiction it was in the public interest - Appellant Union argued, inter-alia, that the hearing should be adjourned because it would be inconvenient, there were no established facts and discovery was incomplete in the substantive matter, it would not inconvenience the Appellant Employer and the President had dismissed the application for a stay of the declaration - Full Bench found one application for adjournment was incompetent as it was made before the appeal was listed and that the approaches to the Registrar for an adjournment were unsatisfactory Full Bench reviewed authorities and found many of the issues raised were irrelevant and matters for the appeal and that refusing an adjournment would not result in a serious injustice to the Appellant Union - However an adjournment was subsequently granted due to the indisposition of an advocate - Full Bench found that the issues in one appeal were not of such importance that an appeal should lie and gave reasons therefore - Appellant Union conceded in the second appeal that one cannot appeal against reasons for decision and sought leave to discontinue - Full Bench found neither appeal warranted an order for costs - Dismissed, Discontinued and procedural orders issued accordingly - Civil Service Association of Western Australia Incorporated -v- Director General, Department of Justice - FBA 3,4 of 2002 - Full Bench - SHARKEY P/COLEMAN CC/BEECH SC - 07/05/02 - Government Administration.....	752

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⁴ Application for stay of operation of the Order of the Commission (unreported) re unfair dismissal and contractual entitlements pending the hearing and determination of Appeal to Full Bench - Appellants Employer argued that Commissioner erred in law and fact in making the Order as there was no basis for making the Order because the claim was one of contractual benefits and for unfair dismissal and that the documents ordered were excessively broad - Respondent argued that there was no justification for an order for stay of operation to be made - President found that Appellants had not made or established that they were entitled to an order for a stay of operation - Dismissed - Mr Ron Stanley/Mr Peter Stanley, Westlaw Securities P/L T/as Communique Communications -v- Mr MK Bryant - PRES 8 of 2002 - President - SHARKEY P - 30/04/02 - Communication Services	785
⁴ Application for stay of operation of Order in Matter No.1624/2001 (82WAIG1025) pending appeal to Full Bench - Appellant sought that the Order be stayed on the grounds that the Commissioner at first instance erred on a number of issues relating to jurisdiction and that the appeal was in respect to an order requiring a substantial amount of money to be paid - President found that the Appellant had not established that it had a strong case on appeal and that there were no exceptional circumstances established requiring the Order to be made - Dismissed - Bamboo Holdings Pty Ltd -v- Mr MG Halligan - PRES 20 of 2002 - President - SHARKEY P - 06/06/02 - Other Services.....	966
SUPERANNUATION—	
² Appeal against Decision of Commission (81WAIG1632) re quantum of compensation and contractual benefits - Appellant argued that the Commissioner erred on a number of grounds regarding compensation, superannuation, entitlements and redundancy payment - There was no cross appeal - Full Bench found that the Appellant was not entitled to claim an amount equal to superannuation contributions as a contractual benefit, and had received a reasonable redundancy payment - Dismissed - Mr P Dellys -v- Elderslie Finance Corporation Limited - FBA 42 of 2001 - Full Bench - SHARKEY P/SCOTT C./SMITH, C - 18/12/01 - Finance	24
Application re contractual entitlements - Superannuation - Applicant argued that she was to be paid at a rate of 50% of gross earnings of sales, not reducible by any deductions made by employer for superannuation or any other reason, her superannuation entitlements were additional to the payments - Respondent argued that it made superannuation contributions in accordance with the Superannuation Guarantee Administration Act 1992 and when the Act prescribed higher contributions her rate of commission was decreased to take into account those higher contributions - Commission found that there was a variation to the contract of service and that the claim had not been made out - Dismissed - Ms LD Davis -v- Blaxland Pty Ltd - APPL 1074 of 2001 - GREGOR C - 08/03/02 - Real Estate Agency.....	475
Application re contractual entitlements - Applicant argued that he was owed benefits accrued as compensation for time not worked as his contract guaranteed him employment until 16 October 2002 - Respondent argued the agreement only created a salary guarantee - Commission found that clauses 4.3 and 4.4 of the agreement were ambiguous and the Applicant was unable to make out his claim for leave and that superannuation did not form part of the Applicant's salary within the meaning of the agreement - Dismissed - Mr NL Knight -v- Alinta Gas Limited - APPL 1248 of 2001 - SMITH, C - 15/02/02 - Electricity and Gas Supply.....	478
Application re unfair dismissal - An application by Applicant for adjournment was granted and an application for leave to amend the Notice of Application was dismissed - Applicant argued he was harshly oppressively or unfairly dismissed, that he was not given reasons for his dismissal and sought three months' lost earnings and the costs involved in the closing and re-opening of his own private business - Respondent argued Applicant was on three months probation, that during that period he was incapable of performing basic duties of estimating and site measurement, that he was advised he was unsuitable for the position and was provided with the full reasons why - Further, Applicant was offered an alternative position within the company which he rejected - Commission found that it was a term of Applicant's contract of employment that it would be subject to review and that no specific period of time for the review was agreed too - Further, Commission found on evidence that Applicant was not given a "fair go" and accordingly his dismissal was unfair, that reinstatement was impracticable and ordered compensation - Ordered Accordingly - Mr SJ O'Brien -v- Perth Metalwork Co. Pty Ltd - APPL 778 of 2001 - BEECH SC - 18/09/01 - Construction Trade Services.....	642
Application re contractual entitlements - Applicant claimed he was owed benefits to which he was entitled to under his contract of employment - Applicant claimed he was owed wages, leave entitlements, superannuation, petty cash and mobile phone expenses, accommodation and fuel entitlements - Respondents opposed the claim and counter claimed with a list of expenses paid by the Respondents for the Applicant - Commissioner found that all claim except the petty cash were made out by the Applicant - Respondents counter claims that the Applicant owed the Respondent money were not made out - Commissioner ordered the Applicant to return the computer tower in working order to the Respondents before the Respondents were required to pay the outstanding amounts - Granted in part - Mr DJ Jackson -v- Warrayu Aboriginal Corporation - APPL 431,432 of 2000 - SMITH C - 03/05/02 - General Construction	1032
Application re contractual entitlements - Applicant sought denied salary, salary in lieu of notice, annual leave and superannuation entitlements due under his contract of service - Respondent's notice of answer and counter proposal did not comply with the Commission's direction or regulations - Respondent advised the Commission that it would not appear at the hearing as it had no assets - Commission awarded the Applicant salary payments due under the contract of service, but denied the claims for salary in lieu of notice, annual leave and superannuation - Granted in Part - Mr MJ Radford -v- Coinstar Pty Ltd - APPL 1855 of 2001 - KENNER C - 21/05/02 - Finance	1049
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¹ Appeal against Decision of Full Bench (80WAIG4326) re dismissed application for unfair dismissal - Appellant argued the Full Bench erred in law in not taking cognisance of the legal significance of a cross appeal, by finding the Appellant was satisfied with the Commission's order and by not granting an extension of time - Industrial Appeal Court found the grounds of appeal for an extension of time was without merit and should not be granted - Dismissed - Mr M Cousins -v- YMCA of Perth - IAC 6 of 2000 - Industrial Appeal Court - Kennedy J./Scott J./Parker J. - 28/11/01 - Community Services.....	5
² Appeal against Decision of Commission (81WAIG1616) re unfair dismissal and contractual entitlements - Appellant argued the Commissioner erred in law and fact regarding the no period of notice to terminate within the employment contract and the Appellant's work performance, and sought an order that the decision be overturned - An application for an extension of time to lodge appeal books was granted and application to adduce fresh evidence was dismissed - Full Bench found that there was no concluded written agreement nor was an offer of employment accepted which contained an agreed term of notice of termination - Dismissed - Dayman Holdings Pty Ltd ABN 009 309 468 Trading as Reynolds & Associates -v- Mr MRS Barnes - FBA 41 of 2001 - Full Bench - SHARKEY P/COLEMAN CC/BEECH C - 17/12/01 - Business Services	17
² Appeal against Decision of Commission (81WAIG1632) re quantum of compensation and contractual benefits - Appellant argued that the Commissioner erred on a number of grounds regarding compensation, superannuation, entitlements and redundancy payment - There was no cross appeal - Full Bench found that the Appellant was not entitled to claim an amount equal to superannuation contributions as a contractual benefit, and had received a reasonable redundancy payment - Dismissed - Mr P Dellys -v- Elderslie Finance Corporation Limited - FBA 42 of 2001 - Full Bench - SHARKEY P/SCOTT C./SMITH, C - 18/12/01 - Finance	24
² Appeal against Decision of Commission (81WAIG1646) re unfair dismissal - Appellant argued the Commissioner had erred in law and fact on numerous grounds relating to the contract of service - Full Bench found there was no jurisdiction to hear and determine an application claiming relief for harsh, oppressive and unfair dismissal, and the claim for contractual benefits was not established at first instance - Dismissed - Mr CJ Fox -v- News Illustrated Pty Ltd - FBA 46 of 2001 - Full Bench - SHARKEY P/COLEMAN CC/BEECH C - 20/12/01 - Printng, Publishg & Rcd Media	35

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² Appeal against Decision of Commission (81WAIG2596) re unfair dismissal - Appellant argued that in relation to the written warning issued, the Commissioner erred in concluding that it was unfairly issued, that on various other issues such as health and safety, the relationship between Applicant and the Head Department, the Applicant's performance and compensation, the Commissioner failed to give proper weight to the evidence - Further, Appellant sought that the Commission's order be quashed - Full Bench reviewed evidence, authorities and found on various reasons, that the Commissioner was entitled to find and correct in finding that the dismissal was unfair, that it was quite clear that the exercise of the discretion at first instance did not miscarry as alleged in the grounds of appeal and that the appeal was not made out, therefore dismissed the appeal - Dismissed - Penrhos College (Inc) -v- Mrs M Muggeridge - FBA 52 of 2001 - Full Bench - SHARKEY P/COLEMAN CC/WOOD,C - 07/12/01 - Education.....	49
Complaint re breach of Workplace Agreement - Complainant argued that she had been unfairly dismissed because at the time of termination she was on sick leave - Further, Complainant sought reinstatement, unpaid sick leave and a finding that the termination was in breach of a workplace agreement and in contravention of the Workplace Agreements Act 1993 - Defendant argued Complainant repudiated the contract of employment and that its acceptance of that repudiation terminated the employment - Industrial Magistrate found that Defendant was justified, in all circumstances, in coming to a decision that Complainant had no intention of returning to work in the foreseeable future and had repudiated the contract of employment which led to her lawful termination - Dismissed - NL Medwid -v- Central Metropolitan College of TAFE - CP 129,251 of 2000 - Industrial Magistrate - Tarr IM - 13/12/01 - Education.....	124
Application re unfair dismissal - Applicant argued that she was not provided with definitive reason why the Respondent was unhappy with her performance, nor was she given any opportunity to rectify the situation, that the Respondent's instructions were unclear and erratic and she had no idea she would be dismissed - Respondent argued that Applicant started well and seemed interested in her job at first but then her attitude declined, she was unwilling to communicate, lack initiative and her attitude was defiant and recalcitrant when counselled leaving Respondent no alternative but to dismiss her - Commission found based on the evidence provided that after the warning, Applicant had not been given the opportunity to improve, therefore her dismissal was unfair and ordered Respondent to pay Applicant the sum equivalent to 2 week's wages as compensation for the dismissal - Granted - Ms SE Anderson -v- Eastern Goldfields Medical Division of General Practice - APPL 958 of 2001 - BEECH C - 21/12/01 - Metal Ore Mining.....	127
Application re unfair dismissal - Applicant argued she had been harshly, oppressively or unfairly dismissed - Respondent denied the claim - Commission found based on the evidence presented that Applicant had made out her claim that she was dismissed and that it was harsh, oppressive or unfair, and ordered that as reinstatement was impracticable, that Respondent pay compensation to the Applicant for the dismissal - Granted - Ms KJ Williams -v- Havencourt ATF Richard Strutt FT t/a Helena Valley Pharmacy - APPL 928 of 2001 - BEECH C - 21/12/01 - Personal & Household Good Rtlg.....	130
Application re unfair dismissal and contractual entitlements - Applicant argued that she was unfairly dismissed and not paid benefits including overtime under her contract of employment and that she would have been paid overtime for hours greater than 37.5 hours per week - Respondent argued that Applicant was not entitled to any overtime and that it was not expressed in the contract of employment and was never claimed or paid during six years of employment - Commission found that the contract of employment did not contain any provisions that she would be paid overtime and that she never claimed overtime in the six years of employment was a strong suggestion that she believed that she was not entitled to it and thus had difficulty in proving the claim - Order Issued - Ms SR Corcoran -v- Gibson Quai Pty Ltd ACN (009 323 620) - APPL 1716 of 2001 - BEECH C - 12/12/01 - Other Services.....	137
Application re unfair dismissal and contractual entitlements - Application to amend the name of Respondent - Applicant argued that section 27 of the Act gave Commission the powers to correct, amend or waive any error and in this instance amend the name of Respondent - Respondent argued that although the Commission had powers to amend pursuant to section 27, it could not substitute a new party for the Respondent unless the party so substituted waived the irregularity and Respondent did not waive the irregularity - Commission found that it had powers in exercising its discretion to consider whether the circumstances warranted an amendment and found that there was insufficient evidence to explain why the error was made and any real efforts to remedy the situation and thus application dismissed - Dismissed - Ms JE Graham -v- Robert Waters - The Queens Hotel - APPL 699 of 2001 - SCOTT C - 07/01/02 - Hotel.....	139
Application re unfair dismissal - Applicant argued that dismissal was unfair because the status of employment was permanent as had been promised and thus able to have the necessary time off - Respondent argued that Applicant was employed as a permanent employee in the first period and a casual employee in the second period of employment - Further, support was offered to Applicant to assist with his rehabilitation and had been told on a number of occasions that his behaviour was unacceptable and was sufficiently warned about the viability of his job - Commission found that Applicant was given a fair go all round, had become less cooperative and had a poor attitude and performance towards his work - Dismissed - Mr BA Johnston -v- Diasson Holdings Pty Ltd The Lonie Family Trust t/as R. H. Trotter & Co - APPL 415 of 2001 - GREGOR C - 20/12/01 - Horticulture & Fruit Growing.....	146
Application re unfair dismissal and contractual entitlements - Application for adjournment by Applicant - Applicant's agent argued that Applicant had moved to Queensland and had employment that did not allow for time off until February 2002 and that Respondent had provided documents at the last minute that had not been put to Applicant - Respondent opposed application for adjournment and argued that Applicant was self employed and doubted not being able to take time off in advance - Further, Respondent reserves the right to claim costs - Commission found that Applicant had moved to Queensland and was prepared to accept in principle that a person who found new employment may not be able to take time off in the first few months and finally if the adjournment was not granted Applicant would suffer a serious injustice - Adjourment Granted - Ms JA Morrison -v- Suzanne Grae Corporation Pty Ltd - APPL 467 of 2001 - BEECH C - 10/12/01 - Personal & Household Good Rtlg.....	154
Application re unfair dismissal - Applicant argued that dismissal was unfair because there was no warnings given to her before she was dismissed, the procedure used to terminate her services was unfair, she received no counselling or other opportunity to identify the employer's complaints about her or to remedy them - Respondent argued that Applicant was terminated after a sequence of events - Further the principle reason for dismissal was her poor performance and that she failed to follow directions - Commission found that Respondent did not give Applicant the opportunity to explain what she had done and Respondent could not have legitimately reached a conclusion that failure to carry out instructions justified termination instead she was dismissed forthwith and thus dismissal was unfair - Order Issued - Mrs SM Parker -v- Mary-Anne Kenworthy - Image International Pty Ltd - APPL 955 of 2001 - GREGOR C - 23/11/01 - Recreation.....	156
Application re unfair dismissal - Applicant argued that she viewed her position as long term, there was never any dissatisfaction expressed with her work at any time and that Respondent repudiated the contract of employment - Respondent argued that its action did not constitute a termination of employment, therefore the Commission lacked jurisdiction to determine the claim - Commission found based on the evidence presented that the Respondent had repudiated the contract of employment because Applicant was asking for more money and had been consistent in her demands to that extent, and the Respondent incorrectly concluded that at the end of the 12 months period the contract would come to an end - Further, Commission found that reinstatement was impracticable and ordered that compensation be paid to Applicant for a period of 10 weeks and four days - Granted - Ms SL Semple -v- Pro Subi Limited - APPL 910 of 2001 - GREGOR C - 20/12/01 - Other Services.....	159
Application re unfair dismissal and contractual entitlements - Applicant argued that she was summarily dismissed in that she was required to leave Respondent's employment immediately upon termination without reasonable notice and that Respondent breached the contract of employment - Respondent argued that Applicant was made redundant due to restructure and Applicant did not hold the necessary qualifications required and there was no alternative employment available - Commission found that Applicant was unfairly dismissed in many ways and where a fair go all round did not enter the equation and her position was not made redundant and that Applicant was terminated without warning or prior notice - Further, Commission found that Applicant was unfairly dismissed, reinstatement was impracticable and awarded compensation - Order Issued - Ms DM Smith -v- Nutricia Australia Pty Limited - APPL 640 of 2001 - WOOD,C - 07/12/01 - Health Services.....	162

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Application re unfair dismissal and contractual entitlements - Applicant argued that she has been harshly, oppressively or unfairly dismissed - Claim for contractual entitlements was not pursued at the hearing - Respondent argued that Applicant had breached the Company's Casual Employment Contract by providing false information in relation to criminal history - Commission found on evidence that Respondent had failed to satisfy the onus to demonstrate the summary dismissal was fair, however, Commission was of the view that the Respondent was entitled to dismiss the Applicant by giving her notice - Further, Commission ordered that 1 months pay be paid to Applicant as compensation in accordance with her contract of employment - Ordered Accordingly - Ms D Churchill -v- Pharmacia and UpJohn (Perth) Pty Limited - APPL 2077 of 2000 - SMITH, C - 06/12/01 - Petroleum Coal Chemical Assoc.....	172
Application re unfair dismissal and contractual entitlements - Applicant argued that she has been harshly, oppressively or unfairly dismissed and she was owed benefits entitled to her under her contract of employment - Respondent argued that Applicant resigned after it lost the agency for products it was intended that Applicant would promote and sell - Commission, having considered all of the evidence, found that Applicant resigned without duress and dismissed her claim for harsh, oppressive or unfair dismissal - Claim for contractual benefit - Upheld - Mrs KM Zuglian -v- Ordberg Nominees P/L T/as Western Biomedical - APPL 1806 of 2000 - SMITH, C - Health Services	177
¹ Appeal against decision of Full Bench (81WAIG2537) re amount of compensation paid for loss or injury due to unfair dismissal - IAC found question was whether when assessing the monetary compensation which may be awarded under s23A(1)(ba) of the IR Act 1979 the Commission should discount the amount awarded, if an Applicant has commenced proceedings in a common law court for damages which may result in a monetary award - IAC found that there was nothing in the IR Act, including the requirement to act according to equity, good conscience and the substantial merits of the case that required the Commission to take into account the fact that the Applicant may have other monetary remedies or has commenced proceedings to enforce those remedies - Dismissed - Q-Vis Limited (ACN 009 234 173) -v- Mr SD Gordon - IAC 5 of 2001 - Industrial Appeal Court - 01/01/02 - Machinery & Equipment Mfg	210
² Appeal against decision of Commission (81WAIG1206) - Appellant argued that the learned Commissioner erred in law and fact on several grounds regarding procedural fairness and failing to consider a number of matters and facts - A submission that the Appeal was incompetent as being out time was dismissed - Full Bench found that the exercise of discretion at the first instance was not miscarried and no ground of appeal was made out - Dismissed - Mr GE Garbett -v- Midland Brick Co Pty Ltd - FBA 28 of 2001 - Full Bench - SHARKEY P/COLEMAN CC/SMITH, C - 06/02/02 - Other Manufacturing	212
Application re unfair dismissal - Applicant argued that he was harshly, oppressively or unfairly dismissed by the Respondent - Respondent claimed that Applicant was dismissed because of poor performance and the company had lost a major contract which resulted in the reduction in the number of employees - Commissioner found the Applicant had been unfairly dismissed and he had diligently sought alternative employment and awarded compensation - Granted - Mr K Chopra -v- Kwik & Swift Co Pty Ltd trading as Kwik & Swift Couriers - APPL 1813 of 2000 - SMITH, C - 01/02/02 - Road Transport	329
Application re unfair dismissal and contractual entitlements - Applicant argued that her resignation was really a constructive dismissal because she was left with no other alternative other than to resign and that there was no training or assistance provided and she was punctual during her period of employment - Respondent argued that Applicant had tendered her resignation and that she did have an alternative to resignation and her attitude did not change whilst her resignation was put on hold for a period of two weeks - Commission found that Applicant did tender her resignation and that she agreed to put it on hold for a two week period at the conclusion of which Respondent could, if it wished accept it - Dismissed - Ms AL Green -v- Ballajura Properties Pty Ltd - APPL 1454 of 2001 - BEECH C - 07/02/02 - Property and Business Services.....	335
Application re unfair dismissal - Applicant claimed his dismissal was unfair as he was given no indication or warning that his performance was unsatisfactory - Applicant was employed on a two month probationary period and was dismissed at the end of that period - Respondent argued that he believed the Applicant's attitude was such that it was unlikely he would improve - Commission found that although neither oral or written warnings were given to Applicant, Commissioner found Applicant had not proved his dismissal to be unfair - Dismissed - Mr CJ Hastie -v- Mr Umberto Fiore, Camera Land Camera House - APPL 1154 of 2001 - BEECH C - 23/01/02 - Personal & Household Good W/sg.....	337
Application re unfair dismissal and denial of contractual entitlements - Applicant sought an adjournment on a number of grounds including, illness, being an unrepresented party and the delay in providing discovery of documents - Respondent submitted that the injustice in granting an adjournment arose from the inconvenience and the question of cost - Commissioner granted an adjournment for one day - Granted in part - Mr R Jeeves -v- Brett Martin Plastics Pty Ltd - APPL 1370 of 2001 - BEECH C - 30/01/02 - Other Manufacturing	339
Application re unfair dismissal - Applicant argued that his dismissal was unfair as it was a summary dismissal - Respondent argued that Applicant's behaviour and the burning out of the intercom incident had serious adverse effect on the employer's business - Commission was not persuaded on the evidence that it was unfair to dismiss Applicant when these things had occurred in the first weeks of his employment - Dismissed - Mr MJ Jolly -v- ABA Automatic Gates (W.A) - APPL 839 of 2001 - BEECH C - 22/01/02 - Construction Trade Services	340
Application re unfair dismissal and contractual entitlements - Applicant argued that she did not resign but was dismissed by Respondent and was employed as a permanent employee not as a casual and had not been paid all her contractual entitlements as a full time employee - Respondent argued that Applicant had verbally tendered her resignation which was accepted by the Directors and that in her final week she was placed on casual hours and was paid out all contractual entitlements - Commission found that it was Respondent that decided that Applicant's employment should end and was therefore dismissed and that it was Respondent that instituted the casual hours only after Applicant's employment ceased - Further, Commission found however that Applicant by her own actions in offering to leave and seeking the meeting had to take responsibility for her actions and that payments made were paid for previous work and as a goodwill gesture - Dismissed - Ms JS Monteith -v- Saruman Holdings Pty Ltd & Other - APPL 1285 of 2001 - WOOD,C - 11/01/02 - Restaurant	345
Application re unfair dismissal and contractual benefits - Applicant argued that he was harshly, oppressively and unfairly dismissed from his employment and sought compensation - Respondent argued the Applicant was not an employee, had relinquished day to day involvement in the business and that the application was lodged out of time - Commissioner found the Applicant was paid wages and was an employee and a Director of the company, and was unfairly dismissed but reinstatement was impracticable - Claims for contractual benefits and costs dismissed - Granted in part - Mr N Polra -v- Chesterfield Child Care Centre Pty Ltd - APPL 1016 of 1999 - SCOTT C - 25/01/02 - Community Services.....	351
Application re redundancy payment - Applicant sought additional payment to her redundancy payment based on equity regarding recent redundancy payments to other staff - Respondent argued that an error was made with other employees payments - Commissioner found that the Applicant had received no offer of a redundancy package above the award and had received the same package as employees covered by the award made redundant in housekeeping at the same time, and found the termination payment to be fair - Dismissed - Mrs E Warner -v- Burswood Hotel Pty Ltd - APPL 1533 of 2001 - WOOD,C - 23/01/02 - Accommodatn, Cafes&Restaurants	364
² Appeal against Decision of Commission (81WAIG2772) re unfair dismissal - Applications to extend time to institute the appeal were granted and fresh evidence was admitted - Appellant appealed against the original order striking out the application due to no attendance on behalf of the application at the first hearing - Full Bench found the failure of the Appellant's solicitor to attend the hearing was the fault of the Solicitor and suspended the order and remitted the matter back to the Commission - Costs for the Respondent's inconvenience was awarded - Upheld and decision at first instance suspended and remitted back to the Commission - Mr AA Cheesman -v- Jamco Nominees Pty Ltd - FBA 54 of 2001 - Full Bench - SHARKEY P/COLEMAN CC/WOOD,C - 28/02/02 - Other Services	422

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² Appeal against Decision of Commission (unreported) re unfair dismissal - An application to extend time to institute the appeal was granted - Appellant argued the Commissioner erred in exercising his discretion to make an order discontinuing matter No. 1039/2000 - Respondent argued there was no material put forward to support the application - Full Bench found that the Commissioner had erred in the exercise of his discretion and quashed the order made at the first instance - Upheld and Quashed - Mr J Lane -v- Aussie Online Limited (ACN 004 160 927) - FBA 50 of 2001 - Full Bench - SHARKEY P/COLEMAN CC/GREGOR C - 20/02/02.....	430
Application re unfair dismissal and contractual entitlements - Applicant alleged she was dismissed because she would not apologise to the Respondent's daughter and son in law, and sought compensation for dismissal and outstanding benefits - Respondent claimed that tension had developed in the workplace caused by the Applicant's conduct, and there was no dismissal as the Applicant removed herself from the workplace - Commission found the Applicant had brought the contract of employment to an end at her behest and there was no jurisdiction for unfair dismissal for the Commission - Claim for contractual benefits was made out in part for payment of notice - Granted - Ms RV Adamiak -v- All Things X-Ray Pty Ltd - APPL 472 of 2001 - GREGOR C - 01/03/02 - Health Services.....	467
Application re unfair dismissal and contractual entitlements - Applicant argued that dismissal was unfair and that he had been denied contractual entitlements under his contract of service - Applicant argued that the reason for the dismissal stemmed from something of an abusive attitude on the part of employer on that day and that he was ordered to leave the premises - No appearance from Respondent - Commission found that in the absence of Respondent there was no countervailing evidence and found that the dismissal was unfair and awarded compensation - Unfair dismissal claim granted and contractual entitlements claim dismissed - Mr TP Bartell -v- Outdoor Shades Wangara - APPL 1998 of 2001 - BEECH C - 05/03/02 - Building Structure Services.....	470
Application re unfair dismissal - Applicant contends that the dismissal was unfair and sought compensation - Commission, based on the evidence presented by both parties, applied the indicia set out in Vabu's case and found that Applicant was an independent contractor, that he was unable to access the Commission through s.29(b)(1) of the I.R. Act and that the Commission had no jurisdiction to deal with the claim - Dismissed for want of jurisdiction - Mr J Boyle -v- WA Fork Truck Distributors Pty Ltd - APPL 1195 of 2001 - GREGOR C - 13/03/02 - Road Transport	472
Application re unfair dismissal and contractual entitlements - Applicant argued that he was unfairly dismissed and denied benefits for a period of employment that was denied - This period of employment was an extension of what was otherwise a fixed term arrangement - Respondent argued the Applicant's contract of employment ended with the expiry of a fixed term contract - Commission found that despite the expectations from the meeting on 26 February 2001 no written approval or funding was forthcoming to extend the contract of employment, and the Applicant was not unfairly dismissed - Dismissed - Mr R Williamson -v- Yulella Fabrications Aboriginal Corporation - APPL 746 of 2001 - KENNER C - 04/02/02 - Government Administration.....	483
Conference re dismissal - Applicant Union argued the Applicant had been dismissed because he had complained about late payments - During the conference an issue arose as to the status of the employment contract - Respondent argued the Applicant had been employed as a subcontractor - Commission found the employment relationship was one of an independent contractor and declined to refer the matter for a hearing as there was no jurisdiction - Declaration Issued - The Western Australian Builders' Labourers, Painters & Plasterers Union of Workers -v- Geltray Pty Ltd trading as Reofast Steel Fixing - C 156 of 2001 - GREGOR C - 12/02/02 - Construction Trade Services.....	489
Application re unfair dismissal and contractual entitlements - Application for an Order for discovery considered - Applicant lodged an application for general discovery to substantiate application re unfair dismissal and contractual entitlements - Respondent argued that the Order for general discovery may be oppressive given that the documents covered by such an Order would go back possibly some 20 years - Commission considered that an Order for general discovery would be refused, however, an Order for discovery of documents that were relevant or related to the substantive application would be considered - Ordered Accordingly - Ms P Alderson -v- St Columba - Kingswood College - APPL 901 of 2001 - GREGOR C - 06/03/02 - Education - (Note: Further Reasons for Decision in this matter published in April WAIG, Vol. 82, Part 1, Subpart 4 at page 696).....	501, 696
Application re unfair dismissal and contractual entitlements - Applicant argued that dismissal was unfair because he was not given the opportunity to explain his actions and was denied natural justice - Respondent argued that Applicant had been dismissed for misconduct and that the breach of trust had warranted the termination - Commission found that there were different accounts of what had taken place and that those circumstances alone did not warrant the summary dismissal and that Applicant did not have any opportunity to defend himself or provide an explanation thus, the dismissal was substantively and procedurally harsh and unfair - Further Commission found that the employee/employer relationship had broken down so that reinstatement was impractical and awarded compensation - Ordered Accordingly - Mr CV Caldwell -v- P.Brown - Cloveroaks Pty Ltd - APPL 1421 of 2001 - WOOD C - 18/03/02 - Agriculture	617
Application re unfair dismissal - Applicant argued he has been unfairly dismissed and that he had as a benefit under his employment an entitlement to six month's salary - Respondent stated that Commission did not have jurisdiction as such to hear the matter as Applicant was employed under an award of the Australian Industrial Relations Commission - Parties were invited to prepare written submissions for determination - On the grounds submitted in support of Applicant's claim, the only issue the Commission was asked to decide was the question of whether or not Applicant's employment had been subject to the terms and conditions of the federal award - Commission found on evidence that Respondent was the successor to Community Youth Support Scheme Scarborough for the purposes of s.149(1)(d) of that Act because the name of the body carrying on that business was the only thing that changed; there was no suggestion of any change whatsoever resulting from the change of name and accordingly, found that the Respondent was a Respondent to the Community Employment, Training and Support Services Award 1999 an award of the AIRC - Declaration Issued - Mr GJ Clarke -v- Stirling Skills Training Inc Trading as Jobwest - APPL 2112 of 2001 - BEECH SC - 04/04/02 - Other Business Services.....	621
Application re unfair dismissal - No appearance from Applicant - No appearance from Respondent - Commission found that there had been a continuing lack of attention by Applicant to the requirements of the Regulations and the need to attend to responses to various advices from the Commission and therefore Commission exercised the powers vested in it by s27 of the Act and dismissed the application - Dismissed - Mr DR Germano -v- Gryphon Garage Doors - APPL 103 of 2002 - GREGOR C - 26/03/02 - Metal Product Manufacturing.....	623
Application re unfair dismissal - Preliminary issue to determine whether matter should proceed - Applicant argued that application should proceed because the prejudice would be the denial of Applicant to bring his claim before the Commission for determination and that documentation requested from Respondent were not forthcoming - Respondent argued that Applicant had not complied with Regulation 89, that Applicant had not been unfairly dismissed and that Applicant had not provided sufficient grounds for an unfair dismissal case - Commission found that there would be prejudice to Applicant by the application being dismissed and thus the application was not dismissed - Application to proceed - Mr DT Gould -v- Commissioner for Police - APPL 132 of 2002 - SCOTT C - 05/04/02 - Police	624
Application re unfair dismissal - Applicant argued he was unfairly dismissed and sought the maximum amount compensation in the alternative that reinstatement was impracticable - Respondent argued that Applicant was not a target for the dismissal, that he had previously considered terminating him to cut costs because his business was not performing well - Commission found on evidence that Respondent had previously considered terminating Applicant because its business was not performing well, therefore, Commission did not believe that Applicant was a target - Further, Commission found that Applicant was unfairly dismissed; that it doubt that a successful working relationship could be re-established and that it was satisfied that Applicant had sought to mitigate his loss and awarded compensation - Ordered Accordingly - Mr PM Kerr -v- Retech Rubber Pty Ltd - APPL 1303 of 2001 - WOOD C - 22/03/02 - Other Services	625

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Application re unfair dismissal - Commission was satisfied that Applicant had been properly represented during the proceedings and that a settlement had been reached - Further, in circumstances when an agreement has been reached, and the Applicant then seeks to re-agitate that agreement but it is not willing to provide further information, provides grounds for the application to be dismissed for want of prosecution - An order that the Commission refrain from further hearing or determination as further proceedings are not necessary or desirable in the public interest was issued - Dismissed - Mr J Kluchar -v- Hamersley Iron Pty Ltd - APPL 625 of 2001 - BEECH SC - 11/03/02 - Metal Ore Mining	628
Application re unfair dismissal - Application to amend name of Respondent - Applicant Union argued that the Industrial Officer had wrongly named the CEO as Respondent and as the employer even though no instructions were given to do so and to amend the Respondent's name would cause no prejudice as the error was brought to the attention of Respondent at an early stage of the proceedings - Respondent argued that Respondent was not Applicant's employer and that Applicant ought to have been aware of the correct Respondent because the identity of her employer was readily apparent from all of her employment documents and that Applicant had vexatiously named the wrong entity - Commission found the naming of Respondent as the employer was an error which could be described as a clerical error or misnomer and thus amended the name of Respondent to reflect correct employer - Order issued - Ms P Levaci -v- Canning Division of General Practice Ltd - APPL 601 of 2001 - SMITH C - 08/03/02 - Education	630
Application re unfair dismissal - Applicant argued that Respondent had dismissed her unfairly, that an agreement had been reached in the Commission and that Respondent had not complied fully with the agreement that was reached - No appearance from Respondent - Commission found that an agreement had been reached and made an order in terms of that agreement - Ordered Accordingly - Ms NM Lucanus -v- Cuddles Childcare Group - APPL 1719 of 2001 - SMITH C - 05/04/02 - Community Services	634
Application re unfair dismissal - Applicant argued she has been harshly, oppressively or unfairly dismissed on the grounds that her employment contract was unilaterally varied by the employer so as to give her a workload that was unreasonable and failure to complete that workload was a ground for dismissal; that the review process undertaken by Respondent prior to the dismissal was unfair and denied her natural justice and the performance of her contractual duties was reasonable and not such to warrant dismissal - Respondent argued that appraisals of Applicant's skill and work had a number of deficiencies; that Applicant was counselled; there were errors in her work; there were questions of competence and timeliness of work which were brought to her attention many times and attempts were made to assist her to improve - Commission found based on the evidence presented that in all circumstances, Applicant's failure and her refusal to accept that there was a problem meant that there was no real prospect of resolution, therefore, the employer was left with no alternative but to bring the employment to an end - Further, that in all of the circumstances, the Respondent has been very fair to Applicant and that she has no cause for complaint and that Respondent has used the lawful right to terminate - Dismissed - Mrs B Naso -v- The Roman Catholic Archbishop of Perth (Inc) & Other - APPL 1158 of 2001 - SCOTT C - 02/04/02 - Education	637
Application re unfair dismissal - An application by Applicant for adjournment was granted and an application for leave to amend the Notice of Application was dismissed - Applicant argued he was harshly oppressively or unfairly dismissed, that he was not given reasons for his dismissal and sought three months' lost earnings and the costs involved in the closing and re-opening of his own private business - Respondent argued Applicant was on three months probation, that during that period he was incapable of performing basic duties of estimating and site measurement, that he was advised he was unsuitable for the position and was provided with the full reasons why - Further, Applicant was offered an alternative position within the company which he rejected - Commission found that it was a term of Applicant's contract of employment that it would be subject to review and that no specific period of time for the review was agreed too - Further, Commission found on evidence that Applicant was not given a "fair go" and accordingly his dismissal was unfair, that reinstatement was impracticable and ordered compensation - Ordered Accordingly - Mr SJ O'Brien -v- Perth Metalwork Co. Pty Ltd - APPL 778 of 2001 - BEECH SC - 18/09/01 - Construction Trade Services	642
Application re unfair dismissal and contractual entitlements - Applicant argued she was harshly, oppressively and unfairly dismissed and sought contractual benefits in respect to a fixed term contract - Respondent argued that as a result of certain difficulties they did not want the Applicant to return to teaching and attempted to negotiate a separation agreement - A preliminary issue was raised and the Commission determined that the application was lodged within time - Commission found the Applicant was harshly, oppressively and unfairly dismissed and that reinstatement was impracticable and compensation for loss and injury was awarded, but the Applicant's claim for contractual benefits was denied - Granted in Part - Ms BA Smith -v- Penrhos College (Inc) - APPL 1302 of 2000 - KENNER C - 22/02/02 - Education	652
Application re unfair dismissal - Applicant argued that dismissal was unfair because she had not committed the acts of alleged misconduct and did not divulge any information received by her under the Anti Corruption Commission Act 1988 - Respondent argued that it had conducted an investigation and that it had reasonable grounds that Applicant was guilty of misconduct and that misconduct justified dismissal - Commission found that Respondent had conducted a full and extensive investigation into the allegation of misconduct and that Respondent had reasonable grounds to terminate Applicant for misconduct - Dismissed - Ms NM Whittle -v- Anti-Corruption Commission - APPL 1331 of 2001 - BEECH SC - 19/03/02 - Police	664
Application re unfair dismissal - Applicant argued that termination was unfair because she was dismissed solely on the basis that she wanted to look over the workplace agreement before signing it and that Respondent was also in breach of its contract to employ her - Respondent argued that Applicant did not accept the offer of employment and therefore did not start work - Commission found that Respondent had not employed Applicant and thus application was dismissed - Dismissed for want of jurisdiction - Ms DF Tenthly -v- Airlite Group of Companies - APPL 2246 of 2001 - BEECH SC - 10/04/02 - Other Business Services	661
Application re unfair dismissal - Applicant argued that due to the lack of any warnings and the fact that he was not told he was doing anything wrong, his dismissal was unfair and sought 10 weeks compensation - In its notice of answer and counter proposal, Respondent stated that Applicant was on three month's probation and that his work performance was inadequate - On the day of the hearing, there was no appearance by the Respondent - A copy of the transcript of the proceedings with a covering letter was forwarded to the Respondent on 22/3/2002 by Commission advising them that if any submission was to be made it should be done by COB Friday 8/3/2002 and Commission did not receive a response from the company - Commission accepted the Applicant's evidence and found that he was dismissed unfairly without any prior warning or any reason given and awarded compensation - Ordered Accordingly - Mr AS Tilley -v- ABACUS Computers and Technology - APPL 1623,1888 of 2001 - WOOD C - 27/03/02 - Other Services	663
Conference referred re termination - Applicant Union sought an order for compensation to the maximum available under the Act - Applicant argued that whilst not in any way seeking to derogate from the importance of safety in the mining industry, if the Commission were to accept that its member was working too far out from safe ground, the circumstances of this matter did not warrant his dismissal - Respondent objected to and opposed the claim, arguing that union member had breached the Mines Safety and Inspection Regulations 1985 and the Respondent's policy in relation to the same - Further, it was the other safety breaches that was apparent in his employment record that contributed to its decision to dismiss him - Commission found based on the evidence presented that union member was working in an area of unsupported ground which was prohibited under the Regulation and the Respondent's policy and this was a serious and potentially fatal safety breach - Further, Commission reviewed test cases, the prior incident that occurred and was of the opinion that the union member's dismissal was not harsh, oppressive or unfair, and on all of the evidence in the matter, he had been given a fair go all round - Dismissed - The Australian Workers' Union, West Australian Branch, Industrial Union of Workers -v- Henry Walker Eltin Pty Ltd - CR 203 of 2001 - KENNER C - 08/04/02 - Metal Ore Mining	673

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Conference referred re unfair dismissal - Applicant Union argued its member was harshly, oppressively and unfairly dismissed - Respondent argued the Applicant was dismissed for misconduct and for providing her son lunch from the canteen without paying for items provided - Commission found that the Applicant's actions of providing free lunch to her son constituted misconduct and that the Respondent was entitled to take into account the Applicant's prior conduct in relation to teaching staff - Respondent's application for reimbursement of expenses was dismissed - Dismissed - Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch -v- Cannington Community College P & C Association Inc - CR 158 of 2001 - SMITH C - 22/03/02 - Accommodatn, Cafes&Restaurants.....	677
Conference referred re unfair dismissal - Applicant Union argued the Applicant was harshly, oppressively and unfairly dismissed as the employer had not raised any issues of work performance and that the dismissal was motivated by a claim for workers compensation - Respondent argued the Applicant was dismissed for poor work performance and traffic infringement notices - Commission found the Applicant was not given any warning re his work performance and allegations against him contained in his letter of termination have not been substantiated - Further, the Applicant was unfairly dismissed, that reinstatement was not practicable as the relationship had broken down and awarded compensation - Application for cost was dismissed - Granted - Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch -v- Heaton Cleaning Pty Ltd - CR 219 of 2001 - WOOD C - 15/02/02 - Other Business Services.....	686
² Appeal against Decision of the Commission (81WAIG3112) - Appellant argued that the Commissioner erred in law and fact on a number of grounds in finding that the applicants were not unfairly dismissed - Applications to adjourn proceedings and to substantially amend the grounds of appeal were dismissed - Appellant made an application that Commissioner Kenner disqualify himself from hearing the appeal - Commissioner Kenner declined to disqualify himself and his reasons are provided in the decisions - Full Bench found that the grounds of the appeal were not made out as the grounds did not disclose any error on the part of the Commission at first instance - Dismissed - Mr D Bucu & Others -v- Midland Brick Co Pty Ltd - FBA 59 of 2001 - Full Bench - SHARKEY P/BEECH SC/KENNER C - 02/05/02 - Non -Metallic Min Product Mfg.....	743
² Appeal against Decision of the Commission (81WAIG3135) re unfair dismissal - Appellant appealed the decision on a number of grounds relating to the amount of compensation awarded for loss and redundancy pay - Full Bench found that the Appellant was made redundant but the award precludes any obligation to pay redundancy as the Appellant was a part time employee and the Respondent employed less than 15 employees - Further, the claim for compensation for loss was not established - Dismissed - Mrs DE Harley -v- Jasgold Holdings T/A Ringcraft Jewellers - FBA 60 of 2001 - Full Bench - SHARKEY P/COLEMAN CC/KENNER C - 23/04/02 - Personal & Household Good Rtlg.....	761
Application re unfair dismissal and contractual entitlements - Applicant argued that he has been harshly, oppressively and unfairly dismissed and sought unpaid wages and two weeks' pay in lieu of notice which he claimed has been denied to him under his contract of employment - There was no appearance for or on behalf of the Respondent - Commission found that Applicant's claim for harsh, oppressive or unfair dismissal was filed out of time and heard the claim for contractual entitlements ex-parte - Commission was satisfied based on the evidence presented that Applicant had made out a case that Respondent owed him wages pursuant to his contract of employment and as for the claim for pay in lieu of notice, that Applicant was engaged to work on an ongoing basis, irrespective of the number of hours per week worked by him, therefore, Respondent was ordered to pay the Applicant \$2,828.57 being an award for wages and one week's pay in lieu of notice - Ordered Accordingly - Mr S Dwyer -v- Aurora Information Systems - APPL 1842 of 2001 - SMITH C - 10/04/02 - Other Services.....	844
Application re unfair dismissal - Applicant argued that he has been unfairly dismissed from the job he has held for at least seven years after he refused to sign a workplace agreement and sought an Order for compensation for the wages he had lost arising from that dismissal - Respondent's Agent opposed the claim, arguing that there was no case to answer, that the Commission lacked jurisdiction because the Applicant has not been dismissed and even if notice of dismissal had been given to Applicant, it was abandoned by mutual consent and there has been an agreed variation to the terms of employment, therefore there has been no dismissal but simply a variation of Applicant's contract of employment - Commission found that Applicant has not been dismissed but that his hours of work has been varied, that Applicant had been given notice of dismissal, but that notice was subsequently withdrawn, therefore his claim for unfair dismissal was dismissed - Dismissed - Mr BM Garie -v- Arrowglenn Pty Ltd - APPL 1792 of 2001 - BEECH SC - 15/04/02 - Petroleum Coal Chemical Assoc.....	848
Application re unfair dismissal and contractual entitlements - Applicant argued he was unfairly dismissed, and owed annual leave, pay in lieu of notice, redundancy pay and compensation on the basis that he had been continually employed in the Respondent's business - Respondent argued that Applicant was terminated because the business was closing down as it was likely to become insolvent - Commission found that Applicant was unfairly dismissed and awarded compensation in lieu of notice, one day's pay and accrued annual leave - A separate award for redundancy was not made out nor was the transmission of business argument - Granted in Part - Mr PJ Hasler -v- LP Maintenance Pty Ltd ACN 094 805 366 - APPL 167 of 2001 - SMITH C - 16/04/02 - Construction Trade Services.....	850
Application re unfair dismissal and contractual entitlements - Applicant argued she was dismissed without prior warnings or cause, and denied contractual benefits, and sought reinstatement - Respondent argued that due to low sales, they had intended to make some staff, including the Applicant, redundant but had changed their mind and gave the Applicant a chance to improve her performance, but she instead resigned - Commission found that Applicant had resigned her own employment and was not dismissed, that her action resulted in at least two if not three of the properties being removed from the Respondent company's listing, therefore Applicant could not be entitled to the commission as a denied contractual benefits - Dismissed - Ms AD Patterson -v- Calold (WA) Pty Ltd - APPL 1270 of 2001 - WOOD C - 26/04/02 - Property Services.....	853
Application re unfair dismissal - Applicant alleged that the dismissal was unfair because he was replaced by someone else without notice and that he was not reliable - Respondent argued that Applicant had resigned to go work for another employer - Commission found that Applicant had chosen to take up employment elsewhere and that the claim for unfair dismissal was dismissed for want of jurisdiction - Dismissed for want of jurisdiction - Mr RA Richardson -v- Goldfields Contractors - APPL 1630,2003 of 2001 - WOOD C - 11/04/02 - Other Services.....	856
Application re unfair dismissal - Applicant argued that dismissal was unfair because she was offered a continuing position with Respondent instead of redundancy yet without consultation was made redundant - No appearance from Respondent at hearing however Respondent contacted Commission after hearing to indicate that he had no knowledge and was not notified of the hearing - Commission verified firstly that Respondent had been notified and advised correctly at correct address and that no response had been received - Further, Commission found that Applicant had been dismissed unfairly and that reinstatement was impractical and awarded compensation - Order Issued - Ms R Twyford -v- Travel Central Pty Ltd ABN 22 095 851 675 - APPL 1623,1888 of 2001 - WOOD C - 27/03/02 - Other Services.....	868
Conference referred re unfair dismissal - Applicant Union argued the Applicant was unfairly dismissed and denied the allegation made against him that he had been selling drugs - Respondent argued that the Applicant was dismissed for disciplinary reasons - Commission was not satisfied that any deficiency in the Respondent's process meant that the Applicant's dismissal was unfair, and that the Applicant's evidence did not show his dismissal was unfair - Commission also stated that its decision did not indicate in any way that the Applicant was involved in offering drugs for sale - Dismissed - Construction, Forestry, Mining and Energy Union (Federal Union) -v- Fieldway Enterprises Pty Ltd - CR 277 of 2001 - BEECH SC - 17/04/02 - General Construction.....	873
Appeal against the Decision of Respondent re gross misconduct - Appellant argued that alleged dismissal regarding gross misconduct was unfair and submitted that the PSAB had jurisdiction to hear the appeal - Respondent argued that Appellant's employment was subject to a workplace agreement pursuant to the Workplace Agreement Act 1993 and that the PSAB did not have the jurisdiction to deal with this matter - PSAB found that it did not have the jurisdiction to deal with this matter on the basis that there was no industrial matter - Dismissed for want of jurisdiction - Mr P Henley -v- Geraldton Health Service - PSAB 1 of 1999 - Public Service Appeal Board - SCOTT C - 23/04/02 - Government Administration.....	882

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² Appeal against Decision of Commission (81WAIG3107) re dismissed unfair dismissal and denied contractual entitlements claim - Appellant argued that the Commission did not apply the correct test to determine whether she was an employee and sought to introduce new evidence - Appellant sought compensation and pay in lieu of notice - Respondent argued that the Appellant was not an employee, but had been in a defacto or domestic relationship - Full Bench found that it was not clear that the extra evidence could not have been obtained before the matter was first heard or was likely to have altered the outcome of the decision - Full Bench found that the claim for contractual entitlements under an award should not have been made - Further, Full Bench reviewed authorities and found that the Commission had erred in failing to find on evidence that there was a contract of service between the Appellant and the Respondent company and dismissed the Appeal - Upheld and Remitted - Ms JE Augustyn -v- Vistadale Pty Ltd As Trustee For The Ranger Family Trust Trading As Ranger Contracting - FBA 61 of 2001 - Full Bench - SHARKEY P/COLEMAN CC/BEECH SC - 07/06/02 - Construction Trade Services	939
² Appeal against Decision of Commission (81WAIG3151) re dismissed unfair dismissal claim - Appellant appealed on numerous grounds regarding the Commissioner's finding that there was a valid reason to terminate the Appellant's employment - Full Bench found as the Commissioner had found, that the Appellant had not established that the allegations against him were untrue, and that there was unfairness in his dismissal - Full Bench also found the Commissioner had not misused the advantage that she had in seeing the witnesses, and it was not established that the exercise of discretion was miscarried - Dismissed - Mr AD Tasker -v- Sinogal Pty Ltd trading as Rockingham Auto Electrics & Mechanical Services - FBA 57 of 2001 - Full Bench - SHARKEY P/COLEMAN CC/WOOD C - 09/05/02 - Motor Vehicle Rtlg & Services	957
⁴ Application for stay of operation of Order in Matter No.1624/2001 (82WAIG1025) pending appeal to Full Bench - Appellant sought that the Order be stayed on the grounds that the Commissioner at first instance erred on a number of issues relating to jurisdiction and that the appeal was in respect to an order requiring a substantial amount of money to be paid - President found that the Appellant had not established that it had a strong case on appeal and that there were no exceptional circumstances established requiring the Order to be made - Dismissed - Bamboo Holdings Pty Ltd -v- Mr MG Halligan - PRES 20 of 2002 - President - SHARKEY P - 06/06/02 - Other Services.....	966
Application re unfair dismissal and contractual entitlements - Applicant argued he was harshly, oppressively and unfairly dismissed by reason of redundancy and sought denied benefits entitled under his contract of employment - Commission found that the Applicant was made redundant for genuine reasons as the Respondent's business was going through a difficult time - Commission was not satisfied that entitlements from a draft workplace agreement were entitlements of the Applicant's contract of employment, and was of the view that the Applicant's claim was not made out - Dismissed - Mr M Boronovskis -v- Milne Feeds Pty Ltd - APPL 2329 of 2001 - BEECH SC - 14/05/02 - Services to Agric/Huntg/Trappg	1011
Application re unfair dismissal seeking orders for discovery - Applicant sought three separate orders for discovery of books, papers and other documents in the power, possession or control of the Respondent - Commission declined to issue the orders as it considered there was sufficient information available for this case to be properly argued by both parties, and stated that if additional information was required both parties do not need the liberty of the Commission to ask for orders - Dismissed - Mr GM Cann -v- Blackburne Real Estate (Licencee: Joburne Pty Ltd - APPL 936,937 of 2000 - GREGOR C - 15/05/02 - Property and Business Services.....	1013
Application re unfair dismissal - Applicant argued he was dismissed in a harsh, oppressive and unfair manner and sought compensation as the opportunity for reinstatement was unavailing - Respondent argued that at the time he was in the process of selling the business and was having relationship difficulties with the Applicant, and as there was no position for the Applicant in the new company the Respondent decided to make the Applicant redundant - Commission found the Applicant was unfairly dismissed because the job he was doing continued to be performed by someone until the business was taken over by the purchaser and awarded compensation - Granted - Mr A Cokic -v- Graeme Wheildon Pty Ltd - APPL 1901 of 2001 - GREGOR C - 03/05/02 - Other Services	1014
Application re unfair dismissal - Applicant argued she was summarily dismissed and that her dismissal was unfair, and sought reinstatement - Respondent argued that it was unable to continue to sponsor the Applicant in relation to a visa application due to the Department of Immigration's rules, and had no alternative but to terminate the contract - Commission found that the termination of employment was not effected in accordance with the Applicant's contract of employment and to that extent the dismissal was unfair - Reinstatement was sought but Commission was of the view there was a valid reason for the termination and reinstatement was impracticable, and awarded compensation for insufficient notice of termination - Granted in Part - Mrs IE GAULT -v- Mr Mike Smith Principal of Winthrop Baptist College - APPL 254 of 2002 - HARRISON C - 17/05/02 - Education	1017
Application re unfair dismissal - Applicant claimed harsh, oppressive and unfair dismissal and argued that as a matter of law at the date of his dismissal his employment was governed by the original employment contract in addition to the workplace agreement - Respondent argued the Applicant was party to a workplace agreement and that the workplace agreement takes precedent by virtue of the statute - Commissioner found the Applicant & Respondent were parties to a workplace agreement over which the Commission has no jurisdiction, and dismissed the application for want of jurisdiction - Dismissed - Mr BW Girdwood -v- Surtron Technologies Pty Ltd ACN 009 253 338 - APPL 2344 of 2001 - BEECH SC - 15/05/02 - Services to Mining	1024
Application re unfair dismissal - Applicant argued that he was unfairly dismissed - Respondent argued that Applicant was an independent contractor and the Commission had no jurisdiction to hear the unfair dismissal application - Commission found that the most significant elements of the employment relationship point to a contract of service and that Applicant was an employee of Respondent - Further, Commission found that Applicant had been unfairly dismissed, that reinstatement was impracticable and thus awarded compensation - Granted - Mr MG Halligan -v- Bamboo Holdings Pty Ltd - APPL 1624 of 2001 - HARRISON C - 08/05/02 - Other Services.....	1025
Application re costs - The substantive matter of this application is a claim for unfair dismissal - Applicant opposed the adjournment application as he was ready to proceed and had travelled to Kalgoorlie with his witness - Applicant argued that the Respondent had not attended the conference and had shown little regard for the hearing of the matter, and applied for an order for costs - Commission found the conduct of the Respondent to date warranted an order for costs - Granted - Mr RJ Hinkley -v- Eurest (Australia) Catering & Services - APPL 279 of 2002 - WOOD C - 17/05/02 - Other Services	1031
Application re unfair dismissal seeking interlocutory order - Substantive matter before the Commission was set for a hearing on 13 June 2002 - Respondent has not filed a notice of answer and counter proposal nor attended a previous conference and hearing on the matter - Applicant sought an order requiring the Respondent to provide further and better particulars for an answer - Commission dismissed the application for such an order stating that in such circumstances the Respondent's non compliance with the regulations means that if the Respondent attends the hearing, he shall be heard only in response to matters raised by the Applicant's notice of application - Dismissed - Mrs NJ Hribar -v- Doug Millar - Millar Management Services - APPL 239 of 2002 - BEECH SC - 24/05/02 - Finance	1032
Application re interlocutory order - The substantive claim in this matter was an application for unfair dismissal - Applicant sought leave to amend the Respondent's name on the unfair dismissal application - Commission was satisfied that the Applicant had made a genuine mistake when incorrectly naming the Respondent and had taken immediate steps to rectify the matter, and was granted leave to amend the application - Granted - Mrs J Meier -v- CVCS Pty Ltd t/a Canningvale Convenience Store - APPL 2214 of 2001 - KENNER C - 24/05/02 - Food Retailing	1043
Application re unfair dismissal and contractual entitlements - Applicant argued his dismissal was harsh, oppressive and unfair, and that he was owed outstanding benefits under his contract of employment - Respondent argued the Applicant had been made redundant due to the business's financial difficulties and the Applicant had refused offers to discuss the redundancy - Commission found that the Applicant was not dismissed but made redundant - Dismissed - Mr AJ Nieuwendyk -v- Mr W Heggors & Other - APPL 732 of 2001 - GREGOR C - 17/05/02 - Agriculture	1045

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Application re unfair dismissal and contractual entitlements - Applicant argued he was harshly, oppressively and unfairly dismissed, denied the payment of one year's remuneration in lieu of notice and sought compensation for loss and injury - Respondent argued the Applicant was terminated due to serious breaches of his employment agreement which were not capable of rectification - Commission found that the Applicant was not unfairly dismissed, that Respondent was entitled to take into account the history of the Applicant's employment relating to misconduct, and that the summary dismissal was justified - Respondent's application to delay delivery of reasons for decision was dismissed - Dismissed - Mr RJH Smith -v- Saracen Management Pty Limited ACN 079 747 452 - APPL 138 of 2001 - SMITH C - 24/05/02 - Metal Ore Mining	1050
Application re unfair dismissal - Applicant argued she was unfairly dismissed and was given notice of her dismissal on 23 November 2001 - Respondent stated that on that day, he reduced the Applicant's hours but did not dismiss the Applicant - Respondent admitted dismissing the Applicant half way through her shift on 29 November 2001 as he believed the Applicant was tarnishing the Respondent's reputation - Commission found that the Respondent gave notice to the Applicant that her employment would end the following Friday and that prior to that event occurring, the Respondent dismissed the Applicant with immediate effect - Commission found the dismissal was unfair and that reinstatement was impracticable and awarded compensation - Granted - Mrs LL Wherry -v- K Hu Pty Ltd t/a Manning Fresh - APPL 2243 of 2001 - BEECH SC - 05/05/02 - Food Retailing	1089
Application re unfair dismissal - Applicant argued he was unfairly dismissed and sought reinstatement - Respondent argued that the Applicant's time had lapsed and the application should be closed - Commission noted the delay regarding the application had been inordinate and the explanation for the delay was inadequate, and that the Applicant had failed to attend the proceedings - Commission found that it was no longer in the public interest for the matter to be pursued and that the matter be discontinued - Dismissed - Mr MA Wilson -v- Timberlook Blinds Pty Ltd - APPL 1935 of 2001 - BEECH SC - 08/05/02 - Community Services	1092
Conference referred re unfair dismissal and contractual entitlements - Applicant Union argued both Applicants were unfairly dismissed and sought denied contractual benefits relating to the final week of work - Respondent opposed the claim arguing the Applicants were terminated as permanent employees from other sites had to be placed, displacing the Applicants who were employed on a casual part time basis - Commission found the Applicant's dismissal to be unfair and reinstatement not practicable, awarded compensation but denied the claims for outstanding entitlements - Granted in Part - The Australian Workers' Union, West Australian Branch, Industrial Union of Workers -v- Goldfields Contractors - CR 265 of 2001 - WOOD C - 03/04/02 - Construction Trade Services	1102
Conference referred re unfair dismissal - Applicant Union argued that the employee had been unfairly excluded from the shearing workforce because of a dispute between the Respondent and the employee's spouse - Applicant Union argued this to be harsh and unfair and sought compensation - Respondent opposed the claim arguing the Applicant was never dismissed - Commission found the Applicant's approach to his employment was not adequate to justify a finding of unfair dismissal or dismissal at all - Application by the Respondent for costs was denied - Dismissed - The Australian Workers' Union, West Australian Branch, Industrial Union of Workers -v- Mr Leo Cattalini T/as Metro Shears - CR 287 of 2000 - WOOD C - 14/05/02 - Services to Agric/Huntg/Trappg	1104
Conference referred re unfair dismissal - Applicant Union argued the employee had been unfairly dismissed and sought compensation - Respondent argued the Applicant had been dismissed due to a deterioration in his standard of work and that he had received warnings concerning his work performance - Commission found that there were difficulties with the Applicant's performance which were raised with him over a period of 2 years and that the Respondent had done everything they had to do in executing a termination of an employee - Dismissed - AUTO, FOOD, METAL, ENGIN UNION -v- Parins - CR 280 of 2001 - GREGOR C - 15/05/02 - Motor Vehicle Rtlg & Services	1109
Conference referred re unfair dismissal - There was no appearance by either the Applicant or the Respondent - Commission dismissed the application for want of prosecution - Dismissed - The Construction, Forestry, Mining and Energy Union of Workers -v- C.E.C.K. Pty Ltd - CR 278 of 2001 - GREGOR C - 17/05/02 -	1113
Conference referred re payment of long service leave - Applicant sought the payment of 13 weeks' pay as payment for accrued long service leave - Respondent opposed the claim stating the Commission did not have jurisdiction to hear the claim for long service leave - Commission was of the view that an employee was entitled to long service leave if they complete 15 years of service, even if they are then subsequently terminated for misconduct, but dismissed the application for want of jurisdiction - Dismissed - Mr IR Davies -v- Youngs WA Pty Ltd - APPL 1570 of 2001; CR 23 of 2002 - SMITH C - 17/05/02 -	1114
TRAINING—	
Application re unfair dismissal and contractual entitlements - Applicant argued that her resignation was really a constructive dismissal because she was left with no other alternative other than to resign and that there was no training or assistance provided and she was punctual during her period of employment - Respondent argued that Applicant had tendered her resignation and that she did have an alternative to resignation and her attitude did not change whilst her resignation was put on hold for a period of two weeks - Commission found that Applicant did tender her resignation and that she agreed to put it on hold for a two week period at the conclusion of which Respondent could, if it wished accept it - Dismissed - Ms AL Green -v- Ballajura Properties Pty Ltd - APPL 1454 of 2001 - BEECH C - 07/02/02 - Property and Business Services	335
TRANSFER—	
Application re transfer to a full time position - Applicant Union sought an order that its member be transferred to a full-time permanent position in accordance with Clause 24(3)(c) of the Family and Children's Services Enterprise Bargaining Agreement 2000 - Respondent rejected the Applicant's arguments on a number of grounds and argued that the movement from part-time to full-time employment contained within the EBA relates to a "right of reversion" and that the award applicable to the employee's employment provides no "right of reversion" - Public Service Arbitrator reviewed relevant clauses of the EBA, PSA and GOSAC awards and concluded that in all circumstances, the employee should be entitled to apply and be considered for transfer to a full-time CSO position in which she has indicated an interest provided that she meets the criteria set out within the Human Resource Management Standards and Policies which it bound to apply - Order Issued - Civil Service Association of Western Australia Incorporated -v- Chief Executive Officer Family and Children's Services - P 12 of 2001 - SCOTT C. - 11/01/02 - Government Administration	315
Application re transfer of member - Applicant Union argued that the decision of Respondent to transfer member from the position of Prison Support Officer in Broome Regional Prison to Prisoner Support officer at Hakea Prison in Canning Vale be quashed and that Respondent be made to return member to work at the Broome Regional Prison or transfer her to suitable alternative employment in Broome - Respondent argued that it had the right to transfer the member after considering the situation that had arisen - Public Service Arbitrator found that it had exclusive jurisdiction to enquire into and deal with any industrial matter relating to government officers which was subject to the Industrial Relations Act, however, a Public Service Arbitrator did not have jurisdiction to enquire into or deal with any matter in respect to a procedure referred to in the Public Sector Management Act 1994 - Public Service Arbitrator also found that matters which were allegations of breaches of the relevant public sector standard were not within the jurisdiction of the Arbitrator - Arbitrator concluded that it did not have the jurisdiction to deal with the Union's application to enquire and deal with the decision of Respondent to transfer and thus, with some reluctance the application was dismissed for want of jurisdiction - Dismissed for want of jurisdiction - Civil Service Association of Western Australia Incorporated -v- Director General, Ministry of Justice - P 2 of 2001 - Public Service Arbitrator - BEECH SC - 14/03/02 - Other Services	596

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UNFAIR DISCREPANCY—	
Application re fairness and equity of treatment of a union member - Parties provided Commission with agreed fact - Public Service Arbitrator found that due to the restructure of the Bike Education Area and the incumbent's situation, there was no longer a Level 3 position of Bike Area Manager in which union member could act - PSA was not satisfied based on the information before it, that Respondent had acted in any way unfairly or unreasonably because union member was forewarned of the changes that was to come, that he was given 3 months' notice of the change in his income and provided with an opportunity for assistance in the pursuit of bettering his qualifications and an opportunity for him to act in a Level 2 position was made available - Further, PSA was not satisfied that Respondent had treated the union member in a way that means this Commission ought intervene to provide a remedy to him - Dismissed - Civil Service Association of Western Australia Incorporated -v- Commissioner of Police - P 6 of 2001 - Public Service Arbitrator - SCOTT C - 14/03/02 - Government Administration	589
UNIONS—	
Application re alleged unfairness for the refusal to allow member to undertake private employment - Application for production of documents - Union argued that the production of documents were required for comparison with other members of staff who had been given permission and approval to undertake private employment - Respondent argued that it was prepared to provide some documents but did not embrace providing all the documents - Commission found that the discovery of documents be confined to what was the issues in the Application and Notice of Answer and Counter Proposal and required that a list be made available for the parties - Order Issued - Civil Service Association of Western Australia Incorporated -v- Chief Executive Officer, Department of Agriculture - P 25 of 2001 - Public Service Arbitrator - BEECH SC - 11/03/02 - Agriculture	588
Application for an Order pursuant to Section 80E of the I.R. Act re perceived bias - Applicant Union argued that Respondent had refused member's application for leave without pay and for permission to undertake other work - Applicant Union sought interim orders to enable member to take leave without pay and to be able to undertake work outside his employment - Applicant Union also sought to have matter referred to Chief Commissioner for re-allocation on the basis of a perception of bias - Respondent argued that the authorities submitted did not support any finding of perceived bias in respect to these matters - Public Service Arbitrator found that it had an obligation to proceed with matters which arise before it, it had an obligation to ensure that it was not diverted by applications that are not of substance and that it should not disqualify itself from proceeding without reason - Dismissed - Civil Service Association of Western Australia Incorporated -v- Director General Department of Consumer and Employment Protection - P 57 of 2001 - Public Service Arbitrator - SCOTT C - 19/03/02 - Government Administration	591
Conference referred re discrimination against member on the basis of involvement in the Union - Applicant Union argued that their member was unfairly terminated from the position of Doughmaker on 28 March 2001 and had been penalised for being active in Union claims - Respondent argued that the member was at all material times employed under the classification of Baker under the Award and accordingly opposed the Union's claim that the member was unfairly terminated from a position of Doughmaker - Further, Respondent stated that it did not employ persons as Doughmakers - Commission found that the demotion of the member was unfair and that reinstatement to the position of Doughmaker be remedied and that payment be reinstated to that of Doughmaker - Ordered Accordingly - Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch -v- Tip Top Bakeries - CR 93 of 2001 - WOOD C - 08/03/02 - Food, Beverage and Tobacco Mfg ..	689
⁴ Application for an order pursuant to s.66 of the I.R. Act - Applicant sought an interim order in the form of extending the time for notifying the Registrar of objections to proposed rule changes - Respondent argued that there was no unfairness in the manner in which notice was given or in the amount of notice given - President found that Applicant had failed to establish a case for an interim order and dismissed application - Dismissed - Ms K Luby -v- The Australian Nursing Federation, Industrial Union of Workers Perth - PRES 11 of 2002 - President - SHARKEY P - 07/05/02 - Health Services	790
Application re Order pursuant to Section 80E - Applicant Union argued that the Respondent had refused to allow a Union member to undertake private employment in her own time - The private activity to be undertaken was to operate as a sole trader providing consultancy in ornamental horticulture - Respondent opposed and argued against her requests in particular that the proposed consultancy would be in the same area of activity as Respondent and that there would be the perception of a conflict of interest - Commission found and accepted Respondent's evidence that there would be a potential conflict of interest by having an employee actively promoting her private consultancy in that same industry as the Department - Dismissed - Civil Service Association of Western Australia Incorporated -v- Chief Executive Officer, Department of Agriculture - P 25 of 2001 - Public Service Arbitrator - BEECH SC - 23/04/02 - Government Administration	838
Application to vary the Transport Workers' (General) Award No. 10 of 1961 - Applicant Union sought to amend allowances in the Award pursuant to Principle 2 and Principle 5 of the Statement of Principles 2001 and also to vary various other clauses - Respondents sought to vary Clause 15(1) of the Award and argued that the variation was deleted by mistake when the Award was varied on 19 February 1986 - Commission was not satisfied that Respondents had made out a case that any error was made when Award was varied in 1986 - Commission declared that the amendment sought by the Respondent (if allowed) would be to reduce the Award Safety Net and accordingly referred the Respondent's application to the Chief Commissioner under Principle 10 of the Statement of Principles - Declaration Issued - Transport Workers' Union of Australia, Industrial Union of Workers, Western Australian Branch -v- Gordon & Gotch (Australasian) Ltd & Others - APPL 83 of 2002 - SMITH C/WOOD C/HARRISON C - 30/05/02 - Road Transport	1008
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Application re transfer of member - Applicant Union argued that the decision of Respondent to transfer member from the position of Prison Support Officer in Broome Regional Prison to Prisoner Support officer at Hakea Prison in Canning Vale be quashed and that Respondent be made to return member to work at the Broome Regional Prison or transfer her to suitable alternative employment in Broome - Respondent argued that it had the right to transfer the member after considering the situation that had arisen - Public Service Arbitrator found that it had exclusive jurisdiction to enquire into and deal with any industrial matter relating to government officers which was subject to the Industrial Relations Act, however, a Public Service Arbitrator did not have jurisdiction to enquire into or deal with any matter in respect to a procedure referred to in the Public Sector Management Act 1994 - Public Service Arbitrator also found that matters which were allegations of breaches of the relevant public sector standard were not within the jurisdiction of the Arbitrator - Arbitrator concluded that it did not have the jurisdiction to deal with the Union's application to enquire and deal with the decision of Respondent to transfer and thus, with some reluctance the application was dismissed for want of jurisdiction - Dismissed for want of jurisdiction - Civil Service Association of Western Australia Incorporated -v- Director General, Ministry of Justice - P 2 of 2001 - Public Service Arbitrator - BEECH SC - 14/03/02 - Other Services	596
Conference referred re discrimination against member on the basis of involvement in the Union - Applicant Union argued that their member was unfairly terminated from the position of Doughmaker on 28 March 2001 and had been penalised for being active in Union claims - Respondent argued that the member was at all material times employed under the classification of Baker under the Award and accordingly opposed the Union's claim that the member was unfairly terminated from a position of Doughmaker - Further, Respondent stated that it did not employ persons as Doughmakers - Commission found that the demotion of the member was unfair and that reinstatement to the position of Doughmaker be remedied and that payment be reinstated to that of Doughmaker - Ordered Accordingly - Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch -v- Tip Top Bakeries - CR 93 of 2001 - WOOD C - 08/03/02 - Food, Beverage and Tobacco Mfg ..	689

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WAGES—	
¹ Appeal against decision of Full Bench (81WAIG3026) re jurisdiction of Public Service Arbitrator to deal with a claim of unfair treatment of an officer on temporary deployment due to a restructure - IAC reviewed 80E(7) of the IR Act 1979 and s97(1)(a) of the PSM Act 1994 - IAC found that the case appeared to be about whether there was a legitimate expectation that the officer would continue to be paid at a higher level and would not raise an issue about the compliance with the Public Sector Standards as to temporary deployment - Dismissed - Commissioner of Police -v- Civil Service Association of Western Australia Incorporated - IAC 9 of 2001 - Industrial Appeal Court - 01/02/02 - Community Services.....	207
Application re unfair dismissal and contractual entitlements - Applicant argued that Respondent had dismissed him unfairly and denied him contractual entitlements including wages, superannuation, annual leave and mileage/vehicle allowance - Respondent argued that it had no case to answer because there had been no agreement or contract with Applicant - Commission found that there was not enough detail to establish the any terms of employment and thus application dismissed for want of jurisdiction - Dismissed for want of jurisdiction - Mr DT McMaugh -v- Health Professionals Agency Pty Ltd ACN 096 981 556 - APPL 1863 of 2001 - BEECH SC - 12/03/02 - Health and Community Services	635
Application re contractual entitlements - Applicant argued that Respondent had underpaid him for his work as a Chef at the Natraj Indian Restaurant and that the contract had been breached - No appearance from Respondent - Commission found that the evidence of Applicant was inconsistent, unreliable and inconclusive and that it was difficult to make findings as to what payments were in fact made - Further, Commission found that the case was not made out and therefore application was dismissed - Dismissed - Mr D Sharma -v- Mr AK Billimoria - APPL 1415 of 2001 - WOOD C - 28/02/02 - Restaurant	651
Application re unfair dismissal and contractual entitlements - Applicant argued that he has been harshly, oppressively and unfairly dismissed and sought unpaid wages and two weeks' pay in lieu of notice which he claimed has been denied to him under his contract of employment - There was no appearance for or on behalf of the Respondent - Commission found that Applicant's claim for harsh, oppressive or unfair dismissal was filed out of time and heard the claim for contractual entitlements ex-parte - Commission was satisfied based on the evidence presented that Applicant had made out a case that Respondent owed him wages pursuant to his contract of employment and as for the claim for pay in lieu of notice, that Applicant was engaged to work on an ongoing basis, irrespective of the number of hours per week worked by him, therefore, Respondent was ordered to pay the Applicant \$2,828.57 being an award for wages and one week's pay in lieu of notice - Ordered Accordingly - Mr S Dwyer -v- Aurora Information Systems - APPL 1842 of 2001 - SMITH C - 10/04/02 - Other Services	844
Application re contractual entitlements - Applicant argued that he had not been paid for 147 hours which he had worked for and a locality allowance that he was entitled to - Respondent argued that the company was no longer operating and disputed the hours of work claimed - Commission found that an investigation of the Australian Securities and Investment Commission record's show that Gemstone Exploration Pty Ltd as a registered company had a change of name to Gemstone Mining Ltd and award part of the claim of contractual entitlements - Granted in part - Mr JS Gallop -v- Gemstone Drilling Pty of Gemstone Exploration - APPL 1630,2003 of 2001 - WOOD C - 11/04/02 - Other Mining	846
³ State Review of National Wage Decision - CICS considered whether to give effect to the 2001 Federal Safety Net Review - Wages Case (Living Wage Claim) - CCIWA argued that the amendments to the awards should be the sole province of the parties - AMMA sought variation to State Wage Principles to allow for amendment and substitution of enterprise awards by consent - CICS stated that awards, unlike agreements, were the creation of the Commission and in the case of common rule awards covered more people than the parties - CICS found no good reason not to implement the National Wage Decision by general order amending all State awards for the same reasons as the previous State Wage Case - CICS also found it unnecessary to make any modification to enable awards variations prior to the expiry of at least 12 months since the last adjustment or amend the Test Case Standard Principle - Statement and General Order Issued Accordingly - (Commission's own motion) -v- Trades and Labor Council of Western Australia & Others - APPL 752 of 2001 - Commission in Court Session - COLEMAN CC/FIELDING C/GREGOR C - 01/06/01	885
Application re contractual entitlements - Applicant claimed he was owed benefits to which he was entitled to under his contract of employment - Applicant claimed he was owed wages, leave entitlements, superannuation, petty cash and mobile phone expenses, accommodation and fuel entitlements - Respondents opposed the claim and counter claimed with a list of expenses paid by the Respondents for the Applicant - Commissioner found that all claim except the petty cash were made out by the Applicant - Respondents counter claims that the Applicant owed the Respondent money were not made out - Commissioner ordered the Applicant to return the computer tower in working order to the Respondents before the Respondents were required to pay the outstanding amounts - Granted in part - Mr DJ Jackson -v- Warrayu Aboriginal Corporation - APPL 431,432 of 2000 - SMITH C - 03/05/02 - General Construction	1032
Application re contractual entitlements - Applicant sought denied salary, salary in lieu of notice, annual leave and superannuation entitlements due under his contract of service - Respondent's notice of answer and counter proposal did not comply with the Commission's direction or regulations - Respondent advised the Commission that it would not appear at the hearing as it had no assets - Commission awarded the Applicant salary payments due under the contract of service, but denied the claims for salary in lieu of notice, annual leave and superannuation - Granted in Part - Mr MJ Radford -v- Coinstar Pty Ltd - APPL 1855 of 2001 - KENNER C - 21/05/02 - Finance	1049
WORKERS COMPENSATION—	
Conference referred re unfair dismissal - Applicant Union argued the Applicant was harshly, oppressively and unfairly dismissed as the employer had not raised any issues of work performance and that the dismissal was motivated by a claim for workers compensation - Respondent argued the Applicant was dismissed for poor work performance and traffic infringement notices - Commission found the Applicant was not given any warning re his work performance and allegations against him contained in his letter of termination have not been substantiated - Further, the Applicant was unfairly dismissed, that reinstatement was not practicable as the relationship had broken down and awarded compensation - Application for cost was dismissed - Granted - Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch -v- Heaton Cleaning Pty Ltd - CR 219 of 2001 - WOOD C - 15/02/02 - Other Business Services.....	686
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Complaint re breach of Workplace Agreement - Complainant argued that she had been unfairly dismissed because at the time of termination she was on sick leave - Further, Complainant sought reinstatement, unpaid sick leave and a finding that the termination was in breach of a workplace agreement and in contravention of the Workplace Agreements Act 1993 - Defendant argued Complainant repudiated the contract of employment and that its acceptance of that repudiation terminated the employment - Industrial Magistrate found that Defendant was justified, in all circumstances, in coming to a decision that Complainant had no intention of returning to work in the foreseeable future and had repudiated the contract of employment which led to her lawful termination - Dismissed - NL Medwid -v- Central Metropolitan College of TAFE - CP 129,251 of 2000 - Industrial Magistrate - Tarr IM - 13/12/01 - Education.....	124

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¹ Appeal against Decision of Commission in Court Session (81WAIG1162) re an application to vary an award - Appellant argued the Commission in Court Session erred in law in finding that there was an industrial matter in the case, and was in excess of jurisdiction in its decision to allow the Applicant Union's "freedom of choice" clause to be inserted into the award - Industrial Appeal Court found the Commission erred in the exercise of its discretion to grant the application by giving significant weight to the effects of workplace agreements on terms and conditions of the cleaning industry, and to the diminution of employment under the award. The appeals were allowed, the decision of the Commission in Court Session set aside, and the original application of the union was dismissed - Upheld - Chamber of Commerce & Industry of Western Australia -v- Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch - IAC 3 of 2001 and IAC 4 of 2001 - Industrial Appeal Court - 15/02/02 - Property Services	405
³ Application for registration of a new award - Application by the Union for the making of a new award governing employees employed by Burswood Catering and Entertainment Pty Ltd at the new facilities at the Burswood Island Resort which will replace the existing award and agreement - Respondent opposed the issuance of the award and argued that the company will have a wages and labour structure that allowed it to be competitive - Commission in Court Session found that the company created was in reality a labour hire company, which did not operate as an independent business, that effectively Burswood Ltd was contracting to itself and this has resulted in an inequality of wages - CICS reviewed various authorities and were of the view that an award should issue substantially in the terms claimed by the Union as they reflect the industrial agreement in order to remedy the inequity - New award issued - Granted - Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch -v- Burswood Catering and Entertainment Pty Ltd - A 4 of 2001 - Commission in Court Session - BEECH SC/SMITH C/WOOD C - 12/02/02 - Accommodatn, Cafes&Restaurants	544
Complaint re breach of Workplace Agreement - Complainant argued that Respondent had failed to comply with the terms of the workplace agreement and that the claim did not include a certificate as required by Section 54 of WPA Act and that the requirement for a certificate to be given was no more than an administrative obligation that once given at any time after initiating process has been lodged - Respondent argued that there was no breach and the Court did not have the jurisdiction to hear the complaint, to the extent that the Court may have jurisdiction, it could not grant the relief sought against Respondent - Industrial Magistrate found that the provision of the certificate was more than a mere administrative requirement, its provision was a mandatory initiating requirement which enlivened this Court - Further Magistrate found that this Court had no jurisdiction to hear and determine this matter and struck out the claim for want of jurisdiction - Mr DF Halpin -v- Western Australian Mint - M 397 of 2001 - Industrial Magistrate - Cicchini IM - 13/03/02 - Metal Product Manufacturing.....	611
Complaint re breach of state agreement - Claimant Union contends that their member was entitled to be paid for the full 3 hours during which the union meeting took place, that she was entitled to have her lunch break following the meeting and that Respondent's refusal to let her have her lunch break resulted in her working the full day without a lunch break - Further, that their member was entitled to be paid penalty rates in accordance with clause 16(1)(a) of the agreement - Respondent denied that it had breached the agreement, that it was liable to pay the amount claimed and rejected the claim on a number of grounds - Industrial Magistrate reviewed the relevant clauses of the agreement and found that the union meeting did not fall within the auspices of clause 34 of the agreement, that on the material date the union member took her lunch break prior to returning to work and accordingly she was not entitled to another lunch break - Further, IM found that clause 34(4)(c) did not permit the interpretation sought by the Claimant Union and that the Claimant Union had failed to prove its claim - Decision Issued - Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch -v- Burswood Resort (Management) Ltd - M 284 of 2001 - Industrial Magistrate - Cicchini IM - 07/03/02 - Personal and Other Services	612
Application re unfair dismissal - Applicant claimed harsh, oppressive and unfair dismissal and argued that as a matter of law at the date of his dismissal his employment was governed by the original employment contract in addition to the workplace agreement - Respondent argued the Applicant was party to a workplace agreement and that the workplace agreement takes precedent by virtue of the statute - Commissioner found the Applicant & Respondent were parties to a workplace agreement over which the Commission has no jurisdiction, and dismissed the application for want of jurisdiction - Dismissed - Mr BW Girdwood -v- Surtron Technologies Pty Ltd ACN 009 253 338 - APPL 2344 of 2001 - BEECH SC - 15/05/02 - Services to Mining	1024
Conference referred re unfair dismissal - There was no appearance by either the Applicant or the Respondent - Commission dismissed the application for want of prosecution - Dismissed - The Construction, Forestry, Mining and Energy Union of Workers -v- C.E.C.K. Pty Ltd - CR 278 of 2001 - GREGOR C - 17/05/02 -	1113