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PRESIDENT—Unions—Matters dealt with under Section 66—

2009 WAIRC 01192

PARTIES	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION ANTHONY D MULLEN AND CHRISTOPHER C SHARPE	APPLICANTS
	-and- ANNE GISBORNE, PRESIDENT OF THE STATE SCHOOL TEACHERS UNION OF WESTERN AUSTRALIA (INC.)	RESPONDENT
	-and- THE STATE SCHOOL TEACHERS UNION OF WESTERN AUSTRALIA INC	INTERVENER
CORAM	THE HONOURABLE J H SMITH, ACTING PRESIDENT	
DATE	FRIDAY, 13 NOVEMBER 2009	
FILE NO/S	PRES 9 OF 2009	
CITATION NO.	2009 WAIRC 01192	
Decision	Directions Order issued	
Appearances		
Applicants	In person	
Respondent	Mr D Balfour (as agent)	
Intervener	Mr S Millman (of Counsel), by leave	

Order

This matter having come on for a directions hearing before me on 6 November 2009, and having heard Mr A D Mullen on behalf of the applicants, and Mr D Balfour as agent on behalf of the respondent and Mr S Millman (of Counsel), by leave, on behalf of the intervener, it is ordered that —

1. The applicants file and serve particulars of the grounds for seeking an order that the intervener's claim for legal professional privilege be set aside, by 4:00 pm on Friday, 13 November 2009;
2. The applicants file and serve a list of all documents relevant to the application, by 4:00 pm on Friday, 13 November 2009;

3. The intervener file and serve its response to the applicants' application to set aside the intervener's claim of legal professional privilege, by 4:00 pm on Wednesday, 18 November 2009;
4. The applicants, respondent and intervener file and serve a Statement of Agreed Facts, by 4:00 pm on Friday, 20 November 2009;
5. The applicants, respondent and intervener are to exchange and file witness statements, by 4:00 pm on Friday, 4 December 2009;
6. The applicants, respondent and intervener are to file and serve a list of the authorities they rely upon by 4:00 pm on Monday, 11 January 2010;
7. The application be adjourned to a hearing at 111 St Georges Terrace, Perth in Court 3 on Level 18 on Wednesday, 13 January 2010 and Thursday, 14 January 2010 at 10:30 o'clock in the forenoon to hear the abovementioned matter.

[L.S.]

(Sgd.) J H SMITH,
Acting President.**2009 WAIRC 01286**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

ANTHONY D MULLEN, CHRISTOPHER C SHARPE

APPLICANT**-and-**

ANNE GISBORNE,

PRESIDENT OF THE STATE SCHOOL TEACHERS UNION OF WESTERN AUSTRALIA (INC.)

-and-

THE STATE SCHOOL TEACHERS UNION OF WESTERN AUSTRALIA INC

RESPONDENT**CORAM**

THE HONOURABLE J H SMITH, ACTING PRESIDENT

DATE

FRIDAY, 4 DECEMBER 2009

FILE NO/S

PRES 9 OF 2009

CITATION NO.

2009 WAIRC 01286

Decision

Order varied

Appearances**Applicants**

Mr C Sharpe, in person

Respondent

Mr D Balfour (as agent)

Intervener

Mr S Millman (of Counsel, by leave)

Order

This matter having come on for a directions hearing before me on 2 December 2009, and having heard Mr C Sharpe on behalf of the applicants, and Mr D Balfour on behalf of the respondent, and Mr S Millman on behalf of the intervener, by consent it is ordered that –

1. Order [2009] WAIRC 01192 be varied by:
 - (a) amending the time for compliance for order (4) to 4.00pm on Tuesday, 8 December 2009;
 - (b) amending the time for compliance for order (5) to 4.00pm on Tuesday, 8 December 2009;
 - (c) amending the time for compliance for order (6) to 4.00pm on Friday, 29 January 2010;
2. The hearing on Wednesday 13 January 2010 and Thursday 14 January 2010 be and is hereby adjourned to Wednesday 3 February 2010 and Thursday 4 February 2010.

[L.S.]

(Sgd.) J H SMITH,
Acting President.

2009 WAIRC 01360

ALLEGED BREACH OF UNION RULES

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

ANTHONY D MULLEN, CHRISTOPHER C SHARPE

APPLICANTS**-and-**

ANNE GISBORNE, PRESIDENT OF THE STATE SCHOOL TEACHERS UNION OF WESTERN AUSTRALIA (INC.)

RESPONDENT**-and-**

THE STATE SCHOOL TEACHERS UNION OF WESTERN AUSTRALIA INC

INTERVENER**CORAM**

THE HONOURABLE J H SMITH, ACTING PRESIDENT

HEARD

WEDNESDAY, 2 DECEMBER 2009

DELIVERED

THURSDAY, 24 DECEMBER 2009

FILE NO.

PRES 9 OF 2009

CITATION NO.

2009 WAIRC 01360

CatchWordsDiscovery - Application to set aside advice privilege - Legal professional privilege - Waiver - Substance of legal advice disclosed in report - Whether disclosure of report to applicants inconsistent with the maintenance of confidentiality of the content of advice - *Industrial Relations Act 1979 (WA)* s 62(1), s 62(2), s 66(1)(a).**Result**

Application dismissed

Representation**Applicants**

Mr C Sharpe, in person

Respondent

Mr D Balfour (as agent)

Intervener

Mr S Millman (of Counsel, by leave)

*Reasons for Decision***Background**

- 1 This is an application made pursuant to s 62(1) and s 62(2) of the *Industrial Relations Act 1979 (WA)* (the Act). The applicants make the application under s 66(1)(a) of the Act as persons who are members of an organisation. The organisation is The State School Teachers' Union of W.A. (Incorporated) (SSTUWA), who is the intervener in this matter. The applicants' application arises out of a resolution made on 14 September 2007 by the intervener's Executive Committee. The resolution was to dismiss each of the applicants as a district delegate to the SSTUWA State Council.
- 2 On 17 November 2007, the SSTUWA State Council resolved that the Executive decision be endorsed. At the time the applicants were elected as district delegates to State Council the applicants were both employees of the intervener.
- 3 In the minutes of particulars filed by the applicants on 21 September 2009, the applicants state their particulars of claim as follows:

The Applicant asserts the true interpretation of the Rules of the SSTUWA is that Industrial Staff Employee members of the SSTUWA are eligible to be elected as delegates to the SSTUWA State Council.

The Orders sought by the Applicant under s66 of the Industrial Relations Act 1979 (WA) are as follows:

1. That the true interpretation of the Rules of the SSTUWA being that Industrial Staff Employee members of the SSTUWA are eligible to be elected as delegates to the SSTUWA State Council, SSTUWA State Council is ordered to rescind the decision of 17 November 2007 (SC 2), namely, 'That the Executive decision be endorsed.'
2. That the true interpretation of the Rules of the SSTUWA being that Industrial Staff Employee members of the SSTUWA are eligible to be elected as delegates to the SSTUWA State Council, SSTUWA Executive is ordered to rescind the decision of 14 September 2007 (E 491), namely, 'That Executive
 - (a) notes that Chris Sharpe and Tony Mullen did not resign from their employment with the Union before the commencement of their terms of office as district delegates to State Council.
 - (b) find that under the rules of the Union that failure to so resign renders Chris Sharpe and Tony Mullen ineligible to hold office as district delegates to State Council.

- (c) hereby dismisses Chris Sharpe from office as a district delegate to State Council.
- (d) hereby dismisses Tony Mullen from office as a district delegate to State Council.
- (e) directs the Union President to report this resolution to the next meeting of State Council.'

4 Pursuant to orders made on 13 October 2009, the intervener filed a list of discoverable documents on 4 November 2009. The intervener listed in part 2 of the first schedule of the list, a number of documents which it says are confidential communications passing between the intervener and the intervener's solicitors and advisers in this matter with reference solely to matters which are now in question in this action, for the purpose of obtaining legal advice, or are documents which have come into existence after the matters in present in dispute in this action were in controversy, and have been obtained or prepared by or on behalf of the intervener in this action and solely for the purpose of this action.

5 On 6 November 2009, the applicants made an oral application to set aside legal professional privilege in respect of the documents listed in part 2 of the first schedule of the intervener's list of documents. On 16 November 2009, the applicants filed grounds for seeking an order to set aside the claim of legal professional privilege. Their grounds are:

The Order sought by the Applicants relates specifically to the disclosure of documents originating during the period June 2007 to September 2007, generally from the time of the State Council on 16 & 17 June until the meeting of the SSTUWA Executive Committee on 14 September. These are the documents related to the Applicants' status as Delegates to the SSTUWA State Council in 2007.

The Applicants do not dispute the principle and application of legal (or client) professional privilege in general terms. The Applicants submit, however, the common law doctrine that voluntary disclosure by the client effectively waives legal professional/client privilege and that this applies in this particular situation.

In August 2007 The President of the SSTUWA voluntarily provided the Applicants with a copy of a document headed: 'SSTUWA Executive 3-4 August 2007.' The document is entitled 'Report Item: Union Employees as Delegates to State Council.' It provides a brief background to the issue, gives legal advice on the matter, canvasses three options for prospective action by the SSTUWA Executive and makes a recommendation based on one of the options. The document appears to have been drafted on behalf of the SSTUWA President by Slater and Gordon, the Union's lawyers.

A copy of the document is attached.

The Applicants note, in the second paragraph, that the matter of Union employees, ie ourselves, being State Council delegates has been raised as a result of, 'Questions (having) arisen as to the validity of those staff members serving the union in both capacities at the same time.' This implies that other parties may have raised such questions.

The Applicants also note that the recommended option for Executive action is worded the same as the decision taken by the SSTUWA Executive at its meeting on 14 September 2007.

The Applicants submit that the voluntary disclosure of this document, and the contents contained therein, to us by the SSTUWA President, Acting on behalf of the SSTUWA Executive and the organization generally, effectively waives the legal/client professional privilege the Intervener is relying on to deny us access to the various relevant communications cited in Part 2 of Schedule 1 of the Intervener's list of discoverable documents.

The documents we are seeking to be provided with that are germane to the Union Report of 3-4 August 2007, and which date from June to September 2007, are:

1. Letters, written memoranda, emails and notes of verbal communications between the SSTUWA (including Senior Officers and Executive Officers) and Slater and Gordon lawyers.
2. Letters, written memoranda, emails, statements and notes of verbal communications between SSTUWA Senior Officers and Executive Officers) [sic] and State Council delegates and/or prospective expert and other witnesses.
3. Letters, written memoranda, statements and notes of verbal communications between State Council delegates and/or prospective and other witnesses and Slater and Gordon lawyers.
4. Details of instructions given to Slater and Gordon lawyers by the SSTUWA (including Senior Officers and Executive Officers).

6 When the application to set aside legal professional privilege was heard on 2 December 2009, Mr Sharpe on behalf of the applicants informed the Commission that they now only seek discovery of the legal advice which is referred to the document titled "SSTUWA Executive 3 - 4 August 2007 Report Item: Union Employees as Delegates to State Council" (the Report).

7 In the intervener's reply to the applicants' application to set aside the legal privilege, the intervener admits that the Report was provided to the applicants at the request of the applicants by the then President of the intervener. The intervener also says in its reply that:

- (a) The Report was prepared for the State executive of the SSTUWA and is a summary of the matter for the use of the State executive;
- (b) The documents were provided to the applicants in the interests of natural justice as their position was affected;
- (c) The Report is specifically not a document that provides legal advice and on these facts cannot be said to constitute a document that clearly and unequivocally waives privilege; and
- (d) Merely by providing a copy of the Report to the applicants the intervener has not waived legal professional privilege.

8 The material part of the Report states:

Background

1. Members of Executive will recall that, at the most recent meeting of State Council, two members of the union who are also members of the union's industrial staff, participated as district delegates to Council.
2. Questions have arisen as to the validity of those staff members serving the union in both capacities at the same time. Legal advice has been sought.

Advice

3. The advice that has been received concludes that the holding of an elected office in the union is incompatible with continuing service as an employee of the union.
4. This conclusion arises from rule 25(f), which states

Any employee of the SSTUWA who is elected to an office of the Union shall resign their employment with the Union by no later than the day that that person commences his or her term of office.

5. We are advised that the effect of this rule is that it is permissible for a member of staff to nominate for election, and it is valid for a member of staff to be declared elected while remaining an employee. However, if the employee has not resigned such employment before commencing his or her term of office, then as soon as that term of office commences, the person concerned ceases to be eligible to hold that office.

The rule does not affect the employment relationship. In other words, the election to office as a district delegate to Council does not, we are advised, operate to 'automatically' (or otherwise) terminate the employment relationship.

6. State Council has a power to dismiss from office any person elected to an office within the Union who has ceased according to the rules of the Union to be eligible to hold the office. That power comes from rule 23(b)(iv). We are advised that this power affords the appropriate remedy under the rules to deal with the present circumstance.
7. Executive has a general authority under the rules to exercise State Council's powers (with some exceptions, none of which are presently relevant). Executive's power in that regard comes from rules 24(a) and 24(d).
8. It follows that Executive has a power to dismiss from office any person elected to an office within the Union who has ceased according to the rules of the Union to be eligible to hold the office.

Correspondence

9. I have written to the two members concerned. Copies of those letters are attached to this report. In summary, I have drawn their attention to the issues discussed above, and informed them that I intended to raise the matter at Executive. The members were invited to provide a written submission that could be considered by Executive at the same time as it received this report.

9 The intervener made the following submissions in writing about the legal principles that should be applied when considering this application:

The rationale for legal professional privilege is that promotes the public interest because it assists and enhances the administration of justice by facilitating the representation of clients by legal advisers (see *Grant v Downs* (1976) 135 CLR 674).

As the Applicants are unrepresented, the intervener makes no submission on the requirement that admissible evidence is required to displace a claim of privilege. In any event the facts on which the allegation of waiver (provision of the Document to the Applicants by the then president of the Intervener [sic]) are not disputed.

The law will impute a waiver of legal professional privilege for documents from the acts or omissions of the person entitled to the privilege ('the client') (*Goldberg v Ng* (1995) 185 CLR 83 at 96).

What brings about the waiver is the inconsistency between the conduct of the client and the maintenance of confidentiality (*Mann v Carnell* (1999) CLR 1 at 13).

If there is a waiver as to part of a protected communication the waiver may extend to the rest of the communication, but not the source material from which the privileged documents are created (*Attorney-General (NT) v Maurice* (1986) 161 CLR 475 at 491).

A mere reference in a document to legal advice does not ordinarily constitute a waiver of the legal professional privilege.

Privilege is not waived merely by discovery of a document that refers to other documents (*Prus-Grzbowski v Everingham* (1987) 44 NTR 7).

- 10 The interveners say that when these principles are applied to the circumstances that arise in this matter, the scope of the request made by the applicants is inconsistent with the principles in *Attorney-General (NT) v Maurice* (1986) 161 CLR 475. They also say in relation to the applicants' claim that the production of these materials will cure procedural unfairness that any procedural irregularity on behalf of the intervener, (which is denied), is more than adequately cured by the commencement of these proceedings, and that there is nothing in its conduct which would constitute a waiver of legal professional privilege. Consequently it asserts privilege over the materials sought.

Legal principles - Legal professional privilege

- 11 The onus of establishing that a communication occurred or a document was brought into existence for the dominant purpose of giving or obtaining legal advice is on the party claiming privilege: *AWB Ltd v Cole (No 5)* [2006] FCA 1234; (2006) 155 FCR 30 [44(1)]. However, there is an evidentiary onus on the applicants to displace the claim of privilege. The intervener produced to the Commission for inspection a copy of the legal advice referred to in the Report. The legal advice is set out in a letter dated 20 July 2007 addressed to the then President of the intervener from solicitors Slater and Gordon. There is no dispute that the advice set out in the letter dated 20 July 2007 is protected by advice privilege. The only issue in dispute is whether by referring to the advice in the Report the intervener has waived the advice privilege in respect of that advice.
- 12 The applicants argue that the intervener has expressly waived legal professional privilege as it has revealed the content of part of the legal advice in the Report. Express waiver occurs when a person entitled to claim legal privilege provides a copy of a privileged document or discloses the privileged communication without claiming privilege, such as counsel reading into open court part of a memorandum of legal advice: *Great Atlantic Insurance Co v Home Insurance Co* [1981] 1 WLR 529; [1981] 2 All ER 485 (CA). That has not occurred in this matter as the Report is not a document that itself is legal advice. Waiver may, however, occur by implication where there is a limited disclosure of the existence and effect of legal advice.
- 13 In *Attorney-General for the Northern Territory v Maurice* (1986) 161 CLR 475 Gibbs CJ explained how a Court or Tribunal should determine whether legal privilege has been impliedly waived (481):

The principle applicable in these circumstances seems to me to be well stated in *Wigmore*, op cit, par 2327:

'In deciding it, regard must be had to the double elements that are predicated in every waiver, ie, not only the element of implied intention, but also the element of fairness and consistency. A privileged person would seldom be found to waive, if his intention not to abandon could alone control the situation. There is always also the objective consideration that when his conduct touches a certain point of disclosure, fairness requires that his privilege shall cease whether he intended that result or not. He cannot be allowed, after disclosing as much as he pleases, to withhold the remainder. He may elect to withhold or to disclose, but after a certain point his election must remain final.'

The decisions in which this question has been considered seem to me to be particular applications of the rule that in a case where there is no intentional waiver the question whether a waiver should be implied depends on whether it would be unfair or misleading to allow a party to refer to or use material and yet assert that that material, or material associated with it, is privileged from production. Thus it has been held that the privilege in respect of a document is not waived by the mere reference to that document in pleadings.

- 14 The issue is not, however, to be determined by any principle of fairness at large. In *Mann v Carnell* (1999) 201 CLR 1; [1999] HCA 66 Gleeson CJ, Gaudron, Gummow and Callinan JJ observed [29]:

Disputes as to implied waiver usually arise from the need to decide whether particular conduct is inconsistent with the maintenance of the confidentiality which the privilege is intended to protect. When an affirmative answer is given to such a question, it is sometimes said that waiver is 'imputed by operation of law' (for example, *Goldberg v Ng* (1995) 185 CLR 83 at 95; 132 ALR 57). This means that the law recognises the inconsistency and determines its consequences, even though such consequences may not reflect the subjective intention of the party who has lost the privilege. Thus, in *Benecke v National Australia Bank* (1993) 35 NSWLR 110, the client was held to have waived privilege by giving evidence, in legal proceedings, concerning her instructions to a barrister in related proceedings, even though she apparently believed she could prevent the barrister from giving the barrister's version of those instructions. She did not subjectively intend to abandon the privilege. She may not even have turned her mind to the question. However, her intentional act was inconsistent with the maintenance of the confidentiality of the communication. What brings about the waiver is the inconsistency, which the courts, where necessary informed by considerations of fairness, perceive, between the conduct of the client and maintenance of the confidentiality; not some overriding principle of fairness operating at large.

- 15 The intervener argues that the Report contains only mere reference to legal advice. In *Temwood Holdings Pty Ltd v Western Australian Planning Commission and Anor* [2003] WASCA 112, Wheeler J distinguished characterising a disclosure of a portion of the content of legal advice and mere reference to it [21]:

A disclosure which was difficult to categorise was analysed with some care by Rolfe J in *Ampolex Ltd v Perpetual Trustee Co (Canberra) Ltd* (1966) 40 NSWLR 12. His Honour was concerned with the provision of the *Evidence Act 1995* (NSW), which provided that legal professional privilege (known under that Act as 'client legal privilege') did not extend to prevent the adducing of evidence 'if a ... party has ... disclosed to another person the substance of the evidence.' There were two statements in particular which his Honour had to consider. One was a view expressed by a corporation in a Part B statement as to the likely outcome of certain litigation. The corporation asserted that on the basis of legal advice received, it would be successful. It went on to set out the corporation's views as to the likely outcome of the litigation, prefacing those views with the observations:

'The views set out below have regard to the pleadings, the evidence available ... and the advice of the barristers and the solicitors engaged ...'

His Honour formed the view that what was set out in those passages was to be characterised properly as a statement of the corporation's view of the likely outcome of the litigation, rather than a statement of either the substance or effect of the legal advice received. Although it was true that the views were formed relying, or at least relying in part, on legal advice, his Honour considered that at no point did the statement rise above a statement of the corporation's own view and, because it did not purport to state the advice, its substance or effect, it did not amount to a disclosure of the advice. His Honour contrasted those passages with a statement which appeared elsewhere in the Part B statement which read:

'There is a dispute about the conversion ratio. Ampolex maintains that the correct ratio is 1 : 1 and has legal advice supporting this position.'

His Honour held that those words amounted to a disclosure that the substance of the legal advice was that the correct ratio was 1 : 1 and therefore meant that there had been a waiver of privilege.

- 16 In *Ampolex Ltd* a statement that: '[o]n the basis of legal advice received, Ampolex believes it will be successful in the Convertible Note litigation', did not purport to state the advice or its substance or effects (18). When this statement is compared to the statement about the conversion ratio set out in the reasons by Wheeler J in *Temwood Holdings Pty Ltd*, it is apparent that the statement about the conversion ratio did disclose the substance or effect of the legal advice as it stated a conclusion given in legal advice. The former statement by Ampolex however did not disclose any advice or the effect of advice but was simply a statement by Ampolex about its own assessment of prospects of the litigation in question.
- 17 In this matter it is apparent from reading paragraphs 2. to 8. of the Report that part of the legal advice to the intervener has not only been referred to but been disclosed. For example, paragraph 3. commences with the words: '[t]he advice that has been received concludes that'. These words are followed by a stated conclusion. Also in paragraphs 5. and 6. it is clear that the substance of at least part of the legal advice has been disclosed by the use of the words in each case: '[w]e are advised that the', and a statement of consequence that follows, which are purported statements of legal effect.
- 18 Despite the fact that the substance of at least part of the legal advice has been disclosed by the intervener to the applicants it does not necessarily follow that legal privilege has been waived. Disclosure of a conclusion expressed in legal advice may or may not result in waiver of privilege. It depends upon the consideration of the whole of the context in which that occurs. In *Secretary to the Department of Justice v Osland (Osland CA)* [2007] VSCA 96, Maxwell P of the Victorian Court of Appeal explained at [63] - [67]:
- 63 Amongst the circumstances relevant to determining inconsistency, it is clear from *Carnell and Bennett* that the purpose for which the privilege-holder made the disclosure is highly relevant. The question here was whether the use made by the Minister of the disclosed portion of the privileged communication – more particularly, the purpose for which the conclusion was disclosed – was inconsistent with the maintenance of confidentiality in respect of the content of the advice.
- 64 First it is necessary to restate the purpose of the confidentiality which the privilege preserves. In *Grant v Downs*, Stephen, Mason and Murphy JJ said:
- 'The rationale of this head of privilege, according to traditional doctrine, is that it promotes the public interest because it assists and enhances the administration of justice by facilitating the representation of clients by legal advisers, the law being a complex and complicated discipline. This it does by keeping secret their communications, thereby inducing the client to retain the solicitor and seek his advice, and encouraging the client to make a full and frank disclosure of the relevant circumstances to the solicitor.' [1976] HCA 63; (1976) 135 CLR 674 at 685.
- 65 Later, in *Baker v Campbell*, Mason J noted that the underlying policy of the privilege covering legal advice –
- 'involved the promotion of freedom of consultation generally between lawyer and client.' [1983] HCA 39; (1983) 153 CLR 52 at 74.
- In the same case, Deane J said that the principle underlying the privilege was that –
- 'a person should be entitled to seek and obtain legal advice without the apprehension of being prejudiced by the subsequent disclosure of confidential communications.'
- 66 The evident purpose of the Attorney-General's disclosure was to inform the public that the recommendation he had made to the Governor – that the petition for mercy be denied – was based on independent legal advice, advice which recommended that each ground advanced in the petition should be rejected. The Attorney-General evidently wished it to be known that, in considering whether or not the prerogative of mercy should be exercised, he had taken independent advice and was making a recommendation which accorded with that advice. In the language of *Carnell*, this was a disclosure 'for the purpose of explaining or justifying' the Attorney-General's actions. The purpose was similar to that of the disclosure in *Carnell* itself, where the Chief Minister wished to satisfy the relevant member of Parliament that the ACT Government 'had acted responsibly and in accordance with legal advice'.
- 67 In my opinion, there was no inconsistency between disclosing the fact of, and the conclusions of, the independent advice for that purpose, and wishing to maintain the confidentiality of the advice itself. This was not a case of a party to litigation 'deploying' a partial disclosure for forensic advantage, while seeking unfairly to deny the other party an opportunity to see the full text of the privileged communication. Nor was it 'the laying open of the confidential communication to necessary scrutiny'.
- (approved on appeal in *Osland v Secretary to the Department of Justice (Osland HCA)* (2008) 234 CLR 275; 249 ALR 1; [2008] HCA 37)
- 19 To constitute waiver, the conduct of the party entitled to the privilege must be judged inconsistent with the maintenance of the confidentiality which the privilege is intended to protect: *Osland HCA* [45]. In considering this issue it is relevant to consider the purpose of disclosing the advice and the element of fairness.
- 20 Whether a limited disclosure of the existence, and the effect, of legal advice is inconsistent with maintaining confidentiality will depend upon the circumstances of the case. Questions of waiver are matters of fact and degree: *Osland HCA* [49]; *Nine Films and Television Pty Ltd v Ninnox Television Ltd* (2005) 65 IPR 442 [26].

21 The Report discloses part of the substance of advice that is confidential. Whilst there is nothing before me to suggest that the Report was disclosed for the purpose of obtaining an unfair advantage, could it be said that it is unfair that only part of the legal advice has been disclosed? As Mason and Brennan JJ in *Maurice* explained, fairness usually requires that where one part of a communication has been waived, waiver should result in the disclosure of the whole of the communication so that the opposing litigant is not misled by an inaccurate perception (487 - 488) (applied by in *Goldberg v NG* (1995) 185 CLR 83, 96 Deane, Dawson, Gaudron JJ):

An implied waiver occurs when, by reason of some conduct on the privilege holder's part, it becomes unfair to maintain the privilege. The holder of the privilege should not be able to abuse it by using it to create an inaccurate perception of the protected communication. Professor Wigmore explains: 'When his conduct touches a certain point of disclosure, fairness requires that his privilege shall cease whether he intended that result or not. He cannot be allowed, after disclosing as much as he pleases, to withhold the remainder' (Wigmore: *Evidence in Trials at Common Law* (1961) vol 8, par 2327, p 636). In order to ensure that the opposing litigant is not misled by an inaccurate perception of the disclosed communication, fairness will usually require that waiver as to one part of a protected communication should result in waiver as to the rest of the communication on that subject matter: see *Great Atlantic Insurance Co.*

22 A copy of the Report was provided to the applicants sometime in August 2007. The Report was provided to the applicants prior to the meeting of the SSTUWA Executive on 14 September 2007 which was also prior to the meeting of the State Council of the SSTUWA on 17 November 2007 at which the decision of the SSTUWA Executive to dismiss the applicants was endorsed. During oral submissions Mr Sharpe, however, informed the Commission (without objection) that copies of letters from the then President of the intervener to the applicants which were referred to in the Report were not provided to the applicants until after the meeting of the Executive.

23 The intervener says that the Report was provided to the applicants to provide them with procedural fairness as their position was affected. Other than obvious fact that the applicants are unable to judge (in the absence of an examination of the legal advice) whether the statements about the advice in the Report are accurate or complete, no issue of unfairness to the applicants appears to arise in this matter. On the other hand, the fact that part of the legal advice was disclosed with the purpose of providing procedural fairness to the applicants can be said to raise fairness in favour of the applicants. In providing a copy of the Report has the intervener acted inconsistently with the maintenance of the confidentiality which the privilege protects? In my opinion the answer is no, as the purpose for which the portion of legal advice was disclosed was not inconsistent with the maintenance of confidentiality. In *Osland* the Attorney-General disclosed in a press statement that he had made a recommendation to the Governor that a petition of mercy be denied and his recommendation was based on independent legal advice. Maxwell P in *Osland CA* considered this to be a disclosure 'for the purpose of explaining or justifying' the Attorney-General's actions. He found there was no inconsistency between disclosing the fact of, and the conclusions of, the independent advice for that purpose, with wishing to maintain the confidentiality of the advice itself. On appeal to the High Court, Gleeson CJ, Gummow, Heydon and Kiefel JJ in *Osland HCA* stated in conclusion that the reasoning of Maxwell P was correct [50]. Kirby J in his separate judgment also agreed there had been no waiver and found the purpose of issuing a press statement was compatible with non-disclosure as the purpose of issuing the press statement was to show the State had taken a proper course in obtaining and considering advice [97]-[98].

24 The purpose of providing a copy of the Report was to provide to the applicants the basis on which the Executive acted to make the resolutions to dismiss the applicants in each case from the office as a district delegate to State Council. As it is not in dispute that this was done in the interests of natural justice as the position of the applicants were affected, the provision of the copy of the Report to the applicants can not be said to be inconsistent with the confidentiality of the privilege as it can not be said that the Report was provided to advance a forensic purpose or any other purpose to disadvantage the applicants.

25 For these reasons the applicants' application to set aside legal privilege will be dismissed.

2009 WAIRC 01359

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

ANTHONY D MULLEN, CHRISTOPHER C SHARPE

APPLICANTS

-and-

ANNE GISBORNE, PRESIDENT OF THE STATE SCHOOL TEACHERS UNION OF WESTERN AUSTRALIA (INC.)

RESPONDENT

-and-

THE STATE SCHOOL TEACHERS UNION OF WESTERN AUSTRALIA INC

INTERVENER

CORAM

THE HONOURABLE J H SMITH, ACTING PRESIDENT

DATE

THURSDAY, 24 DECEMBER 2009

FILE NO/S

PRES 9 OF 2009

CITATION NO.

2009 WAIRC 01359

Decision	Application dismissed
Appearances	
Applicants	Mr C Sharpe, in person
Respondent	Mr D Balfour (as agent)
Intervener	Mr S Millman (of Counsel)

Order

HAVING heard Mr C Sharpe on behalf of the applicants, Mr D Balfour as agent on behalf of the respondent and Mr S Millman of counsel on behalf of the intervener, pursuant to the powers conferred on the President under the *Industrial Relations Act 1979*, the President hereby orders that —

The application to set aside legal professional privilege is hereby dismissed.

[L.S.]

(Sgd.) J H SMITH,
Acting President.

2009 WAIRC 01313

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PRESIDENT

CITATION	:	2009 WAIRC 01313
CORAM	:	THE HONOURABLE J H SMITH, ACTING PRESIDENT
HEARD	:	THURSDAY, 3 DECEMBER 2009
DELIVERED	:	TUESDAY, 15 DECEMBER 2009
FILE NO.	:	PRES 13 OF 2009
BETWEEN	:	WILLIAM CLEVERLEY BEATTS-RATTRAY
		Applicant
		AND
		AUSTRALIAN MUNICIPAL, ADMINISTRATIVE, CLERICAL AND SERVICES UNION OF EMPLOYEES, W.A. CLERICAL AND ADMINISTRATIVE BRANCH
		Respondent

CatchWords: Industrial Law (WA) – s 66 of the *Industrial Relations Act 1979* (WA) - application for election of organisation's offices – whether there are corresponding counterpart Federal body offices – s 71 certificate no longer in effect – respondent offices vacant - no Sections from which Branch Councillors can be elected as required by respondent's rules.

Legislation: *Industrial Relations Act 1979* (WA) s 66, s 69, s 71, s 71(1), s 71(2), s 71(3), s 71(4), s 71(5).

Result: Application granted

Representation:

Applicant	:	Mr D Schapper (of counsel)
Respondent	:	Ms P Byrne

Reasons for Decision

SMITH AP:

Background

- This is an application made pursuant to s 66 of the *Industrial Relations Act 1979* (WA) (the Act). The application is brought by the applicant who is a member of the respondent for the purpose of bringing about elections for offices within the respondent. The reason the application is made is because the applicant formed a view that a certificate issued to the respondent on 24 June 1985 under s 71 of the Act was no longer operative and as a consequence there were no validly elected officials of the respondent holding office. The application seeks an order that the respondent call elections to be held for the offices of President, Vice-President, Treasurer and Secretary of the respondent. The application also seeks an order that the number of Branch Councillors be set at eight and that elections be called for each of those eight positions.

- 2 The respondent filed a Notice of Answer and Counter-Proposal in which it briefly stated it consents to the claim made by the applicant. Ms Byrne who appeared on behalf of the respondent informed the Commission that the respondent consented to orders being made to cause elections to be held.
- 3 In an statutory declaration made on 13 November 2009 titled 'Affidavit of Wayne Michael Wood', Mr Wood states as follows:
 1. I am the Secretary of the Western Australian Branch of the Australian Municipal, Administrative, Clerical and Services Union (the ASU).
 2. I swear this my affidavit on the basis of my personal knowledge and on the basis of information acquired by me in the course of my duties as Secretary. I have been a member of the respondent since 13 March 2000.
 3. The ASU is an organisation registered under the Fair Work Act and its predecessor Acts.
 4. I have also believed that I am the Secretary of the respondent.
 5. The applicant has been a member of the respondent since at least 1 July 1994.
 6. In 1985 the respondent, then named the Federated Clerks Union of Australia Industrial Union of Workers W.A. Branch, obtained a declaration under s71 of the Industrial Relations Act.
 7. Since that time
 - 7.1 there have been no elections separately conducted within the respondent; and
 - 7.2 the ASU and the respondent have for all practical purposes been operated as if they were one and the same organisation.
 8. For many years the application form to join the ASU and the respondent has been in the form attached and marked 1.
 9. In 2003 the rules of the ASU were substantially changed including the rules of the WA Branch. At that time, changes to the offices within the WA Branch of the ASU were made such that there was no longer an office within the ASU for each office within the respondent.
 10. One of the changes made to the rules of the ASU at that time was the abolition of sections within the Branch. However, the rules of the respondent were not similarly altered to abolish sections. In fact, sections ceased to exist with the ASU rules changes in 2003.
 11. In addition, the changes within the ASU have included a number of amalgamations by which the eligibility rule of the ASU is now greatly different from and wider than that of the respondent.
 12. I have recently received legal advice to the effect that elections should be held for the offices within the respondent as, by reason of the above changes, the declaration under section 71 of the Act may no longer be effective to remove the requirement for elections.
 13. The respondent also seeks directions as to the offices for which elections are to be held in view of the fact that sections no longer exists.
- 4 On 30 November 2009, the parties filed a joint submission. The material paragraphs of the joint submission are as follows:
 2. The evidence shows that elections are required for the offices within the respondent.
 3. This is because the section 71 certificate issued many years ago can no longer have had effect, at least since 2003.
 4. The respondent believed that the section 71 certificate had removed the necessity for elections notwithstanding the changes that occurred in the Counterpart Federal Body.
 5. The respondent's belief was mistaken.
 6. The offices for which elections are required are those set out in clauses 6a and 8 of the respondent's rules being:

President, Vice-President, Secretary, Treasurer, 3 Executive Councillors and a number of Branch Councillors elected by whole of the membership.
 7. It is not possible to have elections for the Councillors elected by sections in accordance with rule 6b because the evidence shows that there are no sections.
 8. A quorum of the Council is 15: rule 6e.
 9. Accordingly it is proposed that the number of branch councillors be set at 8 so that a full complement of the elected officers will constitute a quorate Council.
 10. It is not necessary to make provision for interim office holders because there is nothing that the respondent requires to be done that immediately requires officers.
 11. As it is anticipated that elections may be held promptly, the respondent will soon have officers who can alter the respondent's rules to modernise them and have them reflect the respondent's actual situation.
- 5 After hearing evidence in this matter, I formed the view that the application should be granted and that an order should be made pursuant to s 66 of the Act. The reasons why I made the order are set out in the following reasons.

Section 71 and the Rules of the Respondent

6 Section 71(1) to (5) of the Act provides:

(1) In this section —

Branch means the Western Australian Branch of an organisation of employees registered under the Commonwealth Act;

counterpart Federal body, in relation to a State organisation, means a Branch the rules of which —

- (a) relating to the qualifications of persons for membership; and
- (b) prescribing the offices which shall exist within the Branch,

are, or, in accordance with this section, are deemed to be, the same as the rules of the State organisation relating to the corresponding subject matter; and

State organisation means an organisation that is registered under Division 4 of Part II.

(2) The rules of the State organisation and its counterpart Federal body relating to the qualifications of persons for membership are deemed to be the same if, in the opinion of the Full Bench, they are substantially the same.

(3) The Full Bench may form the opinion that the rules referred to in subsection (2) are substantially the same notwithstanding that a person who is —

- (a) eligible to be a member of the State organisation is, by reason of his being a member of a particular class of persons, ineligible to be a member of that State organisation's counterpart Federal body; or
- (b) eligible to be a member of the counterpart Federal body is, for the reason referred to in paragraph (a), ineligible to be a member of the State organisation.

(4) The rules of a counterpart Federal body prescribing the offices which shall exist in the Branch are deemed to be the same as the rules of the State organisation prescribing the offices which shall exist in the State organisation if, for every office in the State organisation there is a corresponding office in the Branch.

(5) Where, after the coming into operation of this section —

- (a) the rules of a State organisation are altered pursuant to section 62 to provide that each office in the State organisation may, from such time as the committee of management of the State organisation may determine, be held by the person who, in accordance with the rules of the State organisation's counterpart Federal body, holds the corresponding office in that body; and
- (b) the committee of management of the State organisation decides and, in the prescribed manner notifies the Registrar accordingly, that from a date specified in the notification all offices in the State organisation will be filled in accordance with the rule referred to in paragraph (a),

the Registrar shall issue the State organisation with a certificate which declares —

- (c) that the provisions of this Act relating to elections for office within a State organisation do not, from the date referred to in paragraph (b), apply in relation to offices in that State organisation; and
- (d) that, from that date, the persons holding office in the State organisation in accordance with the rule referred to in paragraph (a) shall, for all purposes, be the officers of the State organisation,

and the certificate has effect according to its tenor.

7 In 1985, the name of the respondent was the Federated Clerks' Union of Australia Industrial Union of Workers, WA Branch. At that time, its counterpart Federal body was the Western Australian Branch of the Federated Clerks' Union of Australia Industrial Union of Workers. Pursuant to s 71 of the Act, on 6 June 1985, the Full Bench issued a Declaration that the rules of the Western Australian Branch of the Federated Clerks' Union of Australia Industrial Union of Workers relating to the qualifications of persons for membership of the Branch and prescribing the offices which shall exist within the Branch were deemed, for the purposes of s 71 of the Act, to be the same as the rules of the respondent relating to the corresponding subject matter.

8 On 24 June 1985, the Acting Registrar of the Commission issued a Certificate of Registrar pursuant to s 71(5) of the Act. This certificate states as follows:

I, the undersigned, Acting Registrar of The Western Australian Industrial Relations Commission, acting pursuant to section 71 of the Industrial Relations Act, 1979, hereby declare —

(1) that the provisions of the Industrial Relations Act, 1979 relating to elections for office within a union do not, from June 28, 1985 apply in relation to offices in the 'Federated Clerks' Union of Australia Industrial Union of Workers, WA Branch';

and

(2) that, from June 28, 1985 the persons holding office in the 'Federated Clerks' Union of Australia Industrial Union of Workers, WA Branch', and organisation registered under the provisions of the 'Conciliation and Arbitration Act, 1904', shall, for all purposes, be the officers of the 'Federated Clerks' Union of Australia Industrial Union of Workers, WA Branch'.

9 As Mr Schapper points out, the basis on which the s 71 certificate was made was twofold. Firstly, it was made following the Declaration made by the Full Bench that it had formed the opinion that the qualifications of persons for membership of the respondent and the counterpart Federal body were deemed to be the same. Section 71 of the Act requires that the qualifications of persons for membership requirement are deemed to be the same if they are substantially the same. What is meant by the words 'substantially the same' in s 71(2) is qualified by s 71(3) of the Act which makes it clear that the rules in each case need not be identical as some classes of persons eligible to be a member of the State organisation can be ineligible to be a member of the counterpart Federal body or alternatively a person who is eligible to be member of the counterpart Federal body can be a particular class of persons ineligible to be a member of the State organisation. Consequently it is contemplated that there may be some classes of membership which are different.

10 The second matter that needs to be satisfied for a s 71 certificate to be issued and for the certificate to have effect is the rules of the counterpart Federal body must prescribe a corresponding office in the Branch for every office in the State organisation.

11 Rule 5 of the rules of the respondent currently provides:

The Union shall consist of persons, male or female, engaged in any clerical capacity, including telephonists, or in the occupation of shorthand writing or typing or on calculating, billing or other machines designed to perform, or assist in performing any clerical work whatsoever within the State of Western Australia, but excepting that portion of the State within the 20th and 26th parallels of latitude and the 125th and 129th meridians of longitude.

Provided that no person shall be a member who is not a [sic] employee within the meaning of the 'Industrial Relations Act, 1979'.

12 It is clear from rule 5 that the respondent consists of persons engaged in clerical work within the State of Western Australia which would include both public and private sectors of industry.

13 The current rules of the counterpart Federal body whose name is now the Australian Municipal, Administrative, Clerical and Services Union contain very extensive categories of persons eligible to be members of the Federal branch of the counterpart body. The eligibility rule is contained in rule 5 of the counterpart Federal body's rules. In the copy of the extract of the rules provided to the Commission the eligibility rule extends to 26 pages. The eligibility rule covers a number of specific industries such as local government, maintaining and servicing business equipment, shipping, social and welfare work, the health and insurance industry, building societies and credit unions. It also covers those employed by the Australian Federal Police, the customs service and covers all those persons engaged within those industries in the clerical industry. It also covers professional engineers engaged by the Western Australian Government Railways Commission or its successor. It includes other professional groups such as those who are employed as social workers within Western Australia. Whilst the categories of persons eligible to be members of the counterpart Federal body are different it could be argued that this may not preclude a Full Bench from forming the view that the rules of the counterpart Federal body are substantially the same because of the operation of s 71(3) of the Act. However, s 71(4) of the Act must be satisfied for a s 71 certificate to have effect. Section 71(4) requires that for every office in the State organisation there must be a corresponding office in the Branch. Rule 6 and rule 8 of the respondent's rules establish the offices of the respondent to be the President, Vice-President, Treasurer, three Executive Councillors, the Secretary, (Assistant Secretary when acquired to be elected as provided for by rule 33) and Branch Councillors, some are which are elected as members of each Section of the Branch and others who are additional Branch Councillors are elected by the whole of the membership.

14 The counterpart Federal body is the Western Australian Branch of the Australian Municipal, Administrative, Clerical and Services Union (the Western Australian Branch). Pursuant to rule 4 of Division 5 of the rules of the Western Australian Branch, the Branch Executive Council controls and manages the affairs of the Western Australian Branch. The Branch Executive Council consists of the Branch Executive Committee; which in turn consists of the Branch President, the Deputy Branch President, the Branch Vice-President (Women), the Branch Secretary, the Assistant Branch Secretary and the Branch Treasurer. The other members of the Council consist of Branch Executive Councillors representing Divisions. The number of Branch Executive Councillors is calculated in accordance with rule 8 of the Western Australian Branch rules and the number of Branch Executive Councillors (Women) as may be required pursuant to rule 19 of the Western Australian Branch rules.

15 It is clearly apparent that the offices of the Western Australian Branch do not correspond with the respondent's offices. It is difficult to say who in the Western Australian Branch would be regarded as the corresponding office for the respondent's office of Vice-President in the Western Australian Branch as the Federal rules provide for a Deputy Branch President and a Branch Vice-President (Women). In addition, the number of Branch Executive Councillors required by the Western Australian Branch rules is calculated on the basis of each Division is entitled to one Branch Executive Councillor for each 600 financial members or part thereof (rule 8 of the Western Australian Branch rules). Whereas under the respondent's rules each Section of the Branch is entitled to elect one Branch Councillor for the first 500 financial members or part thereof in the Section and one for each succeeding 500 members or part thereof shown in the records of the Branch office on the last day of the quarter immediately preceding any such election as financial members (rule 6 b.). In addition, additional Branch Councillors are required to be elected by the whole of the membership which equal the number of Branch Councillors elected by the Sections (rule 6 d.).

16 As the evidence establishes that since at least sometime in 2003 not all offices of the respondent correspond with offices in the counterpart Federal body, I am satisfied that the s 71 certificate currently has no effect, which in turn has the effect in law that the offices of the respondent are vacant, and elections should be held to fill those offices. However, as foreshadowed in the

parties' joint submission the election of the offices of Branch Councillors can not proceed in accordance with requirements of the respondent's rules as Sections of the respondent do not currently exist. To rectify this difficulty and enable the respondent to generally act within the requirements of its rules the parties agreed that an order should be made to set the number of Branch Councillors at eight to enable an election for positions of Branch Councillors to proceed and to enable a quorum for Branch Council to be convened.

- 17 To enable the election of the offices of the respondent to proceed as if an election had been called in accordance with the provisions of the Act and the respondent's rules, I made an order on 7 December 2009 that the election of the offices were to proceed as if a request in writing had been duly made to the Registrar under s 69 of the Act. The terms of the order also makes it clear that once elected, each Branch Councillor is to exercise all the powers and carry out all the functions of office pursuant to the rules of the respondent as if each were elected from a Section of the Branch or by the whole of the membership pursuant to the rules of the respondent.

2009 WAIRC 01294

	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION	
PARTIES	WILLIAM CLEVERLEY BEATTS-RATTRAY	APPLICANT
	-and-	
	AUSTRALIAN MUNICIPAL, ADMINISTRATIVE, CLERICAL AND SERVICES UNION OF EMPLOYEES, W.A. CLERICAL AND ADMINISTRATIVE BRANCH	RESPONDENT
CORAM	THE HONOURABLE J H SMITH, ACTING PRESIDENT	
DATE	MONDAY, 7 DECEMBER 2009	
FILE NO/S	PRES 13 OF 2009	
CITATION NO.	2009 WAIRC 01294	

Decision	Order issued
Appearances	
Applicant	Mr D Schapper (of Counsel)
Respondent	Ms P Byrne

Order

HAVING heard Mr D Schapper (of Counsel), on behalf of the applicant, and Ms P Byrne on behalf of the respondent, the Acting President, pursuant to the powers conferred under the *Industrial Relations Act 1979* (WA) (the Act) and by consent hereby orders that:—

1. Elections are to be held forthwith for the following offices in accordance with the rules of the respondent (except as varied or modified by this Order) as if a request in writing had been duly made to the Registrar in accordance with s 69 of the Act:
 - President;
 - Vice-President;
 - Treasurer;
 - Secretary;
 - 3 Executive Councillors;
 - 8 Branch Councillors;
2. Each person elected to the office of President, Vice-President, Treasurer, Secretary and Executive Councillor in accordance with this Order shall have the authority to exercise all the powers and carry out all the functions of their office pursuant to the rules of the respondent;
3. Each person elected to the office of Branch Councillor in accordance with this Order shall have the authority to exercise all the powers and carry out all the functions of office pursuant to the rules of the respondent as if each were elected from a Section of the Branch or by the whole of the membership pursuant to the rules of the respondent;
4. There be liberty to apply on 72 hours' notice;
5. The application be otherwise adjourned sine die.

[L.S.]

(Sgd.) J H SMITH,
Acting President.

2009 WAIRC 01358

PARTIES WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
THE REGISTRAR

APPLICANT

-and-

MR PHIL WOODCOCK
THE AUSTRALIAN RAIL, TRAM AND BUS INDUSTRY UNION OF EMPLOYEES, WEST
AUSTRALIAN BRANCH

RESPONDENT

CORAM THE HONOURABLE J H SMITH, ACTING PRESIDENT
DATE THURSDAY, 24 DECEMBER 2009
FILE NO/S PRES 7 OF 2009
CITATION NO. 2009 WAIRC 01358

Result Order issued

Appearances

Applicant Mr J Spurling

Respondent Mr J Nolan (of Counsel)

Proposed Interveners Mr P Momber (of Counsel)

Order

This matter having come on for a directions hearing before me on 23 December 2009, and having heard Mr J Spurling, Mr J Nolan (of Counsel) and Mr P Momber (of Counsel), pursuant to the powers conferred on the President under the *Industrial Relations Act 1979*, hereby orders that —

1. The Registrar carry out an investigation and make a written report as to whether the Interim Branch Executive is functioning;
2. The Registrar is to provide a copy of the written report to the parties by no later than close of business on 5 January 2010;
3. This matter is adjourned to 19 January 2010 at 9:30 o'clock in the forenoon in Court 3 on Level 18, 111 St Georges Terrace, Perth;
4. There be liberty to apply on two days' notice.

[L.S.]

(Sgd.) J H SMITH,
Acting President.

AWARDS/AGREEMENTS—Variation of—

2009 WAIRC 01321**BURSWOOD HOTEL (MAINTENANCE EMPLOYEES') AWARD, 1990**

PARTIES WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
COMMUNICATIONS, ELECTRICAL, ELECTRONIC, ENERGY, INFORMATION, POSTAL,
PLUMBING, AND ALLIED WORKERS UNION OF AUSTRALIA, ENGINEERING &
ELECTRICAL DIVISION, WA BRANCH

APPLICANT

-v-

BURSWOOD RESORT AND OTHERS

RESPONDENTS

CORAM COMMISSIONER S M MAYMAN
DATE TUESDAY, 15 DECEMBER 2009
FILE NO APPL 67 OF 2009
CITATION NO. 2009 WAIRC 01321

Result	Award varied
Representation	
Applicant	Ms N Ireland
Respondent	Ms S Walker on behalf of The Construction, Forestry, Mining and Energy Union of Workers Western Australian Branch

Order

HAVING HEARD Ms N Ireland on behalf of the applicant and Ms S Walker on behalf of The Construction, Forestry, Mining and Energy Union of Workers Western Australian Branch, and by consent, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT the Burswood Hotel (Maintenance Employees') Award, 1990 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after 11 December 2009.

(Sgd.) S M MAYMAN,
Commissioner.

[L.S.]

SCHEDULE

1. Clause 12. - Overtime: Delete subclause (3)(f) of this clause and insert the following in lieu thereof:

(f) An employee required to work overtime for more than two hours shall be supplied with a meal by the Company or if no meal is supplied be paid \$10.80 for a meal, and if owing to the amount of overtime worked, a second subsequent meal is required they shall be supplied with each such meal by the Company or be paid \$7.40 for each meal so required.

2. Clause 14. – Wage Rates: Delete subclauses (2), (3), (4), (7), (8), (9) and (10) of this clause and insert the following in lieu thereof:

(2) NOMINEE

A Licensed Electrical Mechanic or Fitter who acts as nominee for an Electrical Contractor shall be paid an allowance of \$59.90 per week.

(3) In addition to the weekly wage rate provided by subclause (1) of this clause an adult employee shall be paid:

- | | |
|--|---------|
| (a) After the completion of one years continuous service | \$17.80 |
| (b) After the completion of two years service | \$35.90 |

Such payment shall be deemed part of the weekly wage rate for all purposes of the Award.

(4) In addition to the weekly wage rate provided by subclause (1) of this clause a Leading Hand shall be paid:

- | | |
|---|---------|
| (a) If placed in charge of not less than three
and not more than ten other employees | \$24.90 |
| (b) If placed in charge of more than ten and
not more than 20 other employees | \$38.20 |
| (c) If placed in charge of more than 20
other employees | \$49.10 |

(7) An employee holding either a Third Year First Aid Medallion of the St. John Ambulance Association or a "C" Standard Senior First Aid Certificate of the Australian Red Cross Society, appointed by the Company to perform first aid duties, shall be paid \$9.60 per week in additions to their ordinary rate.

(8) An employee who holds, and in the course of their employment is required to use, a current "A" Grade or "B" Grade, or "L" Grade or "R" Grade licence issued pursuant to the relevant regulation in force on the 28th day of February 1978 under the Electricity Act 1945 shall be paid an allowance of \$19.90 per week.

(9) An employee, who is in possession of, and is requested by the company to use, a plumber's licence issued by the Metropolitan Water Supply, Sewerage and Drainage Board, shall, in each week so requested, be paid an allowance of \$36.80 per week.

(10) A plumber holding registration in accordance with the Metropolitan Water Supply, Sewerage and Drainage Act shall be paid \$25.40 per week in addition to their ordinary rate.

2009 WAIRC 01320

BURSWOOD ISLAND RESORT (MAINTENANCE EMPLOYEES') AWARD NO. A 22 OF 1986

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIESCOMMUNICATIONS, ELECTRICAL, ELECTRONIC, ENERGY, INFORMATION, POSTAL,
PLUMBING, AND ALLIED WORKERS UNION OF AUSTRALIA, ENGINEERING &
ELECTRICAL DIVISION, WA BRANCH**APPLICANT**

-v-

BURSWOOD RESORT (MANAGEMENT) LTD AND OTHERS

RESPONDENTS**CORAM** COMMISSIONER S M MAYMAN**DATE** TUESDAY, 15 DECEMBER 2009**FILE NO** APPL 66 OF 2009**CITATION NO.** 2009 WAIRC 01320

Result	Award varied
Representation	
Applicant	Ms N Ireland
Respondent	Ms S Walker on behalf of The Construction, Forestry, Mining and Energy Union of Workers Western Australian Branch

Order

HAVING HEARD Ms N Ireland on behalf of the applicant and Ms S Walker on behalf of The Construction, Forestry, Mining and Energy Union of Workers Western Australian Branch, and by consent, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT the Burswood Island Resort (Maintenance Employees') Award No. A 22 of 1986 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after 11 December 2009.

(Sgd.) S M MAYMAN,
Commissioner.

[L.S.]

SCHEDULE

1. Clause 11. - Overtime: Delete subclause (3)(f) of this clause and insert the following in lieu thereof:

- (f) An employee required to work overtime for more than two hours shall be supplied with a meal by the Company or if no meal is supplied be paid \$11.00 for a meal and, if owing to the amount of overtime worked, a second subsequent meal is required they shall be supplied with each such meal by the Company or be paid \$7.50 for each meal so required.

2. Clause 13. - Wage Rates: Delete subclauses (2) through to (9) of this clause and insert the following in lieu thereof:

- (2) In addition to the weekly wage rate provided by subclause (1) hereof an adult employee shall be paid:

	Per Week
	\$
(a) After the completion of one year's continuous service	17.80
(b) After the completion of two years' continuous service	35.90

Such payments shall be deemed part of the weekly wage rate for all purposes of the award.

- (3) **Leading Hand:** In addition to the appropriate total wage prescribed in this Clause a Leading Hand shall be paid:

	\$
(a) If placed in charge of not less than three and not more than ten other employees	24.90
(b) If placed in charge of more than ten and not more than twenty other employees	38.20
(c) If placed in charge of more than twenty other employees	49.10

- (4) A casual employee shall be paid 20 per cent of the ordinary rate in addition to the ordinary rate for the calling in which they are employed.

- (5) **Nominee**

A licensed electrical mechanic or fitter who acts as nominee for the Company shall be paid an allowance of \$59.90 per week.

- (6) An employee holding either a Third Year First Aid Medallion of the St. John Ambulance Association or a "C" Standard Senior First Aid Certificate of the Australian Red Cross Society, appointed by the Company to perform first aid duties, shall be paid \$9.30 per week in addition to their ordinary rate.
- (7) An employee who holds, and in the course of their employment is required to use, a current "A" Grade or "B" Grade licence issued pursuant to the relevant regulation in force on the 28th day of February, 1978 under the Electricity Act 1945 shall be paid an allowance of \$19.90 per week.
- (8) An employee who is in possession of, and is requested by the Company to use, a plumber's licence issued by the Metropolitan Water Supply, Sewerage and Drainage Board, shall, in each week so requested, be paid an allowance of \$34.40 per week.
- (9) A plumber holding registration in accordance with the Metropolitan Water Supply, Sewerage and Drainage Act shall be paid \$14.30 per week in addition to their ordinary rate.

2009 WAIRC 01314

ELECTRICAL CONTRACTING INDUSTRY AWARD

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

COMMUNICATIONS, ELECTRICAL, ELECTRONIC, ENERGY, INFORMATION, POSTAL,
PLUMBING, AND ALLIED WORKERS UNION OF AUSTRALIA, ENGINEERING &
ELECTRICAL DIVISION, WA BRANCH

APPLICANT

-v-

ELECTRICAL & COMMUNICATIONS ASSOCIATION OF WA (INC) AND OTHERS

RESPONDENTS

CORAM COMMISSIONER S M MAYMAN
DATE TUESDAY, 15 DECEMBER 2009
FILE NO APPL 59 OF 2009
CITATION NO. 2009 WAIRC 01314

Result Award varied
Representation
Applicant Ms N Ireland
Respondent No Appearance

Order

HAVING HEARD Ms N Ireland on behalf of the applicant and there being no appearance on behalf of the respondents, and by consent, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT the Electrical Contracting Industry Award be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after 11 December 2009.

(Sgd.) S M MAYMAN,
Commissioner.

[L.S.]

SCHEDULE**1. Clause 12. - Overtime: Delete subclause (2)(e) of this clause and insert the following in lieu thereof:**

- (e) (i) An employee required to work overtime for more than two hours without being notified on the previous day or earlier that they will be so required to work overtime shall be supplied with a meal by the employer or be paid \$11.90 for such meal and for a second or subsequent meal if so required.
- (ii) No such payments shall be made to any employee living in the same locality as their place of work who can reasonably return home for such meals.
- (iii) If an employee to whom subparagraph (i) of paragraph (e) of subclause (2) hereof applies has, as a consequence of the notice referred to in that paragraph, provided themselves with a meal or meals and is not required to work overtime or is required to work less overtime than the period notified, they shall be paid for each meal provided and not required, \$11.90.

2. Clause 18. – Special Rates and Provisions:**(A) Delete subclauses (1), (2), (3), (4) and (5) of this clause and insert the following in lieu thereof:**

- (1) **Height Money:** An employee shall be paid an allowance of \$2.40 for each day on which they work at a height of 15.5 metres or more above the nearest horizontal plane, but this provision does not apply to linespersons.

- (2) **Dirt Money:** An employee shall be paid an allowance of 49 cents per hour when engaged on work of an unusually dirty nature where clothes are necessarily unduly soiled or damaged or boots are unduly damaged by the nature of the work done.
- (3) **Grain Dust:** Where any dispute arises at a bulk grain handling installation due to the presence of grain dust in the atmosphere and the Board of Reference determines that employees employed under this award are unduly affected by that dust, the Board may, subject to such conditions as it deems fit to impose, fix an allowance or allowances not exceeding 82 cents per hour.
- (4) **Confined Space:** An employee shall be paid an allowance of 58 cents per hour when, because of the dimensions of the compartment or space in which they are working, the employee is required to work in a stooped or otherwise cramped position or without proper ventilation.
- (5) **Diesel Engine Ships:** The provisions of subclauses (2) and (4) of this Clause do not apply to an employee when they are engaged on work below the floor plates in diesel engine ships, but the employee shall be paid an allowance of 82 cents per hour whilst so engaged.
- (B) Delete subclause (7) of this clause and insert the following in lieu thereof:**
- (7) **Hot Work:** An employee shall be paid an allowance of 49 cents per hour when they work in the shade in any place where the temperature is raised by artificial means to between 46.1 and 54.4 degrees Celsius.
- (C) Delete subclauses (9), (10), (11), and (12) of this clause and insert the following in lieu thereof:**
- (9) **Percussion Tools:** An employee shall be paid an allowance of 30 cents per hour when working a pneumatic riveter of the percussion type and other pneumatic tools of the percussion type.
- (10) **Chemical, Artificial Manure and Cement Works:** An employee other than a general labourer, in chemical, artificial manure and cement works shall, in respect of all work done in and around the plant outside the machine shop, be paid an allowance calculated at the rate of \$12.20 per week. The allowance shall be paid during overtime but shall not be subject to penalty additions. An employee receiving this allowance is not entitled to any other allowance under this Clause.
- (11) **Abattoirs:** An employee employed in and about an abattoir shall be paid an allowance calculated at the rate of \$16.20 per week. The allowance shall be paid during overtime but shall not be subject to penalty additions. An employee receiving this allowance is not entitled to any other allowance under this Clause.
- (12) **Phosphate Ships:** An employee shall be paid an allowance of 72 cents for each hour they work in the holds 'tween decks of ships which, immediately prior to such work, have carried phosphatic rock but this subclause only applies if and for as long as the holds and 'tween decks are not cleaned down.
- (D) Delete subclause (19) of this clause and insert the following in lieu thereof:**
- (19) An employee holding either a Third Year First Aid Medallion of the St. John Ambulance Association or a "C" Standard Senior First Aid Certificate of the Australian Red Cross Society, appointed by the employer to perform first aid duties shall be paid \$9.70 per week in addition to their ordinary rate.
- (E) Delete subclause (21) of this clause and insert the following in lieu thereof:**
- (21) **Nominee:** A licensed electrical installer or fitter who acts as a nominee for an electrical contractor shall be paid an allowance of \$60.10 per week.
- 3. Clause 27. – Grievance Procedure and Special Allowance: Delete subclause (3) of this clause and insert the following in lieu thereof:**
- (3) (a) Subject to paragraph (e) of this subclause, a special allowance of \$29.80 per week shall be paid as a flat amount each week except where direct action takes place.
- (b) Provided that a general combined union meeting called by the Unions W.A., or any absence declared by the Commission under Section 44 as being an authorised absence, shall not be regarded as non-adherence to the disputes procedure Clause or affect the payment of this allowance.
- (c) In the event of the need for a meeting not covered by the circumstances outlined by the above, a Union Official shall give 24 hours' notice to the employer and the reason for the meeting and \$29.80 shall be paid.
- (d) Any time which an employee is absent from work on annual leave, public holidays, bereavement leave or paid sick leave shall not affect the payment of this allowance.
- (e) An apprentice shall be paid a percentage of \$29.80 being the percentage which appears against their year of apprenticeship set out in subclause (4) of the First Schedule - Wages.
- 4. Clause 30. – Special Provisions – Western Power: Delete subclause (6) of this clause and insert the following in lieu thereof:**
- (6) (a) An employee to whom the provisions of Clause 21. - Distant Work of this Award, applies who work at Muja and who elects not to live in Construction Camp Accommodation shall, subject to paragraph (b) of this subclause, be paid a living-out allowance at the rate of \$398.30 per week to meet the expenses reasonably incurred by the employee for board and lodging.
- (b) (i) The allowance prescribed in paragraph (a) shall only apply to an employee while they continue to live with their spouse (including de facto partner) in accommodation provided by the employee.

- (ii) The accommodation shall be of a reasonable standard.
- (iii) The employee shall continue to maintain their original residence.
- (iv) The employee shall satisfy the employer, upon request, that their circumstances meet the requirements of this subclause.
- (v) Any dispute as to the application of this Clause shall be subject to discussion between the employer and the Union and, failing agreement, shall be referred to a Board of Reference for determination.
- (c) Provided that the provisions of subclause (6) of Clause 21. - Distant Work of this Award shall not apply.
- 5. Clause 36. – Superannuation: Delete subclause (2)(b)(i) of this clause and insert the following in lieu thereof:**
- (i) For Apprentices not engaged on construction work, a weekly contribution calculated as 9% of the rate of pay prescribed in the First Schedule - Wages of this Award as follows:
- | Four Year Term | Three and a Half Year Term | Three Year Term |
|------------------|----------------------------|------------------|
| 1st Year \$24.98 | Six Months \$24.98 | 1st Year \$32.66 |
| 2nd Year \$32.66 | Next Year \$32.66 | 2nd Year \$42.91 |
| 3rd Year \$42.91 | Next Year \$42.91 | 3rd Year \$50.59 |
| 4th Year \$50.59 | Final Year \$50.59 | |
- 6. First Schedule – Wages:**
- (A) Delete subclause (3) of this clause and insert the following in lieu thereof:**
- (3) Leading Hands - In addition to the appropriate rates shown in subclause (2) hereof a leading hand shall be paid -
- | | |
|--|---------|
| (a) If placed in charge of not less than three and not more than ten other employees | \$25.10 |
| (b) If placed in charge of more than ten and not more than twenty other employees | \$38.50 |
| (c) If placed in charge of more than twenty other employees | \$49.60 |
- (B) Delete subclauses (5) and (6) of this clause and insert the following in lieu thereof:**
- (5) Tool Allowance:
- (a) In accordance with the provisions of subclause (20) of Clause 18. – Special Rates and Provisions of this award the tool allowance to be paid is:
- (i) \$14.40 per week to such tradesperson, or
- (ii) In the case of an apprentice a percentage of \$14.40 being the percentage which appears against the apprentice's year of apprenticeship set out in subclause (4) of this schedule.
- (b) Any tool allowance paid pursuant to paragraph (a) of this subclause shall be included in, and form part of, the ordinary weekly wage prescribed in this Clause.
- (6) Construction Allowance:
- (a) In addition to the appropriate rates of pay prescribed in this Clause an employee shall be paid:
- (i) \$44.70 per week if the employee is engaged on the construction of a large industrial undertaking or any large civil engineering project.
- (ii) \$40.30 per week if the employee is engaged on a multi-storeyed building but only until the exterior walls have been erected and the windows completed and a lift made available to carry the employee between the ground floor and the floor upon which the employee is required to work. A multi-storeyed building is a building which, when completed, will consist of at least five storeys.
- (iii) \$23.70 per week if the employee is engaged otherwise on construction work falling within the definition of construction work in Clause 5. - Definitions of this Award.
- (b) Any dispute as to which of the aforesaid allowances applies to particular work shall be determined by the Board of Reference.
- (C) Delete subclauses (9) and (1) of this clause and insert the following in lieu thereof:**
- (9) Licence Allowance:
A tradesperson who holds and in the course of their employment may be required to use a current "A" Grade or "B" Grade licence issued pursuant to the relevant regulation in force at the date of this Award under the Electricity Act, 1945, shall be paid \$21.30 per week.
- (10) Commissioning Allowances:
An "Electrician Commissioning" as defined shall be paid at the rate of \$32.50 per week in addition to rates prescribed in this schedule.

2009 WAIRC 01316

ELECTRICAL TRADES (SECURITY ALARMS INDUSTRY) AWARD, 1980

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

COMMUNICATIONS, ELECTRICAL, ELECTRONIC, ENERGY, INFORMATION, POSTAL,
PLUMBING, AND ALLIED WORKERS UNION OF AUSTRALIA, ENGINEERING &
ELECTRICAL DIVISION, WA BRANCH

APPLICANT

-v-

CHUBB ELECTRONIC SECURITY AND OTHERS

RESPONDENTS

CORAM COMMISSIONER S M MAYMAN
DATE TUESDAY, 15 DECEMBER 2009
FILE NO APPL 62 OF 2009
CITATION NO. 2009 WAIRC 01316

Result Award varied
Representation
Applicant Ms N Ireland
Respondent No appearance

Order

HAVING HEARD Ms N Ireland on behalf of the applicant and there being no appearance on behalf of the respondents, and by consent, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT the Electrical Trades (Security Alarms Industry) Award, 1980 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after 11 December 2009.

(Sgd.) S M MAYMAN,
Commissioner.

[L.S.]

SCHEDULE

1. **Clause 11. - Overtime: Delete subclause (3)(f) of this clause and insert the following in lieu thereof:**
 - (f) Subject to the provisions of paragraph (g) of this subclause, an employee required to work overtime for more than two hours shall be supplied with a meal by the employer or be paid \$11.40 for a meal and, if owing to the amount of overtime worked, a second or subsequent meal is required they shall be supplied with each such meal by the employer or be paid \$7.80 for each meal so required.
2. **Clause 15. – Special Rates and Provisions:**
 - (A) **Delete subclauses (1) to (4) of this clause and insert the following in lieu thereof:**
 - (1) **Height Money:** An employee shall be paid an allowance of \$2.50 for each day on which they work at a height of 15.5 metres or more above the nearest horizontal plane but this provision does not apply to linespersons nor to riggers and splicers on ships or buildings.
 - (2) **Dirt Money:** An employee shall be paid an allowance of 51 cents per hour when engaged on work of an unusually dirty nature where clothes are necessarily unduly soiled or damaged or boots are unduly damaged by the nature of the work done.
 - (3) **Confined Space:** An employee shall be paid an allowance of 64 cents per hour when, because of the dimensions of the compartment or space in which they are working, the employee is required to work in a stooped or otherwise cramped position or without proper ventilation.
 - (4) **Hot Work:** An employee shall be paid an allowance of 51 cents per hour when they work in the shade in any place where the temperature is raised by artificial means to between 46.1 and 54.4 degrees celsius.
 - (B) **Delete subclause (6) of this clause and insert the following in lieu thereof:**
 - (6) **Percussion Tools:**
An employee shall be paid an allowance of 32 cents per hour when working a pneumatic rivetter of the percussion type and other pneumatic tools of the percussion type.

(C) Delete subclauses (13) and (14) of this clause and insert the following in lieu thereof:

- (13) An employee, holding either a Third Year First Aid Medallion of the St. John Ambulance Association or a "C" Standard Senior First Aid Certificate of the Australian Red Cross Society, appointed by the employer to perform first aid duties shall be paid \$10.40 per week in addition to his ordinary rate.
- (14) A Serviceperson - Special Class, a Serviceperson or an Installer who holds, and in the course of their employment may be required to use, a current "A" Grade or "B" Grade Licence issued pursuant to the relevant regulation in force on the 28th day of February, 1978 under the Electricity Act 1945 shall be paid an allowance of \$21.10 per week.

3. Clause 28. – Wages: Delete subclauses (3) to (5) of this clause and insert the following in lieu thereof:

- (3) (a) Where an employer does not provide a tradesperson with the tools ordinarily required by that tradesperson in the performance of their work as a tradesperson the employer shall pay a tool allowance of \$14.60 per week to such tradesperson for the purpose of such tradesperson supplying and maintaining tools ordinarily required in the performance of their work as a tradesperson.
- (b) Any tool allowance paid pursuant to paragraph (a) of this subclause shall be included in, and form part of, the ordinary weekly wage prescribed in this Clause.
- (c) An employer shall provide for the use of tradespersons all necessary power tools, special purpose tools and precision measuring instruments.
- (d) A tradesperson shall replace or pay for any tools supplied by the employer if lost through their negligence.
- (4) (a) In addition to the appropriate rates of pay prescribed in this Clause an employee shall be paid -
- (i) \$47.20 per week if they are engaged on the construction of a large industrial undertaking or any large civil engineering project.
- (ii) \$42.70 per week if they are engaged in a multi-storeyed building but only until the exterior walls have been erected and the windows completed and a lift made available to carry the employee between the ground floor and the floor upon which they are required to work. A multi-storeyed building is a building which, when completed, will consist of at least five storeys.
- (iii) \$24.60 per week if they are engaged otherwise on construction work falling within the definition of construction work in Clause 5. - Definitions of this Award.
- (b) Any dispute as to which of the aforesaid allowances apply to particular work shall be determined by the Board of Reference.
- (c) An allowance paid under this subclause includes any allowance otherwise payable under Clause 15. - Special Rates and Provisions of this Award except the allowance for work at heights, the first aid allowance and the licence allowance.
- (5) **Leading Hand:** In addition to the appropriate total wage prescribed in subclause (1) of this clause, a leading hand shall be paid –
- | | | |
|-----|--|---------|
| (a) | If placed in charge of not less than three and not more than ten other employees | \$26.80 |
| (b) | If placed in charge of more than ten and not more than twenty other employees | \$40.90 |
| (c) | If placed in charge of more than twenty other employees | \$52.60 |

2009 WAIRC 01315**ELECTRONICS INDUSTRY AWARD NO. A 22 OF 1985**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

COMMUNICATIONS, ELECTRICAL, ELECTRONIC, ENERGY, INFORMATION, POSTAL,
PLUMBING, AND ALLIED WORKERS UNION OF AUSTRALIA, ENGINEERING &
ELECTRICAL DIVISION, WA BRANCH

APPLICANT**-v-**

ACTION ELECTRONICS PTY. LTD AND OTHERS

RESPONDENTS**CORAM**

COMMISSIONER S M MAYMAN

DATE

TUESDAY, 15 DECEMBER 2009

FILE NO

APPL 60 OF 2009

CITATION NO.

2009 WAIRC 01315

Result	Award varied
Representation	
Applicant	Ms N Ireland
Respondent	No appearance

Order

HAVING HEARD Ms N Ireland on behalf of the applicant and there being no appearance on behalf of the respondents, and by consent, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT the Electronics Industry Award No. A 22 of 1985 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after 11 December 2009

(Sgd.) S M MAYMAN,
Commissioner.

[L.S.]

SCHEDULE

1. Clause 9. - Overtime: Delete subclause (3)(f) of this clause and insert the following in lieu thereof:

(f) Subject to the provisions of paragraph (g) of this subclause, an employee required to work overtime for more than two hours shall be supplied with a meal by the employer or be paid \$11.30 for a meal and, if owing to the amount of overtime worked, a second or subsequent meal is required the employee shall be supplied with each such meal by the employer or be paid \$7.60 for each meal so required.

2. Clause 20. – Special Provisions: Delete subclauses (1) – (4), (6) - (8) and (14) of this clause and insert the following in lieu thereof:

(1) **Dirt Money:** An employee shall be paid an allowance of 51 cents per hour when engaged on work of an unusually dirty nature where clothes are necessarily unduly soiled or damaged or boots are unduly damaged by the nature of the work done.

(2) **Confined Space:** An employee shall be paid an allowance of 63 cents per hour when, because of the dimensions of the compartment or space in which they are working, the employee is required to work in a stooped or otherwise cramped position or without proper ventilation.

(3) **Hot Work:** An employee shall be paid an allowance of 51 cents per hour when working in the shade in any place where the temperature is raised by artificial means to be between 46.1 and 54.4 degrees celsius.

(4) **Height Money:** An employee shall be paid an allowance of \$2.45 for each day on which the employee works at a height of 15.5 metres or more above the nearest horizontal plane.

(6) **Diesel Engine Ships:** The provisions of subclauses (1) and (2) hereof do not apply to an employee when the employee is engaged on work below the floor plates in diesel engine ships, but the employee shall be paid an allowance of 86 cents per hour whilst so engaged.

(7) **Percussion Tools:** An employee shall be paid an allowance of 32 cents per hour when working pneumatic riveter of the percussion type and other pneumatic tools of the percussion type.

(8) **Chemical, Artificial Manure and Cement Works:** An employee, other than a general labourer, in chemical, artificial manure and cement works, in respect of all work done in and around the plant outside the machine shop, shall be paid an allowance calculated at the rate of \$12.90 per week. The allowance shall be paid during overtime but shall not be subject to penalty additions. An employee receiving this allowance is not entitled to any other allowance under this clause.

(14) An employee holding either a Third Year First Aid Medallion of the St. John Ambulance Association of a "C" standard Senior First Aid Certificate of the Australian Red Cross Society, appointed by the employer to perform first aid duties shall be paid \$10.00 per week in addition to their ordinary rate.

3. Clause 33. – Wages: Delete subclauses (2) and (5) of this clause and insert the following in lieu thereof:

(2) Leading Hands:

In addition to the appropriate rate of wage prescribed in subclause (1) of this clause a leading hand shall be paid:

(a) If placed in charge of not less than three and not more than ten other employees \$26.50

(b) If placed in charge of more than ten but not more than twenty other employees \$40.00

(c) If placed in charge of more than twenty other employees \$52.00

(5) **Tool Allowance**

(a) Where an employer does not provide a technician, serviceperson, installer or an apprentice with the tools ordinarily required by that person in the performance of work as a technician, serviceperson, installer or an apprentice the employer shall pay a tool allowance of -

- (i) \$14.60 per week to such technician, serviceperson, installer; or
- (ii) In the case of an apprentice a percentage of \$14.60 being the percentage which appears against their year of apprenticeship in subclause (3) of this clause for the purpose of such technician, serviceperson, installer or apprentice applying and maintaining tools ordinarily required in the performance of work as a technician, serviceperson, installer or apprentice.
- (b) Any tool allowance paid pursuant to paragraph (a) of this subclause shall be included in, and form part of, the ordinary weekly wage prescribed in this clause.
- (c) An employer shall provide for the use of technicians, servicepeople, installers or apprentices all necessary power tools, special purpose tools and precision measuring instruments.
- (d) A technician, serviceperson, installer or apprentice shall replace or pay for any tools supplied by the employer if lost through his negligence.

PART II – CONSTRUCTION

- 4. Clause 5. – Special Rates and Provisions: Delete subclause (2) of this clause and insert the following in lieu thereof:**
- (2) (a) The employer shall, where practicable, provide a waterproof and secure place on each job for the safekeeping of a employee's tools when not in use and an employee's working clothes and where an employee is absent from work because of illness or accident and has advised the employer to that effect in accordance with the provisions of Clause 11. - Sick Leave of PART I - GENERAL of this award the employer shall ensure that the employee's tools and working clothes are securely stored during their absence.
 - (b) Subject to paragraph (c) hereof where the employee's tools or working clothes are lost by fire or breaking and entering whilst securely stored in the place provided by the employer under paragraph (a) hereof the employer shall reimburse the employee for that loss but only up to a maximum of \$306.10.
 - (c) The provisions of paragraph (b) hereof shall only apply with respect to tools and working clothes used by an employee in the course of their employment as set out in a list furnished to the employer at least twenty four hours before being lost by fire or theft and if the employee has reported any theft to the police.
- 5. Clause 10. – Wages: Delete subclauses (5), (6) and (7) of this clause and insert the following in lieu thereof:**
- (5) Construction Allowances:
 - (a) In addition to the appropriate rates of pay prescribed in this clause an employee shall be paid -
 - (i) \$46.60 per week if engaged on the construction of a large industrial undertaking or any large civil engineering projects.
 - (ii) \$42.10 per week if engaged on a multi-storeyed building, but only until the exterior walls have been erected and the windows completed and a lift made available to carry the employee between the ground floor and the floor upon which the employee is required to work. A multi-storeyed building is a building which, when completed, will consist of at least five storeys.
 - (iii) \$24.70 per week if engaged otherwise on construction work falling within the definition of construction work in Clause 5. - Definitions of PART I - GENERAL of this award.
 - (b) Any dispute as to which of the aforesaid allowances apply to particular work shall be determined by the Board of Reference.
 - (6) Leading Hand:

In addition to the appropriate rate of wage prescribed in subclause (1) of this clause a leading hand shall be paid:

 - (a) If placed in charge of not less than three and not more than ten other employees \$26.50
 - (b) If placed in charge of more than ten but not more than twenty other employees \$40.00
 - (c) If placed in charge of more than twenty other employees \$52.00
 - (7) (a) Where an employer does not provide a Technician, Serviceperson, Installer or Apprentice with the tools ordinarily required by that Serviceperson, Technician or Installer in the performance of work as a Technician, Installer or Apprentice the employer shall pay a tool allowance of -
 - (i) \$14.60 per week to such Technician, Serviceperson or Installer, or
 - (ii) In the case of an apprentice a percentage of \$14.60 being the percentage referred to in subclause (3) of Clause 33. - Wages of PART I - GENERAL of this award,

for the purpose of such Technician, Serviceperson, Installer or Apprentice supplying and maintaining tools ordinarily required in the performance of work as a Technician, Serviceperson, Installer or Apprentice.

 - (b) Any tool allowance paid pursuant to paragraph (a) of this subclause shall be included in, and form part of, the ordinary weekly wage prescribed in this clause.

- (c) An employer shall provide for the use of Technicians, Servicepersons, Installers and Apprentices all necessary power tools, special purpose tools and precision measuring instruments.
- (d) A Technician, Serviceperson, Installer or Apprentice shall replace or pay for any tools supplied by the employer if lost through that person's negligence.

2009 WAIRC 01347

ENGINEERING TRADES (GOVERNMENT) AWARD, 1967 AWARD NOS. 29, 30 AND 31 OF 1961 AND 3 OF 1962

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

COMMUNICATIONS, ELECTRICAL, ELECTRONIC, ENERGY, INFORMATION, POSTAL,
PLUMBING, AND ALLIED WORKERS UNION OF AUSTRALIA, ENGINEERING &
ELECTRICAL DIVISION, WA BRANCH

APPLICANT

-v-

THE MINISTER FOR WORKS, THE MINISTER FOR EDUCATION, THE MINISTER FOR
HEALTH

RESPONDENT

CORAM COMMISSIONER S M MAYMAN
DATE THURSDAY, 15 DECEMBER 2009
FILE NO/S APPLA 61 OF 2009
CITATION NO. 2009 WAIRC 01347

Result Award varied
Representation
Applicant Ms N Ireland
Respondents Mr A Harper

Order

HAVING HEARD Ms Ireland on behalf of the applicant and Mr Harper on behalf of the respondents, and by consent, the Commission pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT the Engineering Trades (Government) Award, 1967 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after 15 December 2009

(Sgd.) S M MAYMAN,
Commissioner.

[L.S.]

SCHEDULE

1. Clause 14. - Overtime:

(A) Delete subclause (3)(e) of this clause and insert the following in lieu thereof:

- (e) Subject to the provisions of paragraph (f) of this subclause, an employee required to work overtime for more than one hour shall be supplied with a meal by the employer or be paid \$11.20 for a meal if, owing to the amount of overtime worked, a second or subsequent meal is required, he/she shall be supplied with each such meal by the employer or be paid \$7.85 for each meal so required.

(B) Delete subclause (3)(h) of this clause and insert the following in lieu thereof:

- (h) An employee required to work continuously from 12 midnight to 6.30 a.m. and ordered back to work at 8.00 a.m. the same day shall be paid \$5.20 for breakfast.

2. Clause 17. – Special Rates and Provisions:

(A) Delete subclauses (1) – (5) of this clause and insert the following in lieu thereof:

- (1) **Height Money:** An employee shall be paid an allowance of \$2.40 for each day in which they work at a height of 15.5 metres or more above the nearest horizontal plane, but this provision does not apply to linespersons nor to riggers and splicers in ships or buildings.
- (2) **Dirt Money:** Dirt Money of 50 cents per hour shall be paid as follows:-
- (a) To employees employed on hot or dirty locomotives, or stripping locomotives, boilers, steam, petrol, diesel or electric cranes, or when repairing Babcock and Wilcox or other stationary boiler in site (except repairs on bench to steam and water mounting), or when repairing the conveyor gear in conduit of power houses and when repairing or overhauling electric or steam pile-driving machines and boring plants.

- (b) Bitumen Sprayers - Large Units:
 - (i) To employees whilst engaged on work appertaining to the spraying of bitumen but exclusive of the standard chassis engine form the front end of the main tank to the back end of the plant. Provided that work on the compressor and its engines shall not be subject to dirt money.
 - (ii) To motor mechanics in the motor section for all work performed on the standard chassis from and including the sump to the rear end of the chassis, but excluding the engine and parts forward thereto unless the work is of a specially dirty nature, where clothes are necessarily unduly soiled or damaged by the nature of the work done. Provided that to employees engaged as above on sprays of the Bristow type, dirt money of 55 cents per hour shall be paid.
 - (c) Bitumen Sprayers - Small Units:
 - (i) To employees for work done on main tank, its fittings, pump and spray arms.
 - (ii) To motor mechanics on work from and including the sump to the rear end of the chassis, but excluding the engine and parts forward thereto unless the work is of a specially dirty nature where clothes are necessarily unduly soiled or damaged by the nature of the work done.
 - (d) To employees on all other dirty tar sprays and kettles.
 - (e) Diesel Engines: Work on engines, or on gear box attached to engines, but excluding work on rollers (wheels) on which a diesel powered roller travels.
 - (f) Dirt Money shall only be paid during the stages of dismantling and cleaning and shall not cover employees who receive portions of the work after cleaning has taken place.
 - (g) Notwithstanding anything contained in the foregoing provisions, dirt money shall not be paid unless the work is of an exceptionally dirty nature where clothes are necessarily unduly soiled or damaged by the nature of the work done.
- (3) Confined Space:
62 cents per hour extra shall be paid to an employee working in any place, the dimensions of which necessitate the employee working in an unusually stooped or otherwise cramped position, or where confinement within a limited space is productive of unusual discomfort.
- (4) Any employee actually working a pneumatic tool of the percussion type shall be paid 31 cents per hour extra whilst so engaged.
- (5) **Hot Work:** An employee shall be paid an allowance of 50 cents per hour while working in the shade in any place where the temperature is raised by artificial means to between 46.1 and 54.4 degrees Celsius.
- (B) Delete subclauses (8) – (16) of this clause and insert the following in lieu thereof:**
- (8) Any employee working in water over his/her boots or, if gumboots are supplied, over the gumboots, shall be paid an allowance of \$1.45 per day.
- (9) Employees using Anderson-Kerrick steam cleaning units or unit of a similar type on cranes or other machinery shall be paid an allowance of 50 cents.
- (10) Well Work: Any employee required to enter a well nine metres or more in depth for the purpose in the first instance of examining the pump, or any other work connected therewith, shall receive an amount of \$2.95 for such examination and \$1.07 per hour extra thereafter for fixing, renewing or repairing such work.
- (11) **Ship Repair Work:** Any employee engaged in repair work on board ships shall be paid an additional \$5.35 per day for each day on which so employed.
- (12) An employee shall, whilst working in double bottom tanks on board vessels, be paid an allowance of \$2.07 per hour.
- (13) An employee shall, whilst using explosive powered tools, be paid an allowance of 18 cents per hour, with a minimum payment of \$1.25 per day.
- (14) **Abattoirs -**
An employee employed in and about an abattoir shall be paid an allowance calculated at the rate of \$16.90 per week. The allowance shall be paid during overtime but shall not be subject to penalty additions. An employee receiving this allowance is not entitled to any other allowance under this clause. The allowance prescribed herein may be reduced to \$15.60 with respect to any employee who is supplied with overalls by the employer.
- (15) Employees engaged to iron ore and manganese or loading equipment at the Geraldton Harbour shall be paid an allowance of 52 cents per hour, with a minimum payment for four hours.
- (16) **Morgues -**
An employee required to work in a morgue shall be paid 52 cents per hour or part thereof, in addition to the rates prescribed in this clause.
- (C) Delete subclause (19) of this clause and insert the following in lieu thereof:**
- (19) An employee required to repair or maintain incinerates shall be paid \$3.15 per unit.

(D) Delete subclauses (21) – (24) of this clause and insert the following in lieu thereof:

- (21) (a) Subject to the provisions of this clause, an employee whilst employed on foundry work shall be paid a disability allowance of 37 cents for each hour worked to compensate for all disagreeable features associated with foundry work, including heat, fumes, atmospheric conditions, sparks, dampness, confined space and noise.
- (b) The foundry allowance herein prescribed shall be in lieu of any payment otherwise due under this clause and does not in any way limit an employer's obligations to comply with all relevant requirements of Acts and Regulations relative to conditions in foundries.
- (c) The foundry allowance herein prescribed shall be in lieu of any payment otherwise due under this clause and does not in any way limit an employer's obligations to comply with all relevant requirements of Acts and Regulations relative to conditions in foundries.
- (d) For the purpose of this subclause foundry work shall mean:
- (i) Any operation in the production of castings by casting metal in moulds made of sand, loam, metal moulding composition or other material or mixture of materials, or by shell moulding, centrifugal casting or continuous casting; and
- (ii) Where carried on as an incidental process in connection with and in the course of production to which paragraph (i) of this definition applies, the preparation of moulds and cores (but not in the making of patterns and dies in a separate room), knock-out processes and dressing operations, but shall not include any operation performed in connection with:
- (aa) Non-ferrous die casting (including gravity and pressure);
- (bb) Casting of billets and/or ingots in metal mould;
- (cc) Continuous casting of metal into billets;
- (dd) Melting of metal for use in printing;
- (ee) Refining of metal.
- (22) An electronics tradesperson, an electrician - special class, an electrical fitter and/or an armature winder or an electrical installer who holds and in the course of employment may be required to use a current "A" grade or "B" grade licence issued pursuant to the relevant regulation in force on the 28th day of February, 1978 under the Electricity Act, 1948 shall be paid an allowance of \$20.60 per week.
- (23) Where an employee is engaged in a process involving asbestos and is required to wear protective equipment, i.e: respiratory protection in the form of a high efficiency class H particulate respirator and/or special clothing, a disability allowance of 66 cents per hour shall be paid for each hour or part thereof that such employee is so engaged.
- (24) **Towing Allowance:** A Level 1, 2 or 3 Tradesperson who drives a tow truck towing an articulated bus in traffic shall be paid an allowance of \$4.67 per shift when such duties are performed. This allowance shall be payable irrespective of the time such work is performed and is not subject to any premium of penalty additions.

(E) Delete subclauses (26) – (29) of this clause and insert the following in lieu thereof:

- (26) **First Aid Allowance:** A worker, holding either a Third Year First Aid Medallion of the St John Ambulance Association or a "C" Standard Senior First Aid Certificate of the Australian Red Cross Society, appointed by the employer to perform first aid duties, shall be paid \$10.00 per week in addition to their ordinary rate.
- (27) **Polychlorinated Biphenyls**
Employees required to remove or handle equipment or fittings containing polychlorinated biphenyls (PCBs) for which protective clothing must be worn shall, in addition to the rates and provisions contained in this Clause, be paid an allowances of \$2.07 per hour whilst so engaged.
- (28) **Nominee Allowance:**
A licensed electrical fitter or installer who acts as a nominee for the employer shall be paid an allowance of \$17.90 per week.
- (29) **Hospital Environment Allowance:**
Notwithstanding the provisions of this clause, the following allowances shall be paid to maintenance employees employed at hospitals listed hereunder:
- (a) (i) \$14.40 per week for work performed in a hospital environment; and
- (ii) \$4.90 per week for disabilities associated with work performed in difficult access areas, tunnel complexes, and areas with great temperature variation at -
- Princess Margaret Hospital
King Edward Memorial Hospital
Sir Charles Gairdner Hospital
Royal Perth Hospital
Fremantle Hospital

- (b) \$10.40 per week for work performed in a hospital environment at -
 Kalgoorlie Hospital
 Osborne Park Hospital
 Albany Hospital
 Bunbury Hospital
 Geraldton Hospital
 Mt. Henry Hospital
 Northam Hospital
 Swan Districts Hospital
 Perth Dental Hospital

- (c) \$6.90 per week for work performed in a hospital environment at -

Bentley Hospital	Derby Hospital
Narrogin Hospital	Port Hedland Hospital
Rockingham Hospital	Sunset Hospital
Armadale Hospital	Broome Hospital
Busselton Hospital	Carnarvon Hospital
Collie Hospital	Esperance Hospital
Katanning Hospital	Merredin Hospital
Murray Hospital	Warren Hospital
Wyndham Hospital	

3. Clause 18. – Car Allowance: Delete subclause (3) of this clause and insert the following in lieu thereof:

- (3) A year, for the purpose of this clause, shall commence on the 1st day of July and end on the 30th day of June next following:

RATES OF HIRE FOR USE OF EMPLOYEE'S OWN VEHICLE ON EMPLOYER'S BUSINESS

AREA AND DETAILS	MOTOR CAR		
	ENGINE DISPLACEMENT (IN CUBIC CENTIMETRES)		
DISTANCE TRAVELLED EACH YEAR ON OFFICIAL BUSINESS	Over 2600cc	Over 1600cc -2600cc	1600cc & Under
Rate per Kilometre (Cents)			
Metropolitan Area	89.5	64.5	53.2
South West Land Division	91.0	65.4	54.0
North of 23.5° South Latitude	98.6	70.6	58.3
Rest of the State	94.3	67.5	55.6
Motor Cycle (In All Areas)	31.0 cents per kilometre		

4. Clause 21. – District Allowances: Delete subclause (6) of this clause and insert the following in lieu thereof:

- (6) The weekly rate of District Allowance payable to employees pursuant to subclause (3) of this clause shall be as follows:

COLUMN I DISTRICT	COLUMN II STANDARD RATE \$ Per Week	COLUMN III EXCEPTIONS TO STANDARD RATE Town Or Place	COLUMN IV RATE \$ Per Week
6	79.30	Nil	Nil
5	64.90	Fitzroy Crossing Halls Creek Turner River Camp Nullagine	87.50
		Liveringa (Camballin) Marble Bar Wittenoom Karratha	81.60
		Port Hedland	76.70
4	32.90	Warburton Mission Carnarvon	71.10 88.10 30.70

COLUMN I DISTRICT	COLUMN II STANDARD RATE	COLUMN III EXCEPTIONS TO STANDARD RATE	COLUMN IV RATE
	\$ Per Week	Town Or Place	\$ Per Week
3	20.70	Meekatharra Mount Magnet Wiluna Laverton Leonora Cue	32.90
2	14.70	Kalgoorlie Boulder Ravensthorpe Norseman Salmon Gums Marvel Loch Esperance	4.90 19.50
1	Nil	Nil	Nil

Note: In accordance with subclause (4) of this clause employees with dependants shall be entitled to double the rate of district allowance shown.

5. First Schedule – Wages:

(A) Delete subclause (5) of this clause and insert the following in lieu thereof:

- (5) (a) In addition to the rates contained in subclauses (2) and (3) hereof, employees designated in classifications C 14 to C 7 inclusive shall receive an all purpose industry allowance of \$16.20.
- (b) This allowance shall be paid in two instalments, as follows:
- (i) \$8.10 of the allowance shall be paid after the first 12 months of Government service; and
- (ii) the remaining \$8.10 - totalling \$16.20 - shall be paid on completion of 24 months of Government service.
- (c) The industry allowance shall be adjusted in accordance with any movements to the wage prescribed in subclause (2) hereof, as follows:
- (i) The increase shall apply to the 'plus 24 months of service' rate;
- (ii) The increase is to be rounded to the nearest ten cents;
- (iii) The rate is to be divided by two to calculate instalments in accordance with subparagraphs (i) and (ii) of paragraph (b) hereof, provided that the instalment rates are not expressed in less than ten cents amounts; and
- (iv) In the event of such an equal division of the industry allowance not resulting in the rates being expressed in less than ten cent amounts, as provided in subparagraph (iii) hereof, the division shall be unequal and weighted to the 12 months' service instalment.

(B) Delete subclause (8) of this clause and insert the following in lieu thereof:

- (8) (a) **Leading Hands**
- A tradesperson placed in charge of three or more other employees shall, in addition to the ordinary rate, be paid per week:
- | | |
|--|-------|
| | \$ |
| If placed in charge of not less than three and not more than ten other employees | 26.00 |
| If placed in charge of more than ten and not more than twenty other employees | 39.60 |
| If placed in charge of more than twenty other employees | 50.90 |
- (b) Any tradesperson moulder employed in a foundry where no other jobbing moulder is employed shall be paid at the rate prescribed for leading hands in charge of not less than three and not more than ten other employees.
- (c) A Certificated Rigger or Scaffolder on ships and buildings, other than a Leading Hand, who, in compliance with the provisions of the Occupational Health, Safety and Welfare Act and Regulations 1988, is responsible for the supervision of not less than three other employees, shall be deemed to be a Leading Hand and be paid at the rate prescribed for a Leading Hand in charge of not less than three and not more than ten other employees.
- (d) In addition to any rates to which an employee may be entitled under this clause a Mechanic-in-Charge, employed by the Department of Conservation and Land Management in the following towns, shall be paid per week -

	\$
Manjimup, Collie	63.50
Harvey, Dwellingup, Mundaring, Yanchep	31.70
Ludlow, Nannup, Margaret River, Kirup, Walpole, Pemberton	16.00
Jarrahdale	16.00

(C) Delete subclauses (10) – (12) of this clause and insert the following in lieu thereof:

(10) Construction Allowance

- (a) In addition to the appropriate rate of pay prescribed in subclause (1) hereof, an employee shall be paid -
- (i) \$45.50 per week if engaged on the construction of a large industrial undertaking or any large civil engineering project;
 - (ii) \$41.00 per week if engaged on a multi-storeyed building but only until the exterior walls have been erected, the windows completed and a lift made available to carry the employee between the ground floor and the floor upon which he/she is required to work. A "multi-storeyed building" is a building which, when completed will consist of at least five storeys.
 - (iii) \$24.20 per week if engaged otherwise on construction work falling within the definition of construction work in Clause 5. - Classification Structure and Definitions of this Award.
- (b) Any dispute as to which of the aforesaid allowances applies to particular work shall be determined by the Western Australian Industrial Relations Commission.
- (c) Any allowance paid under this subclause includes any allowance otherwise payable under Clause 17. - Special Rates and Provisions of this Award.

(11) Tool Allowance

- (a) Where an employer does not provide a tradesperson or an apprentice with the tools ordinarily required by that tradesperson or apprentice in the performance of work as a tradesperson or as an apprentice, the employer shall pay a tool allowance of -
- (i) \$14.40 per week to such tradesperson; or
 - (ii) In the case of an apprentice a percentage which appears against the relevant year of apprenticeship in this Schedule,
- for the purpose of such tradesperson or apprentice supplying and maintaining tools ordinarily required in the performance of work as a tradesperson or as an apprentice.
- (b) Any tool allowance paid pursuant to paragraph (a) hereof shall be included in, and form part of, the ordinary weekly wage prescribed in this Schedule.
- (c) An employer shall provide, for the use of tradespersons or apprentices, all necessary power tools, special purpose tools and precision measuring instruments.
- (d) A tradesperson or apprentice shall replace or pay for any tools supplied by the employer, if lost through the negligence of such employee.

(12) Drilling Allowance

A driller using a Herbert two-spindle sensitive machine to drill to a marked circumference shall be paid an additional \$2.38 per hour whilst so engaged.

6. Fifth Schedule – Building Management Authority Wages and Conditions:

(A) Delete subclause (5)(c), (d) and (e) of this clause and insert the following in lieu thereof:

- (c) In addition to the wage rates provided in paragraph (a) hereof, electricians employed by the Building Management Authority will receive an all purpose payment of \$27.20 per week.
- (d) In addition to the wage rates prescribed in paragraph (a) hereof, by agreement between the employer, the employee and the Union, evidenced in writing, a Mechanical Fitter and a Refrigeration Mechanic may receive 25% loading in lieu of overtime payments.
- (e) Leading hand electricians who are required to perform duties over and above those normally required of leading hands shall be paid an all purpose allowance of \$36.60 per week in addition to the relevant leading hand rate prescribed in subclause (8) of the First Schedule - Wages of this Award.

(B) Delete subclause (7) of this clause and insert the following in lieu thereof:

(7) Computing Quantities:

An employee, other than a leading hand, who is required to compute or estimate quantities of materials in respect of work performed by others, shall be paid \$3.85 per day, or part thereof, in addition to the rates otherwise prescribed in this award.

2009 WAIRC 01317

LIFT INDUSTRY (ELECTRICAL AND METAL TRADES) AWARD 1973

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

COMMUNICATIONS, ELECTRICAL, ELECTRONIC, ENERGY, INFORMATION, POSTAL,
PLUMBING, AND ALLIED WORKERS UNION OF AUSTRALIA, ENGINEERING &
ELECTRICAL DIVISION, WA BRANCH

APPLICANT

-v-

KONE ELEVATORS PTY. LIMITED, OTIS ELEVATOR CO PTY LTD, SCHINDLER LIFTS
AUSTRALIA PTY LTD

RESPONDENT

CORAM COMMISSIONER S M MAYMAN
DATE TUESDAY, 15 DECEMBER 2009
FILE NO APPL 63 OF 2009
CITATION NO. 2009 WAIRC 01317

Result Award varied
Representation
Applicant Ms N Ireland
Respondent No appearance

Order

HAVING HEARD Ms N Ireland on behalf of the applicant and there being no appearance on behalf of the respondents, and by consent, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT the Lift Industry (Electrical and Metal Trades) Award 1973 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after 11 December 2009.

(Sgd.) S M MAYMAN,
Commissioner.

[L.S.]

SCHEDULE

1. **Clause 12. - Overtime: Delete subclause (3)(f) of this clause and insert the following in lieu thereof:**
 - (f) Subject to the provisions of paragraph (g) of this subclause, an employee required to work overtime for more than two hours shall be supplied with a meal by the employer or be paid \$11.40 for a meal and, if owing to the amount of overtime worked, a second or subsequent meal is required the employee shall be supplied with each such meal by the employer or be paid \$7.80 for each meal so required.
2. **Clause 16. – Special Rates and Provisions: Delete subclauses (5) and (6) of this clause and insert the following in lieu thereof:**
 - (5) An Electrician Special Class, an electrical fitter and/or armature winder or an electrical installer who holds and, in the course of the employee's employment may be required to use a current "A" Grade or "B" Grade License issued pursuant to the relevant regulation in force on 28th day of February 1979 under the Electricity Act, 1945 shall be paid an allowance of \$20.90 per week.
 - (6) An employee holding either a First Aid Medallion of the St. John Ambulance Association or a Senior First Aid Certificate of the Australian Red Cross Society, appointed by the employer to perform first aid duties shall be paid \$10.30 per week in addition to his/her ordinary rate.
3. **Clause 28. – Lift Industry Allowance: Delete subclause (1) of this clause and insert the following in lieu thereof:**
 - (1) Tradespeople and their assistants who perform work in connection with the installation, servicing, repairing and/or maintenance of lifts and escalators, other than in the employer's workshops, shall be paid an amount of \$98.10 per week as a lift industry allowance in consideration of the peculiarities and disabilities associated with such work and in recognition of the fact that employees engaged in such work may be required to perform and/or assist to perform, as the case may be, any of such work.
4. **First Schedule – Wages: Delete subclauses (3) and (6) and insert the following in lieu thereof:**
 - (3) Leading Hands:
In addition to the appropriate total wage prescribed in this Clause, a leading hand shall be paid -

- | | | |
|-----|--|-------|
| | | \$ |
| (a) | If placed in charge of not less than three and not more than ten other employees | 26.40 |
| (b) | If placed in charge of more than ten and not more than twenty other employees | 40.20 |
| (c) | If placed in charge of more than twenty other employees | 51.90 |
- (6) (a) Where an employer does not provide a tradesperson or an apprentice with the tools ordinarily required by that tradesperson or apprentice in the performance of his/her work as a tradesperson or as an apprentice the employer shall pay a tool allowance of:-
- (i) \$14.60 per week to such tradesperson; or
- (ii) In the case of an apprentice a percentage of \$14.60 being the percentage which appears against his/her years of apprenticeship in Clause 3 of this schedule, for the purpose of such tradesperson or apprentice supplying and maintaining tools ordinarily required in the performance of his/her work as a tradesperson or apprentice.
- (b) Any tool allowance paid pursuant of paragraph (a) of this Clause shall be included in, and form part of, the ordinary weekly wage prescribed in this schedule.
- (c) An employer shall provide for the use of tradesperson or apprentices all necessary power tools, special purpose tools and precision measuring instruments.
- (d) A tradesperson or apprentice shall replace or pay for any tools supplied by his/her employer if lost through his/her negligence.

2009 WAIRC 01355

METAL TRADES (GENERAL) AWARD

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

COMMUNICATIONS, ELECTRICAL, ELECTRONIC, ENERGY, INFORMATION, POSTAL,
PLUMBING, AND ALLIED WORKERS UNION OF AUSTRALIA, ENGINEERING &
ELECTRICAL DIVISION, WA BRANCH

APPLICANT

-v-

ANODISERS WA AND OTHERS

RESPONDENTS

CORAM COMMISSIONER S M MAYMAN
DATE MONDAY, 21 DECEMBER 2009
FILE NO APPL 68 OF 2009
CITATION NO. 2009 WAIRC 01355

Result	Award varied
Representation	
Applicant	Ms N Ireland
Respondent	No appearance

Order

HAVING HEARD Ms N Ireland on behalf of the applicant and there being no appearance on behalf of the respondents, and by consent, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT the Metal Trades (General) Award 1966 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after 18 December 2009.

[L.S.]

(Sgd.) S M MAYMAN,
Commissioner.

SCHEDULE

1. Clause 3.2 – Overtime: Delete subclause 3.2.3(6) of this clause and insert the following in lieu thereof:

- (6) Subject to the provisions of 3.2.3(7), an employee required to work overtime for more than two (2) hours shall be supplied with a meal by the employer or be paid \$11.45 for a meal and, if owing to the amount of overtime worked, a second or subsequent meal is required, the employee shall be supplied with each such meal by the employer or be paid \$7.75 for each meal so required.

2. Clause 4.8 – Wages and Supplementary Payments:**(A) Delete subclause 4.8.2(1) of this clause and insert the following in lieu thereof:**

4.8.2 (1) Leading Hands:

In addition to the appropriate total wage prescribed in this clause, a leading hand shall be paid per week –
\$

- | | | |
|-----|---|-------|
| (a) | If placed in charge of not less than three and not more than 10 other employees | 26.60 |
| (b) | If placed in charge of more than 10 and not more than 20 other employees | 40.60 |
| (c) | If placed in charge of more than 20 other employees | 52.50 |

(B) Delete subclause 4.8.6(1) of this clause and insert the following in lieu thereof:

- (1) Where an employer does not provide a tradesperson or an apprentice with the tools ordinarily required by that tradesperson or apprentice in the performance of work as a tradesperson or as an apprentice the employer shall pay a tool allowance of:

- (a) \$14.60 per week to such tradesperson; or
(b) in the case of an apprentice a percentage of \$14.60 being the percentage which appears against the year of apprenticeship in 4.8.3;

for the purpose of such tradesperson or apprentice supplying and maintaining tools ordinarily required in the performance of work as a tradesperson or apprentice.

(C) Delete subclause 4.8.7 of this clause and insert the following in lieu thereof:

- 4.8.7 An employee employed in rock quarries, limestone quarries or sand pits shall be paid an allowance of \$23.60 per week to compensate for dust and climatic conditions when working in the open and for deficiencies in general amenities and facilities, but an employee so employed for not more than three days shall be paid on a pro rata basis.

This subclause shall not apply to employees employed by Cockburn Cement Limited.

3. Clause 5.2 – Special Rates and Facilities: Delete this clause and insert the following in lieu thereof:

5.2.1 Height Money:

An employee shall be paid an allowance of \$2.45 for each day on which the employee works at a height of 15.5 metres or more above the nearest horizontal plane, but this provision does not apply to linespeople nor to riggers and splicers on ships and buildings.

5.2.2 Dirt Money:

An employee shall be paid an allowance of 52 cents per hour when engaged on work of an unusually dirty nature where clothes are necessarily unduly soiled or damaged or boots are unduly damaged by the nature of the work done.

5.2.3 Grain Dust:

Where any dispute arises at a bulk grain handling installation due to the presence of grain dust in the atmosphere and the Board of Reference determines that employees employed under this Award are unduly affected by that dust, the Board may, subject to such conditions as it deems fit to impose, fix an allowance or allowances not exceeding 88 cents per hour.

5.2.4 Confined Space:

An employee shall be paid an allowance of 62 cents per hour when, because of the dimensions of the compartment or space in which the employee is working, the employee is required to work in a stooped or otherwise cramped position, or without proper ventilation.

5.2.5 Diesel Engine Ships:

The provisions of 5.2.2 and 5.2.4 do not apply to an employee when the employee is engaged on work below the floor plates in diesel engine ships, but the employee shall be paid an allowance of 88 cents per hour whilst so engaged.

5.2.6 Boiler Work:

An employee required to work in a boiler which has not been cooled down shall be paid at the rate of time and one-half for each hour or part of an hour so worked in addition to any allowance to which the employee may be entitled under 5.2.2 and 5.2.4.

5.2.7 Hot Work:

An employee shall be paid an allowance of 52 cents per hour when the employee works in the shade in any place where the temperature is raised by artificial means to between 46.1 degrees and 54.4 degrees Celsius.

- 5.2.8 (1) Where, in the opinion of the Board of Reference, the conditions under which work is to be performed are, by reason of excessive heat, exceptionally oppressive, the Board may -
- (a) fix an allowance, or allowances, not exceeding the equivalent of half the ordinary rate;
 - (b) fix the period (including a minimum period) during which any allowance so fixed is to be paid; and
 - (c) prescribe such other conditions, relating to the provision of protective clothing or equipment and the granting of rest periods, as the Board sees fit.
- (2) The provisions of 5.2.8(1) do not apply unless the temperature in the shade at the place of work has been raised by artificial means beyond 54.4 degrees Celsius.
- (3) An allowance fixed pursuant to paragraph 5.2.8(1) includes any other allowance which would otherwise be payable under this clause.

5.2.9 Tarring Pipes:

The provisions of 5.2.2 and 5.2.4 do not apply to an employee engaged in tarring pipes in the Cast Pipe Section but the employee shall, in lieu thereof, be paid an allowance of 84 cents per day whilst so engaged.

5.2.10 Percussion Tools:

An employee shall be paid an allowance of 30 cents per hour when working a pneumatic riveter of the percussion type and other pneumatic tools of the percussion type.

5.2.11 Chemical, Artificial Manure and Cement Works:

An employee, other than a general labourer, in chemical, artificial manure and cement works, in respect of all work done in and around the plant outside the machine shop, shall be paid an allowance calculated at the rate of \$12.90 per week. This allowance shall be paid during overtime but shall not be subject to penalty additions. An employee receiving this allowance is not entitled to any other allowance under this clause.

5.2.12 Abattoirs and Tallow Rendering Works:

An employee, employed in and about an abattoir or in a rendering section of a tallow works shall be paid an allowance calculated at the rate of \$16.90 per week. The allowance shall be paid during overtime but shall not be subject to penalty additions. An employee receiving this allowance is not entitled to receive any other allowance under this clause.

- 5.2.13 An employee who is employed at a timber sawmill or is sent to work at a timber sawmill shall be paid for the time there engaged a disability allowance equivalent to what the majority of the employees at the mill receive under the appropriate Award. The allowance shall be paid during overtime but shall not be subject to penalty additions. An employee receiving this allowance is not entitled to receive any other allowance under this clause with the exception of that prescribed in 5.2.1 - Height Money.

5.2.14 Phosphate Ships:

An employee shall be paid an allowance of 74 cents for each hour the employee works in the holds or 'tween decks of ships which, immediately prior to such work, have carried phosphatic rock, but this subclause only applies if and for as long as the holds and 'tween decks are not cleaned down.

- 5.2.15 An employee who is sent to work on any gold mine shall be paid an allowance of such amount as will afford the employee a wage not less than he or she would be entitled to receive pursuant to the Award which would apply if such employee was employed in the gold mine concerned.

- 5.2.16 An employee who is required to work from a ladder shall be provided with an assistant on the ground where it is reasonably necessary for the employee's safety.

- 5.2.17 The work of an electrical fitter shall not be tested by an employee of a lower grade.

5.2.18 Special Rates Not Cumulative:

Where more than one of the disabilities entitling an employee to extra rates exists on the same job, the employer shall be bound to pay only one rate, namely - the highest for the disabilities prevailing. Provided that this subclause shall not apply to confined space, dirt money, height money, or hot work, the rates for which are cumulative.

5.2.19 Protective Equipment:

- (1) An employer shall have available a sufficient supply of protective equipment as, for example, goggles (including anti-flash goggles), glasses, gloves, mitts, aprons, sleeves, leggings, gumboots, ear protectors, helmets, or other efficient substitutes thereof) for use by employees when engaged on work for which some protective equipment is reasonably necessary.
- (2) An employee shall sign an acknowledgement when issued with any article of protective equipment and shall return that article to the employer when finished using it or on leaving employment.
- (3) An employee to whom an article of protective equipment has been issued shall not lend that article to another employee and if the employee does, both employees shall be deemed guilty of wilful misconduct.

- (4) An article of protective equipment which has been used by an employee shall not be issued by the employer to another employee until it has been effectively sterilised but this paragraph only applies where sterilisation of the article is practicable and is reasonably necessary.
- (5) Adequate safety gear (including insulating gloves, mats and/or shields where necessary) shall be provided by employers for employees required to work on live electrical equipment.
- 5.2.20 (1) Subject to the provisions of this clause, an employee whilst employed on foundry work shall be paid a disability allowance of 37 cents for each hour worked to compensate for all disagreeable features associated with foundry work including heat, fumes, atmospheric conditions, sparks, dampness, confined spaces, and noise.
- (2) The foundry allowance herein prescribed shall also apply to apprentices and unapprenticed juniors employed in foundries; provided that where an apprentice is, for a period of half a day or longer, away from the foundry for the purpose of receiving tuition, the amount of foundry allowance paid to the employee shall be decreased proportionately.
- (3) The foundry allowance herein prescribed shall be in lieu of any payment otherwise due under this clause and does not in any way limit an employer's obligations to comply with all relevant requirements of Acts and Regulations relative to conditions in foundries.
- (4) For the purpose of this subclause 'foundry work' shall mean -
- (a) Any operation in the production of castings by casting metal in moulds made of sand, loam, metal, moulding composition or other material or mixture of materials, or by shell moulding, centrifugal casting or continuous casting; and
- (b) where carried on as an incidental process in connection with and in the course of production to which 5.2.20(4)(a) applies, the preparation of moulds and cores (but not in the making of patterns and dies in a separate room), knock out processes and dressing operations, but shall not include any operation performed in connection with -
- (i) non-ferrous die casting (including gravity and pressure);
- (ii) casting of billets and/or ingots in metal moulds;
- (iii) continuous casting of metal into billets;
- (iv) melting of metal for use in printing;
- (v) refining of metal.
- 5.2.21 An employee, holding a Third Year First Aid Medallion of the St. John Ambulance Association or a "C" Standard Senior First Aid Certificate of the Australian Red Cross Society, appointed by the employer to perform first aid duties, shall be paid \$10.10 per week in addition to the employee's ordinary rate.
- 5.2.22 An electronics tradesperson, an electrician - special class, an electrical fitter and/or armature winder or an electrical installer who holds and, in the course of employment may be required to use, a current "A" Grade or "B" Grade license issued pursuant to the relevant Regulation in force on the 28th day of February 1978 under the *Electricity Act 1945*, shall be paid an allowance of \$21.00 per week.

PART 2 – CONSTRUCTION WORK

4. Clause 13. – Wages: Delete subclauses 13.4, 13.5 and 13.6 of this clause and insert the following in lieu thereof:

13.4 Construction Allowance

- (1) In addition to the appropriate rates of pay prescribed in this clause an employee shall be paid:
- (a) \$47.00 per week if the employee is engaged on the construction of a large industrial undertaking or any large civil engineering project.
- (b) \$42.20 per week if the employee is engaged on a multi-storeyed building, but only until the exterior walls have been erected and the windows completed and a lift made available to carry the employee between the ground floor and the floor upon which such employee is required to work. A multi-storeyed building is a building which, when completed, will consist of at least five storeys.
- (c) \$24.80 per week if the employee is engaged otherwise on construction work falling within the definition of construction work in Clause 1.6 - Definitions and Classification Structure of PART 1 - GENERAL of this Award.
- (2) Any dispute as to which of the aforesaid allowances apply to particular work shall be determined by the Board of Reference.

13.5 Leading Hands

In addition to the appropriate total wage prescribed in this clause a leading hand shall be paid:

	\$
(1) If placed in charge of not less than three (3) and not more than ten (10) other employees	26.60
(2) If placed in charge of more than ten (10) and not more than twenty (20) other employees	40.60
(3) If placed in charge of more than twenty (20) other employees	52.50

- 13.6 (1) Where an employer does not provide a tradesperson or an apprentice with the tools ordinarily required by that tradesperson or apprentice in the performance of work as a tradesperson or as an apprentice, the employer shall pay a tool allowance of –
- (a) \$14.60 per week to such tradesperson; or
 - (b) in the case of an apprentice a percentage of \$14.60 being the percentage which appears against his or her year of apprenticeship in 4.8.3 of Clause 4.8 – Wages and Supplementary Payments of PART 1 - GENERAL (subject to Clause 12.2 Apprentices of PART 2) of this Award,
- for the purpose of such tradesperson or apprentice supplying and maintaining tools ordinarily required in the performance of his or her work as a tradesperson or apprentice.
- (2) Any tool allowance paid pursuant to 13.6(1) shall be included in, and form part of, the ordinary weekly wage prescribed in this clause.
 - (3) An employer shall provide for the use of tradespersons or apprentices all necessary power tools, special purpose tools and precision measuring instruments.
 - (4) A tradesperson or apprentice shall replace or pay for any tools supplied by his or her employer if lost through his or her negligence.
- 5. Clause 15.1 – Special Allowances and Provisions:**
- (A) Delete subclause 15.1.2(2) of this clause and insert the following in lieu thereof:**
- (2) Subject to 15.1.3 where the employee's tools or working clothes are lost by fire or breaking and entering whilst securely stored in the place provided by the employer under 15.1.2(1) the employer shall reimburse the employee for that loss but only up to a maximum of \$799.00.
- (B) Delete subclause 15.1.4 of this clause and insert the following in lieu thereof:**
- 15.1.4 An Electronics Tradesperson, an Electrician Special Class, an Electrical Fitter and/or Armature Winder or an Electrical Installer who holds, and in the course of employment may be required to use, a current "A" Grade or "B" Grade license issued pursuant to the relevant regulation in force on the 28th day of February 1978 under the *Electricity Act 1945*, shall be paid an allowance of \$21.00 per week.
- 6. Clause 15. – Allowances and Provisions: Delete subclause 15.4.2 of this clause and insert the following in lieu thereof:**
- 15.4.2 In addition to the wage otherwise payable to an employee pursuant to the provisions of PART 2 - CONSTRUCTION WORK of this Award, an employee (other than an apprentice) shall be paid -
- (1) \$2.09 per hour for each hour worked if employed at Muja;
 - (2) \$1.23 per hour for each hour worked if employed at Kwinana;
 - (3) a safety footwear allowance of eleven (11) cents per hour for each hour worked to compensate for the requirement to wear approved safety footwear which is to be maintained in sound condition by the employee. Failure to wear approved safety footwear or to maintain it in sound condition as determined by the employer shall render the employee liable to dismissal.

2009 WAIRC 01318

RADIO AND TELEVISION EMPLOYEES' AWARD

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

COMMUNICATIONS, ELECTRICAL, ELECTRONIC, ENERGY, INFORMATION, POSTAL,
PLUMBING, AND ALLIED WORKERS UNION OF AUSTRALIA, ENGINEERING &
ELECTRICAL DIVISION, WA BRANCH

APPLICANT

-v-

HILLS INDUSTRIES LTD AND OTHERS

RESPONDENTS

CORAM COMMISSIONER S M MAYMAN
DATE TUESDAY, 15 DECEMBER 2009
FILE NO APPL 64 OF 2009
CITATION NO. 2009 WAIRC 01318

Result Award varied
Representation
Applicant Ms N Ireland
Respondent No appearance

Order

HAVING HEARD Ms N Ireland on behalf of the applicant and there being no appearance on behalf of the respondents, and by consent, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT the Radio and Television Employees' Award be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after 11 December 2009.

(Sgd.) S M MAYMAN,
Commissioner.

[L.S.]

SCHEDULE

1. Clause 9. - Overtime: Delete subclause (3)(f) of this clause and insert the following in lieu thereof:

(f) Subject to the provisions of paragraph (g) of this subclause, an employee required to work overtime for more than two hours shall be supplied with a meal by the employer or be paid \$11.40 for a meal and, if owing to the amount of overtime worked, a second or subsequent meal is required they shall be supplied with each such meal by the employer or be paid \$7.70 for each meal so required.

2. Clause 29. - Wages: Delete subclauses (2) and (5) of this clause and insert the following in lieu thereof:

(2) Leading Hands:

In addition to the appropriate total wage prescribed in subclause (1) of this Clause a leading hand shall be paid:

	\$
(a) If placed in charge of not less than three and not more than ten other employees	26.50
(b) If placed in charge of more than ten and not more than twenty other employees	40.30
(c) If placed in charge of more than twenty other employees	52.00

(5) (a) Where an employer does not provide a Serviceperson, Installer, Assembler or an apprentice with the tools ordinarily required by that Serviceperson, Installer, Assembler or apprentice in the performance of their work as a Serviceperson, Installer, Assembler or as an apprentice the employer shall pay a tool allowance of:-

- (i) \$14.50 per week to such Serviceperson, Installer or Assembler; or
(ii) In the case of an apprentice a percentage of \$14.50 being the percentage which appears against their year of apprenticeship in subclause (3) of this Clause,

for the purpose of such Serviceperson, Installer, Assembler or apprentice supplying and maintaining tools ordinarily required in the performance of their work as a Serviceperson, Installer, Assembler or apprentice.

- (b) Any tool allowance paid pursuant to paragraph (a) of this subclause shall be included in, and form part of, the ordinary weekly wage prescribed in this Clause.
(c) An employer shall provide for the use of tradespersons or apprentices all necessary power tools, special purpose tools and precision measuring instruments.
(d) A tradesperson or apprentice shall replace or pay for any tools supplied by their employer if lost through their negligence.

2009 WAIRC 01325

WA GOVERNMENT HEALTH SERVICES ENGINEERING AND BUILDING SERVICES AWARD 2004

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

COMMUNICATIONS, ELECTRICAL, ELECTRONIC, ENERGY, INFORMATION, POSTAL,
PLUMBING, AND ALLIED WORKERS UNION OF AUSTRALIA, ENGINEERING &
ELECTRICAL DIVISION, WA BRANCH

APPLICANT

-v-

DEPARTMENT OF HEALTH AND OTHERS

RESPONDENTS

CORAM

COMMISSIONER S M MAYMAN

DATE

TUESDAY, 15 DECEMBER 2009

FILE NO

APPL 65 OF 2009

CITATION NO.

2009 WAIRC 01325

Result	Award varied
Representation	
Applicant	Ms N Ireland
Respondent	Ms S Smith on behalf of the Department of Health Ms S Walker on behalf of The Construction, Forestry, Mining and Energy Union of Workers Western Australian Branch

Order

HAVING HEARD Ms N Ireland on behalf of the applicant, Ms S Smith on behalf of the Department of Health and Ms S Walker on behalf of The Construction, Forestry, Mining and Energy Union of Workers Western Australian Branch, and by consent, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT the WA Government Health Services Engineering and Building Services Award 2004 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after 11 December 2009.

(Sgd.) S M MAYMAN,
Commissioner.

[L.S.]

SCHEDULE

1. **Clause 19. – Leading Hand Allowance: Delete subclause (1) of this clause and insert the following in lieu thereof:**
 - (1) An employee placed in charge of 3 or more other employees shall, in addition to the employee's ordinary salary, be paid -
 - (a) Not less than 3 and not more than 10 other employees - \$38.90 per week;
 - (b) More than 10 and not more than 20 other employees - \$52.20 per week;
 - (c) More than 20 other employees - \$65.30 per week.
2. **Clause 23. – Special Rates and Provisions:**
 - (A) **Delete subclause (1) of this clause and insert the following in lieu thereof:**
 - (1) Disability Allowances
 - (a) Except as otherwise provided in this clause, the annual base salaries prescribed in this Award incorporate a commuted allowance which is in full substitution for all disability allowances and other special rates and provisions which are contained in any of the awards named in Clause 1. - Title, as at the date of registration of this Award.
 - (b) Polychlorinated Biphenyls: Employees required to remove or handle equipment or fittings containing polychlorinated biphenyls (PCBs), for which protective clothing must be worn, shall be paid an allowance of \$1.97 for each hour or part thereof whilst so engaged.
 - (c) Asbestos:
 - (i) Employees required to use materials containing asbestos or to work in close proximity to employees using such materials shall be provided with and shall use all necessary safeguards as required by the appropriate occupational health authority
 - (ii) Employees engaged in a work process involving asbestos who are required to wear protective equipment, ie. respiratory protection in the form of a high efficiency class H particulate respirator and/or special clothing, shall be paid an allowance of \$0.65 per hour for each hour or part thereof whilst so engaged.
 - (d) Furnace Work

Employees engaged in the construction or alteration or repairs to boilers, flues, furnaces, retorts, kilns, ovens, ladles, steam generators, heat exchangers and similar refractory work or on underpinning shall be paid \$1.43 per hour or part thereof whilst so engaged.
 - (e) Construction Allowance
 - (i) In addition to the appropriate rate of pay prescribed in Appendix A. - Salaries of this Award, an employee shall be paid -
 - (aa) \$43.10 per week if engaged on the construction of a large industrial undertaking or any large civil engineering project;

- (bb) \$38.80 per week if engaged on a multi-storey building but only until the exterior walls have been erected, the windows completed and a lift made available to carry the employee between the ground floor and the floor upon which he/she is required to work. A "multi-storey building" is a building which, when completed, shall consist of at least five stories.
- (cc) \$22.90 per week if engaged otherwise on Construction Work.
- (ii) The rates specified in paragraph (1)(e)(i) shall be discounted by \$17.80 per week, the amount of the commuted allowance granted under paragraph (1)(a) of this subclause.
- (f) Asbestos Eradication
 - (i) This sub-clause shall apply to employees engaged in the process of asbestos eradication on the performance of work within the scope of this Award.
 - (ii) For the purposes of this clause "asbestos eradication" means work on or about buildings, involving the removal or any other method of neutralisation of any materials which consist of, or contain asbestos.
 - (iii) All aspects of asbestos work shall meet as a minimum standard the provisions of the National Health and Medical Research Council codes, as varied from time to time, for the safe demolition/removal of asbestos based materials.

Without limiting the effect of the above provision, any person who carried out asbestos eradication work shall do so in accordance with the legislation/regulations prescribed by the appropriate authorities.

- (iv) An employee engaged in asbestos eradication (as defined) shall receive an allowance of \$1.42 per hour worked in lieu of rates prescribed in paragraph (1)(c) of Clause 23.- Special Rates and Provisions
- (v) Respiratory protective equipment, conforming to the relevant parts of the appropriate Australian Standard (ie. 1716 "Specification of Respiratory Protective Devices") shall be worn by all personnel during work involving eradication of asbestos.
- (g) Where more than one of the disabilities entitling an employee to extra rates exists on the same job the employee shall be paid only the highest rate for the disabilities so prevailing.

(B) Delete subclause (3)(b), (d), (e) and (f) of this clause and insert the following in lieu thereof:

- (b) Permit Work

Any licensed plumber called upon by the Employer to use the licence issued to him/her by the Metropolitan Water Supply, Sewerage and Drainage Board for a period in any one week shall be paid \$16.80 for that week in addition to the rates otherwise prescribed.
- (d) Scaffolding Certificate Allowance:

A tradesperson who is the holder of a scaffolding certificate or rigging certificate issued by an accredited training provider and is required to act on that certificate whilst engaged on work requiring a certified person shall be paid \$0.53 per hour or part thereof: in addition to the rates otherwise prescribed in this Award.
- (e) Nominee Allowance

A licensed electrical fitter or mechanic who acts as nominee for the Employer shall be paid an allowance of \$16.80 per week.
- (f) Setter Out:

A setter out (other than a leading hand) in a joiner's shop shall be paid \$5.05 per day in addition to the rates otherwise prescribed.

3. Clause 25. – Overtime: Delete subclause (7)(a) of this clause and insert the following in lieu thereof:

- (a) An employee required to work 2 hours or more overtime continuous with their rostered hours, which necessitates taking a meal break, shall be paid a meal allowance of \$12.25 for each meal so required or may be provided with a meal ticket.

Provided that this subclause shall not apply to an employee notified on the previous day of the requirement to work such overtime.

4. Appendix A – Salaries: Delete subclause (1) of this Appendix and insert the following in lieu thereof:

(1) Rates of Pay

Subject to this Appendix, employees shall be paid the rates of pay specified in the following table in accordance with the level to which they are from time to time classified.

(1) Rates of Pay

Subject to this Appendix, employees shall be paid the rates of pay specified in the following table in accordance with the level to which they are from time to time classified.

Level	Percentage Relativity to C10 Tradesperson	Award Base Weekly – Metal, Engineering and Associated Industries Award, 1998 Part I.	Supplementary Payment	State Wage Order Adjustment	Minimum Rate	Additional Payment	Annualised Weekly Allowances and Loading	Committed Overtime and Mobility Allowance (Salary Increase for value for money trade-offs in award safety net of conditions)	Above Award Payment - Subject to Absorption	Salary
Carpenter	Building Tradesperson Level 04	100	365.20	52.00	246.30	663.50	12.40	89.30	0.00	40,543
	Building Tradesperson Level 05	105	383.50	54.60	246.30	684.40	13.04	89.54	0.00	41,680
	Building Tradesperson Level 06	110	401.70	57.20	246.30	705.20	13.68	89.80	0.00	42,812
	Building Tradesperson Level 07	115	420.00	59.80	244.30	724.10	14.22	90.04	0.00	43,838
	Building Tradesperson Level 08	120	438.20	62.40	244.30	744.90	14.86	74.73	0.00	44,158
	Building Tradesperson Level 09	125	456.50	65.00	244.30	765.80	15.50	75.05	0.00	45,298
	Building Tradesperson Level 04	100	365.20	52.00	246.30	663.50	12.40	69.20	0.00	39,495
	Building Tradesperson Level 05	105	383.50	54.60	246.30	684.40	13.04	69.46	0.00	40,632
	Building Tradesperson Level 06	110	401.70	57.20	246.30	705.20	13.68	69.71	0.00	41,764
Painter	Building Tradesperson Level 07	115	420.00	59.80	244.30	724.10	14.22	69.96	0.00	42,791
	Building Tradesperson Level 08	120	438.20	62.40	242.30	742.90	14.86	54.60	0.00	43,004
	Building Tradesperson Level 09	125	456.50	65.00	244.30	765.80	15.50	54.97	0.00	44,251
	Building Tradesperson Level 04	100	365.20	52.00	246.30	663.50	12.40	84.60	0.00	39,657
	Building Tradesperson Level 05	105	383.50	54.60	246.30	684.40	13.04	84.84	0.00	41,434
	Building Tradesperson Level 06	110	401.70	57.20	246.30	705.20	13.68	85.10	0.00	42,566
	Building Tradesperson Level 07	115	420.00	59.80	244.30	724.10	14.22	85.34	0.00	43,593
	Building Tradesperson Level 08	120	438.20	62.40	244.30	744.90	14.86	70.01	0.00	43,912
	Building Tradesperson Level 09	125	456.50	65.00	244.30	765.80	15.50	70.33	0.00	45,052
Plasterer	Building Tradesperson Level 04	100	365.20	52.00	246.30	663.50	12.40	84.60	0.00	39,657
	Building Tradesperson Level 05	105	383.50	54.60	246.30	684.40	13.04	84.84	0.00	41,434
	Building Tradesperson Level 06	110	401.70	57.20	246.30	705.20	13.68	85.10	0.00	42,566
Plumber	Building Tradesperson Level 05	105	383.50	54.60	246.30	684.40	13.04	108.90	0.00	42,690
	Building Tradesperson Level 06	110	401.70	57.20	246.30	705.20	13.68	109.15	0.00	43,821
	Building Tradesperson Level 04	100	365.20	52.00	246.30	663.50	12.40	108.66	0.00	41,553
	Building Tradesperson Level 05	105	383.50	54.60	246.30	684.40	13.04	108.90	0.00	42,690
	Building Tradesperson Level 06	110	401.70	57.20	246.30	705.20	13.68	109.15	0.00	43,821
	Building Tradesperson Level 06	110	401.70	57.20	246.30	705.20	13.68	109.15	0.00	43,821

Level	Percentage Relativity to C10 Tradesperson	Award Base Weekly - Metal, Engineering and Associated Industries Award, 1998 Part I.	Supplementary Payment	State Wage Order Adjustment	Minimum Rate	Additional Payment	Annualised Weekly Allowances and Loading	Commuted Overtime and Mobility Allowance (Salary Increase for value for money trade-offs in award safety, net of conditions)	Above Award Payment - Subject to Absorption	Salary
Electrical Fitter/ Mechanic										
Engineering Tradesperson Level 10	100	365.20	52.00	246.30	663.50	18.80	95.63	12.00	0.00	41,207
Engineering Tradesperson Level 09	105	383.50	54.60	246.30	684.40	19.70	95.88	12.00	0.00	42,358
Engineering Tradesperson Level 08	110	401.70	57.20	246.30	705.20	20.70	96.13	12.00	0.00	43,508
Engineering Tradesperson Level 07	115	420.00	59.80	244.30	724.10	21.60	96.38	12.00	0.00	44,554
Engineering Tradesperson Level 06	125	456.50	65.00	244.30	765.80	23.50	81.21	12.00	0.00	46,037
Engineering Tradesperson Level 05	130	474.80	67.60	244.30	786.70	24.40	81.47	10.00	0.00	47,083



INDUSTRIAL MAGISTRATE—Claims before—

2009 WAIRC 01357

PARTIES	WESTERN AUSTRALIAN INDUSTRIAL MAGISTRATES COURT JOHN MARTIN WALL; TREVOR JAMES WARD	CLAIMANTS
	-v-	
	CHIEF EXECUTIVE OFFICER, DEPARTMENT OF AGRICULTURE AND FOOD	RESPONDENT
CORAM	INDUSTRIAL MAGISTRATE G. CICCHINI	
HEARD	WEDNESDAY, 16 DECEMBER 2009, WEDNESDAY, 26 AUGUST 2009	
DELIVERED	WEDNESDAY, 16 DECEMBER 2009	
CLAIM NO.	M 32 AND M 33 OF 2008	
CITATION NO.	2009 WAIRC 01357	

CatchWords	Alleged failure to comply with the <i>Public Service Award 1992</i> and the <i>Public Service General Agreement 2006</i> ; Claim for 2.5 hours overtime for each week worked from 2002 until 2008; Public sector employees not paid for hours worked in excess of 37.5 ordinary hours per week specified in the <i>Public Service Award 1992</i> ; effect of <i>Labour Relations Reform Act 2002</i> on workplace agreements; Interaction between workplace agreements and industrial agreements; Statutory construction; Construction of s 4H of the <i>Workplace Agreements Act 1993</i> .
Legislation	<i>Agriculture Act 1988 (repealed)</i> <i>Public Sector Management Act 1994</i> <i>Industrial Relations Act 1979</i> <i>Workplace Agreements Act 1993</i> <i>Labour Relations Reform Act 2002</i>
Industrial Instruments:	<i>Public Service Award 1992</i> <i>Public Service General Agreement 2002</i> <i>Public Service General Agreement 2004</i> <i>Public Service General Agreement 2006</i> <i>Public Service General Agreement 2008</i> <i>Department of Agriculture Agency Specific Agreement 2003</i> <i>Department of Agriculture Agency Specific Agreement 2005</i> <i>Department of Agriculture and Food Western Australia Agency Specific Agreement 2007</i> <i>System of Hours Agreements 2004</i>
Cases Referred to	
In Judgement:	<i>John Martin Wall and Trevor James Ward v Chief Executive Officer, Department of Agriculture and Food</i> (2007) 87 WAIG 2853, (2007) 87 WAIG 2872 <i>Chief Executive Officer, Department of Agriculture and Food v Trevor James Ward and John Martin Wall</i> (2008) 88 WAIG 156 <i>Project Blue Sky v Australian Broadcasting Authority</i> (1998) 194 CLR 355 <i>Robe River Iron Associates v Amalgamated Metal Workers' and Shipwrights Union of Western Australia and Others</i> (1987) 67 WAIG 1097 <i>City of Wanneroo v Holmes</i> (1989) 30 IR 362 <i>Public Service Commissioner v Arthur Alfred Dixon</i> (1995) 75 WAIG 1822 <i>BHP Billiton Iron Ore Pty Ltd v Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers (Western Australian Branch)</i> [2006] WASCA 124

Cases also Cited:	<i>Ancor Limited v Construction, Forestry, Mining and Energy Union and Others</i> [2005] 222 CLR 241 <i>Kucks v CSR Ltd</i> (1996) 66 IR 182 <i>Webster v MacIntosh</i> (1980) 32 ALR 603 <i>Australian Woollen Mills Pty Ltd v The Commonwealth</i> (1954) 92 CLR 424 <i>AMP Ltd v Chaplin</i> (1978) 18 ALR 385 <i>Walton Stores (Interstate) Ltd v Maher</i> (1988) 164 CLR 387 <i>Commonwealth v Verwayen</i> (1990) 170 CLR 394 <i>Giumelli v Giumelli</i> (1999) 196 CLR 101
Result	Claims Proven
Representation	
Claimant	Mr R Hooker instructed by <i>Lavan Legal</i> , appeared for the Claimant
Respondent	Mr D Matthews instructed by the <i>State Solicitor for Western Australia</i> , appeared for the Respondent

REASONS FOR DECISION

Background

- The facts in this matter are uncontroversial.
- The Respondent employs the Claimants John Martin Wall and Trevor James Ward. Mr Wall, a Level 2 Administration Officer, has worked for the Respondent at Merredin for 11 years. Mr Ward, a Level 3 Financial Officer, has worked for the Respondent in Perth since 2000. Both are public service officers. They were initially employed pursuant to s 11 of the *Agriculture Act 1988* (now repealed) and are subject to Part 3 of the *Public Sector Management Act 1994* (PSMA). They are also government officers for the purpose of Division 2 of Part IIA of the *Industrial Relations Act 1979* (IRA).
- Their employment was, until 31 December 2002, governed by workplace agreements made pursuant to the *Workplace Agreements Act 1993* (WAA). The *Labour Relations Reform Act 2002* (LRRRA) among other effects amended the WAA so as to cease the legal operation of workplace agreements and to produce certain transitional arrangements. Pursuant to the provisions of the WAA, as amended, workplace agreements expired on 31 December 2002. On 1 January 2003 the Claimants moved from workplace agreements to so called Statutory Contracts of Employment (SCOEs) which preserved their pre-existing terms and conditions of employment so as to ensure that they would not be worse off by the change. Their hours of work did not change.
- In an explanatory memorandum concerning the proposed changes issued to government employees on individual workplace agreements by the Department of Consumer and Employment Protection (DOCEP) on 22 November 2002, the following statement was made:

“Hours of work will not change as a result of the ceasing of workplace agreements. If the hours of work in statutory contracts of employment are greater than the ordinary hours provided for in awards/EBAs, the additional time worked will be treated as overtime in accordance with the provisions of awards/EBAs. This does not necessarily mean the additional time worked will be paid as overtime. Some awards require minimum additional time to be worked before overtime is paid.”

[Exhibit 3]

- From 1 January 2003 onwards the Claimants' employment was governed by the SCOE, an award and other industrial instruments. The industrial instruments which have at different times governed their employment have been the *Public Service Award 1992* (PSA), the *Public Service General Agreement 2002* (PSGA 2002), the *Public Service General Agreement 2004* (PSGA 2004), the *Public Service General Agreement 2006* (PSGA 2006), the *Department of Agriculture Agency Specific Agreement 2003* (ASA 2003), the *Department of Agriculture Agency Specific Agreement 2005* (ASA 2005), the *Department of Agriculture and Food Agency Specific Agreement 2007* (ASA 2007), and the *System of Hours Agreements 2004*. The Claimants' employment is currently governed by the PSA, the *Public Service General Agreement 2008* (PSGA 2008), the ASA 2007, and the *System of Hours Agreements 2004*.
- The workplace agreements which formerly governed the Claimants' employment provided for the working of and payment for an average of 40 hours per week at an agreed ordinary rate. Since the expiration of the workplace agreements the Claimants have continued to work an average of 40 hours per week notwithstanding that the respective instruments that have subsequently governed their employment have provided for the working of and payment for an average of 37.5 hours per week at the ordinary rate of pay. Since 1 April 2006 the Claimants have not been paid for all of the average 40 hours per week worked. Indeed they have been paid for having worked an average of 37.5 hours per week.
- The Claimants contend that, under the applicable industrial instruments, from 1 January 2003 onwards they were entitled, as provided by Part 1A of the WAA, to continue to be paid at the ordinary rate of pay for the average of 40 hours worked each week. Their argument was rejected by the Full Bench of the Western Australian Industrial Relations Commission (WAIRC) (see *Chief Executive Officer, Department of Agriculture and Food v Trevor James Ward and John Martin Wall* (2008) 88 WAIG 156). For the purpose of these proceedings the Claimants maintain that argument but say in the alternative that they should have otherwise, from 1 January 2003, been paid overtime for the 2.5 hours worked each week in excess of the 37.5 ordinary hours prescribed by the applicable industrial instruments.

- 8 The Respondent disputes the claims and says that the payment of 37.5 hours per week at the ordinary rate of pay, is all that is contemplated and able to be paid under the applicable industrial instruments. In that regard the Respondent maintains that the applicable instruments prevail over the workplace agreements because of the transitional provisions of the WAA. The effect being that any contract for work, more than an average 37.5 hours per week as ordinary time is unlawful and invalid and may not be enforced. The Respondent says that the claims for overtime are untenable because the Claimants had never considered any part of their working week to be overtime, and in any event they were not directed to work overtime. A direction to work overtime is a precondition for the payment of overtime. Further, the Respondent points out that some parts of the claims fall outside the 6 year limitation period referred to in s 83A(2) of the IRA. The Respondent also disputes the quantum claimed.

History of Litigation

- 9 In or about March 2007, the Claimants commenced proceedings in the WAIRC seeking certain remedies for the Respondent's alleged underpayment of their entitlements. The Respondent denied that the Claimants had been underpaid. On 24 September 2007 Senior Commissioner Smith (as she then was) determined the matters and ordered that the Respondent pay each Claimant a specified amount. She further ordered that the Respondent pay the Claimants for 40 hours per week at the ordinary rate of pay specified in the applicable industrial instruments until a variation or termination is made of the SCOE under s 4H(5) of the WAA. (see *John Martin Wall and Trevor James Ward v Chief Executive Officer, Department of Agriculture and Food* (2007) 87 WAIG 2853, (2007) 87 WAIG 2872).
- 10 In October 2007, the Respondent appealed the decision to the Full Bench of the WAIRC. In February 2008 the Full Bench allowed the appeal and quashed the decision of Smith SC (see *Chief Executive Officer, Department of Agriculture and Food v Trevor James Ward and John Martin Wall* (2008) 88 WAIG 156). In the course of their Reasons for Decision the members of the Full Bench expressed opinions as to the meaning of s 4H of the WAA, and with respect to the appropriate forum for enforcement. The Full Bench held that following the commencement of the LRRRA on 1 January 2003, it was no longer possible for the Claimants to work 40 hours per week as ordinary hours under the PSA and the other instruments which had effect. The Full Bench held that as from 1 January 2003 the Claimants could only work 37.5 hours as ordinary hours. The Claimants have appealed the decision of the Full Bench. The appeals to the Western Australian Industrial Appeal Court are yet to be heard.

These Claims

- 11 The Claimants seek relief for the alleged underpayment of salary. In each instance their claims relate to the period commencing the week ending 26 September 2002 and concluding the week ending 20 August 2009. They contend that they should have been paid for time worked at either ordinary time, or alternatively, at overtime rates. The Claimants recognise that success in these claims in so far as they relate to payment at ordinary rates for 2.5 hours worked each week will be difficult in light of the decision of the Full Bench.
- 12 Mr Ward claims an amount of \$14,042.30 and Mr Wall an amount of \$15,462.34. The amounts represent the value of 2.5 hours overtime worked at time and a half, less the commuted overtime allowances which they have recently been paid. In order to achieve industrial harmony the Respondent has, from 7 March 2008, in Mr Wall's case, and from 4 April 2008 in Mr Ward's case, paid each of them a commuted overtime allowance for 2.5 hours worked per week.
- 13 The Claimants also seek the payment of pre-judgement interest on the amounts claimed, the imposition of a penalty for the contravention of the relevant instruments, an order preventing further contravention, and costs.

Issues

- 14 The pivotal issues to be determined are:
1. whether the Respondent was obliged, over the relevant period, to pay the Claimants in addition to their fortnightly remuneration an amount for the extra 2.5 hours they worked each week; and
 2. if so, the rate/s at which those amounts are to be paid.

Determination

- 15 From 1 January 2003 until 31 March 2006 each of the Claimants were paid 40 hours ordinary time for having worked a 40 hour week. From 1 April 2006 the Respondent stopped paying them for a 40 hour week and instead paid them on the basis of having worked 37.5 hours per week. Notwithstanding this, the Claimants continued to work 40 hours per week in accordance with their contracts of employment.
- 16 Employees are entitled to be paid for all hours worked pursuant to their respective contracts of employment (see *Chief Executive Officer, Department of Agriculture and Food v Trevor James Ward and John Martin Wall* (supra) per Beech CC at [186] and Wood C at [193]).
- 17 In these matters the undisputed fact is that each Claimant has, during the period of the Claim, except when on leave for various reasons, worked 40 hours each week. Notwithstanding that as from 1 April 2006 they have only been paid for 37.5 hours of the 40 hours worked. The Respondent suggests that the Claimants have brought the situation onto themselves by choosing not to terminate the SCOE under which they are currently employed. If they were to terminate the SCOE they would work and be paid for 37.5 hours per week. Indeed, they choose to continue to work 40 hours per week knowing that they can only be paid for 37.5 hours per week at the ordinary rate of pay. In my view such a criticism of the Claimants is harsh, particularly given that statutory provisions preserved their contractual entitlement to work 40 hours per week. The statutory provisions were enacted to ensure that they would not be disadvantaged by what was contained in the LRRRA. In the end the Claimants have been doing no more than to exercise their contractual entitlements. It is unfair to blame the Claimants for the protracted dispute.

- 18 The Respondent submits that it is not true to contend, as the Claimants do, that 2.5 hours worked each week have not counted for anything. Rather the true position is that the Claimants have been paid at least that which they have been contracted to receive pursuant to their respective workplace agreements. It follows therefore they have been paid for work that they have done and that no unfairness results. That submission is, with respect, illusory. It ignores industrial reality. The Claimants have been paid at an hourly rate for 37.5 hours worked with the result being that they have not been paid for 2.5 hours worked each week. If the Respondent's contention is correct it would not have mattered whether they worked 40 hours or alternatively 37.5 hours because in either case they would have received the same amount of weekly pay. It follows that the 2.5 hours worked in addition to the 37.5 hours will have been for nothing.

Claim to be Paid at Ordinary Rates

- 19 The Claimants' starting position is that they should have been paid at ordinary rates for the additional 2.5 hours worked each week. The Full Bench of the WAIRC in *Chief Executive Officer, Department of Agriculture and Food v Trevor James Ward and John Martin Wall* (88 WAIG 156) held that following the commencement of the LRRRA on 1 January 2003, it was no longer possible for them to work 40 hours per week as ordinary hours under the PSA and the various General Agreements which have had affect since then. The Claimants could only work 37.5 hours as ordinary hours.
- 20 Although the Claimants seem to dispute the correctness of that decision I am bound to follow it. Accordingly, the unpaid 2.5 hours worked each week cannot be paid at ordinary rates. The Respondent says that the Claimants' claim for payment of overtime does not arise because they never considered they were working 2.5 hours overtime each week. Rather the claim is made because the Full Bench rejected their claims that they be paid at ordinary rates. Consequently the claims for payment of overtime have been brought notwithstanding there is no evidence to support it. The Respondent submits that there is no basis upon which the Claimants may be remunerated for the 2.5 hours worked each week in addition to their ordinary hours.

Claim for Overtime

- 21 The 2.5 hours per week over and above the 37.5 hours per week worked may be paid at overtime rates if the Claimants are able to demonstrate that such is required by the industrial instruments that regulated their employment.
- 22 The Respondent submits that save for the fact that the General Agreements prescribe that no more than 37.5 hours per week may be worked as ordinary hours, the hours of work of the Claimants were regulated by the Agency Specific Agreements which have been in place since 1 January 2003 and the System of Hours Agreements made under them which have been in place since 2 January 2004. The Respondent says also that the *Department of Agriculture Agency Specific Agreement 2003* had application from 1 January 2003 and that Clause 10.10 thereof, which relates to overtime, did not apply. Further, no evidence was brought to support coverage of the Claimants within Clause 10.9 of that Agreement which relates to additional hours worked in excess of 75 credit hours.
- 23 The Respondent points out further that the System of Hours Agreements which applied to the Claimants from 2 January 2004 provided that penalty rates would only apply for time in excess of 30 minutes worked outside of the 12 hours standard flexi time period between Monday to Friday, weekends and public holidays. Given that both Claimants submitted that the System of Hours arrangements applied to them and that they had been enjoying the benefits of that system, that is, accumulating and clearing credit hours, it has not been shown that any part of the Claimants' claims were covered by the System of Hours Agreements which entitled them to the payment of overtime. Finally the Respondent argues that the General Agreements provide that the Agency Specific Agreements prevail over General Agreements and the PSA to the extent of any inconsistency except when the General Agreements identify a condition as a core condition. The overtime conditions are not identified as core conditions. The Agency Specific Agreements and System of Hours Agreements made under them provide that penalty rates will only apply for time in excess of 30 minutes worked outside of the 12 hours standard flexi time period. This has precedence over differing provisions in the General Agreements or the PSA for those employees such as the Claimants who take advantage of the flexi time arrangements.
- 24 The implicit contention by the Respondent is that the Claimants are not entitled to be paid for the 2.5 hours worked in excess of the ordinary hours, in excess of ordinary time. The issue to be determined is whether, on a proper construction of the applicable industrial instruments, the extra 2.5 hours worked each week was payable at overtime rates. That of course requires the construction of the applicable instruments.
- 25 The contemporary approach to construction which stems from *Project Blue Sky v Australian Broadcasting Authority* (1998) 194 CLR 355 is that factors such as purpose, general policy and context have to be taken into account rather than just the literal meaning of a provision so as to create consistency and fairness. The interpretation of the relevant industrial instruments in these matters begins with a consideration of the words used and their natural meaning but they cannot be interpreted in a vacuum divorced from industrial realities. (See *City of Wanneroo v Holmes* (1987) 30 IR 362 per French J at 378 and *BHP Billiton Iron Ore Pty Ltd v Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers (Western Australian Branch)* [2006] WASCA 124 per Pullin J at [19] - [23]).
- 26 A consideration of the applicable industrial instruments must start with the Award from which all other instruments flow. Clause 11(3)(d) of the PSA provides that the hourly rate shall only be applied to an average of no more than 37.5 hours per week worked as ordinary hours whether under the PSA or the SCOE. It follows that the issue to determine is whether the 2.5 extra hours worked was done so as overtime. Clause 22 of the PSA contains the overtime provisions. Subclause 22(1)(a) of the PSA defines "overtime" to mean:

"...all work performed only at the direction of the employer or a duly authorised officer outside the prescribed hours of duty."

27 Subclause 22(3)(a) of the PSA states when and how overtime is to be paid. It provides:

“An officer who works overtime for a greater period than 30 minutes, shall be entitled to payment in accordance with paragraph (d) of this subclause, or time off in lieu of payment in accordance with paragraph (b) of this subclause, or any combination of payment or time off in lieu.”

- 28 What is readily apparent from the aforementioned provisions is that working overtime for a period greater than 30 minutes, entitles the employee to the payment of overtime, to time in lieu or a combination of both. There has been no suggestion made in these matters that the Claimants have been offered time in lieu or a combination of time in lieu and overtime for the extra 2.5 hours worked each week. Reference to the 30 minute period in the PSA is not expressed to apply to any particular period whether it be a day or a week. The Claimants' contend that Clause 22(3)(a) of the PSA is designed to preclude claims for overtime for short ad hoc periods arising from time to time, the duration of which is not more than 30 minutes. It is not designed to restrict access to the entitlement where, as an ongoing arrangement or sustained course of conduct, an employee regularly works in excess of 37.5 hours per week. There seems to be force in that argument and I accept that that is a better contextual construction of that particular provision.
- 29 The 2004, 2006 and 2008 General Agreements provide with respect to “Hours” that the provisions of the relevant clauses in each instance replace the PSA provision relating to “Hours”. The relevant clauses with respect to overtime provide inter alia that where an employee is directed by the employer to work more than 7.5 hours in any one day, that overtime applies. In that regard, the Respondent argues that the Claimants were never directed to work overtime which was a necessary pre-condition to their payment of overtime. On the other hand the Claimants argue that a specific direction was not necessary and that a direction or requirement to work overtime could be satisfied by implication. That argument is supported by the finding of an Industrial Magistrate sustained on appeal by the Full Bench in *Public Service Commissioner v Dixon* (1995) 75 WAIG 1823.
- 30 The express terms of their contracts of employment required the Claimants to work 40 hours per week, which they did. The Respondent knew, however, that the Claimants could not be paid for any more than 37.5 hours worked per week at the ordinary rate. The Respondent was therefore conscious of and acquiesced to that ongoing arrangement in which the Claimants worked an extra 2.5 hours per week. Indeed the proforma time sheets created by the Respondent reflected a 40 hour per week regime. There was an expectation by the Respondent that the Claimants would work 40 hours for the week. In those circumstances the Respondent implicitly directed and/or required the Claimants to work an extra 2.5 hours per week in overtime.
- 31 The Claimants have conceded in their evidence that they were not given a specific direction to work overtime. That however, is not fatal to their claims. The reality of their situation was that they were contractually obligated to work 40 hours per week but only 37.5 hours of those hours could be paid at ordinary time. It follows that the remaining 2.5 hours were required to be worked as overtime because the alternate position would be that they would have provided their employer with 2.5 hours labour for no reward. A direction to work overtime resulted by implication in their circumstances by virtue of their contracts of employment. The Respondent acquiesced to the ongoing performance of 40 hours work each week but now says that the Claimants should not be remunerated for any more than 37.5 hours worked. That is patently unfair and offends the principle that employees should be paid for hours worked. That is particularly so in this instance where the Claimants did not go off on a folly of their own. The extra 2.5 hours was worked by agreement and in the full knowledge of the Respondent. In those circumstances the Respondent is estopped from denying the Claimants were required, and by implication directed, to work an excess of 2.5 hours per week over and above the 37.5 hours ordinary time.
- 32 The Respondent says that in any event the ASAs prevail over the PSA and General Agreements and as a consequence whether or not a direction was given is of no significance. Accordingly I need to consider whether the ASAs prevail over the General Agreements and the PSA.
- 33 The General Agreements provide, except where the General Agreement identifies conditions as core, that the ASA will prevail over the General Agreement and the PSA. The overtime provision in each of the General Agreements is not expressed to be a core condition. The ASAs will assume ascendancy over both the General Agreements and the PSA to the extent of any inconsistency. Clause 5 of the ASAs make it clear that the ASAs do not replace the General Agreement to which it relates and that it should be read together with the PSA and the General Agreement. In each instance, Clause 10 of the ASAs deals with the System of Hours. They provide for flexible working hours, permitting the storage of extra hours worked to be credited within certain limits and thereafter debited. The express reference to overtime, other than in circumstances where flexible working arrangements have been exhausted, relate only to the circumstances when not less than 24 hours notice is given to work outside those outlined in Clause 10 and further, in circumstances where a declared emergency exists. It follows that the ASA provisions with respect to overtime are discreet and are particular to situations which do not apply to the Claimants. In those circumstances there is no conflict between the ASA overtime provisions and those contained in the PSA and General Agreements. The PSA and General Agreement provisions are not excluded.
- 34 The Respondent's contention that the System of Hours Agreements, which at Clauses 6 and 7 provide that overtime penalty rates apply only for time worked in excess of 30 minutes outside the 12 hour standard flexi time period between Monday to Friday, weekends and public holidays, seems at first instance to have force. Indeed, Clause 10 of the ASAs provides inter alia that work groups or work sites may develop their own System of Hours. The Claimants in each instance were part of work sites that developed their own System of Hours which addressed the issue of payment of overtime. However the question which arises is, whether the ASAs provided the requisite legal source to exclude that provided by the General Agreements and the PSA. The answer to that question is no. There were inherent limitations in what the System of Hours Agreements could provide and in so far as the System of Hours Agreements purports to exclude the overtime entitlements provided by the

General Agreements and the PSA, it cannot operate to that effect. Indeed, that which was provided for by the Systems of Hours Agreements was extraneous to and not contemplative of the ongoing arrangement to work an extra 2.5 hours each week. Clause 3 of the Systems of Hours Agreements reflects that employees work a daily average 7.5 hours. The Claimants however, by virtue their respective SCOE, are expected to work an average of 8 hours per day. The creation of the System of Hours Agreements was predicated on a false premise that all employees covered by the agreements work an average of 37.5 hours per week. That however is not the case and was not the case for the Claimants. It follows that the specific overtime provisions therein can only relate to employees who work an average of 37.5 hours per week and cannot have the effect of excluding the Claimants' entitlement to overtime for 2.5 hours worked each week.

Are the Claimants Entitled to be Paid for the 2.5 Hours Worked Each Week in Excess of their Ordinary Time?

- 35 The Respondent says that the protracted dispute stems from the Claimants' refusal to accept that they cannot work 40 hours per week and be paid at ordinary rates. That however, ignores the fact that their respective contract of employment obligated them to work 40 hours per week, which they did. Of course they could only be remunerated at ordinary rates for 37.5 of those hours. The implication of the Respondent's submission is that the remaining 2.5 hours worked per week amounted to nothing and should not be remunerated. The Respondent's contention is that the Claimants have been paid at least what they had contracted to receive pursuant to their workplace agreements. That however, fails to recognise that the Claimants were contractually entitled to work 40 hours per week and be remunerated accordingly. The Respondent's argument also seems to ignore the industrial reality of the Claimants' situation and suggests an absurd result in that the Claimants are entitled to same amount of pay irrespective of whether they have worked 37.5 hours or 40 hours per week.
- 36 Although it is true to say that the Claimants cannot be paid at ordinary rates for 40 hours it does not follow that the Respondent should receive the benefit of their efforts over 2.5 hours per week for free. The Claimants are entitled to be remunerated in some form with respect to those 2.5 hours worked. Given that there were no other alternative arrangements made and given that the Claimants were by implication, required and directed to work overtime it follows that in respect to the 2.5 hours worked each week they should have been paid for their endeavours at the overtime rate. If the Respondent's argument were to be accepted it would result in the Claimants being worse off than they had been under their respective workplace agreements because their paid hours would have been reduced. In those circumstances their terms and conditions will not have been preserved but rather would have been unilaterally altered. That would be contrary to the representations made by DOCEP.

Quantum

- 37 Section 83A(2) of the IRA provides that an order may only be made in respect of an amount relating to a period being not more than 6 years prior to the commencement of proceedings. Given that the proceedings were commenced on 6 June 2008 orders may only cover the period 6 June 2002 to 6 June 2008 with the later date being excluded.
- 38 There can be no claim for the period 6 June 2002 to 31 December 2002 in any event given that the Claimants were, during that period being paid in accordance with their respective workplace agreements. From 1 January 2003 to 31 March 2006 the Claimants were paid at the ordinary hourly rate for 40 hours per week. Accordingly the Claimants were entitled to be paid an extra 0.5 times the hourly rate for 2.5 hours worked each week during that period in which they worked 40 hours. For the period 1 April 2006 to 6 March 2008 in Mr Wall's case and to 3 April 2008 in Mr Ward's case, they were entitled to the payment of 2.5 hours worked for each week in which they worked 40 hours at time and a half. From 7 March 2008 in Mr Wall's case and 4 April 2008 in Mr Ward's case, the payment for 2.5 hours per week was covered by a commuted overtime allowance pursuant to Clause 10 of the 2007 ASA (see Exhibits 1 and 4).
- 39 The Claimants contend that from the commencement of their respective agreements to 6 June 2008 they should be paid an increment reflecting the margin in excess of the commuted overtime allowance represented by 1.5 times 2.5 hours each week. The Respondent on the other hand says the payment for 2.5 hours per week was covered by a commuted overtime allowance which, by its very nature, must extinguish the claims for overtime during that period. Clause 10.10 of the 2007 ASA enables hours of "*accrued ordinary hours*" (my emphasis) to be converted into a monetary equivalent representing an additional 8% of an employee's salary. The first observation to be made with respect to this provision is that it follows the flexi time provisions in the preceding clauses. The subclause is clearly aimed at a situation where extra hours are worked as ordinary hours in contemplation of receiving time in lieu but where time in lieu cannot be cleared as agreed and as a consequence the hours are to be paid out as overtime. The commuted overtime allowance operates in those circumstances. That, however, did not have application in these matters where the Claimants worked overtime as opposed to accrued ordinary time in lieu. It seems to me that there is no proper legal foundation for the introduction of the commuted overtime allowance agreements entered into, and accordingly the Claimants are entitled to recover the difference between what they have been paid and that to which they are entitled.
- 40 The Respondent submits that there is no evidential basis whatsoever to properly determine when overtime was worked and no evidential basis for the proper calculation of the quantum payable. The Claimants worked an average of 40 hours per week and on that basis they claim that they should be paid 2.5 hours per week as overtime. The Respondent points out that no attempt has been made to demonstrate on what days overtime has actually been worked. It follows therefore that the Claimants' claim is a blanket claim for 2.5 hours per week regardless of how many hours were actually worked in any given day or in any given week.
- 41 Although the quantification of the Claimants' entitlements is not easy to achieve it does not follow that their claims ought to be rejected. Indeed, there is documentary evidence before me in the form of time sheets (see Exhibits 1 and 4) and in the summaries created by Mr Durnin (see Exhibits 5 and 6) which if collated, are capable of precisely establishing the hours worked by each Claimant for each day and each week over the relevant period. The documentary evidence is also capable of establishing the leave periods taken in various forms during which overtime cannot be paid. The precondition for the payment

of overtime is the actual performance of work. The Claimants submit that they are entitled to the payment of 2.5 hours per week at single time in addition to the 37.5 hours per week paid whilst on leave. In my view, the Full Bench has made it clear that such is not permissible.

- 42 It is not correct to say, as the Respondent does, that there is no evidential basis whatsoever to determine the overtime worked and the quantum payable. Clearly the evidence required with respect to those issues is before the Court. That evidence however is not in a compendious form. A determination of the issue requires a laborious examination of records appertaining to each Claimant over 6 years and calculations that flow from such examination. In my view, valuable judicial time will not be well served by trawling through the documents to ascertain the precise quantum payable. I accordingly invite the parties to calculate the quantum in accordance with these Reasons for Decision. What is required is the identification of each week from 1 January 2003 until 6 June 2008 in which the Claimants actually worked 40 hours. The performance of 40 hours work is a pre-requisite to the payment of overtime. For each of those weeks 2.5 hours overtime is payable. Overtime is not payable whilst the Claimants were on leave or where the combination of leave taken and work performed did not amount to 40 hours. For the period 7 March 2008 in Mr Wall's case and 4 April 2008 in Mr Ward's case to 6 June 2008, the payments received by them in the form of a commuted overtime allowance needs to be setoff against their entitlement.

G Cicchini

Industrial Magistrate

POLICE ACT 1892—APPEAL—Matters Pertaining To—

2009 WAIRC 01350

APPEAL AGAINST A DECISION OF THE COMMISSIONER OF POLICE TO TAKE REMOVAL ACTION

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

GERALD JEAN-NOEL LAURENT

APPELLANT

-v-

COMMISSIONER OF POLICE

RESPONDENT

CORAM

CHIEF COMMISSIONER A R BEECH
ACTING SENIOR COMMISSIONER P E SCOTT
COMMISSIONER J L HARRISON

HEARD

FRIDAY, 24 APRIL 2009, FRIDAY, 17 JULY 2009, TUESDAY, 11 AUGUST 2009,
WEDNESDAY, 16 SEPTEMBER 2009, THURSDAY, 1 OCTOBER 2009

DELIVERED

FRIDAY, 18 DECEMBER 2009

FILE NO.

APPL 135 OF 2008

CITATION NO.

2009 WAIRC 01350

CatchWords

Removal of Police Officer - Loss of confidence by Commissioner of Police - Off duty behaviour towards other police officer - Behaviour in context of past performance and conduct - Police Act 1891 (WA) s 33P, s 33Q

Result

Appeal dismissed

Representation

Appellant

Mr GJ Laurent, in person

Respondent

Ms D Scaddan, of counsel

Reasons for Decision

- 1 This is our unanimous decision. These reasons for decision relate to Mr Laurent's substantive claim that the decision of the Commissioner of Police to remove him from office was harsh, oppressive or unfair. Since Mr Laurent's Notice of Appeal was filed in the WAIRC on 23 December 2008 there have been five interlocutory applications made by Mr Laurent which have been separately decided prior to the hearing of Mr Laurent's appeal on 1 October 2009. The reasons for decision in those five interlocutory applications will be referred to in the course of these reasons for decision as they become relevant to the issues before us.
- 2 The proceedings for the hearing of Mr Laurent's appeal are prescribed in s 33Q(1) of the *Police Act 1892* (WA) ("the Police Act") as follows:

“33Q. Proceedings on appeal

- (1) On the hearing of an appeal instituted under this Part, the WAIRC shall proceed as follows -
- (a) first, it shall consider the Commissioner of Police’s reasons for deciding to take removal action;
 - (b) secondly, it shall consider the case presented by the appellant as to why that decision was harsh, oppressive or unfair;
 - (c) thirdly, it shall consider the case presented by the Commissioner in answer to the appellant’s case.”

3 We therefore commence these reasons by considering first the Commissioner of Police’s reasons for deciding to take removal action.

The Commissioner of Police’s Reasons for Deciding to Take Removal Action

4 The reasons for Mr Laurent’s removal are contained in the letter to him dated 18 November 2008 (Vol 1, Tab 3 of the Respondent’s documents). In summary form, those reasons are:

- Having reviewed Mr Laurent’s performance and conduct as a police officer since his graduation from the Police Academy in February 1997, the Commissioner of Police is satisfied that he has demonstrated a consistent pattern of substandard work, poor productivity and performance throughout his career, together with a poor sense of judgment exemplified by his conduct in Northbridge on 8 March 2008.
- Mr Laurent’s response to the Summary of Investigation and Notice of Intention to Remove amplified, rather than mitigated, the Commissioner of Police’s concerns about Mr Laurent’s performance, conduct, ethics, integrity and competence. The response demonstrated not only shortcomings in Mr Laurent’s written communication and conceptual skills but also the more substantive issues that underlie Mr Laurent’s unsuitability.
- That throughout Mr Laurent’s career his supervisors have made extensive efforts to explain to him their concerns about Mr Laurent’s performance and conduct, and he has been provided with training and development opportunities that are afforded to every police officer. However Mr Laurent appears to have been more interested in attacking the individual who brought these issues to his attention than in dealing with the issues themselves. Mr Laurent labels himself as being the subject of “victimisation”, “poor governance” and “unjust treatment” but provides no evidence to substantiate the claims and this has left the Commissioner of Police with the impression that any person who attempted to performance manage Mr Laurent or regulate his conduct risked being the subject of such accusations.
- That whilst the Commissioner of Police is aware that Mr Laurent refers to a medical condition, or medical conditions, in his response, Mr Laurent has provided the Commissioner of Police with no evidence of these conditions nor any indication of precisely how these conditions have affected Mr Laurent’s past performance.
- That Mr Laurent’s allegations and statements about “senior police’s criminal behaviours” and the “abuse of office” by “senior managers” are nonsensical and have provided the Commissioner of Police with no assistance whatsoever in assessing the material before the Commissioner of Police other than to reinforce the Commissioner of Police’s concerns about Mr Laurent’s suitability to be a police officer.
- The Commissioner of Police believed that Mr Laurent demonstrated to him serious deficiencies in Mr Laurent’s understanding of the legal process and caused the Commissioner of Police serious concern that as a police officer Mr Laurent has been exercising powers in a legal system which Mr Laurent profoundly misunderstands. The Commissioner of Police refers in this context to the decision of the Director of Public Prosecutions not to proceed with a charge against Mr Laurent on the grounds that it was not in the public interest to proceed, and Mr Laurent’s interpretation of the discontinuation as evidence that the “charge was corrupt” or that Mr Laurent was “shown to be having told the truth”.

5 The Commissioner of Police’s Response of 12 February 2009 (Vol 1, Tab 1) to the Notice of Appeal sets out the detail of the matters relied on by the Commissioner of Police. The response runs to 59 pages and 353 points, and we will refer to it as appropriate in the course of these reasons for decision. During the hearing, Ms Scaddan, on behalf of the Commissioner of Police, drew attention to a number of the documents which had been provided to us either as part of the Commissioner of Police’s Response to the Notice of Appeal or in the three volumes of documents relied on by the Commissioner of Police.

6 The submissions made by the Commissioner of Police during the hearing clarified that the material prior to 2006 relevant to Mr Laurent is seen by him as being historical, however, it is relied upon to point to a consistent pattern of substandard work, poor performance and conduct, and as the record of the training and development opportunities provided to Mr Laurent. In the period after 2006, the Northbridge incident was seen by the Commissioner of Police as a catalyst because it was brought to the attention of the Commissioner of Police by the Internal Affairs Unit following an allegation of criminal behaviour against Mr Laurent. As part of their investigation, the Internal Affairs Unit looked at Mr Laurent’s history and this led to the Loss of Confidence nomination.

- 7 The Northbridge incident to which the Commissioner of Police refers also forms an important point in Mr Laurent's appeal so it is appropriate to now set out the Commissioner of Police's understanding of what occurred which led to an allegation of criminal behaviour against Mr Laurent, behaviour which Mr Laurent denies. This incident occurred on 8 March 2008 outside the Aberdeen Hotel in Aberdeen Street whilst Mr Laurent was off duty and on sick leave.
- 8 The Commissioner of Police says (Vol 1, Tab 1, p 4) that during this incident Mr Laurent:
- “(a) hindered and obstructed a Police Sergeant who was issuing a Move On Notice to a member of the public;
 - (b) inappropriately incited members of the public to become aggressive;
 - (c) was charged with obstructing a public officer under s 172(2) of the *Criminal Code*;
 - (d) displayed inappropriate, aggressive and confrontational behaviour towards members of the public and Police Staff when he challenged his criminal charge; and
 - (e) was insubordinate to more senior police officers.”
- 9 The details of Mr Laurent's actions are set out in Vol 1, Tab 1, pp 41-46. The Commissioner of Police notes that Mr Laurent was at the Aberdeen Hotel in Northbridge with a group celebrating a buck's night and that Mr Laurent was off duty and on sick leave at the time. Mr Laurent was a member of a group which was directed by the hotel's head crowd controller to move away from the hotel and to keep the footpath and hotel accesses clear. Mr Laurent refused, stating that the crowd controller had no authority to remove him and Mr Laurent then addressed the crowd advising them not to move. The crowd controller requested the Police to attend.
- 10 Four police officers attended: Acting Senior Sergeant Fisher, Constable Procopis, and two recruits Constables Wooler and Nagy. Whilst beginning to issue a Move On Notice to a member of the public (Mr Dekker) who failed to leave, Sergeant Fisher was confronted by Mr Laurent who was positioned behind a barrier separating the road and the footpath. Mr Laurent began arguing with Sergeant Fisher over the legality of the Move On Notice being issued to Mr Dekker, stating that he (Mr Laurent) was a police officer and demanding to know the grounds of the Notice. The Commissioner of Police says that Mr Laurent was requested by Sergeant Fisher to move on and he refused, turning to address his group and others, advising them not to listen to the police and not to move on. The groups were influenced by him and remained.
- 11 Sergeant Fisher moved away from Mr Laurent, taking Mr Dekker with him. Mr Laurent jumped over the waist-high barrier and approached Sergeant Fisher again requesting Sergeant Fisher's justification in issuing the Move On Notice to Mr Dekker. Sergeant Fisher advised Mr Laurent that he was interfering and obstructing him in his duties, but Mr Laurent persisted and told him he was a police officer. When Sergeant Fisher demanded that Mr Laurent display his police ID, Mr Laurent produced a photo driver's licence. As the crowd was becoming increasingly vocal and aggressive, Sergeant Fisher considered, in the circumstances, that it was not appropriate to arrest Mr Laurent and eventually, Mr Laurent and his group moved away from the Aberdeen Hotel.
- 12 The Commissioner of Police notes that Mr Laurent was to re-commence work after his sick leave ceased on 15 March 2008 but, he failed to report and no contact was made to the Police Station or his supervisors until 17 March 2008. When Mr Laurent eventually made contact he advised that he would be taking a further period of sick leave until 4 April 2008.
- 13 The Commissioner of Police then refers to 19 March 2008 when Mr Laurent attended the Perth Police Station to collect an infringement notice for the incident that had occurred on 8 March 2008 (Vol 1, Tab 1, from p 43). The Commissioner of Police states that after Sergeant Fisher had handed the infringement notice to Mr Laurent and was escorting him back to the exit/entry door, Mr Laurent became hostile and aggressive, and Sergeant Fisher ordered him to leave the premises.
- 14 The Commissioner of Police notes that on 18 April 2008 Mr Laurent was interviewed by the Internal Affairs Unit and the transcript of that interview is at Vol 1, Tab 11.
- 15 The Commissioner of Police states (Vol 1, Tab 1, p 46) that Mr Laurent was later summonsed to attend the Perth Magistrate's Court on the charge of "Obstructing a Public Officer" under section 172(2) of the *Criminal Code*. On 5 September 2008, Mr Ken Bates, the Director of the Legal Services Division of the Director of Public Prosecutions office wrote that in his opinion, the brief against Mr Laurent disclosed a *prima facie* case with reasonable prospects of a conviction but the charge would be discontinued by the State because it was not in the public interest to proceed, having regard to the availability of an appropriate alternative, namely disciplinary proceedings (this letter is contained at Vol 1, Tab 5, Attachment 3).

The Case Presented by Mr Laurent

- 16 It is now appropriate to consider the case presented by Mr Laurent. The reasons, or "grounds of appeal", why Mr Laurent believes his removal is harsh, oppressive or unfair are contained in the four-page letter attached to his Notice of Appeal. One of the interlocutory applications lodged by Mr Laurent sought to amend these reasons. As a result of that interlocutory application the WAIRC added to his reasons a further reason: "That I was not allowed any office time during my working time at Scarborough Police Station and therefore it was difficult to catch up on administrative duties" (2009) 89 WAIG 934; [2009] WAIRC 00515, 3 August 2009). For convenience, we now set out, and deal with, Mr Laurent's reasons under the heading "grounds".

Ground 1

- 17 The first paragraph of Mr Laurent's letter contains his first reason why he believes his removal is harsh, oppressive or unfair:
- “With regards to the Northbridge incident it will become evident from my statement below that the Commissioner has mistakenly identified me as the person of interest (the offender) which will be evidenced by witness statements to be provided in due course”.

- 18 We record here that no witness statements were “provided in due course”. Section 33R of the Police Act would make any such statements new evidence. Mr Laurent did apply for leave to tender new evidence. As we recorded in the reasons for decision ((2009) 89 WAIG 2177; [2009] WAIRC 00839), on 5 and 17 August 2009 Mr Laurent advised the WAIRC that he intended to forward new evidence and on 23 August 2009 that he intended to summons 20 witnesses. The documents he wished to have tendered as new evidence are listed by us in those reasons commencing at [19]. None of those documents was a witness statement directed to Mr Laurent’s assertion that the Commissioner of Police had mistakenly identified him as the person of interest.
- 19 Further, when Mr Laurent supplied the list of witnesses he wished to call to the WAIRC, he did not identify within the list that any of these persons were the persons who would be able to show that the Commissioner of Police has mistakenly identified him as the person of interest. At [39] of the above reasons, we made a point of referring to Mr Laurent’s wish to summons Mr Dekker and concluded that there was nothing before us to show that Mr Laurent wished to call Mr Dekker for this reason. Therefore, although Mr Laurent’s appeal regarding the Northbridge incident is based upon an allegation of mistaken identity he has not provided us with any evidence proving his allegation.

The Statement in the Letter attached to the Notice of Appeal

- 20 The “statement below” to which Mr Laurent refers in his first paragraph sets out what he says occurred on 8 March 2008 outside the Aberdeen Hotel. It commences partway down page 2 of the letter under the heading “Background pertaining to the Northbridge incident”, includes all of page 3 and the first two paragraphs of page 4. (Mr Laurent also recounted the events of the Northbridge incident in his submission to us during the appeal commencing at transcript, p 21.) Commencing partway down page 2 of his appeal, Mr Laurent says that it was Mr Gailey who “went on to abuse the Police who was issuing the notice on the other side of the hotel barrier” and that Mr Laurent was speaking to Constable Procopis explaining that he, Mr Laurent, was leaving the area whilst waiting for other friends to exit the building and whilst waiting for the bus.
- 21 Mr Laurent states that Constable Procopis later heard Sergeant Fisher “screaming for help” and that “Adam proceeded to leave the area upon the arrival of Constable Procopis whilst at the same time provoking the group not to comply with Police demands”. Mr Laurent says that during this time he was attempting to defuse the situation. Mr Laurent continues that “[a] short time later it was brought to my attention that Adam had not moved on as requested but continued to abuse the Police Officer to the extent of jumping the barrier and menacing (pointing at) the Police Officer”. Mr Laurent continues that within a few minutes Mr Gailey was continuing to abuse the police which led Sergeant Fisher to approach the barrier and to caution Mr Gailey that he could be arrested and the Sergeant unsuccessfully attempted to retrieve Mr Gailey’s full name and personal details.
- 22 Mr Laurent says that as Mr Gailey then stepped away, Sergeant Fisher approached Mr Laurent and demanded Mr Laurent move on without providing any plausible explanation for the request to move on and that “[a]s a Police Officer and a law abiding Citizen I am aware that I have the right to ask the reason as to why I was being asked to move on which I did”. Sergeant Fisher continued to ask that Mr Laurent move on and Mr Laurent continued to exercise “my citizen’s right asking for what reason”. Mr Laurent says that Sergeant Fisher said to him that he was on licensed premises and Mr Laurent replied that the licensing terminated at the entrance door. Sergeant Fisher said that Mr Laurent had attempted to enter the licensed premises and that Mr Laurent obstructed and hindered police. Mr Laurent replied, “Mate if you are going to make up false charges then you may as well arrest me”.
- 23 Sergeant Fisher then demanded Mr Laurent’s police number which he refused to give but Mr Laurent did provide him with his driver’s licence. Mr Laurent continues that Sergeant Fisher requested Mr Laurent’s police number again and mentioned that Sergeant Fisher wanted to write a report about Mr Laurent, and Mr Laurent explained that he was well within his rights not to provide him with a police number. Mr Laurent says “[f]ollowing receipt of my Driver’s Licence details and my Police number, [Sergeant] Fisher became very agitated and requested I leave the area with abusive foul language directed specifically at me. Following [Sergeant] Fisher’s abusive language towards me I immediately left the scene in total shock whilst making him aware that he didn’t know what he was doing as a police officer to protect and serve the public”.

Mr Laurent’s Submissions during the Hearing on the Northbridge Incident

- 24 Mr Laurent referred to the Northbridge incident in his submissions before us in the appeal. These submissions (transcript, p 21), were principally directed to Mr Laurent saying that all he was doing was questioning Sergeant Fisher issuing a Move On Notice to Mr Dekker without giving Mr Dekker a reason:

“The Northbridge incident is a clear evident ... it ... how the Police Service works. I’m a 11-year constable. I’ve served move on notice every weekend at Geraldton at the ... at the nightclubs. Every weekend I worked there is ample of move on notice and I can tell you the nine criterias for move on notices. What I found to be ... when I was at Northbridge and my brother-in-law was carrying up all the way through the night, being drunk, unable to control his alcohol, I sat there and listened to Senior Sergeant Fisher call out, “Mate, you’ve got to move.” The officer says, “Why?” The person says ... Mr Decker (*sic*) says, “Why do you have to move?” “Mate, come over here, I’ll give you a move on notice.” My question to him was that if someone asks you as ... as a police for 11 years and I know, “Please give me a reason.” You give the person a reason otherwise it becomes in a ... in a judicial process, questionable or unlawful because you don’t give a person no reason. If ... if Mr Fisher had done his ... his ... had given an instruction or ... or direction to ... a lawful direction, he would have to give a reason and at no stage did Mr Decker (*sic*) say that he gave a reason.

He actually said that because a bouncer had told him before to leave, that he was asked to leave and he was about five metres away from the door that the bouncer walked away from the door, didn’t come to him, he came to us, and spoke to it. When ... when Fisher spoke to the bouncer, the bouncer ... that Fisher got it wrong. He went ... instead of speaking

to us, which the bouncer was referring to, he spoke to Mr Decker (*sic*). He made an example out of Mr Decker (*sic*). So when he ... when he gave the instruction to Mr Decker, (*sic*) "You've got to move. Mate, you've got to move," and he says, "Why?" and he doesn't give, "Come over here, I'll give you a move on notice." That becomes a questionable of lawfulness of the order. That's all I was questioning."

(Extracts from transcript, p 21)

25 Further, on page 23, referring to Sergeant Fisher, Mr Laurent states:

"He came ... he was going to charge me. I know I shouldn't have reacted and, unfortunately, I shouldn't have reacted. I should have said ... when the police asked to move, let's move. I suffer post-natal response and ... and there's evidence from my evidence through the medical ground ... information that I have and I don't take it back for ... when I know that I've done nothing wrong and I ... that's why I'm here and I lost my job. "Give me a reason," but he couldn't give me a reason. Instead of working with me, he charged me for an offence, 15 days after, and asked me for an explanation. Then he wanted ... the worst thing he said, he said I swore to him. I don't swear to people. I might've been assertive and ... and maybe, if you call it aggression, but ... but in ... you know, the manner and response ... but I don't swear and ... and it's evident for all the way through for the ... for the matters at ... at the ... of the medical centre and all that. I don't swear, because it's not part of me to swear. It shows that this officer didn't ... go with the false charge. He ... he felt that the Liquor Act wasn't enough, yet he's going to ... with an amount of cohesion and ... and coercion convince other people that ... that he did that, but unfortunately ... and unfortunate on my behalf, I had my brother-in-law, who didn't want to tell the truth, but he admits to what he did in an email that I received. He ... however, he goes on to say that, "You deserved it because police were trying to get rid of you for the last six, seven years."

(Extracts from transcript, pp 23-24)

26 Further on, Mr Laurent was critical of the Internal Affairs Unit interview of Mr Dekker stating that the police officers concerned did not put the right questions to Mr Dekker. Mr Laurent states (from transcript, p 26 onwards) that in Sergeant Fisher's statement to the Internal Affairs Unit he should cross out Mr Laurent's name and put Mr Gailey's name up to the point where Mr Laurent had produced his identification to Sergeant Fisher. Mr Laurent referred to the Northbridge incident again at transcript, pp 64-65.

Response of Commissioner of Police to Mr Laurent's Submissions during the Hearing

27 In response to Mr Laurent's submissions made during the hearing, the Commissioner of Police observed that to the extent that Mr Laurent's submission was on the basis that Sergeant Fisher was issuing Mr Laurent with a Move On Notice, the Commissioner of Police submitted that Sergeant Fisher never sought to issue Mr Laurent with a Move On Notice. Rather, Mr Laurent had interjected himself into a situation in which he had no right to inject himself (transcript, p 75). Sergeant Fisher was dealing with a member of the public in the course of his duties as a police officer, and Mr Laurent was informed by Sergeant Fisher to leave and go away because he had no business interposing himself between Sergeant Fisher and Mr Dekker.

28 The Commissioner of Police points out that there were four police officers, two of whom were recruits, one of whom was a junior constable and the other an Acting Sergeant, patrolling Northbridge at midnight facing a crowd of people coming out of the Aberdeen Hotel and it was a potentially volatile situation. The Commissioner of Police submitted that police officers are at risk in those particular situations and Mr Laurent ought to have known better.

Conclusion on the Northbridge Incident

29 We consider the essence of Mr Laurent's appeal on this point is his submission that he did not obstruct or hinder Sergeant Fisher and that he was mistakenly charged for something he did not do. Mr Laurent has not provided the WAIRC with any evidence to support his submission. His statement in the letter attached to his Notice of Appeal is not evidence of what he alleges; neither is his submission during the hearing before us.

30 During the hearing, Mr Laurent stated (transcript, p 24) that there is one person, whom he named as Mr Duckerill, who had been in Northbridge and would be a person who would "tell it as it is", however we note that Mr Duckerill was not listed amongst the list of eventually 96 persons Mr Laurent said he wished to summons as witnesses. During the hearing, when we pointed out to Mr Laurent that he had indicated in the exchanges of emails leading up to the hearing that he had evidence, or that he knew of witnesses, Mr Laurent replied to us that he did but that he cannot tell us:

BEECH CC: - - - you've indicated that you ... you have evidence or you know who witnesses are - - -

MR LAURENT: I have. Yeah. I can't tell you. It's like - - -

BEECH CC: Well, and if you can't tell us there's ... if you can't tell us - - -

MR LAURENT: I understand that.

BEECH CC: - - - we can't take it into account.

MR LAURENT: I understand that and I ... and I empathise with you - - -

(Extract from transcript, pp 29-30)

31 In the absence of any evidence from Mr Laurent to support his submission, we look to the material that we do have before us. That material does not support Mr Laurent's submission that the Commissioner of Police has mistakenly identified him as "the person of interest". Sergeant Fisher was interviewed by the Internal Affairs Unit on 9 April 2008 which is only four weeks after the Northbridge incident. His statement makes it clear that he knows the person he was describing was Mr Laurent because Mr Laurent identified himself to Sergeant Fisher, initially by showing a driver's licence and then by giving his regimental number.

- 32 Sergeant Fisher says in his interview (Vol 3, Tab 3) that when he was starting to speak to a person who we understand to be Mr Dekker, he was approached by Mr Laurent who was leaning over the barrier, said that he was a police officer and said he wanted to know on what grounds he, Sergeant Fisher, was issuing a Move On Notice (p 5). He asked Mr Laurent to go away but Mr Laurent refused and Mr Laurent started yelling to his friends “[y]ou don’t have to listen to the police, you don’t have to move away, you don’t have to move”. Sergeant Fisher moved away together with the person to whom he was speaking. He states that Mr Laurent started to climb the barrier and Sergeant Fisher said “Mate, don’t come near me, you’re obstructing me, its done, this is what I’m doing, don’t – you’re just interfering at the moment”. He says “[He] then climbed the barrier anyway and started coming towards me... [and]... confronted me”. Sergeant Fisher asked him to produce his police identification and he refused however he did produce his driver’s licence in the name of Gerald Laurent, and Sergeant Fisher noted those details in his notes. Eventually, Mr Laurent gave his regimental number. Sergeant Fisher thought that Mr Laurent should have been arrested because Mr Laurent was agitated and seemed quite confrontational, however, Sergeant Fisher felt that Mr Laurent would have resisted and he decided to issue an infringement later on (p 11).
- 33 It is clear that Sergeant Fisher is saying that the person who approached him, who queried what he was doing, who climbed the barrier and confronted him is the person who produced the driver’s licence to him, and who eventually gave him his regimental number. There is no room in Sergeant Fisher’s statements to suggest that he confused Mr Laurent with another person. On this point, the statement of Constable Procopis, who was interviewed by the Internal Affairs Unit on 11 April 2008 distinguishes between Mr Laurent and another person. At Vol 3, Tab 12, pp 9-10 Constable Procopis was asked about “the group that this off duty officer was with” and he said:
- “One of them was shouting out. I can’t remember the big guy in the group. He was the one that was – that told Scott, the security, that he [i.e. Mr Laurent] was a sergeant in Geraldton” and “[h]e was – apart from the off duty cop, he was probably the loudest of the group.”
- 34 That is, Constable Procopis refers to a “big guy” who was not “the off duty cop”. At page 20, Constable Procopis again refers to “... a really big guy in that group and he was quite aggressive as well...”. Constable Procopis differentiates this person from the person he identified as Mr Laurent. However, when Constable Procopis recalls a person yelling out to both him and Sergeant Fisher that they could not do that (a reference to the issuing of the Move On Notice); that this same person was originally behind the barrier and then he climbed over the barrier and came over towards them and was still being argumentative (p 9); that he [Constable Procopis] advised Sergeant Fisher that he had information that this person was an off duty police officer or a Sergeant from Geraldton; that Sergeant Fisher had asked this person if he was a police officer and for the person’s ID, and the person showed his driver’s licence; that the person was being “a real interference”; and that when this person gave his regimental number he wrote it in his notebook and it was Mr Laurent’s regimental number, the person he is referring to is Mr Laurent. Constable Procopis’s identification of Mr Laurent as being this person who was “a real interference” is quite clear. Constable Procopis is not confusing Mr Laurent with “the big guy” in the group.
- 35 It was Mr Laurent whom Constable Procopis described as being “very argumentative and border line aggressive” (p 12) and Constable Procopis was sufficiently concerned that when Mr Laurent approached them, Constable Procopis told the recruits to watch his friends and adopted a defensive stance (p 19). Constable Procopis was asked whether the person who was the off duty police officer said anything to the people that Sergeant Fisher was issuing the Move On Notice to and Constable Procopis answered:
- “Not that I recall, no. He did yell out something like –, now, I am not sure if it was directed – I’m assuming it was probably directed at him. He goes, you know, they can’t do this to you sort, of thing, yes.” (p 14)
- 36 Constable Procopis thought that Mr Laurent’s actions were going to make it harder for him and Sergeant Fisher because in the end these people might not have moved on as they would listen to this person. It was clearly Mr Laurent whom Constable Procopis believed was “very close to being locked up if he had kept on”; it was Mr Laurent whom Constable Procopis would have been compelled to arrest (p 20).
- 37 In contrast, we note that the statement of Mr Dekker (Vol 3, Tab 12) at p 6 says that Mr Laurent was not aggressive. However, Mr Dekker does say that he thought Mr Laurent was “pretty rude” and a “smart a*** type” which seems to us to be a description which is not inconsistent with the statements of Mr Laurent’s behaviour by Sergeant Fisher and Constable Procopis.
- 38 We also consider the statements of Sergeant Fisher and Constable Procopis in their interviews to be credible because in part they are consistent in important respects with Mr Laurent’s own statements in his interview conducted by the Internal Affairs Unit on 18 April 2008 (Vol 1, Tab 11). In his interview, Mr Laurent states that Adam Gailey was present and was very aggressive (interview, p 4), and incited the Sergeant (p 5) (in Constable Procopis’s statement is the reference to “the big guy in the group who was, apart from Mr Laurent, probably the loudest of the group). When Sergeant Fisher, who was standing on the other side of the barrier, said “Look, you guys got to move on”, Mr Laurent replied “Look, please, tell me what we did wrong. Why are you asking us to move?” (in Sergeant Fisher’s statement it was Mr Laurent wanting to know on what grounds he, Sergeant Fisher, was issuing a Move On Notice).
- 39 In his interview, Mr Laurent states that he “stood over the barrier”, had a little stumble and Sergeant Fisher said something to the effect of “Wow, watch out”. Mr Laurent says that Sergeant Fisher was “a bit paranoid in relation to my actions” (in Sergeant Fisher’s statement Mr Laurent started to climb the barrier and Sergeant Fisher said “Mate, don’t come near me, you’re obstructing me, it’s done, this is what I’m doing, don’t – you’re just interfering at the moment”. He says “[He] then climbed the barrier anyway and started coming towards me... [and]... confronted me”).
- 40 Mr Laurent was inquisitive as to why they were being asked to move on. At page 6, Mr Laurent states that he jumped the barrier and Sergeant Fisher said “look, you’re on legally licensed premises” and Mr Laurent replied “[w]ith due respect, legally licensed premises finish at 3 metres away by the door and no way am I on legally licensed premises”. Mr Laurent’s statement

to the Internal Affairs Unit confirmed that Sergeant Fisher asked Mr Laurent for his regimental number and Mr Laurent believed there was no requirement for providing regimental numbers and he did not give to him until after having been asked a second or third time. At some stage he gave Sergeant Fisher his driver's licence and this was then returned to him (p 6) (in Sergeant Fisher's statement, Sergeant Fisher asked Mr Laurent to produce his police identification and he refused however he did produce his driver's licence in the name of Gerald Laurent and Sergeant Fisher noted those details in his notebook. Eventually, Mr Laurent gave his regimental number).

- 41 Mr Laurent's statement shows his replies to points put to him by the Internal Affairs Unit officers which arose from their interviews of Sergeant Fisher, Constable Procopis, Constable Wooler and the head of security of the Aberdeen Hotel Mr Scott Simpson. In his replies, Mr Laurent admitted that he spoke to Sergeant Fisher after Sergeant Fisher came to Mr Laurent to try to give him a Move On Notice (p 25) but denies that he went and spoke to Sergeant Fisher while Sergeant Fisher was issuing a Move On Notice to Mr Dekker. He also denied following Sergeant Fisher, Constable Procopis and Mr Dekker down the road and confronting Sergeant Fisher (p 26). He denied that he was shouting at the crowd at the time (pp 27-28), and said that he did not approach Sergeant Fisher in an aggressive manner (p 28). He said that it was Mr Gailey who was confronting (pp 36-37) and who interfered with Mr Dekker (p 41). However, we note that these responses are at odds with the statements of Sergeant Fisher and Constable Procopis. Further, in his submissions before us during the appeal Mr Laurent stated that "I might've been assertive and ... and maybe, if you call it aggression..." (transcript, pp 23-24). This, in our view, indicates that the statements of Sergeant Fisher and Constable Procopis are reliable and we therefore do not accept Mr Laurent's claims.
- 42 In relation to the Northbridge incident, Mr Laurent has sought to blame others by suggesting that it was Adam Gailey who behaved in the manner attributed to Mr Laurent but did not seek to prove this notwithstanding his statement in his Notice of Appeal that witness statements will be forthcoming. He has not shown that there was any mistaken identity and the evidence before us shows that there was not. He also attacked Sergeant Fisher's behaviour on the night when the issue is the behaviour of Mr Laurent, not of Sergeant Fisher.
- 43 Whatever Mr Gailey may or may not have done outside the hotel, Mr Laurent's own behaviour towards Sergeant Fisher was, in his own words, at least assertive and possibly could be seen as aggressive. Certainly, Constable Procopis adopted a defensive stance towards Mr Laurent when Mr Laurent approached, which suggests to us that Mr Laurent's manner was confrontational. Even in the observations of the member of the public, Mr Dekker who was with Sergeant Fisher, Mr Laurent was rude and a smart a***. Mr Laurent has not provided us with a reason not to accept as correct the statements of Sergeant Fisher and Constable Procopis that Mr Laurent yelled at his friends that they did not have to listen to the police, that he was confrontational, that he obstructed and interfered with Sergeant Fisher carrying out his duty and was a real interference who was very close to being locked up if he had kept on.
- 44 In our view, Mr Laurent's behaviour in Northbridge could only have made the potentially volatile situation more difficult for Sergeant Fisher and his fellow officers. Constable Procopis's defensive stance illustrates the risk to police safety in these situations. Mr Laurent's behaviour was inexcusable given he was himself a police officer with 12 years of service. He had no business interfering with Sergeant Fisher, and his submissions before us suggest that he still regards Sergeant Fisher's actions in issuing a Move On Notice to Mr Dekker to have been incorrect.
- 45 Therefore on the only material available to us, there is no basis upon which we could conclude that Mr Laurent has shown that the Commissioner of Police has mistakenly identified him as "the person of interest". This ground of appeal is not made out.

Ground 2

- 46 Mr Laurent next says that that the reasons for his removal were unfounded to the extent that the Commissioner of Police was made aware, and has been fully aware, that his performance was hindered due to injury he sustained whilst carrying out his duties as a police officer. He writes that "[s]ince my injury which occurred in 1997, I have received no assistance whatsoever from the WA Police". During the hearing we asked Mr Laurent to clarify the injury to which he there refers (transcript, pp 33-34). He mentioned a back injury from the arrest of Mr Batka in February 2004 and a rash from the Geraldton Police Station air-conditioning refurbishment from August-September 2007. Mr Laurent had previously provided the WAIRC with a bundle of medical reports in support of his request for an adjournment and he was asked during the hearing whether those medical reports are the matters to which he is referring and he replied (transcript, p 39) "...I think so...".
- 47 Also at transcript, p 39 the Chief Commissioner put to Mr Laurent that the date "1997" was a misprint and should read "2007"; Mr Laurent replied: "That's correct, sir, yes". Later in the hearing, during the Commissioner of Police's submissions in answer to Mr Laurent's case, Ms Scaddan put to us that the presumption of a misprint was not appropriate and that Mr Laurent had also submitted a first medical certificate in 2002 regarding a back complaint arising out of work and sport (transcript, p 77). We note also that within Mr Laurent's submissions to us during the hearing is a passing reference to him having "suffered a workload injury sometimes which caused me to suffer anxiety attacks, stress and blurred vision, that ... that is noted that it was my time when I worked at Midland and ... and the time to 2002 ... 2000 ... 2000". (transcript, p 56).
- 48 Mr Laurent's submissions therefore leave us quite unsure to what injury Mr Laurent is referring as having "hindered" his performance as a police officer. Although Mr Laurent did not refer us to any particular document in the three volumes of material we have before us, we note Mr Laurent's response to the Commissioner's loss of confidence process (Vol 1, Tab 5, Att 1) which has a heading "Injuries". Under that heading is a list of 7 alleged injuries. However, none of them is earlier than February 2004 where Mr Batka is mentioned, although further in this document at page 2 is a heading "Loss of Confidence Issues" under which at point 5 is a sentence containing the words: "I suffered a work related injury sometime in 1997, which caused me to suffer from an anxiety attack, stress, blurred vision and trauma". This is so vague we are unable to accept it as establishing anything relevant.
- 49 We point out that our concern is not so much about whether Mr Laurent suffered an injury sustained whilst carrying out his duties as a police officer; it is whether, as Mr Laurent says in this ground of appeal, his performance as a police officer when

- he was at work was hindered by injury. We understand Mr Laurent to be submitting to us that any substandard work, poor productivity or performance is to be excused as it was due to injury sustained whilst carrying out his duties as a police officer.
- 50 In reply to this ground, during the hearing Ms Scaddan submitted that Mr Laurent had the opportunity to present medical evidence to the Commissioner of Police as part of his response to the Notice of Intention to Remove explaining how the performance of his duties as a police officer was affected by injury. He did not do so. She stated the presentation of a medical certificate by Mr Laurent does no more than purport to say that he has a medical condition. There is no connection at that stage between it and the workplace. There is no evidence that Mr Laurent's rash has any nexus with his poor performance and conduct and no evidence in any way to suggest that the rash caused his behaviour in the Northbridge incident.
- 51 We note that Mr Laurent has not drawn to our attention any medical certificate or report which shows that his performance as a police officer was hindered by injury. For example, it is one thing for Mr Laurent to produce medical or other reports to show that he suffered from a rash but there is nothing in that to show that it caused the poor performance or poor conduct to which the Commissioner of Police refers. We note that during the Internal Affairs Unit Interview about the Northbridge incident Mr Laurent did not suggest that his behaviour was due to injury. However, during the hearing (transcript, p 42) Mr Laurent stated the following in relation to the treatment for his rash not working:
- "And ... and so I lost the plot. I honestly lost the plot and I saw Sergeant Fisher come to me and say, "Mate, nick off, go." I said, "Well, give me a reason." It's only because I am so anti-police at the moment that I am quite adamant I will catch a few of them and I will catch them quite severely and that's unfortunate, so that's ... that's why I'm here. I'm not being vexatious or malicious, I just want what I ... what I was legally entitled to prior to losing my employment and prior to sustaining injury."
- 52 Any issue of the treatment for his rash not working or that this affected his behaviour at Northbridge was not raised in his response to the Commissioner's Loss of Confidence, nor in his Notice of Appeal and nor in his application to amend his grounds of appeal. In any event, there is no evidence before us to this effect.
- 53 During the hearing we drew to Mr Laurent's attention a letter from a doctor dated 21 February 2005 (Vol 2, Tab 24) saying that Mr Laurent was sufficiently recovered to return to full duties. Mr Laurent's reply was there are other similar letters but that "I kept on hurting myself and I couldn't get the ... the assistance not to prolong sitting, so I was hurting myself and ... and I was coming back again" (transcript, p 41). Although Mr Laurent has made a submission to us in the hearing that he kept on hurting himself he did not direct us to any medical evidence to support that submission although there are relevant reports at Vol 2, Tab 24. In relation to these reports, the issue for this appeal is not whether Mr Laurent had further time off work after 21 February 2005 (which he did as is shown in Tab 24) but rather whether there is medical evidence to show that when he was at work, the sub-standard performance relied upon by the Commissioner of Police occurred due to injury. In our view, there is no such medical evidence and Mr Laurent did not direct our attention to any such evidence.
- 54 We note that one of the reasons for Mr Laurent's removal in the letter to him dated 18 November 2008 is that whilst the Commissioner of Police is aware that Mr Laurent refers to a medical condition or medical conditions in his response, Mr Laurent has provided the Commissioner of Police with no evidence of these conditions nor any indication of precisely how these conditions have affected Mr Laurent's past performance. Mr Laurent did not submit that was incorrect and we too are unable to conclude on the material before us that Mr Laurent has shown that his removal was unfair on the ground that the Commissioner of Police was made aware and has been fully aware that his performance as a police officer was hindered due to injury he sustained whilst carrying out his duties as a police officer. This ground is not made out.

Ground 3

- 55 The next paragraph of Mr Laurent's letter contains the following two sentences:
- "Since my injury, which occurred in 1997, I have received no assistance whatsoever from the WA Police. I was made to feel inadequate from my peers and Supervisors and constantly harassed because of my pending claim for compensation for the injury I sustained as a Police Officer".
- 56 As to the first of those sentences, we have already dealt with the uncertainty from Mr Laurent's submissions to what injury in 1997 he is referring. We also observe that even if he had received no assistance whatsoever from the WA Police, that would not by itself make his removal for the reasons of poor performance relied upon by the Commissioner of Police harsh, oppressive or unfair; it would suggest a breach of Mr Laurent's entitlements which he would pursue elsewhere.
- 57 However, the material before us shows that Mr Laurent did receive assistance. The Commissioner of Police points out that during his time as a police officer Mr Laurent took 2131 hours of fully paid sick leave, which is the equivalent of 266 days (Vol 2, Tab 3). All medical consultations have been organised for him by the Commissioner of Police and all treatment has been fully funded by the WA Police under the relevant industrial agreement (for example Vol 2, Tab 24). In total, the WA Police has paid \$16,522 to Mr Laurent in the way of medical and pharmaceutical expenses (transcript, p 77). When Mr Laurent requested a country transfer to an area that had a regional hospital or had sufficient facilities to accommodate his injury he was transferred to Geraldton, which is a large regional centre in Western Australia (Vol 3, Tab 1). He was provided with a chair in response to his request (Vol 3, Tab 3) although he considers it took too long for it to be provided (email 22 March 2006 at Vol 3, Tab 7). When the belt he had to wear caused him discomfort, the officer in charge requested that as there was to be a trial of a new belt, Mr Laurent should be the trialling officer (also Vol 3, Tab 1) and Mr Laurent has undertaken several supported rehabilitation programs, developed by rehabilitation officers employed by the WA Police (for example Vol 2, Tab 24).
- 58 Mr Laurent appeared to agree that he had received this assistance (transcript, pp 39-40) although he mentioned that this assistance was provided because a specialist wrote that he needed those things and that although the injury happened in 2004 it took until 2007 for the assistance to happen during which he had to type for two weeks standing up. Even if that was so,

Mr Laurent's claim that since his injury, which occurred in 1997, he has received no assistance whatsoever from the WA Police just is not made out on the material before us.

- 59 As to the second sentence, that he was made to feel inadequate by his peers and supervisors and constantly harassed because of his pending claim for compensation for the injury he sustained as a police officer, we were not informed by Mr Laurent of the claim to which he refers. We do not know what it is or whether and when it was made. Mr Laurent has not provided any details about how he was made to feel inadequate by his peers and supervisors. It is a claim which seems at odds with the material we have mentioned above which shows the assistance given to him by the WA Police. This ground is not made out.

Ground 4

- 60 The next paragraph of Mr Laurent's letter is as follows:

It has recently been brought to my attention that there are certain reports about my conduct and performance which was never brought to my attention during my time as a Police Officer. I would have liked the opportunity to have defended myself on untrue allegations, a right which is given to every law abiding Citizen. As a result of not being offered that due right, I can only conclude that I was the subject of victimisation, corruption and discrimination from the WA Police.

- 61 The letter itself does not identify the reports to which he refers and Mr Laurent did not identify them in the hearing. During the hearing, Mr Laurent did mention reports going on to his file which he didn't know about (for example, transcript, p 54 with apparent reference to him not updating the Custody system whilst at Scarborough) however he did so as part of wide-ranging submissions and it is not easy to identify from this to which reports this ground of appeal refers.
- 62 It is apparent to us from reading the material relied upon by the Commissioner of Police that there are reports written about Mr Laurent which, on the face of the report, were not copied to him or sent to him for his comment at the time they were written, but it is not up to us to guess whether it is to those reports that Mr Laurent refers. Further, there are some reports of which he was aware because he responded to them at the time (Vol 2, Tabs 18 and 25).
- 63 Mr Laurent has had access to all of the documents, including reports, referred to in the Summary of Investigation and to which the Commissioner of Police had access prior to making his decision to remove Mr Laurent. He was provided with the opportunity to respond to any of the documents, including reports, in his response to the Notice of intention to remove. Even if he was too ill to do so at the time, as he has submitted, all of these documents have been part of his appeal since at least February 2009 and we consider that he has had ample time since then to identify those reports to us.

- 64 The conclusion drawn by Mr Laurent that there are certain reports about his conduct and performance which were never brought to his attention and he was therefore "the subject of victimisation, corruption and discrimination" is not a conclusion that is open to him. It is a serious matter to allege victimisation, corruption or discrimination. In this case, there is no evidence offered by Mr Laurent to support such allegations and the claims, and this ground of appeal is not made out.

Ground 5

- 65 Mr Laurent's letter next says:

I sincerely feel that I have been unfairly dismissed as a result of my performance which was caused by injury sustained in carrying out my duties as a Police Officer, taking into account the pain and suffering, harassment, threats, assaults, discrimination, false statements and reports and vexatious allegations I have had to endure during my tenure as a Police Officer.

- 66 We have already referred to the lack of detail in Mr Laurent's submissions to us regarding the injury, or injuries, to which he is there referring and have noted Mr Laurent's response to the Commissioner's loss of confidence process (Vol 1, Tab 5, Att 1) with its references to an unspecified event "sometime in 1997", to the arrest of Mr Batka in February 2004 and to the Geraldton Police Station air-conditioning refurbishment in August-September 2007. We also have referred to the 21 February 2005 letter from a doctor saying that he was sufficiently recovered to return to full duties (Vol 2, Tab 24) which, in the absence of any credible reason not to, we accept as truthful and accurate.
- 67 Mr Laurent makes sweeping allegations of having suffered harassment, threats, assaults, discrimination, false statements and reports and vexatious allegations during his tenure as a police officer. He has made these allegations in a number of the documents he has previously submitted to us in support of the various interlocutory applications he has made (for example the "Appellant's Issues, Facts and Contentions for Dismissal of Employment, 9 September 2009). None of those documents constitute evidence of these allegations. The allegations remain just that, allegations, and they are not made out on the material before us. This ground of appeal is not made out.

Ground 6

- 68 Mr Laurent's letter next says:

The threats, harassment, assaults and discrimination exacerbated after his complaint to the State Administrative Tribunal for reasons to prevent prolonged pain and suffering.

- 69 The reliance by Mr Laurent on this claim and that his removal was therefore harsh, oppressive or unfair suffers from the same difficulty as set out above. Mr Laurent has not established before us that he suffered threats, harassment, assaults, or discrimination. He manifestly believes he has suffered those things, but has not proven it before us. As to his complaint to the State Administrative Tribunal, Mr Laurent has, on a number of occasions, sent to us copies of his submissions to that Tribunal, however, he has never provided us with a copy of his complaint to that Tribunal nor told us when he made it.

- 70 In reply to Mr Laurent's submissions on this ground, the Commissioner of Police points out that it was Mr Laurent's own conduct in Northbridge, which occurred whilst Mr Laurent was on paid sick leave, that had precipitated an investigation by the Internal Affairs Unit and which brought his poor performance and conduct to the attention of the Commissioner of Police via the Loss of Confidence nomination. Further, and contrary to Mr Laurent's assertion, he has subjected various supervisors to threats of victimisation whenever they have attempted to manage his poor performance. Thus, the Commissioner of Police submits, it was open to him to find that rather than accept criticisms and seek out training and development opportunities to address these conclusions, Mr Laurent was defensive and aggressive, and subjected his supervisors to threats of victimisation. The material before us in the Commissioner of Police's Response to the Notice of Appeal, including the three volumes of documents, supports these observations. We find that this ground is not made out.

Ground 7

- 71 Mr Laurent says that if his performance as a police officer was "substandard" he would not have moved up to the rank of First Class Constable after four years and to the rank of Senior Constable after eight years of dedicated service. This includes positive accolades from senior police as well as having conducted approximately 250 successful prosecutions. During the hearing, we asked Mr Laurent specifically about this ground however he did not make a submission directly on this issue (transcript, p 48).
- 72 The Commissioner of Police informed us during the proceedings that the ranks of Constable, First Class Constable and Senior Constable are progressive and require an officer to complete a number of years of service and complete nominated courses prior to moving through to the next rank; the promotional positions in the WA Police do not start until the rank of Sergeant (transcript, p 78). In the case of Mr Laurent, he became First Class Constable and Senior Constable by length of service and educational qualification (Vol 2, Tabs 23 and 29).
- 73 This information was not contested by Mr Laurent. It shows that his progression to the rank of First Class Constable after four years and to the rank of Senior Constable after eight years was not made upon an assessment of performance but rather upon his attaining a set length of service and his completion of nominated courses. That being the case, his submission that if his performance as a police officer was "substandard" he would not have moved up to those ranks is not a convincing submission. As to his service including positive accolades from senior police as well as having conducted approximately 250 successful prosecutions, Mr Laurent did not produce evidence of any accolades from senior police and neither did he produce any evidence regarding any prosecutions he has done. This ground is not made out.
- 74 We observe that the material before us on this point, in the circumstances of this case, also leads to the conclusion that a member whose performance is substandard is able to progress up to those ranks without that substandard performance being properly addressed. We would not wish to be taken as tacitly endorsing such a position by not commenting upon it. We do comment upon it and express the hope that it is addressed by the Commissioner of Police in the future.

Final ground

- 75 The final ground of appeal is that while at Scarborough Police Station Mr Laurent was provided no time to complete paperwork. During the hearing, Mr Laurent appeared to deal with this issue (transcript, p 54) although it is not entirely clear that he was referring to this ground. He referred to being given "a task which is unattainable" and that "Inglewood" was given the credit over an investigation and arrest done by him, however the greater part of his submission seems to be an attack upon others and we have not found it particularly helpful to his appeal.
- 76 The issues at Scarborough of relevance are set out in Vol 3, Tabs 2 and 4. In the case of Tab 2, the memorandum at that Tab includes a copy of an email sent to Mr Laurent at the time; he was therefore aware of the issue even if he was not aware of the memorandum. An issue raised in the email at Tab 2 (dated 2 March 2006) refers to a person being still listed as "Unknown Male" and that "this should not happen, particularly for a summons or an arrest matter because unless you identify the person it makes it impossible to complete the summons or the arrest brief". The email continues "Custody should be updated with the persons (*sic*) details when you identify them, certainly prior to final release on the system".
- 77 Mr Laurent submitted during the hearing that this was "a total distortion". At transcript pp 54-55 he referred to an example where if an arrested person gives a name but it comes up "unknown" he will need to make enquiries but he doesn't need to detain the person while he finds out why Custody doesn't "take" his name, "[so] one of the things they teach you to do is put the person as unknown and come back to it ...". Even if we accept this submission as an answer to the issue in the email, we cannot attach a great deal of weight to it: Mr Laurent did not put this to the Commissioner of Police in response to the Notice of Intention to Remove and he has not sought to tender as new evidence under s 33R of the Police Act the training given to officers regarding the Custody system.
- 78 Further, the document at Vol 3, Tab 2 shows that Mr Laurent was given extra time to complete paperwork: approximately two half-shifts. Even if Mr Laurent submits that this was insufficient time, his ground that he was provided "no time" to complete paperwork is not made out. The Commissioner of Police also points out that Mr Laurent's submissions do not adequately explain his consistent poor performance at other Police Stations. It is noted in the reports that when given extra time to prepare paperwork, Mr Laurent was also given correctional advice which he ignored, and became aggressive and defensive. He has been provided with numerous training opportunities and numerous informal counselling and remedial action by senior officers. Therefore the Commissioner of Police has complied with his duty to ensure that Mr Laurent received appropriate education, training, information and supervision in order for him to make decisions appropriate to the proper discharge of his duties. However, the Commissioner of Police submits that Mr Laurent has failed to discharge the requirements of his commission both on and off duty by failing to perform at a suitable standard and by conducting himself in a manner inconsistent with that required and expected by the public. We consider these submissions to be quite consistent with the material before us.

CONCLUSION

- 79 The task of the WAIRC is to decide whether Mr Laurent's removal was harsh, oppressive or unfair. Mr Laurent has at all times the burden of establishing that it was. For the reasons set out above, Mr Laurent has not discharged that burden at all. Mr Laurent's appeal is set out in his Notice of Appeal, as amended by order of the WAIRC. His submissions before us, however, were not structured to follow the grounds of appeal, he did not refer us to any of the documentary material which may have assisted him and he also did not produce any evidence, or seek to tender new evidence, directed towards the matters set out in his Notice of Appeal.
- 80 Rather, Mr Laurent's submissions tended to attempt to excuse his own behaviour by blaming or criticising the behaviour of other officers and even accusing some of them of committing offences. As we have set out above, Mr Laurent told us that he is "so anti-police at the moment that I am quite adamant I will catch a few of them and I will catch them quite severely and that's unfortunate, so that's ... that's why I'm here". This shows a misunderstanding of the appeal process under Part IIB of the Police Act which does not provide a forum for an appellant to "catch" other police officers. In any event, his criticisms of other police officers are not supported by any evidence and are therefore unsubstantiated.
- 81 We have considered all of the circumstances of the history of Mr Laurent's behaviour, including but not limited to the events surrounding the Northbridge incident. It has been viewed in the context of the material before us presented by the Commissioner of Police in response to Mr Laurent's Notice of Appeal which reaches back into his 12 years' service. We conclude that Mr Laurent has not shown that his removal was harsh, oppressive or unfair and accordingly we dismiss his appeal.

2009 WAIRC 01351

APPEAL AGAINST A DECISION OF THE COMMISSIONER OF POLICE TO TAKE REMOVAL ACTION

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

GERALD JEAN-NOEL LAURENT

APPELLANT

-v-

COMMISSIONER OF POLICE

RESPONDENT**CORAM**

CHIEF COMMISSIONER A R BEECH
 ACTING SENIOR COMMISSIONER P E SCOTT
 COMMISSIONER J L HARRISON

DATE

FRIDAY, 18 DECEMBER 2009

FILE NO/S

APPL 135 OF 2008

CITATION NO.

2009 WAIRC 01351

Result

Appeal dismissed

Order

The WAIRC, pursuant to the powers conferred on it under Part IIB of the *Police Act, 1892*, hereby orders –

THAT the appeal be dismissed.

(Sgd.) A R BEECH,
 Chief Commissioner,

[L.S.]

On Behalf of the Western Australian Industrial Relations Commission.

UNFAIR DISMISSAL/CONTRACTUAL ENTITLEMENTS—**2009 WAIRC 01356**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES AMANDA BUDD **APPLICANT**

-v-

VIVIENNE BALDWIN **RESPONDENT**

CORAM COMMISSIONER S M MAYMAN

DATE MONDAY, 21 DECEMBER 2009

FILE NO/S U 189 OF 2009

CITATION NO. 2009 WAIRC 01356

Result Application discontinued

Representation

Applicant No appearance

Respondent No appearance

Order

WHEREAS this is an application pursuant to Section 29(1)(b)(i) of the *Industrial Relations Act 1979*; and

AND WHEREAS the Commission convened a conference on 13 November 2009 for the purpose of conciliating between the parties;

AND WHEREAS prior to the conference the Commission was advised that a settlement was reached between the parties;

AND WHEREAS on 25 November 2009 the Commission wrote to the applicant requesting a Notice of discontinuance be filed;

AND WHEREAS the applicant failed to file a Notice of discontinuance;

AND WHEREAS the Commission listed this matter on 21 December 2009 for the applicant to show cause why her application ought not be struck out of want of prosecution;

AND WHEREAS the applicant failed to attend that hearing;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby discontinued.

[L.S.]

(Sgd.) S M MAYMAN,
Commissioner.

2009 WAIRC 01346

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES LYNDELL BONNIE DRYDEN **APPLICANT**

-v-

NINDILINGARRI CULTURAL HEALTH SERVICES **RESPONDENT**

CORAM COMMISSIONER S M MAYMAN

DATE THURSDAY, 17 DECEMBER 2009

FILE NO/S U 106 OF 2009

CITATION NO. 2009 WAIRC 01346

Result	Application discontinued
Representation	
Applicant	Ms L B Dryden
Respondent	Mr S Bibby (as agent)

Order

WHEREAS this is an application pursuant to Section 29(1)(b)(i) of the *Industrial Relations Act 1979*;
 AND WHEREAS on 2 July 2009 the Commission convened a conference for the purpose of conciliating between the parties;
 AND WHEREAS at the conclusion of the conference no agreement was able to be reached between the parties;
 AND WHEREAS on 15 December 2009 the applicant filed a Notice of Discontinuance in respect of the application;
 NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby discontinued.

[L.S.]

(Sgd.) S M MAYMAN,
Commissioner.

2009 WAIRC 01309

PARTIES

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
REBECCA ANN FITZPATRICK

APPLICANT

-v-

ALESSIA BECCEGATO, TRADING AS MILANOS HAIR LOUNGE

RESPONDENT

CORAM	COMMISSIONER S M MAYMAN
DATE	MONDAY, 14 DECEMBER 2009
FILE NO	U 205 OF 2009
CITATION NO.	2009 WAIRC 01309

Result	Application discontinued
Representation	
Applicant	Mr D Leask (of counsel)
Respondent	Ms A Beccegato

Order

WHEREAS this is an application pursuant to Section 29(1)(b)(i) of the *Industrial Relations Act 1979*;
 AND WHEREAS on 26 November 2009 the Commission convened a conference for the purpose of conciliating between the parties;
 AND WHEREAS at the conclusion of the conference agreement was reached between the parties;
 AND WHEREAS on 30 November 2009 the applicant filed a Notice of Discontinuance in respect of the application;
 NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby discontinued.

[L.S.]

(Sgd.) S M MAYMAN,
Commissioner.

2009 WAIRC 01322

	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION	
PARTIES	TERESA ANNE PRINCE	APPLICANT
	-v-	
	COMMUNITY FIRST INC.	RESPONDENT
CORAM	COMMISSIONER J L HARRISON	
DATE	TUESDAY, 15 DECEMBER 2009	
FILE NO/S	U 132 OF 2009	
CITATION NO.	2009 WAIRC 01322	
Result	Discontinued	
Representation		
Applicant	Ms T Prince on her own behalf	
Respondent	Mr L Pilgrim as agent	

Order

WHEREAS this is an application pursuant to s 29(1)(b)(i) of the *Industrial Relations Act 1979*; and

WHEREAS the Commission listed a conference on 4 September 2009, which date was later changed to 3 September 2009, for the purpose of conciliating between the parties and to deal with scheduling issues in relation to an issue of jurisdiction raised by the respondent; and

WHEREAS on 2 September 2009 the applicant advised the Commission that the parties had reached an agreement in principle in respect of the application and the conference was vacated; and

WHEREAS the Commission contacted the applicant on several occasions with respect to the applicant filing a Notice of Withdrawal or Discontinuance; and

WHEREAS on 4 December 2009 the applicant filed a Notice of Withdrawal or Discontinuance in respect of the application; and

WHEREAS on 7 December 2009 the respondent consented to the matter being discontinued;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby discontinued.

[L.S.]

(Sgd.) J L HARRISON,
Commissioner.

2009 WAIRC 01331

	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION	
PARTIES	JAMES RICHTER	APPLICANT
	-v-	
	BEGA GARNBIRRINGU HEALTH SERVICES, ABORIGINAL CORPORATION	RESPONDENT
CORAM	COMMISSIONER J L HARRISON	
DATE	WEDNESDAY, 16 DECEMBER 2009	
FILE NO/S	U 97 OF 2009	
CITATION NO.	2009 WAIRC 01331	
Result	Dismissed	
Representation		
Applicant	Mr J Richter on his own behalf	
Respondent	Mr S Bibby as agent	

Order

WHEREAS this application was lodged on 12 May 2009 pursuant to s 29(1)(b)(i) of the *Industrial Relations Act 1979*; and
 WHEREAS on 10 June 2009 the Commission convened a conference for the purpose of conciliating between the parties however no agreement was reached; and

WHEREAS on 25 June 2009 the Commission was advised by the respondent's representative that the parties were having further discussions; and

WHEREAS on 13 August 2009 the respondent's representative requested that the matter be set down for a further conference; and

WHEREAS the Commission contacted the applicant on a number of occasions about setting a further conference; and

WHEREAS the Commission listed a further conference on 14 October 2009 for the purpose of conciliating between the parties; and

WHEREAS on 13 October 2009 the Commission was contacted by a person on behalf of the applicant to advise that the applicant was unable to attend the conference on 14 October 2009 and the conference was vacated; and

FURTHER on 13 October 2009 the applicant was advised by way of electronic mail that if he wished to proceed with his application he was to contact the Commission by no later than the close of business on 27 October 2009 to advise his availability to attend a conference by telephone however, this did not occur; and

WHEREAS the matter was listed for a show cause hearing on 9 December 2009 and the applicant was advised that non-attendance by the applicant at these proceedings would result in an order being issued dismissing the application for want of prosecution; and

WHEREAS the applicant did not attend the show cause hearing on 9 December 2009 nor did he advise the Commission beforehand as to any reason why he was unable to attend the hearing; and

WHEREAS the Commission is satisfied that the applicant has been given numerous opportunities to pursue his claim and has chosen not to do so;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby dismissed.

(Sgd.) J L HARRISON,
 Commissioner.

[L.S.]

2009 WAIRC 01324

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

JANET STEVENS

APPLICANT

-v-

THE PANTRY DOOR / TRACEY HOGAN AND JONATHON LEGROS AS TRUSTEES FOR
 THE GUSTOSO UNIT TRUST

RESPONDENT

CORAM

ACTING SENIOR COMMISSIONER P E SCOTT

DATE

TUESDAY, 15 DECEMBER 2009

FILE NO/S

B 129 OF 2009

CITATION NO.

2009 WAIRC 01324

Result

Application dismissed

Order

WHEREAS this is an application pursuant to Section 29(1)(b)(ii) of the *Industrial Relations Act 1979*; and

WHEREAS on the 8th day of December 2009 the applicant advised the Commission that the matter had settled; and

WHEREAS on the 9th day of December 2009 the applicant filed a Notice of Discontinuance in respect of the application;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby dismissed.

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

[L.S.]

2009 WAIRC 01323

PARTIES	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION	APPLICANT
	JANET STEVENS	
	-v-	
	THE PANTRY DOOR / TRACEY HOGAN AND JONATHON LEGROS AS TRUSTEES FOR THE GUSTOSO UNIT TRUST	RESPONDENT
CORAM	ACTING SENIOR COMMISSIONER P E SCOTT	
DATE	TUESDAY, 15 DECEMBER 2009	
FILE NO/S	U 129 OF 2009	
CITATION NO.	2009 WAIRC 01323	
Result	Application dismissed	

Order

WHEREAS this is an application pursuant to Section 29(1)(b)(i) of the *Industrial Relations Act 1979*; and
 WHEREAS on the 8th day of December 2009 the applicant advised the Commission that the matter had settled; and
 WHEREAS on the 9th day of December 2009 the applicant filed a Notice of Discontinuance in respect of the application;
 NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby dismissed.

[L.S.]

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

2009 WAIRC 01310

PARTIES	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION	APPLICANT
	HELEN JUNE WRIGHT (NEE RODDA)	
	-v-	
	THE PURSUITS GROUP	RESPONDENT
CORAM	COMMISSIONER S M MAYMAN	
DATE	MONDAY, 14 DECEMBER 2009	
FILE NO	U 127 OF 2009	
CITATION NO.	2009 WAIRC 01310	
Result	Application discontinued	
Representation		
Applicant	Mrs H J Wright	
Respondent	Ms P Tassell	

Order

WHEREAS this is an application pursuant to Section 29(1)(b)(i) of the *Industrial Relations Act 1979*;
 AND WHEREAS on 26 November 2009 the Commission convened a conference for the purpose of conciliating between the parties;
 AND WHEREAS at the conclusion of the conference agreement was reached between the parties;
 AND WHEREAS on 26 November 2009 the applicant filed a Notice of Discontinuance in respect of the application;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby discontinued.

[L.S.]

(Sgd.) S M MAYMAN,
Commissioner.

CONFERENCES—Matters arising out of—

2009 WAIRC 01352

DISPUTE RE TERMINATION OF UNION MEMBER

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

WESTERN AUSTRALIAN PRISON OFFICERS' UNION OF WORKERS

APPLICANT

-v-

THE MINISTER OF CORRECTIVE SERVICES

RESPONDENT

CORAM

CHIEF COMMISSIONER A R BEECH

HEARD

FRIDAY, 11 DECEMBER 2009

DELIVERED

FRIDAY, 18 DECEMBER 2009

FILE NO.

C 42 OF 2009

CITATION NO.

2009 WAIRC 01352

CatchWords

Dismissal of employee – claim that dismissal is unfair referred for hearing and determination – claim for interim order reinstating employee pending hearing and determination refused – *Industrial Relations Act, 1979* (WA) s 44(6)(bb)(ii) - *Prisons Act, 1981* (WA) s 13(3) and (4)

Result

Application for interim order dismissed

Representation

Applicant

Mr T Clark

Respondent

Ms K Jack

Reasons for Decision

- 1 In this matter the Western Australian Prison Officers' Union of Workers ("the Union") claims that the dismissal of Mr Dunn on 1 December 2009 by the Minister for Corrective Services ("the Minister") from his employment as a Prison Officer is harsh, oppressive or unfair. A conference called by the Commission at relatively short notice was held at which it was apparent to the Commission that no agreement was going to be able to be reached on the Union's claim. Accordingly, the claim will be referred for hearing and determination. The Union seeks an interim order pursuant to s 44(6)(bb)(ii) of the *Industrial Relations Act, 1979* (WA) ("the IR Act") reinstating Mr Dunn pending the hearing and determination of the Union's claim. The Minister opposed the issuing of an interim order.
- 2 The Commission has been assisted in this matter by the detail in the Schedule attached to the Union's Notice of Application and by the comprehensive written submission of the Minister, to which the Union was given an opportunity to reply.
- 3 The leading authority in this jurisdiction dealing with such interim orders is the decision of the Full Bench in *The Director General Department of Education and Training v. The State School Teachers' Union of W.A. (Incorporated)* (2009) 89 WAIG 622; [2009] WAIRC 00283. That matter was an appeal against an interim order which had been issued for the reinstatement of a teacher in whom the Director General of Education and Training had lost confidence (2009) 89 WAIG 1151; [2009] WAIRC 00128. As Ms Jack, who appears for the Minister in this matter, correctly observes at [49] of the Minister's submission, Ritter AP (with whom Smith SC and Mayman C agreed) stated at [36]:

"...whether an [interim] order should be made must depend upon the particular facts and circumstances which are before the Commission. Those facts and circumstances will inevitably vary from case to case. They will include the reasons for the loss of confidence occurring and the teacher's prior performance."
- 4 Ritter AP continued that loss of confidence, is in his opinion, a factor of "considerable importance", although he based his conclusion upon his observations of the duties of care which the Director General has to school children and the public to ensure that only properly performing teachers are working in state schools and because the Director General will have formed her opinion after an investigation and inquiry of the alleged misconduct under the *Public Sector Management Act, 1994* (WA). I am not sure that both these factors are relevant to the circumstances of this case.

- 5 In this case, the letter from the Commissioner of Corrective Services to Mr Dunn of 1 December 2009 shows that he is of the opinion that Mr Dunn has irreparably breached the trust placed in him as an employee of the Department and he is no longer confident that Mr Dunn will fulfil his responsibilities in the manner expected of a Prison Officer. This view was formed after considering Mr Dunn's recent criminal conviction for breaching a Police Order pursuant to s 61(2) of the *Restraining Orders Act, 1997* (WA) together with Mr Dunn's employment disciplinary history.
- 6 The union refers to the circumstances whereby Mr Dunn breached the Police Order, submits that the dismissal may have been procedurally unfair and that dismissal was disproportionate to the misconduct, particularly given comments purportedly made by the Magistrate when imposing a penalty of \$40.00 that a spent conviction would be recorded so that Mr Dunn's employment would not be affected.
- 7 However, I am not persuaded that there is a *prima facie* case for relief. Mr Dunn was dismissed pursuant to s 13(3) of the *Prisons Act, 1981* (WA) ("the Prisons Act"). This provides as follows:
- (3) Where a prison officer to whom Part X applies is convicted of an offence other than under this Act but which relates to the performance of his duties or his fitness to hold office as a prison officer, the chief executive officer may, with the consent of the Minister, dismiss that prison officer.
- 8 Mr Dunn has been convicted of an offence, in this case a criminal offence. A breach of the *Restraining Orders Act, 1997* may well impact upon his fitness to hold office as a Prison Officer even though Mr Dunn was fined only \$40.00 and the Magistrate recorded a spent conviction, and may have done so out of consideration for the consequence for Mr Dunn's employment. Whether it does impact upon his fitness to hold office as a Prison Officer is a matter for substantive argument rather than an argument in support of interim relief.
- 9 A similar conclusion applies to the Union's references in its reply submissions at [16] and [18] to the circumstances of other Prison Officers who may have been either suspended immediately or against whom no action was taken in similar circumstances. Much turns upon individual circumstances; in *Wayne Russell McGrath v. Commissioner of Police* (2005) 85 WAIG 2006; [2005] WAIRC 01989 a former Police Officer sought to rely upon evidence of what had happened to other Police Officers in similar circumstances. The Commission commented at [42] that where comparative unfair treatment is alleged, it is not appropriate to assume that punishment which appears more lenient on one occasion is the standard by which punishment in a different circumstance on a later occasion should be measured:
- "To put it another way, the punishment that may have been given on the earlier occasion may have been due to particular circumstances not revealed or have been simply too lenient. It cannot be safely used for comparative purposes unless all the facts are the same."
- 10 I also consider that Mr Dunn's disciplinary history argues against the Union's submission that there is a *prima facie* case for relief. Unlike the teacher who had 14 years without being the subject of any alleged misconduct in *The Director General Department of Education and Training v. The State School Teachers Union* (above), the Minister lists 17 documented prior disciplinary-related matters against Mr Dunn, and states it is aware of more charges laid against him. At [16] of the Minister's submission, it is stated that "many of the matters resulted in penalties imposed against Mr Dunn, and Mr Dunn has already received at least one prior letter ... detailing his disciplinary history to date and formally warning him that should any further disciplinary matters be raised against him this may result in termination of his employment" (a letter to that effect dated August 2003 is attached to the Minister's submission). Therefore, whilst the fairness of his dismissal may be arguable, and I expressly make no comment about that in these Reasons for Decision, in the context of this application for an interim order of reinstatement, Mr Dunn's disciplinary history including written advice that further matters may result in termination of employment, argues against there being a *prima facie* case for relief.
- 11 The Union in its reply submissions at [9] to [13] states that the chronology taken from the "Statement of Evidence" of Mr O.J. Wood (which is a document accompanying the written submission of the Minister) shows that the correct procedure for dismissal under s 13(3) of the *Prisons Act* has not been followed in this case. The Union says that the chronology shows that at the time Mr Dunn was written to on 29 October 2009 the Minister had been advised by the Commissioner of Corrective Services that a decision had been made to dismiss Mr Dunn, the conclusion being that Mr Dunn had not been shown due process or natural justice as "his response could not make any difference to the outcome".
- 12 While this submission may be arguable in the substantive hearing, it does not establish a *prima facie* case for relief. The requirement in s 13(3) of the *Prisons Act* is for the Commissioner to have the consent of the Minister to dismiss a Prison Officer. There is no "correct procedure" set out in s 13(3) and it is therefore difficult to establish on the papers that the correct procedure has not been followed. The statement of Mr Wood at [20] shows that the Commissioner's advice to the Minister was "pending a response being received from Mr Dunn". This does not suggest that his response could not make any difference to the outcome.
- 13 It is certainly the case that a statutory power to affect rights, privileges and legitimate expectations must be exercised in accordance with the common law requirements of natural justice (see *re Railway Appeal Board; Ex Parte The Western Australian Government Railways Commission* [1999] WASCA 63; (1999) 21 WAR 1 per Malcolm CJ at [39]). In this case, Mr Dunn was at least entitled to know the case sought to be made against him and given an opportunity of replying to it (*Kioa & Others v West & Another* (1985) 159 CLR 550 as referred to in *Re Kenner; Ex Parte Minister for Education* [2003] WASCA 37 at [56]). The material before me shows that Mr Dunn was given that opportunity and took advantage of it.
- 14 The Union, in the schedule attached to the Notice of Application at [12] to [15], has suggested that Mr Dunn's dismissal may have been procedurally unfair because the Minister may in fact not have given his consent. This does not appear now to be pursued other than in the context of timing. In the reply submissions at [13] the Union suggests in the alternative that if the decision had not been taken by the Commissioner to dismiss Mr Dunn on 29th October, the chronology shows that the decision was taken after the 13th November in which case the Commissioner failed to receive the consent from the Minister.

- 15 In my view, while this submission may be put in the substantive hearing, it is not so apparent from my reading of s 13(3) and (4) of the *Prisons Act* that the Minister needs to give consent after the Commissioner has decided to dismiss Mr Dunn, as the Union submits in the reply submissions at [10(i)]. Further, whether to grant the interim order sought is ultimately a question of discretion. The exercise of discretion involves notions of equity and it is not irrelevant to note that the Minister maintains that Mr Dunn himself did not notify the Minister in accordance with proper process that he had committed an offence (see [9] of the Minister's submission). For the purposes of this application for an interim order, the weight of the submission that Mr Dunn's dismissal may have been procedurally unfair is somewhat lessened as a result.
- 16 I recognise Mr Dunn's family and personal commitments referred to in the reply submissions at [20] and the potential as stated for him to be placed in severe financial hardship very quickly. That is likely to be felt by most persons upon their dismissal, however there is no presumption in s 44(6)(bb)(ii) of the IR Act that reinstatement pending the hearing and determination will be the rule rather than the exception. It is to be anticipated that the claim of unfair dismissal will be dealt with promptly and Mr Dunn will be paid his salary up to 30 December 2009. I also note with approval the Minister's undertaking at [67] enabling Mr Dunn to remain in his government housing until such time as the claim of unfair dismissal has been finally heard and determined. The Minister has pointed out, correctly in my view, that if the Union is successful in its claim that Mr Dunn's dismissal was harsh, oppressive or unfair, either reinstatement or compensation will adequately compensate Mr Dunn for the loss he will otherwise incur.
- 17 For the above reasons, I decline to issue the interim order as requested and an order now issues giving effect to this decision.

2009 WAIRC 01353

DISPUTE RE TERMINATION OF UNION MEMBER

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
WESTERN AUSTRALIAN PRISON OFFICERS' UNION OF WORKERS

PARTIES**APPLICANT**

-v-

THE MINISTER OF CORRECTIVE SERVICES

RESPONDENT**CORAM**

CHIEF COMMISSIONER A R BEECH

DATE

FRIDAY, 18 DECEMBER 2009

FILE NO/S

C 42 OF 2009

CITATION NO.

2009 WAIRC 01353

Result

Application for an Interim Order Dismissed

Order

HAVING HEARD Mr T Clark on behalf of the applicant and Ms K Jack on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act, 1979*, hereby orders:

THAT the application for an interim order reinstating Mr Dunn pending the hearing and determination of the claim that his dismissal was harsh, oppressive or unfair be dismissed.

[L.S.]

(Sgd.) A R BEECH,
Chief Commissioner.**CONFERENCES—Matters referred—**

2009 WAIRC 01348

DISPUTE RE DISCIPLINARY PROCESS

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

THE CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA INCORPORATED

APPLICANT

-v-

DIRECTOR GENERAL, DEPARTMENT FOR CHILD PROTECTION, GOVERNMENT OF WESTERN AUSTRALIA

RESPONDENT**CORAM**

ACTING SENIOR COMMISSIONER P E SCOTT

HEARD

WEDNESDAY, 25 NOVEMBER 2009

DELIVERED

THURSDAY, 17 DECEMBER 2009

FILE NO.

PSACR 24 OF 2009

CITATION NO.

2009 WAIRC 01348

CatchWords	Public Service Arbitrator - Industrial Law (WA) - Matter referred for hearing and determination pursuant to s 44 - Whether jurisdiction of Arbitrator ousted by Public Service Appeal Board - <i>Generalia specialibus non derogant</i> - Jurisdiction of Arbitrator and Board - "Government officer" - Public Service Officer" - "Conditions of Service" - Disciplinary process under Public Sector Management Act 1994 - Whether employer has power to initiate or continue a disciplinary investigation against a former public service officer
Legislation	<i>Industrial Relations Act 1979</i> , s 7(1)(a), s 80C, s 80E, s 80I(1)(a) <i>Public Sector Management Act 1994</i> , s 3, s 64, s 65, s 66, s 67, Part V, Part VI, s 102
Result	Jurisdiction of Public Service Appeal Board prevails - matter dismissed
Representation	
Applicant	Ms C Reid and with her Mr W Claydon
Respondent	Mr E Rea and with him Mr D Hughes

Reasons for Decision

- 1 This matter was the subject of a conference pursuant to s 44 of the *Industrial Relations Act 1979* (the *IR Act*). There was no agreement reached and the matter was referred for hearing and determination in the following terms:

“The Applicant says that:

1. It is an organisation of employees authorised to represent Mr Luke van der Zanden, a former employee of the Department for Child Protection (“the Respondent”).
2. It is in dispute with the Respondent over its power to continue a breach of disciplinary process under the *Public Sector Management Act 1994* (“the Act”), when Mr van der Zanden is no longer its employee.
3. Mr van der Zanden was presented with a suspected breach of discipline letter dated 20 April 2009.
4. Mr van der Zanden provided his written response addressing the allegations to the Respondent on 8 May 2009.
5. After Mr van der Zanden had submitted his response his fixed term contract of employment expired as at 4 June 2009 and was not renewed.
6. On 11 June 2009, the Respondent sent Mr van der Zanden a letter notifying him that an investigation into the suspected breaches of discipline would be commenced pursuant to s 81(2) of the Act.
7. The Respondent advised the Applicant in a letter dated 17 September 2009 that it would continue with the investigation notwithstanding the cessation of employment.
8. The Respondent has no power under the Act to pursue a disciplinary investigation of a former employee.
9. Furthermore, the Act provides a statutory mechanism for regulating disciplinary investigations of current employees only.

The Applicant seeks an order that the Respondent ceases the disciplinary process immediately and any other orders the Public Service Arbitrator deems appropriate to resolve the dispute.

The Respondent says that:

1. There is no legislative impediment to its continuing to undertake an investigation upon the cessation of employment of the officer.
2. It is desirable and appropriate to continue with the investigation and reach a conclusion regarding Mr van der Zanden’s conduct.
3. Objects to the orders sought.”

- 2 For the purposes of the determination of a jurisdictional issue raised by the respondent, the parties provided the following Statement of Agreed Facts:

- “1. The Applicant is The Civil Service Association of Western Australia Incorporated (“the CSA”).
2. The CSA is a registered organisation of employees authorised to represent Mr Luke van der Zanden.
3. The Respondent is the Director General, Department for Child Protection.
4. Mr van der Zanden was employed with the Respondent pursuant to Section 64(1)(b) of the *Public Sector Management Act 1994* (“the Act”) as a Residential Care Officer.
5. The Respondent presented Mr van der Zanden with a suspected breach of discipline letter dated 20 April 2009 identifying three suspected breaches of discipline.
6. Mr van der Zanden responded to the three allegations in writing and provided his response to the Respondent on 8 May 2009.
7. Mr van der Zanden's fixed term contract of employment expired as at 4 June 2009. As of the expiration of Mr van der Zanden's fixed term contract Mr van der Zanden was no longer an employee of the Respondent.

8. On 11 June 2009 the Respondent sent Mr van der Zanden a letter notifying him that an investigation into the suspected breaches of discipline would be commenced pursuant to section 81(2) of the the (sic)Act.
9. On 11 September 2009 the Applicant sent the Respondent a letter stating that as Mr van der Zanden was no longer an employee of the Respondent and the Respondent had no ability to continue its investigation.
10. On 17 September 2009 the Respondent wrote to the Applicant and advised that the Respondent believed that it did have the ability to continue its investigation.
11. On 23 September 2009 the Applicant wrote to the Respondent requesting the disciplinary investigation be stayed until such time as the matter could be determined by the Public Service Arbitrator.
12. The Respondent acceded to this request.
13. The Applicant contends that the Respondent does not have the power under the Act to continue the breach of discipline process against Mr van der Zanden.
14. The Respondent contends that it does have the power under the Act to continue the breach of discipline process against Mr van der Zanden.”

The Respondent's Case

- 3 The respondent raised an issue of jurisdiction, that the Public Service Arbitrator (the Arbitrator) does not have jurisdiction to determine the claim, that the dispute between the parties relates a decision of the respondent in relation to the interpretation of the disciplinary procedures contained in Part 5 - Substandard performance and disciplinary matters of the *Public Sector Management Act 1994* (the *PSM Act*), that such an interpretation is specifically within the jurisdiction of the Public Service Appeal Board (the Board) (s 80I(1)(a) of the *IR Act*), and that the particular jurisdiction set out there overrides the general jurisdiction of the Arbitrator set out in s 80E of the *IR Act*.
- 4 In that regard the respondent referred to the decision of the Full Bench in *Ronald Thomas Bellamy v Chairman, Public Service Board* (1986) 66 WAIG 1579 where the principle underlying the *generalia specialibus* applied.
- 5 In that case, the applicant, a government officer, had applied to the Commission for relief under s 29(2)(b) of the *IR Act* rather than appealing to the Board, against the decision to dismiss him. The application of the *generalia specialibus* principle meant that because the legislature had made special provisions for government officers to make a claim relating to dismissal by reference to the Board, that those provisions prevailed over the general provisions for claims by employees of unfair dismissal under s 29(2)(b).
- 6 The respondent argues that the jurisdiction of the Board is to deal with the particular issue of a challenge to a decision of the respondent relating to the employing authority's interpretation of the *PSM Act* concerning conditions of service of public service officers. The issue between the parties is, according to the respondent, a dispute as to the interpretation of the *PSM Act* as to whether the employing authority has power to pursue a disciplinary investigation of a former employee. According to the respondent that requires an interpretation of the disciplinary provisions of the *PSM Act* and whether it applies to former employees. The respondent says that once that issue is resolved, the dispute is resolved.
- 7 Mr Rea conceded that the terms of the Schedule may suggest that the dispute goes beyond the bare or bald interpretation of the employing authority's powers under the *PSM Act* to include the question of merit, that is to include whether, if such an interpretation were that the employing authority may continue or instigate a disciplinary investigation against a former employee, the circumstances of the case justify the continuation or investigation of the investigation. This is reflected in the orders sought by the applicant and the respondent's position set out in that Schedule which includes:
 - “2. It is desirable and appropriate to continue with the investigation and reach a conclusion regarding Mr van der Zanden's conduct”.
- 8 However, ultimately, the respondent says that an examination of the statement of the applicant's position in the Schedule clearly relates to power under the *PSM Act* and the statutory mechanism and not to any question of merit. The claim relates to the special jurisdiction of the Board, and this prevails over the jurisdiction of the Arbitrator.

The Applicant's Case

- 9 The applicant says that the Arbitrator has jurisdiction to deal with the matter on the basis that it is an industrial matter; that this matter involves an abuse of the disciplinary process, which in this case relates to an industrial matter in the form of “conditions of employment which are to take effect after the termination of employment” (See the definition of “industrial matter”, s 7(1)(a) of the *IR Act*).
- 10 In the course of the hearing, I put to Ms Reid for the applicant whether what “the matters referred for hearing and determination requires is a bare interpretation, or an interpretation for the purpose of moving to a next stage dealing with merit”. Her response was that it was the latter. She went on to say:

Ms Reid: Commissioner, in this particular matter obviously it is to finalise this issue and I think it's to achieve a result for this particular member.”

(Transcript p 13)

- 11 Following the hearing on 25 November 2009, I directed my Associate to write to the parties inviting them to make further submissions regarding s 80I(1)(a) of the *IR Act*. These Reasons also take account of those submissions.

Consideration and Conclusions

- 12 The first question to be asked is what is the matter in dispute about and what does the applicant seek? The Schedule is set out in para 1 above. The essential parts of that are that:

1. The respondent has advised the applicant that it will continue with the disciplinary investigation into Mr van der Zanden's suspected breach of discipline, notwithstanding that his employment has ceased.
 2. The applicant claims that the respondent has no power to do so.
 3. "The applicant seeks an order that the respondent ceases the disciplinary process immediately and any other orders the Public Service Arbitrator deems appropriate to resolve the dispute".
- 13 I have noted the terms of the Schedule and the parties' submissions and conclude that the dispute does not simply involve a question of interpretation and a consequential declaration as to the meaning of the provisions of the *PSM Act*. The interpretation of the provisions of the *PSM Act* would be for the purpose of dealing with a matter going beyond that interpretation, to include whether the respondent, if power exists to continue the investigation, should be prevented from doing so. This would include questions of merit. It may involve the issuing of orders to require the respondent to cease the investigation.
- 14 The next issue is whether the jurisdiction of the Arbitrator is ousted by that of the Board on account of the principle of *generalia specialibus*.
- 15 The jurisdiction of the Arbitrator is set out in s 80E of the *IR Act*. The relevant parts are as follows:
- "80E. Jurisdiction of Arbitrator**
- (1) Subject to Division 3 of Part II and subsections (6) and (7), an Arbitrator has exclusive jurisdiction to enquire into and deal with any industrial matter relating to a government officer, a group of government officers or government officers generally.
 - ...
 - (5) Nothing in subsection (1) or (2) shall affect or interfere with the exercise by an employer in relation to any government officer, or office under his administration, of any power in relation to any matter within the jurisdiction of an Arbitrator, but any act, matter or thing done by an employer in relation to any such matter is liable to be reviewed, nullified, modified or varied by an Arbitrator in the course of the exercise by him of his jurisdiction in respect of that matter under this Division.
 - ..."
- 16 Division 3 of Part II of the *IR Act* relates to General Orders and is not relevant to this matter.
- 17 Subsection (6) of s 80E relates to referrals to the Full Bench and Commission in Court Session and is not relevant. Subsection (7) excludes from the Arbitrator's jurisdiction "any matter in respect of which a procedure referred to in section 97(1)(a) of the *PSM Act* 1994 is, or may be, prescribed under that Act" and is also not relevant to this matter.
- 18 The Arbitrator's jurisdiction is an exclusive jurisdiction to enquire into and deal with any industrial matter relating, in this case, to a government officer.
- 19 For the purposes of this matter, an "industrial matter" is defined in s 7 of the *IR Act* as:
- "any matter affecting or relating or pertaining to the work, privileges, rights, or duties of employers or employees in any industry or of any employer or employee therein and, without limiting the generality of that meaning, includes any matter affecting or relating or pertaining to -
- (a) ...;
 - (b) the hours of employment, leave of absence, sex, age, qualification, or status of employees and the mode, terms, and conditions of employment including conditions which are to take effect after the termination of employment;
 - ...
- 20 As I have found earlier, the dispute between the parties involves an interpretation of the provisions of the *PSM Act* as to the respondent's powers and a consequent question of merit regarding whether that power ought to have been exercised.
- 21 I also note that in *Director General Department of Justice v Civil Service Association of Western Australia Incorporated* [2005] WASCA 244, Wheeler and Le Miere JJ said:
- 30 An inquiry into an industrial matter will, where that industrial matter is affected by other legislation, or where the actions of persons involved in the industrial matter are, in some respect, governed by other legislation, involve an inquiry into what was done, in that legislative context. In order to determine how to "deal with" an industrial matter, the Arbitrator must find relevant facts. If it is the case that a relevant factual finding suggests that a person has been guilty of unlawful or improper conduct, that is a finding which it is open to the Arbitrator to make, not as an end in itself, but as a step in determining how the industrial matter is to be dealt with.
 - 31 Where, as is presently the case, the way in which officers in the public service deal with each other is the subject of principles and requirements contained in legislation such as the *PSM Act*, it will often be desirable for the Arbitrator to consider whether the behaviour of individuals involved in the industrial matter has been in conformity with those principles and requirements. Again, findings of that kind would not be made as an end in themselves, but would be made in order to determine how, in the broad statutory context, it would be appropriate to deal with the industrial matter.

- 32 It will on occasion, as part of that process, be necessary for the Arbitrator to undertake a consideration of the relevant statutes, so as to ascertain how they apply to the facts as found. That exercise is undertaken, not in order authoritatively to declare the meaning of the statutory provision, but again as a step in the process of ascertaining what is required, in the statutory context, to deal with the industrial matter.
- 22 The power of the Arbitrator to provide a remedy is set out in s 80E(1), “to enquire into and deal with” the industrial matter. Further s 80E(5) provides for the employer’s decision to be “reviewed, nullified, modified or varied by the Arbitrator in the course of the exercise of” jurisdiction. Therefore the Arbitrator has very wide powers to deal with the industrial matter for the purpose of its resolution. In any event, it is the respondent’s contention that the Arbitrator would have jurisdiction but for it being ousted because the jurisdiction of the Board is more particular to this matter.
- 23 The jurisdiction of the Board is set out in s 80I of the *IR Act* to include:
- “80I. Appeals
- (1) Subject to section 52 of the *Public Sector Management Act 1994* and subsection (3) of this section, a Board has jurisdiction to hear and determine -
- (a) an appeal by any public service officer against any decision of an employing authority in relation to an interpretation of any provision of the *Public Sector Management Act 1994*, and any provision of the regulations made under that Act, concerning the conditions of service (other than salaries and allowances) of public service officers;
- ...
- and to adjust all such matters as are referred to in paragraphs (a), (b), (c), (d) and (e).”
- 24 Section 52 of the *PSM Act* provides that issues relating to the appointment and other matters associated with chief executive officers are not industrial matters. This is not relevant to the matters being considered. Subsection (3) of s 80I excludes from the Board’s jurisdiction an appeal from a government officer against a decision made under regulations referred to in s 94 of the *PSM Act*. Neither party suggested that this matter relates to such an appeal and is therefore not relevant.
- 25 I note the terms of s 80I(1)(a) are that the Board has power to hear and determine “an appeal by any public service officer against any decision of employing authority in relation to an interpretation of any provision of the (*PSM Act*) concerning conditions of service ... of public service officers”.
- 26 The provision does not simply provide for an appeal against the employing authority’s interpretation of a provision of the *PSM Act*. Rather, it provides for an appeal “against any decision ... in relation to an interpretation of any provision of the *Public Sector Management Act* ... concerning the conditions of service ... of public service officers”. (emphasis added) It is therefore not a bare or bald interpretation referred to in the decision of the Commission in *Crewe and Sons Pty Ltd v AMWSU* (1989) 69 WAIG 2624. It can be clearly distinguished from an interpretation envisaged by s 46 of the *IR Act* as it relates to the Commission’s general jurisdiction. It involves an appeal against the employer’s decision. That decision *relates to* an interpretation of the *PSM Act* concerning conditions of employment of public service officers.
- 27 An examination of the *PSM Act* shows that the term “conditions of service” is not defined. However, one might look at, for example, Div 3 - Public Service Officers other than Executive Officers, in particular s 64 - s 67 which deal with appointments; transfers within and between departments and organisations; secondments and vacation of office. Part V - Substandard performance and disciplinary matters deals with a range of conditions of service which include rights to procedural fairness and rights of appeal in the substandard performance and disciplinary processes. Part VI - Redeployment and redundancy provisions also sets out some provisions of the *PSM Act* dealing with conditions of service. Other miscellaneous conditions include s 102 - Employees not to engage in activities unconnected with their functions. These then might be the flavour of conditions of service for public service officers about which an employing authority may make a decision relating to an interpretation of the *PSM Act*.
- 28 The jurisdiction of the Board includes the power to adjust all such matters (s 80I(1) of the *IR Act*). In this case the adjustment would be to the decision of the employing authority in relation to the interpretation of any provision of the *PSM Act* concerning conditions of service of public service officers.
- 29 Therefore the jurisdiction of the Board provides for the adjustment of the employer’s decision in relation to the interpretation of a provision of the *PSM Act* concerning, in this case, what can be described as a condition of service, that is, whether the conditions of service include the capacity of the employer to instigate or continue to investigate a suspected breach of discipline when the employment has ended. Therefore, the subject of the application also falls within the jurisdiction of the Board.
- 30 The next question is whether one jurisdiction prevails over the other by reference to the *generalia specialibus* principle, that is has the legislature made special provisions which deal with the matter in dispute as opposed to provisions which apply generally?
- 31 The Arbitrator’s jurisdiction is to deal with industrial matters generally as they relate to government officers. Examples of industrial matters are given including conditions which are to take effect after termination of employment.
- 32 “Government officer” is defined in s 80C of the *IR Act* in the following terms:
- government officer* means -
- (a) every public service officer;
- (aa) each member of the Governor’s Establishment within the meaning of the *Governor’s Establishment Act 1992* ;

- (ab) each member of a department of the staff of Parliament referred to in, and each electorate officer within the meaning of, the Parliamentary and Electorate Staff (Employment) Act 1992 ;
- (b) every other person employed on the salaried staff of a public authority; and
- (c) any person not referred to in paragraph (a) or (b) who would have been a government officer within the meaning of section 96 of this Act as enacted before the coming into operation of section 58 of the Acts Amendment and Repeal (Industrial Relations) Act (No. 2) 1984 1 ,
- but does not include -
- (d) any teacher;
- (e) any railway officer as defined in section 80M; or
- (f) any member of the academic staff of a post-secondary education institution;”
- 33 The Board’s jurisdiction is in respect of an appeal against a decision of the employer in relation to an interpretation of the *PSM Act* concerning conditions of employment of public service officers. Although the Schedule and the Statement of Agreed Facts do not explicitly record whether Mr van der Zanden was a public service officer, point 4 of the Statement of Agreed Facts refers to his appointment pursuant to s 64(1)(b) of the *PSM Act*. This relates to the appointment of public service officers. Therefore I conclude that Mr van der Zanden was a public service officer.
- 34 Public service officer is defined in s 3 of the *PSM Act* as being “executive officer, permanent officer or term officer employed in the Public Service under Part 3”.
- 35 When considering to whom the respective jurisdictions of the Arbitrator and the Board apply, the Board’s jurisdiction in s 80I(1)(a) is more limited - that is to “public service officers”, who are a subset of “government officers”, whereas the Arbitrator’s jurisdiction is broader, dealing as it does with “government officers”.
- 36 In relation to the subject matter, the Board’s jurisdiction covers the dispute as to the employer’s decision in relation to an interpretation of the *PSM Act* concerning conditions of service of public service officers. This is more narrowly focussed on the issue in dispute than a dispute about an industrial matter in respect of conditions which are to take effect after termination of employment. This is because the dispute is about the particular decision of the respondent, which relies on an interpretation of the provisions of the *PSM Act*. That provision relates to a condition of service, being the disciplinary process.
- 37 The Full Bench in *Bellamy* (op cit) referred to the rule in *generalia specialibus non derogent* and quoted from a number of authorities as follows:

“... In *Refrigerated Express Lines (A/Asia) Pty Ltd v. Australian Meat and Live-Stock Corporation and Others* (1979-80) 29 ALR 33, Deane J. at 347 referred to the rule in the following terms:-

As a matter of general construction, where there is repugnancy between the general provision of a statute and provisions dealing with a particular subject matter, the latter must prevail and, to the extent of any such repugnancy, the general provisions will be inapplicable to the subject matter of the special provisions. “The rule is, that wherever there is a particular enactment and a general enactment in the same statute, and the latter, taken in its most comprehensive sense, would overrule the former, the particular enactment must be taken to be operative ...” [per Romilly MR: *Pretty v. Solly* (1859) 26 Beav 606 at 610]. Repugnancy can be present in cases where there is no direct contradictions between the relevant legislative provisions. It is present where it appears, as a matter of construction, that special provisions were intended exhaustively to govern their particular subject matter and where general provisions, if held to be applicable to the particular subject matter, would constitute a departure from that intention by encroaching on that subject matter.

It was earlier pointed out in these reasons that the intention that the special provisions should prevail is indicated by inclusion in the general provision of the words “Subject to this Act”.

There is a reference in *Pearce* (*supra*) to a particular application of the principle underlying the *generalia specialibus* approach where there is a grant of power in general terms and specific terms. It relates to *Anthony Hordern and Sons Ltd v. Amalgamated Clothing and Allied Trades Union of Australia* (1932) 47 CLR 1 at 7 in which, in the majority judgment, it was observed:-

Extensive and unfettered as the authority of the Court of Conciliation and Arbitration to award preference in settlement of a dispute might have been in virtue of its general power, yet, when section 40 expressly gives a special power, subject to limitations and qualifications, surely it must be understood to mean that the Court shall not exercise an unqualified power to do the same thing. When the Legislature explicitly gives a power by a particular provision which prescribes the mode in which it shall be exercised and the conditions and restrictions which must be observed, it excludes the operation of general expressions in the same instrument which might otherwise have been relied upon for the same power.

Pearce also refers to an excerpt from the judgment of Megarry J. in *No. 20 Cannon St Ltd v. Singer and Friedlander Ltd* (1974) Ch 229 at 235:-

... the proper principle to apply if an enactment contains two similar prohibitions, one wide and the other applying only to a limited class of case wholly within the wide prohibition, is to treat the wide prohibition as not applying to cases within the limited prohibition, especially if the limited prohibition is made subject to some exception and the wide prohibition is not.”

- 38 Taking account of these authorities I conclude that the legislature intended there to be a special and particular tribunal whose purpose was to deal with a claim of the nature as the matter referred for hearing and determination. The legislature provided, within the *IR Act*, the Board, to deal with the decisions of employers of public service officers relating to the interpretation of the *PSM Act* concerning the power of the employer in the disciplinary process set out in that Act.
- 39 Therefore I conclude that while the Arbitrator has jurisdiction which is broad and encompasses the issue in dispute, the Board's jurisdiction is more specific and specialised. The jurisdiction of the Board must prevail.

2009 WAIRC 01349

DISPUTE RE DISCIPLINARY PROCESS

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

THE CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA INCORPORATED

APPLICANT

-v-

DIRECTOR GENERAL, DEPARTMENT FOR CHILD PROTECTION, GOVERNMENT OF
WESTERN AUSTRALIA**RESPONDENT****CORAM**

ACTING SENIOR COMMISSIONER P E SCOTT

DATE

THURSDAY, 17 DECEMBER 2009

FILE NO/S

PSACR 24 OF 2009

CITATION NO.

2009 WAIRC 01349

Result

Jurisdiction of Public Service Appeal Board prevails - matter dismissed

Order

Having heard Ms C Reid and with her Mr W Claydon for the applicant, and Mr E Rea and with him Mr D Hughes, and pursuant to the powers conferred by the *Industrial Relations Act 1979* the Commission hereby orders:

That this matter be and is hereby dismissed

[L.S.]

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

CORRECTIONS—

2010 WAIRC 00001

CORRIGENDUM

Whereas an error occurred in the Publication of the "Variation Schedule" for "The Western Australian Surveying (Private Practice) Industry Award, 2003" at 88 WAIG 1596-1598 following the General Order which issued on 17 June 2008 in application 115 of 2007, the "Variation Schedule" is hereby republished. The correction is made in respect to the hourly, weekly and annual salaries for the Level 11, 5.1.1(k) Trainee Assistant Survey classification where the amounts of \$16.75, \$636.50 and \$331123.83 are replaced with \$15.99, \$607.50 and \$31610.83 respectively.

Dated at Perth this 29th day of September 2009.

[L.S.]

(Sgd.) J SPURLING,
Registrar.

5.1 - SALARIES

The rates of pay in this Award include Arbitrated Safety Net adjustments available since December 1993 under the Arbitrated Safety Net Adjustment Principle and includes the 2003 Safety Net Wage Case Increase of 5 June 2003 (2003 WAIRC 08452).

These Arbitrated Safety Net adjustments may be offset against any equivalent amount in the rate of pay received by employees since 1 November 1991 above the rate prescribed in the Award except where such absorption is contrary to the terms of an industrial agreement.

Increases in rates of pay otherwise made under the State Wage Case Principles, excepting those resulting from enterprise agreements, are not to be used to offset Arbitrated Safety Net adjustments.

Wage	Classification title	Minimum Salaries - \$			Skill relativity to level 10 after full minimum rate\broadbanding adjustments
		Hourly	Weekly	Annual	
Level 1 5.1.1(a)	Manager/Professional Business/Specialist	- 29.82	1133.1	58946.50	210
Level 2 5.1.1(b)	Manager/Professional Project/Specialist	- 26.52	1008.00	52441.50	180
Level 3 5.1.1(c)	Experienced Professional Surveyor including Licensed Surveyor/Engineer	24.33	924.50	48099.50	160
Level 4 5.1.1(d)	Experienced Surveyor/Town Planner	23.31	886.00	46097.83	150
Level 5 5.1.1(e)	Technician V / Survey Party Leader	22.79	865.90	45052.83	145
Level 6 5.1.1(f)	Technician IV / Survey Party Leader	21.69	824.19	42883.83	135
Level 7 5.1.1(g)	Technician III / Survey Technician, Senior (part-time party leader)Graduate Professional Engineer/Surveyor/Town Planner - 4 year	21.14	803.40	41802.83	130
Level 8 5.1.1(h)	Technician II / Survey Technician,Graduate Surveyor - under Articles/Town Planner – 3 year	20.59	782.50	40715.83	125
Level 9 5.1.1(i)	Technician I / Trainee Technician, Survey	19.00	721.90	37564.83	110
Level 10 5.1.1(j)	Technical Assistant Survey	17.91	680.50	35411.83	100
Level 11 5.1.1(k)	Trainee Assistant Survey	15.99	607.50	31610.83	90
Level 12 5.1.1(l)	Unskilled	15.87	603.10	31386.83	82
Entry level 5.1.1(m)	For entry level for employees who possess relevant technical/professional qualifications see clause 5.1.2				
5.1.1(n)	The skill relativities to level 10 set out in the above table apply subject to any future award or safety net increases by the Commission. Any such safety net increases will not vary the percentages set out above as being the indicative wage relativities of classifications under this award.				

5.1.3 - SALARIES CLERICAL EMPLOYEES

5.1.3(a) Adult

Grade	Weekly Rate
	\$
1	579.60
2	600.50
3	634.20

Provided that:

- (a) No employee employed as at the commencement of this award is to receive less pay as a result of regrading under this award. In the event that such regrading results in a lower grading, the present salary is to be maintained until overtaken by award increases.

- (b) Overaward payments may be absorbed into any increase arising under this award.

5.1.3(b) Juniors

The following percentage of Grade 1 weekly rates shall be minimum rates of wages per week for junior employees:

Age	Rate per Week
17	60%
18	70%
19	80%
20	90%

5.3 - MINIMUM ADULT AWARD WAGE

- (1) No employee aged 21 or more shall be paid less than the minimum adult award wage unless otherwise provided by this clause.
- (2) The minimum adult award wage for full-time employees aged 21 or more is \$557.40 per week payable on and from the first pay period on or after 1 July 2008.
- (3) The minimum adult award wage is deemed to include all State Wage order adjustments from State Wage Case Decisions.
- (4) Unless otherwise provided in this clause adults employed as casuals, part-time employees or piece workers or employees who are remunerated wholly on the basis of payment by result shall not be paid less than pro rata the minimum adult award wage according to the hours worked.
- (5) Employees under the age of 21 shall be paid no less than the wage determined by applying the percentage prescribed in the junior rates provision in this award to the minimum adult award wage.
- (6) The minimum adult award wage shall not apply to apprentices, employees engaged on traineeships or Jobskill placements or employed under the Commonwealth Government Supported Wage System or to other categories of employees who by prescription are paid less than the minimum award rate.
- (7) Liberty to apply is reserved in relation to any special category of employees not included here or otherwise in relation to the application of the minimum adult award wage.
- (8) Subject to this clause the minimum adult award wage shall –
- (a) Apply to all work in ordinary hours.
- (b) Apply to the calculation of overtime and all other penalty rates, superannuation, payments during any period of paid leave and for all purposes of this award.
- (9) Minimum Adult Award Wage
- The rates of pay in this award include the minimum weekly wage for employees aged 21 or more payable under the 2008 State Wage order decision. Any increase arising from the insertion of the minimum wage will be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award which are above the wage rates prescribed in the award. Such above award payments include wages payable pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements and over award arrangements. Absorption which is contrary to the terms of an agreement is not required.
- Increases under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset the minimum wage.
- (10) Adult Apprentices
- (a) Notwithstanding the provisions of this clause, an apprentice, 21 years of age or more, shall not be paid less than \$488.40 per week on and from the commencement of the first pay period on or after 1 July 2008.
- (b) The rate paid in the paragraph above to an apprentice 21 years of age or more is payable on superannuation and during any period of paid leave prescribed by this award.
- (c) Where in this award an additional rate is expressed as a percentage, fraction or multiple of the ordinary rate of pay, it shall be calculated upon the rate prescribed in this award for the actual year of apprenticeship.
- (d) Nothing in this clause shall operate to reduce the rate of pay fixed by the award for an adult apprentice in force immediately prior to 5 June 2003.

INDUSTRIAL AGREEMENTS—Notation of—

Agreement Name/Number	Date of Registration	Parties		Commissioner	Result
Congregation of Presentation Sisters WA Teachers Enterprise Bargaining Agreement 2009 - The AG 64/2009	17/12/2009	The Independent Education Union of Western Australia, Union of Employees and The Congregation of the Presentation Sisters of WA Inc	(Not applicable)	Commissioner S M Mayman	Agreement registered
Congregation of the Missionary Oblates of the Most Holy and Immaculate Virgin Mary Teachers Enterprise Bargaining Agreement 2009 - The AG 68/2009	17/12/2009	The Independent Education Union of Western Australia, Union of Employees and The Congregation of the Missionary Oblates of the Most Holy and Immaculate Virgin Mary	(Not applicable)	Commissioner S M Mayman	Agreement registered
Edmund Rice Education Australia Teachers Enterprise Bargaining Agreement 2009 - The AG 48/2009	17/12/2009	The Independent Education Union of Western Australia, Union of Employees and Edmund Rice Education Australia	(Not applicable)	Commissioner S M Mayman	Agreement registered
Institute of the Blessed Virgin Mary Teachers Enterprise Bargaining Agreement 2009 - The AG 65/2009	17/12/2009	The Independent Education Union of Western Australia, Union of Employees and The Institute of the Blessed Virgin Mary	(Not applicable)	Commissioner S M Mayman	Agreement registered
John XXIII College Teachers Enterprise Bargaining Agreement 2009 - The AG 57/2009	17/12/2009	The Independent Education Union of Western Australia, Union of Employees and John XXIII College Inc	(Not applicable)	Commissioner S M Mayman	Agreement registered
Norbertine Canons Teachers Enterprise Bargaining Agreement 2009 - The AG 66/2009	17/12/2009	The Independent Education Union of Western Australia, Union of Employees and The Norbertine Canons Incorporated	(Not applicable)	Commissioner S M Mayman	Agreement registered
Roman Catholic Bishop of Broome Teachers Enterprise Bargaining Agreement 2009 - The AG 67/2009	17/12/2009	The Independent Education Union of Western Australia, Union of Employees and Roman Catholic Bishop of Broome	(Not applicable)	Commissioner S M Mayman	Agreement registered
Roman Catholic Bishop of Bunbury Teachers Enterprise Bargaining Agreement 2009 - The AG 52/2009	17/12/2009	The Independent Education Union of Western Australia, Union of Employees and Roman Catholic Bishop of Bunbury	(Not applicable)	Commissioner S M Mayman	Agreement registered

Agreement Name/Number	Date of Registration	Parties		Commissioner	Result
Roman Catholic Bishop of Geraldton Teachers Enterprise Bargaining Agreement 2009 - The AG 54/2009	17/12/2009	The Independent Education Union of Western Australia, Union of Employees AND The Roman Catholic Bishop of Geraldton	(Not applicable)	Commissioner S M Mayman	Agreement registered
Servite College Council Teachers Enterprise Bargaining Agreement 2009 - The AG 70/2009	17/12/2009	The Independent Education Union of Western Australia, Union of Employees and The Servite College Council Inc	(Not applicable)	Commissioner S M Mayman	Agreement registered
Sisters of Mercy Perth (Amalgamated) Teachers Enterprise Bargaining Agreement 2009 - The AG 56/2009	17/12/2009	The Independent Education Union of Western Australia, Union of Employees and The Sisters of Mercy Perth (Amalgamated) Inc	(Not applicable)	Commissioner S M Mayman	Agreement registered
Sisters of Mercy West Perth Congregation Teachers Enterprise Bargaining Agreement 2009 - The AG 44/2009	17/12/2009	The Independent Education Union of Western Australia, Union of Employees and The Sisters of Mercy West Perth Congregation	(Not applicable)	Commissioner S M Mayman	Agreement registered
Sisters of the Holy Family of Nazareth Teachers Enterprise Bargaining Agreement 2009 - The AG 50/2009	17/12/2009	The Independent Education Union of Western Australia, Union of Employees and The Sisters of the Holy Family of Nazareth	(Not applicable)	Commissioner S M Mayman	Agreement registered
Trustees of the Marist Brothers Southern Province Teachers Enterprise Bargaining Agreement 2009 - The AG 69/2009	17/12/2009	The Independent Education Union of Western Australia, Union of Employees and The Trustees of the Marist Brothers Southern Province,	(Not applicable)	Commissioner S M Mayman	Agreement registered

RECLASSIFICATION APPEALS—

2009 WAIRC 01311

PARTIES

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
LENORE BATT

APPELLANT

-v-

COMMISSIONER OF POLICE

RESPONDENT

CORAM

PUBLIC SERVICE ARBITRATOR
ACTING SENIOR COMMISSIONER P E SCOTT

DATE

MONDAY, 14 DECEMBER 2009

FILE NO

PSA 9 OF 2009

CITATION NO.

2009 WAIRC 01311

2009 WAIRC 01328

PARTIES	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION DAVID DOUGLAS MOTT	APPELLANT
	-v- MAIN ROADS WA	RESPONDENT
CORAM	PUBLIC SERVICE ARBITRATOR ACTING SENIOR COMMISSIONER P E SCOTT	
DATE	WEDNESDAY, 16 DECEMBER 2009	
FILE NO	PSA 44 OF 2008	
CITATION NO.	2009 WAIRC 01328	

Result	Reclassification appeal dismissed
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Order

WHEREAS this is a reclassification appeal made pursuant to the *Industrial Relations Act 1979*; and

WHEREAS by Notice of Hearing dated the 30th day of November 2009, the Public Service Arbitrator advised the appellant that a hearing would be convened on Wednesday, the 9th day of December 2009 at 2.15 pm for the appellant to show cause why the appeal should not be dismissed; and

WHEREAS at the hearing on Wednesday, the 9th day of December 2009 there was no appearance for or by the appellant;

NOW THEREFORE, the Public Service Arbitrator, pursuant to the powers conferred under the *Industrial Relations Act 1979*, hereby orders:

THAT this appeal be, and is hereby dismissed.

[L.S.]

(Sgd.) P E SCOTT,
Acting Senior Commissioner,
Public Service Arbitrator.

2009 WAIRC 01330

PARTIES	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION DAVID WILSON	APPELLANT
	-v- MAIN ROADS W.A.	RESPONDENT
CORAM	PUBLIC SERVICE ARBITRATOR ACTING SENIOR COMMISSIONER P E SCOTT	
DATE	WEDNESDAY, 16 DECEMBER 2009	
FILE NO	PSA 60 OF 2008	
CITATION NO.	2009 WAIRC 01330	

Result	Reclassification appeal dismissed
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Order

WHEREAS this is a reclassification appeal made pursuant to the *Industrial Relations Act 1979*; and

WHEREAS by Notice of Hearing dated the 30th day of November 2009, the Public Service Arbitrator advised the appellant that a hearing would be convened on Wednesday, the 9th day of December 2009 at 2.15 pm for the appellant to show cause why the appeal should not be dismissed; and

WHEREAS at the hearing on Wednesday, the 9th day of December 2009 there was no appearance for or by the appellant;

NOW THEREFORE, the Public Service Arbitrator, pursuant to the powers conferred under the *Industrial Relations Act 1979*, hereby orders:

THAT this appeal be, and is hereby dismissed.

[L.S.]

(Sgd.) P E SCOTT,
Acting Senior Commissioner,
Public Service Arbitrator.

2009 WAIRC 01326

	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION	
PARTIES	ZELJKO ZAGORAC	APPELLANT
	-v-	
	MAIN ROADS WA	RESPONDENT
CORAM	PUBLIC SERVICE ARBITRATOR ACTING SENIOR COMMISSIONER P E SCOTT	
DATE	WEDNESDAY, 16 DECEMBER 2009	
FILE NO	PSA 41 OF 2008	
CITATION NO.	2009 WAIRC 01326	

Result	Reclassification appeal dismissed
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Order

WHEREAS this is a reclassification appeal made pursuant to the *Industrial Relations Act 1979*; and

WHEREAS by Notice of Hearing dated the 30th day of November 2009, the Public Service Arbitrator advised the appellant that a hearing would be convened on Wednesday, the 9th day of December 2009 at 2.15 pm for the appellant to show cause why the appeal should not be dismissed; and

WHEREAS at the hearing on Wednesday, the 9th day of December 2009 there was no appearance for or by the appellant;

NOW THEREFORE, the Public Service Arbitrator, pursuant to the powers conferred under the *Industrial Relations Act 1979*, hereby orders:

THAT this appeal be, and is hereby dismissed.

[L.S.]

(Sgd.) P E SCOTT,
Acting Senior Commissioner,
Public Service Arbitrator.



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CUMULATIVE CONTENTS AND DIGEST APPEAR AT THE END OF THIS PUBLICATION

FULL BENCH—Unions—Application for Alteration of Rules—

2010 WAIRC 00053

	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION	
PARTIES	THE CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION OF WORKERS	APPLICANT
	-and-	
	(NOT APPLICABLE)	RESPONDENT
CORAM	FULL BENCH	
	THE HONOURABLE J H SMITH, ACTING PRESIDENT	
	CHIEF COMMISSIONER A R BEECH	
	COMMISSIONER S M MAYMAN	
DATE	MONDAY, 8 FEBRUARY 2010	
FILE NO/S	FBM 6 OF 2009	
CITATION NO.	2010 WAIRC 00053	

Result	Ajourned sine die
Appearances	
Applicant	Mr S Millman (of counsel)

Order

It is this day, 8 February 2010, ordered by consent that —

The hearing listed for 18 February 2010 be adjourned sine die.

[L.S.]

By the Full Bench
(Sgd.) J H SMITH,
Acting President.

FULL BENCH—Unions—Application for registration—

2010 WAIRC 00033

PARTIES	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION WESTERN AUSTRALIAN PRINCIPALS' FEDERATION	APPLICANT
	-and-	
	STATE SCHOOL TEACHERS' UNION OF WESTERN AUSTRALIA (INC) JENNIFER BROZ EDMUND FREDRICK TREVOR VAUGHAN	OBJECTORS
CORAM	FULL BENCH THE HONOURABLE J H SMITH, ACTING PRESIDENT ACTING SENIOR COMMISSIONER P E SCOTT COMMISSIONER S M MAYMAN	
DATE	FRIDAY, 29 JANUARY 2010	
FILE NO/S	FBM 7 OF 2009	
CITATION NO.	2010 WAIRC 00033	

Result	Order issued
Appearances	
Applicant	Mr S P Kemp (of counsel), by leave
Objectors	Mr T Dixon (of counsel), by leave and with him Mr S Millman (of counsel), by leave for the State School Teachers' Union of Western Australia (Inc) Mr J Broz in person Mr E Black in person

Order

This matter having come on for hearing before the Full Bench on 28 January 2010, and having heard Mr Kemp (of counsel) on behalf of the applicant, Mr Dixon (of counsel) and with him Mr Millman (of counsel) on behalf of the objector State School Teachers' Union of Western Australia (Inc), and objectors Ms Broz and Mr Black, in person, by consent it is ordered that:—

1. The following objections be heard as preliminary issues:
 - (a) that there is no valid application for registration for the purposes of s 55(4) of the *Industrial Relations Act 1979*;
 - (b) that the Western Australian Principals' Federation is not an unregistered organisation consisting of not less than 200 employees associated for the purpose of protecting or furthering the interest of employees for the purpose of s 53(1) of the *Industrial Relations Act 1979*; and
 - (c) the Rules of the Western Australian Principals' Federation do not comply with the requirements of s 55(4)(e) of the *Industrial Relations Act 1979*.
2. The union objector file and serve any applications for discovery and any summons for the production of documents relevant to the issues set out in Order 1(a), (b) and (c) on or before 19 February 2010.
3. The summons filed and served in accordance with Order 2 is to be returnable on or before 11 March 2010.
4. All documents sought to be produced under Order 2 are to be produced on or before 11 March 2010.
5. The union objector file and serve further and better particulars of its objections in respect of the issues set out in Order 1(a), (b) and (c) on or before 25 March 2010.
6. The matter be listed for further directions in the week commencing 29 March 2010.
7. There be liberty to apply.

By the Full Bench
(Sgd.) J H SMITH,
Acting President.

[L.S.]

PRESIDENT—Unions—Matters dealt with under Section 66—

2010 WAIRC 00018

	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION	
PARTIES	GEOFFREY A. DAVIS AM, RETURNING OFFICER OF THE STATE SCHOOL TEACHERS UNION OF WA	APPLICANT
	-and-	
	THE STATE SCHOOL TEACHERS' UNION OF W.A. (INCORPORATED)	RESPONDENT
CORAM	THE HONOURABLE J H SMITH, ACTING PRESIDENT	
DATE	WEDNESDAY, 20 JANUARY 2010	
FILE NO/S	PRES 11 OF 2009	
CITATION NO.	2010 WAIRC 00018	

Result	Discontinued
Appearances	
Applicant	In person
Respondent	Mr S Millman (of counsel)

Order

WHEREAS this is an application pursuant to s 66(2)(d) of the *Industrial Relations Act 1979*;

AND WHEREAS on 13 January 2010, the applicant filed a Notice of withdrawal or discontinuance in respect of the application;

AND WHEREAS on 15 January 2010, counsel for the respondent advised that the respondent consents to the application being discontinued;

NOW THEREFORE, the President, pursuant to the powers conferred on her under the *Industrial Relations Act 1979*, hereby orders:—

THAT the application be and is hereby discontinued by leave.

[L.S.]

(Sgd.) J H SMITH,
Acting President.

2010 WAIRC 00020

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION**PRESIDENT**

CITATION	:	2010 WAIRC 00020
CORAM	:	THE HONOURABLE J H SMITH, ACTING PRESIDENT
HEARD	:	TUESDAY, 18 AUGUST 2009, WEDNESDAY, 30 SEPTEMBER 2009, THURSDAY, 1 OCTOBER 2009, FRIDAY, 16 OCTOBER 2009, TUESDAY, 27 OCTOBER 2009, WEDNESDAY, 4 NOVEMBER 2009, WEDNESDAY, 23 DECEMBER 2009, TUESDAY, 19 JANUARY 2010
DELIVERED	:	THURSDAY, 21 JANUARY 2010
FILE NO.	:	PRES 7 OF 2009
BETWEEN	:	THE REGISTRAR Applicant AND MR PHIL WOODCOCK THE AUSTRALIAN RAIL, TRAM AND BUS INDUSTRY UNION OF EMPLOYEES, WEST AUSTRALIAN BRANCH Respondent

CatchWords : Industrial Law (WA) - Application under s 66 of the *Industrial Relations Act 1979* (WA) - Respondent failed to have elections in accordance with the Union rules - Appointment of independent Chairperson

Legislation : *Industrial Relations Act 1979* (WA), s 66

Result : Order made

Representation:*Counsel:*

Applicant : Mr R Andretich (of Counsel), by leave

Respondent : Mr J Nolan (of Counsel), by leave

Proposed Interveners : Mr P Momber (of Counsel), by leave

Solicitors:

Applicant : State Solicitor's Office

Respondent : Not applicable

Proposed Interveners : Peter Momber Barristers & Solicitors

Reasons for Decision

- 1 This application is before the Commission pursuant to s 66 of the *Industrial Relations Act 1979* (WA) (the Act). The application was made by the Registrar because the Union has not held elections for office bearers or officials since 1999. By consent an order was made by Ritter AP on 1 October 2009 to appoint an Interim Branch Executive composed of nine members to exercise all of the powers, functions and duties of Branch Council and Branch Executive under the rules of the Union: [2009] WAIRC 01108; [2009] WAIRC 00964. This order was made as an interim step to enable the Union to regularise and move towards becoming a properly functioning organisation under the Act. The order provided the parties with liberty to apply. Pursuant to that provision this matter came before me on 23 December 2009. At the hearing on 23 December 2009, a number of allegations were raised about the conduct of the Branch Secretary of the Union and whether the Interim Branch Executive was functioning. On 24 December 2009, an order was made directing the Registrar to carry out an investigation and make a written report as to whether the Interim Branch Executive was functioning and to provide a copy of the written report to the parties no later than close of business on 5 January 2010: [2009] WAIRC 01358.
- 2 On 1 January 2010, the Registrar made a report in which he concluded that the Interim Branch Executive was not functioning. The contents of the Registrar's report and the conclusions he draws from the interviews conducted with each member of the Interim Branch Executive is not in dispute. Under the heading 'Can the Interim Function' the Registrar states:

I sought from each member any ideas as to what changes could be made to enable the interim committee to begin to function. The general view was that the interim committee is needed and could function if it was 'sorted out'.

The majority view was that a functioning interim committee was the best approach rather than going straight to an election, because there was concern that the union structure, and the rules, did not really reflect the present working arrangements. It was felt that these issues needed to be addressed before electing people to the 'old' positions.

A number of committee members sought the removal of Mr Woodcock from the committee or that he be instructed to carry out the resolutions of the Committee. Other members suggested the structure of the Committee be changed to provide a more balanced representation of the membership. It was pointed out that of the 9 members of the interim committee, more than half were railcar drivers, 2 were Transit Guards and another was a Customer Service Officer.

I understand that the coverage of the various EBAs (or award for railcar drivers) within PTA employment (which is eligible rather actual membership) is as follows;

180	23%	Transit Guards
100	12%	Transwa (rail, road, porters etc)
263	33%	Railcar Drivers
253	32%	Railway Employees (customer service, car-parking, infrastructure or maintenance staff)

The members who suggested a change in the Committee suggested that the committee membership should reflect those proportions of membership. If there were 9 members then it would mean;

2	Transit Guards
1	TransWA (rail, road, porters etc)
3	Railcar Drivers
3	Railway Employees (customer service, car-parking, infrastructure or maintenance staff)

All of this is of course predicated on the view that membership is confined to PTA employment.

It seems to be the determined view of some members that there should be an immediate state union election to establish a separate union, with its own funding and office bearers, before work is started on appropriate rule changes leading to affiliation with the state branch of the federal union. Others think this is in reverse order.

Others see this separation as not only detrimental for the membership but as resulting in an unviable organisation. It was put to me that some years ago the overall membership dropped to around 800 and it meant that the union began to feed off its assets, being unable to survive on members' dues alone. I get the impression that the majority view is that the union should not split away from the federal body, even in a transient stage.

Some members put to me that a membership of anything less than 700 or 800 could not sustain the additional benefits, commercially provided, such as journey cover, mortality benefit, the RTBU Health Plan or the provision of diaries for roster arrangements.

Those expressing concern at the proposal to establish a separate union as a first step, also expressed anxiety that those wishing to do that, do not seem to have a cogent long term plan in place. They say that it may be appropriate to press on with establishing a separate union, if they could first see what is then intended. It was put to me by several members that 'tearing down' the present arrangements without a plan of what is to replace it, would be disastrous for the membership.

Some members see another bout of mediation as a useful next step but ask that there be an agreed long term agenda and independent leadership, to assist the committee to regain its momentum. It was said to me that at present there was a degree of 'loudest voice' dominating the agenda and there was no common goal to which the committee was committed.

I understand there was a document prepared by Mr Nolan entitled 'Heads of Agreement' which was to assist the interim committee in taking cogent and progressive steps towards a common goal.

That document had 17 paragraphs and seems to set out a coordinated plan to guide the interim committee. I'm not sure to what extent this proposal was thoughtfully considered but Mr Woodcock advises me that it was rejected by the committee. I think it is unfortunate that there wasn't further discussion, debate and perhaps amendment, about the document before it was discarded.

3 The Registrar also made the following observations under the heading 'What of the Future':

1. Resort to an election immediately may cause more problems than it would solve for the reasons set out in this report. Specifically I am referring to an uncertainty about the electorate and the suitability of present union structures set out in the rules;
2. The interim committee needs to continue and be supported, whether with the existing or a different constitution;
3. The interim committee needs to have a common purpose and an agreed prioritised set of steps to reach that common purpose. I understand that the common purpose is to achieve a s71 certificate but if that is not agreed, then that is the first thing that needs to be tackled. It may not be easy to establish a common purpose and it may be appropriate to engage a suitably skilled facilitator for the interim committee to 'workshop' though these issues which may take more than one meeting. Apart from a common aim, there should also be an agreed set of steps that the interim committee will take towards that common aim. It is perhaps unfortunate that the proposal from Mr Nolan was rejected rather than debated or amended.
4. The new proposed position of assistant secretary PTA (or other name) should be proceeded with immediately by convening a meeting of the interim committee for the single purpose of selecting a suitable candidate. Perhaps this could even be done by email. In the event of disagreement about a candidate, the Commission may be able to provide mediation;
5. With that position in place, there should be a genuine effort to separate out the industrial issues from those related to re-establishing the state union;
6. The rules of the state union and of the state branch of the federal union need to be altered, not only for the purposes of a s71 certificate, but to reflect today's working environment in PTA;
7. The eligibility for membership needs to be revisited and or clarified to decide whether or not the employees in rail freight operations are part of the state union. Perhaps this may be unnecessary if the agreed plan is closer compatibility between the state union and the state branch of the federal union. Perhaps the existing presumption about membership can continue until then;
8. There needs to be acceptance about the ownership of the assets and of the need to preserve and protect those assets in the interests of the present (rail freight and PTA) and future membership.
9. There needs to be agreement about adequate funding for the state union in working towards its re-establishment. I would imagine there may be a need for legal advice along the way. (Mr Nolan's proposal made provision for this);
10. The membership needs to have access to what is happening and the information provided should be from a common, agreed, and neutral source. In that context I would suggest that perhaps the meetings of the interim committee need to be chaired by a neutral and 'disinterested' chair whose function is to ensure professionally run, properly conducted and properly recorded meetings;
11. There needs to be an agenda circulated to the membership some days before committee meetings and the minutes made available to the membership, as soon as possible after the meeting, even if they be unconfirmed minutes until

the next meeting. I am aware that it is often difficult to get participation from the membership and I don't propose that the participation of the whole membership be sought, merely that they be given the opportunity, from a neutral source, to understand what is happening to their union. If the 'silent majority' are given the opportunity and don't take it, then the representatives' views should prevail. But in the interests of 'democratic control of organisations ... and the full participation by members' they should be given the opportunity.

- 4 When the matter came before me on 19 January 2010, the parties and proposed interveners represented by Mr Nolan (one of whom is the Federal Union) and represented by Mr Momber (who are some members of the Interim Branch Executive and a number of persons eligible to be members of the Union) made it clear that the matters set out by the Registrar in points 1 to 11 propose a sensible course of action that should be adopted.
- 5 Mr Nolan informed the Commission that where the Interim Branch Executive had failed was that they had ignored or failed to implement the steps that Ritter AP had stated were necessary which were to take all necessary steps to:
 - (1) Regularise the Union's membership; that is, determine which persons should have been admitted to the Union, and to arrange for admission in accordance with the rules.
 - (2) Obtain advice regarding the adoption of suitably amended rules and adopt such rules in consultation with the Registrar.
 - (3) Obtain advice regarding the possible adoption of rules as will be necessary to bring into conformity the eligibility rule of the respondent and Federal Union.
 - (4) Obtain advice regarding the adoption of a s71 certificate and/or advice as to the election of an executive committee.

[2009] WAIRC 01108
- 6 Mr Nolan also informed the Commission that the membership of the Interim Branch Executive should be expanded by three members to include one member from TransWA and two additional members from the railway employees' occupational group. He also stated that the Commission should recommend that the Interim Branch Executive should:
 - (a) resume meetings;
 - (b) be chaired or facilitated by a nominated person acceptable to all;
 - (c) take steps to properly consider the measures set out in a document titled 'Heads of Agreement [confidential draft discussion November 4, 2009]';
 - (d) consider applicants for the position of Assistant Secretary and appoint a person to fill that position;
 - (e) receive expressions of interest and make additional appointments of three new members of the Interim Branch Executive, one of whom should be a person employed in TransWA and two from rail operations; and
 - (f) consider and adopt new rules.
- 7 Mr Momber informed the Commission that the majority of the members of the Interim Branch Executive agree the matters set out in the document titled 'Heads of Agreement' have great merit but what stood in the way of the Interim Branch Executive moving forward towards taking the steps mooted in that document and to proceed to an election, is that the members of the Interim Branch Executive do not have a mandate to do anything. In particular, the members he represents are of the view that they do not have a mandate from anyone to enter into an agreement to bind the Interim Branch Executive to a course of action no matter how practical and sensible it is. He also said that these members agreed to become members of the Interim Branch Executive to proceed to an election so that the persons they represent could be recognised as eligible to be members, and after an election those elected would have a mandate to bring change.
- 8 Mr Momber also importantly stated on behalf of those he represents that what the Registrar proposes is best for everyone. He also stated that what Mr Nolan proposes would be right and proper for everyone providing they go down the Federal route. Mr Momber then went on to say that the fundamental problem was that those who are eligible to be members have lost confidence in all concerned because they take the view they are not represented.
- 9 Mr Momber then put forward a proposal which he says should enable the Interim Branch Executive to proceed to consider the issues proposed in the Heads of Agreement document and to adopt the course of action proposed by the Registrar and to proceed to an election at a suitable time. Mr Momber also stated that the Interim Branch Executive would need to be provided with resources to reach conclusions and to receive independent advice. Mr Momber then said that whilst Mr Nolan has acted properly at all times as he represents the Federal Union, the members of the Interim Branch Executive should be able to take independent advice.
- 10 At the heart of the submissions made on behalf of the persons who are represented by Mr Momber appears to be a perception that the members of the Interim Branch Executive have no mandate as they have not been elected. Mr Momber informed the Commission that the members of the Interim Branch Executive should be replaced with those referred to in Schedule 6 of the Registrar's Outline of Submissions as each of those persons were elected as office bearers of the Federal Branch in the last Federal election. He pointed out that these persons were elected as office bearers of the State Branch of the Federal Union by members of the Federal Union (who are also eligible to be members of the Union) who had formed the view when casting their vote that they were electing officers of the Union.
- 11 Mr Momber said that he was instructed that Mr Ian King represented TransWA as the Metropolitan Sub-Branch Secretary. However when regard is had to r 180(4) of the Rules of the Australian Rail Tram and Bus Industry Union, it is difficult to see how that could be the case as the Metropolitan Sub-Branch is composed of "those workers who have an appointed position at

Claisebrook, Currambine and Neerabup, Westrail Centre or other locations when relocated and at Rockingham on the proposed Mandurah line". If all TransWA positions are appointed to positions at the Westrail Centre or the other locations referred to in r 180(4) then perhaps Mr King is correct in his assertion.

- 12 It is notable that the Rules of the Federal Union provide the role of a Federal Sub-Branch is determined by Branch Council which is the highest deliberative body in the Branch (r 57 and r 42). The Branch Council in Western Australia is composed of the:
 - Branch President;
 - Branch Vice-President;
 - Branch Secretary;
 - Branch Organiser; and
 - the Secretary of each Sub-Branch (r 178).
- 13 There are 11 Federal Sub-Branches in WA (Kalgoorlie, Esperance, Merredin, Wagin, Bunbury, Kwinana, Forrestfield, Geraldton, Northam, Perth and Metropolitan (r 180). Each Federal Sub-Branch has a committee composed of a Sub-Branch President, a Sub-Branch Vice-President, a Sub-Branch Secretary and up to seven committee members. The committee may meet up to six times a year (r 57).
- 14 It is also notable that the elected officials referred to Schedule 6 of the Registrar's Outline of Submissions compose the Branch Secretary and the Sub-Branch Presidents of the Metropolitan and Perth Sub-Branches, the Sub-Branch Vice-Presidents of the Metropolitan and Perth Sub-Branches, the Sub-Branch Secretaries of the Metropolitan and Perth Sub-Branches, together with the committee members of the Metropolitan Committee and Perth Committee. The total number of persons listed is 18, seven of whom are members of the Interim Branch Executive. The remaining two members of the Interim Branch Executive, Mr Michael Chance and Mr John Miller, also hold positions in the Federal Branch. They hold the positions of Branch President and Branch Vice-President respectively. Importantly it is apparent that each of the members of the Interim Branch Executive were elected by persons who are eligible to be members of the Union, albeit when each was elected they were elected to offices in the Federal Branch.
- 15 It is clear that Schedule 6 of the Registrar's Outline of Submissions contains a list of some of the office bearers of the Federal Branch and only part of Branch Council of the Western Australian Branch which is the governing body of the Federal Branch. If this proposal put on behalf of the persons represented by Mr Momber was to be adopted could this body of persons be said to be representative or appropriate? Firstly it would mean that the Interim Branch Executive would compose 18 members which could be said to be an unweilding number. Whilst there may be a dispute as to who is eligible to join the Union insofar as those not employed by the Public Transport Authority, it is plain that persons who are employed by the Public Transport Authority in the division of TransWA are eligible to join. However in my view it is not material that TransWA employees as an occupational group are not equally or sufficiently represented as when the rules of the Union and the Federal Union are examined, it is apparent that both are organised geographically rather than by occupational groups.
- 16 Whilst Mr Momber argues that the current members of the Interim Branch Executive do not have a mandate to carry out the steps necessary to resolve the issues in dispute and progress the affairs of the Union to an orderly election of officials, I do not accept that contention or what might be said to be the opinion of those he represents. The mandate to represent those who are eligible to be members of the Union comes from the order made by Ritter AP on 1 October 2009 which was made pursuant to the powers conferred on the President under s 66 of the Act. The establishment of the Interim Branch Executive in the Order made by Ritter AP was for the purpose of requiring the Union to act in accordance with its rules and it gave specific power to the Interim Branch Executive to exercise all of the powers, functions and duties of the Branch Council and the Branch Executive under the rules. Without an Interim Branch Executive the Union would have no power to act within its rules. An order for the purpose of requiring an organisation to act in accordance with its rules is within power: *WALEDFCU v Schmid* (1996) 76 WAIG 639; *Stacey v Civil Service Association of Western Australia (Incorporated)* (2007) 87 WAIG 1229 [279](f). In any event all present members of the Interim Branch Executive are elected office holders of the Federal Branch.
- 17 The mandate to act having been given to the members of the Interim Branch Executive, by order of this Commission, those members are required to act in the best interests of the organisation. It appears apparent from the Registrar's report that the members of the Interim Branch Executive have collectively failed to do so. It seems that they may have been distracted by other issues but in my opinion these should be set aside until the tasks addressed by Ritter AP above have been achieved through the measures recommended by the Registrar. To do so should require a proper consideration by the Interim Branch Executive of the matters set out in the Heads of Agreement document. The Registrar's report does not indicate that any member of the Interim Branch Executive wishes to be released from the obligation to act as a member of the Interim Branch Executive. As set out above it is irrelevant that the membership of the Interim Branch Executive may not be representative of the occupational groups who are eligible to be members. Nor do the rules of the Union provide for the creation of an Executive in the way suggested in Schedule 6 of the Registrar's Outline of Submissions.
- 18 At this point in time I am not satisfied that additional appointments should be made to the Interim Branch Executive or that the Interim Branch Executive should be constituted as proposed in Schedule 6. I do however agree that a neutral Chairperson who does not have a right to vote, should be appointed temporarily to ensure that meetings of the Interim Branch Executive are properly conducted and the members of the Interim Branch Executive focus on the tasks that are necessary to regularise the Union. Having reviewed the recent report of the Registrar carefully, it is apparent the problem with the functioning of the Interim Branch Executive lies with the fact reported by the Registrar at page 2 of his report that there are differing views as what, specifically, the committee's program should be.

- 19 It is clearly apparent from the Registrar's report that the Union needs to put its "house in order" before it can proceed to an election. The way to do that is for the members of the Interim Branch Executive to work together by:
- (a) taking steps to address each of the four points Ritter AP stated were necessary to be carried out to regularise the affairs of the Union;
 - (b) addressing each of the 11 points in the Registrar's report;
 - (c) taking steps to consider making an appointment to the position of Assistant Secretary to deal with industrial issues; and
 - (d) properly considering each of the points set out in the Heads of Agreement document.
- 20 As to who should provide legal advice and the cost of the provision of the advice is not a matter that it is appropriate to be considered by the Commission and is a matter that should be considered by not only the Interim Branch Executive but the Federal Union.
- 21 For these reasons I will make the following order:
1. A temporary independent person be appointed as Chairperson of the Interim Branch Executive (the Chairperson) within 14 days of the date of this order;
 2. Prior to a person being appointed as Chairperson, consent must be given to the appointment by all members of the Interim Branch Executive;
 3. The Chairperson shall not be entitled to a vote but shall take steps to ensure that meetings of the Interim Branch Executive are properly conducted;
 4. The Interim Branch Executive is to hold a meeting no later than 28 days following the date of this order;
 5. There be liberty to apply to vary this order on five (5) days' notice.
- 22 If in the near future the Interim Branch Executive is able to function properly without the assistance of a neutral Chairperson then the order can be varied to remove the requirement for a Chairperson.

2010 WAIRC 00030

	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION	
PARTIES	THE REGISTRAR	APPLICANT
	-and-	
	MR PHIL WOODCOCK THE AUSTRALIAN RAIL, TRAM AND BUS INDUSTRY UNION OF EMPLOYEES, WEST AUSTRALIAN BRANCH	RESPONDENT
CORAM	THE HONOURABLE J H SMITH, ACTING PRESIDENT	
DATE	WEDNESDAY, 27 JANUARY 2010	
FILE NO/S	PRES 7 OF 2009	
CITATION NO.	2010 WAIRC 00030	

Result	Order issued
Appearances	
Applicant	Mr R Andretich (of Counsel)
Respondent	Mr J Nolan (of Counsel)
Proposed Interveners	Mr P Momber (of Counsel)

Order

This matter having come on for a directions hearing before me on 19 January 2010, and having heard Mr R Andretich (of Counsel), Mr J Nolan (of Counsel) and Mr P Momber (of Counsel), pursuant to the powers conferred on the President under the *Industrial Relations Act 1979*, hereby orders that —

1. A temporary independent person be appointed as Chairperson of the Interim Branch Executive (the Chairperson) within 14 days of the date of this order;
2. Prior to a person being appointed as Chairperson, consent must be given to the appointment by all members of the Interim Branch Executive;

3. The Chairperson shall not be entitled to a vote but shall take steps to ensure that meetings of the Interim Branch Executive are properly conducted;
4. The Interim Branch Executive is to hold a meeting no later than 28 days following the date of this order;
5. There be liberty to apply to vary this order on five (5) days' notice.

[L.S.]

(Sgd.) J H SMITH,
Acting President.**2010 WAIRC 00014**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES THE REGISTRAR OF THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS
COMMISSION **APPLICANT**

-and-

THE DISABLED WORKERS' UNION OF WESTERN AUSTRALIA **RESPONDENT**

CORAM THE HONOURABLE J H SMITH, ACTING PRESIDENT

DATE TUESDAY, 19 JANUARY 2010

FILE NO/S PRES 1 OF 2009

CITATION NO. 2010 WAIRC 00014

Result	Order varied
Appearances	
Applicant	Mr R Andretich (of counsel)
Respondent	Mr K Trainer, as agent

Order

HAVING heard Mr Andretich on behalf of the applicant and Mr Trainer on behalf of the respondent, by consent it is ordered that –

1. Order [2009] WAIRC 00836 be varied by:
 - (a) amending the date for the directions hearing in order (1) to 10:00 am on Wednesday, 10 February 2010 in Court 1 (Level 18);
 - (b) amending the time for compliance for order (2) to on or before 5 February 2010.

[L.S.]

(Sgd.) J H SMITH,
Acting President.**2010 WAIRC 00058**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES THE REGISTRAR OF THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS
COMMISSION **APPLICANT**

-and-

THE DISABLED WORKERS' UNION OF WESTERN AUSTRALIA **RESPONDENT**

CORAM THE HONOURABLE J H SMITH, ACTING PRESIDENT

DATE WEDNESDAY, 10 FEBRUARY 2010

FILE NO/S PRES 1 OF 2009

CITATION NO. 2010 WAIRC 00058

- 2. Clause 16. – Special Rates and Provisions: Delete Subclause (2)(b) and insert in lieu thereof the following:**
- (b) Subject to paragraph (c) hereof where the employee's working clothes are lost by fire or breaking and entering whilst securely stored in the place provided by the employer under paragraph (a) hereof the employer shall reimburse the worker for that loss but only up to a maximum of \$153.25.
- 3. Clause 29. - Wages:**
- A. Delete subclauses (4) and (5) of this clause and insert in lieu thereof the following:**
- (4) (a) In addition to the appropriate rates of pay prescribed in this clause, an employee shall be paid -
- (i) \$45.70 per week if engaged on the construction of a large industrial undertaking or any large civil engineering project.
- (ii) \$41.20 per week if engaged on a multi-storey building, but only until the exterior walls have been erected and the windows completed and a lift made available to carry the employee between the ground floor and the floor upon which he/she is required to work. A multi-storey building is a building which, when completed, will consist of at least five storeys.
- (iii) \$24.20 per week if engaged otherwise on construction work falling within the definition of construction work in Clause 5. - Definitions of this award.
- (b) Any dispute as to which of the aforesaid allowances apply to particular work shall be determined by the Board of Reference.
- (5) **Leading Hands:**
- In addition to the appropriate total wage prescribed in this clause a leading hand shall be paid -
- | | |
|---|-------|
| | \$ |
| (a) If placed in charge of not less than three and not more than 10 other employees | 26.00 |
| (b) If placed in charge of more than 10 and not more than 20 other employees | 39.50 |
| (c) If placed in charge of more than 20 other employees | 51.10 |
- B. Delete subparagraphs (8)(a)(i) and (ii) of the clause and insert in lieu thereof the following:**
- (i) \$14.30 per week to such tradesperson or second-class sheetmetal employee; or
- (ii) in the case of an apprentice a percentage of \$14.30 being the percentage which appears against the year of apprenticeship in subclause (3) hereof, for the purpose of such tradesperson, second-class sheetmetal employee or Apprentice supplying and maintaining tools ordinarily required in the performance of work as a tradesperson, second-class sheetmetal employee or as an apprentice.

2009 WAIRC 00428

PRISON OFFICERS' AWARD

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
 WESTERN AUSTRALIAN PRISON OFFICERS' UNION OF WORKERS

PARTIES**APPLICANT**

-v-

THE MINISTER FOR CORRECTIVE SERVICES

RESPONDENT

CORAM COMMISSIONER S J KENNER
DATE MONDAY, 6 JULY 2009
FILE NO. APPL 33 OF 2009
CITATION NO. 2009 WAIRC 00428

Result Direction issued
Representation
Applicant Mr J Welch
Respondent Mr P Budd

Direction

HAVING heard Mr J Welch on behalf of the applicant and Mr P Budd on behalf of the respondent the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby directs –

1. THAT by consent the following documents filed and/or used in application C 23 of 2008 be and are hereby incorporated into these proceedings:
 - a) The notice of application;
 - b) The WAPOU submissions dated 6,7 and 28 August 2008;
 - c) The DoCS submission dated 13 August 2008;
 - d) The transcript of proceedings;
 - e) The Overtime Incentive Bonus Reports from the trial prepared by WAPOU DoCS; and
 - f) The Overtime Trial Survey Report.
2. THAT evidence-in-chief in this matter be adduced by way of signed witness statements which will stand as the evidence-in-chief of the maker. Evidence-in-chief other than that contained in the witness statements may only be adduced by leave of the Commission.
3. THAT the applicant file and serve any signed witness statements upon which it intends to rely no later than 3 August 2009.
4. THAT the applicant file and serve any further written submissions upon which it intends to rely no later than 3 August 2009.
5. THAT the respondent file and serve any signed witness statements upon which it intends to rely no later than 31 August 2009.
6. THAT the respondent file and serve any further written submissions upon which it intends to rely no later than 31 August 2009.
7. THAT the matter be listed for hearing for 3 days.
8. THAT the parties have liberty to apply on short notice.

(Sgd.) S J KENNER,
Commissioner.

[L.S.]

2009 WAIRC 01361

PRISON OFFICERS' AWARD

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
WESTERN AUSTRALIAN PRISON OFFICERS' UNION OF WORKERS

PARTIES

APPLICANT

-v-

THE MINISTER FOR CORRECTIVE SERVICES

RESPONDENT

CORAM CHIEF COMMISSIONER A R BEECH
HEARD 1 DECEMBER 2009
DELIVERED 29 DECEMBER 2009
FILE NO. APPL 33 OF 2009
CITATION NO. 2009 WAIRC 01361

CatchWords Award - Award variation – Overtime incentive payment - Principle 7 Work Value Changes – Principle 10 Making or Varying an Award or issuing an Order which has the effect of varying wages or conditions above or below the award minimum conditions – Enterprise Bargaining – Annualised salary - Industrial Relations Act 1979 (WA) s 40 – Prisons Act 1981 (WA) s 7 - Statement of Principles 2009

Result Award amended for limited term

Representation

Applicant Mr J. Welch

Respondent Mr P. Budd

Intervener Mr R. Andretich (of Counsel) on behalf of the Hon. Minister for Commerce

Reasons for Decision

- 1 This is an application by the WA Prison Officers Union to amend Clause 13 - Out of Hours Work of the *Prison Officers Award* to provide a higher rate of payment when additional hours are worked as a result of the prison population and staffing being at high and low levels respectively. Clause 13.1 defines "out of hours work" as all work performed at the direction of the Superintendent or a duly authorised officer outside the officer's rostered hours of duty. If granted, the amendment would insert into clause 13.1 a definition of "Critical Muster", being a circumstance where:
 - (a) The prison population in any prison exceeds by 5% or more the prisoner population level agreed between the WAPOU and the Department for a period of 3 calendar days; and
 - (b) The level of actual staffing available to work (by having regard to absences for secondments, workers compensation, sickness, and all other leave categories) for the relevant prison is 5% or more below the agreed establishment level of staff as agreed between the WAPOU and the Department for a period of 3 calendar days.
- 2 Clause 13.4(1) provides that the payment to be made for out of hours work is time and one-half of the prison officer's annualised rate of pay for all excess time worked. If the amendment is granted then where a critical muster exists payment for out of hours work will also include an overtime incentive payment of \$143 to be paid in addition to the time and one-half of the prison officer's annualised rate of pay.
- 3 The Hon Minister for Corrective Services opposes the amendment. The Hon Minister for Commerce, who intervened on behalf of the State, also opposes the amendment.

Background

- 4 The dispute between the parties regarding shortages of Prison Officers employed throughout metropolitan and regional prisons in the State is of reasonably long standing. Shortages have resulted in Prison Officers increasingly filling vacant shifts by working overtime, defined in the award as "out of hours work". The issue is exacerbated by the prison population within metropolitan and regional prisons (the muster) being in excess of the design capacity of the various facilities. The dispute resulted in the imposition of overtime bans by the union in July 2008 and came before the Commission constituted by Kenner C (matter C23 of 2008).
- 5 Following several compulsory conferences under s 44 of the Act, the union sought an interim order for the introduction of a trial of the payment of public sector overtime rates, being time and a half for the first three hours and double time thereafter. This was sought to create a greater incentive for Prison Officers to work overtime, in particular the group of Prison Officers presently working little or no overtime, so as to more evenly spread the overtime load and thus reduce the pressure on those who had been regularly working overtime.
- 6 Kenner C ordered that a trial of the payment of public sector overtime rates be held for a three month period between 1 October and 31 December 2008. This resulted in the payment to Prison Officers who worked overtime of an incentive payment of \$129 in addition to the time and one-half of the prison officer's annualised rate of pay. His reasons for decision (2008 WAIRC 01395; 12 September 2008) and several documents used in the hearing before him were incorporated into these proceedings. I gratefully adopt paragraphs [1] – [25] of those reasons for decision as containing background relevant to this application to amend the award.
- 7 Although the Minister objected to the trial, in accordance with the decision and direction of Kenner C, the Minister and the union agreed that the trigger for the payment would be where the actual muster level is 5% or greater than the modified design capacity of the prison and where a shortfall of 5% or greater exists in the agreed staffing levels to deal with that actual muster (2008 WAIRC 01461; 1 October 2008, Schedule A). During the trial, the Minister, through the Department of Corrective Services, kept data which was subsequently analysed by both the Department and the union. Each drew different conclusions from the data regarding the success or otherwise of the trial from their respective points of view.

The Union's Submission

- 8 The union presented a comprehensive written submission. In summary, the union submits that there is a recurrent and serious problem with the management of prisoner musters significantly in excess of the design capacity of prisons or the levels agreed between the union and the Department in a 2006 staffing agreement. In combination with this, there have been recurrent difficulties with the Department's ability to provide the levels of staffing that have been agreed locally and centrally to ensure the safe running of the prisons. These agreements have allowed the prison population to grow dramatically with very little disputation between the parties. However actually getting the staff to carry out the agreed roles, and to be available to do the work that has been agreed between the parties as being necessary on a daily basis, has in many cases proven to be a much greater problem than actually getting the agreements themselves.
- 9 The union says that its proposal to amend the award is the only proven method of dealing with the problem, that this is evidenced by the results of the trial and that other alternatives for the management of the problem, in the union's view, have not worked and will not work.
- 10 The union submits that working overtime in these conditions is harder, more intense and more stressful. The union also submits that it impacts upon the physical working environment and that security issues are increased. The union states that the amendment follows a similar approach to the already existing concept in Clause 13 of paying a higher rate for overtime worked during Major Emergency Duty which is a situation when there is an absolute need for further staff. Moreover, the wording of the amendment means that if the Minister provides the staff required, the penalty will not be payable.
- 11 The union called evidence from its Senior Industrial Officer Tony Clark, from Mr Walsh who is a Senior Officer from the Greenough Regional Prison and from Mr Smith who is a Senior Officer at Hakea. In addition, the union tendered documentary evidence in support of its claim including the overtime summary for Hakea, Casuarina and Bandyup Prisons for the period 1 June to 31 August 2009 (WAPOU 5).

The Minister's Position

- 12 The Minister for Corrections also presented a comprehensive written submission. In outline, the Minister opposes the application in its entirety. The Minister considers it is more appropriate to consider and discuss the matter in the next Enterprise Bargaining Agreement (EBA) negotiations which are scheduled to commence in a few weeks in 2010 and is concerned that the application appears to be trying to circumvent that bargaining process. The Department of Corrections and the Minister are confident that a combination of recruitment and management initiatives, along with more effective deployment of staff via the available processes, will address the overtime issue and submit that "incentivisation" through enhanced overtime rates will not spread the load across the prisoner officer body and should not be considered until all other options are fully explored and executed.
- 13 The Minister's submission outlines a number of efficiencies as alternatives to increasing penalty rates as sought by the union. Those alternatives include but are not limited to:
- reviewing shift patterns in hours of duty such as a greater use of alternative shifts as provided for in subclause 12.2 of the Award;
 - more efficient and flexible deployment of Prison Officers;
 - more effective management of the prison muster by reviewing prison routines to take pressure off prisons with overtime issues;
 - a more effective use of non-Prison Officer occupational groups;
 - placement of the majority of Prison Officer trainees from new schools into the prisons under pressure;
 - a recall of Prison Officers from secondments in public sector positions and secondments to other public sector agencies; and
 - a realisation of the imprisonment reduction strategies and of the requirement of Prison Officers to make themselves available to work reasonable overtime as prescribed in subclause 13.2 of the Award.
- 14 The Commission was informed that \$11.25 million in additional funds have been allocated to specifically provide for an increase in recruitment of Prison Officers. The Minister for Corrective Services in May of this year outlined a planned \$12 million 600-bed capital works program for the short-term increase in prisoner accommodation and the State Government has announced its intention to spend \$655 million on a total infrastructure programme.
- 15 The Minister submitted that under s 7 of the *Prisons Act 1981* (WA), the Chief Executive Officer of the Department is responsible for the management, control and security of all prisons and it is for the CEO, using his managerial prerogative, to address the issue. Further, the Minister submits that the claim in this matter does not comply with the Commission's State Wage Principles; in the Minister's view the application and the evidence show that Prison Officers are busier, not that the value of their work has significantly changed warranting payment of an additional allowance.
- 16 The Minister sought to remind the Commission that overtime for Prison Officers is already paid on an annualised salary, which contains shift penalties; this means that the payment sought by the union will mean "a penalty (the bonus payment) is paid on a penalty (being overtime) and a penalty (being shift)" (transcript p 98) and "it is a well-accepted industrial principle that overtime penalties are paid on a base rate of pay".
- 17 The Minister called evidence from Ms Skowron who is the Manager, Recruiting of the Department and from Mr Giles, the Deputy Commissioner for the Adult Custodial Division of the Department. A witness statement from Mr Newell, Workforce Planner for the Department was also tendered. In addition, the Minister tendered documentary evidence in support of his position.

The Intervention of the Minister for Commerce

- 18 The Minister for Commerce states that the trial ordered by the Commission had been seen by the union as an interim arrangement. This also was the understanding of Kenner C and in the opinion of the Minister for Commerce the Commission had recognised that the trial should not be the foundation for a more permanent arrangement.
- 19 Further, the use of overtime to meet minimum or agreed staffing levels is undesirable from both a policy point of view and an occupational safety and health point of view. This was accepted by both parties in C23 of 2008, yet the union puts it forward as the only reasonable and effective measure to meet the problem. Granting the amendment will entrench it for the long term and make it more desirable to work in a way which is occupationally undesirable. The Minister for Commerce submits by way of contrast, that the evidence from the Minister for Corrective Services shows that the efforts of the Department have been extremely productive in reducing the deficiency in the number of Prison Officers compared to the required staffing levels. The long term solution to the problem lies in the employment of sufficient numbers of Prison Officers to meet required staffing levels.
- 20 The Minister for Commerce emphasises that Clause 13.2 of the Award provides that all Prison Officers are required to be available to work reasonable out of hours work in addition to their rostered duty and that it is inappropriate to align the current situation with the additional overtime provisions payable at a time of Major Emergency Duty.
- 21 The Minister for Commerce also emphasises that the circumstances in which an overtime rate of more than time and one-half will be paid were considered and dealt with within the Award and more recently in the parties' 2007 EBA (AG 58 of 2007; 2007 WAIRC 01104). EBAs have become the vehicle by which conditions of employment are regulated and changed. There are restrictions in s 43 of the Act on the power of the Commission to vary an EBA and to grant the application to amend the Award would be in substance to vary the EBA. This is not permitted by either the terms of the EBA or by the Act. As a matter of policy, the award should not be amended in these circumstances.

- 22 The Minister for Commerce sees a potential for flow-on of this application to other sectors of Government; it is not generally the case that the rate of remuneration increases when there are staff deficiencies and the workload reaches a certain point. The amendment will introduce a new cost in difficult times for which provision has not been made. The overtime rate is paid on top of an annualised salary which includes a component in lieu of shift penalty payments, accrued days off, public holidays and overtime. The Minister for Commerce also submits that the variation sought must conform to the State Wage principles and there must be evidence of a change in the value of work; in the submission of the Minister for Commerce, there has not been evidence of such a change.

CONSIDERATION OF THE ISSUES

Enterprise Bargaining and the State Wage Principles

- 23 The Ministers very properly have pointed to the emphasis placed upon the enterprise bargaining process, and not amendments to awards, as being the vehicle for the improvement of wages, salaries and other conditions of employment. The Minister for Commerce particularly pointed to the restrictions in s 43 of the *Industrial Relations Act, 1979* (the Act) on the power of the Commission to vary an EBA. The submission was that to grant the application to amend the Award would be in substance to vary the EBA.
- 24 This submission carries considerable weight. At least since the amendments to the Act resulting from the *Labour Relations Reform Act 2002* there has been a legislative recognition of the importance of the enterprise bargaining process. Section 6 was amended to make one of the principal objects of the Act to encourage employers, employees and organisations to reach agreements appropriate to the needs of enterprises within industry and the employees in those enterprises, and Division 2B — Industrial Agreements was extensively revised. The recent history of industrial regulation of Prison Officers has been of negotiating EBAs with only consequential amendments being made to the Award.
- 25 Although the Commission is not permitted to amend an EBA except in the most limited circumstances, there is no provision in the Act preventing a party to an EBA from applying to amend the award to which they are a party during the life of the EBA. To the extent that there is any policy position which addresses the issue raised by the Minister for Commerce, it is to be found in the Act and in the Commission's State Wage Principles. Consistent with the adoption in this State of National Wage Cases under the now-repealed s 51 of the Act, the Commission established State Wage Principles which are binding upon the Commission in the exercise of its jurisdiction. The need, if not the requirement, for the continuation of such Principles was recognised by the State Parliament in the 2006 amendments to the Act which gave the Commission the power in s 50A to make a General Order each year which adjusts the Minimum Wage and award rates of pay (*Labour Relations Legislation Amendment Act 2006*). The General Order is also, by s 50A(1)(d), to:
- “[Set] out a statement of principles to be applied and followed in relation to the exercise of jurisdiction under this Act to set the wages, salaries, allowances or other remuneration of employees or the prices to be paid in respect of their employment.
- 26 The current State Wage Principles (2009 WAIRC 00402; Schedule 2 – Statement of Principles 2009) therefore apply to this application and are to be applied and followed. Their application means that variations to awards which set wages, salaries, allowances or other remuneration may only be made in the limited circumstances contained within them.
- 27 The 2007 EBA deals with this issue in Clause 7.0 No Further Claims which provides as follows:
- 7.0 NO FURTHER CLAIMS
- 7.1 The parties to the Agreement undertake that for the term of the Agreement there will be no salary increases sought or granted other than those provided under the terms of the Agreement. This includes salary adjustments arising out of State Wage Cases. Such increases are to be absorbed in the salaries set out in the Agreement.
- 7.2 The parties to this Agreement undertake that for the term of the Agreement there will be no further claims on matters contained in the Agreement except where specifically provided for.
- 7.3 This clause will not preclude the Union from making an application to vary the Award pursuant to the State Wage Fixing Principles.
- 28 For present purposes, the union and the Minister agreed in 7.3 that the union is not precluded from making an application to vary the award provided it is pursuant to the State Wage Principles.
- 29 Where an EBA has a “no extra claims commitment”, it is most unlikely that the equity, good conscience and the substantial merits of the case would favour the variation of an award which would have the effect of breaching that commitment. The words “a deal is a deal” remain vital to good industrial relations between employers, employees and their registered organisations. In this case, Kenner C observed in the matter before him at [28] that the no further claims provision of the EBA did not present a barrier to the interim relief sought by the union; that is, the union's claim for the trial of an additional payment for out of hours work due to staff shortages and overcrowding did not breach Clause 7.0 No Further Claims. In this case, if the State Wage Fixing Principles permit this application then it too does not breach the No Further Claims provision.
- 30 The union relies upon Principle 7 Work Value because of its reference in 7.2 to changes in the nature of the work, skill and responsibility required or the conditions under which work is performed. In its written submission at [137] – [146] the union states that there is a “radical change” to the nature of the work when “muster crisis” conditions occur and many Prison Officers become risk managers instead of managing prisoners.

31 In relation to Principle 7, it is important to note the whole of 7.2 which cautions that:

Changes in work by themselves may not lead to a change in wage rates. The strict test for an alteration in wage rates is that the change in the nature of the work should constitute such a significant net addition to work requirements as to warrant the creation of a new classification or upgrading to a higher classification.

32 The union also relies upon Principle 10 which permits consideration of an application to vary the remuneration of employees which is not made by an applicant under any other Principle and which is a matter or concerns a matter to vary wages above or below the award minimum conditions. By 10.2, claims may be brought under Principle 10 irrespective of whether a claim could have been brought under any other Principle. Principle 10 is to be read in the context of the Principles as a whole; although Principle 10 permits a matter to be considered irrespective of whether it could have been brought under any other Principle, it does not mean that those other Principles are irrelevant. The strict test in Principle 7.2 for an alteration in wage rates cannot be avoided by invoking Principle 10. (This Principle states in 10.3 that all claims made under this Principle will be referred to the Chief Commissioner for him to determine whether the matter should be dealt with by a Commission in Court Session or by a single Commissioner. I note for the record that on 19 June 2009 Kenner C referred the matter to me and I determined that it was appropriate for it to be dealt with by a single Commissioner.)

33 In giving consideration to the application, I draw attention to Principle 1.3 which states:

1.3 In making a decision in respect of any application brought under these Principles the primary consideration in all cases will be the merits of the application in accordance with equity, good conscience and the substantial merits of the case pursuant to section 26(1)(a) of the Act.

34 I therefore look to the merits of the application and turn to consider the evidence.

The Evidence Regarding the Current Position

35 The evidence before the Commission from both the union and the Department shows that the accelerated growth of prisoner numbers over the last twelve months has been unique in the history of its growth. The union's evidence is that the prisoner population in WA has increased beyond the Department's forecast for the adult prisoner population of November 2008: figures supplied to the union in November 2008 (Sub 3 of WAPOU 1) predicted for 2009 (at the upper forecast level) the adult prisoner population would be 4081 and that it would be 4621 in 2011. The Commission was informed during the hearing that the muster at the moment is 4837 (transcript p 4). That is, the current prisoner population at the end of 2009 already exceeds the November 2008 maximum projection for 2010. It is already above the lower projection figure for 2011. It was said that this is an increase since December 2008 of over 800 prisoners which equates to a growth in the last 11 months roughly analogous to that which has taken place in the previous eight years (transcript p 4). Correspondingly, the overtime summary for Hakea, Casuarina and Bandyup Prisons 1 June to 31 August 2009 (WAPOU 5) shows a significant amount of overtime is being worked due to this peak muster.

36 The evidence of Mr Walsh in relation to the Greenough Regional Prison, and of Mr Smith in relation to Hakea, shows how the general increase in the prisoner population has affected those two prisons, and I accept their evidence. Greenough Regional Prison has a bed capacity of 219 and its muster 3 months ago was 330; the prison has an average of 10 staff positions vacant on any day created mostly, though not entirely, by roster vacancies (transcript pp 19 – 21, 26) and may fill 5 of those vacancies. Hakea has a design capacity of 617 prisoners and in November 2009 its muster had reached 903; on the day of the hearing in this matter, Hakea had 25 officers brought in on overtime and one position was unable to be covered.

37 I accept the evidence of Mr Walsh and Mr Smith that Prison Officers work in a more stressful environment at this time of a significant and unforeseen increase in the muster. In relation to the Greenough Regional Prison, positions are left vacant, staff stress levels have increased which in turn affects prisoners and which increases the incidence of violence between prisoners and by prisoners against officers. Prison Officers working excessive overtime to meet the demands of the higher muster show increased stress levels to the point where they are not able to function at one hundred percent. This in turn affects how prisoners are dealt with and potentially the security and good order of the prison is put at risk. Because of the overcrowding, transfers of prisoners between prisons is extremely restricted due to the lack of beds available and this also leads to stress within the prison. I accept that these situations are occurring on a regular basis.

38 Mr Smith was asked whether he himself had found it harder to carry out his role as a Prison Officer over the last 12 months. He replied:

“Absolutely. I think because of the increase in muster and, as I said before, the amount of prisoners that we have to look after these days, the concentration of prisoners within such a small area, the conflict that that produces, also the stress levels of Prison Officers that are working in those areas, has made it much more difficult than it was.”

(transcript p 26)

39 In relation to Hakea, high musters inevitably lead to higher density living, sleeping and containment areas for prisoners. Coupled with staff shortages, this leads to a change in prison routine. Work and education routines have changed significantly. In order to effect the unlocking of prisoners within units it has been necessary to redeploy staff from unit to unit thereby delaying scheduled events such as breakfasting, medication and release for work and education. These delays put additional pressures on staff as prisoners' requests and demands were directed to staff in a shorter available time. Changes in the daily routine include the closing of workshops and education, limiting or closing recreation and limiting the escorting of prisoners including to the medical centre. The limiting of recreational and employment opportunities means prisoners are forced to spend more time in residential units where additional work loads are placed on staff. Together with the number of prisoners and the units being above the design capacity, there is a more stressful atmosphere in which Prison Officers have to work.

They are required to be more alert and constantly prepared for incidents, creating constant stress without relief over their entire shift.

- 40 It was acknowledged in the Department's evidence during the hearing in this matter that overcrowding in prisons leads to many, many issues (transcript p 79). These include the need to maintain order by having a structured day in terms of employment, recreation, programs, education and visits; overcrowding also puts pressure on the actual facilities themselves and impacts on staff by, for example, "burn out".
- 41 This evidence is consistent with the comments made by Professor Neil Morgan, the Inspector of Custodial Services, Western Australia regarding overcrowding in a paper presented in June 2009 (Sub 9 of WAPOU 1). The Union draws particular attention to pages 16 - 18 where Professor Morgan notes that staff resources may not keep pace with rises in prisoner numbers which may mean that the number of staff per head of the prisoner population may decline and the quality and experience of staff may well drop off leading to an environment where staff are also likely to feel less safe. Staff will lapse into a less positive role and become gaolers rather than correctional officers and retreat into their secure areas rather than interacting more positively with prisoners.
- 42 The Union also quoted from a memorandum of 22 June 2007 from the then General Manager Prison Operations (Document JW22 attached to the union submissions in C23 of 2008) which at page 14 recognised the additional stress and other work environment changes likely to lead to accelerated staff "burn out" and the time frames for recruiting professional staff may result in the prisoner population reaching the higher levels before support staff are in place.
- 43 I therefore consider that the evidence referred to above relating specifically to Greenough and Hakea is likely to be representative of working conditions generally within other prisons.

The Industrial Dispute and the Trial of the Incentive Payment

- 44 The imposition of overtime bans in mid-2008 led to the involvement of the Commission. It was the claim of the union for an overtime incentive payment, and the rejection of the claim by the Minister, which led to its three-month trial being ordered by Kenner C. The union and the Minister are not able to agree whether the trial was, or was not, a success. This is, in my view, in part because each measures "success" differently. During the hearing the Department did not contest the analysis of Mr Clark and I am satisfied that the Department's data as it has been interpreted by the union in the evidence of Mr Clark is quite reliable.
- 45 Mr Clark's conclusion at [15] is that an extra 184 Prison Officers worked more than four overtime shifts during the trial period compared with a comparable period when the incentive payment had not been paid. His conclusion is that on the whole, in every prison during the trial the percentage of staff doing no or little overtime reduced, and the percentage of staff already working some overtime increased. That is, there was a greater take up of overtime by all groups of staff; those who were doing little or no overtime actually started to work more overtime and those already working overtime actually worked more. I accept that evidence.
- 46 I recognise that from the Minister's point of view, this conclusion does not mean that the trial was a success: not all prisons were involved in the trial and nor were all classifications of prison officer. However, the evidence before me is that working conditions of Prison Officers improved as a result of additional Prison Officers volunteering to work overtime. The evidence of Mr Walsh is that he believed that in Greenough Regional Prison during the trial all positions that were required to be filled by way of overtime were filled (transcript p 17). More officers were putting their names in the overtime book, more were actually working overtime and overall more overtime was worked. Prior to the trial, between July and September 2008 there were 70 staff who did not undertake at least one overtime shift every 3-week roster period and during the trial this number dropped to 38.
- 47 Crucial from my point of view is the evidence that the increased numbers of Prison Officers who were prepared to help cover the shortfall in overtime shifts reduced the amount of stress on Prison Officers (evidence of Mr Walsh at [48], and see too the corresponding evidence of Mr Smith at [48] that morale was "much higher"). The incentive payment was seen as recognition of the "major change" in the work at this time as well as the "major disruption to officers' home lives". In Hakea during the trial, the increased number of shifts being covered each day and the increased spread of overtime amongst officers changed the ability to manage the high numbers and overcrowding and may have changed officers' attitudes to working overtime. All shifts were covered and daily routines were not affected.
- 48 Correspondingly, the evidence of Mr Walsh is that the situation after the trial is now worse than it was during the trial. This is because:

"...we have so many vacant positions due to the positions that were created for the higher muster. There's not the same amount of names in the overtime book or the amount of officers willing to do overtime as there were during the trial."

- 49 I reach the preliminary conclusion that the effect of the trial was positive because even though there were still some Prison Officers who did not volunteer to work overtime, more Prison Officers did so which resulted in a spreading of the overtime workload between Prison Officers. This significantly improved the ability to manage the high prisoner numbers and overcrowding and improved staff morale. It did not completely cure the problem of staff deficiencies but it certainly assisted in addressing the issue.

The Initiatives Proposed by the Minister

- 50 The opposition to the trial being used as the basis for an amendment to the award is based upon a number of issues. The evidence before the Commission particularly from Ms Skowron shows that the Department is making commendable efforts to increase recruitment of Prison Officers, including the introduction of "open ended recruitment" and has a significant

advertising and recruiting campaign scheduled for 2010. Its efforts, notwithstanding any unforeseen circumstances, should provide 357 Prison Officers into the public prison system by January 2011. It takes significant resources to fulfil the requirements of a recruitment process and the Department has committed an additional \$11.5 million over the next 2 years for the recruitment and training of Prison Officers.

- 51 The evidence of Mr Giles shows that there have been preliminary discussions with Departmental personnel on the best way to manage the adult prisoner environment and population including, but not limited to:
- The management of overtime, including a better use of resources to limit reliance on overtime.
 - Prison routines and the need to meet the obligations of the prison service to provide an efficient and effective prison system to the WA community.
 - Staffing flexibility including the requirement to permit a greater flexibility in rostering so as to meet the changing needs of the prison system.
 - Capital works including the commitment by the Government to provide additional resources, and
 - The importance of constructive bipartisan discussions and negotiation on the best way forward to resolve the outstanding issues that confront the Department in the management of the prison population.
- 52 These points were expanded upon particularly in [20] of the Department's written submissions. In my view, the Department's position in principle has much to commend it. I agree too, as Kenner C stated at [44] of his reasons for decision, that the objective must be to increase staffing levels to the level agreed to as necessary for the optimum operation of the State's prisons and that the long term resolution of the issue is to recruit more staff. The evidence shows, however, that there will be a time lag before the changes to recruitment and the Department's initiatives in recruitment scheduled for 2010 take effect. The Department stated at transcript p 99 – 100 that in anticipation of the building program arising from the additional funds that have been provided the Department is already recruiting additional staff which will reduce some of the time lag in that process, but I conclude there will still be a time lag.
- 53 During the course of the hearing in this matter the Minister stated that requiring Prison Officers to undertake a reasonable amount of overtime continues to be an essential component of responsible management and its historic application should not be viewed as an indication of its future use. Mr Giles drew attention to Clause 13.2 which requires Prison Officers to undertake a reasonable amount of overtime and stated that where a need for overtime exists and there are insufficient volunteers to perform it then the Department should feel free to consider the responsible application of this provision.
- 54 The union's written submission at [135] is that its members are strongly opposed to rostering overtime and the Department's fears about industrial action were raised in the course of the hearing (transcript p 76). In my view, it is open to the Minister to consider utilising Clause 13.2. This is because it is an existing award provision and it cannot be treated by either the Department or the union as though it does not exist. It cannot be ignored either by the Commission in this matter. It requires all Prison Officers to be available to work reasonable out of hours work in addition to their rostered hours of duty and states that arrangements in respect of such availability will be agreed to ensure that the routine operations of each Prison are maintained. By Clause 13.2(1), where it is necessary to maintain routine Prison functions, and only when sufficient Officers are not available on a voluntary basis, the Superintendent may roster Officers for out of hours work. It is to be read together with Clauses 13.11 and 13.13 which provide that subject to the provisions of the clause, Prison Officers may be given advance or immediate notice to report for, return to, or remain on duty to perform out of hours work and must not unreasonably fail to attend duty for out of hours work.
- 55 Not only is Clause 13.2 an existing award provision, it was part of changes to the award which were inserted into the award by agreement when pre-paid hours were removed (*WAPOU v Hon. Attorney General* (2000) 80 WAIG 3110). Even if ultimately no agreement is reached between the parties about its utilisation, the union should not be seen to resile from the consent it gave to Clause 13 being inserted into the award by refusing to discuss positively how it may be properly and practically used.
- 56 For present purposes however, the issue with Clause 13.2 is that the Minister has not used it in the recent past. Kenner C observed at [32] that even in cases of prior emergencies in the prison system the Commissioner, Department of Corrective Services (who was the named employer in the matter before Kenner C) had not sought to invoke the power in Clause 13.2 to forcibly roster Prison Officers to work overtime. The lack of recent use of the provision, even during the current significant increase in muster, and the practical issues regarding the rostering of overtime which were raised during the hearing (for example, transcript pp 69 – 70) does not suggest to me that it will provide the solution to the current issue in the short to medium term. Further, in the context of what is "reasonable" out of hours work, it is not clear what proportion of those Prison Officers working little or no overtime will be available to work out of hours because of, for example, a family member's illness (transcript p 88) or family commitments (transcript p 31) and in turn it is not clear to what extent the use of Clause 13.2 will in fact address the current situation. I will return to Clause 13.2 later in these Reasons.
- 57 In relation to other solutions to minimise the working of overtime, including its current review of rostering practices, the Department still has "a lot of work to do" (transcript p 63). These represent solutions more for the medium or long term (transcript p 64). They therefore do not present themselves as solutions available now to address the current situation although in my view they should be pursued and their potential to minimise overtime assessed irrespective of the outcome of this matter.
- 58 During the hearing I asked Mr Budd, who appeared for the Minister, whether it is the Department's view that if the union's claim in this matter is granted the Department is prevented from pursuing these alternatives. The reply (transcript p 52-53) was a belief that if the union's claim is granted the union will not be as helpful in the resolution of issues. I put this to Mr Welch and I record here the union's reply that the union itself has been pressing on the Department a number of the issues and:

“None of those things have been affected by our claim and they weren't affected by the trial. I don't see why they would be affected into the future, because in our view, there is actually a benefit for all of us for their proposals to work.”
(transcript p 114)

59 In my view this reply commits the union to continue to be as helpful in the resolution of issues as it has been to date irrespective of the outcome of this application.

60 I turn to consider other issues raised by the Minister.

Managerial Prerogative

61 The Minister states that the issue raised by the claim predominantly concerns staffing levels, appropriate infrastructure to cater for an increasing prisoner population and prison routines and that these are at the heart of managerial prerogative. I accept that s 7 of the Prisons Act prescribes that it is the Chief Executive Officer of the Department of Corrective Services who is responsible for the management, control, and security of all prisons and the welfare and safe custody of all prisoners. It is not the function of this Commission to manage the prison system or a particular prison within it.

62 Nevertheless, the role of the Commission in dealing with this application to vary the award is recognised in s 13(1) of the Prisons Act which provides that the terms and conditions of the employment of Prison Officers are subject to any applicable industrial award. I am satisfied that the claim before the Commission concerns an industrial matter, namely the working conditions of Prison Officers as a result of the significantly increased prison population, particularly over the last twelve months.

Payment for All Out of Hours Work at Double-Time

63 One of the issues raised by the Minister in opposition to this claim, and also by the Minister for Commerce intervening, is the belief that the claim to amend the award is a manifestation of the union's objective of achieving payment of double time for all out of hours work. Whatever may be the union's position in principle in relation to double time for all overtime worked, or its position on it in the imminent EBA negotiations, the evidence brought on this occasion, and the claim, relates only to overtime to be worked in response to peak muster and staffing shortfall situations. It does not apply outside those situations and my consideration of the claim is not able to be used to support a claim of payment of double time for all overtime worked.

64 Further, the claim is not for a double time payment as such but rather for the payment of a flat sum which in turn is based upon the formula used by Kenner C which is based upon the difference between overtime at time and one-half for all hours worked and the public service overtime rate, although I recognise that the payment of that sum upon a Prison Officer's annualised salary is equal to a payment of double time of the Prison Officer base rate (transcript p 121).

The Penalty Paid on Annualised Salary

65 I also recognise that the payment claimed is effectively a penalty upon a penalty upon a penalty, as both Mr Budd and Mr Andretich have submitted. This submission must be viewed in the context of the relevant history of the *Prison Officers Award* because the payment for out of hours work by reference to the annualised salary has a history that is worth revisiting. Prior to 2000 the award (at that time called the *Gaol Officers Award 1998*) required all Prison Officers to be able to work up to 80 hours per year in addition to their rostered hours of duty. Remuneration for these prepaid hours was included in the Prison Officer's annualised salary (see the award as varied by consent at (1997) 78 WAIG 462 at 464).

66 Pursuant to Clause 12(1) of the Award as it then was, special shifts could be utilised for certain purposes including for prison overcrowding; if a Prison Officer was offered and agreed to work such a special shift outside his or her ordinary hours, it was paid for at the ordinary rate for the position in addition to the annualised salary. This was the payment which also applied when a Prison Officer was called in pursuant to Clause 14 to work shifts outside the normal roster for the approved staffing level of the prison due to excess prisoner numbers. Pursuant to Clause 13(1) of the Award as it then was if a Prison Officer was called in for duty under exceptional circumstances outside the officer's ordinary working hours, including a major emergency, it was paid for at the rate of double time in addition to the officer's annualised salary.

67 In 2000, a dispute between the parties over the operation of the prepaid hours in the Award and over the achievement of an EBA was referred to the Commission and the resulting interim agreement resulted in variations to the operation of the Award (as referred to earlier in these Reasons at (2000) 80 WAIG 3110). The variations, whilst not actually amending the Award, included effectively deleting the prepaid hours clause and inserting the present Clause 13. This provides for payment for excess hours to be at the rate of time and one-half, and payment for a Prison Officer called in for Major Emergency Duty to be at double time, of the Prison Officer's annualised rate of pay; not of the Prison Officer's base salary.

68 Therefore payment for out of hours work using the annualised salary, as distinct from using the base salary, is a rate which the Minister for Corrective Services at the time, and the union, have agreed is appropriate for the award. This, in my view, must lessen the impact of the submission that the claim will result in the payment of a penalty upon a penalty. I recognise that this is not a rate of payment which the Commission is ordinarily likely to prescribe in an arbitration. In this case however, to prescribe the payment of the flat sum claimed in addition to the annualised salary merely applies the rate which the parties themselves agreed was appropriate for the calculation of payment for out of hours work and which has operated without amendment since that time.

Cost Implications

69 The Minister states in the written submission at [18] that payment of enhanced overtime rates will not result in an incentivisation of the broader Prison Officer workforce to work overtime and will not reduce the need for overtime. It will however, significantly increase overtime costs resulting in less funding available to improve infrastructure. The three month

trial increased the average overtime bill by \$156, 000 per month and if imposed on the Department permanently it would add approximately \$1.87m to an annual overtime bill estimated to be \$19.5m. This not an insignificant consideration. The union sought to counter it by submitting that the cost of paying for overtime is relatively less expensive than the cost of hiring, training and equipping new staff however I have not found this to be a persuasive argument. It is not desirable for large amounts of overtime to be worked on a regular basis and the recruitment of staff is recognised as part of the long term solution to the issue.

CONCLUSION

- 70 In relation to the State Wage Principles, the evidence produced in this matter shows that the workload of Prison Officers has increased and that work is more difficult and stressful. However, the claim is not for a consequential increase in salary or a reclassification of the position of Prison Officer. Moreover, the evidence does not show such a significant net addition to work requirements as to warrant the creation of a new classification or upgrading to a higher classification. I consider the Minister is quite correct in submitting that being busier does not of itself result in an increase in work value (submissions at [82]). In my view, Principle 7 does not apply. The Minister at [80] drew attention to Principle 6 Adjustment of Allowances and Service Increments and concludes that it too does not apply, however the union did not advance its claim by reference to Principle 6.
- 71 Whether Principle 10 permits it to be considered requires a consideration pursuant to s 26 of the Act. In this regard, there is much to be said for each of the competing submissions in this matter and it has made this application one of the more difficult matters to decide. The working conditions of Prison Officers arising from a continuing increase in the prisoner population and staffing being at relatively low levels is not new and has been able to be dealt with over time by agreement between the union and the Minister. What is new is the unanticipated significant growth in the adult prisoner population over the last 12 months. The union and the Minister have not been able to agree between them how to address the resulting unanticipated effect on the working conditions of Prison Officers from this overcrowding - hence the dispute which came before Kenner C and the lodging of this claim and its eventual arbitration.
- 72 On the face of it, it appears contradictory to both recognise that it is not desirable for large amounts of overtime to be worked on a regular basis and to prescribe an incentive to encourage the working of overtime. However, it is clear that significant amounts of overtime are being worked and will continue to be worked, unless and until the initiatives of the Minister, including increasing recruitment, have the practical effect in the workplace of reducing the need to work such significant overtime. Prescribing an incentive payment to encourage others to work overtime in this context does not endorse the working of overtime, it spreads the current significant overtime workload over a greater number of Prison Officers thereby reducing the difficult and stressful working conditions being experienced by Prison Officers. This is important because the current working conditions led to industrial action which was referred to the Commission and which led to the Commission ordering the trial of the incentive payment.
- 73 A problem with the claim, and one that has not been easy to resolve, is that granting it will require the Minister to pay more money to encourage more Prison Officers to do what the award already requires them to do: to be available to work reasonable out of hours work. However as referred to earlier in these Reasons the Minister has not utilised the option of rostered overtime in recent times and it may not be practicable in the short to medium term: the most that can be said is that rostering overtime is either under active consideration or is being progressed (transcript p 54). It is more difficult for the Minister to oppose the incentive payment on the basis that Clause 13.2 provides the answer when the Minister has not utilised it in recent times.
- 74 Another perceived problem is that granting the claim will provide a permanent award provision when the trial was not seen by the Commission as necessarily providing the foundation for a more permanent arrangement (2008 WAIRC 01395 at [44]). The union says that if some or all of the Minister's initiatives work and the staffing level increases, the wording of the amendment means that the payment will not be made because there will not be a "critical muster" as defined within the claim. While this is correct as far as it goes, it also may be premature to grant the claim in advance of the maturing of the Minister's initiatives: if some or all of the Minister's initiatives do work and the staffing level increases, the award provision should not be needed.
- 75 Negotiations for a new EBA to replace the 2007 EBA are due to commence in only a few weeks and both Ministers submit that the Commission should dismiss the claim and leave the solution to the difficult and stressful working conditions to those negotiations. However, the outcome of those negotiations will be evident only in the future and to dismiss the claim would mean the Commission would recognise, but then not deal with, the evidence that there is a current problem. The initiatives proposed by the Minister, whilst commendable, have not yet had a practical effect on the current situation. They were proposed to Kenner C in 2008 in opposition to the claim for the trial; other than for the increased recruiting initiatives, they do not appear any closer to resulting in a practical change now that they did then and the recruiting initiatives have a necessary time lag attached to them.
- 76 In the final analysis, until there is some practical result from the initiatives proposed by the Minister, from the allocation of \$655 million to fast track additional beds into the WA prison system announced in May 2009 by the Minister and from the proposal to further increase prison capacities including the recruitment and delivery of more staff, there is nothing in the evidence to suggest that the significant increase in the prisoner population and the corresponding need for Prison Officers to be available to work overtime for that purpose, will not continue in the short to medium term which means that the more stressful and difficult working conditions of Prison Officers will continue in the short to medium term.
- 77 The evidence before me shows that the unique accelerated growth of prisoner numbers over the last twelve months, with its consequential effect on the working conditions of Prison Officers, is a circumstance which was unforeseen at the time of the making of the 2007 EBA and is not dealt with by it. To the extent that there was any "front-end loading" of the increases in salaries at the time of the making of the 2007 EBA, it cannot be said that it was in anticipation of the rate of growth of prisoner numbers over the last twelve months. In my view, the circumstances of the rate of growth in the prisoner population makes it

inequitable and unjust not to grant the relief sought because it is the only demonstrated means of addressing the issue in the short to medium term. The use of Principle 10 in the context of this case permits it to provide a safety valve for a situation not foreseen by the parties to the EBA. Further, this decision can apply only to Prison Officers – it arises because they are the front-line in relation to the increased prisoner population; there is therefore no likelihood of flow-on to other occupational groups.

- 78 I consider that the substantial merits of the matter favour the granting of the application but for the short to medium term only. This is in part because of the imminent commencement of negotiations: although the accelerated growth of prisoner numbers over the last twelve months was unforeseen at the time of the making of the 2007 EBA, the parties do have the capacity to deal with it in their 2010 EBA. Therefore, the amendment to be made will contain a sunset clause and operate only for a fixed period. It will be up to the Minister and the union together to decide whether or not the incentive payment should be made permanent at the expiry of that fixed period in the light of the success or otherwise of their EBA negotiations.
- 79 Further, during the fixed period, the development of the suite of initiatives proposed will continue. The union's submission is that these initiatives, while welcome, will not work however that really remains to be seen. The decision whether the incentive payment should be made permanent can also be made in the light of the success or otherwise of those initiatives in addressing the current working conditions of Prison Officers. In this way, the Commission will deal with the difficult and stressful working conditions being experienced by Prison Officers which have not been addressed and do not appear to be able to be addressed in the short or medium term while not impeding the parties' potential to address the situation in the negotiation of a new EBA and in the context of the initiatives proposed by the Minister.
- 80 Providing the incentive payment for a fixed period will also take into account the issue of cost. While the cost of the incentive payment for the fixed period will be incurred, it is a cost limited to the fixed period.

The Minute to Issue

- 81 The wording of the amendment proposed by the union is based upon the operation of the trial. There is no suggestion, and certainly no evidence, before the Commission that from an administrative, or mechanical, point of view, the practical operation of the trial did not proceed smoothly. In my view, the words "Critical Muster" in the union's claim do not sit harmoniously with the wording used generally in the Award. Clause 15 of the Award is called "Management of Musters" and previously had been called "Management of Peak Musters". I consider the words "Peak Muster" to be more appropriate. I therefore see no need to vary the wording as proposed other than to refer to a Peak Muster and to include a provision limiting the duration of its operation. I propose that the duration be a period of six months being a period to the expiry of the 2007 EBA. The parties have not been given an opportunity to consider the words "Peak Muster" in this context nor the length of a fixed period of operation and these may be addressed at a speaking to the minutes if requested.
- 82 The Minute of Proposed Order now issues.

2010 WAIRC 00005

PRISON OFFICERS' AWARD

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
WESTERN AUSTRALIAN PRISON OFFICERS' UNION OF WORKERS

PARTIES

APPLICANT

-v-

THE MINISTER FOR CORRECTIVE SERVICES

RESPONDENT

CORAM CHIEF COMMISSIONER A R BEECH
DATE THURSDAY, 14 JANUARY 2010
FILE NO. APPL 33 OF 2009
CITATION NO. 2010 WAIRC 00005

Catchwords Award - variation of award - Speaking to the minutes - principles of a speaking to the minutes - Industrial Relations Act, 1979 s 35(3)

Result Further Minute of Proposed Order issued

Representation

Applicant Mr J Welch, and with him Mr T Clark

Respondent Mr P Budd

Supplementary Reasons for Decision

- 1 Both the union and the Minister for Corrective Services requested an opportunity to speak to the minutes. What follows are my reasons for decision on the matters they each raised after considering their respective submissions.

- 2 In relation to the Commission's observation at [81] that the words "Peak Muster" are more appropriate than the words "Critical Muster", I have considered the union's submission that the history of the use of the words "peak muster" might lead to some confusion amongst Prison Officers if they are used in the context of the incentive payment. I have concluded that it is important that the language of the amendment sit harmoniously with the language used elsewhere in the award and I do not consider the point raised by the union has great significance. The words "Peak Muster" will be used.
 - 3 In relation to the length of the fixed period of operation of the proposed amendment, the decision of the Commission at [78] and [79] that there be a fixed period of operation rests significantly on:
 - the imminent commencement of negotiations for a new EBA;
 - the capacity of the parties to deal with the more stressful and difficult working conditions of Prison Officers in a new EBA; and
 - the parties' potential to address the situation in the context of the initiatives proposed by the Minister.
 - 4 The importance of the EBA process to the Commission's conclusion cannot be overstated, particularly given the conclusion at [75] that the initiatives proposed by the Minister, whilst commendable, have not yet had a practical effect on the current situation and do not appear to be any closer to resulting in a practical change now than they did in 2008. It does appear sensible to link the fixed period to the conclusion of the EBA process. It will mean the parties will not be distracted from their negotiations by having to consider whether a further amendment to the fixed term will be necessary if the new EBA comes into effect earlier or later than the expiry date of the existing EBA. In the event that one or more of the initiatives proposed by the Minister does address the situation prior to the conclusion of the EBA process, then the preconditions for the incentive payment would simply not occur. There is no apparent disadvantage to the Minister if the fixed period is so linked and to do so will be consistent with the importance to be given to the EBA process.
 - 5 In relation to the ability to pay a pro-rata amount of the incentive payment, I note that a pro-rata payment for hours other than 12 hour shifts was both agreed and provided for in the Order which issued for the three-month trial period: (2008) 89 WAIG 1018; [2008] WAIRC 01461, Schedule A. Shifts other than 12 hour shifts are worked and it was not intended by the Commission that the incentive payment be the same amount irrespective of the length of the shift. Accordingly, a pro-rata payment will be prescribed.
 - 6 The Minister questioned whether the incentive payment should be triggered when out of hours work is undertaken due to factors over which the Minister has no control (such as when personal leave has been taken by Prison Officers) and whether the incentive payment should apply to canine handlers, the ESG and the front gate. The union responded that these are new issues which were not raised by the Minister during the hearing. I have taken the opportunity to review the Minister's Notice of Answer and Counter-proposal and written and oral submissions. I consider these are new issues which were not raised by the Minister during the hearing. Even if there have been some questions asked in cross-examination about the reasons why overtime is necessary, neither the answers to those questions, nor the issue the answers may or may not have established, were made part of the Minister's opposition to the claim. It was not specifically put that any incentive payment to be prescribed in the award should operate differently to the operation of incentive payment prescribed in the trial.
 - 7 A speaking to the minutes under s 35(3) of the Act has only a limited purpose. I respectfully apply and follow what the Full Bench said in *Gek Lian Tan v Paris and Chrissie Kafetzis t/as Gabriel's Café* ((1999) 79 WAIG 2990) which in turn applied the dictum of Dwyer P in *CSA v Public Service Commissioner of WA* (1937) 17 WAIG 22:

"The object of drawing up the decision of the [Commission] in the form of minutes is to give the representatives of the parties an opportunity to point out any of the provisions of the award which may have been inserted inadvertently or by mistake and which, if allowed to remain would be inconsistent or unworkable or would in some way render the award [or order] less perfect than the [Commission] intended it to be. The parties should therefore, when speaking to the minutes, confine their attention to alterations which will have the effect of making the award[, or order or declaration] more workable, rather than to alter its substance."
 - 8 The preliminary conclusion of the Commission at [49] is that:

"...the effect of the trial was positive because even though there were still some Prison Officers who did not volunteer to work overtime, more Prison Officers did so which resulted in a spreading of the overtime workload between Prison Officers. This significantly improved the ability to manage the high prisoner numbers and overcrowding and improved staff morale."
 - 9 This conclusion was based upon the evidence of the effect of the three-month trial where the incentive payment was paid irrespective of whether the Minister had control over the taking of personal leave and which was extended to canine handlers, the ESG and the front gate. Change to those parameters might mean the incentive payment will not achieve the same result as outlined in this conclusion. Further, the incentive payment during the trial was paid in circumstances over which the Minister has no control, namely the sentencing of prisoners and the increase of the muster. Therefore, there will be no change to the Minutes to accommodate those issues raised.
 - 10 For all of those reasons, a further Minute of Proposed Order now issues which links the fixed period to the conclusion of the EBA process and prescribes a pro-rata sum for hours other than 12 hour shifts. The parties should advise the Commission by 11.00 am Friday 15 January 2010 of any amendment they request to these two changes. Subject to that advice, an order will issue in the terms of this further minute.
-

2010 WAIRC 00008

PRISON OFFICERS' AWARD

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
 WESTERN AUSTRALIAN PRISON OFFICERS' UNION OF WORKERS

PARTIES**APPLICANT**

-v-

THE MINISTER FOR CORRECTIVE SERVICES

RESPONDENT

CORAM CHIEF COMMISSIONER A R BEECH
DATE 15 JANUARY 2010
FILE NO/S APPL 33 OF 2009
CITATION NO. 2010 WAIRC 00008

Result Award varied

Order

HAVING heard from Mr J. Welch on behalf of the Applicant, Mr P. Budd on behalf of the Respondent and Mr R. Andretich (of counsel) intervening on behalf of the Hon. Minister for Commerce, the Commission, pursuant to the powers conferred on it under s 40 of the *Industrial Relations Act 1979*, hereby orders -

THAT the Prison Officers' Award be varied in accordance with the following schedule and that such variations shall have effect from the first pay period commencing on or after the 15th day of January 2010.

[L.S.]

(Sgd.) A R BEECH,
 Chief Commissioner.

SCHEDULE

1. **Clause 13 – Out of Hours Work. Delete subclause 13.1 of this clause and insert the following in lieu thereof:**
 - 13.1 For the purposes of this Clause, the following terms shall have the following meanings:

"Out of hours work" means all work performed at the direction of the Superintendent or a duly authorised Officer outside the Officer's rostered hours of duty.

"Major Emergency Duty" shall be duty outside the Officer's rostered hours of duty on a major emergency as determined by the Minister or the Commissioner or Deputy Commissioner Adult Custodial.

"Peak Muster" means circumstances where:

 - (a) The prison population in any Prison exceeds by 5% or more the prisoner population level agreed between the Union and the Department for a period of 3 calendar days, and
 - (b) The level of actual staffing available to work (by having regard to absences for secondments, workers compensation, sickness, and all other leave categories) for the relevant Prison is 5% or more below the agreed establishment level of staff as agreed between WAPOU and the Department for a period of 3 calendar days.
2. **Clause 13 – Out of Hours Work. Delete subclause 13.4 of this clause and insert the following in lieu thereof:**
 - 13.4 Payment for Excess Hours
 - (1) Payment for all out of hours work, other than that set out in subclause 13.4(2) of this subclause, will be calculated at the rate of time and a half the Officer's annualised rate of pay for all excess time worked.
 - (2) Any Officer who is called in for Major Emergency Duty shall be paid at the rate of doubletime the Officer's annualised rate of pay for all hours worked outside the Officer's rostered hours of duty on that major emergency.
 - (3)
 - (a) This provision shall apply from the beginning of the first pay period on or after 15 January 2010 and shall cease to apply upon the registration of an industrial agreement to replace the Department of Corrective Services Prison Officers' Enterprise Agreement 2007 No. AG 58 of 2007.
 - (b) Any Officer, Canine Handler, Emergency Services Group Officer or Front Gate employee who performs duty outside the Officer's or employee's rostered hours of duty in circumstances where a Peak Muster exists shall be paid an overtime incentive payment of \$143 per 12 hour shift or \$11.90 for hours other than 12 hour shifts, in addition to the payment for out of hours payable under clause 13.4(1) in respect of that duty.

- (4) Subclause (3) of this clause shall apply to Canine Handlers, Emergency Services Group and Front Gate staff when one or more of the following Prisons has a Critical Muster:
- Hakea Prison
Casuarina Prison
Bandyup Women's Prison
- (5) When the Critical Muster overtime incentive payments are triggered the overtime incentive payment contained in subclause 13.4(3) of this clause will continue to be paid until the end of the current roster period, or until the prison population and staffing levels fall outside the defined Critical Muster levels, whichever occurs last.

2010 WAIRC 00011

PRISON OFFICERS' AWARD

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

WESTERN AUSTRALIAN PRISON OFFICERS' UNION OF WORKERS

APPLICANT

-v-

THE MINISTER FOR CORRECTIVE SERVICES

RESPONDENT**CORAM** CHIEF COMMISSIONER A R BEECH**DATE** MONDAY, 18 JANUARY 2010**FILE NO.** APPL 33 OF 2009**CITATION NO.** 2010 WAIRC 00011**Result** Correction Order issued*Correction Order*

WHEREAS on 15 January 2010 an Order in this matter was deposited in the Office of the Registrar;

AND WHEREAS on 18 January 2010 the union advised the Commission that the Order contained some typographical errors;

AND WHEREAS on 18 January 2010 the respondent was advised of these errors;

NOW THEREFORE the Commission pursuant to the powers conferred on it under the *Industrial Relations Act, 1979*, hereby orders:

THAT the schedule to the Order issued by the Commission in Application 33 of 2009 on 15 January 2010 be replaced by the attached schedule.

[L.S.]

(Sgd.) A R BEECH,
Chief Commissioner.**SCHEDULE****1. Clause 13 – Out of Hours Work. Delete subclause 13.1 of this clause and insert the following in lieu thereof:**

13.1 For the purposes of this Clause, the following terms shall have the following meanings:

"Out of hours work" means all work performed at the direction of the Superintendent or a duly authorised Officer outside the Officer's rostered hours of duty.

"Major Emergency Duty" shall be duty outside the Officer's rostered hours of duty on a major emergency as determined by the Minister or the Commissioner or Deputy Commissioner Adult Custodial.

"Peak Muster" means circumstances where:

- (a) The prison population in any Prison exceeds by 5% or more the prisoner population level agreed between the Union and the Department for a period of 3 calendar days, and
- (b) The level of actual staffing available to work (by having regard to absences for secondments, workers compensation, sickness, and all other leave categories) for the relevant Prison is 5% or more below the agreed establishment level of staff as agreed between WAPOU and the Department for a period of 3 calendar days.

2. Clause 13 – Out of Hours Work. Delete subclause 13.4 of this clause and insert the following in lieu thereof:**13.4 Payment for Excess Hours**

- (1) Payment for all out of hours work, other than that set out in subclause 13.4(2) of this subclause, will be calculated at the rate of time and a half the Officer's annualised rate of pay for all excess time worked.
- (2) Any Officer who is called in for Major Emergency Duty shall be paid at the rate of doubletime the Officer's annualised rate of pay for all hours worked outside the Officer's rostered hours of duty on that major emergency.
- (3)
 - (a) This provision shall apply from the beginning of the first pay period on or after 15 January 2010 and shall cease to apply upon the registration of an industrial agreement to replace the Department of Corrective Services Prison Officers' Enterprise Agreement 2007 No. AG 58 of 2007.
 - (b) Any Officer, Canine Handler, Emergency Services Group Officer or Front Gate employee who performs duty outside the Officer's or employee's rostered hours of duty in circumstances where a Peak Muster exists shall be paid an overtime incentive payment of \$143 per 12 hour shift or \$11.90 for hours other than 12 hour shifts, in addition to the payment for out of hours payable under clause 13.4(1) in respect of that duty.
- (4) Subclause (3) of this clause shall apply to Canine Handlers, Emergency Services Group and Front Gate staff when one or more of the following Prisons has a Peak Muster:
 - Hakea Prison
 - Casuarina Prison
 - Bandyup Women's Prison
- (5) When the Peak Muster overtime incentive payments are triggered the overtime incentive payment contained in subclause 13.4(3) of this clause will continue to be paid until the end of the current roster period, or until the prison population and staffing levels fall outside the defined Peak Muster levels, whichever occurs last.

UNFAIR DISMISSAL/CONTRACTUAL ENTITLEMENTS—

2010 WAIRC 00057

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

SANDRA ANN CHAPMAN

APPLICANT

-v-

BRUMBYS ARMADALE

RESPONDENT**CORAM**

ACTING SENIOR COMMISSIONER P E SCOTT

DATE

WEDNESDAY, 10 FEBRUARY 2010

FILE NO/S

U 181 OF 2009

CITATION NO.

2010 WAIRC 00057

Result

Application dismissed

*Order*WHEREAS this is an application pursuant to Section 29(1)(b)(i) of the *Industrial Relations Act 1979*; andWHEREAS on the 13th day of November 2009 the Commission convened a conference for the purpose of conciliating between the parties; and

WHEREAS at the conclusion of that conference the parties sought time to attempt a resolution; and

WHEREAS on the 23rd day of November 2009 the applicant advised a resolution had not been reached; andWHEREAS on the 3rd day of December 2009 the Commission convened a scheduling hearing; and

WHEREAS at the conclusion of that hearing the applicant sought time to consider her position; and

WHEREAS on the 1st day of February 2010 the applicant filed a Notice of Discontinuance in respect of the application;
NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby dismissed.

[L.S.]

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

2010 WAIRC 00015

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

MR JOHN P. HENRY

APPLICANT

-v-

SKILLED ENGINEERING

RESPONDENT

CORAM

ACTING SENIOR COMMISSIONER P E SCOTT

DATE

TUESDAY, 19 JANUARY 2010

FILE NO/S

B 166 OF 2009

CITATION NO.

2010 WAIRC 00015

Result

Application dismissed

Order

WHEREAS this is an application pursuant to Section 29(1)(b)(ii) of the *Industrial Relations Act 1979*; and
WHEREAS a conference was set down for the 2nd day of December 2009 for the purpose of conciliating between the parties; and
WHEREAS by letter dated the 20 November 2009 the Commission invited the applicant to respond to the issue of whether the Western Australian Industrial Relations Commission has the jurisdiction to deal with the applicant's claim on the basis that the respondent said it was a constitutional corporation, no later than 4.00 pm on the 30th day of November 2009 and that if he had not contacted the Commission by that time the conference scheduled for the 2nd day of December 2009 would be cancelled; and
WHEREAS by 4.00 pm on the 30th day of November 2009, the applicant had not contacted the Commission and the Commission cancelled the conference; and
WHEREAS by letter dated the 16th day of December 2009 the Commission directed the applicant to advise the Commission of his intentions regarding the application no later than 4.00 pm on the 4th day of January 2010 or the application would be dismissed; and
WHEREAS by 4.00 pm on the 4th day of January 2010 the applicant had not contacted the Commission;
NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby dismissed.

[L.S.]

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

2010 WAIRC 00036

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

CLAYTON JOHNSTON

APPLICANT

-v-

CHRIS GONSER

RESPONDENT

CORAM

COMMISSIONER S M MAYMAN

DATE

MONDAY, 1 FEBRUARY 2010

FILE NO/S

B 96 OF 2009

CITATION NO.

2010 WAIRC 00036

Result	Application dismissed
Representation	
Applicant	No appearance
Respondent	No appearance

Order

WHEREAS this is an application pursuant to Section 29(1)(b)(ii) of the *Industrial Relations Act 1979*;

AND WHEREAS this matter was listed for hearing on 15 January 2010 for the applicant to show cause why his application should not be dismissed;

AND WHEREAS the applicant failed to attend the hearing;

AND WHEREAS having no appearance by the applicant the Commission formed the view the application should be dismissed;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders -

THAT this application be, and is hereby, dismissed.

[L.S.]

(Sgd.) S M MAYMAN,
Commissioner.

2010 WAIRC 00035

PARTIES	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION CLAYTON JOHNSTON	APPLICANT
	-v-	
	CHRIS GONSER	RESPONDENT
CORAM	COMMISSIONER S M MAYMAN	
DATE	MONDAY, 1 FEBRUARY 2010	
FILE NO/S	U 96 OF 2009	
CITATION NO.	2010 WAIRC 00035	

Result	Application dismissed
Representation	
Applicant	No appearance
Respondent	No appearance

Order

WHEREAS this is an application pursuant to Section 29(1)(b)(i) of the *Industrial Relations Act 1979*;

AND WHEREAS this matter was listed for hearing on 15 January 2010 for the applicant to show cause why his application should not be dismissed;

AND WHEREAS the applicant failed to attend the hearing;

AND WHEREAS having no appearance by the applicant the Commission formed the view the application should be dismissed;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders -

THAT this application be, and is hereby, dismissed.

[L.S.]

(Sgd.) S M MAYMAN,
Commissioner.

2010 WAIRC 00025

PARTIES WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
JOHN MATHEW LONGA **APPLICANT**

-v-
KALGOORLIE BOULDER CEMETERY BOARD **RESPONDENT**

CORAM COMMISSIONER J L HARRISON
DATE FRIDAY, 22 JANUARY 2010
FILE NO/S U 222 OF 2009
CITATION NO. 2010 WAIRC 00025

Result Dismissed
Representation
Applicant Mr J Longa on his own behalf
Respondent Ms G Newton

Order

WHEREAS this is an application pursuant to s 29(1)(b)(i) of the *Industrial Relations Act 1979*; and
WHEREAS on 9 December 2009 and 15 December 2009 the Commission convened conferences for the purpose of conciliating between the parties however, agreement was not reached; and
WHEREAS the application was set down for hearing and determination on 23 and 24 February 2010; and
WHEREAS on 21 January 2010 the applicant filed a Notice of Withdrawal or Discontinuance in respect of the application and the hearing was vacated;
NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby dismissed.

[L.S.]

(Sgd.) J L HARRISON,
Commissioner.

2010 WAIRC 00029

PARTIES WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
LAWSON MCDONALD **APPLICANT**

-v-
HARRY ENGINEERING CO. **RESPONDENT**

CORAM COMMISSIONER S M MAYMAN
DATE WEDNESDAY, 27 JANUARY 2010
FILE NO/S U 211 OF 2009
CITATION NO. 2010 WAIRC 00029

Result Application discontinued
Representation
Applicant Mr L McDonald
Respondent Mr M Haylett (as agent)

Order

WHEREAS this is an application pursuant to Section 29(1)(b)(i) of the *Industrial Relations Act 1979*;

AND WHEREAS on 11 November 2009 the Commission convened a conference for the purpose of conciliating between the parties;

AND WHEREAS at the conclusion of the conference agreement was reached between the parties;

AND WHEREAS on 7 January 2010 the applicant filed a Notice of Discontinuance in respect of the application;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby discontinued.

[L.S.]

(Sgd.) S M MAYMAN,
Commissioner.

2010 WAIRC 00006

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

CHARLES HENRY ROSENTHAL

APPLICANT

-v-

JOHN PALERMO

RESPONDENT

CORAM

ACTING SENIOR COMMISSIONER P E SCOTT

HEARD

TUESDAY, 3 MARCH 2009, THURSDAY, 9 APRIL 2009, MONDAY, 11 MAY 2009, MONDAY, 31 AUGUST 2009, TUESDAY, 1 SEPTEMBER 2009, WEDNESDAY, 2 SEPTEMBER 2009, TUESDAY, 20 OCTOBER 2009, WEDNESDAY, 21 OCTOBER 2009, THURSDAY, 5 NOVEMBER 2009

DELIVERED

FRIDAY, 15 JANUARY 2010

FILE NO.

U 10 OF 2009, B 101 OF 2009

CITATION NO.

2010 WAIRC 00006

CatchWords

Industrial Law WA – *Industrial Relations Act 1979* – limitation on the period for presentation of the parties' cases – s 27(1)(ha)

Result

Orders issued limiting the times for presentation of cases

Representation**Applicant**

Ms R Cosentino (of counsel)

Respondent

In Person and Mr T Palermo (as agent)

*Reasons for Decision*Background

- 1 On 5 November 2009, the Commission issued Orders, the recitals of which included that the Commission was of the view that in the circumstances of this matter that it was appropriate to determine the periods that are reasonably necessary for the fair and adequate presentation of the parties' respective cases and to require that the cases be presented within the respective periods.
- 2 The Orders required the following:
 - "1. The Respondent file and serve further and better particulars of facts and issues of:
 - (a) the applicant's alleged misconduct; and
 - (b) the applicant's performance issues,
 upon which it relies as reasons for the termination of the applicant's employment no later than 28 days from Thursday, 5 November 2009;
 2. The parties shall file and serve a list of the names of their witnesses and an estimate of the time necessary for examination in chief of each of those witnesses no later than 28 days from Thursday, 5 November 2009;
 3. No later than 7 days after receipt of the other party's list of witnesses referred to in Order 2 above, each party shall file and serve a notice of the estimated length of time for the cross-examination of each of the other party's witnesses;

4. Reference to witnesses in Orders 2 and 3 above includes estimates of the time necessary to conclude the examination in chief of Victor John Matthews and the cross-examination of Charles Henry Rosenthal; and
 5. The parties advise the Commission no later than 28 days from Thursday, 5 November 2009;
 - (a) an estimate of the length of time their closing submissions will take; and
 - (b) whether they would prefer to make closing submissions in writing; and
 - (c) if closing submissions are to be made in writing, the period to be allowed between the final day of hearing and the filing of closing submissions.
 6. The parties advise the Commission of their unavailable dates for the resumption of the hearing in February and March 2010.”
- 3 By letter dated 1 December 2009, the applicant’s solicitors advised that in accordance with Order 2, its only witness is Charles Henry Rosenthal and estimated that re-examination of Mr Rosenthal will be of 30 minutes’ duration, and that the applicant prefers to make oral closing submissions, the duration of which was estimated to be 30 minutes.
- 4 On 3 December 2009 the Commission received two emails from Mr Tony Palermo, one at 2.07 pm in the following terms:
- “Orders .Full response will be by next Tues as adv in prev email
 Brief response is as follows
 Order 1 a tba failing which what has already been provided stands
 b as for a above
 Order 2
 Charles Rosenthal 3 to 8 days
 Mr Rosenthal Senior 1 day
 Mrs Rosenthal Senior 3 hours
 C Rosenthal 3 hours
 Vic Mathews 2 to 4 days
 T Palermo 1 to 8 days
 John Palermo 6 hours
 N Nancarrow 4 hours
 T Nancarrow 4 hours
 B Nancarrow 4 hours
 M Venn 1 day
 T Venn 2 days
 D Cabassi 2 days
 R Cosentino 2 hours
 Order 5
 A 2 days
 B in writing
 60 days
 Order 6 tba by Tuesday but at present Feb and March are out April is ok First 2 weeks in May ok June and July are out”(sic)
- 5 On 7 December 2009 the Commission received a letter from the respondent addressing the Commission’s Orders of 5 November 2009 which:
- (1) In respect of Order 1 -
 - (a) Set out information relating to the applicant’s alleged misconduct and performance issues;
 - (b) Sought leave to amend the “defence” to provide a right to “set-off and counterclaim for damages that I have incurred either as a result of Mr Rosenthal’s negligence or refusal to attend to his duties”;
 - (c) Suggested that Mr Rosenthal calculate and provide details of holiday entitlements claimed, with a view to the claim being considered.
 - (2) In respect of Order 2 –
 - (a) Reiterated the times for examination of witnesses contained in the email of 3 December 2009; and
 - (b) Where the email had set out the names of witnesses N Nancarrow, T Nancarrow, B Nancarrow, M Venn, T Venn, D Cabassi and R Cosentino, by providing first names to those initials.

- 6 In respect of Order 5, the respondent's letter said that the length of time for closing submissions was as previously advised, two days, and the preference was for closing submissions to be made orally.
- 7 In respect of Order 6, the respondent advised of his unavailable dates.
- 8 The respondent also sought that I reconsider my previous decision to discharge summonses issued to Mr Rosenthal Snr and Mrs Rosenthal Snr. The respondent wishes to examine them about a number of issues which I will outline later in these Reasons.
- 9 By letter dated 14 December 2009 the applicant's solicitors answered Order 3 in the following terms:

"In accordance with Order 3 we advise that the estimated length of time for cross-examination of the Respondent's witnesses is as follows:

1	Vic Matthews	1.5 hours
2	Tony Palermo	1.5 hours
3	John Palermo	0.5 hours
4	Noel Nancarrow	0.1 hours
5	Todd Nancarrow	0 hours
6	Bob Nancarrow	0 hours
7	Michael Venn	0 hours
8	Tim Venn	0 hours
9	David Cabassi	0.3 hours"

The letter also expressed the view that the particulars of performance issues or misconduct relied upon by the respondent and set out in his letter of 7 December 2009 did not justify termination; that it was difficult to see how the evidence proposed by the respondent would be relevant; that the "Defence" was as vaguely and broadly framed as it was "merely to justify using the hearing as a lengthy and time wasting fishing exercise". The letter questioned "how Rachel Cosentino or the Applicant's parents can give admissible evidence relevant to this case" and requested the Commission to "make orders limiting the time for presentation of the Defence without regard to the Respondent's letter of 7 December 2009". The applicant's solicitors also submitted that it was entirely inappropriate for the respondent to name Mr Rosenthal Snr, Mrs Rosenthal Snr, Chantel Rosenthal and Rachel Cosentino as further witnesses, noting:

"In relation to Mrs (*sic*) and Mrs Rosenthal Senior being witnesses, Senior Commissioner Scott has already made a determination disallowing the Respondent's Summons served on Mr and Mrs Rosenthal Senior. Mr and Mrs Rosenthal Senior advise that they have not otherwise been asked by the Respondent to give evidence on behalf of the Respondent.

Chantel Rosenthal was called as a witness by the Applicant. She has been cross examined, has completed her evidence to the Commission and has been discharged."

Issues and Conclusions

- 10 I have considered the history of this matter. That history includes that the matter was listed for three days, and it was listed for a further two days, although some of that latter period was utilised for conciliation. Mr Rosenthal's evidence has already taken an inordinate time due to the way questions have been framed; an inefficient and time consuming method of cross-examination; a lack of clarity as to the reasons for dismissal, and due to Mr Rosenthal being reluctant to answer and unhelpful in answering questions such that he was required to be directed to answer on a number of occasions. The manner in which the respondent in particular has approached the hearing to date has lacked discipline and if such an approach were to continue, it is conceivable that the hearing would drag on indefinitely. This is further evidenced by the lack of precision in the respondent's estimates of the length of time it will take for examination in chief of Mr Tony Palermo, the respondent's own agent, where the estimate is between one and eight days, and for Mr Matthews, a further two to four days.
- 11 The Commission is not obliged to allow parties to take as long as they please. It has an obligation to conduct hearings in an expeditious manner, and to do so in a manner which is fair to both sides. To allow one side to proceed in a manner which places no obligation on that party to conduct its case efficiently would be an inefficient use of the Commission's time, but also unfair and costly on the other party. Section 27(1)(ha) recognises the need for the Commission to impose limits in appropriate circumstances.
- 12 Reviewing the history of this matter has reinforced my view as to the need for and appropriateness of issuing orders for the purpose of limiting the period for presentation of the parties' respective cases pursuant to s 27(1)(ha) of the Industrial Relations Act, 1979 ("the Act") to ensure that the hearing is conducted in a manner envisaged by s 26(1)(a) of the Act, in particular by the respondent's proposals in respect of the length of time that it intends its witnesses to be under examination in chief.
- 13 I note also that the respondent suggests that Chantel Rosenthal be under examination for three hours, however, Chantel Marie Rosenthal, the wife of the applicant, gave evidence on 2 September 2009 and was cross-examined. Her evidence concluded that day. There is no indication as to why she ought to be recalled.
- 14 The respondent seeks that I reconsider my decision made early in proceedings to discharge summonses issued to Mr Rosenthal Snr and Mrs Rosenthal Snr. The suggestion contained within Mr Palermo's letter of 7 December is two-fold:
1. That if I do not reconsider that ruling then he "will have no alternative but to lodge an appeal against the ruling".

2. That evidence given by the applicant:

“of certain critical information that was processed on Mrs Rosenthal Senior’s computer. Despite continuous requests, the computer has not been produced. Mrs Rosenthal Senior is required to give evidence not only of the ownership of the computer but of the information that was processed on her computer. I can have a computer analyst examine the computer either at or prior to the hearing continuing so as to reduce hearing time”.

15 I have considered whether it is appropriate to reconsider my earlier decision regarding Mr and Mrs Rosenthal Snr being summonsed and my view on that matter has not changed.

16 The evidence given by Chantel Rosenthal as to her use of the computer stands. Appropriate conclusions can be drawn from that applying the rules of evidence. Furthermore, it would appear that Mr Palermo wishes to examine Mrs Rosenthal Snr not only as to the ownership of the computer but about the information that was processed on her computer. The only question which arose during Chantel Rosenthal’s evidence was the date upon which a particular document was typed. Her evidence stands as it is and there is no indication as to why that evidence should or should not be accepted. Further, there is no indication of what, if any, further evidence regarding “information that was processed on her computer” was necessary for the purpose of this hearing, and why Mrs Rosenthal Snr ought to be examined about that.

17 As to Mr Rosenthal Snr, the respondent says that he is required to give evidence:

“as it appears from what Mr Rosenthal (the applicant) has stated in cross-examination that at times while he was on leave he consigned the farm and all farming operations without authority to his father. His father needs to be cross-examined as to the duties he undertook, stock numbers consigned to him and stock numbers re-consigned upon completing his ‘caretaking’ role”.

There is no indication as to how this information is relevant. It appears to go back to the question of stock numbers which Mr Palermo suggests were not as they ought to have been, whilst he denies there is any allegation of theft against the applicant.

18 The questions which are before the Commission relate to the applicant’s performance of his duties. He has given evidence of the circumstances under which he took leave and his father undertook duties for him. I see no relevance in further examination of this issue in terms of evidence from Mr Rosenthal Snr. I am of the view that Mr Palermo is seeking to use this hearing to gather information for purposes other than responding to the claim before the Commission, a matter clarified with Mr Palermo early in proceedings.

19 In respect of the evidence of Victor John Matthews, he was under examination in chief on 2 September 2009 from 2:00pm until 4:00pm. For it to be suggested that his evidence in chief should now take between two and four days, without explanation, makes it difficult to accept that this is a fair and reasonable estimate of the time required of him. Further, an examination of the transcript of the examination in chief on that day demonstrates that his examination could have been far more efficiently and effectively conducted in a shorter period of time that it took to that point. There was also a great deal of repetition in the questioning of him. Accordingly, I am prepared to allow Mr Matthews’ examination in chief for a further half-day or 2.5 hours.

20 As to the applicant, Charles Rosenthal, the respondent says that it requires him to be cross-examined for between three and eight further days. Mr Rosenthal has already been under cross-examination for almost all of 1 September 2009, for more than half of the morning on 2 September 2009, and all day on 20 October 2009. In deciding how much more time should be allowed for the cross-examination of Mr Rosenthal, I note how long he has already been under cross-examination; how long the hearing was originally scheduled for; that Mr Rosenthal has, from time to time, been directed by me to answer questions put to him because of his lack of cooperation, and that during the hearing of 20 October 2009, Mr Palermo responded to a question regarding the timing of Mr Rosenthal’s cross-examination and of Mr Matthews completing his evidence. Mr Palermo said:

“Yes. Mr Matthews has been programmed to be here tomorrow and, hopefully, we’ll get through Mr Rosenthal’s evidence today.” (Transcript page 259).

In all of those circumstances, I conclude that one further day of cross-examination of Mr Rosenthal, the applicant, ought to be quite adequate.

21 As to examination of the respondent’s own witnesses, the respondent suggests Mr Tony Palermo’s evidence will take between one and eight days. Given that Mr Tony Palermo is conducting the case for the respondent, this is an extraordinarily inadequate and poor estimation and one is led to the conclusion that there has been no genuine attempt to make any proper estimate. One would have thought that Mr Palermo would know how long his evidence will take. In the circumstances, Mr Tony Palermo’s evidence is to be scheduled for two hours.

22 As to John Palermo’s evidence, it is suggested that his will take six hours. Given what I perceive to be gross over-estimations and unreasonable estimations of time for the respondent’s witnesses, and not having any information as to what evidence John Palermo would give during that six hours, I intend to order that his evidence be limited to two hours.

23 Likewise, the estimates of the time for the evidence to be called of Noel Nancarrow, Todd Nancarrow, Bob Nancarrow, Michael Venn, Tim Venn and David Cabassi appear to be unreasonable. In the case of each of these witnesses, I will schedule their evidence for one hour each.

24 As to the respondent calling evidence from Rachel Cosentino, Ms Cosentino is the applicant’s solicitor representing him during these proceedings. There is no explanation as to why she would be able to give any evidence of a relevant nature in this matter. In the absence of such an explanation, it is not my intention to provide any time for her to be examined by the respondent.

- 25 The times for cross-examination of the respondent's witnesses do not appear to be unreasonable given the times for examination in chief which I have set out above. However, where the applicant has indicated that "0 hours will be required for cross-examination", I will allow the applicant to apply to cross-examine those witnesses once their evidence has been given, provided that cross-examination is limited to 30 minutes in each case.
- 26 The closing submissions shall be made at the conclusion of the hearing, orally. The parties shall each have one hour for closing submissions.
- 27 Minutes of Proposed Orders shall issue reflecting these time limits.

2010 WAIRC 00023

	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION	
PARTIES	CHARLES HENRY ROSENTHAL	APPLICANT
	-v-	
	JOHN PALERMO	RESPONDENT
CORAM	ACTING SENIOR COMMISSIONER P E SCOTT	
DATE	THURSDAY, 21 JANUARY 2010	
FILE NO/S	U 10 OF 2009, B 101 OF 2009	
CITATION NO.	2010 WAIRC 00023	

Result	Orders limiting the times for presentation of cases
Representation	
Applicant	Ms R Cosentino (of counsel)
Respondent	In Person and Mr T Palermo (as agent)

Order

Having heard from Ms R Cosentino of counsel on behalf of the applicant and Mr T Palermo and the respondent on his own behalf, by way of written correspondence, the Commission, pursuant to the powers set out in the *Industrial Relations Act 1979* hereby:

1. Declares that the periods set out in Order 2 hereunder are those reasonably necessary for the fair and adequate presentation of the parties' respective cases;
2. Orders that the parties shall present their cases in accordance with the maximum periods set out below:
 - (a) completion of the cross examination of the applicant, Charles Henry Rosenthal – a further day;
 - (b) completion of the evidence of Victor John Matthews:
 - (i) examination in chief – a further half day or 2.5 hours, whichever is greater;
 - (ii) cross examination – 1.5 hours.
 - (c) evidence of Tony Palermo:
 - (i) examination in chief – 2 hours;
 - (ii) cross examination – 1.5 hours.
 - (d) evidence of John Palermo:
 - (i) examination in chief – 2 hours;
 - (ii) cross examination – 30 minutes.
 - (e) evidence of Noel Nancarrow:
 - (i) examination in chief – 1 hour;
 - (ii) cross examination – 10 minutes.
 - (f) evidence of Todd Nancarrow, Bob Nancarrow, Michael Venn and Tim Venn:
 - (i) examination in chief – 1 hour each:

- (ii) cross examination – by application, provided that it shall be no more than thirty minutes each.
- (g) evidence of David Cabassi:
- (i) examination in chief – one hour;
- (ii) cross examination – 20 minutes.
3. Orders that closing submissions be made orally at the conclusion of the evidence, with each of the respondent and applicant being limited to 1 hour.
4. The hearing of this matter shall be re listed for a period of 5 days at which time it shall conclude unless further time is allowed.

[L.S.]

(Sgd.) P E SCOTT,
Acting Senior Commissioner.**2010 WAIRC 00028**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

CATHERINE SMIT

APPLICANT

-v-

SAFETY BAY SENIOR HIGH SCHOOL

RESPONDENT

CORAM COMMISSIONER S M MAYMAN
DATE WEDNESDAY, 27 JANUARY 2010
FILE NO/S U 177 OF 2009
CITATION NO. 2010 WAIRC 00028

Result Application discontinued**Representation****Applicant** No appearance**Respondent** No appearance*Order*WHEREAS this is an application pursuant to Section 29(1)(b)(i) of the *Industrial Relations Act 1979*;

AND WHEREAS the respondent in its Notice of answer and counter and proposal indicated the applicant had filed her claim in the incorrect jurisdiction;

AND WHEREAS on 14 October 2009 the Commission wrote to the applicant seeking her views on the jurisdictional issue raised by the respondent;

AND WHEREAS on 27 November 2009 the applicant filed a Notice of appeal to Public Service Appeal Board;

AND WHEREAS on 12 January 2010 the applicant filed a Notice of discontinuance in respect of the application;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby discontinued.

[L.S.]

(Sgd.) S M MAYMAN,
Commissioner.

CONFERENCES—Matters arising out of—

2010 WAIRC 00034

DISPUTE RE DISPUTE RESOLUTION OF AGREEMENT

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

THE CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION OF WORKERS

APPLICANT

-v-

DIRECTOR GENERAL OF HEALTH

RESPONDENT**CORAM**

COMMISSIONER S M MAYMAN

DATE

MONDAY, 1 FEBRUARY 2010

FILE NO/S

C 1 OF 2010

CITATION NO.

2010 WAIRC 00034

Result	Order issued
Representation	
Applicant	Ms S Walker
Respondent	Mr M Golesworthy

Consent Order

WHEREAS this is an application pursuant to s 44 of the *Industrial Relations Act 1979* (the Act);

AND WHEREAS on 28 January 2010 and 1 February 2010 the Commission conducted conciliation conferences between the parties pursuant to s 44 of the Act;

AND WHEREAS the applicant union of behalf of its members formally advised the respondent in December 2009 they were opposed to the introduction of the new pay system as many of the employees have financial arrangements and would be detrimentally affected by a change to their wage payments;

AND WHEREAS the applicant union failed to hear from the respondent on the union's concerns;

AND WHEREAS at the conference held on 28 January 2010 the respondent advised they intended to proceed with the implementation of the new One Pay Health system at Royal Perth Hospital in the week commencing 1 February 2010;

AND WHEREAS the Commission recommended the parties hold private discussions on Friday 29 January 2010;

AND WHEREAS at the conference held on 1 February 2010 the parties advised a consent settlement was reached between the parties in relation to the implementation of the One Pay Health system;

AND WHEREAS at the conference held on 1 February 2010 the parties advised The Automotive, Food, Metals, Engineering, Printing & Kindred Industries Union of Workers – Western Australian Branch had been present at the discussions on Friday 29 January 2010 and the respondent had had discussions with the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing, and Allied Workers Union of Australia, Engineering & Electrical Division;

AND WHEREAS under this settlement the employees of the respondent whose contracts of employment are regulated by the WA Health Engineering and Building Services Industrial Agreement 2007 and who are engaged at Royal Perth Hospital shall, in addition to 1 week's pay on the relevant consolidation date, receive an advance payment of 1 week's pay, an amount which shall be recoverable by the respondent by automatic payroll deduction over the following 26 fortnightly pays in equal instalments.

NOW THEREFORE the Commission pursuant to the powers conferred on it under the Act, and by consent, hereby orders:

THAT all employees of the respondent whose contracts of employment are regulated by the WA Health Engineering and Building Services Industrial Agreement 2007 and who are engaged at Royal Perth Hospital shall, in addition to 1 week's pay on the relevant consolidation date, receive an advance payment of 1 week's pay, an amount which shall be recoverable by the respondent by automatic payroll deduction over the following 26 fortnightly pays in equal instalments.

[L.S.]

(Sgd.) S M MAYMAN,
Commissioner.

2010 WAIRC 00031

DISPUTE RE TERMINATION OF UNION MEMBER

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIESLIQUOR, HOSPITALITY AND MISCELLANEOUS UNION, WESTERN AUSTRALIAN
BRANCH**APPLICANT**

-v-

THE DEPARTMENT OF HEALTH

RESPONDENT**CORAM**

CHIEF COMMISSIONER A R BEECH

DATE

THURSDAY, 28 JANUARY 2010

FILE NO/S

C 22 OF 2009

CITATION NO.

2010 WAIRC 00031

Result Consent Order Issued**Representation****Applicant** Mr. M. Aulfrey, by correspondence**Respondent** Mr. P. Heslewood, by correspondence*Order*

WHEREAS this is an application lodged in the Commission on 12 June 2009 pursuant to s 44 of the *Industrial Relations Act 1979* ("the Act"); and

WHEREAS the Commission convened conferences on 23 June 2009, 27 August 2009 and 3 December 2009; and

WHEREAS at the conference on 3 December 2009 the parties indicated that an agreement in respect of this application had been reached in the following terms:

1. Re-employment

The parties agree Mr Iloski is to be re-employed in the position he held on 16 April 2009, and Mr Iloski will commence as soon as practicable after the issue of this order. The parties further agree that for the period 22 May 2009 until the date following the issue of this order he attends the workplace as an employee, Mr Iloski cannot be deemed to have been an employee of the respondent.

2. Continuity of Service

The parties agree that for the purposes of accrued entitlements with regard to Long Service Leave and Sick Leave, Mr Iloski will be granted continuity of service from one period of employment to the next.

3. No Compensation due for the period

The parties agree Mr Iloski is not due any compensation, including the accrual of leave or other benefits, for the period 22 May 2009 until the date, following the issue of this order he attends the workplace as an employee. The parties further agree that Mr Iloski have reinstated any past accrued, but not utilised, long service leave or sick leave benefits, as per item 2 of this order.

AND WHEREAS the parties have requested the Commission to issue an order in the following terms and the Commission is satisfied that an order should issue;

NOW THEREFORE pursuant to the powers under s 44(8)(a) of the Act, and by consent, I hereby order:

1. THAT Mr Iloski be re-employed in the position he held on 16 April 2009;
2. THAT Mr Iloski be granted continuity of service from one period of employment to the next;
3. THAT Mr Iloski not be due any compensation for the period 22 May 2009 until the date he recommences his employment.

(Sgd.) A R BEECH,
Chief Commissioner.

[L.S.]

PROCEDURAL DIRECTIONS AND ORDERS—

2010 WAIRC 00010

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

CVETE (AKA CHRIS) RISTOSKI

APPLICANT

-v-

GEOFFREY JENSEN

RESPONDENT**CORAM** COMMISSIONER S M MAYMAN**DATE** MONDAY, 18 JANUARY 2010**FILE NO** U 178 OF 2009**CITATION NO.** 2010 WAIRC 00010**Result** Change of respondent's name**Representation****Applicant** Mr C Ristoski**Respondent** Mr G Jansen*Order*

WHEREAS an application was lodged in the Commission pursuant to Section 29(1)(b)(i) of the *Industrial Relations Act 1979*;

AND WHEREAS the matter was listed for hearing on 14 January 2010;

AND WHEREAS at the hearing the Commission formed the view that the respondent had been incorrectly named in the application;

AND WHEREAS I am satisfied that at all times there was an intention on behalf of the applicant to commence these proceedings against his employer;

NOW THEREFORE, I hereby exercise the Commission's powers of amendment pursuant to s 27(1)(l) and (m) of the Act to substitute the proper identity of the applicant's employer for the trading or business name. I therefore order –

THAT the name Geoffrey Jensen be deleted and The Trustee for the Jansen Gray Family Trust trading as Geoff's Tree Service Pty Ltd inserted in lieu thereof.

(Sgd.) S M MAYMAN,
Commissioner.

[L.S.]

INDUSTRIAL AGREEMENTS—Notation of—

Agreement Name/Number	Date of Registration	Parties		Commissioner	Result
Congregation of the Missionary Oblates of the Most Holy and Immaculate Virgin Mary Non - Teaching Staff Enterprise Bargaining Agreement 2009 - The AG 63/2009	1/02/2010	The Independent Education Union of Western Australia, Union of Employees; The Congregation of the Missionary Oblates of the Most Holy and Immaculate Virgin Mary AND The Australian Nursing Federation,	(Not applicable)	Commissioner S M Mayman	Agreement registered

Agreement Name/Number	Date of Registration	Parties		Commissioner	Result
Congregation of the Presentation Sisters WA Non-Teaching Staff Enterprise Bargaining Agreement 2009 - The AG 45/2009	4/02/2010	The Independent Education Union of Western Australia, Union of Employees; The Congregation of the Presentation Sisters of WA Inc and The Australian Nursing Federation, Industrial Union of Workers Pert	(Not applicable)	Commissioner S M Mayman	Agreement registered
Edmund Rice Education Australia Non - Teaching Staff Enterprise Bargaining Agreement 2009 - The AG 62/2009	4/02/2010	The Independent Education Union of Western Australia, Union of Employees; Edmund Rice Education Australia AND The Australian Nursing Federation, Industrial Union of Workers Perth	(Not applicable)	Commissioner S M Mayman	Agreement registered
Institute of the Blessed Virgin Mary Non - Teaching Staff Enterprise Bargaining Agreement 2009 - The AG 59/2009	4/02/2010	The Independent Education Union of Western Australia, Union of Employees; The Institute of the Blessed Virgin Mary AND The Australian Nursing Federation, Industrial Union of Workers Perth	(Not applicable)	Commissioner S M Mayman	Agreement registered
John XXIII College Non-Teaching Staff Enterprise Bargaining Agreement 2009 - The AG 43/2009	4/02/2010	The Independent Education Union of Western Australia, Union of Employees; The John XXIII College Inc AND The Australian Nursing Federation, Industrial Union of Workers Perth	(Not applicable)	Commissioner S M Mayman	Agreement registered
Norbertine Canons Non - Teaching Staff Enterprise Bargaining Agreement 2009 - The AG 60/2009	4/02/2010	The Independent Education Union of Western Australia, Union of Employees; The Norbertine Canons Incorporated AND The Australian Nursing Federation, Industrial Union of Workers Perth	(Not applicable)	Commissioner S M Mayman	Agreement registered
Roman Catholic Bishop of Broome Non - Teaching Staff Enterprise Bargaining Agreement 2009 - The AG 51/2009	4/02/2010	The Independent Education Union of Western Australia, Union of Employees; The Roman Catholic Bishop of Broome AND The Australian Nursing Federation, Industrial Union of Workers Perth	(Not applicable)	Commissioner S M Mayman	Agreement registered

Agreement Name/Number	Date of Registration	Parties		Commissioner	Result
Roman Catholic Bishop of Bunbury Non - Teaching Staff Enterprise Bargaining Agreement 2009 - The AG 61/2009	1/02/2010	The Independent Education Union of Western Australia, Union of Employees; The Roman Catholic Bishop of Bunbury AND The Australian Nursing Federation, Industrial Union of Workers Perth	(Not applicable)	Commissioner S M Mayman	Agreement registered
Roman Catholic Bishop of Geraldton Non - Teaching Staff Enterprise Bargaining Agreement 2009 - The AG 47/2009	4/02/2010	The Independent Education Union of Western Australia, Union of Employees; The Roman Catholic Bishop of Geraldton and The Australian Nursing Federation, Industrial Union of Workers Perth	(Not applicable)	Commissioner S M Mayman	Agreement registered
Servite College Council Non - Teaching Staff Enterprise Bargaining Agreement 2009 - The AG 58/2009	4/02/2010	The Independent Education Union of Western Australia, Union of Employees; The Servite College Council Inc AND The Australian Nursing Federation, Industrial Union of Workers Perth	(Not applicable)	Commissioner S M Mayman	Agreement registered
Sisters of Mercy Perth (Amalgamated) Non-Teaching Staff Enterprise Bargaining Agreement 2009 - The AG 49/2009	4/02/2010	The Independent Education Union of Western Australia, Union of Employees; The Sisters of Mercy Perth (Amalgamated) Inc AND The Australian Nursing Federation, Industrial Union of Workers Perth	(Not applicable)	Commissioner S M Mayman	Agreement registered
Sisters of Mercy West Perth Congregation Non - Teaching Staff Enterprise Bargaining Agreement 2009 - The AG 53/2009	4/02/2010	The Independent Education Union of Western Australia, Union of Employees; The Sisters of Mercy West Perth Congregation AND The Australian Nursing Federation, Industrial Union of Workers Perth	(Not applicable)	Commissioner S M Mayman	Agreement registered
Sisters of the Holy Family of Nazareth Non - Teaching Staff Enterprise Bargaining Agreement 2009 - The AG 46/2009	4/02/2010	The Independent Education Union of Western Australia, Union of Employees; The Sisters of the Holy Family of Nazareth AND The Australian Nursing Federation, Industrial Union of Workers Perth	(Not applicable)	Commissioner S M Mayman	Agreement registered

Agreement Name/Number	Date of Registration	Parties		Commissioner	Result
Trustees of the Marist Brothers Southern Province Non - Teaching Staff Enterprise Bargaining Agreement 2009 - The AG 55/2009	4/02/2010	The Independent Education Union of Western Australia, Union of Employees; The Trustees of the Marist Brothers Southern Province AND The Australian Nursing Federation, Industrial Union of Workers Perth	(Not applicable)	Commissioner S M Mayman	Agreement registered

RECLASSIFICATION APPEALS—

2010 WAIRC 00016

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

TAMMY BROWNING

APPELLANT

-v-

DIRECTOR GENERAL OF HEALTH AS DELEGATE OF THE MINISTER FOR HEALTH IN HIS INCORPORATED CAPACITY UNDER S7 OF THE HOSPITAL AND HEALTH SERVICES ACT 1927 AS THE METROPOLITAN HEALTH SERVICE

RESPONDENT**CORAM**

PUBLIC SERVICE ARBITRATOR
ACTING SENIOR COMMISSIONER P E SCOTT

DATE

TUESDAY, 19 JANUARY 2010

FILE NO

PSA 7 OF 2009

CITATION NO.

2010 WAIRC 00016

Result

Reclassification appeal dismissed

Order

WHEREAS this is a reclassification appeal made pursuant to the *Industrial Relations Act 1979*; and

WHEREAS on Friday, the 15th day of January 2010, the appellant's representative advised the Public Service Arbitrator in writing that she wished to withdraw the appeal;

NOW THEREFORE, the Public Service Arbitrator, pursuant to the powers conferred under the *Industrial Relations Act 1979*, hereby orders:

THAT this appeal be, and is hereby dismissed.

[L.S.]

(Sgd.) P E SCOTT,
Acting Senior Commissioner,
Public Service Arbitrator.

EMPLOYMENT DISPUTE RESOLUTION MATTERS—Notation of—

The following were matters before the Commission under the Employment Dispute Resolution Act 2008 that concluded without an order issuing.

Application Number	Matter	Commissioner	Dates	Result
APPL 58/2009	Request for mediation in relation to suspension or termination	Harrison C	27/10/2009 25/11/2009	Concluded



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CUMULATIVE CONTENTS AND DIGEST APPEAR AT THE END OF THIS PUBLICATION

FULL BENCH—Appeals against decision of Commission—

2010 WAIRC 00089

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

FULL BENCH

CITATION	:	2010 WAIRC 00089
CORAM	:	THE HONOURABLE J H SMITH, ACTING PRESIDENT CHIEF COMMISSIONER A R BEECH COMMISSIONER S J KENNER
HEARD	:	TUESDAY, 16 FEBRUARY 2010
DELIVERED	:	26 FEBRUARY 2010
FILE NO.	:	FBA 7 OF 2009
BETWEEN	:	LIQUOR, HOSPITALITY AND MISCELLANEOUS UNION, WESTERN AUSTRALIAN BRANCH Appellant AND THE DIRECTOR GENERAL, DEPARTMENT OF EDUCATION AND TRAINING Respondent

ON APPEAL FROM:

Jurisdiction	:	Western Australian Industrial Relations Commission
Coram	:	Commissioner J L Harrison
Citation	:	2009 WAIRC 01232
File No	:	C 35 of 2009

CatchWords	:	Courts and judges – Apprehended bias – Disqualification of President – Spouse of acting President appeared as counsel at first instance – Whether doctrine of necessity applies – Principles considered – Power of Full Bench to depart from previous decisions – Power to appoint acting President to hear an appeal where holder of the office of President is unable to act.
Legislation	:	<i>Industrial Relations Act 1979</i> (WA) s 11(1), s 15(1), s 17, s 17(1), s 17(1a), s 23(1), s 44, s 49, s 95(2) <i>Interpretation Act 1984</i> (WA) s 10(c), s 18

Result : Order made.

Representation:

Counsel:

Appellant : Mr R L Hooker (of counsel)

Respondent : Mr R L Bathurst (of counsel)

Reasons for Decision

SMITH AP:

- 1 Through my Associate on 28 January 2010, I wrote to the parties to raise the issue whether I should hear this appeal as my spouse had appeared as counsel on behalf of the Union in the matter before the Commission at first instance. I invited the parties to make submissions about this matter in open court before the Full Bench on Tuesday, 16 February 2010.
- 2 The parties agree that no issue of actual bias arises and that this is a matter where apparent or ostensible bias is raised which arises solely because of the fact that I am related by marriage to counsel who appeared on behalf of the Union at first instance. In *Ebner v Official Trustee in Bankruptcy* [2000] HCA 63; (2000) 205 CLR 337, Gleeson CJ, McHugh, Gummow and Hayne JJ observed:

Where, in the absence of any suggestion of actual bias, a question arises as to the independence or impartiality of a judge (or other judicial officer or juror), as here, the governing principle is that, subject to qualifications relating to waiver (which is not presently relevant) or necessity (which may be relevant to the second appeal), a judge is disqualified if a fair-minded lay observer might reasonably apprehend that the judge might not bring an impartial mind to the resolution of the question the judge is required to decide (*R v Watson; Ex parte Armstrong* (1976) 136 CLR 248; *Re Lusink; Ex parte Shaw* (1980) 55 ALJR 12; 32 ALR 47; *Livesey v NSW Bar Association* (1983) 151 CLR 288; *Re JRL; Ex parte CJL* (1986) 161 CLR 342; *Vakauta v Kelly* (1989) 167 CLR 568; *Webb v The Queen* (1994) 181 CLR 41; *Johnson v Johnson* (2000) 201 CLR 488). That principle gives effect to the requirement that justice should both be done and be seen to be done (*R v Sussex Justices; Ex parte McCarthy* [1924] 1 KB 256 at 259, per Lord Hewart CJ), a requirement which reflects the fundamental importance of the principle that the tribunal be independent and impartial. It is convenient to refer to it as the apprehension of bias principle.

The apprehension of bias principle may be thought to find its justification in the importance of the basic principle, that the tribunal be independent and impartial. So important is the principle that even the appearance of departure from it is prohibited lest the integrity of the judicial system be undermined. There are, however, some other aspects of the apprehension of bias principle which should be recognised. Deciding whether a judicial officer (or juror) might not bring an impartial mind to the resolution of a question that has not been determined requires no prediction about how the judge or juror will in fact approach the matter. The question is one of possibility (real and not remote), not probability. Similarly, if the matter has already been decided, the test is one which requires no conclusion about what factors actually influenced the outcome. No attempt need be made to inquire into the actual thought processes of the judge or juror [6] - [7].

- 3 *Guide to Judicial Conduct* (2nd ed, 2007) published for The Council of Chief Justices of Australia by The Australasian Institute of Judicial Administration Incorporated, provides that a judge or a member of a tribunal should not sit to hear a case where a party to a matter is represented by a close relative. Such a circumstance in my view directly raises a situation where a fair-minded lay observer might reasonably apprehend that the judge might not bring an impartial mind to the resolution of the case. The Guide classifies the relationship of judge and spouse to be a first degree relationship and provides the following guidance about the conduct of matters in para 3.3.4(b) where such a relationship exists:

Where a judge is in a relationship of the first or second degree to counsel or the solicitor having the actual conduct of the case, or the spouse or domestic partner of such counsel or solicitor, most judges would and should disqualify themselves. Ordinarily there is no need to do so if the matter is uncontested or is a relatively minor or procedural matter. Nor is there a need to do so merely because the person in question is a partner in, or employee of, a firm of solicitors or public authority acting for a party. In such cases, it is a matter of considering all the circumstances, including the nature and extent of the involvement in the matter of the person in question. Some judges may be aware of cases involving such a relationship when the judge has sat without objection, but current community expectations make such conduct undesirable.

In most of these situations, Bar Rules in each jurisdiction require a barrister to return a brief to appear in a contested hearing, so the occasion for a judge to disqualify himself or herself should arise infrequently.

There may be a justifiable exception:

- By reference to the principle of necessity (see par 2.1);
- Where the solicitor-relative is a partner or employee of the solicitor on the record, but has not been involved in the preparation or presentation of the case;
- Where, notwithstanding the relationship, the parties to the case consent to the judge sitting but that may depend upon the nature of the relationship, which should be disclosed to the parties before the judge decides whether to sit or not to sit.

- 4 Whether a judge should disqualify himself or herself where apparent or ostensible bias is raised is a matter for the judge to decide as an individual: *Kartinyeri v The Commonwealth* [1998] HCA 52; (1998) 72 ALJR 1334. The respondent says I should disqualify myself, the appellant does not agree. The appellant does, however, concede that if there is a factual dispute about what occurred at the conference before Commissioner Harrison when the orders the subject of this appeal were made, it may be difficult to say that the independent observer referred to in *Ebner* would not have an apprehension that I might not be able to bring an impartial mind to the resolution of this appeal.
- 5 As the decision of the Commission at first instance was made at the conclusion of a compulsory conference convened by the Commission under s 44 of the *Industrial Relations Act 1979* (WA) (the Act), no transcript of the proceedings was made. Affidavits made by Jessica Foster and Brett Owen are contained in the appeal book which purport to set out a record of who attended the conference and what was said during the course of the conference by the parties' representatives and Commissioner Harrison who convened the conference. Mr Bathurst has informed the Full Bench that the affidavits have yet to be analysed but there are some factual matters which will be in dispute between the parties.
- 6 It is clear to me that the grounds of appeal and the matters stated in the affidavits that the determination of this appeal will require members of the Full Bench to make findings of fact and draw inferences of fact from those affidavits and the other materials set out in the appeal book. This will include making findings of fact about the matters raised by my spouse on behalf of the appellant at first instance. In those circumstances it is also clear that a fair-minded observer might reasonably apprehend that I might not bring an impartial mind to the resolution of the grounds of appeal. Where counsel for a party to a matter is related by marriage to the judge it is elementary that the judge should not sit as there is a real danger of actual bias and certainly the appearance of bias in such situations: The Hon James Thomas, *Judicial Ethics in Australia* (3rd ed, 2009) [5.6]. For this reason I am of the opinion that unless the principle of necessity applies I should not sit to hear and determine this appeal.
- 7 One of the justifiable exceptions which enables a judge or a member of a tribunal in a relationship to counsel in the first degree to sit on a matter is where the principle of necessity applies. The common law principle of necessity allows an otherwise disqualified decision maker to hear and decide a case where no other person is able to act to hear a matter. The application of the doctrine of necessity is raised because pursuant to s 15(1) of the Act each Full Bench must be constituted by no less than three members of the Commission one of whom shall be the President.
- 8 President Sharkey decided in 1992 that the doctrine of necessity prevents the President of the Commission from disqualifying himself or herself for bias unless the application of the doctrine of necessity would involve 'positive and substantial injustice': *Carter v Drake* (1992) 72 WAIG 736 at 744 - 746.
- 9 In *Carter v Drake*, Sharkey P found on the facts of the matter before him that although no apparent or ostensible bias applied, if the claims of bias had been upheld the doctrine of necessity excluded bias by the statutory constitution of the Commission when the Commission is constituted by the President. Sharkey P found at 744 - 745 that an acting President could not be appointed under s 17(1) of the Act unless the President was unable to attend to all of his or her duties on account of illness or otherwise and this would not arise if the President was to disqualify himself or herself from one matter. President Sharkey also found that he would be bound to disqualify himself if submissions persuaded him in a particular matter that the application of the doctrine of necessity would involve positive and substantial injustice (746).
- 10 The reasoning of Sharkey P in *Carter v Drake* was subsequently applied by the Full Bench in *Commissioner of Police v Civil Service Association of Western Australia Inc* (2001) 81 WAIG 3026 at [26], *Volkofsky v Clough Engineering Ltd* (2004) 84 WAIG 723 at 724 and *CFMEU v BHP Billiton Iron Ore Pty Ltd* (2005) 85 WAIG 1924 at 1927. The decision of Sharkey P in *Carter v Drake* was also applied by Sharkey P in *J & R Sacca Poultry v Pearson* (1998) 78 WAIG 819 in an application for a stay of an order pending an appeal to the Full Bench. It is of some importance that in each of these decisions the principles considered in *Carter v Drake* were not the subject of any argument. Further it is apparent from the facts set out in each of those cases that no real arguable case of bias was raised.
- 11 Both parties in this appeal agree that the reasoning of Sharkey P in *Carter v Drake* is in error and should not be followed. They also agree that it is open to the Governor to exercise the power to appoint a person to act in the position of President to hear and determine this appeal. Both counsel put forward a submission that the proper interpretation of s 17(1) of the Act is that if the President is required to disqualify herself or himself under normal principles of judicial conduct, an acting President may be appointed by the Governor to hear the case in question. It is common ground that it is not unusual for Governments in Australia to appoint an acting judge or judges where there are no members of a court who can hear a matter because of the application of the principles of bias or conflict of interest.
- 12 Consequently, the Full Bench in this matter must turn its mind to whether the reasoning of Sharkey P in *Carter v Drake* should not be followed. In *Nguyen v Nguyen* (1990) 169 CLR 245 Dawson, Toohey and McHugh JJ observed in relation to the ability of a State Supreme Court to overturn an earlier decision that:

Where a court of appeal holds itself free to depart from an earlier decision it should do so cautiously and only when compelled to the conclusion that the earlier decision is wrong. The occasions upon which the departure from previous authority is warranted are infrequent and exceptional and pose no real threat to the doctrine of precedent and the predicability [sic] of the law: see *Queensland v The Commonwealth* (1977) 139 CLR 585 at 620 per Aickin J.

This Court has never regarded itself as bound by its own decisions, which is all the more appropriate now that it is a court of last resort for all purposes. There is a point of view that different considerations should govern the situation of an intermediate court of appeal: see *Young v Bristol Aeroplane Co Ltd* [1944] KB 718; *Davis v Johnson* [1979] AC 264; *Miliangos v Frank (Textiles) Ltd* [1976] AC 443. But even if that view were correct, now that appeals to the High Court

are by special leave only, the appeal courts of the Supreme Courts of the States and of the Federal Court are in many instances courts of last resort for all practical purposes. There is no equivalent of s 12 of the Administration of Justice Act 1969 (UK) to authorize 'leap-frog' appeals which would by-pass those courts as the Court of Appeal may be by-passed in the United Kingdom. See, however, *Sanofi v Parke Davis Pty Ltd* [No 1] (1982) 149 CLR 147. In these circumstances, it would seem inappropriate that the appeal courts of the Supreme Courts and of the Federal Court should regard themselves as strictly bound by their own previous decisions. In cases where an appeal is not available or is not taken to this Court, rigid adherence to precedent is likely on occasions to perpetuate error without, as experience has shown, significantly increasing the corresponding advantage of certainty (269 - 270).

This reasoning was applied by the Full Bench in *Hanssen Pty Ltd v Construction, Forestry, Mining and Energy Union (Western Australian Branch)* [2004] WAIRC 10828; (2003-2004) 84 WAIG 694.

13 Unlike other courts of appeal, the High Court has power to review and depart from its previous decisions. However, such a course is not lightly undertaken. In *The Commonwealth v Hospital Contribution Fund* (1982) 150 CLR 49 Stephen J (59) with whom Aickin J agreed (66) specified the following four matters that will justify departure by the High Court from earlier decisions. These are:

- (a) The earlier decisions do not rest on a principle carefully worked out in a significant succession of cases;
- (b) There was a difference between the reasons of the justices constituting the majority in one of the earlier decisions;
- (c) The earlier decisions have achieved no useful result but to the contrary have led to considerable inconvenience;
- (d) The earlier decisions have not been independently acted on in a manner which militates against reconsideration.

This criteria was applied in *John v Commissioner of Taxation of the Commonwealth of Australia* (1989) 166 CLR 417, by Mason CJ, Wilson, Dawson Toohey and Gaudron JJ (438 - 439). Whilst it is the case that the Full Bench can overrule its own decisions it is my view that it should only do so when an earlier decision is patently wrong in law and when at least one of criteria set out by Stephen J in *Hospital Contribution Fund* is made out.

14 As counsel for the respondent points out, the observations in *Carter v Drake* that the power to appoint an acting President to hear a case when the President is 'unable to attend to his duties ... whether on account of illness or otherwise' can only be exercised in cases where illness or something else prevents the President being present to attend work is obiter (as Sharkey P had already decided he would not disqualify himself for bias). Therefore, in the absence of being applied in subsequent Full Bench decisions the reasoning in *Carter v Drake* could not be considered binding.

15 In my opinion, with respect, the reasoning of Sharkey P in *Carter v Drake* is plainly wrong in law. Firstly, in reasoning that the reference to 'duties' excludes the operation of s 17 in a single duty where the President should not sit, ignores the operation of s 10(c) of the *Interpretation Act 1984* (WA) which provides that words in the plural include the singular. When regard is had to s 10(c) of the *Interpretation Act*, it is clear as Mr Hooker points out that an inability to attend to duties within the meaning of s 17(1) of the Act must mean more than whether the person who holds the office of President is able to come to work or not. As Mr Bathurst properly points out one of the purposes of the Act is to set up a Commission that is able to decide matters impartially. This duty is expressly reflected in s 11(1) of the Act, which requires each member of the Commission to make an oath before a judge that he: 'will faithfully and impartially perform the duties of his office'.

16 Secondly, the reasoning is based on an incorrect, or incomplete, view of the contemporary rules of statutory interpretation: *Cooper Brookes (Wollongong) Pty Ltd v Commissioner of Taxation* (1980) 147 CLR 297; *Mills v Meeking* (1990) 169 CLR 214. In particular, not only does the reasoning in *Carter v Drake* not have regard to the express intention of the Act that all members of the Commission are to act impartially, the reasoning takes no account of the difference in wording between s 17(1) and s 95(2) of the Act. As Ritter AP observed in *Kenji Auto Parts Pty Ltd v/as SSS Auto Parts (WA) v Fisk* (2007) 87 WAIG 328 [38] statutory construction involves a consideration and analysis of the meaning of the words used in a section in the context of the legislation and legislative scheme as a whole, to try to discern the intention of the legislature: *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355 (381) (McHugh, Gummow, Kirby and Hayne JJ); and *Wilson v Anderson* [2002] HCA 29; (2002) 213 CLR 401 [8] (Gleeson CJ). Courts must seek to ascertain the statutory purpose and legislative intention from the words used in the statute (and can use other aids as are legitimately available). Where the will of Parliament is clear, a court or tribunal must give effect to that clearly expressed will.

17 Section 17(1) and s 17(1a) of the Act provide:

- (1) Where a member of the Commission is, or is expected to be, unable to attend to his duties under this Act, whether on account of illness or otherwise, the Governor may appoint a person to be acting President, acting Chief Commissioner, acting Senior Commissioner or an acting commissioner, as the case may require, for such period as the Governor determines.
- (1a) Where the office of President is vacant, or is expected to become vacant, the Governor may appoint a person to be acting President.

18 Section 95(2) of the Act provides:

During the illness, temporary incapacity, or temporary absence from office of the Registrar, the designated deputy registrar shall have and may exercise the powers and authorities and shall discharge the duties of the Registrar under this Act.

The ability of a deputy registrar to act as Registrar in the absence of the Registrar is by the language used in s 95(2) of the Act confined to a temporary incapacity or temporary absence. The language used in s 95(2) is much narrower than the language used in s 17(1) of the Act. Section s 95(2) contemplates that the Registrar must be unable to be present to attend to his or her duties of the office of Registrar. Section 17(1) does not raise a similar requirement. The term 'otherwise' in s 17(1) is broad and unconstrained by any other terms in the provision. When s 17(1) is interpreted by having regard to its context, particularly the requirement to take an oath in s 11(1) to act impartially and to the fact that the legislature did not expressly confine the power to appoint an acting President to a temporary absence from office as opposed to being unable to attend to duties, it is plain that the legislature did not intend that s 17(1) could not operate when the President accepts that an issue of bias properly raised and accepted also raises a duty on the President to disqualify himself or herself.

- 19 I do not agree that s 17(1) is open to more than one construction. If I am wrong on this point, as Mr Bathurst points out, where an ambiguity arises, a court or tribunal should prefer the construction that appears to achieve the legislative purpose rather than one that appears to defeat or frustrate: *New South Wales v Macquarie Bank Ltd* (1992) 30 NSWLR 307 (CA), Kirby P (319). This approach is enshrined in statute in s 18 of the *Interpretation Act*. The application of the reasoning of Sharkey P in *Carter v Drake* to matters where an issue of apparent or ostensible bias on behalf of the President is made out would result in matters such as this appeal not being able to proceed to hearing and determination if no appointment can be made under s 17 of the Act. Such a result is unjust. If there is no appeal at all it is possible that this would involve positive and substantive injustice which is inconsistent with the purpose of the Act to provide an independent arbitral body to resolve disputes which includes and preserves rights of appeal. In addition, if the doctrine of necessity applies this would, at least in this matter, result in positive and substantial injustice, in that a party or parties must be judged by a President who, according to required community standards, should not be sitting.
- 20 I am of the opinion that the reasoning in *Carter v Drake* should no longer be considered good law. In my opinion two of the criteria considered by Stephen J in *Hospital Contribution Fund* as reasons for departing from an earlier decision are satisfied. These are:
- (a) The reasoning does not rest on a principle carefully worked out in a significant succession of cases;
 - (b) Because the decision has not been the subject of argument in any matter before a Full Bench it cannot be said that the decision has been independently acted on in a manner which militates against reconsideration.

Conclusion

- 21 I am of the opinion that the doctrine of necessity does not apply to the powers, functions and duties of the President under the Act. I am also of the opinion that if the person appointed as President or acting President of the Commission is unable to act to hear and determine a matter because an issue of actual bias, or apparent or ostensible bias, has been raised which makes it clear to the person holding the office of President that it would be improper for that person to sit as President, s 17(1) of the Act can be invoked to appoint a qualified person to act as President to hear and determine the matter in which the issue of bias has been raised. As set out above I am of the opinion that I should disqualify myself from hearing and determining this appeal. It follows therefore that this appeal cannot proceed until an appointment has been made under s 17(1) of the Act to appoint a qualified person to act as President to hear and determine this appeal.
- 22 For these reasons I am of the opinion that an order should be made that this appeal be adjourned sine die. I would anticipate that once an appointment is made a date can be fixed for the hearing of the appeal and the matter can promptly proceed.

BEECH CC:

- 23 I have had the advantage of reading in draft form the reasons for decisions of her Honour the Acting President. The decision of the Hon Acting President that she should disqualify herself from hearing and determining this appeal is a matter for her Honour. The Guide to Judicial Conduct (2nd edition), March 2007, Australasian Institute of Judicial Administration at 3.5(a) shows that if a judge considers disqualification is required, the judge should so decide. I respect the decision of the Acting President.
- 24 I am of the view that the reasons expressed by Sharkey P in *Carter v. Drake* (1992) 72 WAIG 736 must be seen in the context of its own circumstances. Subsequent cases in the Commission, *Commissioner of Police v. Civil Service Association of WA Inc.* (2001) 81 WAIG 3026; [2001] WAIRC 04107; *Volkofsky v. Clough Engineering Limited* (2004) 84 WAIG 723; [2004] WAIRC 10949; and *CFMEU v. BHP Billiton Iron Ore Pty Ltd* (2005) 85 WAIG 1924; [2005] WAIRC 01797, were not circumstances where *Carter v. Drake* was re-examined and these cases do not take the issue any further.
- 25 In *Carter v. Drake*, Sharkey P was asked to disqualify himself for ostensible or apparent bias arising from:
- (a) a number of dicta in reasons for decision;
 - (b) by remarks in discussion with counsel;
 - (c) for having given the appearance for pre-determination of an issue by touching upon, and appearing to publish, a point of view which went to the very subject matter of the proceedings; and
 - (d) having made interim orders on the basis of no evidence.
- 26 The matters complained of before Sharkey P had arisen only in interim orders and directions hearings both before and after the final hearing and determination of some of the matters. Those circumstances are distinguishable from the facts in this matter.

27 Sharkey P concluded that there was no real possibility either that his participation might lead to a reasonable apprehension of pre-judgment or bias and declined to disqualify himself for bias on that ground. That conclusion, with respect, appears consistent with the observation in the Guide to Judicial Conduct at page 15 that:

“What a judge may have said in other cases by way of expression of legal opinion whether as *obiter dicta* or in dissent can seldom, if ever, be a ground for disqualification.”

28 To that extent, the comments made by Sharkey P subsequent to that conclusion regarding the application of the doctrine of necessity to the office of President are, with respect, *obiter*. Nevertheless, in my view, with respect, the conclusion reached by Sharkey P at 745 that the words “illness or otherwise” in s 17 of the *Industrial Relations Act, 1979* (“the Act”) have to be interpreted to mean illness or something else which prevents the President to be present to attend his work appears to be too narrow an interpretation. Sharkey P states that at 745 that if the President were to disqualify himself for bias then for the reasons he gives, an Acting President could not be appointed merely because the President disqualifies himself from hearing one matter. It appears to follow from Sharkey P’s reasoning at p 746 that although he would be bound to disqualify himself if the submissions made to him persuaded him that the application of the doctrine of necessity would involve positive and substantial injustice, if that disqualification was for one matter no Acting President could be able to be appointed because the President was not ill or otherwise not able to attend to his work. This would, in my view, mean that the matter would not be able to be heard which would be contrary to the purpose of the Act.

29 Where personal relationships do arise in a matter as discussed in the Guide to Judicial Conduct at 3.3.4, whether of the first, second or third degree, and it is appropriate that the judicial officer disqualify himself or herself, s 17 should not be read to require that judicial officer to continue to deal with the matter. This matter is not a case where the Acting President is unable to attend to her duties under the Act on account of illness; nor is there something else which prevents the Acting President being present to attend to her duties under the Act. Therefore, I agree with the conclusions of the Acting President and in particular, I agree with the Acting President that the legislature did not intend that s 17(1) could not operate when the President accepts that an issue of bias properly raised and accepted also raises the duty on the President to disqualify him or herself.

30 In the circumstances, the appropriate order to be made is that the appeal be adjourned *sine die* and I agree with the order to issue.

KENNER C:

31 To the extent that I am able to do so, I agree with the reasons to be published by the Acting President that she disqualifies herself on the grounds of ostensible bias.

32 I am also in general agreement that the decision of Sharkey P in *Carter v Drake* (1992) 72 WAIG 736 should now be regarded as wrongly decided. I add the following brief observations of my own.

33 The reasoning in *Carter* has been adopted in subsequent decisions of the Full Bench: *Commissioner of Police v Civil Service Association of Western Australia Inc* (2001) 81 WAIG 3026; *John Paul Volkofsky v Clough Engineering Limited* (2004) 84 WAIG 723. Whilst the Full Bench should be hesitant to overrule its previous decisions, it should not shrink from doing so where it considers its previous decisions to be wrong. This is particularly so in cases involving statutory interpretation, where an appellate court considers an earlier interpretation to be erroneous: *Babaniaris v Lutony Fashions Pty Ltd* (1987) 163 CLR 1; *John v Federal Commissioner of Taxation* (1989) 166 CLR 417.

34 Whilst the rule of necessity can ground an exception to disqualification on the grounds of bias in certain circumstances, in my opinion, the doctrine has no application in this jurisdiction under s 17 of the *Industrial Relations Act 1979* (“the Act”).

35 With respect, in *Carter*, Sharkey P placed an overly restrictive construction on the ordinary and natural language of s 17(1) as to the meaning of “unable to attend to his duties under this Act, whether on account of illness *or otherwise*” In my view, there is no warrant to read down the words “or otherwise” as a matter of plain construction, to apply only to the circumstance of the physical absence from work of the Commission Member, in that case, the President. Where a Member of the Commission, whether it be the President or any other Member, is unable to sit by reason of actual or ostensible bias, and no other Member is available to sit to deal with the matter, the Parliament has provided a mechanism in s 17(1) of the Act, to make an acting appointment to enable the Commission to function.

36 Such a construction is entirely consistent with the overall purposes and objects of the Act, which is to be taken into account in a contemporary approach to statutory interpretation: s 18 Interpretation Act 1984.

37 Where, as in this case, the President or an Acting President of the Commission is unable to sit to hear and determine a matter on the basis of ostensible bias, then plainly in my view, they are “unable to attend to their duties” in respect of the particular matter or matters in question. A disqualification on the grounds of bias, means that a Member of the Commission is unable to perform his or her statutory duty to “enquire into and deal with any industrial matter” for the purposes of s 23(1) of the Act, including exercising appellate jurisdiction under s 49 of the Act.

38 I agree with the order as proposed.

2010 WAIRC 00095

	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION	
PARTIES	LIQUOR, HOSPITALITY AND MISCELLANEOUS UNION, WESTERN AUSTRALIAN BRANCH	APPELLANT
	-and-	
	THE DIRECTOR GENERAL, DEPARTMENT OF EDUCATION AND TRAINING	RESPONDENT
CORAM	FULL BENCH THE HONOURABLE J H SMITH, ACTING PRESIDENT CHIEF COMMISSIONER A R BEECH COMMISSIONER S J KENNER	
DATE	WEDNESDAY, 3 MARCH 2010	
FILE NO/S	FBA 7 OF 2009	
CITATION NO.	2010 WAIRC 00095	
Result	Order made	
Appearances		
Appellant	Mr R L Hooker (of counsel)	
Respondent	Mr R L Bathurst (of counsel)	

Order

This matter having come on for hearing before the Full Bench on 16 February 2010, and having heard Mr Hooker (of counsel), on behalf of the appellant, and Mr Bathurst (of counsel), on behalf of the respondent, and reasons for decision having been delivered on 26 February 2010, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders—

THAT this appeal be adjourned sine die.

By the Full Bench
(Sgd.) J H SMITH,
Acting President.

[L.S.]

FULL BENCH—Unions—Declarations made under Section 71—

2010 WAIRC 00101

	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
	FULL BENCH
CITATION	: 2010 WAIRC 00101
CORAM	: THE HONOURABLE J H SMITH, ACTING PRESIDENT CHIEF COMMISSIONER A R BEECH COMMISSIONER J L HARRISON
HEARD	: MONDAY, 15 FEBRUARY 2010
DELIVERED	: FRIDAY, 5 MARCH 2010
FILE NO.	: APPL 75 OF 2009, FBM 8 OF 2009
BETWEEN	: MEDIA, ENTERTAINMENT AND ARTS ALLIANCE OF WESTERN AUSTRALIA (UNION OF EMPLOYEES)) Applicant AND (NOT APPLICABLE) Respondent

CatchWords	:	<i>Industrial Law (WA) – Application pursuant to s 62(2) of the Industrial Relations Act 1979 (WA) for the Full Bench to authorise alteration to registered rules as a matter referred to in s 71(5) – Application pursuant to s 71 for a declaration relating to qualifications of persons for membership of a State Branch of a Federal organisation and offices which exist with the Branch – Applications granted.</i>
Legislation	:	<i>Industrial Relations Act 1979 (WA) s 55(4), s 55(4)(a), s 55(4)(b), s 55(4)(c), s 55(4)(d), s 62, s 62(1), s 62(2), s 62(3), s 62(4), s 71, s 71(1), s 71(2), s 71(3), s 71(4), s 71(5). Industrial Relations Commission Regulations 2005 (WA) reg 72(b).</i>
Result	:	Order made; Declaration issued.

Representation:*Counsel:*

Applicant : Mr D H Schapper

Solicitors:

Applicant : Derek Schapper, Barrister & Solicitor

*Reasons for Decision***THE FULL BENCH:****The Applications**

- 1 The Full Bench has before it two applications made under the *Industrial Relations Act 1979 (WA)* (the Act). The applicant seeks to obtain a s 71 certificate to enable the offices that exist in its rules to be held by persons holding corresponding offices in its counterpart Federal body. A certificate will also enable it to make an agreement with its Federal organisation relating to the management and control of funds.
- 2 Prior to the issuance of a certificate, the applicant's rules must be altered and the Full Bench must issue a declaration pursuant to s 71 of the Act. In APPL 75 of 2009, the applicant seeks to ensure that its rules comply with the requirements of s 71 and the application for the declaration is the subject of FBM 8 of 2009.
- 3 In APPL 75 of 2009, pursuant to s 62(2) of the Act the applicant as a registered organisation seeks the authorisation of the Full Bench to register an alteration to its rules to provide as required by s 71(5) of the Act that each office in the State organisation may from time to time as the Committee of Management of the State organisation may determine be held by the person who in accordance with the rules of the State organisation's counterpart Federal body holds the corresponding office in that body. Pursuant to s 62(2) an alteration of an organisation's rules of this kind can only be authorised by a Full Bench.
- 4 The application to authorise the alteration to the rules is part of APPL 75 of 2009. APPL 75 of 2009 was an application under s 62 of the Act to alter a number of rules of the applicant. Except for the alteration sought to add a new r 18 – Offices which raises a matter referred to in s 71(5) of the Act, the other alterations sought by the applicant were registered by the Registrar on 18 February 2010 pursuant to s 62(1) and s 62(3) of the Act.
- 5 In the part of APPL 75 of 2009 that is before the Full Bench, the applicant seeks to add a new r 18 – Offices as follows:

Each office in the Association may, from such time as the Council may determine, be held by the person who, in accordance with the rules of the Association's Counterpart Federal Body namely the Media, Entertainment and Arts Alliance – Western Australian Branch, holds the corresponding office in that body.
- 6 Section 62(1) and s 62(2) of the Act provides:
 - (1) Upon and after the registration of rules in accordance with section 58(1), an alteration to those rules by the organisation concerned shall not be or become effective until the Registrar has given to the organisation a certificate that the alteration has been registered.
 - (2) The Registrar shall not register any alteration to the rules of an organisation that relates to its name, qualifications of persons for membership, or a matter referred to in section 71(2) or (5) unless so authorised by the Full Bench.
- 7 In FBM 8 of 2009, the Full Bench has before it an application made pursuant to s 71 of the Act for a declaration by the Full Bench that:
 - (a) The Media, Entertainment and Arts Alliance – Western Australian Branch is the counterpart Federal body of the Media, Entertainment and Arts Alliance of Western Australia (Union of Employees);
 - (b) The offices which exist with the counterpart Federal body are, or are deemed to be the same as the offices that exist in the Media, Entertainment and Arts Alliance of Western Australia (Union of Employees).
- 8 Some of the alterations registered by the Registrar on 18 February 2010 are material to the application to make the declaration sought under s 71 of the Act. These are as follows:
 4. Amend paragraph (b) of Rule 19 – Council by deleting the underlined words
 - (b) The Council shall consist of the President, three Vice-Presidents, the Secretary, ~~Assistant Secretary (where Council has approved the creation of an Assistant Secretary)~~ and no more than 25 delegates from the sections of the Association. The numbers of delegates shall be determined by the Council.

5. Amend Rule 20 – Powers and Duties of Council by deleting the whole of paragraph (q). Paragraph (q) reads "The right to create the office of Assistant Secretary".
6. Delete the whole of Rule 28 – Duties of Assistant Secretary.
- ...
8. Delete the words "Assistant Secretary (where determined by Council)" from paragraph (b)(i) of rule 53 – Elections.

9 Both applications before the Full Bench are unopposed.

APPL 75 of 2009

(a) The Applicant's Rules about Alteration

- 10 Pursuant to s 62(4) of the Act, the requirements of s 55(4) of the Act must be complied with before the Full Bench can approve a rule alteration application. Section 55(4) of the Act provides that the Full Bench shall refuse an application by the organisation under this section unless it is satisfied that –
- (a) the application has been authorised in accordance with the rules of the organisation;
 - (b) reasonable steps have been taken to adequately inform the members —
 - (i) of the intention of the organisation to apply for registration;
 - (ii) of the proposed rules of the organisation; and
 - (iii) that the members or any of them may object to the making of the application or to those rules or any of them by forwarding a written objection to the Registrar,
 and having regard to the structure of the organisation and any other relevant circumstance, the members have been afforded a reasonable opportunity to make such an objection;
 - (c) in relation to the members of the organisation —
 - (i) less than 5% have objected to the making of the application or to those rules or any of them, as the case may be; or
 - (ii) a majority of the members who voted in a ballot conducted in a manner approved by the Registrar has authorised or approved the making of the application and the proposed rules;
 - (d) in relation to the alteration of the rules of the organisation, those rules provide for reasonable notice of any proposed alteration and reasons therefor to be given to the members of the organisation and for reasonable opportunity for the members to object to any such proposal; and
 - (e) rules of the organisation relating to elections for office —
 - (i) provide that the election shall be by secret ballot; and
 - (ii) conform with the requirements of section 56(1),
 and are such as will ensure, as far as practicable, that no irregularity can occur in connection with the election.

(b) Statutory Requirements Met

- 11 Pursuant to s 55(4)(a) of the Act, the Full Bench shall refuse the rule alteration unless it has been authorised by the organisation in accordance with its rules. The authority to alter the rules of the applicant is found in r 49 – New Rules and Alterations of Rules. Rule 49 provides:
- (a) No new rules shall be made nor shall any of the rules of the Association for the time being be altered, added to, amended or rescinded except by the Council.
 Any proposal to alter, amend, add to or rescind the Rules shall be submitted to the Secretary to enable it to be circulated to all members of the Union at least 28 days before the date on which the meeting or the postal ballot of Council to consider the proposal is scheduled to begin. A member wishing to object to a proposed amendment shall notify the Secretary in writing of his or her objection and the reasons for it not less than 14 days before the meeting of Council which will consider the amendment. The Secretary shall circulate the objection to members of Council at least 7 days before the meeting of Council.
 - (c) Any proposal to alter, amend, add to or rescind the rules may be proposed by any Sectional Committee at any time between meetings of the Council. Such proposed rules and/or amendments shall be submitted to the Secretary and shall be circulated in accordance with (b) hereof.
 - (d) No new rule (or amendment, addition or rescission) shall be made which alters any sectional professional rights without the section first approving any such change in accordance with the rules governing those sections.
- 12 The application to authorise the addition of a new r 18 – Offices is brought pursuant to r 49(a). The facts supporting the applicant's application that it has complied with r 49 and the statutory requirements of the Act are set out in an affidavit by the Secretary of the applicant, Mr Michael Sinclair-Jones, sworn on 9 February 2010.
- 13 The evidence of Mr Sinclair-Jones in his affidavit and documents attached to his affidavit establishes the following relevant matters:

- (a) A notice was sent to members on 16 November 2009 setting out the proposed amendments, the reasons for the amendments and informed members that they could object to the proposal by forwarding a written objection to the Registrar of the Commission no later than 21 days after the date of the Council meeting. In addition as required by r 49(a), members were also advised that they could object by written notice to the Secretary not less than 14 days before the meeting of Council (annexure 1 of the affidavit).
- (b) The notice informed members that a Council meeting at which the proposed alterations would be considered was scheduled for 15 December 2009 (annexure 1 of the affidavit). Consequently I am satisfied that the requirement of r 49 to circulate any proposal to amend the rules to all members of the Union at least 28 days before the date of the proposed meeting of Council to consider proposals was met.
- (c) The Secretary received no objections or comments from any members in response to the notice of 16 November 2009.
- (d) The notice was sent by email to all members. For those members with no email address, members were contacted to confirm a current postal address and notices were sent to those addresses. Those members that refused to give personal address details were sent a notice at their work address or post office box address. As the rules of the applicant do not prescribe or specify the means by which members must be given notice, I am satisfied that the members of the organisation were served with the notice.
- (e) Minutes of the applicant's Council meeting of 15 December 2009 record that the proposed alterations were considered. Rule 21 – Meetings of the Council provides that a quorum shall be no less than a third of the members of the Council. The minutes of the meeting record that four of the five members of Council were present at the meeting and that those members unanimously agreed to the proposal to amend r 18 amongst other proposals to amend the rules which were registered by the Registrar on 18 February 2010 but not the subject of this part of Appl 75 of 2009 which is before the Full Bench. The Council also unanimously agreed to authorise an application to be made to the Commission to register the amendments (annexure 2 of the affidavit).

14 Having regard to the matters stated in the affidavit of Mr Sinclair-Jones and the attached documents, we are satisfied that s 55(4)(b), s 55(4)(c) and s 55(4)(d) of the Act have been complied with as it is clear that adequate notice of the proposed change to the rules was given to members and that they had a reasonable opportunity to make an objection to the change. It is notable that no objection has been forthcoming.

15 For these reasons we are of the opinion that an order should be made that the Registrar be authorised to register an alteration to the rules of the applicant by registering r 18 – Offices.

FBM 8 of 2009 – Application for s 71 Certificate

16 The counterpart Federal body of the applicant is the Media, Entertainment and Arts Alliance Western Australian (the Branch). The applicant seeks a declaration that pursuant to s 71(2) of the Act the Full Bench is of the opinion that the rules of the counterpart Federal Body prescribing the offices which exist in the Branch are deemed to be the same as the rules prescribing the offices which exist in the State organisation in accordance with s 71(1) and s 71(4) of the Act.

(a) Qualifications of Persons for Membership

17 Pursuant to s 71(1) of the Act, a counterpart Federal body, in relation to a State organisation, means a Western Australian Branch of an organisation of employees registered under the Commonwealth Act the rules of which:

- (a) relating to the qualifications of persons for membership; and
- (b) prescribing the offices which shall exist within the Branch,

are, or, in accordance with this section, are deemed to be, the same as the rules of the State organisation relating to the corresponding subject matter;

18 By operation of s 71(2) of the Act the rules of the State organisation and its counterpart Federal body relating to the qualifications of persons for membership are deemed to be the same if, in the opinion of the Full Bench, they are substantially the same.

19 Further s 71(3) provides:

The Full Bench may form the opinion that the rules referred to in subsection (2) are substantially the same notwithstanding that a person who is —

- (a) eligible to be a member of the State organisation is, by reason of his being a member of a particular class of persons, ineligible to be a member of that State organisation's counterpart Federal body; or
- (b) eligible to be a member of the counterpart Federal body is, for the reason referred to in paragraph (a), ineligible to be a member of the State organisation.

20 In an affidavit sworn by Mr Sinclair-Jones dated 15 February 2010 he attests that the annexures to the application are true and correct in relation to each statement of fact made in each of the annexures. In an annexure to the application made pursuant to reg 72(b) of the *Industrial Relations Commission Regulations 2005*, r 4 of the applicant's rules and r 4 of the Media, Entertainment and Arts Alliance (the Federal Union) rules relating to qualifications of persons for membership are compared. The applicant says in this annexure that:

Part A of the Applicant's rule is not materially different from Part A of the Counterpart Federal Body's rule.

Part B of the Applicant's rule is not materially different from Part B of the Counterpart Federal Body's rule. [Rule B(h) has no counterpart in the Applicant's rule]

Part C of the Applicant's rule is not materially different from Part C of the Counterpart Federal Body's rule. [Rule Part C(a)7 has no equivalent in the Applicant's rules but those persons (Federal and State public servants) are probably eligible for membership of the applicant in any event]

Part D of the Applicant's rule is not materially different from Part D of the Counterpart Federal Body's rule.

Part E of the Applicant's rules has Part G of the Counterpart Federal Body's rules as its counterpart which, though differently expressed, covers much of the same classes of employees.

Parts E and H of the Counterpart Federal Body's rules have no counterpart in the Applicant's rules.

21 In an annexure headed "Regulation 72(d)" the applicant states that:

- (a) there are 1,246 members of the applicant and its counterpart Federal body;
- (b) all members of the applicant are also members of the counterpart Federal body; and
- (c) all members of the counterpart Federal body are members of the applicant.

22 An examination of r 4 of the rules of the applicant and r 4 of the Federal Union's rules reveals that all persons who are to be eligible to be members of the applicant are eligible to be members of the Branch. However, there is one category of membership of persons who are eligible to be members of the Branch who are ineligible to be members of the applicant. These are persons set out in Part E of r 4 of the Federal Union's rules. Part E of r 4 of the Federal Union's rules establishes a category of persons eligible to be members who are independent contractors who, if they were employed performing work of the kind which they usually perform as independent contractors, would be employees and eligible for membership of the Branch. Historically Federal industrial legislation has enabled federally registered organisations to enrol subcontractors as members whereas such categories of persons in Western Australia have been unable to be registered under the provisions of the Act. It is also notable that Part H provides a category of persons ineligible for membership of the Union who are employed by named organisations in Queensland. It is our view that this category of ineligibility for membership is immaterial as this rule simply excludes persons from membership who are employed by a number of organisations in Queensland and it is not relevant to qualifications for membership of the Branch.

23 For these reasons we are of the opinion the qualifications of persons for membership set out in the rules of the applicant and rules that apply to the Branch are substantially the same.

(b) Offices

24 When determining whether the offices that exist in the Branch are the same as the offices of the applicant, it is necessary for the Full Bench to consider the functions and powers of each office based on a consideration of the similarity or otherwise of the content of the rules: *Jones v Civil Service Association Inc* (2003) 84 WAIG 4 (Pullin J) [35].

25 In an annexure to the application titled "Regulation 72(c)" the applicant compares the offices that exist within its organisation and the offices that exist within the Branch. The document states as follows:

Applicant's rule/office	Counterpart Federal Body rule/office
Rule 25- President	Rule 19(c) – Branch President
Rule 25A – 3 Vice-presidents	Rule 19(c) – 3 Vice-Presidents
Rule 26 – Secretary	Rule 19(c) - Secretary
Rule 19(b) – such number of Section Delegates as determined by Council and Rule 54	Rule 19(c) – such number of Section Delegates as determined by Council and Rule 80
In both the Applicant and the Counterpart Federal Body, the number of section delegates has long been determined to be 0.	
Rule 19(b) and 28 – Assistant Branch Secretary – not created.	Not applicable

26 When the application was filed on 21 December 2009 the office of Assistant Branch Secretary was still in existence although historically this position had never been filled. However, this office was deleted by the variations to the rules set out in paragraph [8] of these reasons when those variations were registered by the Registrar on 18 February 2010.

27 The supreme governing body of the applicant is the Council (r 19(a)). The supreme governing body of the Branch is the Branch Council (r 19(a) of the Federal Union rules). Prima facie the offices of both the State organisation and the Branch pursuant to r 19(b) of the applicant's rules and r 19(c) of the Federal Union's rules are the same. The applicant's Council consists of the President, three Vice-Presidents, the Secretary and no more than 25 delegates from the sections of the applicant (r 19(b)). Under r 19(c) of the Federal Union's rules the Branch Council consists of the Branch President, three Branch Vice-Presidents, the Branch Secretary and delegates from the sections of the Association as determined by r 80 (other than in those

branches where Federal Council has determined that the number of delegates shall be zero). As set out in the applicant's annexure titled "Regulation 72(c)" in both the applicant's organisation and in the Branch, the number of section delegates has long been determined to be zero. In any event, the applicant's rules and the Federal Union's rules provide a very similar formula for the selection of sectional delegates. Rule 54 – Formula for Election of Sectional Delegates to Council of the applicant's rules, sets the number of section delegates by applying the annual income of each section from entrance fees and membership subscriptions for the aggregate dues paid to the applicant and its Branch for the previous financial year and ascertains the notional number of members of each section by dividing the amount of income for each section by \$200 (or another amount as determined by Council). The same formula is contained in r 80 of the Federal Union's rules. However, the proportional formula to be obtained of national sections under r 80 is to be applied is 50, whereas the proportional formula to be obtained in respect of sections under the applicant's rules is 25. Further pursuant to r 54(vi) of the applicant's rules, where sections are entitled to three or more delegates or three or more Vice-President positions are to be filled, one of each three positions filled shall be a woman according to a formula that follows. There is no equivalent of r 54(vi) in the rules of the Federal Union. However, there is no requirement in s 71(4) of the Act that the offices be identical only that there be a corresponding office for each office in the State organisation.

- 28 In relation to each of the duties of the President, Branch President, the Vice-Presidents, the Secretary and the Branch Secretary it is clear that the rules of the applicant and of the Branch are not identical. However, when the powers and duties of each of those positions in the rules are examined, it is apparent that all of the powers and duties of each of the Branch offices are also found in the powers and duties of the offices that exist pursuant to the applicant's rules. There are, however, some additional duties which are required of the holders of the offices of the applicant which, in our view, are not material to the determination of this application. These matters relate to the keeping of books of account as required by the Act and other statutory duties under the Act. It is also notable that the terms of office for each of the offices are the same. Pursuant to r 52 – Terms of Office of the applicant's rules, the terms of office for the Secretary is four years and for Honorary officers two years. Under r 78 – Terms of Office of the Federal Union's rules, full-time Branch officers hold office for a term of four years and Honorary branch officers two years. For these reasons we are of the opinion that in each of the offices of the applicant's State organisation there is a corresponding office in the Branch.
- 29 For the reasons set out above, we are satisfied that the Media, Entertainment and Arts Alliance – Western Australian Branch is the counterpart Federal body in relation to the applicant. Accordingly, it is appropriate to make the declaration in the form provided for in s 71(1), s 71(2) and s 71(4) of the Act.
- 30 Once the order authorising the Registrar to register the alteration to the rules of the applicant by adding a new r 18 is made and the s 71 declaration is made, s 71(5) issues a mandatory command to the Registrar to issue a certificate in the form prescribed by that sub-section.

2010 WAIRC 00106

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

MEDIA, ENTERTAINMENT AND ARTS ALLIANCE OF WESTERN AUSTRALIA (UNION OF EMPLOYEES)

APPLICANT

-and-

(NOT APPLICABLE)

RESPONDENT

CORAM

FULL BENCH

THE HONOURABLE J H SMITH, ACTING PRESIDENT

CHIEF COMMISSIONER A R BEECH

COMMISSIONER J L HARRISON

DATE

MONDAY, 8 MARCH 2010

FILE NO/S

APPL 75 OF 2009

CITATION NO.

2010 WAIRC 00106

Result

Order made

Appearances

Applicant

Mr D H Schapper (of counsel)

Order

This matter having come on for hearing before the Full Bench on 15 February 2010, and having heard Mr D H Schapper, of counsel, on behalf of the applicant, the Full Bench orders that:—

The Registrar is hereby authorised to register an alteration to the rules of the applicant by adding a new rule 18 – Offices.

[L.S.]

By the Full Bench
(Sgd.) J H SMITH,
Acting President.

2010 WAIRC 00105

PARTIES	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION MEDIA, ENTERTAINMENT AND ARTS ALLIANCE OF WESTERN AUSTRALIA (UNION OF EMPLOYEES)	APPLICANT
	-and- (NOT APPLICABLE)	
CORAM	FULL BENCH THE HONOURABLE J H SMITH, ACTING PRESIDENT CHIEF COMMISSIONER A R BEECH COMMISSIONER J L HARRISON	RESPONDENT
DATE	MONDAY, 8 MARCH 2010	
FILE NO/S	FBM 8 OF 2009	
CITATION NO.	2010 WAIRC 00105	
Result	Declaration issued	
Appearances		
Applicant	Mr D H Schapper (of counsel)	

Declaration

This matter having come on for hearing before the Full Bench on 15 February 2010, and having heard Mr D H Schapper, of counsel, on behalf of the applicant, the Full Bench pursuant to its powers in s 71 of the *Industrial Relations Act 1979* (the Act), hereby declares that:—

- (a) The Media, Entertainment and Arts Alliance – Western Australian Branch is the counterpart Federal body of the Media, Entertainment and Arts Alliance of Western Australia (Union of Employees);
- (b) The rules of the applicant and its counterpart Federal body relating to the qualifications of persons for membership are deemed to be the same, in accordance with s 71(2) of the Act.
- (c) The rules of the counterpart Federal body prescribing the offices which exist in the Branch are hereby deemed to be the same as the rules of the applicant, prescribing the offices which exist in the applicant, in accordance with s 71(4) of the Act.

[L.S.]

By the Full Bench
(Sgd.) J H SMITH,
Acting President.

COMMISSION IN COURT SESSION—Matters dealt with—

2010 WAIRC 00059

GOVERNMENT SERVICES (MISCELLANEOUS) GENERAL AGREEMENT, 2010 EDUCATION ASSISTANTS' (GOVERNMENT) GENERAL AGREEMENT 2010

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

THE LIQUOR, HOSPITALITY AND MISCELLANEOUS UNION (WA BRANCH

APPLICANT

THE EXECUTIVE DIRECTOR DEPARTMENT OF EDUCATION AND THE EXECUTIVE
DIRECTOR LABOUR RELATIONS DIVISION DEPARTMENT OF COMMERCE

RESPONDENTS

CORAM

CHIEF COMMISSIONER A R BEECH

COMMISSIONER S J KENNER

COMMISSIONER S M MAYMAN

HEARD

MONDAY, 8 FEBRUARY 2010

DELIVERED

THURSDAY, 11 FEBRUARY 2010

FILE NO.

AG 1 OF 2010, AG 3 OF 2010

CITATION NO.

2010 WAIRC 00059

CatchWords

Practice and procedure - Further and better particulars - Discovery and inspection of documents - Relevant principles - Orders made - Industrial Relations Act, 1979 s 27(1)(o)

Result

Order issued

Representation

Applicant

Mr B Owen

Respondent

Mr R Bathurst of counsel

Reasons for Decision

COMMISSION IN COURT SESSION:

- 1 The substantive proceedings in these matters are applications pursuant to s 42G of the *Industrial Relations Act 1979* (“the Act”) for the registration of two agreements, they being the Education Assistants’ (Government) General Agreement 2010 and the Government Services (Miscellaneous) General Agreement 2010 (“the Agreements”). The Commission in Court Session is requested to determine, for the purposes of s 42G (2) of the Act, the rates of pay to apply under the Agreements.
- 2 In accordance with the joint request of the Liquor Hospitality and Miscellaneous Union (WA Branch) (“LHMU”) and the respondents, the substantive applications have been listed for hearing for six days commencing on 10 March 2010.

Interlocutory Applications

- 3 By application filed on 4 February 2010 the LHMU seeks an order pursuant to s 27(1)(o) of the Act in the following terms:

- “(1) particulars of the grounds upon which the Government denies that the LHMU is entitled to the pay increase it seeks (the LHMU Wages Claim) and maintains that the wage increases should, instead, be 2.5%, 2.5% and 3% over the next three years; and
- (2) discovery on oath of all documentation in the possession, custody or power of the Government relating to any matter and issue in the proceedings for the arbitration of the LHMU Wages Claim and without limiting the generality of the discovery that is fair and just to be provided by the Government (in accordance with regulation 20(7)) to enable the LHMU to properly and fairly present its case and understand the case against it, the LHMU seeks, in particular, discovery on oath of documentation concerning the following:
 - (a) consideration by or on behalf of the Government of the LHMU Wages Claim;
 - (b) advice (not including legal advice) about the LHMU Wages Claim;
 - (c) economic analyses of or concerning the LHMU Wages Claim;
 - (d) the application of the Government’s Public Sector State Wages Policy to the LHMU Wages Claim.”

- 4 Given the impending dates of hearing of the substantive claims, the Commission in Court Session heard the interlocutory application on 8 February 2010. At the hearing of the application, the LHMU, after making only limited submissions in support of the application, was granted leave by the Commission in Court Session to file and serve written submissions in reply by 9 February 2010, which it has done through its counsel, Mr Hooker.
- 5 For the purposes of dealing with this application, we will also refer to the written outline of submissions and annexures provided by Mr Bathurst, counsel appearing on behalf of the various State Government entities who are the respondents to which these proceedings relate.
- 6 Additionally, we should also observe that during the course of the hearing on 8 February, the State Government made an oral application for particulars and discovery, in relation to the LHMU's wages claim. This application was previously expressed in a letter from the State Solicitor's Office to the LHMU dated 4 February 2010 which relevantly provides as follows:

“Particulars and Discovery by the LHMU

Would you please provide, within five days of the date of this letter, particulars of the grounds upon which the LHMU claims that it is entitled to the pay increases it seeks. If it is alleged that there has been work value changes for any classification of employee in question, would you please specify the exact nature of that alleged change, when it allegedly occurred and how the LHMU claims it is to be valued. Further, if it is alleged that any amount of the pay rise sought is justifiable on the basis of gender discrimination or inequality, please specify the exact nature of that alleged discrimination or inequality and why it is said to justify a wage increase.

Would you please also provide, within five days of the date of this letter, discovery of all documentation in the LHMU's possession, custody or power concerning any alleged:

- (a) change in work value for any classification of employee in question; and
- (b) gender discrimination or inequality which is said to justify a wage increase.”

- 7 We will deal with both applications in these reasons.

Particulars

- 8 The Commission is empowered by s 27(1)(o) of the Act to make such orders as may be just with respect to any interlocutory proceedings to be taken before the hearing of any matter, including delivery of particulars of claims of all parties, discovery, inspection or production of documents. As a matter of general principle, a party to proceedings before the Commission is entitled to reasonably know the case brought against it. The relevant provisions of the *Industrial Relations Commission Regulations 2005* (“the Regulations”) require applicants and respondents to particularise their claims or answers respectively.
- 9 Furthermore, as in the present proceedings, by r 22 of the Regulations, it is open to a party to any matter before the Commission to apply to the Commission in Chambers for an order that any other party to the matter furnish further and better particulars of any claim, answer, counter-proposal or other matters stated in or in relation to the matter.
- 10 In the present context, the circumstances of the claims are somewhat unusual. This is the first application pursuant to s 42G of the Act, whereby the Commission in Court Session is being asked to determine the rates of pay to have application in the Agreements upon their registration by the Commission in Court Session. The only “claims” before the Commission in Court Session, as such, are set out in the “Agreement For Arbitration” annexed to the applications. The relevant part of this for present purposes is as follows:

“The LHMU will argue for wage increases of 7%, 6.5%, 6.5% and the Government respondents will argue for wage increases of 2.5%, 2.5% and 3%”.

- 11 As to the LHMU application for particulars, counsel for the respondents submitted that in their letter of 4 February 2010 to the LHMU, the respondents have set out particulars of their position. The particulars are as follows:

“The Government's proposed pay increase of 8% over 3 years:

- (a) in accordance with the Public Sector Wages Policy 2009, maintains the real value of wages for the employees in question;
- (b) reflects the fact that the LHMU has not agreed to any efficiencies or work practice reform initiatives being included in the relevant industrial agreements;
- (c) reflects the fact that there has not been any changes, or alternatively, material changes, in work value for the employees in question;
- (d) is appropriate given the budgetary constraints facing the State and the difficult economic circumstances;
- (e) is appropriate taking into account the size of the Western Australian Public Sector and the adverse budgetary consequences if inappropriately large pay increases were to flow on to other employee groups;
- (f) is fair in all the circumstances.”

- 12 In our view, the above sets out with reasonable particularity the basis for the respondents' position in relation to the wage increases to apply in the Agreements. We are not persuaded that any further particularity is necessary in order to enable the LHMU to adequately understand the case it has to meet. Accordingly, the LHMU application for further particulars is refused.
- 13 In terms of the the respondents' request for particulars of the LHMU claim, in our opinion, the the respondents, consistent with the principles to which we have just referred, are entitled to know the general basis of the claim they will be required to meet at the hearing of the applications. We note that no issue was taken with this in paragraph [9] of the written submissions filed by the LHMU. Indeed it has undertaken to provide particulars and discovery in a "reasonable time". Nonetheless, given the impending dates of hearing of the substantive claims we consider that the LHMU should be required to provide particulars of its claim within a defined timetable, which we deal with in the order to issue.

Discovery

- 14 It is fair to say that the primary focus of the oral and written submissions of the parties was in relation to the matter of discovery of documents in relation to the claims.

Relevant Principles Regarding Discovery

- 15 It is trite to observe that in this jurisdiction, discovery is not available as of right. Rather it is for a party making an application for an order under s 27(1)(o) of the Act to establish that it would be just for such an order to be made: *ALHMWU and Others v. Burswood Resort Management (Ltd) and Others* (1995) 75 WAIG 1801.
- 16 Relevantly, in *Burswood*, the Full Bench considered the approach to be taken in this jurisdiction in relation to applications for discovery and said at 1805:

"The Commission may therefore only make an order if such an order is just (see *Springdale Comfort Pty Ltd t/a Dalfield Homes v. BTA (op cit)* (IAC).

S.26(1)(a) of the Act would not seem to be excluded from operation by the words of s 27(1)(o) but we do not think that it alters the question to be asked and answered under s.27(1)(o).

It is for the applicant for an order under s.27(1)(o), to establish that it is just for such an order to be made. The expression "just" means "right and fair, having reasonable and adequate grounds to support it, well-founded and conformable to a standard of what is proper and right". (see *Loxton v. Ryan* (1921) State Reports (Qld) 79 at 84, 88 per Lukin J). Perhaps more appositely in *Smith's Weekly Publishing Co Ltd v. Sunday Times Newspaper Co Ltd (op cit)*, which was a case relating to discovery of documents Isaacs and Rich JJ at page 562 held that "just" means "just according to law".

- 17 Generally speaking, if an order for discovery is made, it may be made requiring the parties to the proceedings to furnish a list to one another, setting out a list of documents which are or have been in the party's possession or power, relating to any matter in question in the proceedings. This will include documents which may advance a party's case or damage the case of its opponent, or otherwise which may fairly lead to a train of inquiry in connection with the subject matter of the proceedings: *Compagnie Financiere et Commerciale du Pacifique v. The Peruvian Guano Company* (1882) 11 QBD 55 per Brett LJ at 63.

Contentions of Parties

- 18 The LHMU submitted that a number of issues will be contested in these proceedings such that its general request for discovery should not be regarded as oppressive. It submitted that these issues will include:
- (a) An erosion of the value of LHMU members' salaries compared to other public sector employees in particular nurses, teachers, and police;
 - (b) State Government expenditure in areas of policy and reform taking precedence over and above fair and reasonable remuneration for LHMU members proposed to be covered by the Agreements; and
 - (c) The general operation and effect of the State Government's Wages Policy particularly as to how and to what extent the Wages Policy applies to the claims.
- 19 There were also general submissions made by the LHMU that the position adopted by the State Government that the LHMU's request is oppressive is dubious, given the resources of the State and the LHMU's assertion that the State Government had previously advised that no such documents were in its possession, custody or power.
- 20 Counsel for the respondents submitted that the general request for discovery of all documents in its possession, custody or power relating to any matter in issue in the proceedings for the arbitration of the LHMU Wages Claim is of such a width as to make it oppressive. Additionally, a further submission was made by counsel to the effect that there has been an accepted practice in Australia for many years that in proceedings of this kind, internal working documents of parties are, other than in exceptional circumstances, not discoverable: *Re Federated Clerks Union of Australia* Print H2892; *Construction, Forestry, Mining and Energy Union v. A Aarons Waterbed Centre and Others* Print N4704; *The Amalgamated Metal Workers' and Shipwrights Union and Electricity Trust of South Australia and Others* Print E3438.
- 21 These decisions relied upon by counsel for the respondents were decisions of the Australian Industrial Relations Commission and its predecessors in relation to summonses for production of documents in the absence of any general power for the provision of discovery and inspection of documents under the relevant Commonwealth legislation. Having considered the

authorities to which counsel referred, with respect, we do not agree with the approach taken in those decisions. We do not consider they have application in this jurisdiction, where no such general principle has been endorsed. In our opinion, the approach to be taken is that as set out in *Burswood*, that being for the Commission in Court Session to consider whether an application for an order under s 27(1)(o) of the Act is just in all of the circumstances of the case.

Consideration

- 22 One of the respondents' claim for an order is that the LHMU provide discovery of all documentation in its possession, custody or power concerning any alleged change in work value for any change in work value for any classification of employee in question and gender, discrimination or inequality which is said to justify a wage increase. In relation to this, we note the preparedness of the LHMU in paragraph [9] of its written submissions to comply with the respondents' request.
- 23 Additionally, we observe that discovery is confined to what is in issue on the pleadings (*Burswood* supra at 1805). In this case we are not prepared to require the LHMU to give discovery in advance of the provision by it of its particulars. We are prepared to accept that the LHMU will provide discovery in accordance with its position in paragraph [9] of the written submissions and a liberty to apply may be exercised by the respondents if it is needed.
- 24 In relation to the LHMU claim for an order for discovery on oath of all documentation in the possession, custody or power of the Government relating to any matter and issue in the proceedings for the arbitration of the LHMU wages claim, we observe firstly that an order can only issue against the respondents and not the State Government. Even so, we consider the wording "any matter in issue" to be too broad in the absence of the LHMU's particulars. We also consider such an order would be oppressive for that reason.
- 25 We do not think an order should specifically include consideration by or on behalf of the Government of the LHMU wages claim. In our view, the relevant position of the respondents is the respondents' final position and in any event we consider an order in such terms would be too broad. We are also of the view that any advice to the Government about the LHMU wages claim is not relevant.
- 26 However, given the respondents' particulars outlined above, and paragraph 5(c) of the LHMU's written submissions, we do consider it is just that an order should issue in the terms of subparagraphs (2)(c) and (d) of the schedule to the LHMU's application, namely:
- “(c) economic analyses of or concerning the LHMU wages claim;
- (d) the application of the Government Public Sector State Wages Policy to the LHMU wages claim.”
- 27 We propose to order accordingly.

Mode of Taking Evidence

- 28 The parties have informed us that evidence that will be adduced from approximately 24 witnesses in total. Some 20 witnesses are to be called by the LHMU and four by the respondents. In this connection, the respondents have requested that the Commission in Court Session make orders for the filing and service of witness statements to stand as the evidence in chief of the maker. The LHMU appears not to oppose the provision of witness statements as such, however, it wishes to call six witnesses to give their evidence in chief orally.
- 29 The Commission has the power under s 27(1)(hb) of the Act to require evidence or argument to be presented in writing. Additionally, modern case management principles, in particular where a large number of witnesses are to be called in proceedings, contemplate the making of orders for the use of witness statements in appropriate cases. We consider that such an order should be made in this case given the parties agreed position that the matter be listed for or hearing for six days. This will assist in enabling the matter to be completed within the agreed time.
- 30 However, we also acknowledge the request by the LHMU to call evidence in chief orally from some of its witnesses. In paragraph 10 of its written submissions the LHMU says that at this stage it does not intend to call more than six witnesses for this purpose. Subject to what follows, the orders to issue in relation to the filing and service of witness statements will make provision for this and, as a matter of balance, it will also extend to the respondents.

Case Management Generally

- 31 The proceedings have been listed for hearing for six days commencing on 10 March 2010. The requested length of hearing and the commencement date arise from an agreement between the parties which the Commission in Court Session has accommodated. In these circumstances, the Commission in Court Session wishes to observe that the parties should tailor the presentation of their cases in order that the matter can be completed within the agreed time. The Commission in Court Session also refers to the case management powers that it has under s 27(1)(ha) of the Act, which include the power to determine periods reasonably necessary for the fair and adequate presentation of the respective cases of the parties to the proceedings and require the cases to be presented within the respective periods. The Commission in Court Session foreshadows that it will consider the use of these powers if it becomes necessary in the circumstances of this case. Despite the foregoing, if for whatever reason, the matters require further listing dates, we wish to state that while every consideration will be given to the availability of counsel, the Commission has an obligation to act with as much speed as the requirements of the Act and a proper consideration of the matter before it permit and the availability of counsel will not be determinative of that obligation.
- 32 A minute of proposed order now issues.
-

2010 WAIRC 00063

**GOVERNMENT SERVICES (MISCELLANEOUS) GENERAL AGREEMENT, 2010 EDUCATION ASSISTANTS'
(GOVERNMENT) GENERAL AGREEMENT 2010**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

THE LIQUOR, HOSPITALITY AND MISCELLANEOUS UNION (WA BRANCH)

APPLICANT

-v-

THE EXECUTIVE DIRECTOR DEPARTMENT OF EDUCATION AND THE EXECUTIVE
DIRECTOR LABOUR RELATIONS DIVISION, DEPARTMENT OF COMMERCE

RESPONDENTS

CORAM

CHIEF COMMISSIONER A R BEECH

COMMISSIONER S J KENNER

COMMISSIONER S M MAYMAN

DATE

FRIDAY, 12 FEBRUARY 2010

FILE NO/S

AG 1 OF 2010, AG 3 OF 2010

CITATION NO.

2010 WAIRC 00063

Result

Order made regarding provision of particulars, discovery and witness statements

Representation**Applicant**

Mr B. Owen

Respondents

Mr R. Bathurst (of counsel)

Order

HAVING HEARD Mr B. Owen on behalf of the applicant and Mr R. Bathurst (of counsel) on behalf of the respondents, the Commission in Court Session acting pursuant to s 27(1)(o) of the *Industrial Relations Act, 1979* hereby makes the following orders:

1. THAT the application by the Liquor, Hospitality and Miscellaneous Union ("LHMU") for particulars of the grounds upon which the Government denies that the LHMU is entitled to the pay increase it seeks is dismissed.
2. THAT by 15 February 2010 the LHMU file and serve upon the respondents particulars of the grounds upon which it claims that it is entitled to the pay increases it seeks.
3. THAT liberty is reserved to the respondents to seek an order for discovery following the provision of particulars by the LHMU.
4. THAT by 26 February 2010 the respondents give to the LHMU informal discovery and inspection of all documents which are in their respective custody, possession, power or control and which relate to:
 - (a) the economic analyses of or concerning the LHMU Wages Claim;
 - (b) the application of the Public Sector Wages Policy 2009 to the LHMU wages claim in this matter.
5. THAT other than as provided elsewhere in this order, evidence in chief be given by way of signed witness statements which will stand as the evidence in chief of the maker.
6. THAT by 3 March 2010 the parties file and serve upon one another any signed witness statements upon which they intend to rely.
7. THAT the LHMU and the respondents respectively may adduce oral evidence from no more than 6 witnesses.
8. THAT by 8 March 2010 the LHMU and the respondents file and serve an outline of submissions and any authorities upon which they intend to rely.
9. THAT the parties or any of them have liberty to apply at short notice to vary this order.

(Sgd.) A R BEECH,
Chief Commissioner,
Commission In Court Session.

[L.S.]

2010 WAIRC 00067

**GOVERNMENT SERVICES (MISCELLANEOUS) GENERAL AGREEMENT, 2010 EDUCATION ASSISTANTS'
(GOVERNMENT) GENERAL AGREEMENT 2010**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

THE LIQUOR, HOSPITALITY AND MISCELLANEOUS UNION (WA BRANCH)

APPLICANT

-v-

THE EXECUTIVE DIRECTOR DEPARTMENT OF EDUCATION AND THE EXECUTIVE
DIRECTOR LABOUR RELATIONS DIVISION, DEPARTMENT OF COMMERCE

RESPONDENTS

CORAM

CHIEF COMMISSIONER A R BEECH
COMMISSIONER S J KENNER
COMMISSIONER S M MAYMAN

DATE

TUESDAY, 16 FEBRUARY 2010

FILE NO.

AG 1 OF 2010, AG 3 OF 2010

CITATION NO.

2010 WAIRC 00067

Catchwords

Speaking to the minutes – Industrial Relations Act, 1979 s 35(1)

Result

Order issued

Supplementary Reasons for Decision

- 1 This is our unanimous decision. The parties were given an opportunity to speak to the Minutes by way of written submissions. The LHMU submitted that the Minutes of Proposed Orders accurately reflect the reasons for decision and opposed any change to the Minutes in response to the respondents' submissions. The respondents raised three issues.
- 2 The first matter raised by the respondents is that to ensure there can be no misapprehension as to what is required by way of particulars to be provided by the LHMU, Order 2 of the Minutes should be amended so that the particulars should include, without limitation:
 - (a) the percentage increase that the LHMU alleges each classification of employee in question is entitled to;
 - (b) if it is alleged that there has been any work value changes for any classification of an employee in question, the exact nature of that alleged change, when it allegedly occurred and how the LHMU states it is to be valued; and
 - (c) if it is alleged that any amount of the pay rise sought is justifiable on the basis of gender discrimination or inequality, the exact nature of that alleged discrimination or inequality and why it is said to justify a wage increase."
- 3 We are of the view that the Minutes which issued reflect the decision reached by the Commission in Court Session. We considered the respondents are entitled to know the general basis of the claim they will be required to meet at the hearing of the applications and we noted the response of the LHMU in paragraph [9] of its written submissions which undertakes to provide the particulars. We do not propose to anticipate what those particulars might be. In the event that the respondents consider that insufficient particularity has been provided, the liberty to apply reserved to the parties is exercisable at short notice.
- 4 The respondents next point out that in Order 2 the date of 27 February 2010 is a Saturday. It had been the intention of the Commission in Court Session to refer to the preceding Friday which is 26 February 2010 and this change will be made.
- 5 Finally, the respondents foreshadow that it is likely they will need to lead evidence in rebuttal to the evidence provided by the LHMU. They request that the Minutes clarify that at the hearing either party may lead evidence in rebuttal to the witness statements filed and served by the other party.
- 6 We note that the reasons which were issued did not deal with evidence in rebuttal (or perhaps statements in reply). We are of the view that whether statements in reply are needed is an issue which will only be known once all witness statements are available, and accordingly we believe this issue is one that is better dealt with at the commencement of the hearing. No change will be made to the Minutes in this regard.
- 7 Therefore, the Order will issue in the terms of the Minutes other than for the correction of the date of 26 February 2010.

2010 WAIRC 00084

**GOVERNMENT SERVICES (MISCELLANEOUS) GENERAL AGREEMENT, 2010 EDUCATION ASSISTANTS'
(GOVERNMENT) GENERAL AGREEMENT 2010**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

THE EXECUTIVE DIRECTOR DEPARTMENT OF EDUCATION;
THE EXECUTIVE DIRECTOR LABOUR RELATIONS DIVISION, DEPARTMENT OF
COMMERCE

APPLICANTS

-v-

THE LIQUOR, HOSPITALITY AND MISCELLANEOUS UNION (WA BRANCH)

RESPONDENT

CORAM

CHIEF COMMISSIONER A R BEECH
COMMISSIONER S J KENNER
COMMISSIONER S M MAYMAN

DELIVERED

WEDNESDAY, 24 FEBRUARY 2010

FILE NO.

AG 1 OF 2010, AG 3 OF 2010

CITATION NO.

2010 WAIRC 00084

Catchwords

Practice and procedure - Further and better particulars - Discovery and inspection of documents -
Orders made - Industrial Relations Act, 1979 s 27(1)(o)

Result

Order to issue

Representation**Applicant**

Mr R. Bathurst (of counsel)

Respondent

Mr B. Owen

Further Reasons for Decision

- 1 This is our unanimous decision. We announced at the conclusion of the proceedings that we intended to issue our decision as soon as possible with brief written reasons to follow. A minute of proposed order has issued and these are the reasons for that order.
- 2 The respondents filed an application for further and better particulars on 18 February 2010 in response to the particulars of the LHMU's wages position filed on 15 February 2010. We listed the application urgently and what follows are our reasons for the order we have made. Necessarily, these Reasons will be brief and follow on from and adopt our earlier Reasons ([2010] WAIRC 00059).
- 3 We commence by noting a significant deficiency in the particulars provided by the LHMU on 16 February 2010 when compared with the undertakings given by it in its earlier written submissions of 9 February 2010. We refer to:
 - (a) the LHMU statement at [5](b) in its written submission that numerous examples of government effecting spending on areas of policy and reform will be particularised; and
 - (b) the undertaking at [9] to provide the particulars requested by the respondents in the letter from the State Solicitor's Office of 4 February 2010 which, for ease of reference, were:
 - particulars of the grounds upon which the LHMU claims that it is entitled to the pay increases it seeks. If it is alleged that there has been work value changes for any classification of employee in question, would you please specify the exact nature of that alleged change, when it allegedly occurred and how the LHMU claims it is to be valued. Further, if it is alleged that any amount of the pay rise sought is justifiable on the basis of gender discrimination or inequality, please specify the exact nature of that alleged discrimination or inequality and why it is said to justify a wage increase.
- 4 The Commission in Court Session accepted this latter undertaking in its Reasons for Decision [2010] WAIRC 00059 at [23] and especially in the Supplementary Reasons [2010] WAIRC 00067 at [3] as the basis for not ordering the particulars to be provided. We express our extreme disappointment that the LHMU has not done so.
- 5 We have previously stated in our Reasons for Decision at [13] that the respondents are entitled to know the general basis of the claim they will be required to meet. We consider, given the previous undertaking by the LHMU to provide greater detail of at least some of the issues now requested and also the submissions of the respondents, that it is appropriate for the LHMU to provide greater detail of its position. We consider that it will assist in the proper preparation for the hearing for the respondents to know in greater detail the case it has to meet.

- 6 We acknowledge the relatively tight timeframe the parties have imposed upon themselves for the hearing of this matter and that the resources of the LHMU may be limited compared to the resources available to the respondents. In turn, the scope we have to give practical recognition of any limitation is itself limited to the parties' own timeframe.
- 7 As to paragraph 1 of the particulars, we consider it is not apparent on what basis the LHMU is saying that its members are treated unfairly and that the respondents are entitled to know the basis. Similarly in relation to paragraph 2, we consider the respondents are entitled to know the basis for arguing that the Government Wages Policy does not maintain the real wages of the LHMU's members.
- 8 As to paragraph 3(c) of the particulars, we consider the reference to "State Government utilities" is sufficiently descriptive of what is being referred to. In relation to paragraph 3(d) we refer to the undertaking of the LHMU in its written submission to give these particulars and we shall require them to do so. Similarly in relation to 3(e) the LHMU has already undertaken to supply these particulars in the context of the letter from the SSO of 4 February 2010. We will require this to be done. In relation to the valuation of any change in work roles and work value, we consider the wording in the letter from the SSO of 4 February 2010 to be preferable to the currently proposed wording because the LHMU's valuation may not necessarily be by way of dollar value.
- 9 We consider the request for particulars relating to non-adherence to Government Wages Policy should be clarified as requested given the LHMU's written submissions at [5](a).
- 10 We are also of the view that discovery should be ordered as requested. We note the preparedness of the LHMU to do so in its written submission at [9].
- 11 The final matter is the respective dates of operation. We consider the particulars to be provided ought be able to be provided by the end of this week, that being 26 February 2010. We do take into account the LHMU's submissions as to its limited resources and we are prepared to give the LHMU to the midday of an additional working day to provide discovery. That is the Tuesday after the long weekend, being Tuesday 2 March 2010. According to Order 4 of 12 February 2010 ([2010] WAIRC 00063) the respondents are to give discovery to the LHMU by 26 February and we consider in fairness to both parties, the dates of discovery should be aligned. The order to issue will therefore also vary that earlier order accordingly. This was not a matter raised by either party nor by the Commission in Court Session during the proceedings and accordingly we will extend an opportunity to be heard in writing on this issue prior to finalising the order to issue from these proceedings.
- 12 In all other respects, we have requested any submissions by way of speaking to the minutes to be made in writing to us.

2010 WAIRC 00087

**GOVERNMENT SERVICES (MISCELLANEOUS) GENERAL AGREEMENT, 2010 EDUCATION ASSISTANTS'
(GOVERNMENT) GENERAL AGREEMENT 2010**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

THE EXECUTIVE DIRECTOR DEPARTMENT OF EDUCATION ;

THE EXECUTIVE DIRECTOR LABOUR RELATIONS DIVISION, DEPARTMENT OF
COMMERCE**APPLICANTS**

-v-

THE LIQUOR, HOSPITALITY AND MISCELLANEOUS UNION (WA BRANCH)

RESPONDENT**CORAM**

CHIEF COMMISSIONER A R BEECH

COMMISSIONER S J KENNER

COMMISSIONER S M MAYMAN

DATE

WEDNESDAY, 24 FEBRUARY 2010

FILE NO/S

AG 1 OF 2010, AG 3 OF 2010

CITATION NO.

2010 WAIRC 00087

Result

Order made regarding provision of particulars and discovery; Previous Order varied

Representation**Applicant**

Mr R. Bathurst (of counsel)

Respondent

Mr B. Owen

Order

HAVING HEARD Mr R. Bathurst (of counsel) on behalf of the applicants and Mr B. Owen on behalf of the respondent, the Commission in Court Session acting pursuant to s 27(1)(o) of the *Industrial Relations Act, 1979* hereby makes the following orders:

PARTICULARS

THAT by 26 February 2010:

1. The LHMU state precisely each fact or circumstance relied upon to support the allegation that the timing and implementation of the Government Wages Policy treats the members of the LHMU unfairly and inequitably.
2. The LHMU state precisely each fact or circumstance relied upon to support the allegation that the Government Wages Policy does not maintain the real wages of LHMU members.
3. The LHMU provide full particulars of the "current trends in WA Government spending".
4. As to paragraph 3(e) of the Particulars, provide particulars of the alleged changes in work roles and work value performed by LHMU's members, including, but not limited to, particulars of:
 - (a) The exact nature of the alleged changes in work roles and work value;
 - (b) When the alleged changes occurred; and
 - (c) How the LHMU claims the changes are to be valued.
5. As to paragraph 4 of the Particulars, state precisely each fact or circumstance relied upon to support the allegation that the Government Wages Policy has not been adhered to including, but not limited to, particulars of:
 - (a) When it is alleged the Government Wages Policy came into force; and
 - (b) Which other groups of employees have allegedly received wage increases which were not in adherence with the Government Wages Policy and when those increases were granted.

DISCOVERY

THAT the LHMU serve on the Applicants by midday 2 March 2010, by way of informal discovery, any documents in its possession, custody or power concerning:

1. The LHMU's claim at paragraph 1 of the Particulars that the Government Wages Policy, both in timing and implementation, treats the members of the LHMU unfairly and inequitably;
2. The LHMU's claim at paragraph 2 of the Particulars that the Government Wages Policy does not maintain the real wages of LHMU members;
3. The LHMU's claim at paragraph 3(e) of the Particulars that there have been changes in the work roles and work value performed by LHMU's members concerned; and
4. The LHMU's claim at paragraph 4 of the Particulars that the Government Wages Policy has not been adhered to for other groups of employees whose workforce is predominately male, and that it is unfair to strictly adhere to the wages policy in respect of the members the subject of this claim, who are predominately female.

AND the Commission in Court Session hereby further orders:

THAT the date of 26 February 2010 in Order 4 of the Order of 12 February 2010 ([2010] WAIRC 00063) be deleted and replaced with the date of midday 2 March 2010.

(Sgd.) A R BEECH,
Chief Commissioner,
Commission In Court Session.

[L.S.]

INDUSTRIAL MAGISTRATE—Claims before—

2010 WAIRC 00110

PARTIES

WESTERN AUSTRALIAN INDUSTRIAL MAGISTRATES COURT
TRANSPORT WORKERS' UNION OF AUSTRALIA

CLAIMANT

-v-

TWENTIETH SUPERPACE NOMINEES PTY LTD T/AS SCT LOGISTICS

RESPONDENT

CORAM

INDUSTRIAL MAGISTRATE G. CICCHINI

HEARD

MONDAY, 7 DECEMBER 2009, TUESDAY, 8 DECEMBER 2009, WEDNESDAY, 9
DECEMBER 2009, THURSDAY, 10 DECEMBER 2009

DELIVERED

WEDNESDAY, 3 MARCH 2010

CLAIM NO.

M 8 OF 2009, M 9 OF 2009, M 10 OF 2009

CITATION NO.

2010 WAIRC 00110

CatchWords	Alleged breach of clause 19.4.2 of the SCT, Forrestfield WA Agreement 1999, clause 19.4.2 of the SCT Logistics Perth WA Agreement 2003; and clause 19.4.2 of the SCT Logistics Perth WA Agreement 2006; Allegation that three of the Claimant's members employed by the Respondent were unable to take lunchbreaks; Claim for overtime payments for working through lunchbreaks.
Legislation	<i>Workplace Relations Act 1996</i>
Industrial Instruments	<i>Transport Workers Award 1998</i> <i>SCT Forrestfield WA Agreement 1999</i> <i>SCT Logistics, Perth WA Agreement 2003</i> <i>SCT Logistics Perth WA Agreement 2006</i>
Cases Cited	<i>Metropolitan Health Services Board v Australian Nursing Federation</i> (2000) 98 IR 390 <i>Briginshaw v Briginshaw</i> [1938] 60 CLR 336 <i>Toll (FGCT) Pty Ltd v Alphapharm Pty Ltd</i> (2004) 219 CLR 165 <i>Pacific Carriers Ltd v BNP Paribas</i> [2004] HCA 35 <i>Kucks v CSR Ltd</i> (1996) 66 IR 102 <i>AMIEU v Coles Supermarkets Australia Pty Ltd</i> (1998) 80 IR 208
Cases Referred to in Judgement	<i>Project Blue Sky Inc and Others v Australian Broadcasting Authority</i> [1998] 194 CLR 355 <i>City of Wanneroo v Holmes</i> (1987) 30 IR 362 <i>BHP Billiton Iron Ore Pty Ltd v Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers (Western Australian Branch)</i> [2006] WASCA 124
Result	Claims Proven
Representation	
Claimant	Mr S. Millman instructed by <i>Messrs Slater and Gordon Lawyers</i> appeared for the Claimant.
Respondent	Mr M. Rinaldi with Mr C Broadbent instructed by <i>Marsh and Maher</i> appeared for the Respondent.

REASONS FOR DECISION

Background

- 1 The Respondent is a national transport and logistics company with its main office in Victoria. It undertakes rail and road bulk transport operations in Australia, primarily providing rail transport across the continent, and road transport along the north-south transport corridors of eastern Australia. It owns and operates locomotives and rolling stock systems on the east-west rail network. These are connected through modal facilities in New South Wales, Victoria, South Australia and Western Australia.
- 2 In Western Australia it operates a localised distribution network centred at its Forrestfield depot where rail freight is received. From that place it distributes stock by road transport within the Perth metropolitan and outer metropolitan areas and to Bunbury. From time to time it also services more distant locations such as Albany and Geraldton; however most of its long distance road transport is carried out by a third party carrier. It also conducts a third party logistics operation on behalf of the Fosters Group from premises adjacent to its Forrestfield depot.
- 3 Timothy Falconer, Mitchell O'Brien and Bernie Williams, all members of the Transport Workers Union (TWU), work for the Respondent at its Forrestfield depot. They are longstanding employees of the Respondent. Mr Falconer and Mr O'Brien are engaged to drive trucks. They drive "B double" configured trucks and sometimes semi trailers in delivering stock to client distribution centres and other places. Mr Williams on the other hand is engaged to drive a forklift at the Forrestfield depot. His primary responsibility is to unload and back load trains. He sometimes is engaged in moving stock to and within warehouses. In each case their duties have remained unchanged for many years and were as described during the material period.

Industrial Instruments

- 4 The employment of Mr Williams, Mr O'Brien and Mr Falconer has, during the relevant period, been regulated by the *Transport Workers Award 1998* (the Award) and a number of enterprise bargaining agreements (EBAs). The EBA prevails over the Award, to the extent of any inconsistency. The first EBA namely *SCT Forrestfield WA Agreement 1999* (1999 Agreement) came into force in November 1999 and was replaced in August 2003 by the *SCT Logistics Perth WA Agreement 2003* (2003 Agreement). The 2003 Agreement was in turn replaced in 2006 by the *SCT Logistics Perth WA Agreement 2006* (2006 Agreement).

Claims and Response

- 5 The Claimant alleges that the Respondent is in breach of the 1999, 2003 and 2006 Agreements by not paying Mr Williams, Mr O'Brien and Mr Falconer their correct entitlements for having worked through their lunchbreaks in circumstances where they were unable to have a lunchbreak.

Truck Drivers

- 6 It is alleged that from March 2003 until December 2007 Mr O'Brien and Mr Falconer were unable to take a lunch or meal break because the system of work adopted by the Respondent was such that it made no provision for taking a lunch or meal break. Half an hour's pay at double time is claimed for each day worked.
- 7 The Respondent contends that truck drivers were at all relevant times able to take and did take paid lunchbreaks. They were never requested to defer their lunch. Indeed there was never an inability to have a lunchbreak. Most truck drivers with some exceptions preferred to not take an unpaid lunchbreak because it suited their purposes providing them with advantages such as earlier finishing times or more pay.
- 8 The Respondent asserts that the lunchbreaks issue has only arisen because of the changes made in February 2008, enforcing the taking of an unpaid half hour lunchbreak. Prior to then, there had never been any complaint by drivers or by the Respondent about the lunchbreak practice or any suggestion that truck drivers had been incorrectly paid.

Forklift Driver

- 9 The Claimant alleges that Mr Williams was, on occasions during the period April 2003 to December 2007, directed to work through his lunchbreak and although paid for having done so was not paid his correct entitlement that is at overtime rates.
- 10 The Respondent contends that Mr Williams' claim that he was directed to work through his lunchbreak on the material dates is both unsubstantiated and incorrect. The Respondent suggests that his claims are not credible and should not be accepted.

Relevant Employment Conditions

Hours

- 11 Each EBA required fulltime employees to work a 10 hour day, consisting of 8 hours at ordinary time and 2 hours of overtime four days per week. Employees could also choose to work a 5th day consisting of 7.6 hours payable at ordinary rates. If they chose to work a 5th day, they were not required to work the full day however they were required to work for at least 4 hours on that day. Any time worked in excess of 7.6 hours on 5th day was payable at overtime rates. That arrangement continues.

Meal break/Lunchbreak

- 12 The Award allowed employees to take a daily regular unpaid meal break of between 30 minutes and one hour during the ordinary hours of work except where unforeseen extraordinary circumstances arose which made the taking of the regular meal break impracticable.
- 13 It provided and continues to provide:

- 36 Meal Times
- 36.1 Regular meal break
- 36.1.1 An employee shall be allowed a regular meal break during the ordinary hours of work except where unforeseen extraordinary circumstances arise which make the allowance of the regular meal break impracticable.

- 14 The meal break shall:

- 36.1.1(a) be of a regular duration of not more than one hour or less than 30 minutes;
- 36.1.1(b) commence not earlier than three and one-half hours after an employee's fixed starting time of the ordinary hours of work; and
- 36.1.1(c) commence not later than five and one-half hours after an employee's fixed starting time of the ordinary hours of work.
- 36.1.2 Provide that in respect of 36.1.1(b) and 36.1.1(c), where it is reasonable and practicable the meal break shall be arranged to be in balance with the ordinary hours of work.
- 36.1.3 If the meal break is not allowed, all time worked after the commencement time of the regular meal break until a break without pay for a meal time is allowed shall be paid for at the rate of ordinary time, the payment to be in addition to any payment due in respect of a weekly or casual wage.

- 15 The applicable EBA provisions relating to lunchbreaks provided:

CLAUSE 19.4.2 Driver Employees ect

Driver employees agree to defer lunchbreaks upon request and will continue at ordinary rate of pay until such time that a lunchbreak is available. If an employee is unable to have a lunchbreak, then that employee will be paid at an additional 30 minutes overtime. An employee may request a lunchbreak and approval may not be withheld. Lunchbreaks may be allocated by management to drivers on return to yard during each shift which if allocated must be taken.

- 16 Although only subclause 19.4.2 of the 2006 Agreement has been reproduced above the relevant clauses in the 1999, 2003 are the same as the 2006 Agreement except that the word “an” is missing before the words “additional 30 minutes overtime” in the 2003 Agreement.
- 17 The Award and the EBAs use different terms relating to the taking of a break for a meal or lunch. In my view, nothing turns on the use of different terminology. Clearly each provision is aimed at ensuring that an employee is able to take a timed, unpaid break in order to have a meal and/or do other things or to receive payment in lieu thereof in the event that it is unable to be taken.
- 18 The terms “lunchbreak” and “meal break” are not defined in the respective industrial instrument in which they are found. The common link with respect to each is that the word “break” is used. “Break” is defined in the Shorter Oxford Dictionary to mean;
“To rupture union or continuity; to disrupt; to stop for the time...”
- 19 It follows that in order to have a meal break or a lunchbreak there must a disruption to work and discontinuance of it. It must necessarily entail stopping for the time required by the applicable industrial instrument, primarily to facilitate the consumption of lunch or a meal.

Issues to be Determined

- 20 The pivotal issues to be determined in these matters are whether during the material period Mr O’Brien, Mr Falconer and Mr Williams were:
1. requested by the Respondent to defer their lunchbreak; and
 2. unable to have a lunchbreak.
- 21 The Respondent submits that in order to prove its claim the Claimant must establish that on each relevant day the men were requested by the Respondent to defer or not to take their lunchbreak and they were unable to have a lunchbreak. On the other hand the Claimant seems to suggest that all that is required is establish that the men were unable to take a lunchbreak.
- 22 I accept the Respondent’s submission. A proper construction of the subclause requires both elements to be satisfied.

Witnesses

- 23 The Claimant called Mr O’Brien, Mr Falconer, Mr Williams and its employee Mr Joshua Dalliston. Mr Dalliston prepared a number of spread sheets (exhibits 4.1, 4.2 and 4.3) using information contained on Mr O’Brien, Mr Falconer, and Mr Williams’ time cards (Exhibit 5 volumes 1-3) in order to particularise the claims.
- 24 The Respondent called a number of its current and past employees. They were Mr Bradley Moore, its current State Manager, his predecessor Mr Neil Griffiths, who now works for another transport company, Mr Douglas James, its former Operations Manager who retired in 2008, Mr Mark Pitcher, its current Refrigeration Manager and former Operations Manger who before then was a truck driver working for the Respondent, Mr Andrew Gunn, Transport Manager at the Fosters warehouse, Mr Edward Davies, its Operations Manager for Rail and Mr Stephen Walker, its current Transit Operations Manager.

Assessment of Witnesses

- 25 Mr O’Brien, Mr Falconer and Mr Williams gave their evidence in an open, forthright, unequivocal and seemingly honest manner. Much of their evidence has not been contradicted and in any event is supported by the documentary evidence. They stood firm when challenged under cross-examination. There is no reason as to why their evidence should not be accepted. I prefer their evidence where there is direct conflict.
- 26 The evidence given by Mr Moore is of little assistance given that much of what is in issue predated his employment. Mr Gunn’s evidence lacked relevance. Mr Pitcher’s evidence was anecdotal and lacked detail with respect to Mr O’Brien and Mr Falconer. The evidence given by Mr Griffiths, Mr James, Mr Davies and Mr Walker lacked the specificity required to attract significant weight. Much of Mr Davies’ evidence was predicated on assumptions rather than direct knowledge or observations. Mr Walker’s evidence was somewhat limited. His concession that his memory is not all that good (see transcript - p314) also raises difficulty.

Findings of Fact - Truck Drivers

- 27 Mr O’Brien testified that about 15 years ago, when he began full time employment as a truck driver with the Respondent, it’s then Fleet Controller Terry Tallowin told him that because of the need to meet customer requirements a dedicated lunchbreak would not be taken. He said that it was “common knowledge” that drivers were required to work though lunch. I accept his evidence in that regard. It has not been rebutted. Mr Douglas James’ evidence supports the fact that prior to 1999 and subsequently there was a practice of not taking an unpaid half hour break. He testified that the practice not to take an unpaid lunchbreak was something not only well known to Mr Griffiths’ predecessor Mr Warchomij but also to Claimant. He formed that view whilst involved in the 1999 EBA negotiations. The practice not to take lunchbreaks continued until 2008.
- 28 In 2008 Mr Griffiths made a decision to enforce the taking of an unpaid half hour lunchbreak. His decision upset many truck drivers and indeed drew a barrage of protests culminating in a dispute which required the intervention and assistance of the Australian Industrial Relations Commission. His decision to enforce the taking a lunchbreak was in part based on his view that drivers had been abusing the system. He had observed them to take what was in effect paid lunchbreaks. He put a stop to that. Further he was of the view that “a recorded lunchbreak” was desirable to demonstrate that the Respondent was complying with occupational safety and health requirements relating to fatigue management.

- 29 It is obvious that the practice of not taking of a dedicated lunchbreak would have suited the Respondent's operational requirements because it would have inevitably created efficiencies. The taking of a dedicated half hour lunchbreak would have made the Respondent's Fleet Controllers scheduling tasks more difficult and would have got in the way of customer requirements. Indeed the Respondent's primary objective was the need to meet customer requirements. Such was clear from Mr O'Brien and Mr Davies' evidence. The absence of an organised lunchbreak would have assisted the Respondent by enabling its processes to flow more rapidly and not to delay deliveries.
- 30 Mr O'Brien testified that Mr Tallowin's directive did not suit him. He much prefers the current system which enforces the taking of an unpaid half hour lunchbreak. Notwithstanding that, I accept that the former practice suited most truck drivers. Mr Pitcher's evidence, that of Mr Falconer and the documentary evidence (see Exhibit 9) establishes that the majority of truck drivers including Mr Falconer preferred not to take an unpaid half hour lunchbreak because it provided them with time and/or monetary advantages such as earlier finishing times or the earlier commencement of overtime. Both the Respondent and its truck drivers derived benefits from that practice.
- 31 There is no dispute about the fact that despite the practice of not having a lunchbreak Mr O'Brien and Mr Falconer were nevertheless able to have their lunch when ever they wanted. They do not suggest that they were not able to have lunch on any particular day nor is suggested that they forwent eating lunch. Their evidence is that they generally ate their lunch at or on their truck at convenient times, mainly whilst waiting for their truck to be loaded or unloaded. Occasionally lunch was eaten elsewhere or whilst driving. They did not expect to take an unpaid lunchbreak. It is not suggested by them that they were on each relevant day asked by the Respondent to defer and/or not take a lunchbreak. It appears also that they accepted that situation. They did not, except in the rarest of circumstances, ask their employer to allow them an unpaid lunchbreak. When such a request was made it was granted.
- 32 The Respondent argues, based on the observations of Mr Griffith and Mr James that despite there being no provision for the taking of an unpaid half hour lunchbreak, truck drivers nevertheless took a daily lunchbreak. Mr Griffith and Mr James testified that they had, on occasions, seen drivers sitting in lunch rooms and at other places having lunch. Mr Griffiths in particular asserts that truck drivers had multiple opportunities to take lunchbreaks and indeed did take lunchbreaks away from their trucks be it at the SCT depot, customer distribution centres or other places. He saw many of them including Mr Falconer taking lunchbreaks at such places. However Mr Griffiths' evidence and that of Mr James cannot and does not establish that truck drivers took a dedicated full half hour lunchbreak on each of those occasions. Their evidence which was based on limited observations lacked specificity. They made broad generalised allegations which were anecdotal in nature. At best such evidence can only establish that from time to time some drivers were seen to be stopped away from their trucks having their lunch. It cannot establish that on each day relevant to these claims that Mr O'Brien and Mr Falconer took a full half hour lunchbreak. The evidence does not establish that truck drivers discontinued work to have lunch. Rather the evidence is to the effect that there was no "break" in the truck drivers' obligations. They had to be ready to drive as soon as their truck was ready to be driven. Their duty was to be remaining at the ready and they did that. Time spent whilst waiting for their truck to be loaded or unloaded or waiting for paper work does not constitute a break.
- 33 I conclude that during the period of these claims and up to February 2008 neither Mr O'Brien nor Mr Falconer took an unpaid half hour lunch or meal break. There was no provision for it within the Respondent's operations. At that time both the Respondent and its truck drivers participated in a longstanding practice which had developed that lunch or meals would be eaten whilst on the job when convenient, having regard to the work at hand. Indeed the relevant time records kept by the Respondent with respect to Mr O'Brien and Mr Falconer clearly reflect that a dedicated unpaid half hour lunch or meal break was not taken except in the rarest of circumstances. Lorraine Pritchard who was the Respondent's Payroll Clerk during the material period said in her statement, received by consent, that unless otherwise indicated the default position was that truck drivers would work without taking a lunchbreak and be paid accordingly. The result was that they were paid for a 10.5 hour day (5.30am to 4 pm) consisting of 8 hours at ordinary time, 2 hours at time and a half, and 30 minutes at double time. The effect of truck drivers not taking lunch was that they were able to perform an extra 30 minutes work per day paid at double time. They were not paid overtime rates for having worked through their lunchbreak.

Findings of Fact - Forklift Driver

- 34 Mr Williams' position was somewhat different. Ms Pritchard in her statement said that the default position with respect to forklift drivers was that they would take a daily unpaid half hour lunchbreak. Typically forklift drivers would commence at 5.30am and finish at 4.00pm. They would be paid 8 hours at ordinary time (5.30am to 2.00pm) which spanned to across the lunchbreak period and thereafter 2 hours at time and a half (2.00pm to 4.00pm). If the forklift driver's time card signed off by a person with authority indicated that on a given day no lunchbreak had been taken then the half hour normally deducted to take account of the lunchbreak would not be made resulting in the forklift driver receiving an additional half hour of overtime at double time.
- 35 I accept that in each instance where Mr Williams' time cards indicate that he did not take a lunchbreak that a lunchbreak was not taken. Lunch was not taken because of a requirement made of him by one of his dock supervisors. Not surprisingly he cannot, now many years after the event, specifically recall the name of the particular supervisor concerned in each instance. He can specifically remember Ron Marsh, Warren Osboine and Dave whose surname he could not recall, as being some of the dock supervisors who required him to work through lunch. However in more recent years he has had many different dock supervisors. It is of note that the bulk of the claim which relates to him covers the period August 2006 to December 2008. The Respondent's employment records (Exhibit 8) establish that Mr Ron Marsh's employment with the Respondent ceased on 18 August 2006 and that Mr Osboine's employment ceased on 30 April 2007. It follows therefore that most of the directives to

work through lunch would have come from other dock supervisors. The evidence of Mr Davies and Mr Walker enables a finding to be made that Mr Williams was supervised by many dock supervisors. It is probable therefore that Mr Williams was instructed to work through his lunchbreak not only by those he specifically remembers but also by others including Adrian Baines, Stuart Wells, Manuel Merredin, Brett Williams, Steve Wilfing, Jason Taylor and Adam Luscombe.

- 36 I accept that Mr Williams never worked through lunch without authority or directive. The increased requirements for him to work through lunch which started in about August 2006 coincided with him working at Warehouse 3 leading up to the busy Christmas period. I also accept that he did not make his own arrangements to work through lunch in order to leave early for medical appointments. His medical issues have only arisen in the last 12 to 14 months and post date the material period.
- 37 The Respondent contends also that Mr Williams worked through his lunch hour so that he could leave before the end of his shift. It provided a schedule attached to counsels' written submissions highlighting numerous examples gleaned from Exhibit 5 of when that is said to have occurred. Mr Williams denied that he worked through his lunchbreak so that he could leave early. I accept his evidence. The fact Mr Williams regularly left early on occasions when he worked through his lunchbreak is quite apparent but that does not necessarily lead to the conclusion that he worked through his lunchbreak, in order to finish early. The earlier finish is also consistent with Mr Williams' evidence that he was instructed to work through his lunchbreak. It follows that on those occasions he could have finished earlier because he worked through his lunchbreak.
- 38 Except for the odd instance the 'N/L' (no lunch) notation on Mr Williams' job card was made by one of his dock supervisors. An examination of his time cards (Exhibit 5) reveals that many of the N/L entries noted thereon have not been initialled by either his manager or his supervisor but despite that at the end of the relevant week a manager or supervisor has authorised payment to him for having worked through a lunchbreak as recorded on his time card. The entries on his time cards which were initially accepted by the Respondent to be accurate clearly corroborate Mr Williams' assertions. It is difficult in those circumstances to rationalise how the Respondent can now take issue with the correctness of Mr Williams' time cards.
- 39 I accept Mr Davies' and Mr Walker's evidence that they did not at any stage ask Mr Williams or anyone else for that matter not to take lunch. It seems that they only asked rail forklift drivers unloading trains to defer their lunchbreaks when the Respondent was under time pressure to meet customer demands. On such occasions they asked them to delay taking their lunchbreak by about half an hour in order to finish unloading a train. However I do not accept their contention that all forklift drivers always had lunch and if they did not it was so they could get away early. It is obvious that that Mr Davies did not directly supervise Mr Williams and that Mr Walker only did so occasionally. In fact Mr Williams was supervised by any number of dock supervisors under Mr Davies' control. Both Mr Davies and Mr Walker accepted under cross-examination that they cannot know whether any of the dock supervisors instructed Mr Williams to work through lunch. Mr Davies said that if that had happened he would have expected to be told but was not. Any of a number of supervisors had authority to adjust time cards and authorise payments and accordingly the instruction given to work through lunch may not have been brought to Davies' attention. There appears to have been no protocols for the reporting of such eventuality. I find that dock supervisors have, without Mr Davies' knowledge or consent, instructed Mr Williams to work through his lunch hour. Mr Walker's evidence (transcript pp 334-5) suggests a degree of autonomy given to dock supervisors. Just because Mr Davies and Mr Walker were unaware that Mr Williams had been instructed to work through lunch does not mean it did not happen.
- 40 The Respondent has over many years not taken issue with the correctness of the entries made on Mr Williams' time cards. It has accepted those entries as being legitimate and accordingly where claimed paid him at the ordinary rate of pay for having worked through his lunchbreak. In those circumstances it will be difficult, without significant evidence of weight to the contrary, for the Respondent to displace Mr Williams' credible evidence about his time card entries being correct.

Determination

- 41 The determination of these claims necessarily requires the construction of subclause 19.4.2 of the Agreements. The contemporary approach to construction which stems from *Project Blue Sky v Australian Broadcasting Authority* (1998) 194 CLR 355 is that factors such as purpose, general policy and context have to be taken into account rather than just the literal meaning of a provision so as to create consistency and fairness. The interpretation of the relevant industrial instruments in these matters begins with a consideration of the words used and their natural meaning but they cannot be interpreted in a vacuum divorced from industrial realities. (See *City of Wanneroo v Holmes* (1987) 30 IR 362 per French J at 378 and *BHP Billiton Iron Ore Pty Ltd v Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers (Western Australian Branch)* [2006] WASCA 124 per Pullin J at [19] - [23]).
- 42 The proper construction of the subclause will necessarily require a consideration of the objectives of the Agreements. The broad objectives of each Agreement are the same. Clause 2 of the 2006 Agreement states that it is "built on a concentrated focus aimed at delivering the best possible service to the customer." It recognises that the customer provides the Respondent and its employees with work, revenue, profit, viability and growth. Subclause 2.3 makes it clear that "the customer is the cornerstone" of the Respondent and its employees' future. Clause 5 further refines the Agreement's objectives. It states that the Agreement is aimed at developing and maintaining a culture of common purpose, trust, and co-operation that will improve the Respondent's profitability. It also goes on to specify the following further objectives:
- 5.1 Operate within flexible, responsive parameters to meet dynamic customer market requirements.
 - 5.2 Develop a highly motivated, multi skilled. Flexible and adaptable workforce.
 - 5.3 Continue to foster co-operation between all staff in a climate of consultation not confrontation through the recognition of the needs and concerns of all employees.

- 5.4 Remove inefficient work practices and processes in all areas of operation to ensure flexibility and quality, timeliness and reliability of services.
- 5.5 All employees will conduct themselves in a professional manner that will enhance the Company image.
- 5.6 To provide wage increases in line with Clause 24 of this Agreement.

43 The objectives of efficiency, timeliness flexibility and co-operation are reflected in individual clauses of the Agreements. Those clauses recognise the existence of practices aimed at meeting the objectives of the Agreement so as to increase the Respondent's profitability. Clause 20 is one such clause. It provides:

CLAUSE 20. FLEXIBILITY DURING HOURS OF WORK

CLAUSE 20.1 Breaks

The flexibility which currently exists in the depot in the staggering of meal and rest breaks to enable continuous loading/unloading will continue. Additionally this practice will be reviewed as required by the Consultative Committee to ensure continuous operation, high service levels and the flexibility to meet customer's requirements. It is intended that lunch breaks be taken during shunting activities where possible.

44 Subclause 19.4.2 of the Agreements fits comfortably with objectives of the Agreements and is consistent with other provisions within them. It too recognises existing practices. It appears to have been concluded on the basis that truck drivers did not, as a matter of routine, take lunchbreaks but would be afforded one upon their request. That pre-existing practice was not only contemplated by the Agreements but also formed part of the Respondent's operation. The documentary evidence (Exhibit 5) supports that. For example Mr Falconer's time cards demonstrate that he routinely did not take lunchbreaks however on 5 July 2006 he took a one hour lunchbreak. The inference to be drawn is that he sought an extended lunchbreak for some special purpose and was granted it (see page 961, volume 3 of Exhibit 5).

45 There can be no suggestion that subclause 19.4.2 of the Agreement somehow fetters or removes the Award entitlement to a lunchbreak. To the contrary the subclause appears to reaffirm the entitlement to a lunchbreak and makes specific provision for its taking. The third and fourth sentences of the subclause provide:

"An employee may request a lunch break and approval may not be withheld. Lunch breaks may be allocated by Management to drivers on return to the yard during each shift which if allocated must be taken."

Truck Drivers

46 One of the critical issues to be decided in the matters relating to Mr O'Brien and Mr Falconer is whether they took a lunchbreak.

47 The taking of a lunchbreak, as opposed to merely eating lunch at a convenient time involves a disruption to the continuity of work. It creates a hiatus in the continuum of work. The taking of a lunchbreak will inevitably require the cessation of work responsibilities and obligations in order to consume a meal (if desired) and/or to do anything else not connected with work that the employee wants to do in his or her own time.

48 Accounting for some rare exceptions, it is clear that during the material period neither Mr O'Brien nor Mr Falconer took lunchbreaks. That was because the Respondent's system of work which was customer focused did not facilitate the taking of lunchbreaks. It is the case that each of Mr O'Brien and Mr Falconer were able to eat their lunch at convenient times. However when doing so they were still on duty with all the attendant responsibilities that such entails. They were required to maintain governance over their truck and could not leave their trucks other than for short periods. In essence they were tied to their truck and could not get away to do other things. The fact that on very odd occasions they may have been able to leave their trucks for short periods and even have a meal away from them does not change the character of what was happening. What was happening was that they were having lunch whilst working and not during a dedicated lunchbreak. It follows that they had lunch but not a lunchbreak.

49 Subclause 19.4.2 recognises the need to service customers. It was created against that background and to give efficacy to the objectives of the Agreements. Consistent with objectives of the Agreements, truck drivers agreed to defer their lunchbreaks. The first sentence of the subclause reflects that. It provides:

"Driver employees agree to defer lunch breaks upon request and will continue at ordinary rate of payment until such time that a lunchbreak is available."

50 The first sentence of the subclause is an affirmation, expressed as an agreement, of the existing practice and willingness of drivers to defer their lunchbreak in order to achieve the Respondent's objectives with which they agreed. In those circumstances the words "upon request" therein can be construed to mean a standing request that truck drivers defer their lunchbreaks until such time as the Respondent allowed one. That standing request originated prior to the commencement of the 1999 Agreement. It was recognised, adopted and continued in the 1999 and subsequent Agreements until it was ceased by directive in February 2008. The existence of the standing request is apparent from the conduct of the parties. The industrial

reality was that truck drivers worked in accordance with the practice which they and the Respondent had developed that they not take a lunchbreak. The drivers were prepared to do so to meet the Respondent's objectives. It is obvious that neither Mr O'Brien nor Mr Falconer were on each day specifically instructed to defer their lunchbreak. It did not happen that way. The meaning of "upon request" in the first sentence of subclause 19.4.2 must, so as to achieve consistency and fairness, be construed to include standing request having regard to the existent industrial reality.

51 The second sentence of subclause 19.4.2 provides:

"If an employee is unable to have a lunch break, then that employee will be paid an additional 30 minutes overtime."

52 Mr O'Brien and Mr Falconer were, almost invariably, unable to take a lunchbreak. They were not afforded the opportunity to do so because the Respondent's work practices failed to facilitate the taking of a lunchbreak. The Respondent's position throughout was that the ability to consume a meal during an interlude in work was sufficient. The facilitation of time during which lunch can be consumed is however an entirely different concept to the taking of a lunchbreak.

53 In order for the claims relating to Mr O'Brien and Mr Falconer to succeed, the Claimant must prove on the balance of probabilities that for each day claimed, the Respondent requested Mr O'Brien and Mr Falconer to defer taking their lunchbreak and that they in each instance were unable to take a lunchbreak on the day. I am satisfied that has occurred. There has been a breach of the Agreements and each of Mr O'Brien and Mr Falconer are entitled to payment of an additional 30 minutes overtime for the days worked during the period of the claim with the exception of the claim relating to Mr Falconer for the week ending 9 July 2006. In that regard it is obvious that on 5 July 2006 Mr Falconer took a one hour unpaid lunchbreak and accordingly the claim for that day cannot succeed. An adjustment will have to be made to the calculations in Exhibit 4.3.

Forklift Driver

54 The claim relating to Mr Falconer is to be determined on the facts. As indicated earlier I accept his evidence that he was, with respect to the days claimed, instructed to work through his lunchbreaks and that he was thereafter unable to have a lunchbreak. It follows that there has been a breach of the Agreements and that Mr Williams is entitled to be paid an additional thirty minutes over time for each day he worked through his lunchbreak.

Rate of Pay

55 Clause 19.4.2 provides that if an employee is unable to have a lunchbreak, then that employee will be paid at "an additional 30 minutes overtime".

56 The Respondent contends that the penalty payment referred to in the clause is extra time above that which is payable. Therefore the 30 minute penalty payment is to be paid at the ordinary rate of pay. It is not a prescribed penalty such as 1.5 times or double time which appears elsewhere in the Agreements. Such prescribed penalty rates could have been easily stipulated in subclause 19.4.2 but are not. The only reference to the rate is that of "continuing at the ordinary rate of pay" which appears not only in subclause 19.4.2 but also in subclause 36.1.3 which refers to an additional payment at the rate of ordinary time where a meal break is not allowed.

57 I do not accept the Respondent's contention. Subclause 19.4.2 expressly provides for the payment of 30 minutes "overtime" when a lunchbreak is unable to be taken. If it was intended that the 30 minutes be paid at ordinary time then it would have said so. It could have provided something similar to that contained in subclause 36.1.3 of the Award which stipulates the payment of ordinary time when a meal break is unable to be taken. It appears rather that the word "overtime" has been deliberately used. The word "overtime" means working beyond ordinary hours. When work is done beyond ordinary hours it attracts a penalty rate. The rate at which the penalty will be applied will be dependant upon the prevailing circumstances. In these instances the correct rate was double time.

58 I accept that the Claims as reflected in Exhibits 4.1, 4.2 and 4.3 have been calculated using the correct rates of pay.

Conclusion

59 The claim made in relation to Mr Williams is made out in its entirety.

60 The claims relating to Mr O'Brien and Mr Falconer are not made out in their entirety. Parts of those claims fall outside the six year limitation period. Given that such claims were lodged on 18 March 2009 the allegations with respect to the pay period ending 16 March 2003 cannot succeed. Furthermore there needs to be an adjustment made with respect Mr Falconer given the error in Exhibit 4.3. He took an unpaid lunchbreak on 5 July 2006 and therefore the Claimant cannot be successful with respect to that day. Otherwise the claims are proved.

61 As a consequence of the breaches of subclause 19.4.2 of the 1999, 2003 and 2006 Agreements the Respondent has underpaid Mr Williams \$2,119.15, Mr O'Brien \$13,859.79 and Mr Falconer \$17,771.26.

G. Cicchini

Industrial Magistrate

UNFAIR DISMISSAL/CONTRACTUAL ENTITLEMENTS—**2010 WAIRC 00079**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES KIM GIDDENS **APPLICANT**

-v-
LHMU **RESPONDENT**

CORAM COMMISSIONER S M MAYMAN
DATE MONDAY, 22 FEBRUARY 2010
FILE NO/S U 193 OF 2009
CITATION NO. 2010 WAIRC 00079

Result Application discontinued

Representation**Applicant** Ms K Giddens**Respondent** Mr N Whitehead*Order*

WHEREAS this is an application pursuant to Section 29(1)(b)(i) of the *Industrial Relations Act 1979*;

AND WHEREAS this application was the subject of conciliation conferences before Commissioner Wood on 18 November 2009 and 9 December 2009;

AND WHEREAS at the conclusion of the conference held on 9 December 2009 no agreement was reached between the parties;

AND WHEREAS the matter was re-allocated to Commissioner Mayman;

AND WHEREAS agreement was reached between the parties;

AND WHEREAS on 11 February 2010 the applicant filed a Notice of Discontinuance in respect of the application;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby discontinued.

(Sgd.) S M MAYMAN,
Commissioner.

[L.S.]

2010 WAIRC 00078

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES BARRY HALES **APPLICANT**

-v-
ROGER SECA & DEREK SIMPSON
AUTO ONE - MARGARET RIVER **RESPONDENT**

CORAM COMMISSIONER S M MAYMAN
DATE MONDAY, 22 FEBRUARY 2010
FILE NO/S U 240 OF 2009
CITATION NO. 2010 WAIRC 00078

Result	Application discontinued
Representation	
Applicant	Mr B Hales
Respondent	Mr R Seca and Mr D Simpson

Order

WHEREAS this is an application pursuant to Section 29(1)(b)(i) of the *Industrial Relations Act 1979*;
 AND WHEREAS on 22 December 2009 the Commission convened a conference for the purpose of conciliating between the parties;
 AND WHEREAS at the conclusion of the conference agreement was reached between the parties;
 AND WHEREAS on 11 February 2010 the applicant filed a Notice of Discontinuance in respect of the application;
 NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby discontinued.

[L.S.]

(Sgd.) S M MAYMAN,
Commissioner.

2010 WAIRC 00066

PARTIES	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION MIGUEL LOBATO	APPLICANT
	-v-	
	GORDON HULL	RESPONDENT
CORAM	COMMISSIONER S M MAYMAN	
DATE	MONDAY, 15 FEBRUARY 2010	
FILE NO	B 228 OF 2009	
CITATION NO.	2010 WAIRC 00066	

Result	Application discontinued
Representation	
Applicant	Mr M Lobato
Respondent	Mr G Hull

Order

WHEREAS this is an application pursuant to Section 29(1)(b)(ii) of the *Industrial Relations Act 1979*;
 AND WHEREAS on 1 February 2010 the Commission convened a conference for the purpose of conciliating between the parties;
 AND WHEREAS at the conclusion of the conference agreement was reached between the parties;
 AND WHEREAS on 4 February 2010 the applicant filed a Notice of Discontinuance in respect of the application;
 NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby discontinued.

[L.S.]

(Sgd.) S M MAYMAN,
Commissioner.

2010 WAIRC 00100

PARTIES WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
 MARK DOUGLAS MCKINNON **APPLICANT**

-v-
 JOHN HOLLAND GROUP PTY LIMITED **RESPONDENT**

CORAM ACTING SENIOR COMMISSIONER P E SCOTT
DATE THURSDAY, 4 MARCH 2010
FILE NO/S B 221 OF 2009
CITATION NO. 2010 WAIRC 00100

Result Application dismissed for want of jurisdiction

Order

HAVING heard the applicant on his own behalf and there being no appearance for the respondent, the Commission, pursuant to the powers conferred under the *Industrial Relations Act 1979*, hereby orders:

THAT the application be, and is hereby dismissed.

[L.S.]

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

2010 WAIRC 00099

PARTIES WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
 MARK DOUGLAS MCKINNON **APPLICANT**

-v-
 JOHN HOLLAND GROUP PTY LIMITED **RESPONDENT**

CORAM ACTING SENIOR COMMISSIONER P E SCOTT
DATE THURSDAY, 4 MARCH 2010
FILE NO/S U 221 OF 2009
CITATION NO. 2010 WAIRC 00099

Result Application dismissed for want of jurisdiction

Order

HAVING heard the applicant on his own behalf and there being no appearance for the respondent, the Commission, pursuant to the powers conferred under the *Industrial Relations Act 1979*, hereby orders:

THAT the application be, and is hereby dismissed.

[L.S.]

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

2010 WAIRC 00077

PARTIES	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION	APPLICANT
	MS BARBARA WYLIE	
	-v-	
	COMMISSIONER OF POLICE	RESPONDENT
CORAM	ACTING SENIOR COMMISSIONER P E SCOTT	
DATE	MONDAY, 22 FEBRUARY 2010	
FILE NO/S	U 261 OF 2009	
CITATION NO.	2010 WAIRC 00077	
Result	Application dismissed	

Order

WHEREAS this is an application pursuant to Section 29(1)(b)(i) of the *Industrial Relations Act 1979*; and
 WHEREAS by a letter dated the 22nd day of January 2010 the Commission directed the applicant to advise of whether or not she was a government officer, and if so, whether the appropriate jurisdiction was the Public Service Appeal Board; and
 WHEREAS on the 16th day of February 2010 the applicant filed a Notice of Discontinuance in relation to the application; and
 NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be and is hereby dismissed.

[L.S.]

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

2010 WAIRC 00092

PARTIES	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION	APPLICANT
	MONIQUE O'GARR	
	-v-	
	WESTCOAST AUTOMOTIVE SUPPLIES	RESPONDENT
CORAM	COMMISSIONER S M MAYMAN	
DATE	TUESDAY, 2 MARCH 2010	
FILE NO/S	U 238 OF 2009	
CITATION NO.	2010 WAIRC 00092	
Result	Application discontinued	
Representation		
Applicant	No appearance	
Respondent	No appearance	

Order

WHEREAS this is an application pursuant to Section 29(1)(b)(i) of the *Industrial Relations Act 1979*;
 AND WHEREAS on 19 February 2010 the applicant filed a Notice of Discontinuance in respect of the application;
 NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby discontinued.

[L.S.]

(Sgd.) S M MAYMAN,
 Commissioner.

2010 WAIRC 00074

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

FRANK THOMAS PARKER

APPLICANT

-v-

BLOODWOOD TREE ASSOC. INC.

RESPONDENT

CORAM COMMISSIONER S M MAYMAN
HEARD WEDNESDAY, 20 JANUARY 2010
DELIVERED THURSDAY, 18 FEBRUARY 2010
FILE NO. U 187 OF 2009
CITATION NO. 2010 WAIRC 00074

CatchWords Whether agreement made to compromise claim – applicant claims agreement made under duress – respondent claims applicant breached agreement - uncertainty in reaching agreement considered - *Industrial Relations Act 1979* (WA)

Result Application referred for further conciliation

Representation

Applicant Mr F T Parker

Respondent Mr B Neville

Reasons for Decision

- 1 Frank Thomas Parker (the applicant) was employed by Bloodwood Tree Association Inc. (the respondent) as a workcoach from 5 May 2008 to 14 September 2009. The applicant asserts he was constructively dismissed by the respondent when he was forced to resign. The applicant now seeks relief by way of an application pursuant to s 29(1)(b)(i) of the *Industrial Relations Act 1979* (the Act), alleging that he was harshly, oppressively and unfairly dismissed by the respondent. The applicant seeks compensation for the unfairness of the dismissal.
- 2 A conference was held between the parties on 3 November 2009 pursuant to s 32 of the Act and an agreement was reached and reflected in correspondence dated 5 November 2009 from the Western Australian Industrial Relations Commission (the Commission) to the parties.
- 3 The supposed agreement was reflected in correspondence from my Associate to the parties dated 5 November 2009:
 1. The respondent will pay to the applicant the sum of \$9,000. The payment will be made by close of business on Friday 6 November 2009.
 2. Neither party will make any adverse comments with respect to the other party.
 3. The agreement is in full and final settlement of all matters relating to the applicant's employment with the respondent.
 4. The terms of the agreement are to remain confidential.
- 4 Following the conference there was contact between the applicant and the Commission regarding various aspects of the settlement. The applicant was requested to submit a Form 14, Notice of withdrawal or discontinuance. None was forthcoming. The matter was then listed for the applicant to show cause why the application ought not be dismissed.

Preliminary issue

- 5 A preliminary issue has now arisen in this matter, that being the question of whether an agreement was ever reached between the parties in conciliation.
- 6 This matter was listed for hearing on 20 January 2010 by video link-up for the applicant to show cause as to why an order ought not issue dismissing the application. Subsequent to the proceedings, the Commission wrote to the parties asking for written submissions by 31 January 2010 on their views as to what ought to occur in the event the application is not dismissed with respect to the payment of \$9,000 each party acknowledges has been made and received. Further, the applicant was to advise what it is he now seeks.

Respondent's submissions

- 7 It is suggested by the respondent the terms of the agreement as reached in conciliation are being breached by the applicant.
- 8 With respect to the preliminary issue the respondent says that it was agreed to settle the applicant's claim in certain terms and in return the applicant would discontinue the application. The respondent submits he has honoured the agreement and paid to the applicant the sum of \$9,000, an aspect conceded by the applicant.

- 9 It was further agreed no adverse comments would be made by either party of each other. The respondent submitted he was currently seeking legal advice given he believed adverse comments were continuing to be made by the applicant. Further, the respondent considers adverse comments were subsequently made by the applicant in correspondence between the applicant and the local Member of Parliament. The respondent submitted the latter matters had been referred to solicitors regarding the issue of defamation. The respondent submitted:

It's just I've had a legal opinion on statements he's made to the Member of Parliament Mr Haas, and they are defamatory and there is a letter going out to Mr Parker to state such.

ts 3

- 10 The respondent understood the matter had been settled by way of the agreement reached at conciliation. It is the respondent's view the Commission ought issue an order dismissing the application. In his written submissions the respondent emphasised the agreement reached at conciliation amounted to full and final settlement of the claim by the applicant against the respondent. The respondent asserted the applicant had breached that agreement and advised in his submissions of 25 January 2010:

that unless the applicant makes good this verbal agreement by way of filing a completed Notice of Discontinuance in due course, then the sum of \$9,000 should be returned to Bloodwood Tree Association Inc. forthwith.

Applicant's submissions

- 11 The applicant submitted the terms of the agreement were reached while he was under significant pressure. The applicant submitted he was in a state of anxiety in relation to a number of issues and did not realise what he was doing at the conciliation conference. The applicant was nervous about the Commission proceedings. Further the applicant's father had recently died in Sydney and at the time of the conciliation proceedings the applicant was attempting to have his father's body returned to Western Australia for burial. The applicant submitted he had great concerns about the terms of the proposed agreement. These added to his overall anxiety in relation to the matter.
- 12 In his written submissions of 22 January 2010 the applicant submitted:
- I have been experiencing severe financial hardship due to my "unfair dismissal", in that, I have been deprived of my livelihood and my social standing. In respect to the \$9,000 paid to me, and received, I can only say that I will abide by the rulings of your court.
- 13 The applicant further submitted he was seeking from the respondent:
- (a) a written agreement the applicant had been unfairly dismissed;
 - (b) an apology;
 - (c) compensation based on the previous Driver Trainer's income (based on the 2008/2009 year); and
 - (d) compensation for at least 12 months.
- 14 The applicant raised concerns regarding threatening tactics demonstrated by the respondent in regard to court action, tactics the applicant suggested were causing increased anxiety.

Findings

- 15 I have listened carefully to each of the parties and closely observed them during the presentation of their submissions by way of video. In my view the applicant, on occasion, presented his submissions honestly and to the best of his recollection. I adopt a similar view about the submissions made Mr Neville for the respondent. Mr Neville appeared angered when detailing exchanges that had allegedly occurred.
- 16 I find it passing strange that the respondent had a copy of personal correspondence written by the applicant to his local Member of Parliament outlining the nature of this dispute.
- 17 It is the Commission's view that at the time the agreement was reached the applicant was under significant pressure created in part by his father's recent death and a lack of certainty surrounding the conciliation proceedings.
- 18 It is common ground the applicant received \$9,000 from the respondent, an aspect of the terms of settlement.
- 19 Further, the Commission finds that several of the terms have been breached by the applicant and the respondent namely:
- (a) the requirement for each party to refrain from making adverse comment about the other party; and
 - (b) the requirement for the terms of the agreement to remain confidential.

Legal Issues

- 20 Where parties to proceedings settle or compromise the proceedings prior to or during the hearing of the claim or matter, the settlement is a new agreement between the parties and may be enforced like any other contract. *Halsbury's Laws of England* (4th ed) [391].
- 21 Further, it is undoubtedly the case, that given the nature of the Commission's jurisdiction, where agreements are reached in conciliation proceedings, parties should not be able to go back on the terms of that settlement. Given that one of the fundamental objects of the Act is resolution of disputes by conciliation, parties should be held to their bargain arising out of conciliation proceedings: *Foley v G & J Reely School of Dancing Pty Ltd trading as Arthur Murray School of Dancing* (1996) 76 WAIG 4342; *MacLeod v Paulownia Trees Pty Ltd* (1997) 78 WAIG 1057.

22 Pressure in a less obvious form may arise where the influence exercised to the extent that the applicant's ability to make decisions is reduced and the subsequent decision reached cannot be regarded as having been freely made. In such circumstances it may be determined that the agreement reached cannot be allowed to stand: Sappideen C, O'Grady P and Warburton G, *Mackens Law of Employment* (6th ed, 2009) [4.135].

Was an Agreement Concluded?

23 In these proceedings, the applicant and the respondent have each observed there was an agreement reached. It is the Commission's view that what has been blurred is whether the agreement was achieved under duress. For an agreement to be properly concluded, the parties must have a true understanding of the agreement's terms. The terms of the agreement must be sufficiently definite and absolute to allow the agreement reached to be enforced at law: Lindgren K E, Carter J W and Harland D J, *Contract Law in Australia* (1986) [258].

24 In this matter the issue is whether there was an agreement. In the absence of clear evidence from which it can be held that such was the case, then it is not open in my opinion, to conclude that there was the necessary understanding on the part of the applicant to bring the matter to an end.

25 As far as the respondent was concerned, a proposal was put and was taken by the applicant on the face of it, to be fair for the purposes of settling the matter. However, the circumstances surrounding the applicant's acceptance, were far from definite or decisive. During the proceedings the applicant submitted:

In relation to the supposed agreement that we did come to, as I was saying, I was under emotional duress, I was panicking, I had never said anything before ... had anything to do with this.

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26 The Commission accepts that during the conference the applicant was under duress and did not fully appreciate the terms of the proposed compromise agreement. Therefore the agreement reached cannot be allowed to stand.

Conclusion

27 In my view, for the aforementioned reasons, it cannot be said that there has been a final agreement reached in this matter and accordingly a declaration will issue to this effect.

28 In light of this, it is necessary to relist further conciliation proceedings as soon as practicable, which will proceed in Port Hedland. A critical issue for the applicant to consider will be the standing of the \$9,000 payment already made by the respondent.

2010 WAIRC 00073

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

FRANK THOMAS PARKER

APPLICANT

-v-

BLOODWOOD TREE ASSOC. INC.

RESPONDENT

CORAM COMMISSIONER S M MAYMAN
DATE THURSDAY, 18 FEBRUARY 2010
FILE NO/S U 187 OF 2009
CITATION NO. 2010 WAIRC 00073

Result Declaration issued

Representation

Applicant Mr F T Parker

Respondent Mr B Neville

Declaration

HAVING heard Mr Parker as the applicant and Mr Neville on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby:

DECLARES that to date there has been no final agreement conciliated in the aforementioned matter between the applicant and the respondent.

[L.S.]

(Sgd.) S M MAYMAN,
Commissioner.

2010 WAIRC 00075

PARTIES	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION SHAYNE OLD	APPLICANT
	-v- MANDURAH TOYOTA	RESPONDENT
CORAM	COMMISSIONER S M MAYMAN	
DATE	MONDAY, 22 FEBRUARY 2010	
FILE NO/S	U 199 OF 2009	
CITATION NO.	2010 WAIRC 00075	
Result	Application discontinued	
Representation		
Applicant	Mr S Old	
Respondent	Mr G Fisher	

Order

WHEREAS this is an application pursuant to Section 29(1)(b)(i) of the *Industrial Relations Act 1979*;

AND WHEREAS on 9 November 2009 and 29 January 2010 the Commission convened conferences for the purpose of conciliating between the parties;

AND WHEREAS at the conclusion of the conference held on 29 January 2010 agreement was reached between the parties;

AND WHEREAS on 12 February 2010 the applicant filed a Notice of Discontinuance in respect of the application;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby discontinued.

[L.S.]

(Sgd.) S M MAYMAN,
Commissioner.

CONFERENCES—Matters referred—

2010 WAIRC 00103

	DISPUTE RE EMPLOYMENT STATUS OF UNION MEMBER	
	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION	
PARTIES	THE STATE SCHOOL TEACHERS' UNION OF W.A. (INCORPORATED)	APPLICANT
	-v- DIRECTOR GENERAL OF THE DEPARTMENT OF EDUCATION AND TRAINING	RESPONDENT
CORAM	COMMISSIONER J L HARRISON	
HEARD	MONDAY, 2 NOVEMBER 2009, TUESDAY, 3 NOVEMBER 2009, WEDNESDAY, 4 NOVEMBER 2009	
DELIVERED	FRIDAY, 5 MARCH 2010	
FILE NO.	CR 40 OF 2008	
CITATION NO.	2010 WAIRC 00103	

Catchwords	Industrial Relations (WA) – Claim that respondent has incorrectly determined an employee’s salary level and wrongly capped employee’s salary – Claim that employee should be paid the rate of a trained teacher - Application for an order that outcome applies to all other employees in similar circumstances - Whether employee is an untrained/unqualified teacher for the purposes of the relevant industrial instruments – Employee classified as an untrained/unqualified teacher - Application dismissed - <i>Industrial Relations Act 1979</i> s 44(9); <i>School Education Act 1999</i> s 235; <i>Western Australian College of Teaching Act 2004</i> ; <i>Public Sector Management Act 1994</i> ; <i>Vocational Education and Training Act 1996</i>
Result	Dismissed
Representation	
Applicant	Ms E J Carbone (of Counsel)
Respondent	Mr J Misso (of Counsel)

Reasons for Decision

- 1 On 5 December 2008, the State School Teachers’ Union of W.A. (Incorporated) (“the applicant”) (“the union”) lodged an application in the Commission pursuant to s 44 of the *Industrial Relations Act 1979* (“the Act”) with respect to a dispute over the permanent status of one of its members, Mr Stephen Adams who is employed by the Director General of the Department of Education and Training (“the respondent”).
- 2 As conciliation proceedings did not resolve the dispute the matter was referred for hearing and determination pursuant to s 44(9) of the Act. During conciliation proceedings it became apparent that the parties were also in dispute over Mr Adams’ salary level and the salary paid to other teachers who were employed in similar positions to Mr Adams and this matter was also referred for hearing. The Schedule of the memorandum of matters referred for hearing and determination is as follows:
 - “1. The applicant claims that the respondent has incorrectly determined Mr Stephen Adams’ salary level and as a result the respondent has wrongly capped his salary. The applicant also claims that the respondent has refused to provide Mr Adams with permanent status. The applicant is seeking the following orders:
 - (a) That Mr Adams be confirmed as a permanent employee pursuant to Clause 92.1 of the *School Education Act Employees’ (Teachers and Administrators) General Agreement 2006* (“the Agreement”).
 - (b) That Mr Adams has a right to incremental progression with respect to his salary.
 - (c) That Mr Adams’ salary and entitlements be adjusted accordingly and any payment and entitlements due to Mr Adams be paid to him.
 - (d) That the respondent provide a letter to Mr Adams advising him that he is a permanent employee and withdrawing previous contrary advice.
 - (e) That all personnel records pertaining to Mr Adams be adjusted accordingly.
 - (f) That the abovementioned outcomes apply to all other employees who have been historically paid in accordance with the teacher salary scale in similar circumstances as Mr Adams.
 2. The respondent denies the claim and opposes the orders being sought.

Applicant’s contentions

3. The applicant’s contentions are as follows:
 - (a) the applicant disputes that Mr Adams is not eligible for permanency as there are no exceptions of the nature alleged that exist to granting permanency under Clause 92.1(a) of the Agreement;
 - (b) it has never been the intention of the applicant, a party to the Agreement, to agree to inferior conditions of employment for Limited Authority to Teach (“LAT”) holders who undertake teaching duties (as defined) in schools, simply because they hold a LAT;
 - (b) Clause 92.1(a) of the Agreement refers to ‘employees’ who are a broader class of the applicant’s membership encompassing administrators and school psychologists as well as all those who teach;
 - (c) the applicant disputes that it is lawful to follow a policy that is:
 - inconsistent with sound industrial principles of fairness;
 - disputed by the applicant union who has not been engaged in any consultation concerning the formulation of an alleged policy concerning an important employment condition;
 - a subordinate legal authority to the Agreement which does not provide exceptions to permanency of the nature the respondent is constructing;
 - not clear and transparent for current employees and potential employees; and
 - appears arbitrary in nature;

- (d) the *Western Australian College of Teaching Act 2004* operates to protect the standards of the teaching profession by its regulation of LATs, in that the Act confines LATs to those instances where suitably qualified teachers are not available;
- (e) in the event that a more suitably qualified teacher is available at a future time and a LAT holder (such as Mr Adams) is unable to have their LAT renewed, the respondent is empowered by virtue of s 236 of the *School Education Act 1999* (WA) to transfer the employee.

Respondent's contentions

4. The respondent's contentions are as follows:
 - (a) Mr Adams is an employee of the respondent at the WA College of Agriculture in Morawa;
 - (b) the payment of Mr Adams' salary is and has been made in accordance with the terms and conditions provided in the *Teachers (Public Sector Primary and Secondary Education) Award 1993*, the Agreement and the replacement *School Education Act Employees' (Teachers and Administrators) General Agreement 2008* as applied at the relevant times;
 - (c) the respondent agreed to grant permanency to Mr Adams on 14 April 2009, therefore there is no need for hearing and determination of this issue."
- 3 The following facts were agreed between the parties at the outset of the hearing:
 1. The applicant is an organisation of employees registered under the Act.
 2. Mr Stephen Adams was initially employed by the respondent under the *Government School Teachers' and School Administrators' Certified Agreement 2004* ("the 2004 Agreement") and the *Teachers (Public Sector Primary and Secondary Education) Award 1993* ("the Award").
 3. The respondent is the Chief Executive Officer of the Department of Education and Training and with respect to Mr Adams is an "employing authority" for the purposes of Division 3, Part 5 of the *Public Sector Management Act 1994*.
- 4 At the outset of the hearing it was put to the parties that as Mr Adams had been offered permanent status by the respondent Order 1(a) being sought by the applicant was therefore redundant. However, the applicant maintained that as this offer was conditional on Mr Adams retaining a Limited Authority to Teach ("LAT") from the Western Australian College of Teaching ("WACOT") and was contingent upon the applicant withdrawing his application this offer was rejected. On this basis the applicant continued to pursue Order 1(a). During the respondent's final submissions it confirmed that the offer of permanency to Mr Adams was still available, subject to Mr Adams retaining a LAT, and the applicant therefore agreed to accept this offer on behalf of Mr Adams. In the circumstances the evidence given during the proceedings with respect to the employment status of Mr Adams has been excluded and Order 1(a) was no longer being sought by the applicant.

Applicant's evidence

- 5 Mr Adams gave evidence by way of a witness statement which was updated at the hearing by the inclusion of an additional pay slip (Exhibit A4).
- 6 Mr Adams is currently employed on a full-time basis as the Design and Technology Automotive Teacher and Program Co-ordinator at the Western Australian College of Agriculture in Morawa ("the College") and he has been in this position since May 2006. Mr Adams has not been subject to any disciplinary proceedings nor has he been the subject of any performance related issues.
- 7 Mr Adams is responsible for running the College's automotive program. In this role he teaches the Certificate II Automotive course to year 11 and 12 students and an Automotive Transport course to year 10 students. He has also taught Vocational Mathematics at the College. Mr Adams reviewed and developed the College's Certificate II Automotive Program, he redesigned the College's automotive workshop facilities and he is responsible for the automotive section's budget and expenditure. Mr Adams has been a member of the College's finance committee since 2007.
- 8 Mr Adams gained a Certificate IV in Assessment and Workplace Training in 2004. Mr Adams stated that he is a qualified Automotive Mechanic and he has worked in the automotive industry for over 30 years. Mr Adams holds a Trade Certificate in Automotive Engineering and has the following current automotive certificates and licences:
 - Motor Vehicle Industry Board Repairer's Certificate – No. MR 407;
 - Energy Safety Gas fitting Permit – Installing and Servicing – No. GF003564;
 - Refrigerant Handling Licence – AUTO – No. L043374; and
 - Institute of Automotive Mechanical Engineers (IAME) – No. 00926121.
- 9 Mr Adams worked on a full-time basis as an Automotive Lecturer within the TAFE system from April 2003 through to April 2006. During this period Mr Adams taught Automotive Certificates II and III as well as a number of high school automotive introductory courses. Prior to becoming a TAFE lecturer Mr Adams was employed as a service technician and between 1983 and 1998 he ran Crown Auto Repairs, an automotive repair and servicing business, which involved managing annual budgets, hiring and training staff, purchasing, sales, customer relations, marketing and overseeing financial processes.
- 10 Mr Adams undertook the following professional development courses between 2003 and 2006:
 - Adult and Adolescent Learning Strategies;
 - Powerpoint – Adding sound and music;

SCDL – Word – Mail Merge;
 SCDL – Excel – Foundations;
 SCDL – Excel 2 – Formulas and Functions;
 SCDL – Excel 3 – Charts and Graphs;
 SCDL – Word – Foundations;
 Job Application and Interview Skills;
 Ethical Behaviour and Corruption Prevention;
 ESS – Employee Self Service workshop;
 SCDL – Excel 1 – Foundations;
 SCDL – Powerpoint – Charts and Graphs;
 TAA – Skills Recognition Workshop;
 SCDL – Word 2 – Tables, Images and Objects;
 SCDL – Powerpoint 1;
 Swan TAFE – 50 Lecturers Program;
 Professional Development for Lecturers – Midland;
 Induction Orientation Program;
 Flexible Learning Showcase;
 Learning and Assessment Strategies Workshop;
 Disability Awareness; and
 Delivery Strategies Workshop.

- 11 Whilst working as an automotive technician, Mr Adams completed the following industry training courses:
- CFC Awareness Course for Service Personal (sic) – Motor Trade Association of WA;
 - NR21 Automotive Air conditioning 86723 – Automotive Training Services, South Metropolitan;
 - Automotive LP Gas Servicing “A” Pass – Department of Education WA;
 - Automotive LP Gas Installations “A” Pass – Department of Education WA;
 - Bosch Electronic Ignition Systems – Petro Ject Training Centre;
 - Advance EFI Stage One – Petro Ject Training Centre;
 - Bosch Jectronic Fuel Injection Systems “L” and “LE” - Petro Ject Training Centre;
 - Electronic Fuel Injection – Repco Auto-tech Clinic;
 - Engine Management Systems – Repco Auto-tech Clinic;
 - Braking Systems – Repco Auto-tech Clinic;
 - Clutch Designs - Repco Auto-tech Clinic; and
 - Engine Electronic – Department of Education WA.
- 12 Mr Adams holds a current St John Ambulance Senior First Aid Certificate.
- 13 Mr Adams gave evidence about how he became employed at the College. Mr Adams stated that in early 2006 the College’s Principal Mr Craig Chadwick asked him to apply for the position of Design and Technology teacher at the College and Mr Chadwick initially offered him a salary significantly less than what he was being paid at TAFE. After Mr Adams decided not to apply for this position Mr Chadwick then offered him a salary of approximately \$53,000 per annum which Mr Adams accepted. At the time Mr Adams was not told that he would not be receiving ongoing wage increases and Mr Adams gave evidence that he only found out after he commenced with the respondent that his salary was to be capped.
- 14 Mr Adams gave evidence that WACOT gave him a LAT on 11 April 2006 which was valid until 31 December 2006 and this was later extended by WACOT to 31 December 2007. Mr Adams has since been given two more LATs, one from 12 February 2008 to 31 December 2009 and another from 17 December 2009 to 31 December 2010.
- 15 Mr Adams stated that his first payslip from the respondent described his job as that of teacher and his grade was as a “TCH/UT/2” which Mr Adams did not understand (Exhibit A4 attachment SA 14). Mr Adams’ second payslip for the period 5 May 2006 to 18 May 2006 increased his pay rate to be comparable to what he was paid at TAFE and states that his grade was a “TCH/TT/8”. Another payslip for the period 26 January 2007 to 8 February 2007 specifies that his grade is a “TCH/UT/6” and as this rate of pay was less than what he should have been paid Mr Chadwick took steps to rectify this (see Exhibit A4 attachments SA 15 to 17). When Mr Adams was being paid at the salary level of TCH/L1/8 he asked Mr Chadwick to request that the respondent review his salary level to reflect the remuneration package paid to TAFE teachers taking into account his trade qualifications and the teaching duties that he was undertaking at the College. As a result on 30 November 2007 Mr Adams and a colleague at the College, Mr Stuart Wilkinson, who was also a design and technology teacher, both

- progressed to salary level TCH/L2/1. Mr Adams gave evidence that Mr Chadwick told Mr Adams at the time that his salary would progress through to Level 2.4. In January 2008 Mr Adams found out that his pay grade had been reduced to TCH/L1/8 and this omission was again rectified with his pay returning to TCH/L2/1 in early 2008 (Exhibit A4 attachments SA 20 and 21). On 18 April 2008 Mr Adams progressed to level TCH/L2/2 (Exhibit A4 attachment SA 22). When Mr Adams was due to receive his next salary increment in May 2009, taking his salary to TCH/L2/3 his grade was changed to that of Teacher/UT/8 on his payslips and his payslips also referred to him receiving salary maintenance (Exhibit A4 attachment SA 24). In May 2009 Mr Chadwick told Mr Adams that he would not be receiving an increase to Level 2.3 and his salary was to be capped at Level 2.2. In response Mr Adams told him that he believed that he had an assurance from him that he would proceed through to Level 2.4 and it was on that basis that he had agreed to another two year contract to work at the College. As at the date of the hearing Mr Adams remains being paid at a level TCH/UT/1/8 employee, although he is in receipt of salary maintenance at Level 2.2.
- 16 Under cross examination Mr Adams stated that all negotiations about what he was to be paid was with his Principal, Mr Chadwick and he confirmed that he had no discussions with Mr Chadwick about progressing up the salary scale. Mr Adams agreed that he had received an email from Mr Iain Dennis, which was sent prior to him commencing employment with the respondent, that refers to him being employed as an unqualified teacher however he could not recall reading the email until recently seeing a copy of it. Mr Adams agreed that he does not hold a teaching qualification but he stated that when he was employed by the respondent he did not understand that he was classified as an untrained teacher. Mr Adams is aware that a LAT lasts for a maximum of two years.
 - 17 Mr Adams stated that when he was advised by the respondent that his salary level was 1.8, even though he was paid at a Level 2.2 at the end of 2008, he contacted the respondent's head office and in response Mr Chadwick confirmed that even though his salary level was stated as 1.8 he would not be paid any less than a level 2.2 salary. Mr Adams agreed that even though his salary level was 1.8 his salary continued to be paid at Level 2.2 through salary maintenance.
 - 18 Mr Adams stated that the nature of the students he teaches is no different at TAFE or at the College however classroom management is different.
 - 19 Under re-examination Mr Adams again stated that he was unaware that he was employed as an untrained teacher and "didn't even know the term 'untrained teacher'" (T51) and Mr Adams could not recall receiving the email from Mr Dennis in April 2006 confirming that this was the case. Mr Adams stated that the issue of him being on salary maintenance did not arise until May 2009. Mr Adams maintained that he was a qualified teacher as he holds a Certificate IV in Training and Assessment and he has the requisite skills and experience to be a teacher. Mr Adams confirmed that he was performance managed by the Deputy Principal at the College.
 - 20 Dr Margaret Henderson gave evidence by way of witness statement (Exhibit A5). As her evidence in the main went to the issue of Mr Adams' permanent status, it is unnecessary to include her evidence.
 - 21 Ms Anne Gisborne gave evidence by way of a witness statement (Exhibit A7). Ms Gisborne is the union's President and she has held this position since January 2008. Prior to this she was the applicant's Senior Vice President from 2002 through to 2007. Ms Gisborne has taught for over 20 years and has been actively involved in the applicant's activities for over 16 years.
 - 22 Ms Gisborne stated that as the applicant's President and in her role as Senior Vice President she has been the lead negotiator when finalising successive collective enterprise agreements. Ms Gisborne co-ordinated the applicant's position in the *School Education Act Employees' (Teachers and Administrators) General Agreement 2006* ("the 2006 Agreement") and the *School Education Act Employees' (Teachers and Administrators) General Agreement 2008* ("the 2008 Agreement") and she also co-ordinated negotiations on behalf of the applicant in recent award variations to and the consolidation of the *Teachers (Public Sector Primary and Secondary Education) Award 1993* ("the Award"), which was registered in December 2008.
 - 23 Ms Gisborne gave evidence that provisions in the 2006 Agreement and the 2008 Agreement provide a forum and mechanism for ongoing consultation about VET issues. Ms Gisborne gave evidence that after the introduction of the *Western Australian College of Teaching Act 2004* ("the WACOT Act"), during joint committees and working party discussions between the applicant and the respondent and during consultations at the VET forum, no issue was raised by the respondent with respect to the status of Mr Adams and other teachers in a similar situation with respect to their LAT status and entitlements. Ms Gisborne stated that since the WACOT Act came into effect in 2004 the first time discussions took place about teachers employed holding a LAT were at the most recent meeting of Employee Relations Executive Committee ("EREC") on 23 September 2009.
 - 24 Ms Gisborne stated that at the EREC meeting held on 20 October 2009 the applicant disputed Mr Adams being described as an untrained teacher and the parties remained in disagreement about this issue. Ms Gisborne stated that the 2006 Agreement and the 2008 Agreement and the recent variation and consolidation of the Award makes no mention of the WACOT Act nor do they provide for differential entitlements for teachers holding a LAT. Furthermore, during negotiations for the 2006 Agreement and the 2008 Agreement no discussion took place with respect to LAT teachers being treated separately to other teachers. Ms Gisborne maintains that WACOT accepts holders of LAT to be teachers who undertake a specific role and they perform the same functions as other teachers, they undertake the same roles and responsibilities and are subject to the same accountability requirements.
 - 25 Ms Gisborne gave evidence that during negotiations for the 2008 Agreement the parties agreed to rename and divide some of the salary scales and she stated that one of the outcomes was that the new teachers scale better reflected the fact that the first time appointment of a graduate teacher was at a Level 1.6 and Ms Gisborne stated that Level 1.6 was to be renamed Level 2.1 in February 2010 under the 2008 Agreement. Ms Gisborne stated that Clause 22(4) of the Award contemplates teachers who may not have graduated being appointed in accordance with the teachers scale and she stated that the applicant's intention in

accepting the salary scales being retitled was that no person appointed as a teacher would be paid below the current Level 1.6 of the teachers scale and the parties also intended to continue to explore a career path for “assistant teachers”. Ms Gisborne gave evidence that during these discussions the respondent did not raise the prospect of employing persons in designated teacher positions on any other scale but the teachers scale nor was there any discussion about restricting the progression of a teacher holding a LAT to a particular salary scale. Ms Gisborne stated that the parties agreed to put a new table titled ‘untrained teachers’ scale in the 2008 Agreement and no mention was made by the respondent at the time of any intention to employ LAT holders in accordance with this scale. The applicant understands that teachers holding a LAT have been progressing in accordance with the teachers salary scale and she was unaware that a teacher in this category had a cap on their salary. Ms Gisborne gave evidence that the applicant did not intend that the untrained teachers scale apply to employees responsible for performing all of the usual functions of a teacher as well as the usual duties of a teacher and that the applicable scale in these circumstances is the teachers scale. Ms Gisborne stated that the increments contained in Table 1 of the untrained teacher scale were taken from Level 1.1 to 1.4 of the previous teachers scale in the 2006 Agreement and they were put into the new untrained teacher scale in the 2008 Agreement to make it clear that teachers who were undertaking the usual functions and duties of a teacher did not start on those incremental scales.

- 26 Ms Gisborne maintained that the classifications existing in the untrained teacher scale in the 2008 Agreement predate the introduction of WACOT (see Clause 37 of the *Government School Teachers’ and School Administrators’ Certified Agreement 2000*) and Ms Gisborne stated that the purpose of having the untrained teachers scale, which was discussed during negotiations for the 2006 Agreement and the 2008 Agreement was to develop a position of teacher assistant which could sit below the teachers salaries scale and she stated that Clause 30 of the 2006 Agreement reflects this discussion, specifically Clauses 30.6 and 30.7. Ms Gisborne stated that even though there is no specific reference to “assistant teacher” in the 2008 Agreement, Clauses 47 and 57 considers this issue.
- 27 Ms Gisborne gave evidence that during negotiations for the 2008 Agreement the respondent never raised its intention that teachers holding a LAT would be provided with inferior conditions with respect to their salary and access to permanency. Ms Gisborne stated that during negotiations for the 2006 Agreement there was some discussion about “unqualified teachers” and the applicant made it clear to the respondent that a person holding a LAT and who undertook the full range of duties and responsibilities as a teacher was entitled to be paid as a trained teacher. Ms Gisborne maintained that the applicant did not consider that a person in this situation who lacks teacher training qualifications should have their entitlement or income as a teacher affected. Furthermore, there is no reference in the 2006 Agreement, the 2008 Agreement and the Award variation and consolidation to the WACOT Act nor is there any provision for differential entitlements for teachers employed who hold a LAT.
- 28 Ms Gisborne stated that the capping of Mr Adams’ salary was never agreed to by the applicant and it is her view that the respondent’s unilateral action in this regard is arbitrary and not in the public interest as this action results in teachers in this situation being paid an uncompetitive salary.
- 29 Under cross-examination Ms Gisborne stated that she understood the untrained teacher scale to apply to graduates who were not qualified teachers and was a career path for students prior to fully qualifying as a teacher and she gave evidence that this issue was raised during discussions about alleviating the work load for teachers and administrators. Ms Gisborne stated that she was not aware that anyone was currently employed under this scale.
- 30 Under re-examination Ms Gisborne stated that she has been directly involved in agreement negotiations with the respondent since 2004 and Ms Gisborne re-iterated that during the negotiations for the 2008 Agreement there were no discussions about the untrained teacher category.
- 31 Mr Kris Weinert was summonsed to give evidence. Mr Weinert teaches Automotive Mechanical Certificate II courses at the Western Australian College of Agriculture at Denmark (“Denmark College”) and he has undertaken this role since 16 October 2006. Mr Weinert gave evidence that Denmark College is a Registered Training Organisation (“RTO”) and its students are in Year 11 and 12, it is a residential school and the courses are Vocational Education and Training (“VET”) subjects. Mr Weinert said that in total there were five agricultural colleges in Western Australia and courses run at these colleges are accredited under the Australian Quality Training Framework (“AQTF”) training regime. Denmark College also runs *School Education Act 1999* (SE Act) courses. Mr Weinert stated that in order to teach a VET course, he is required to hold a Certificate IV in Workplace Training, which he has and he is required to be competent to deliver the courses which he undertakes and to moderate these courses and he assesses student outcomes against AQTF national competencies. Mr Weinert has a LAT which expires in September 2010. Mr Weinert stated that he is required to have a LAT because he is classified as not having a teaching degree and he is required to have a LAT to work in a high school. Mr Weinert stated that he is not required to have a teaching qualification from a tertiary institution to teach and assess students in the VET area. Prior to teaching at Denmark College Mr Weinert taught at TAFE for three and a half years.
- 32 Mr Weinert gave evidence that the respondent paid for him to upgrade and retain his qualifications.
- 33 Mr Weinert confirmed that as a teacher he facilitates student learning, he believes that he competently runs classes, he works in accordance with Denmark College’s plan, he assesses students and writes reports with respect to their achievements, he answers to Denmark College’s Principal and the relevant Head of Teaching, he supervises students, maintains order and discipline and he undertakes administrative duties including writing references and photocopying duties. Mr Weinert also undertakes other duties as required such as driving Denmark College’s bus, he takes students on excursions, he undertakes yard duty, he supervises students and is involved in their behaviour management and he also undertakes counselling of students as well as pastoral care.

- 34 Mr Weinert gave evidence that details about the level contained in his payslips recently changed. Up until mid May 2009 his payslip reflected him as being a Teacher Level 2.2 and from that point onwards his payslip stated that he was an Untrained Teacher Level 8 and salary maintenance at Level 2.2 was then applied to his pay. Mr Weinert stated that in October 2009 his salary maintenance amount was increased to incorporate an increase equivalent to the Teacher Level 2.3 pay rate under salary maintenance (see Exhibits A2 and A3). Mr Weinert gave evidence that he started on the Level 1.8 pay rate when he commenced employment with the respondent and his salary increased on an annual basis and Mr Weinert gave evidence that he understood from discussions with colleagues that Level 2.4 was the highest salary level that he could be paid. Mr Weinert stated that he had no discussions with the respondent about the change in his classification on his payslip in May 2009 nor was any documentation reflecting this change provided to him at the time.
- 35 Mr Weinert stated that he has had extensive experience in the automotive industry both as an employee and a business owner and he has also supervised numerous apprentices and Mr Weinert considers himself more than qualified to teach in the automotive area given his qualifications and his experience.
- 36 Mr Weinert stated that he enjoys teaching, his students were keen to attend his classes and student participation in the courses he taught was growing.
- 37 Mr Weinert took umbrage at being classified as an untrained teacher on the basis that he is highly trained and skilled in his area of expertise, he has undertaken a four year apprenticeship and has had extensive experience in the automotive area subsequent to completing this qualification. Mr Weinert has also been a TAFE teacher, he has assisted with teacher training at Denmark College, he has undertaken a range of courses outside of his area of expertise and he has also undertaken moderation and assessment with other teachers.
- 38 Mr Weinert stated that it would be difficult for him to gain formal teaching qualifications as he would be on a reduced salary and once he qualified he could be sent anywhere in the State which would create issues for his family.
- 39 Under cross examination Mr Weinert stated that he was aware of the classification of untrained teacher when he applied for the position at Denmark College and he agreed that when he commenced employment with the respondent there was no undertaking given to him that he would receive on-going salary increments. When it was put to Mr Weinert that obtaining a Certificate IV qualification was not demanding, he stated that this qualification was not difficult for him to achieve given his relevant skills and experience and he stated that if a person undertaking this course did not have his background then it would be challenging for them. Mr Weinert stated that in order to run his courses he had to determine the competencies to be assessed, design the learning process, work out the assessment instruments and prepare a training package for each competency. These courses were then evaluated and validated through a moderation process.
- 40 Mr Weinert confirmed that he was assessed under a performance management process at Denmark College by his Head of Teaching and he stated that feedback was given to him that his is going well in his role.
- 41 Mr Geoffrey Moyle was summonsed to give evidence. Mr Moyle is employed by the respondent as the Director of Agricultural Education and in this role he manages the respondent's five residential agricultural colleges. Mr Moyle has been in this position since July 2008. Mr Moyle commenced employment with the respondent in 1977 and has had a range of teaching and administrative positions during that period. Mr Moyle confirmed that each of the five residential agricultural colleges has RTO status and he confirmed that he generated a discussion paper which he presented to Principals of the respondent's agricultural colleges at one of their regular meetings (see Exhibit A7, attachment AG 4).
- 42 Mr Moyle stated that students at agricultural colleges completed secondary graduation if they successfully completed requirements to do so and Mr Moyle confirmed that the colleges are subject to the AQTF standards with which they must comply or they will lose their registration. Mr Moyle stated that under AQTF standards teachers at the respondent's agricultural colleges must have a Certificate IV in Workplace Training and Assessment in order to deliver VET courses.

Respondent's evidence

- 43 Mr Chadwick gave evidence by way of a witness statement (Exhibit R1). Mr Chadwick has been employed by the respondent as the Principal of the College since 2003. In this role Mr Chadwick oversees the daily operations of the College as well as its farm and residence, he manages the physical and financial operations, its human resources and he oversees and directs the curriculum delivery for the College's educational and training programs.
- 44 Mr Chadwick gave evidence that Mr Adams was appointed to the College as an unqualified teacher and he was required to obtain a LAT from WACOT before he could commence employment. Mr Chadwick gave evidence that when Mr Adams started working at the College he was assigned the salary grade of 1.8 and he stated that this level was negotiated by Mr Adams with Mr Dennis and Mr Neil Wilson on behalf of the respondent as Mr Adams was not prepared to work at the College if he was to be paid at the untrained teacher salary of Level 1.6. Mr Chadwick gave evidence that he told Mr Adams at the time that his salary would not progress beyond Level 1.8.
- 45 Mr Chadwick was told by Mr Adams in December 2007 that the salary level of an unqualified teacher holding a LAT at Denmark College had progressed past Level 1.8 and this teacher was being paid at salary Level 2.1. After Mr Adams informed him of this, Mr Chadwick contacted the respondent's staffing section to obtain wage parity for his staff at the College. Mr Chadwick confirmed that since that time both Mr Adams and the other unqualified teacher at the College were given salary increments up to Level 2.2 but he was advised in early 2009 by the respondent's payroll section that Mr Adams and the other teacher had been moved back to Level 1.8 and their salary was being maintained at Level 2.2 by salary maintenance allowance.
- 46 Under cross-examination Mr Chadwick stated that he was aware that an untrained teacher could be paid up to Level 1.8 and he stated he informed Mr Adams that he would not receive any further increments past this level. Mr Chadwick gave evidence that when he was told in early 2009 that Mr Adams' salary had been capped at Level 2.2 he was advised by the respondent that

it was a mistake to allow Mr Adams to progress past the salary Level of 1.8. Mr Chadwick confirmed that Mr Adams facilitates learning, he delivers competency based assessment modes aligned to the requirements in the *Vocational Education and Training Act 1996*, he works under the College's plans, he regularly reports on students within the context of this plan, he is answerable to him, he supervises students and provides discipline to them to the highest standard and he undertakes other duties as directed.

- 47 Under re-examination Mr Chadwick stated that to the best of his knowledge a Certificate IV qualification is for delivering competency based units from training packages and possibly up to 300 to 400 hours of tuition was involved in completing this qualification and it was his understanding that to obtain a teaching qualification required a much greater number of hours of study. Mr Chadwick confirmed that Mr Adams was subject to the same performance management processes as other teachers at the College.
- 48 Ms Petra Cameron gave evidence by way of witness statements (Exhibits R2 and R2[2]). Ms Cameron is employed by the respondent as the Acting Senior Labour Relations Advisor in the Labour Relations Directorate. In this role she:
- provides high level advice, support and information on employment and industrial relations issues relevant to the respondent including the interpretation and application of awards, agreements, legislation and policy;
 - mentors and provides information and professional advice to the respondent's managers and members of the labour relations team;
 - promotes, protects and negotiates the intentions and interests of the respondent at a senior level in relevant industrial relations forums;
 - develops and improves client relations; and
 - participates in the business and planning activities of the Directorate and provides significant input into the development, implementation and review of the respondent's labour relations policy and procedures.
- 49 Ms Cameron has been employed in industrial relations in the Western Australian Public Sector since March 2005 and she has been in her current position since April 2008. Ms Cameron gave evidence that she has a comprehensive understanding of the respondent's industrial instruments and she stated that she was involved in the preparation and negotiation of the 2008 Agreement.
- 50 Ms Cameron stated that a person seeking employment as a teacher must be a member of WACOT before they can teach. Ms Cameron stated that membership of WACOT in the LAT category is granted where the person applying for membership has specialist skills or a completed teaching qualification that does not meet the requirements for registration as a teacher but who has nevertheless been offered employment as a teacher. Ms Cameron stated that all other WACOT membership categories require the person applying for membership to hold a teaching qualification approved by WACOT and the minimum approved qualification requirement is four years of completed higher education study with at least one year of this study consisting of a pre-service teacher education program in early childhood, primary, middle or secondary education.
- 51 Ms Cameron stated that under s 235 of the SE Act and consistent with the requirements for WACOT membership, teachers employed by the respondent are required to hold an appropriate qualification. These teachers fall into two groups:
- a. teachers with teaching qualifications – the minimum qualification being successful completion of four years of tertiary education which includes at least one year of full-time teacher education; or
 - b. teachers without teaching qualifications who are employed on the basis of their specialist knowledge, training, skills or qualifications in a particular field to teach in specialist programs such as the languages, arts, sports, business, maths, science and technology when suitably qualified teachers cannot be found.
- 52 Ms Cameron stated that when the WACOT Act came into effect in 2004 teachers without a teaching qualification were required to have a LAT and if a teacher failed to obtain a LAT the WACOT Act prohibited them from teaching in any school. A teacher who is not a member of WACOT therefore cannot perform any teaching duties for the respondent.
- 53 Ms Cameron stated that the change in terminology from "unqualified teacher" to "untrained teacher" in the 2008 Agreement occurred as a consequence of the Award modernisation process undertaken as part of the last round of bargaining between the applicant and the respondent. Ms Cameron gave evidence that three classifications of teacher were identified by the respondent – "four-year-trained", "five-year-trained" or "unqualified" teachers and the term "unqualified teacher" was regarded by representatives of the respondent to be incorrect terminology because s 235 of the SE Act states that all teachers are required to have a qualification in order to be employed. Ms Cameron stated that in June 2008 the respondent decided that the term "untrained" was the best terminology to describe unqualified teachers and as a result this was incorporated into the draft replacement 2008 agreement. Ms Cameron stated that in late 2008 the respondent's Teacher Establishment System, which is an electronic database for the management of teacher placements in Government schools, was upgraded to incorporate the untrained teacher status and this assisted the respondent to ensure that the appropriate documentation was sent to both trained and untrained teachers.
- 54 Ms Cameron stated that under the Award, the 2006 Agreement and the 2008 Agreement the only provisions where separate entitlements apply based on whether a teacher is trained or untrained is the incremental range for salary, internal relief and casual rates of pay. This distinction is based on the Award provision specifying that untrained teachers cannot progress to a salary level higher than 1.8.
- 55 Ms Cameron stated that salary rates for teachers are inserted into the respondent's Human Resource Management Information System ("HRMIS") using a scale for untrained teachers ("UT") ranging from salary levels 1.1 to 1.6 and a scale for trained teachers ("TT") ranging from salary levels 1.6 to 2.4. Incremental progression within each scale is automatic however

progression from the UT scale to the TT scale is not. Ms Cameron stated that the salary rates for trained and untrained teachers overlap on Level 1.6 to Level 1.8 and as the UT scale only goes up to Level 1.6, untrained teachers at Level 1.7 or Level 1.8 are therefore placed on the TT scale in HRMIS. As HRMIS cannot distinguish between trained and untrained teachers who are on the TT scale errors occurred enabling some untrained teachers who under the Award cannot progress to salary levels higher than 1.8 being overpaid. Where such overpayments occur the respondent is obliged to recover these overpaid monies.

- 56 Ms Cameron stated that Schedule B – Salaries in the 2008 Agreement contains separate salary tables for untrained teachers and teachers. Ms Cameron stated that the applicant and respondent agreed to set out the salaries in Schedule B in this way to take into consideration the limitations of the HRMIS as well as the Award provision which requires progression from Level 1 to Level 2 of the salary scale being subject to the attainment of a four year teaching qualification. Ms Cameron stated that during negotiations for amendments to the Award and the final terms of the 2008 Agreement Ms Gisborne was advised that changing the term “unqualified teacher” to “untrained teacher” was necessary as the respondent can only employ qualified teachers or in certain circumstances people who have a specialist knowledge or skills who hold a LAT including music teachers, language teachers and other specialist or trade based positions. Ms Cameron stated that during these negotiations she explained to the applicant’s representatives that whilst these teachers do not hold a qualification in teaching they are qualified in their trade, language or area of expertise hence the term “unqualified teacher” was deemed inappropriate. Ms Cameron stated that she specifically advised Ms Gisborne that not many teachers were paid on the “untrained teacher” salary scales and these scales are used for teachers who were not qualified as teachers. Ms Cameron stated that these changed provisions were endorsed by the applicant’s executive.
- 57 Ms Cameron stated that “Industrial Relations Advice No 1 of 2009” confirms that where employees are being paid at rates higher than their applicable salary level these affected employees will have their salary maintained until such time as the correct salary rate exceeds their current rate (see Exhibit R2 attachment PC6). As a result where untrained teachers have a salary level greater than 1.8 due to errors created by the HRMIS system the respondent maintains their salary levels rather than recover any overpayment of these salaries.
- 58 Ms Cameron stated that before the enactment of the WACOT Act and the registration of the 2006 Agreement the respondent employed teachers without teaching qualifications to be in control of and supervise classes in the same way as a teacher with a teaching qualification. Such teachers were employed in specialist subject areas such as music, drama and languages and they were paid on the “unqualified teachers” salary scales of Level 1.1 to 1.6 and up to 1.8 at the discretion of the respondent. Ms Cameron disagreed that teachers holding a LAT commenced on the same pay scale as a graduate and are paid the same as a fully qualified teacher with a teaching qualification. Ms Cameron stated that the introduction of the WACOT Act from 2004 had no impact on the way the respondent remunerated its teachers.
- 59 Ms Cameron stated that the respondent has consistently paid teachers without a teaching qualification in accordance with the Award and by 2008 these practices had been in place for almost 14 years without any issues arising. Ms Cameron concedes that there is no difference between the functions, roles and responsibilities and accountabilities of teachers fully registered by WACOT and those holding a LAT. However, LAT teachers do not have a teaching qualification and are only given a LAT when suitably qualified teachers cannot be found and the LAT restricts the teacher so that they can only teach in a specific subject area, location and for a finite period.
- 60 Ms Cameron stated that during the negotiations for the 2008 Agreement there were no discussions between the parties regarding the need to make it clear that teachers were not paid salaries below Level 1.6 nor was there a discussion about the need to provide a salary scale for “assistant teachers”. Documentation was also provided to Ms Gisborne clearly showing that approximately 700 full time equivalent teachers were paid on salary levels below 1.6 (see Exhibit R2[2] attachment PCR9). Ms Cameron stated that the separation of the salary scales in the 2008 Agreement was at the respondent’s initiative because of the limited capabilities of the HRMIS, the need to provide a single reference point for all rates of pay according to classifications and to implement the new salary structure and present it in a readable format. Ms Cameron concedes that from time to time there have been instances where untrained teachers have progressed beyond the maximum increment as prescribed in the Award through administrative error and when this has occurred employees have had their salary maintained so as not to financially disadvantage them.
- 61 Ms Cameron maintains that as successive agreements and the Award applied to untrained teachers there was therefore no necessity to hold any discussions with the applicant about this issue and she stated there has been no change in the entitlements of untrained teachers since 1993. Ms Cameron stated that it was the respondent’s intention and obligation to fill all teaching positions by suitably qualified teachers and the employment of LAT teachers was therefore kept to a minimum. However during times of teacher shortage this has resulted in the employment of untrained teachers becoming more prevalent.
- 62 Under cross examination Ms Cameron conceded that there had been errors in the way in which the respondent had handled Mr Adams’ employment and she stated that she was unaware if Mr Adams had been given written advice that he had been overpaid. Ms Cameron confirmed that during discussions for the 2008 Agreement there was no discussion about LAT teachers specifically being placed on the untrained teachers scale as this was not the terminology used by the respondent as it used the term untrained teachers.
- 63 Ms Cameron confirmed that untrained teachers were paid pursuant to Clause 22(2) of the Award and she conceded that the duties of an untrained teacher were the same as those of trained teachers who have as a minimum, a four year teaching qualification.

- 64 Mr Wilson gave evidence by way of a witness statement (Exhibit R3). Mr Wilson is employed by the respondent as the Manager of Teacher Staffing in the Staffing Directorate and in this role he facilitates the staffing of public schools throughout Western Australia and the appointment and transfer of teachers across Western Australia. Mr Wilson has worked with the respondent since 1977. Mr Wilson has been in his current role since January 2005. Mr Wilson is familiar with the appointment processes for both teachers and school administrators.
- 65 Mr Wilson stated that untrained teachers working for the respondent are paid on a salary scale that, in May 2006, ranged from Level 1.1 to Level 1.6 in accordance with Clause 47.6 of the *Government School Teachers' and School Administrator's Certified Agreement 2004* ("the 2004 Agreement") and movement through this salary scale was by annual increment based on a specified number of service days and calculated automatically by the HRMIS. In order to attract and retain teachers in areas of need, such as design and technology, the respondent may increase the salary of untrained teachers up to a maximum of Level 1.8 and the procedure adopted by the Staffing Directorate in a case of this nature was to request substantiating documentation from the teacher who sought to be paid at a higher salary level. This documentation was then considered by staff in the Staffing Directorate and one salary increment was applied to the teacher's salary for every three years of related work experience. Mr Wilson stated that this was a long standing business rule used by the respondent. Mr Wilson stated that moving an untrained teacher to a higher salary level than 1.6 required the untrained teacher to be placed on the trained teacher salary scale within HRMIS and because increments were automatically applied by HRMIS the salary of untrained teachers placed on the teachers scale had to be monitored manually to ensure that they did not progress above Level 1.8.
- 66 Mr Wilson stated that given Mr Adams' work experience Mr Wilson authorised that Mr Adams be paid at commencement at a Level 1.8 and Mr Wilson stated that the respondent's payroll section were asked to ensure that his salary did not progress above this level however this request was not followed.
- 67 Mr Wilson stated that under the 2008 Agreement the salary for untrained teachers can progress to Level 1.8 whereas under previous agreements the salary of an untrained teacher could only progress above Level 1.6 upon a consideration of substantiating document and the HRMIS system was altered at the time to reflect this.
- 68 Mr Wilson stated that the community expects and demands that qualified teachers teach students and this is one of the cornerstones of the national teacher registration requirements. Mr Wilson maintained that to allow untrained teachers to progress to the top of the salary scale would be inappropriate because it would fail to recognise the additional study and higher education fees incurred by teachers who undertake teacher training and appropriately reflect this additional training in the salaries structure and teachers would not undertake such training which may have a significant impact on public confidence in the education system.
- 69 Mr Salvatore Mastrolembo gave evidence by way of a witness statement (Exhibit R4). Mr Mastrolembo is employed by the respondent as the Payroll Operations Manager within the respondent's Shared Services Centre. In this role he manages the respondent's payroll operations. Mr Mastrolembo is familiar with the respondent's payroll procedures and processes.
- 70 Mr Mastrolembo stated that Mr Adams was employed as a Level 1.8 employee from 1 May 2006 and this level was approved by Mr Dennis, Mr Wilson and Kim Ward the respondent's Director of Staffing. Mr Mastrolembo understood that this salary level was to remain at Level 1.8 because the Award precludes untrained teachers from rising about this level. Mr Mastrolembo stated that as HRMIS was programmed so that untrained teachers could not be paid a salary above Level 1.6, Mr Adams' salary level was recorded on the trained teacher salary level in HRMIS.
- 71 Mr Mastrolembo stated that in January 2008 Mr Adams' salary was increased to Level 2.1 at the request of one of the respondent's staffing consultants and on 1 May 2008 HRMIS automatically increased his salary to Level 2.2 as this was the increment applied to all teachers on salary Level 2.1. This error was corrected on 1 May 2009 when Mr Adams' status was changed in HRMIS to "untrained teacher Level 1.8" with no increment date inserted. Mr Mastrolembo stated that since that time Mr Adams' salary has remained at Level 2.2 on a salary maintenance basis until such time as the salary payable at Level 1.8 exceeds his current salary rate, in accordance with advice from the respondent's Acting Executive Director-Workforce.
- 72 Mr Mastrolembo stated that he understands that the respondent employs 177 untrained teachers, that is teachers who have not undertaken teacher training and he has ascertained that of these five have progressed above Level 1.8.
- 73 Mr Dennis gave evidence by way of a witness statement (Exhibit R5). Mr Dennis is currently employed by the respondent as the Manager Operations for the West Coast Education District and between August 2003 and May 2008 he was a staffing consultant for the respondent in the area of art, design and technology and home economics.
- 74 Mr Dennis gave evidence that he discussed the process for appointing Mr Adams as an untrained teacher in early 2006 with Mr Chadwick and at the time he explained to Mr Chadwick the process of obtaining an ID number and discussed the salary level for untrained teachers. On 10 April 2006, Mr Dennis sent a memo to WACOT requesting that Mr Adams' application for a LAT be endorsed (Exhibit R5 attachment ID2).
- 75 Mr Dennis stated that he was aware that under the Award the highest salary level payable to an untrained teacher was Level 1.6 and the respondent had discretion to increase this to Level 1.8. Mr Dennis stated that from 2004 onwards there was pressure on the respondent to staff classes in the design and technology area due to a shortage of trained teachers in this area and there was an increased demand from employers and students in this area. After Mr Adams requested a salary level higher than Level 1.6 and after he supplied documentation with reasons for supporting an increase salary the respondent used its discretion to appoint Mr Adams above Level 1.6 up to a cap of Level 1.8. In doing so Mr Dennis intended that Mr Adams would not receive any annual increments to this salary on the basis of the limitation provided for in the Award (see Exhibit R5 attachment ID4).

Submissions

Applicant's submissions

- 76 The applicant submits that as Mr Adams fulfils the same roles and duties of a tertiary trained teacher under the SE Act, then he should be paid the rate of pay of a trained teacher and even though Mr Adams holds a LAT this should not impact on the salary he should be paid.
- 77 The applicant argues that Mr Adams is not an untrained teacher for the purposes of the WACOT Act and the 2008 Agreement, even though he is regarded by the respondent as being an untrained teacher. Additionally, Mr Adams holds appropriate qualifications to teach in his current role. The applicant concedes that holding a Certificate IV qualification does not equate to that of a tertiary teaching qualification however, the skills held and exercised by Mr Adams as well as the role undertaken by him entitles him to be paid as a Level 2.4 teacher. The applicant also maintains that teachers in a similar situation to Mr Adams should be able to access the teachers salary scale up to Level 2.4 on the basis that they are entitled to equal pay for undertaking equal work and they undertake the full range of duties expected of a teacher.

Respondent's submissions

- 78 The respondent maintains that when determining Mr Adams' salary the provisions of the 2008 Agreement as well as the Award must be taken into account. The respondent argues that when interpreting industrial agreements the ordinary meaning of the text is paramount (see *Robe River Iron Associates v Amalgamated Metal Workers and Shipwrights Union of Western Australia* [1987] 67 WAIG 1097). When determining the true interpretation of the 2008 Agreement and the meaning of relevant clauses the Commission is to refer to the presumed mutual intentions of the parties and if the terms of the industrial agreement are clear and unambiguous, which the respondent submits they are in this case it is not permissible to look at extrinsic material to qualify the meaning (see *Codelfa Construction Pty Ltd v State Rail Authority [NSW]* [1982] 149 CLR 337).
- 79 The respondent does not dispute that Mr Adams fulfils the duties normally undertaken by a teacher however the trained teacher salary scale does not apply to him as he does not have a teaching qualification from a higher education institution and Mr Adams is not a trained teacher under the relevant agreements and the Award, specifically Clause 22(2) of the Award.
- 80 The respondent submits that the term 'untrained teacher', as defined in Clause 7 of the 2008 Agreement, means a teacher who does not have tertiary teacher training. As Mr Adams holds a LAT on the basis that he does not have a tertiary teaching qualification, this also confirms that Mr Adams should not be entitled to be paid the salary level of a trained teacher. Additionally, holding a LAT limits where an employee can teach and that employee is restricted to teaching certain subjects which is different to that which applies to a tertiary trained teacher. The untrained teacher scale must therefore apply to Mr Adams and other teachers who do not hold a relevant tertiary teaching qualification.
- 81 The respondent argues that there was never any agreement between the parties nor did the parties intend that an untrained teacher would progress beyond salary Level 1.8 and no documentation exists confirming otherwise. It is also a relevant consideration that since 1993 the Award provides that Level 1.8 is the maximum salary that an untrained teacher can be paid. As the teacher salary scale incorporates the placement of three, four and five year trained teachers it follows that an untrained teacher is an employee whose qualifications do not meet those requirements. The respondent also argues that gaining a Certificate IV qualification does not mean that a person is a trained teacher as this certificate is not an equivalent qualification to that of a tertiary trained teacher. The respondent maintains that even though there is a shortage of design and technology teachers and that the salary scales of an untrained teacher may not be competitive with other careers this issue is not the subject of arbitration with respect to this application.
- 82 The respondent submits that the fact that Mr Adams' current salary is above Level 1.8 is as a result of administrative errors and Mr Adams has therefore been placed on salary maintenance.
- 83 The respondent objects to the issuance of the order being sought by the applicant that all employees in a similar category to Mr Adams be paid as a fully trained teacher because the evidence given in the proceedings only related to Mr Adams.

Findings and Conclusions

Credibility

- 84 I listened carefully to the evidence given by each witness and closely observed each witness. In my view each witness gave their evidence honestly and to the best of their recollection and I find that the evidence given by each witness was given in a considered and forthright manner. Given my confidence in the evidence of all of the witnesses who gave evidence in these proceedings I have no hesitation in accepting the evidence they gave.
- 85 The applicant is seeking the issuance of orders contained in points 1 (b) to (f) of the Schedule of the memorandum of matters referred for hearing and determination (see paragraph 2). Order 1(b) being sought by the applicant is that Mr Adams be classified and paid at a salary level higher than Level 1.8 of the Untrained Teacher scale in the 2008 Agreement and that he be entitled to be paid the rates of pay of a trained teacher and progress up the teacher scale in the same manner as a three, four or five year trained teacher. The respondent argues that as Mr Adams is an untrained teacher for the purposes of the relevant industrial instruments and given the salary restrictions placed on an untrained teacher in these instruments the appropriate salary level for Mr Adams can be no higher than Level 1.8 notwithstanding the fact that he is currently being paid as a Level 2.2 employee under a salary maintenance arrangement.
- 86 What it is necessary to determine is the salary level to which Mr Adams is entitled and whether or not he is an untrained or unqualified teacher for the purposes of the Award and the 2004, 2006 and 2008 agreements. It is also necessary to consider the applicant's claim that even though Mr Adams does not hold a tertiary teaching qualification, he has teaching qualifications, he fulfils the role of a teacher and as he holds an authority to teach (LAT) this should enable him to progress up the salary scale beyond Level 1.8.

87 As Mr Adams' terms and conditions of employment since the commencement of his employment with the respondent were and are now regulated by a range of industrial instruments it is appropriate to review and interpret these relevant provisions to determine his correct salary level.

88 The interpretation of an award is a matter of law. When interpreting an award one must read the terms of the award, give the words in the clause or clauses in question their ordinary commonsense meaning and ascertain whether the words used have an unambiguous meaning. If the terms of the award are clear and unambiguous it is not permissible to look at extrinsic material to qualify the meaning of the clause or clauses in issue (see *Norwest Beef Industries Limited and Another v West Australian Branch, Australian Meat Industry Employees Union, Industrial Union of Workers* [1984] 64 WAIG 2124).

89 In *Brown & Root Energy Services Pty Ltd v Construction Industry Long Service Leave Payments Board* (2001) 81 WAIG 665 at 671 Smith, C, as she was then, also observed the following:

"In interpreting industrial instruments tribunals usually do not apply a literal approach, as awards and enterprise agreements may have been drafted by industrial rather than skilled draftsmen (*Robe River Iron Associates v Amalgamated Metal Workers' and Shipwrights' Union* per Kennedy J at 1100). This approach to interpretation was explained by Street J in *Geo A Bond and Co Ltd (in liq) v McKenzie* (1929) 28 AR 499 at 503-504—

'Now, speaking generally, awards are to be interpreted as any other enactment is interpreted. They lay down the law affecting employers and employees in their relation as such, and they have to be obeyed to the same extent as any other statutory enactment. But at the same time, it must be remembered that awards are made for the various industries in the light of the customs and working conditions of each industry, and they frequently result, as this award in fact did, from an agreement between parties, couched in terms intelligible to themselves but often framed without that careful attention to form and draughtsmanship which one expects to find in an Act of Parliament. I think, therefore, in construing an award, one must always be careful to avoid a too literal adherence to the strict technical meaning of words, and must view the matter broadly, and after giving consideration and weight to every part of the award, endeavour to give it a meaning consistent with the general intention of the parties to be gathered from the whole award.'"

90 There was no dispute and I find that Mr Adams' employment was governed by the 2004, 2006 and 2008 agreements and the Award, as varied from time to time. There are a number of clauses in these industrial instruments which are relevant to the salary scale of untrained/unqualified and trained teachers and definitions relevant to these classifications.

91 When Mr Adams commenced employment at the College in May 2006 the Award did not contain a definition for untrained teacher but instead contained a definition of an unqualified teacher. This definition reads as follows:

"Unqualified teacher" shall mean a teacher who does not hold an approved teacher's qualification."

At this time the Award also contained the following definition:

"Teacher" shall mean as defined in the Education Act 1928 and shall include –

- (a) any person engaged in teaching in a government school;
- (b) any person employed by the Minister and engaged in teaching in a pre-school centre; and
- (c) any person holding or acting in a position in the Ministry for which a teaching academic qualification is required,

but does not include any public servant, whether or not he or she holds, or acts in a position in respect of which a teaching academic qualification is required;"

92 As at May 2006, the Award contained the following provisions at Clause 8. – Salaries:

"(1) For the purpose of this clause -

...

"Unqualified teacher" shall mean a teacher who does not hold an approved teacher's qualification.

...

(3) (a) Teachers who possess an approved qualification shall be placed on the salary scale prescribed in Schedule B, Table I of this award as follows –

- (i) Three-year trained teacher - Level 1, Point 4;
- (ii) Four-year trained teacher - Level 1, Point 5;
- (iii) Five-year trained teacher – Level 1, Point 6;

provided that teachers who possess approved qualifications in excess of those specified above may be placed on the salary scale at the discretion of the employer.

(b) Teachers who do not possess an approved qualification may be placed on salary points lower than those specified in paragraph (a) of this subclause at the discretion of the employer.

- (c) On first appointment to the Ministry, other than directly from a teacher training institution, teachers may be placed on the appropriate salary scale in Level 1 or 2 as determined by the employer having regard for their qualifications and experience.
- (4) Progression from Level 1 to Level 2 of Schedule B, Table I, will be subject to attainment of a four year trained qualification, except that the employer may allow a three-year trained teacher to progress to Level 2 subject to subclause (10) of this clause.
- ...
- (6) An unqualified teacher may not proceed beyond Level 1, point 6, of Schedule B, Table I, except that the employer may at his/her discretion, and under such terms as he/she thinks fit, allow an unqualified teacher to progress to Level 1, point 8."

93 Clause 22. – Salaries of the Award, as at 16 December 2008, provides as follows:

- (1) (a) The salaries and pay rates for employees are contained in Schedule B. – Salaries of this Award.
- (b) Employees covered by this award are to be paid as per the provisions comprising:
 - (i) Part 1 – Wages Adjusted by Arbitrated Safety Net Adjustments; or
 - (ii) Part 2 – Expired Industrial Agreement Wages
 whichever are the greater.
- (2) Teachers who possess a qualification recognised by the Director General as being an appropriate qualification are placed on the salary scale prescribed in Schedule B. – Salaries of this Award, as follows:
 - (a) Three-year-trained Teacher - Level 1, Point 5.
 - (b) Four-year-trained Teacher - Level 1, Point 6.
 - (c) Five-year-trained Teacher - Level 1, Point 7.
 Teachers who possess approved qualifications in excess of those specified above may be placed above Level 1 point 7 at the discretion of the Employer.
 Untrained Teachers may be placed on salary points lower than those specified in clause 22(2) at the discretion of the Employer.
 An Untrained Teacher can not proceed beyond Level 1, point 8.
- (3) Level 1 and 2 Teachers who have added to their qualifications after appointment may be given accelerated progression subject to the following restrictions:
 - (a) An Untrained Teacher appointed from a teacher training institution who obtains approved teaching qualifications within a period of three (3) years after leaving the teacher training institution is placed on the same salary point as their contemporaries at the time of appointment who were appointed with qualifications.
 - (b) Untrained Teachers other than those referred to in clause 22(3)(a) advance one increment on gaining a qualification recognised by the Director General as being an appropriate qualification.
 - (c) A two (2)-year-trained Teacher who obtains the qualifications of a three (3)-year-trained Teacher is to advance one increment but can not proceed beyond the maximum of Level 1.
 - (d) A three (3)-year trained Teacher who obtains the qualifications of a four (4)-year-trained Teacher is to advance one increment.
 - (e) A four (4)-year-trained Teacher who completes a course of higher study, approved by the Employer, leading to an award such as Doctoral Degree, Master's Degree or approved Graduate Diploma, must advance one (1) increment but can not proceed beyond the maximum of Level 2, Schedule B – Salaries Table I of this Award. Only one (1) increment can be obtained under clause 22(3)(e).
- (4) If a person, immediately before graduating as a qualified Teacher, is employed on a permanent or fixed-term contract basis to fill a teaching vacancy, they are entitled to receive the salary and entitlements as prescribed for Graduate Teachers."

94 Clause 5. – Definitions of the Award, as at 16 December 2008, provides the following definitions:

"Untrained Teacher" means a Teacher who does not have teacher training"

"Teacher" means a person as defined in the Act, and unless otherwise specified in this Award, the term is used to include the classifications identified in Clause 15 – Teacher Career/Classification Structure of this Award"

"Three-Year-Trained Teacher" means a Teacher who successfully completed an academic qualification requiring a sequence of the equivalent of three (3) years of full time, post-matriculation tertiary education which incorporates an approved course of initial teaching training, or obtained other qualifications approved as of equivalent standard;"

"Four-Year-Trained Teacher" means a Teacher who has successfully completed an academic qualification requiring a sequence of the equivalent of four (4) years of full time, post-matriculation tertiary education which incorporates an approved course of initial teacher training, or obtained other qualifications approved as of equivalent standard"

““Five-Year-Trained Teacher” means a Teacher who has successfully completed an academic qualification requiring a sequence of the equivalent of five (5) years of full time, post-matriculation tertiary education which incorporates an approved course of initial teacher training, or obtained other qualifications approved as of equivalent standard”

““Approved” means approved by the Employer”

95 Clause 46 – Compaction of Teachers Incremental Salary Scale in the 2004 Agreement contained the following table:

“46.5 Effective from 2005 the Teachers Salary Structure shall be as follows:

	Current Rate	February 2004	February 2005	February 2006
Teachers				
1.1	\$30,985	\$31,915	\$33,872	\$33,858
1.2	\$32,595	\$33,573	\$34,580	\$35,617
1.3	\$34,474	\$35,508	\$36,573	\$37,671
1.4	\$35,961	\$37,040	\$38,151	\$39,296
1.5	\$38,288	\$39,437	\$40,620	\$41,838
1.6	\$40,543	\$41,759	\$43,012	\$44,302
1.7	\$43,486	\$45,563	\$46,930	\$48,338
1.8	\$48,640	\$50,099	\$51,602	\$53,150
2.1	\$50,135	\$52,025	\$53,586	\$55,193
2.2	\$52,211	\$54,164	\$55,789	\$57,463
2.3	\$56,126	\$57,810	\$59,544	\$61,330
Senior Teacher 1	-	\$59,310	\$61,089	\$62,922
Senior Teacher 2	-	\$60,496	\$62,311	\$64,180
Level 3 Classroom Teacher	\$62,972	\$65,050	\$67,197	\$69,414

96 Clause 47 –Teacher Career Structure in the 2004 Agreement provided as follows:

“47 TEACHER CAREER STRUCTURE

47.1 The jointly agreed Teacher Competence and Standards Working Party will continue to monitor and make recommendations to the parties on further development and implementation of the Teacher Career Structure as initiated in the 1996 Teachers Agreement.

Level 1 & 2 Teachers

47.2 Teachers who possess an approved qualification shall be placed on the salary scale prescribed in clause 45 – Teacher Salary Increases of this Agreement as follows:

- (a) Four-year trained teacher – Level 1, Point 5;
- (b) Five-year trained teacher – Level 1, Point 6;

provided that teachers who possess approved qualifications in excess of those specified above may be placed on the salary scale at the discretion of the employer.

47.3 Teachers who do not possess an approved qualification may be placed on salary points lower than those specified in subclause 47.2 at the discretion of the employer.

47.4 On first appointment to the Department of Education and Training, other than directly from a teacher training institution, teachers may be placed on the appropriate salary scale in Level 1 or 2 as determined by the employer having regard for their qualifications and experience.

47.5 A teacher who has not had a satisfactory report may not advance further than three (3) annual increments from the salary point on appointment.

47.6 An unqualified teacher may not proceed beyond Level 1, point 6, of clause 45 – Teacher Salary Increases, except that the employer may at his/her discretion, and under such terms as he/she thinks fit, allow an unqualified teacher to progress to Level 1, point 8.

47.7 Teachers employed on Level 1 and 2 who have added to their qualifications after appointment may be given accelerated progression subject to the following restrictions –

- (a) An unqualified teacher appointed from a teacher training institution who obtain approved teaching qualifications within a period of three (3) years after leaving the teacher training institution shall be placed on the same salary point as his/her contemporaries at the time of appointment who were appointed with qualifications.

- (b) Unqualified teachers other than those referred to in paragraph (a) of this subclause shall advance one increment on gaining approved teaching qualifications.
- (c) A four-year trained teacher who completed a course of higher study, approved by the employer, leading to an award such as Doctoral Degree, Master's Degree or approved Graduate Diploma, shall advance one increment but shall not proceed beyond the maximum of Level 2 outlined in clause 45 – Teacher Salary Increases (provided that only one increment can be obtained under this subclause)."

97 An approved qualification in the 2004 Agreement means approved by the employer.

98 Clause 5. - Relationship to Award and Previous Agreements in the 2004 Agreement provided as follows:

"5.1 This Agreement shall replace the *Government School Teachers' and School Administrators' Certified Agreement 2000*, *Government School Administrators' Workplace Agreement 2000* and all previous memoranda and agreements which had application to the parties to this Agreement prior to the registration of this Agreement.

5.2 The conditions prescribed in this Agreement shall, to the extent of any inconsistency, prevail over the terms prescribed in the Award. Otherwise the terms of the Award shall be read wholly in conjunction with this Agreement, and such terms are included in this Agreement."

99 Clause 50 – Teacher Salary Increases in the 2006 Agreement provided the following table:

"50.2 Salaries shall be paid in accordance with the following table:

	Current Rate	August 2006	February 2007	August 2007	February 2008
Teachers					
LEVEL 1.1	\$33,858	\$34,704	\$35,399	\$36,107	\$37,009
LEVEL 1.2	\$35,617	\$36,507	\$37,238	\$37,982	\$38,932
LEVEL 1.3	\$37,671	\$38,613	\$39,385	\$40,173	\$41,177
LEVEL 1.4	\$39,296	\$40,278	\$41,084	\$41,906	\$42,953
LEVEL 1.5	\$41,838	\$42,885	\$43,743	\$44,618	\$45,733
LEVEL 1.6	\$44,302	\$45,410	\$46,318	\$47,244	\$48,425
LEVEL 1.7	\$48,338	\$49,546	\$50,537	\$51,548	\$52,837
LEVEL 1.8	\$53,150	\$54,479	\$55,568	\$56,680	\$58,097
LEVEL 2.1	\$55,193	\$56,573	\$57,704	\$58,858	\$60,330
LEVEL 2.2	\$57,463	\$58,900	\$60,078	\$61,279	\$62,811
LEVEL 2.3	\$61,330	\$62,863	\$64,121	\$65,403	\$67,038
LEVEL 2.4	-	-	-	\$67,446	\$69,132
Senior Teacher 1	\$62,922	\$64,495	\$65,785	\$69,140	\$70,868
Senior Teacher 2	\$64,180	\$65,785	\$67,100	\$71,067	\$72,844
Level 3.1 Classroom Teacher	\$69,414	\$71,149	\$72,572	\$74,275	\$76,132
Level 3.2 Classroom Teacher	-	-	-	\$75,848	\$77,744

100 Clause 34 – Teacher Career Structure in the 2006 Agreement provided as follows:

"34.1 The teacher career structure consists of:

- (a) Graduate Teacher, a teacher in his/her first two years of teaching,
- (b) Teacher, a teacher who has taught for more than 2 years;
- (c) Senior Teacher 1 and 2, a teacher who has successfully completed the Senior Teacher process as per Clause 36.
- (d) Level Three Classroom Teacher, a teacher who has attained L3 Classroom Teacher status as per Clause 37.

34.2 In the event an unqualified person, before graduation, is required to fill a teaching vacancy, such an employee who is on fixed term or permanent employee shall be employed at a salary level of no less than 1.5 and will enjoy the entitlements as described for graduate teachers."

101 Clause 9 – Definitions of the 2006 Agreement contained the following definitions and also contained definitions of a "Four-year-trained teacher" and a "Five-year-trained teacher" in the same terms as the Award:

"Unqualified teacher" means a teacher who does not hold an approved teacher's qualification"

““Tertiary Education” means undertaking a course at an approved education institution for which the pre-requisite is a successful Year 12 of schooling or its approved equivalent”

102 Clause 5 – Relationship to Award and Previous Agreements of the 2006 Agreement reads as follows:

“5.1 This Agreement replaces the Government School Teachers’ and School Administrators’ Certified Agreement 2004 which had application to the Parties to this Agreement prior to the registration of this Agreement.

5.2 The conditions prescribed in this Agreement shall, to the extent of any inconsistency, prevail over the terms prescribed in the Award. Otherwise the terms of the Award shall be read in conjunction with this agreement.”

103 Clause 7 – Definitions in the 2008 Agreement provides the following definitions and also contains definitions of a “Three-Year-Trained Teacher”, a “Four-year-trained teacher” and a “Five-year-trained teacher” in the same terms as the Award:

““Teacher” means a person as defined in the Act, and unless otherwise specified in this Agreement, the term is used to include the classifications identified in Clause 15 – Teacher Career/Classification Structure of the Award”

““Untrained Teacher” means a Teacher who does not have teacher training”

““Approved” means approved by the Employer”

104 Schedule B – Salaries of the 2008 Agreement contains, among others, the following relevant tables:

“UNTRAINED TEACHERS

TABLE 1 - Salaries (Annual Rate)

Increment	From Feb-08	Sep-08	Oct-09	Feb-10	Oct-10
1.1	\$37,009	\$39,230	\$41,192	\$41,224	\$42,873
1.2	\$38,932	\$41,268	\$43,331	\$43,504	\$45,244
1.3	\$41,177	\$43,648	\$45,830	\$45,910	\$47,747
1.4	\$42,953	\$45,530	\$47,807	\$48,448	\$50,386
1.5	\$45,733	\$48,477	\$50,901	\$51,127	\$53,172
1.6	\$48,425	\$51,331	\$53,898	\$53,954	\$56,112
1.7	\$52,837	\$56,007	\$58,807	\$59,199	\$61,567
1.8	\$58,097	\$61,583	\$64,662	\$64,788	\$67,380

TEACHERS

TABLE 4 - Salaries (Annual Rate)

Increment	From Feb-08	Sep-08	Oct-09	Feb-10		Oct-10
1.6	\$48,425	\$51,331	\$53,898	2.1	\$53,954	\$56,112
1.7	\$52,837	\$56,007	\$58,807	2.2	\$59,199	\$61,567
1.8	\$58,097	\$61,583	\$64,662	2.3	\$64,788	\$67,380
2.1	\$60,330	\$63,950	\$67,148	2.4	\$67,328	\$70,021
2.2	\$62,811	\$66,580	\$69,909	2.5	\$69,967	\$72,766
				2.6	\$72,710	\$75,618
2.3	\$67,038	\$71,060	\$74,613	2.7	\$75,559	\$78,582
2.4	\$69,132	\$73,280	\$76,944	2.8	\$78,521	\$81,662
				2.9	-	\$84,863

TRANSITION ARRANGEMENTS FOR SALARY INCREMENTS - FEBRUARY 2010

TABLE 23

The following arrangements are effective from the beginning of the pay period ending 4 February 2010:

- (a) The new Teacher salary scale commences at level 2.1 (2.1 is equivalent to 1.6) with increments up to level 2.8, and a new increment level 2.9 introduced from 4 February 2011.
- (b) Permanent teachers in the employ of the Department at the date of registration of the Agreement and remunerated at levels 1.7, 1.8 and 2.1 respectively on the existing classification structure will transition to and progress up the new structure as follows:
 - (i) those on level 2.1 will progress to level 2.2 in accordance with current entitlements in 2009. At the date of transition, Teachers on level 2.2 will convert to the new level 2.5 and progress to level 2.7 on their next anniversary date;

- (ii) those on levels 1.7 and 1.8 respectively will continue to progress up the existing classification structure in accordance with current entitlements and convert to the equivalent incremental point at the date of transition; then as the case may be progress automatically on their anniversary date from Level 2.3 to 2.4 to 2.5 to 2.7.
- (c) Temporary fixed term Teachers in the employ of the Department at the date of registration of this Agreement at levels 1.7, 1.8 and 2.1 respectively and who at the transition date have either attained permanent status or maintained continuous service as a fixed term Teacher as provided for in Clause 38 – Long Service Leave of the Award will convert to and progress up the new classification structure in the manner referred to in subclauses (b)(i) and (ii) above.
- (d) Teachers at level 2.4 (new level 2.8); their new increment date changes to February 2011 at which point they will advance to the next increment, i.e. 2.9.
- (e) Teachers at ST1; their new increment date changes to February 2011 at which point they will advance to the new single ST rate.
- (f) ST2 will convert to the new single ST salary point.
- (g) The transition arrangements referred to above do not apply to casual employees.

105 Clause 2 – Relationship to Award of the 2008 Agreement reads as follows:

“2.1 This Agreement replaces the School Education Act Employees’ (Teachers and Administrators) General Agreement 2006 [AG 63 of 2006].

2.2 The conditions prescribed in this Agreement, to the extent of any inconsistency, prevail over the terms prescribed in the Award. Otherwise the terms of the Award will be read in conjunction with this Agreement.”

106 I find that when determining the salary level to which Mr Adams is entitled the terms of the relevant clauses in 2004, 2006 and 2008 agreements, when read in conjunction with the Award, are clear and unambiguous and confirm that Mr Adams is an untrained/unqualified teacher and his salary therefore cannot progress beyond Level 1.8. Given this conclusion I also reject the applicant’s claim that Mr Adams should be treated in the same manner as a three, four or five year trained teacher and should be able to progress through the teacher salary scales beyond Level 1.8 as he undertakes the full range of duties as a teacher with tertiary teaching qualifications as this would be contrary to the salary level to which Mr Adams is entitled under the relevant industrial instruments.

107 The facts are, to a large extent, not in dispute. There is no dispute and I find that Mr Adams holds a Certificate IV in Assessment and Workplace Training and this is not a tertiary teaching qualification. Notwithstanding this I accept that Mr Adams has sufficient qualifications and experience to adequately undertake his role as a Design and Technology Automotive teacher and Program Co-ordinator at the College. Furthermore, there was no dispute and I find that Mr Adam has successfully carried out his role as a teacher at the College since the commencement of his employment with the respondent in May 2006.

108 A teacher is defined in the Award and the 2004, 2006 and 2008 agreements as being a person who has successfully completed a minimum of three years of full-time, post matriculation tertiary education which incorporates teacher training and an untrained/unqualified teacher is defined as a teacher who does not have an approved teacher’s qualification and an employee who does not have teacher training. When taking into account the definitions of a teacher and the definition of an untrained/unqualified teacher in the relevant industrial instruments and as it was not in dispute that Mr Adams has never completed an approved post secondary teaching qualification of at least three years full-time study I find that Mr Adams is not able to be classified as a teacher and is therefore an untrained/unqualified teacher for the purposes of the Award and the 2004, 2006 and 2008 agreements.

109 I find that the terms of Clause 8(3) and (6) of the Award and Clause 47.6 of the 2004 Agreement, which applied at the time Mr Adams commenced employment at the College and the terms of Clause 22 of the Award which replaced Clause 8 of the Award, make it clear that the respondent only has the discretion to pay Mr Adams no more than the salary attached to Level 1.8 given that he is classified as an untrained/unqualified teacher. Even though Mr Adams claims that he was unaware at the time of his appointment as a teacher at the College that Level 1.8 was the highest level he could be paid under the relevant salary scale, it is clear under the 2004 Agreement and subsequent agreements when read in conjunction with the relevant section of the Award that as an untrained/unqualified teacher he is not entitled to be paid a salary higher than Level 1.8. I find that when Mr Adams commenced employment with the respondent in May 2006, the respondent used the discretion given to it under Clause 8 and later Clause 22 of the Award to place Mr Adams at higher than the untrained/unqualified teacher salary of Level 1.6 to ensure that his salary was competitive with his qualifications and his previous salary as a TAFE teacher. I note that Mr Adams continued to receive salary increments up to Level 2.2 via annual increments however I find that this was as a result of the respondent’s HRMIS system not being able to restrict an untrained teacher’s annual salary progression to Level 1.8.

110 I accept that Mr Adams is currently paid at a higher level than 1.8 however this does not assist the applicant’s claim that Mr Adams has the right to access the trained teacher remuneration scale on an ongoing basis. I find that due to the respondent’s inability to adequately ensure that Mr Adams be paid in accordance with the relevant industrial instrument and due to administrative errors Mr Adams is currently paid a salary level of 2.2 which has now been capped by the respondent under salary maintenance and I accept that Mr Adams will continue to be paid this rate of pay until the Level 1.8 salary rate exceeds this amount.

111 I accept the applicant's argument that it never intended that teachers in Mr Adams' position who undertake the same duties as three, four or five year trained teachers and who are regarded as untrained/unqualified teachers for the purposes of the Award and the 2004, 2006 and 2008 agreements should not have their salaries capped at Level 1.8 and I accept Ms Gisborne's evidence that during negotiations for the 2006 and 2008 Agreements there was no discussion between the parties about the salary rates of LAT teachers who do not have a tertiary teaching qualification being treated differently to other teachers. I also find that there was no discussion between the parties during these negotiations about LAT teachers in Mr Adams' situation having their salary level capped at Level 1.8. However the relevant terms of the 2004, 2006 and 2008 agreements when read in conjunction with the Award with respect to the salary to be paid to an untrained/unqualified teacher cannot be ignored when determining an employee's terms and conditions of employment. It is clear that the combined effect of the definitions of a teacher when read in conjunction with Clause 8 and the current Clause 22 of the Award is that teachers in Mr Adams' situation who do not hold approved tertiary teaching qualifications are regarded as an untrained/unqualified teacher and are precluded from being paid a salary beyond Level 1.8. Whilst Mr Adams' salary is currently capped at Level 2.2 I have already stated that I accept that this level is under a salary maintenance arrangement which arose as a result of the respondent's loose administrative practices which unfortunately gave Mr Adams the impression that he may have had an automatic entitlement to progress up the respondent's teacher salary scale beyond Level 1.8.

112 The regime adopted by WACOT to register teachers who are eligible to teach in Western Australian schools in my view is consistent with the conclusion I have reached that as Mr Adams does not hold teaching qualifications necessary to be registered as a teacher he has a different status to that of a tertiary trained teacher.

113 The Membership Policy of WACOT ("the Policy") contains the following categories of membership:

"2. Categories of membership

A. Provisional registration as a teacher (PRT)

A Provisionally Registered Teacher is a person who has met all requirements for registration, including the qualification requirements of the College, but who has not been employed as a teacher for at least one year in the past five years. The minimum qualification requirement is four years of completed higher education programs with at least one year being a completed initial teacher education program covering K-12 in early childhood, primary, middle or secondary education. In some circumstances, experienced teachers with three year teaching qualifications may be eligible for PRT.

B. Registration as a teacher (RT)

A Registered Teacher is a person who has met all requirements for registration, including the qualification requirements of the College, and has been employed as a teacher for at least one year in the past five years. The minimum qualification requirement is four years of completed higher education programs with at least one year being a completed initial teacher education program covering K-12 in early childhood, primary, middle or secondary education.

During the transition to professional regulation, people who were teaching in Western Australia prior to September 2004 and who did not meet the qualification requirements above, or who had not taught in the last five years, were eligible to apply for membership under special arrangements provided for in Schedule 4 of the Act.

C. Limited authority to teach (LAT) membership

A person who has suitable specialist skills or holds a completed teaching qualification that does not meet the requirements for registration as a teacher, and who has been offered employment as a teacher where no suitable registered or provisionally registered teacher is available, may be granted in conjunction with a prospective employer, a Limited Authority to Teach (LAT). This does not allow the person to engage in any relief teaching or taking of any classes outside of the conditions of the LAT.

A special category of LAT referred to as a "Relief LAT" may be granted to applicants that can demonstrate that they satisfy all requirements and have been awarded a recognised three year teaching qualification. This may allow them to be employed as a relief teacher in a maximum of six nominated schools.

D. Associate membership

An Associate Member is a teacher or educator who holds a qualification in teaching or who has made a significant contribution to education or teaching recognised by the College. An Associate Member is not eligible to teach in a Western Australian school."

114 Section 1 – Membership requirements of the Policy reads as follows:

"All persons employed as teachers in Western Australian schools must be members of the Western Australian College of Teaching. To ensure that professional standards are maintained, a person applying for membership must meet the minimum prescribed requirements for membership outlined in the sections 33, 35, 37 and 39 of the *Western Australian College of Teaching Act 2004*. These requirements are described in this policy.

A person may apply to the College for membership in one of four categories:

1. Provisional Registration as a Teacher;
2. Registration as a Teacher;
3. Limited Authority to Teach; or
4. Associate membership.

1. Provisional registration as a teacher

The requirements for provisional registration as a teacher are that the applicant:

- (a) holds a qualification in teaching approved by the College for provisional registration;
- (b) has not been convicted of an offence the nature of which renders the person unfit to be a teacher; and
- (c) is proficient in the English language, both written and oral.

Provisional registration as a teacher expires after three years and may be renewed.

2. Registration as a teacher

The requirements for registration as a teacher are that the applicant:

- (a) holds a qualification in teaching approved by the College for registration;
- (b) has not been convicted of an offence the nature of which renders the person unfit to be a teacher;
- (c) has successfully completed a prescribed police Criminal Record Check;
- (d) has achieved standards of professional practice approved by the College;
- (e) is proficient in the English language, both written and oral; and
- (f) within the 5 years preceding the application –
 - i) has been teaching, whether or not on a full-time basis, for at least one year; or
 - ii) has complied with any requirements as to professional involvement prescribed by regulations. (See Appendix 3).

Registration as a teacher expires after five years and may be renewed.

3. Limited Authority to Teach membership

The requirements for Limited Authority to Teach are that the applicant:

- (a) has specialist knowledge, training, skills or qualifications;
- (b) has been offered a teaching position at a school for which a suitable registered teacher is not available;
- (c) has not been convicted of an offence the nature of which renders the person unfit to be a teacher; and
- (d) is proficient in the English language both written and oral.

A Limited Authority to Teach may be issued for up to two years and may be renewed.

The requirements for a Limited Authority to Teach for relief teaching are that the applicant

- (a) has been awarded a recognised three year teaching qualification;
- (b) has been offered a relief teaching position at no more than six schools;
- (c) has not been convicted of an offence the nature of which renders the person unfit to be a teacher; and
- (d) is proficient in the English language both written and oral.

4. Associate membership

The requirements for Associate membership of the College are that the applicant:

- (a) holds a qualification in teaching approved by the College or has made a contribution to education or teaching recognised by the College; and
- (b) has not been convicted of an offence the nature of which renders the person unfit to be a member of the College.

Associate membership expires after one year and may be renewed.”

115 Section 6 – Teaching qualifications of the Policy reads in part as follows:

“An applicant for membership must demonstrate that he/she meets the Board’s minimum teaching qualification requirement for the category of membership sought.

1. The College may grant membership in the category of Registered Teacher, or Provisionally Registered Teacher, to an applicant who possesses a qualification in teaching approved by the College. A College-approved course has a minimum of four years full-time completed higher education incorporating:
 - (a) at least a one-year initial teacher education program covering K-12 in early childhood, primary, middle or secondary education; and
 - (b) a minimum of 45 days of satisfactory supervised practice teaching covering K-12 in early childhood, primary, middle or secondary school settings.
2. A person from New South Wales with a three year teaching qualification covering K-12 in early childhood, primary, middle or secondary education and a minimum of two years of recent and relevant teaching experience may be granted Provisional Registration.

3. A person with a three year teaching qualification covering K-12 in early childhood, primary, middle or secondary education who has taught in schools in Western Australia prior to 15 September 2004 for a minimum of 45 days may be granted registration in the category of either Provisional Registration as a Teacher or Registration as a Teacher.
4. The College may grant membership in the category of Associate member to a person who is a teacher or educator who holds a qualification in teaching or who has made a significant contribution to education or teaching recognised by the College who is no longer teaching but wishes to remain connected to the teaching profession.
5. The College may grant membership of the College in the category of Provisionally Registered Teacher, to a person who:
 - has a three year teaching qualification awarded in Australia, Canada, Ireland, New Zealand or United Kingdom prior to 2000;
 - was employed as a teacher following the awarding of their degree;
 - has a minimum of two years recent and relevant teaching experience;
 - has obtained a reference from a line manager attesting to their ability to meet the Western Australian Professional Standards for Teaching; and
 - meets all other requirements for registration.
6. Teaching qualifications covering K-12 in early childhood, primary, middle or secondary education recognised for registration or accreditation by the Australian State or Territory registration authority in which they are delivered will be recognised as meeting the qualification requirement for membership of the College.
7. Applicants with qualifications gained overseas will be required to have their teaching qualifications recognised by the College as commensurate with College approved teacher education qualifications. Qualification assessments completed by the College override those completed by Teaching Australia.
8. If an applicant has completed four years of higher education studies which include a teaching qualification, but whose qualifications are not equivalent to the minimum qualifications set for registration to teach, they may be granted Provisionally Registered Teacher status with the condition they enrol in an approved program for a Graduate Certificate in Education and complete a minimum of one academic unit per semester. ...”

116 There was no dispute that Mr Adams has an authority to teach under a LAT which is issued for a specific teaching position at a school where a suitable registered teacher was not available as Mr Adams does not qualify to be a fully registered teacher by WACOT. This is so because under the requirements contained in the WACOT Act he does not have an approved qualification – that is a minimum of four years full-time higher education study, including at least one year in a teacher education programme.

117 The WACOT Act provides that if a teacher such as Mr Adams lacks a tertiary teaching qualification he cannot be fully accredited by WACOT and can only teach by virtue of a LAT which is subject to restrictions. One of these restrictions relevantly is that if a registered teacher, that is one who holds a qualification approved by WACOT which has a minimum of four years full time completed higher education incorporating a teacher education programme of at least one year is available to undertake the role that Mr Adams currently undertakes then that tertiary trained teacher would be given priority to take up Mr Adams' teaching position.

118 Given that I have found that Mr Adams is an untrained/unqualified teacher for the purposes of the 2004, 2006 and 2006 agreements and the Award it is therefore not appropriate to issue Order 1(b) being sought by the applicant that Mr Adams has a right to automatic incremental progression beyond Level 1.8 with respect to his salary. It follows that Order 1(c) being sought by the applicant fails.

119 It is unfortunate in my view that people in Mr Adams' situation who hold qualifications to teach and have significant work and professional experience which is useful and contributes to their successful role as a teacher and teachers such as Mr Adams who successfully undertake the full range of duties expected of a tertiary trained teacher and are performance managed in the same manner as trained teachers, should not have access to the same salary scales as a tertiary trained teacher. However, I accept that the issue of the salary level to be paid to employees in this situation is ultimately a matter for the parties.

120 Order 1(d) has already been dealt with by the respondent confirming that Mr Adams is a permanent employee and it is clear that as a result of this being confirmed in writing this satisfies Order 1(e) being sought by the applicant.

121 The applicant is seeking an order that the right to incremental progression with respect to the salary of an untrained/unqualified teacher as defined in the relevant industrial instruments apply to all other employees in a similar situation to Mr Adams. As I have found that Order 1(b), which relates to Mr Adams should not issue then it is inappropriate to issue this order. Furthermore and in any event even if the Commission found that Mr Adams had a right to incremental progression with respect to his salary in my view it is inappropriate to apply this decision to other employees in a similar situation as the circumstances of each employee would vary.

122 An order will now issue dismissing this application.

2010 WAIRC 00102

DISPUTE RE EMPLOYMENT STATUS OF UNION MEMBER
WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

THE STATE SCHOOL TEACHERS' UNION OF W.A. (INCORPORATED)

APPLICANT

-v-

DIRECTOR GENERAL OF THE DEPARTMENT OF EDUCATION AND TRAINING

RESPONDENT

CORAM COMMISSIONER J L HARRISON
DATE FRIDAY, 5 MARCH 2010
FILE NO/S CR 40 OF 2008
CITATION NO. 2010 WAIRC 00102

Result Dismissed
Representation
Applicant Ms E J Carbone (of Counsel)
Respondent Mr J Misso (of Counsel)

Order

HAVING HEARD Ms E J Carbone of Counsel on behalf of the applicant and Mr J Misso of Counsel on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders –

THAT the application be and is hereby dismissed.

(Sgd.) J L HARRISON,
Commissioner.

[L.S.]

2010 WAIRC 00070

DISPUTE RE UNLAWFUL AND UNFAIR DOWNGRADING OF AN EMPLOYEE FROM LEVEL 4 TO LEVEL 3

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

THE STATE SCHOOL TEACHERS' UNION OF WA (INCORPORATED)

APPLICANT

-v-

THE DIRECTOR GENERAL, DEPARTMENT OF EDUCATION AND TRAINING

RESPONDENT

CORAM COMMISSIONER J L HARRISON
HEARD MONDAY, 16 NOVEMBER 2009, TUESDAY, 17 NOVEMBER 2009, THURSDAY, 19 NOVEMBER 2009
DELIVERED THURSDAY, 18 FEBRUARY 2010
FILE NO. CR 13 OF 2009
CITATION NO. 2010 WAIRC 00070

Catchwords Industrial Relations (WA) - Claim for employee to be confirmed as a permanent officer at Level 4.4 of the administrators' salary scale of the *School Education Act Employees' (Teachers and Administrators) General Agreement 2008* without any break in service or loss of entitlements - Claim for employee to be deployed into a suitable position consistent with his level status - Application dismissed - *Industrial Relations Act 1979* s 44; *School Education Act 1999* s 236(2) and s 236(4); *Public Sector Management Act 1994*

Result Dismissed
Representation
Applicant Mr M Amati
Respondent Ms R Hartley (of Counsel)

Reasons for Decision

- 1 On 1 April 2009 the State School Teachers' Union of WA (Incorporated) ("the union") ("the applicant") applied to the Commission pursuant to s 44 of the *Industrial Relations Act 1979* ("the Act") seeking the Commission's assistance with respect to a dispute over the salary level of one of its members, Mr Gabriel Harfouche, employed by the Director General, Department of Education and Training ("the respondent"). The Commission convened several conciliation conferences however no agreement was reached between the parties.
- 2 Subsequent to these conferences the following consent interim orders issued:
 1. THAT the issue of Mr Gabriel Harfouche's substantive position be referred for hearing and determination.
 2. THAT if Mr Harfouche's substantive position is found to be as a Level 3.4 Head of Department, Mr Harfouche will return to the position of Head of Department, English at Governor Stirling Senior High School from the commencement of the 2010 school year.
 3. THAT on an interim basis the respondent is to employ Mr Harfouche in a temporary supernumerary Level 4.4 Acting Deputy Principal position at Thornlie Senior High School, on an agreed graduated return to work programme, commencing on 8 May 2009 and he will remain in this position until the end of the 2009 school year.
 4. THAT Mr Harfouche will remain in this supernumerary position even if the issue of Mr Harfouche's substantive position is determined prior to the end of the 2009 school year.
 5. THAT liberty to apply be granted to the parties in relation to this order."
- 3 As the respondent requested an adjournment of the hearing set down on 19 to 23 October 2009, on 6 October 2009 the interim orders were amended by consent as follows:

"THAT orders 2 and 3 in the Order that issued on 6 May 2009 be deleted and replaced with the following:

 2. THAT if Mr Harfouche's substantive position is found to be as a Level 3.4 Head of Department, Mr Harfouche will return to the position of Head of Department, English at Governor Stirling Senior High School.
 3. THAT on an interim basis the respondent is to employ Mr Harfouche in a temporary supernumerary Level 4.4 Acting Deputy Principal position at Thornlie Senior High School, on an agreed graduated return to work programme, commencing on 8 May 2009 and he will remain in this position until the determination of the matter before the Commission."
- 4 The schedule of the Memorandum of matters referred for hearing and determination is as follows:
 1. The applicant claims that the respondent has unfairly and unlawfully demoted Mr Gabriel Harfouche. The applicant is seeking the following orders:
 - (a) THAT Mr Harfouche be and is hereby confirmed as a permanent officer, Level 4.4 of the administrators salary scale of the *School Education Act Employees' (Teachers and Administrators) General Agreement 2008* without any break in service or loss of entitlements.
 - (b) THAT Mr Harfouche be deployed by the respondent into a suitable position consistent with his Level status.
 2. The respondent denies the claim and opposes the orders being sought and seeks an order that the application be dismissed.

Applicant's contentions

3. The applicant's contentions are as follows:
 - (a) Following the successful completion of the State-wide merit-selection process for a Level 4 Deputy Principal position, Mr Harfouche attained the status of a permanent Level 4 Deputy Principal with the respondent effective from 29 January 2004 and the position to which he was appointed was vacant and on-going.
 - (b) This position had been on-going for several years prior to Mr Harfouche being appointed to it and, even if the position was subsequently abolished, this does not have any effect on Mr Harfouche's salary level, which remains that of a Level 4 Deputy Principal.
 - (c) As a permanent employee of the respondent, the latter is not empowered to purport to have appointed Mr Harfouche to a "limited tenure" or "fixed-term contract" position at Level 4 as at 29 January 2004 and subsequently to downgrade Mr Harfouche's salary back to Level 3 administrator some five years later.
 - (d) The respondent acted incorrectly by appointing Mr Harfouche into a "limited tenure" position. This action was inconsistent with and in breach of the provisions of Clause 30 of the *Government School Teachers' and School Administrators' Certified Agreement 2000* (the "relevant agreement"), as it then applied, in that the relevant agreement overtly made all the then "... *current Limited Site Tenure provisions obsolete* ..." which, necessarily, includes Mr Harfouche's position at Carnarvon Senior High School ("Carnarvon SHS") as a Level 4 Deputy Principal, thus confirming his on-going tenure at Carnarvon SHS as a Level 4 Deputy Principal.

- (e) The respondent acted unfairly, harshly and unlawfully in transferring Mr Harfouche out of Carnarvon SHS:
- (i) notwithstanding that the Principal of Carnarvon SHS was a bully and autocratic Mr Harfouche was coerced into moving to Mirrabooka Senior High School (“Mirrabooka SHS”) in September 2006 without a proper explanation and without good cause;
 - (ii) Mr Harfouche was transferred without due process and without any finding of alleged improper conduct or performance against him, pursuant to the provisions of Part 5, Division 3 of the *Public Sector Management Act, 1994* (“the PSM Act”);
 - (iii) Mr Harfouche was neither privy to nor was he ever given an opportunity to respond to any of the statements contained in the Carvosso Report;
 - (iv) Mr Harfouche was refused a copy of this report which he requested in writing on at least three different occasions between September 2006 and November 2006;
 - (v) after reading this report at a later date, Mr Harfouche disputes many of the statements made in the report and Mr Harfouche maintains that he was bullied and harassed by the then Principal;
 - (vi) Mr Harfouche has suffered both professionally and psychologically as a result of both the bullying and the respondent forcibly transferring him out of his position at Carnarvon SHS.
- (f) Mr Harfouche remained a Level 4 Deputy Principal at Mirrabooka SHS until the end of the school year in 2006 and he was subsequently appointed at Yule Brook College at the same Level 4 at increment 4 from the beginning of the school year in 2007, without the need to undergo any further selection process.
- (g) Mr Harfouche has been paid Level 4, increment 4, as per his entitlement in accordance with the administrators salary scale of the relevant agreement, since his appointment to Yule Brook College on the (sic) 29 January 2007.
- (h) Section 236(4) of the *School Education Act 1999* allows the respondent to employ a teacher *either* “... for an indefinite period as a permanent officer, *or* for a period not exceeding 5 years ...” and as a result Mr Harfouche cannot be engaged as both a “permanent” officer on the one hand and for a finite period not exceeding five years (fixed-term contract).
- (i) Mr Harfouche’s permanent status as a Level 4 Deputy Principal is also confirmed pursuant to the provisions of Clause 66.1 of the relevant agreement, or alternatively, Clause 91.1 of the subsequent replacement agreement, the *Government School Teachers’ and School Administrators’ Certified Agreement 2004*, as Mr Harfouche served for 2 years and 9 months in a Difficult To Staff School, which Carnarvon SHS was categorised to be at that time, pursuant to the provisions of the abovementioned clauses.
- (j) The applicant contends that the application of the provisions in Clause 66.1 have the effect of confirming Mr Harfouche’s employment with the respondent at Level 4 of the administrators salary scale despite any considerations of the nature of the position that was occupied by Mr Harfouche at Carnarvon SHS.
- (k) The respondent’s authority to demote an employee only arises when, following the implementation of the provisions of Part 5, Division 3 of the PSM Act, a finding is made that the employee committed a breach of discipline pursuant to s 86(3)(b)(v) of that act. The respondent’s demotion of Mr Harfouche is unlawful as no allegation of misconduct were ever made against Mr Harfouche, as there was never any suspicion of improper behaviour on his part.

Respondent’s contentions

4. The respondent’s contentions are as follows:

- (a) Some of the issues in dispute with reference to application C 13 of 2009 were resolved following the Commission’s order (2009 WAIRC 00256) that issued on 6 May 2009.
- (b) Since 8 May 2009 Mr Harfouche has been placed in a supernumerary, fixed term position as acting Deputy Principal Level 4.4 at Thornlie Senior High School and is currently working in that role on an agreed return to work basis until the end of December 2009.
- (c) This placement at Thornlie Senior High School is until the end of the 2009 school year and is pending the hearing and determination by the Commission of the issue of Mr Harfouche’s substantive position.
- (d) All matters that relate to the events surrounding the employer initiated transfer from Carnarvon SHS are irrelevant to the matters being referred for hearing and determination.
- (e) On 31 January 2002 Mr Harfouche won, through merit selection, promotion to a Level 3 Head of Department position at Governor Stirling Senior High School.
- (f) Mr Harfouche is a permanent Head of Department classified at Level 3.

- (g) Mr Harfouche responded to an advertisement for a temporary vacancy and was appointed to act as Deputy Principal at Carnarvon SHS from 29 January 2004 to 17 December 2004 and he was paid higher duties to Level 4. This acting opportunity as a supernumerary Deputy Principal was because Carnarvon SHS was identified as being in need of systems support.
- (h) This acting opportunity was extended, as is often the usual practice in schools that are identified as being in need of systems support, from 18 December 2004 to 16 December 2005.
- (i) This acting opportunity was further extended on the same basis from 17 December 2005 to December 2006.
- (j) In September 2006 Mr Harfouche was transferred from Carnarvon SHS in an employer initiated transfer to continue his acting opportunity at Mirrabooka SHS.
- (k) After this employer initiated transfer to complete his acting opportunity the respondent granted a compassionate extension to the higher duties in recognition that Mr Harfouche may need additional time to continue developing skills and knowledge to enable him to be competitive in any future promotional merit selections for a Level 4 Deputy Principal position. This extension was from 24 January 2007 to 18 December 2007 and he was located at Yule Brook College.
- (l) Following sick leave Mr Harfouche applied for workers' compensation which was approved from November 2007 and this claim was finalised in September 2008.
- (m) Mr Harfouche has never been merit selected for or promoted to a permanent Level 4 position, he has had every opportunity to engage in merit selection to win a permanent Level 4 position and he continues to apply for promotion but to date he has been unsuccessful.
- (n) Public Sector Standards, which must be complied with, ensure that recruitment, appointment and selection is open and competitive and it is not possible for the respondent to permanently place employees into positions without the standard recruitment processes being followed."

5 On 9 November 2009, prior to the hearing, a statement of agreed facts was lodged in the Commission and is as follows:

1. Mr. Harfouche has been employed by the Director General of the Department of Education and Training since 1993, pursuant to section 235(1)(b) of the *School Education Act 1999* (the "SE Act"), as amended, as a member of the teaching staff, in a variety of positions.
2. The Respondent is an "Employing Authority", pursuant to section 5 of the *Public Sector Management Act, 1994*, as amended (the "PSM Act").
3. The relevant applicable instruments regulating Mr. Harfouche's employment with the Respondent are, *inter alia*, the *Teachers (Public Sector Primary and Secondary) Award, 1993*, as amended; as well as the *School Education Act Employees' (Teachers and Administrators) General Agreement, 2008*, or its predecessor award and agreements.
4. Part 5 of the *Public Sector Management Act 1994* applies to Mr. Harfouche's employment as a member of the teaching staff of the Respondent.
5. In 2002, Mr. Harfouche was appointed as a Head of Department - English - Level 3 at Governor Stirling Senior High School; a school located within the Metropolitan School District.
6. In November 2003, Mr. Harfouche applied for and successfully underwent a merit selection process advertised State-wide for a temporary full time, vacant, Level 4, Deputy Principal position at Carnarvon Senior High School (the "relevant position").
7. The advertisement to which Mr. Harfouche responded was the position advertised in the respondent's publication *School Matters* - No. 18, 21 November 2003 - as a position of "fixed-term" duration for the school years of both 2004 and 2005 - more specifically, from the (sic) 29 January 2004 to the (sic) 16 December 2005.
8. The advertisement also contained provisions for potentially extending the tenure in the relevant position - or "with possible extension" of tenure in the relevant position.
9. The additional Deputy Principal position at Carnarvon SHS was established some years prior to Mr. Harfouche applying for the position.
10. The Respondent appointed Mr. Harfouche to the relevant position effective from the (sic) 29 January 2004 and the applicant began to work in the relevant position from that date.
11. On the (sic) 25 August 2005, the Respondent issued a further contiguous "fixed-term" contract of employment for the relevant position to Mr. Harfouche for two further additional years - that is, for the period spanning from the (sic) 17 December 2005 to the (sic) 16 December 2007.
12. Mr. Harfouche occupied the relevant position for a total period of approximately two (2) years and nine (9) months - between the (sic) 24 January 2004 and the (sic) 15 October 2006.
13. On the (sic) 15 November 2007, Mr. Harfouche lodged a claim for a compensable injury pursuant to the *Workers' Compensation and Injury Management Act, 1981* (the "WCIM Act").
14. For the remainder of 2007 and 2008, Mr. Harfouche remained unfit for work, under continuous psychiatric supervision.

15. At a conciliation conference on the (sic) 27 October 2008, the Respondent accepted liability for the abovementioned injury only for the purposes of settlement and a *Memorandum of Agreement* - (Form 15C) pursuant to ss. 67 & 76 of the WCIM Act - was made between the parties in the terms thereby particularised.
16. On the (sic) 11 March 2009, on behalf of Mr. Harfouche, the Union wrote to the Respondent requesting that Mr. Harfouche be allowed to return to the position of Level 4, Deputy Principal, at Yule Brook College and, additionally, for the respondent to desist from "... *informally pressuring Mr. Harfouche into accepting an unfair, unreasonable and unjustified demotion...*".

Applicant's evidence

- 6 Mr Harfouche has been employed variously as a teacher, a Head of Department ("HOD") and a Deputy Principal since he commenced employment with the respondent in January 1993. Mr Harfouche holds a Bachelor of Education qualification as well as a Masters degree in Educational Management.
- 7 Mr Harfouche gave evidence that whilst employed as a HOD at Governor Stirling Senior High School ("GSSHS") he responded to an advertisement in November 2003 for a temporary full-time Level 4 Deputy Principal position at Carnarvon Senior High School ("CSHS") in response to an advertisement in *School Matters* magazine No 18 dated 21 November 2003 (see Exhibit A2). On 17 December 2003 Mr Harfouche was sent a letter by the Principal at CSHS Mr John Dunning confirming that he was recommended for appointment to this position and a letter of appointment from the respondent dated 2 February 2004 was then sent to Mr Harfouche (see Exhibits A3 and A4).
- 8 Mr Harfouche was one of three Level 4 Deputy Principals at CSHS. In his role as a Level 4 Deputy Principal Mr Harfouche supported year 11 and 12 students to remain at school after year 10 by creating a programme that was meaningful to these students, he worked with students who were on work placement, he dealt with behaviour management issues, in conjunction with the Principal he created a marketing and business plan for CSHS, he supported new staff and he also undertook a range of other activities normally expected of a Deputy Principal. Mr Harfouche stated that he was very enthusiastic and passionate about his role and he stated that in undertaking his role he had to win over the support of the Principal and other administrative staff which he claimed was both challenging and difficult.
- 9 Subsequent to Mr Harfouche leaving CSHS in October 2006 he lodged a workers' compensation claim and at the hearing Mr Harfouche relied on a statement he made on 22 January 2008 with respect to this claim (see Exhibit A12). Mr Harfouche claimed that whilst at CSHS he suffered from extreme work related stress as a result of systematic abuse in the form of bullying, intimidation and harassment by Mr Dunning as well as a lack of support from the respondent with respect to this issue. By way of example Mr Harfouche stated that when he first met Mr Dunning he told him "You're lucky it was a telephone interview for the job because if we had seen the way you looked we would not have given you the job". Mr Harfouche stated that he felt as though Mr Dunning was trying to intimidate, humiliate and manipulate him from an early stage.
- 10 Mr Harfouche maintained that Mr Dunning picked on Mr Andrew Bleach who was a computing teacher. Mr Harfouche claimed that Mr Dunning arbitrarily changed his duties and asked other staff members to write letters complaining about him. Mr Harfouche stated that as a result of Mr Dunning's poor relationship with Mr Bleach he endeavoured to resolve their inter-personal problems.
- 11 Mr Harfouche maintained that he felt insecure about his ongoing employment at CSHS as a result of Mr Dunning placing him on a one year contract in January 2004 despite his position being advertised as a two year position with a possible extension and Mr Harfouche stated that towards the end of 2004 this resulted in him filling out a new appointment form for 2005 and taking it to Mr Dunning to sign. Mr Harfouche maintained the same thing happened the following year when parents wrote to the respondent to have his tenure at the school extended. Mr Harfouche said his concerns about his insecurity were exacerbated because his family had moved with him to Carnarvon. Mr Harfouche confirmed that in October 2004 his tenure at CSHS was extended until December 2005 and in August 2005 his tenure was extended for a further two years by the acting Principal at the time (see Exhibits A5 and A6).
- 12 Mr Harfouche maintained that Mr Dunning did not support him and gave as an example an occasion when Mr Dunning asked him to inform parents that their child had been suspended without knowing why he had been suspended. As a result of this lack of information Mr Harfouche was abused and threatened by them when he visited their home. Mr Harfouche stated that he left the parent's home shaken and distressed. Mr Harfouche stated that when he raised this issue with Mr Dunning he ignored him and Mr Harfouche stated that after this incident he rang the District Director Mr Rodney Baker about the incident however he did not offer him any advice or support apart from listening to him and he asked him to raise the matter again with Mr Dunning.
- 13 In April 2005 Mr Harfouche again spoke to Mr Baker about Mr Dunning and told him that he frequently entered his office when his door was closed without knocking and he would interrupt and take over Mr Harfouche's discussions with colleagues. When he approached Mr Dunning requesting that his privacy be acknowledged Mr Dunning responded by saying he would do what he considered appropriate.
- 14 Mr Harfouche stated that during a performance management meeting with Mr Bleach, which the District Director had asked him to undertake, Mr Dunning entered his office and after an altercation occurred between Mr Dunning and Mr Bleach, Mr Dunning asked Mr Harfouche to document Mr Bleach's unacceptable behaviour towards him and Mr Harfouche stated that he refused to do this as Mr Dunning was interrupting a progressive and positive meeting. Mr Harfouche maintained that Mr Dunning was continually trying to undermine him and the District Director was aware of this issue and did nothing.

- 15 Mr Harfouche maintained that his time working at CSHS was stressful because of Mr Dunning's unethical and unfair decision making as well as his lack of support for him and this exacerbated his health problems. Mr Harfouche stated that furniture disappeared from the camp school and had not been sent to where Mr Dunning maintained it was sent and when \$30,000 was allocated for the purchase of computing items and professional development, at the request of Mr Dunning he created a program to utilise the funds however shortly after the program commenced Mr Dunning cancelled the program and Mr Harfouche stated that this money was not spent nor properly acquitted by Mr Dunning.
- 16 Mr Harfouche stated that when he applied for other Level 4 Deputy Principal positions in 2005 he felt undermined when he received feedback that Mr Dunning was not the right person to use as a referee because of what he might say about him. Mr Harfouche stated that his situation was difficult because the respondent required an employee's current line manager to be used as a referee when applying for positions.
- 17 Mr Harfouche stated that whilst he was at CSHS he was the recipient of a number of Certificates of Appreciation (see Exhibit A7).
- 18 Mr Harfouche stated that after numerous complaints were made to the respondent about Mr Dunning, the District Director asked the school council in November 2005 to conduct a survey about the school's leadership. As part of this process Mr Harfouche was asked to survey staff however because of the difficulties he had with Mr Dunning the school psychologist conducted this survey. When the District Director asked Mr Harfouche to present this report to the school council meeting in November 2005 Mr Dunning became agitated and he gave evidence that when the report was to be tabled Mr Dunning leaned over towards him and removed copies of the report from him in front of school council members. Mr Harfouche stated that when parents and council members threatened to walk out of the meeting because of Mr Dunning's behaviour towards him, Mr Dunning changed his attitude and handed out the report and stipulated that each copy had to be returned to him after the meeting. Mr Harfouche stated that he felt intimidated and distressed by Mr Dunning's behaviour during this meeting and he gave evidence that after this meeting Mr Dunning accused Mr Harfouche of not being a team player and of undermining him. Mr Harfouche stated that when the results of the survey were reported to staff Mr Dunning would not take questions from Mr Harfouche and when Mr Dunning manipulated the statistics in the survey at the meeting the union representative at the school asked members on the staff to leave the meeting. Mr Harfouche did so along with a number of other staff members and Mr Harfouche telephoned Mr Baker later that day and explained what had occurred.
- 19 Mr Harfouche stated that in October 2005 he made formal complaints against Mr Dunning to Mr Baker and on 15 November 2005 he received a letter from him in response to these complaints stating that three complaints were to be dealt with by a grievance panel and the others were to be referred to the respondent's Complaints Management Unit. Mr Harfouche maintained that the grievances he lodged against Mr Dunning which were handled by the grievance panel were upheld (see Exhibits A8 and A9).
- 20 Mr Harfouche was aware that WorkSafe improvement notices had been issued at CSHS in March 2006 in relation to bullying by Mr Dunning.
- 21 Mr Harfouche stated that an investigation into CSHS was commissioned by the respondent in 2006 and this investigation was conducted by Mr David Carvosso and a report was generated by him ("the Carvosso Report"). As a result of Mr Carvosso's report Mr Harfouche stated that he was subject to a forced transfer from CSHS in September 2006 and Mr Harfouche maintained that this occurred because Mr Carvosso recommended that both Mr Dunning and Mr Harfouche be transferred and Mr Baker told him that this was done as they could not allow there to be a perception that there was a winner and a loser in the matter. Mr Harfouche stated that he was deeply distressed by his forced transfer which resulted in him having to work in three different schools in the subsequent 12 months and he maintained that as a result of his forced transfer this adversely affected and jeopardised his career prospects.
- 22 Mr Harfouche claimed that it was unfair to be transferred out of CSHS because he had done nothing wrong and he had wanted to remain at CSHS as he was doing outstanding work. Mr Harfouche stated that after being advised that he was to be transferred, community members gave him referee reports which were passed on to Mr Baker and the Executive Director for Teaching and Learning North, Mr Keith Newton (see Exhibit A10).
- 23 Mr Harfouche stated that at some point in Term 4, 2006 he was given the opportunity to read the Carvosso Report in the presence of Mr Newton and he was later only given an edited copy of the Carvosso Report after he filed a Freedom of Information request and Mr Harfouche claimed that he was never given an opportunity to respond to the findings made by Mr Carvosso. Mr Harfouche maintained that some of the descriptions of him contained in the Carvosso Report were unreasonable and unfair and he denied negative claims made by colleagues about him and he claimed that these comments were made by staff who were favoured by Mr Dunning. Mr Harfouche claimed that he had worked hard to win Mr Dunning's support, he introduced new ideas and initiatives to CSHS and he worked positively with the Gascoyne Development Commission to improve the education outcomes of students in Carnarvon. He also initiated the Gascoyne Education Precinct Plan but this was not followed through because Mr Dunning refused to release Mr Harfouche to implement this plan (see Exhibit A13).
- 24 Mr Harfouche did not accept Mr Carvosso's conclusion that CSHS was dysfunctional and he stated that it was his view that the issues at CSHS were not insurmountable.
- 25 Mr Harfouche gave evidence that despite the claim in the Carvosso Report that his transfer was not punitive, he had completed approximately 34 applications for Level 4 positions but had been unsuccessful even though some of these applications were for very difficult to staff schools. It was Mr Harfouche's view that the Carvosso Report has had a detrimental and punitive impact on his standing with the respondent.

- 26 Mr Harfouche stated that when he was transferred to Mirrabooka Senior High School in Term 4, 2006 he was not appointed to this position even though it was a vacant position and he stated that he was not required to go through a selection process for this position. Mr Harfouche confirmed that he is currently employed as a Level 4 Deputy Principal at Thornlie Senior High School and he stated that he is progressing well at this school and he gets on very well with the Principal, Mr Paul Billing.
- 27 Mr Harfouche stated that during his employment with the respondent he has not been subject to any disciplinary proceedings.
- 28 Mr Harfouche maintains that his substantive position is not a Level 3 HOD at GSSHS because he is a substantive Level 4 Deputy Principal. Mr Harfouche stated that he believed that he should be a permanent Level 4 employee because he spent more than two years at CSHS which was a difficult to staff school.
- 29 Under cross-examination Mr Harfouche confirmed that he received a letter entitled Contract of Employment, dated 15 November 2001, when he was appointed as HOD at GSSHS and he confirmed that he was merit selected for this position. Mr Harfouche could not recall if the advertisement for this position referred to it being a permanent position (see Exhibit R1).
- 30 Mr Harfouche agreed that when he applied for the Level 4 position at CSHS the advertisement referred to this being a temporary position however Mr Harfouche maintained that he should be regarded as a permanent Level 4 employee in this position as he had worked at CSHS for over two years in a difficult to staff school and the Level 4 Deputy Principal position had been ongoing for some years.
- 31 Mr Harfouche stated that the union representative who attended the meeting with him on 7 September 2006 when he was told he was being transferred out of CSHS did not object to him being transferred from CSHS and he could not recall if he was told at the meeting that the transfer was not punitive. Mr Harfouche stated that he was unaware that he could have appealed his transfer at the time and he stated that given the way his transfer was presented he did not think this was possible and Mr Harfouche maintained that he was given no advice at the time that he could appeal this transfer.
- 32 Mr Harfouche reiterated that he believed that his forced transfer from CSHS as well as the findings of the Carvosso Report have had a negative impact on his career prospects and even though different panels have rejected his applications for Level 4 positions he believes that given the way in which the respondent's employees interact, discussions about Mr Harfouche between panel members would take place informally. Mr Harfouche also stated that as he had been moved three or four times in a short period of time this would be looked at poorly by the panels however he stated that he has not appealed the decisions to reject his applications for Level 4 positions. Mr Harfouche stated that whilst he had not been successful in obtaining a permanent merit selected Level 4 position he maintained that the vacancy at CSHS which he filled was advertised State-wide and was based on merit selection and he then conceded that it was not a permanent position.
- 33 Under re-examination Mr Harfouche understood that the third Deputy Principal position at CSHS, for which he claims he was merit selected, had been in place since 1999 and he recalled that in 2007 he appealed two Level 4 applications for which he was unsuccessful.
- 34 Mr Billing is the Principal at Thornlie Senior High School and he has held this position since the beginning of 2009. Mr Billing worked with Mr Harfouche between January and October 2007 and he has worked with him for three terms in 2009. Mr Billing gave evidence that he has an excellent working relationship with Mr Harfouche and he gets on well with him both personally and professionally and Mr Billing stated that the work that Mr Harfouche has undertaken both at Yule Brook College and at Thornlie Senior High School is "top notch". Mr Billing stated that Mr Harfouche had undertaken special responsibilities, he came up to speed quickly, he was enthusiastic and he gets on well with other staff members. Mr Billing stated that Mr Harfouche concentrated on student pastoral care and disciplinary issues and Mr Billing stated that Mr Harfouche has enabled a range of innovative things to be put in place in a short timeframe and he has been very effective as a Level 4 Deputy Principal.
- 35 Mr Bleach currently teaches computing at Mandurah Senior College and he has undertaken this role since November 2006. Mr Bleach previously taught at CSHS between January 2002 and November 2006. Mr Bleach gave evidence that when he first commenced employment at CSHS things went well but in 2003 his relationship with Mr Dunning deteriorated and he claimed that from that time onwards Mr Dunning bullied him. Mr Bleach believed that Mr Dunning used his position and authority to bully him because he disagreed with him about the procurement of computer items. Mr Bleach claimed that Mr Dunning yelled at him, he subjected him to verbal abuse, he denigrated his abilities, he removed critical resources and he impeded opportunities to better himself. As a result of the problems he had with Mr Dunning he complained about him in mid 2005 however once this grievance was heard the respondent found that there was no case to answer. Mr Bleach maintained that Mr Dunning's abuse of him then increased.
- 36 Mr Bleach gave evidence that subsequent to the Carvosso Report being completed he was offered an alternative position in November 2006 and this resulted in him being transferred to Mandurah Senior College.
- 37 Mr Bleach stated that he had time off work because of stress he had suffered as a result of Mr Dunning bullying him. Mr Bleach stated that after he contacted WorkSafe in Term 1 or 2, 2006 five improvement notices were issued against CSHS.
- 38 Mr Bleach confirmed that Mr Harfouche mediated between himself and Mr Dunning in late 2005. Mr Bleach stated that he was not given a copy of the Carvosso Report and only obtained a heavily edited one after completing a Freedom of Information application. Mr Bleach denied that he was part of a dissident group which was one of the findings of the Carvosso Report. Mr Bleach maintained that he only wanted a safe and healthy work environment and in doing so he was operating alone and Mr Bleach stated that he was trying to survive and was not acting in concert with anyone. Mr Bleach maintained that Mr Harfouche should have remained at CSHS because he was the only effective administrator who acted ethically and in the interests of both staff and students to resolve issues.

- 39 Ms Janine Hall is currently employed by the respondent as an Education Assistant at the Bentley Transition Unit and she has been in this role for four years. Ms Hall was employed as an Education Assistant at Carnarvon Primary School up to the end of 2005 and her children attended CSHS during this period. Ms Hall was a member of the school's Parents and Citizens Association and she was on the CSHS school council for five to six years when Mr Dunning was the Principal. Ms Hall also worked in the office at CSHS one day a week for part of this time.
- 40 Ms Hall stated that in her role on the school council she was aware for a number of years that many parents were unhappy with the way in which the school was being run by Mr Dunning and she maintained that parents and other groups in the local community wanted him removed from his position. Ms Hall described Mr Dunning as a "do it my way or no way" person, she stated that at times he was sarcastic at school council meetings and condescending and she maintained that parents did not have confidence in him and the way he did things.
- 41 Ms Hall made a statement on 1 May 2008 in support of Mr Harfouche's Workers' Compensation claim (Exhibit A15). Ms Hall claimed that after Mr Harfouche arrived at CSHS parents had a positive attitude to him given his initiatives and how he dealt with the behaviour management of students.
- 42 Ms Leanne Robertson is an Art teacher and worked at CSHS between 2001 and the end of Term 1, 2005. Whilst at CSHS Ms Robertson taught Career and Vocational Education, Work Studies, English and Art and Ms Robertson worked with Mr Harfouche during part of the time she worked at CSHS. Ms Robertson later taught at Donnybrook District High School between 2006 and 2009. During a telephone interview with Mr Carvosso she gave feedback about the situation at CSHS. Ms Robertson stated that even though CSHS was her first teaching post she found the atmosphere in general at the school was unpleasant and she believed that the school was not being smoothly run and Ms Robertson stated that as a result she obtained a compassionate transfer out of the school in 2005. Ms Robertson described Mr Harfouche as personable, supportive of both staff and students and a good leader who listened to her concerns. Ms Robertson stated that she left the school because she did not feel safe or supported.
- 43 Ms Robertson said CSHS had a significant staff turnover each year.
- 44 Ms Robertson gave evidence that from time to time Mr Dunning exhibited inappropriate behaviour toward staff in front of other staff members and Ms Robertson stated that Mr Dunning often yelled at staff in front of other staff members and did not listen. Ms Robertson stated that she attended a meeting with Mr Bleach as an observer and she stated that Mr Dunning belittled Mr Bleach and was rude and disrespectful towards him. Ms Robertson stated that Mr Colin Sheffield, one of the other Deputy Principals at CSHS, also attended the meeting and was not supportive of Mr Bleach. Ms Robertson stated that communication between the school's administration and teachers was poor and Ms Robertson described decision making at the school as being a dictatorship and if a teacher disagreed with Mr Dunning's decisions they were seen as a troublemaker. Ms Robertson said that after leaving CSHS she became aware of how varying views and ideas could be seen in a positive way at a school and not negatively as had occurred at CSHS.
- 45 Ms Robertson described the performance management procedure at the school as ineffective and she believed her opinions about the leadership at CSHS were objective as she also had positive views about her experience at the school.
- 46 Ms Anne Crawford has been an organiser with the union for nine years and during 2005 and 2006 she was the district organiser for the Mid-West region which included CSHS. Ms Crawford stated that she was involved in the events leading up to the Carvosso Report being generated in 2006 and she stated that as a result of the findings of the Carvosso Report Mr Harfouche, Mr Bleach, Mr Dunning and Mr Sheffield were told that they were to be subject to employer initiated transfers. Subsequent to the Carvosso Report being completed Ms Crawford attended a meeting in September 2006 with Mr Harfouche, Mr Baker and Mr Newton. Ms Crawford confirmed that at this meeting when Mr Harfouche was told that he would be subject to a forced transfer he stated that he was not happy with his transfer on the basis that his family had moved to Carnarvon, he believed he was doing a good job at the school and he felt he was being targeted for raising concerns about Mr Dunning. Mr Harfouche was also keen to retain his Deputy Principal status and felt he would be at a disadvantage if he was transferred out of CSHS.
- 47 Ms Crawford said that when Mr Dunning was the Principal of CSHS a number of informal complaints were made against him by staff and instead of following up their concerns staff chose to transfer out of the school. Ms Crawford stated that many teachers found it difficult to raise concerns with Mr Dunning or Mr Baker. Ms Crawford gave evidence that she encouraged teachers who had grievances against Mr Dunning to make formal complaints and it was only when this occurred that changes were made at CSHS. Ms Crawford stated that the union also encouraged employees to pursue WorkSafe improvement notices if they were disillusioned with the lack of response by the respondent to their concerns.
- 48 Under cross-examination Ms Crawford agreed that Mr Sheffield requested a transfer out of the school rather than it being employer initiated and she understood he chose this course of action because Mr Dunning was being transferred out of the school.
- 49 Ms Crawford stated that the union was not involved in the respondent's decision to transfer employees after the Carvosso Report was completed but she stated that the union did not object to these transfers occurring. Ms Crawford said that she had sympathy for Mr Bleach and Mr Harfouche given they had made formal complaints against Mr Dunning but she believed that in the circumstances it was appropriate that they have a fresh start even though Mr Dunning was at fault. Ms Crawford confirmed that she did not advise Mr Harfouche to appeal the respondent's decision to transfer him out of CSHS.
- Respondent's evidence**
- 50 Mr Neil Wilson is the respondent's Manager of Teacher Staffing and he worked in the respondent's staffing section between 1994 and 1998 and also from 2002 onwards. In this role Mr Wilson is responsible for the appointment and transfer of the respondent's teaching staff but he is not involved in the movement of employees in promotional positions.

- 51 Mr Wilson is aware of the circumstances surrounding Mr Harfouche's employment with the respondent. Mr Wilson confirmed that Mr Harfouche became a permanent employee at the beginning of 1995 after he had completed two years of probationary service with the respondent, in 2000 Mr Harfouche was promoted to a Level 3 position at Hedland Senior High School and in 2002 he obtained a merit select promotion to a Level 3 position as HOD at GSSHS and this promotion was confirmed by a letter dated 15 November 2001 (Exhibit R1).
- 52 Mr Wilson clarified the difference between a permanent employee and an employee in a substantive position. Mr Wilson stated that if an employee has permanent status the respondent has an ongoing obligation to employ that person in their substantive role as either a teacher or school administrator.
- 53 Mr Wilson maintained that Mr Harfouche was appointed to a temporary Deputy Principal position at CSHS as opposed to being appointed to one of the two substantive Level 4 Deputy Principal positions at CSHS and Mr Wilson understood that Mr Harfouche's employment at CSHS was extended after two years. Mr Wilson stated that when Mr Harfouche was transferred out of CSHS under an employer initiated transfer this was done to honour the remaining period of the contract the respondent had given to Mr Harfouche when he was at CSHS. Mr Wilson gave evidence that employer initiated transfers are legislated for under s 236(2) of the *School Education Act 1999* ("the SE Act") and that District Directors, as they were known at the time, have delegated authority from the Director General to effect these transfers. Mr Wilson described Mr Harfouche's appointment at CSHS as a fixed-term limited tenure position and he stated that at the expiry of his contracted term at CSHS he would revert to his substantive position at GSSHS. Mr Wilson was aware that Mr Harfouche had unsuccessfully applied for a number of substantive Level 4 positions.
- 54 Mr Wilson stated that Mr Harfouche worked at Mirrabooka Senior High School after leaving CSHS so that the respondent could honour the remainder of his contract in a Level 4 position. When Mr Harfouche was at Yule Brook College he was acting in a supernumerary Level 4 position and Mr Wilson stated that he understood the respondent continued this acting Deputy Principal position at Yule Brook College in 2007 to allow Mr Harfouche the opportunity to gain further experience at Level 4 to assist him to apply for substantive Level 4 positions. Mr Wilson stated that Mr Harfouche had never been promoted nor merit selected to a permanent Level 4 position with the respondent.
- 55 Under cross-examination Mr Wilson stated that a position advertised as "temporary duration" or "fixed-term" is an acting position because it is offered in the absence of the incumbent or because the position does not have ongoing funding attached to it. Mr Wilson stated that the position at CSHS which Mr Harfouche applied for was advertised on the basis that it could be extended subject to funding being available and if this occurred it was possible for Mr Harfouche to remain in the position without any further selection process taking place. Mr Wilson stated that he understood that the temporary Level 4 position at CSHS commenced in 1999 and was no longer in place. Mr Wilson stated that until Mr Harfouche wins another substantive position he remains at his substantive Level 3 position at GSSHS. Even though an email generated by the respondent's payroll section refers to Mr Harfouche being transferred to Yule Brook College Mr Wilson said that this was a mistake and employees in the respondent's payroll section have no authority to alter the status of an employee (see Exhibit A17). Mr Wilson stated that Mr Harfouche did not work at Yule Brook College in a substantive position.
- 56 Mr Wilson gave evidence that any alteration to a school administrator's substantive position in 2004 would have been dealt with by the respondent's promotions branch and any changes would have been confirmed in writing. On the other hand fixed-term positions were dealt with by the staffing branch. Mr Wilson stated that a work flow is electronic advice from either the promotions or staffing branch to advise the respondent's payroll section that a staffing movement has occurred and an employee's pay may need to be reviewed. Mr Wilson disputed that the Movement Advice dated 23 August 2005 confirms that Mr Harfouche was a permanent Level 4 employee (Exhibit A18). Mr Wilson stated that Mr Sheffield incorrectly filled this form out and the Level 4 position held by Mr Harfouche was an end dated temporary appointment as shown on this form which was contrary to Mr Harfouche being a permanent employee. Mr Wilson stated that if Mr Harfouche was permanently attached to a Level 4 Deputy Principal position this would have been confirmed in writing by the respondent and a contract reflecting this provided to Mr Harfouche.
- 57 Mr Wilson stated that under the country teaching programme permanent status was offered to employees as an incentive and Mr Wilson stated that under this programme permanency refers to an employee's employment status with the respondent not the position of an employee. Mr Wilson stated that permanent status under the country teaching programme could not apply to Mr Harfouche in his Level 4 position at CSHS because he became a permanent employee of the respondent in 1995. He reiterated that Mr Harfouche's substantive position was at GSSHS as a Level 3 and he was in an acting position undertaking higher duties when he was at CSHS. Mr Wilson stated that Mr Harfouche was not permanent or substantive in the Level 4 position at CSHS as this was not a substantive nor ongoing position. Mr Wilson agreed that when Mr Harfouche was transferred out of CSHS he was placed as a Level 4 employee with the respondent in 2007 because of the respondent's contractual obligations to Mr Harfouche.
- 58 Mr Wilson stated that a substantive position is an ongoing permanent position which an employee "owns" and has gained through a merit selection process. It is not a fixed-term position. In Mr Harfouche's case when he was appointed to CSHS it was not to a substantive position nor was this position ongoing. Mr Wilson stated that there were only two Level 4 substantive positions at CSHS and one extra Level 4 temporary fixed-term position had been established to deal with short term issues. Mr Wilson stated that if the Level 4 position occupied by Mr Harfouche was a substantive position it would have been advertised differently.
- 59 Mr Newton was the Executive Director Teaching and Learning North for the respondent in 2005 and 2006 and during this period he was Mr Baker's line manager. Mr Newton gave evidence that Mr Baker discussed difficulties at CSHS with him and the apparent dysfunctional way in which the school was being run. Mr Newton stated that after a number of grievances were

lodge, in May 2006 he visited CSHS with Mr Baker to familiarise himself with the difficulties and concerns expressed from members of the local community. After this visit the respondent decided to undertake an independent review of the school to establish the nature of the working relationships at the school and the Carvosso Report arose out of this review. Mr Newton stated that the respondent acted on all 13 recommendations contained in this report and a risk management plan for CSHS was put in place.

- 60 Mr Newton recalled having a meeting with Mr Harfouche in September 2006 to advise him of his employer initiated transfer and Mr Newton said that at this meeting Mr Harfouche was unhappy at being transferred. Mr Newton maintained that issues at the school could not be resolved without people being transferred.
- 61 Mr Newton confirmed that Mr Harfouche was transferred under an employer initiated transfer in line with the respondent's policy document headed Placement, Transfer and Deployment of School Administrators. The relevant sections are as follows:

“3.4 EMPLOYER-INITIATED TRANSFER (EIT)

An EIT is a transfer initiated by the Department, based on an organisational need.

Decisions to transfer staff will comply with these procedures, the Transfer and Redeployment Standards (as applicable), the General Principles specified in Sections 8 and 9 of the *Public Sector Management Act 1994* (PSM Act) and the principles of procedural fairness.

...

5.3 EMPLOYER-INITIATED TRANSFER (EIT)

- a) Where the Directors General or a relevant delegated officer considers it is in the best interest of the Department to transfer or deploy a school administrator, that person will be informed of the intention and asked for their response. This response will be taken into account in making the final decision, as will the impact of any such decision on the Department's ability to fill vacancies through merit selection.
- b) The relevant District Director will be asked to provide details on the organisational need for the transfer and confirm there are no adverse performance management issues.
- c) The decision maker must take the following factors into account:
 - o organisational need;
 - o school need; and
 - o employee need.
- d) The District Director must notify the school administrator in writing of the transfer or deployment decision. Notification of deployment decisions must state: a start date, an anticipated end date and action at the completion of the deployment (if applicable).
- e) The District Director must forward a copy of the decision to the Promotions Unit for recording purposes.
- f) EIT decisions are subject to the Public Sector Standards in Human Resource Management. A school administrator who claims that a Public Sector Standard has been breached must follow the procedures set out in the policy, Managing a Breach of Public Sector Standard Claim.”

(Exhibit R2)

- 62 Under cross-examination Mr Newton believed that the recommendations and findings of the Carvosso Report were made available to Mr Harfouche around the time of his meeting with him in September 2006 and he thought that Mr Harfouche had received a copy of the recommendations and findings of this report. Mr Newton stated that Mr Harfouche was transferred in accordance with the respondent's policy and it was not a punitive transfer. Mr Newton gave evidence that he was aware that Mr Harfouche was contracted by the respondent in a Level 4 position until the end of 2007 and Mr Newton stated that he was aware that Mr Harfouche was appointed on a temporary basis at CSHS when making the decision to transfer Mr Harfouche. Mr Newton believed that Mr Harfouche was advised that he could reapply to return to CSHS at some point.
- 63 Mr Baker is currently the Principal at Kalumburu Remote Community School and in 2005 and 2006 he was the respondent's Director of Education for the Mid-West. Mr Baker stated that the administrative positions at CSHS consisted of a Principal and two substantive Deputy Principals and a third Level 4 Deputy Principal position was created which was supplementary to the substantive allocations. Mr Baker stated that the filling of this position had to be justified on an ongoing basis.
- 64 Mr Baker confirmed that grievances were raised against Mr Dunning at the end of 2005 and he and Ms Crawford dealt with these complaints. Mr Baker stated that as things were still not going smoothly at CSHS in early 2006 he advised Mr Dunning that if this continued he would need to organise a review of the school. Mr Baker stated that concerns were also being raised about the running of CSHS by external entities including the Gascoyne Development Commission and the Carnarvon Shire and Mr Baker said that the school's reputation in the community was poor and these organisations wanted something done about it.
- 65 Mr Baker stated that in May 2006 he visited the school with Mr Newton over two days and interviewed a number of persons and identified serious issues at the school. As a result the Carvosso review was commissioned and a risk management plan was put in place to deal with his recommendations. Mr Baker stated that on 7 and 8 September 2006 Mr Baker attended the school with Mr Newton to implement the recommendations and liaise with staff. Mr Baker stated that he became a referee for Mr Harfouche at this time given the problems that Mr Harfouche had with Mr Dunning (Exhibit R6).

- 66 Under cross-examination Mr Baker said that it was appropriate that Mr Harfouche be transferred from CSHS because it was a positive step to resolve the situation at CSHS at the time. Mr Baker said that it was not appropriate to only remove Mr Dunning because he was not the only person who was complained about and both Mr Harfouche and Mr Bleach were also identified as being part of the problem at CSHS. Mr Baker stated that he accepted that Mr Harfouche had issues communicating with Mr Dunning and Mr Harfouche approached him about this.
- 67 Mr Baker stated that it was his understanding that Mr Harfouche was not eligible to be placed permanently in his Level 4 position at CSHS after two years as the position he was in was temporary to the school and the position had now been abolished.

Submissions

Applicant

- 68 The applicant no longer relies on its contention at 3(d) in the schedule of the Memorandum of matters referred for hearing (see paragraph 4).
- 69 The applicant maintains that when Mr Harfouche was demoted by the respondent from his permanent Level 4 position at CSHS to a Level 3 position this was unfair and unlawful. The applicant maintains that Mr Harfouche was merit selected for a Level 4 Deputy Principal position at CSHS effective from 29 January 2004 and this position was vacant and ongoing. Even if this position was subsequently abolished the applicant argues that Mr Harfouche remains as a permanent Level 4 employee.
- 70 The applicant argues that even if Mr Harfouche was paid higher duties in his Level 4 position this is an irrelevant consideration as Mr Harfouche was the recommended candidate for the Level 4 position. The applicant argues that the process used that eventuated in Mr Harfouche's appointment as a Level 4 employee was no different to employees applying for other substantive Level 4 positions and his Level 4 position is therefore his substantive position. Additionally, Mr Harfouche remained in his Level 4 position on an ongoing basis under a contract which lasted until the end of 2007 and if Mr Harfouche had not been subject to a forced transfer from CSHS in September 2006 the applicant argues that Mr Harfouche would have remained as a permanent Level 4 employee in the Level 4 Deputy Principal position he occupied at CSHS.
- 71 The applicant claims that as the respondent transferred Mr Harfouche out of CSHS in an unfair and oppressive manner then this warrants the intervention of the Commission (see *Undercliffe Nursing Home v Federated Miscellaneous Workers Union of Australia, Hospital Service and Miscellaneous WA Branch* [1985] 65 WAIG 385). The applicant submits that when Mr Harfouche was subject to a forced transfer out of CSHS his transfer was procedurally and substantively unfair. When the transfer took place Mr Harfouche had no warning that it was to happen, no reasons were given to him as to why he was being transferred, he had no access to the findings made by Mr Carvosso and he had no opportunity at the time to dispute his transfer. As Mr Harfouche was successful in his role at CSHS he should not have been transferred out of CSHS and the applicant argues that this contention is supported by the direct evidence given by the witnesses during the hearing. The applicant also submits that the direct evidence given with respect to this issue at the hearing should be given greater weight than some of the negative statements made to Mr Carvosso about Mr Harfouche.
- 72 The applicant submits in the alternative that Mr Harfouche became a permanent Level 4 employee when he completed two years service at CSHS at the end of 2005, which is a difficult to staff school, because the terms of Clause 66.1 of the *Government School Teachers' and School Administrators' Certified Agreement 2000* ("the 2000 Agreement") and Clause 91.1 of the *Government School Teachers' and School Administrators' Certified Agreement 2004* ("the 2004 Agreement") confirm that Mr Harfouche was entitled to become a permanent employee at CSHS after completing two years of service (see *Norwest Beef Industries Limited and Anor and West Australian Branch, Australian Meat Industry Employees Union, Industrial Union of Workers, Perth* [1984] 64 WAIG 2124). The applicant also relies on Mr Harfouche having been paid as a Level 4 employee since January 2004 and his Level 4 status is also in accordance with information contained in internal documentation relevant to Mr Harfouche's employment in support of its claim that Mr Harfouche is a substantive Level 4 employee (see Exhibit A17).
- 73 The applicant argues that Mr Harfouche could not be regarded as acting in his Level 4 position given the terms of s 236(4) of the SE Act. Section 236(4) of the SE Act only allows the respondent to employ a teacher either for an indefinite period as a permanent officer or for a period not exceeding five years and Mr Harfouche therefore cannot be engaged as both a permanent officer on the one hand and engaged for a finite period not exceeding five years under a fixed-term contract at the same time. The applicant also argues that the payment of a higher duties allowance to an employee contemplates short periods and not periods involving a number of years.
- 74 The applicant argues that if Mr Harfouche is to be regarded as a Level 3 employee he has effectively been demoted from his Level 4 position in breach of his contract of employment with the respondent (see *DVG Morley City Hyundai v Mauro Fabbri* [2002] 82 WAIG 3195). The applicant also submits that the authority relied upon by the respondent in support of its claim that Mr Harfouche is not a Level 4 employee is not on point as this case related to an employee moving from one employer to another employer.

Respondent

- 75 The respondent argues that Mr Harfouche's substantive position with the respondent is as a Level 3 employee and even though he has acted as a Level 4 employee with the respondent this does not mean that Mr Harfouche has been promoted to a permanent Level 4 Deputy Principal position with the respondent.
- 76 The respondent maintains that the position Mr Harfouche applied for at CSHS was a temporary position, as confirmed by the evidence of Mr Wilson. The respondent also submits that Mr Harfouche has never been merit selected or promoted to a substantive Level 4 Deputy Principal position and his substantive position remains that of a Level 3 HOD at GSSHS. A contract was provided to Mr Harfouche confirming his Level 3 status and a contract in similar terms confirming

Mr Harfouche's status as a Level 4 employee was not provided to Mr Harfouche because he remains in his substantive Level 3 position. The Movement Advice completed in relation to Mr Harfouche subsequent to him transferring out of GSSHs confirms that he was acting as a Level 4 Deputy Principal and being paid a higher duties allowance (see Exhibit R7) and the advertisement for the Level 4 Deputy Principal position at CSHS that Mr Harfouche was successful in obtaining confirms that he applied for a temporary, as opposed to a permanent position, and his position was supernumerary to the two existing Level 4 permanent Deputy Principal positions. This additional Deputy Principal position was allocated at the request of CSHS and had to be justified in order to continue to be filled. As this position ceased at the end of 2007 this demonstrates that it was not a permanent ongoing position. The respondent maintains that statements made by Mr Harfouche in his witness statement which was prepared for his workers' compensation claim shows that he was aware that the Level 4 position at CSHS was advertised for two years with possible extensions which is in direct contravention to his current claim that the appointment was a permanent one. Additionally, when Mr Harfouche's contract at CSHS was rolled over in 2005 he was not merit selected for this position as this was permitted by the wording of the initial advertisement.

- 77 The respondent argues that the applicant cannot rely on permanency being granted to Mr Harfouche in a Level 4 position as a result of the terms of Clause 66.1 of the 2000 Agreement and Clause 91.1 of the 2004 Agreement. The respondent submits that these clauses refer to employees who are not already permanent employees and who are seeking to become permanent employees of the respondent. In Mr Harfouche's case he had already gained permanent status with the respondent prior to transferring to CSHS and he cannot be made permanent twice.
- 78 The respondent argues that Mr Harfouche's employer initiated transfer in September 2006 and the circumstances surrounding this event are irrelevant to this matter and even if the transfer had not occurred Mr Harfouche would still not have attained permanent Level 4 Deputy Principal status at CSHS. The fixed-term contract that Mr Harfouche had at the time with the respondent that he occupy a Level 4 position was honoured and that was why he was provided with a Level 4 Deputy Principal position until the end of 2007. Mr Harfouche could have appealed the respondent's decision to transfer him out of CSHS but he did not do so and in any event as the transfer was governed by a Public Sector Standard the respondent contends that the Commission does not have jurisdiction to inquire into or deal with this transfer.
- 79 The respondent maintains that it is common practice for its employees to act in a position or perform higher duties where an employee holds an existing substantive position, but this is for a finite period and it is never the intention or expectation that the employee acting in this role will attain permanent status at that level by virtue of this acting appointment. The respondent relies on Clause 17.1 of the 2000 Agreement which enables it to appoint employees on a fixed-term basis.
- 80 Even though the Movement Advice dated 23 August 2005 refers to Mr Harfouche being promoted, this document relating to Mr Harfouche's ongoing appointment at CSHS was incorrectly filled out by Mr Sheffield the Acting Principal at CSHS and this document is not binding on the respondent as it does not have the status of a contract and is an administrative document (see Exhibit A18). Internal emails which make incorrect references to Mr Harfouche being transferred are also not binding on the respondent and these errors do not mean that Mr Harfouche is a permanent employee at Level 4.
- 81 The respondent maintains that the difference between access to permanent status and occupying a substantive position is clear. Permanent status is where there is an ongoing employment relationship between the parties and suggests an ongoing obligation on the respondent to provide work to that employee regardless of their substantive position with the respondent as opposed to a fixed-term relationship. Appointment to a substantive position arises where an employee applies for a vacant ongoing position that has been advertised and the employee is merit selected and appointed to that role.
- 82 The respondent argues that Mr Harfouche was never appointed to a permanent, ongoing Level 4 position at CSHS as this position was never advertised as such and this position no longer exists. The respondent also maintains that if the Commission grants the order the applicant is seeking it would require the respondent to act contrary to its obligations under the *Public Sector Management Act 1994* (see *Civil Service Association of Western Australia Incorporated v The Director General, Department of Justice and Hon Attorney General* [2003] 83 WAIG 1481).

Findings and conclusions

Credibility

- 83 I listened carefully to the evidence and closely observed each witness. In my view all of the witnesses gave their evidence honestly and to the best of their recollection and I therefore accept their evidence. In particular I find that Mr Harfouche gave his evidence in a considered and forthright manner and much of his evidence was supported by documentation and evidence given by a number of his former colleagues. In the circumstances I prefer the direct evidence he gave about his success as a Deputy Principal and his positive interactions with staff members whilst at CSHS to the adverse comments made about Mr Harfouche by some staff members at CSHS who were interviewed by Mr Carvosso when conducting his review.
- 84 There was no dispute and I find that Mr Harfouche commenced employment with the respondent as a teacher in 1993 and in 2002 he was appointed as a substantive HOD Level 3 at GSSHs on a permanent basis. I find that when Mr Harfouche was appointed to this substantive position this was confirmed in a new contract of employment between the parties (see Exhibit R1). It was not in dispute and I find that in November 2003 Mr Harfouche applied for and was merit selected to fill a full-time vacant Level 4 Deputy Principal position at CSHS and it is clear from the advertisement for this position that it was a temporary position with the successful candidate holding this position for a fixed-term duration for 2004 and 2005 with the possibility of an extension subsequent to 2005. It is therefore clear and I find that this position was not ongoing. There was no dispute and I find that in August 2005 Mr Harfouche's fixed-term contract at CSHS as a Level 4 Deputy Principal was extended until December 2007 and this was confirmed by way of a letter of appointment (see Exhibit A6). However, Mr Harfouche only remained in this position until October 2006 because he was subject to an employer initiated transfer at that time and was posted to Mirrabooka Senior High School until the end of 2006. I accept that this transfer was made by the

respondent under its Placement, Transfer and Deployment of School Administrators policy after the respondent determined that the findings contained in the Carvosso Report should be accepted and acted upon and one of the findings included that Mr Harfouche be transferred out of CSHS along with the Principal of CSHS, Mr Dunning. I find that because the respondent had already offered a fixed-term contract to Mr Harfouche to continue in his Level 4 Deputy Principal position at CSHS until December 2007, it honoured this contract, notwithstanding Mr Harfouche's removal from CSHS. As a result, and after working at Mirrabooka Senior High School until the end of 2006, Mr Harfouche was placed as a Level 4 Deputy Principal at Yule Brook College at the beginning of 2007. It was also common ground and I find that between November 2007 and May 2009 Mr Harfouche had time off work as a result of a workers' compensation claim he made with respect to an injury suffered subsequent to being transferred out of CSHS. This claim was resolved on 27 October 2008 and Mr Harfouche currently remains as a Level 4 Deputy Principal under an interim consent order of this Commission pending the finalisation of this dispute (see *The State School Teachers' Union of WA (Incorporated) v The Director General, Department of Education and Training* 2009 WAIRC 00969 [unreported]).

- 85 I reject the applicant's claim that Mr Harfouche was promoted to a substantive, ongoing Level 4 Deputy Principal position when he was placed in his Level 4 Deputy Principal position at CSHS in January 2004 and he should therefore enjoy the benefit of a Level 4 Deputy Principal position on a permanent basis. I also reject the applicant's alternative claim that Mr Harfouche holds a Level 4 Deputy Principal position on a permanent basis given the terms of the "Professional Incentives" clauses in the industrial instruments and other legislation applying to his employment from January 2004 onwards.
- 86 I find that in order for Mr Harfouche to be appointed as a permanent Level 4 Deputy Principal with the respondent he would have to apply for and be merit selected on a State-wide basis to fill a vacant substantive, ongoing Level 4 Deputy Principal position. I find that the Level 4 position that Mr Harfouche was appointed to at CSHS was a temporary, fixed-term position which was not ongoing and he held this Level 4 Deputy Principal position on an acting basis under a series of fixed-term contracts and I find that when Mr Harfouche was appointed to the Level 4 Deputy Principal position at CSHS he retained his substantive Level 3 HOD at GSSHS and was paid a higher duties allowance whilst he acted in this position and other Level 4 Deputy Principal positions after leaving CSHS. Even though Mr Harfouche has continued to be paid as a Level 4 Deputy Principal since January 2004 this does not confirm that Mr Harfouche was appointed to a permanent Level 4 Deputy Principal position with the respondent since that time. In reaching the conclusion that Mr Harfouche was never appointed to a Level 4 Deputy Principal position on an ongoing and permanent basis I take into account that Mr Harfouche gave evidence confirming that the Level 4 Deputy Principal position that he was selected for and occupied at CSHS was a temporary, fixed-term position, the Level 4 Deputy Principal position Mr Harfouche occupied at CSHS was confirmed as being temporary in the statement of agreed facts and the advertisement for the Level 4 Deputy Principal position at CSHS referred to this position as being a temporary position with only the possibility of the incumbent's tenure being extended subsequent to 2005. I also accept Mr Wilson's evidence that Mr Harfouche's Level 4 Deputy Principal position at CSHS was not a permanent, ongoing position and was additional to the two substantive ongoing Level 4 Deputy Principal positions existing at CSHS under the respondent's normal staffing formula for this school and I find that the Level 4 Deputy Principal position occupied by Mr Harfouche at CSHS remained in place subject to the needs of CSHS and as approved by the respondent. I also note that when Mr Harfouche worked at CSHS he had to ensure that extensions to his fixed-term contracts at the end of 2004 and 2005 were completed in order for him to remain in his Level 4 Deputy Principal position (see Exhibits A18 and R7 and Transcript pages 15-16). Additionally, there was no evidence confirming Mr Harfouche's claim that his position at CSHS was a permanent, ongoing position nor was there any evidence confirming that Mr Harfouche was guaranteed tenure in this Level 4 Deputy Principal position as long as this position remained in place. Indeed evidence was given during the hearing, which I accept, which confirmed that the third Level 4 Deputy Principal position that Mr Harfouche occupied no longer exists. I also accept the evidence given by the respondent that an employee is only appointed to a substantive, ongoing position and holds that level and position on a permanent basis after an employee is merit selected for a vacant position which is advertised as an ongoing, vacant substantive position and this was not the case with respect to the Level 4 Deputy Principal position Mr Harfouche applied for at CSHS. Even though Mr Harfouche was merit selected for this appointment this does not mean the Level 4 Deputy Principal position at CSHS was an ongoing permanent position to which a substantive appointment was made.
- 87 I accept Mr Wilson's evidence and I find that when an employee is promoted by the respondent to a substantive, ongoing position he or she receives confirmation of this change to his or her status with the respondent by being sent a revised contract of employment in the same way that Mr Harfouche was when he was promoted to his permanent position as a Level 3 HOD at GSSHS (see Exhibit R1). When Mr Harfouche was transferred to CSHS to take up the Level 4 Deputy Principal position the only documentation he received about his Level 4 Deputy Principal status at CSHS was a letter of appointment to CSHS and confirmation of his fixed-term contracts at CSHS for the period 2004 to 2005 and 2006 to the end of 2007. Whilst I accept that the respondent's Movement Advice dated 23 August 2005 refers to Mr Harfouche being promoted I find that this document was incorrectly filled out by the then acting Principal at CSHS, Mr Sheffield.
- 88 As I have found that Mr Harfouche was not promoted to a substantive, ongoing, permanent Level 4 Deputy Principal position at CSHS he is therefore not entitled to the benefit of a permanent Level 4 Deputy Principal position. As a result I find that Mr Harfouche's current status is that of a permanent Level 3 HOD at GSSHS.
- 89 The applicant argues in the alternative that Mr Harfouche became a permanent Level 4 employee when he completed two years of service at CSHS as a Level 4 Deputy Principal given the terms of Clause 66.1 of the 2000 Agreement and Clause 91.1 of the 2004 Agreement and should therefore enjoy the benefit of being a Level 4 employee. The applicant also claims that if Mr Harfouche had not been subject to a forced transfer out of CSHS he would have retained his Level 4 position at CSHS.

90 Even if Mr Harfouche was unfairly transferred out of CSHS, as claimed by the applicant, there was no evidence presented at the hearing that Mr Harfouche would have remained in this Level 4 Deputy Principal position on an indefinite basis and I have already noted that there was uncontested evidence given at the hearing that the Level 4 Deputy Principal position occupied by Mr Harfouche was abolished sometime after Mr Harfouche ceased working at CSHS.

91 There is no dispute and I find that Mr Harfouche worked as a Level 4 Deputy Principal at CSHS for approximately two years and nine months. It is also the case that under the 2000 Agreement and the 2004 Agreement CSHS is classed as a difficult to staff school (see Schedule C of the 2000 Agreement and Schedule L of the 2004 Agreement). I also find that Mr Harfouche was made a permanent employee of the respondent in 1995.

92 The interpretation of an award is a matter of law. When interpreting an award one must read the terms of the award, give the words in the clause or clauses in question their ordinary commonsense meaning and ascertain whether the words used have an unambiguous meaning. If the terms of the Award are clear and unambiguous it is not permissible to look at extrinsic material to qualify the meaning of the clause or clauses in issue (see *Norwest Beef Industries Limited and Another v West Australian Branch, Australian Meat Industry Employees Union, Industrial Union of Workers* [op cit]).

93 In *Brown & Root Energy Services Pty Ltd v Construction Industry Long Service Leave Payments Board* (2001) 81 WAIG 665 at 671 Smith, C, as she was then, also observed the following:

"In interpreting industrial instruments tribunals usually do not apply a literal approach, as awards and enterprise agreements may have been drafted by industrial rather than skilled draftsmen (*Robe River Iron Associates v Amalgamated Metal Workers' and Shipwrights' Union* per Kennedy J at 1100). This approach to interpretation was explained by Street J in *Geo A Bond and Co Ltd (in liq) v McKenzie* (1929) 28 AR 499 at 503-504—

'Now, speaking generally, awards are to be interpreted as any other enactment is interpreted. They lay down the law affecting employers and employees in their relation as such, and they have to be obeyed to the same extent as any other statutory enactment. But at the same time, it must be remembered that awards are made for the various industries in the light of the customs and working conditions of each industry, and they frequently result, as this award in fact did, from an agreement between parties, couched in terms intelligible to themselves but often framed without that careful attention to form and draughtsmanship which one expects to find in an Act of Parliament. I think, therefore, in construing an award, one must always be careful to avoid a too literal adherence to the strict technical meaning of words, and must view the matter broadly, and after giving consideration and weight to every part of the award, endeavour to give it a meaning consistent with the general intention of the parties to be gathered from the whole award.'"

94 The applicant relies on the following terms of the 2000 Agreement and the 2004 Agreements in support of this claim. Clause 66 of the 2000 Agreement provides as follows:

“PROFESSIONAL INCENTIVES

- 66.1 Employees shall be granted permanency with the Education Department upon the completion of 2 years continuous good service in a Difficult to Staff school.
- 66.2 For each year of continuous good service in a DTS school employees shall receive bonus transfer points, subject to the completion of 3 years continuous good service in a DTS school.
- 66.3 The bonus transfer points will be as published by the Staffing Directorate from time to time in consultation with the Union.”

Clause 91 of the 2004 Agreement provides as follows:

“PROFESSIONAL INCENTIVES

- 91.1 Employees shall be granted permanency with the Department of Education and Training upon appointment to a school identified in Schedule L – Country and Metropolitan Teaching Program subject to satisfactory completion of two (2) years continuous good service in the Country and Metropolitan Teaching Program.
- 91.2 For each year of continuous good service in a school identified in Schedule L of the Country and Metropolitan Teaching Program employees shall receive bonus transfer points, subject to the completion of two (2) years continuous good service.
- 91.3 The bonus transfer points will be as published in *School Matters* by the Staffing Directorate from time to time in consultation with the Union.”

95 In my view the applicant has misconstrued the content of these clauses. When the ordinary and common sense meaning is given to the words contained in Clause 66.1 of the 2000 Agreement and Clause 91.1 of the 2004 Agreement within the context of these clauses and the agreements as a whole it is clear that a person entitled to be classified as a permanent employee in these clauses relates to a scheme whereby employees who have not yet gained permanent status with the respondent are encouraged to seek employment at difficult to staff school or country schools listed in the agreements and in return permanent status with the respondent would be gained after two years as opposed to a longer period when an employee works in a school which was not difficult to staff or in the country. Furthermore I accept the respondent's submissions and I find that an employee of the respondent, in this case Mr Harfouche, cannot be granted permanent status twice.

- 96 In the circumstances I find that the terms of Clause 66 of the 2000 Agreement and Clause 91 of the 2004 Agreement do not confirm that Mr Harfouche became a permanent employee who was entitled to the benefit of a substantive Level 4 Deputy Principal position at CSHS.
- 97 The applicant relies on the provisions of s 236(4) of the SE Act in support of its claim that Mr Harfouche is a substantive Level 4 Deputy Principal. Section 236(4) reads as follows:
- “(4) Members of the teaching staff and other officers may be engaged —
- (a) on a full-time or part-time basis; and
- (b) for an indefinite period as permanent officers, or for a period not exceeding 5 years.”
- 98 In my view the terms of this provision do not assist the applicant’s claim that Mr Harfouche is entitled to a permanent ongoing Level 4 Deputy Principal position with the respondent. This provision states that the respondent’s employees may be employed either full-time or part-time for an indefinite period as a permanent employee or on a fixed-term basis for a period not exceeding five years. In Mr Harfouche’s case he is employed by the respondent on a full-time ongoing basis as a permanent employee and in my view the respondent is therefore complying with the provisions of this section of the SE Act. Additionally, these provisions are not inconsistent with a permanent employee performing acting and/or higher duties in a fixed-term role.
- 99 I reject the applicant’s claim that Mr Harfouche was unlawfully transferred out of CSHS. The respondent is able to effect an employer initiated transfer under its Placement, Transfer and Deployment of School Administrators policy and used this policy to effect Mr Harfouche’s transfer out of CSHS in September 2006. However I find there is some merit to the applicant’s claim that Mr Harfouche was treated unfairly when he was subject to this employer initiated transfer out of CSHS. There was overwhelming evidence before the Commission that Mr Harfouche completed his duties as a Level 4 Deputy Principal at CSHS in a professional and exemplary manner and I find that he interacted positively and productively with colleagues and community members throughout his tenure at CSHS. I also find on the evidence that there were concerns about staffing at CSHS and its status in the local community for a number of years, both prior to and during Mr Harfouche’s time at CSHS, due to poor oversight of the school by Mr Dunning who had been the Principal of CSHS for many years. I accept the evidence given in the proceedings that in his role as the Principal at CSHS Mr Dunning had poor interpersonal relationships with a number of staff members and I accept that this contributed to a high staff turnover at the school. I also accept that some local community members and organisations lacked confidence in the way in which the school was being run by Mr Dunning. Notwithstanding complaints made by staff members and community members highlighting these problems the respondent did not deal with Mr Dunning’s poor oversight until both Mr Harfouche and Mr Bleach lodged formal complaints against Mr Dunning.
- 100 As I accept Mr Harfouche’s evidence I find that the difficulties between Mr Harfouche and Mr Dunning were not due to any actions or poor behaviour on the part of Mr Harfouche.
- 101 There was no dispute and I find that Mr Harfouche was not given any opportunity to respond to the findings of the Carvosso Report or the respondent’s view that he be transferred out of CSHS prior to this occurring and in my view this contributed to Mr Harfouche being treated unfairly by the respondent. It may also be the case that Mr Harfouche’s forced and unwarranted removal from CSHS has adversely impacted on Mr Harfouche’s efforts to successfully obtain a promotion to a substantive Level 4 Deputy Principal position and it is clear that subsequent to his transfer out of CSHS Mr Harfouche suffered significant health issues arising from his employment at CSHS and his forced transfer out of the school.
- 102 Notwithstanding my view that Mr Harfouche was treated unfairly when he was subject to a forced transfer out of CSHS the issue remains that Mr Harfouche has never been appointed to a substantive Level 4 Deputy Principal position with the respondent. Even if Mr Harfouche had remained as a Level 4 Deputy Principal employee at CSHS and had not been subject to a forced transfer out of CSHS the Level 4 Deputy Principal position he occupied at CSHS was temporary and subject to being filled on a needs basis and at some point Mr Harfouche would have had to be successful in being merit selected on a State-wide basis for a vacant ongoing Level 4 Deputy Principal position in order to be appointed to a substantive Level 4 Deputy Principal position.
- 103 I have some sympathy with the difficulties that Mr Harfouche has experienced as a result of having worked in a number of schools subsequent to his forced transfer out of CSHS and the fact that this may have adversely affected his ability to be promoted to an ongoing, substantive Level 4 position. In the circumstances it is my view that the respondent should give Mr Harfouche every assistance to enable him to apply for a permanent Level 4 Deputy Principal position.
- 104 As I have found that Mr Harfouche was never appointed to a substantive Level 4 Deputy Principal position it follows that Mr Harfouche was not demoted when he was advised by the respondent that he was to return to his substantive position at GSSHS.
- 105 As the applicant has not demonstrated that Mr Harfouche is entitled to the benefit of a substantive Level 4 Deputy Principal position an order will issued dismissing this application.
-

2010 WAIRC 00071

DISPUTE RE UNLAWFUL AND UNFAIR DOWNGRADING OF AN EMPLOYEE FROM LEVEL 4 TO LEVEL 3

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

THE STATE SCHOOL TEACHERS' UNION OF WA (INCORPORATED)

APPLICANT

-v-

THE DIRECTOR GENERAL, DEPARTMENT OF EDUCATION AND TRAINING

RESPONDENT**CORAM**

COMMISSIONER J L HARRISON

DATE

THURSDAY, 18 FEBRUARY 2010

FILE NO/S

CR 13 OF 2009

CITATION NO.

2010 WAIRC 00071

Result	Dismissed
Representation	
Applicant	Mr M Amati
Respondent	Ms R Hartley (of Counsel)

Order

HAVING HEARD Mr M Amati on behalf of the applicant and Ms R Hartley of Counsel on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders –

THAT the application be and is hereby dismissed.

(Sgd.) J L HARRISON,
Commissioner.

[L.S.]

CONFERENCES—Notation of—

Parties		Commissioner	Conference Number	Dates	Matter	Result
Health Services Union of Western Australia (Union of Workers)	The Director General of Health in Right of the Minister for Health as Sir Charles Gairdner Hospital	Acting Scott SC	PSAC 4/2009	26/02/2009 3/03/2009 25/06/2009 25/08/2009 8/10/2009 6/11/2009 26/11/2009	Dispute re alleged misconduct of union member	Concluded
The Civil Service Association of Western Australia Incorporated	Director General, Department for Education and Training	Harrison C	PSAC 26/2009	N/A	Dispute in relation to conditions of employment	Discontinued

PROCEDURAL DIRECTIONS AND ORDERS—

2010 WAIRC 00096

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

ROBYNNE JEAN BOURKE

APPLICANT

-v-

ROCKY BAY

RESPONDENT**CORAM**

COMMISSIONER S J KENNER

DATE

WEDNESDAY, 3 MARCH 2010

FILE NO.

U 237 OF 2009

CITATION NO.

2010 WAIRC 00096

Result	Direction issued
Representation	
Applicant	Mr K Trainer as agent
Respondent	Mr D McKenna of counsel

Direction

HAVING heard Mr K Trainer as agent on behalf of the applicant and Mr D McKenna of counsel on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby directs –

- (1) THAT each party shall give an informal discovery by serving its list of documents by 23 March 2010.
- (2) THAT inspection of documents shall be completed by 30 March 2010.
- (3) THAT the matter be listed for hearing for not more than 4 days.
- (4) THAT the parties have liberty to apply on short notice.

[L.S.]

(Sgd.) S J KENNER,
Commissioner.

NOTICES—Cancellation of Awards/Agreements/Respondents—under Section 47—

2010 WAIRC 00109

NOTICE

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

TAKE NOTICE that the Commission acting pursuant to section 47 of the *Industrial Relations Act 1979*, intends, by order, to cancel the awards listed in Schedule 1 on the grounds that there are no longer any employees to whom the awards apply because of the operation of the Fair Work Act 2009 (Cth).

Any person who has a sufficient interest in these matters may, within 30 days of the date of the publication of this notice, object to the Commission making such an order.

Please quote the award title on all correspondence.

[L.S.]

(Sgd.) J SPURLING,
Registrar.

DATED THIS 8TH DAY OF MARCH 2010

SCHEDULE 1

1. Aerospace Engineering Services Pty Ltd Enterprise Award 2005
2. Ambulance Service Communication Centre Employees' Award 1991
3. Argyle Diamonds Production Award 1996
4. BHP-Utah Minerals International Cadjebut Production Award 1989, No. A 11 of 1989
5. Bibra Lake Fabrication Workshop Award
6. BP Fremantle Ltd Oil Bunkering Award 1992, No. A 20 of 1981
7. BP Refinery (Kwinana) (Security Officers') Award, 1978
8. BRADKEN Bassendean (WA) Way Forward Enterprise Award 2003
9. The Brewery Laboratory Employees Award 1983
10. Brewing Industry Award 1993
11. Building and Engineering Trades (Nickel Mining and Processing) Award, 1968
12. Building Materials Manufacture (CSR Limited – Welshpool Works) Award, 1982
13. Burswood Catering and Entertainment Pty Ltd Employees Award 2001
14. Burswood Hotel (Maintenance Employees') Award, 1990
15. Burswood International Resort Casino Employees' Award 2002
16. Burswood Island Resort (Maintenance Employees') Award No. A22 of 1986
17. Burswood Resort Casino (Theatrical Employees) Award No. A 19 of 1991
18. Can Manufacturing (Production and Maintenance - Amalgamated Industries Pty. Ltd) Award 1985

19. Cargill Australia Limited Salt Production and Processing Award 1988
20. Cement Tile Manufacturing Award No 3 of 1966
21. Cement Workers' Award, 1975
22. Clerks (Commercial Radio and Television Broadcasters) Award of 1970
23. Clerks' (R.A.C. Control Room Officers) Award of 1988
24. Clerks' (Swan Brewery Co. Ltd.) Award 1986
25. Cockburn Cement Limited Award 1991
26. CSBP & Farmers Award 1990
27. Dampier Salt Award 2004
28. Electrical, Engineering and Building Trades (West Australian Newspapers Limited) Award, 1988
29. Engine Drivers' (Gold Mining) Consolidated Award, 1979
30. Engine Drivers' (Nickel Mining) Award 1968
31. Engine Drivers' Minerals Production (Salt) Industry Award, 1970
32. Engineering and Engine Drivers' (Nickel Smelting) Award, 1973
33. Engineering Trades and Engine Drivers (Nickel Refining) Award, 1971
34. Fibre Cement Workers Award
35. Foodland Associated Limited (Western Australia) Warehouse Award 1982
36. Gold Mining Consolidated Award, 1980
37. Gold Mining Engineering and Maintenance Award
38. Government Water Supply, Sewerage and Drainage Employees Award 1981
39. Government Water Supply, Sewerage and Drainage Foremen's Award 1984
40. Grain Handling Maintenance Workers Award
41. Grain Handling Salaried Officers' Consolidated Award 1989
42. Heat Containment Industries (Refractory Specialties) Award No. 3 of 1981
43. Hospital Employees' (Brightwater) Consolidated Award 1981
44. Hospital Salaried Officers (Australian Red Cross Blood Service, Western Australia) Award, 1978
45. Hospital Salaried Officers (WorkPower) Award of 1996
46. Industrial Catering Workers' Award, 1977
47. Iron and Steel Industry Workers' (Australian Iron and Steel Pty. Ltd.) Production Bonus Scheme Award
48. Iron Ore Production and Processing (Hamersley Iron Pty Limited) Award 1987
49. Iron Ore Production & Processing (BHP Billiton Iron Ore Pty Ltd) Award 2002
50. The Iron Ore Production & Processing (Locomotive Drivers) Award 2006
51. Iron Ore Production & Processing (Locomotive Drivers Rio Tinto Railway) Award 2006
52. The John Lysaght (Australia) Limited Award
53. Journalists' (Suburban and Free Newspapers) Award, 1984
54. Kalgoorlie Consolidated Gold Mines Award 2002
55. Laboratory and Technical Employees' (Peters (W.A.) Limited) Award of 1981
56. Malting Industry Award 1993
57. Manufacturing Chemists Award, 1976
58. Masters and Deckhands Total Harbour Services Pty Ltd Award
59. Masters Dairy Award 1994
60. Matilda Bay Brewing Company Limited Enterprise Award 1994
61. Metals and Engineering Rapid Metal Developments (Aust) Pty Ltd Award 1993
62. Mineral Earths Employees' Award
63. Mineral Sands Industry Award 1991
64. Mineral Sands Mining and Processing (Engineering and Building Trades) Award, 1977
65. Mineral Sands Mining and Processing Industry Award, 1981
66. Minerals Production (Salt) Industry Award 1969
67. Nickel Mining and Processing Award, 1975

68. Nickel Refining Award, 1971
69. Nickel Smelting (WMC Resources Ltd) Award 2003
70. Particle Board Employees' Award, 1964
71. Particle Board Industry Award No. 10 of 1978
72. Permanent Building Societies (Administrative and Clerical Officers) Award, 1975
73. Pipe, Tile and Pottery Manufacturing Industry Award
74. Plastic Manufacturing Award 1977
75. Porcelain Workers Award, 1970
76. Printing (Community Newspaper Group) Award, No. A 21 of 1989
77. The Printing (Newspaper) Award 1979
78. Printing (The Sunday Times Guaranteed Employment and Voluntary Retirement) Award, 1983
79. Printing (West Australian Newspapers Limited, Guaranteed Employment and Voluntary Retirement) Award
80. RAC Road, Mechanical and Fleet Services Award 1999
81. Salaried Staff Curtin University of Technology Award 1985
82. Security Officers and Cleaners (West Australian Newspapers) Award, 1992
83. Shark Bay Salt and Gypsum (Production and Processing) Useless Loop Award 1989
84. State Energy Commission of Western Australia Wages and Conditions Award, 1988
85. Storemen IWD Pty Ltd Award 1982
86. Storemen's Rapid Metal Developments (Aust.) Pty. Ltd. Award 1982
87. Supermarkets and Chain Stores (Western Australia) Warehouse Award
88. Telfer Gold Mine Fly In/Fly Out Award
89. Tin and Associated Minerals Mining and Processing Industry Award No. 14 of 1971
90. Titanium Oxide Manufacturing Award 1975
91. Transport Workers (Burswood Island Resort) Award 1987
92. Transport Workers' (Eastern Goldfields Transport Board) Award 1976
93. Water Corporation (Staff) Award 2003
94. Western Australian Mint Security Officers' Award, 1988
95. Western Australian Mint Award 2005
96. Wire Manufacturing (Australian Wire Industries Pty. Ltd.) Award No. 24 of 1970
97. Wundowie Foundry Award 1986

PUBLIC SERVICE APPEAL BOARD—

2010 WAIRC 00093

APPEAL AGAINST THE DECISION MADE ON 31 AUGUST 2009 RELATING TO FINDINGS OF MISCONDUCT

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

DIANE CURRAN

APPELLANT

-v-

GOVERNMENT OF WESTERN AUSTRALIA - DEPARTMENT OF HEALTH - HEALTH
CORPORATE NETWORK

RESPONDENT

CORAM

PUBLIC SERVICE APPEAL BOARD
ACTING SENIOR COMMISSIONER P E SCOTT - CHAIRMAN
MR N HASTINGS-JAMES - BOARD MEMBER
MS A SPAZIANI - BOARD MEMBER

DATE

WEDNESDAY, 3 MARCH 2010

FILE NO

PSAB 21 OF 2009

CITATION NO.

2010 WAIRC 00093

Result Appeal received out of time

Order

HAVING heard Mr K Trainer on behalf of the appellant, and Mr D Matthews on behalf of the respondent, and by consent, the Public Service Appeal Board, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this appeal be received out of time.

[L.S.]

(Sgd.) P E SCOTT,
Acting Senior Commissioner,
On behalf of the Public Service Appeal Board.

2010 WAIRC 00108

APPEAL AGAINST THE DECISION MADE ON 31 AUGUST 2009 RELATING TO FINDINGS OF MISCONDUCT

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

DIANE CURRAN

APPELLANT

-v-

GOVERNMENT OF WESTERN AUSTRALIA - DEPARTMENT OF HEALTH - HEALTH
CORPORATE NETWORK

RESPONDENT

CORAM

PUBLIC SERVICE APPEAL BOARD
ACTING SENIOR COMMISSIONER P E SCOTT - CHAIRMAN
MR N HASTINGS-JAMES - BOARD MEMBER
MS A SPAZIANI - BOARD MEMBER

DATE

MONDAY, 8 MARCH 2010

FILE NO

PSAB 21 OF 2009

CITATION NO.

2010 WAIRC 00108

Result Name of respondent amended

Order

WHEREAS this is an appeal pursuant to Section 80I of the *Industrial Relations Act 1979*; and

WHEREAS on the 23rd day of February 2010 the Public Service Appeal Board convened a hearing for the purpose of scheduling; and

WHEREAS at the hearing the parties agreed that the name of the respondent be amended to "Minister for Health in his incorporated capacity under s 7 of the Hospitals and Health Services Act (WA) as the hospitals formerly comprised in the Metropolitan Health Services Board";

NOW THEREFORE, the Public Service Appeal Board, pursuant to the powers conferred under the *Industrial Relations Act 1979* hereby orders:

THAT the name of the respondent in the appeal be amended to "Minister for Health in his incorporated capacity under s 7 of the Hospitals and Health Services Act (WA) as the hospitals formerly comprised in the Metropolitan Health Services Board".

[L.S.]

(Sgd.) P E SCOTT,
Acting Senior Commissioner,
On behalf of the Public Service Appeal Board.

2010 WAIRC 00088

APPEAL AGAINST THE DECISION MADE ON 1 SEPTEMBER 2009 RELATING TO TERMINATION OF EMPLOYMENT

PARTIES	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION CATHERINE SMIT	APPELLANT
	-v-	
	SAFETY BAY SENIOR HIGH SCHOOL	RESPONDENT
CORAM	PUBLIC SERVICE APPEAL BOARD ACTING SENIOR COMMISSIONER P E SCOTT - CHAIRMAN MR K TRENT - BOARD MEMBER MR J ROSSI - BOARD MEMBER	
DATE	FRIDAY, 26 FEBRUARY 2010	
FILE NO	PSAB 26 OF 2009	
CITATION NO.	2010 WAIRC 00088	
Result	Appeal received out of time	

Order

WHEREAS this is an appeal pursuant to the *Industrial Relations Act 1979* filed beyond the 21 days allowed by the Act; and
WHEREAS at a conference convened on Thursday, the 18th day of February 2010 the respondent consented to the appeal being received out of time; and

NOW THEREFORE, the Public Service Appeal Board, pursuant to the powers conferred under the *Industrial Relations Act 1979* hereby orders:

THAT the appeal be received out of time.

[L.S.]

(Sgd.) P E SCOTT,
Acting Senior Commissioner,
On behalf of the Public Service Appeal Board.

RECLASSIFICATION APPEALS—

2010 WAIRC 00076

PARTIES	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION THE CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA INCORPORATED	APPELLANT
	-v-	
	THE DIRECTOR GENERAL, DEPARTMENT FOR PLANNING & INFRASTRUCTURE	RESPONDENT
CORAM	PUBLIC SERVICE ARBITRATOR ACTING SENIOR COMMISSIONER P E SCOTT	
DATE	MONDAY, 22 FEBRUARY 2010	
FILE NO	PSA 58 OF 2008	
CITATION NO.	2010 WAIRC 00076	
Result	Reclassification appeal dismissed	

Order

WHEREAS this is a reclassification appeal made pursuant to the *Industrial Relations Act 1979*;
and

WHEREAS on Monday, the 18th day of January 2010 the Public Service Arbitrator convened a conference for the purpose of conciliating between the parties; and

WHEREAS on Thursday, the 18th day of February 2010, the appellant filed a Notice of Discontinuance in respect of the appeal;
 NOW THEREFORE, the Public Service Arbitrator, pursuant to the powers conferred under the *Industrial Relations Act 1979*, hereby orders:

THAT this appeal be, and is hereby dismissed.

[L.S.]

(Sgd.) P E SCOTT,
 Acting Senior Commissioner,
 Public Service Arbitrator.

OCCUPATIONAL SAFETY AND HEALTH ACT—Matters Dealt With—

2010 WAIRC 00064

FURTHER REVIEW OF IMPROVEMENT NOTICE 303884

THE OCCUPATIONAL SAFETY AND HEALTH TRIBUNAL

PARTIES

MORTON SEED AND GRAIN PTY LTD

APPLICANT

-v-

WORKSAFE WESTERN AUSTRALIA COMMISSIONER

RESPONDENT

CORAM COMMISSIONER S M MAYMAN

DATE MONDAY, 15 FEBRUARY 2010

FILE NO/S OSHT 30 OF 2009

CITATION NO. 2010 WAIRC 00064

Result Order issued

Representation

Applicant Mr A. Koroveshi (of counsel)

Respondent Mr K. Burgoyne (of counsel)

Order

WHEREAS the applicant referred this matter to the Occupational Safety and Health Tribunal (the Tribunal) pursuant to s 51A of the *Occupational Safety and Health Act 1984* (the Act) seeking a further review of Improvement Notice 303884;

AND WHEREAS the matter was listed for hearing on 27 January 2010 and the parties sought and were granted an adjournment of 14 days;

AND WHEREAS the matter was relisted for hearing on 12 February 2010;

AND WHEREAS the applicant sought an order in these proceedings modifying the WorkSafe Commissioner's decision of 4 December 2009;

AND WHEREAS the respondent consented to an order issuing in these proceedings to modify the WorkSafe Commissioner's decision of 4 December 2009 but opposed the application being adjourned sine die;

AND WHEREAS I have had regard for the submissions of each party;

NOW THEREFORE having regard to s 51A(5)(b) I the undersigned, pursuant to the powers conferred on me under the Act hereby order –

1. The decision of the WorkSafe Western Australia Commissioner dated 4 December 2009, in respect of Morton Seed and Grain Pty Ltd, be affirmed with a single modification.
2. The single modification extend the time limit for compliance with Improvement Notice 303884 from 5.00pm 19 March 2009 until no later than 4.00pm Friday, 30 April 2010.
3. The application is otherwise adjourned sine die.

[L.S.]

(Sgd.) S M MAYMAN,
 Commissioner.



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CUMULATIVE CONTENTS AND DIGEST APPEAR AT THE END OF THIS PUBLICATION

NOTICES—Application for General Order—

2010 WAIRC 00211

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
111 St Georges Terrace, Perth

Submissions for the 2010 WA Minimum Wage

The WAIRC is required to set the minimum wage to apply to employers and employees covered by the WA industrial relations system. It must do this before 1 July each year. The current minimum wage for an adult employee of \$569.70 per week was set in June 2009 to apply from 1 October 2009.

The WAIRC invites interested persons or organisations to make a submission to the Commission on what the minimum wage should be. The Commission will hear oral submissions commencing on Tuesday, 1 June 2010. The proceedings are open to the public and will be webcast. Any person who wishes to make an oral submission at that time should notify the Registrar of the Commission stating the basis of their interest. This must be done by Friday, 14 May 2010.

Written submissions are also welcomed. Any person or organisation who wishes to make a written submission should do so in writing or by email by Friday, 14 May 2010. Please note that copies of written submissions may be made available to other persons and may be displayed on the Commission's website.

Further particulars may be obtained from the Registry of the WAIRC and from the Commission's website at www.wairc.wa.gov.au.

All correspondence should be addressed to the Registrar at the above address or by email to registrar@wairc.wa.gov.au quoting Matter number 2 of 2010.

DATED at Perth this 7th day of April 2010.

J. SPURLING
REGISTRAR

FULL BENCH—Appeals against decision of Commission—

2010 WAIRC 00206

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

FULL BENCH

CITATION : 2010 WAIRC 00206

CORAM : THE HONOURABLE J H SMITH, ACTING PRESIDENT
COMMISSIONER S J KENNER
COMMISSIONER S M MAYMAN

HEARD : THURSDAY, 11 FEBRUARY 2010

DELIVERED : THURSDAY, 15 APRIL 2010

FILE NO. : FBA 1 OF 2010

BETWEEN : THE CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA
INCORPORATED
Appellant
AND
DIRECTOR-GENERAL, DEPARTMENT FOR CHILD PROTECTION
Respondent
AND
MINISTER FOR COMMERCE
Intervener

ON APPEAL FROM:

Jurisdiction : **Public Service Arbitrator**

Coram : **Acting Senior Commissioner P E Scott**

Citation : **[2009] WAIRC 01348; (2009) 90 WAIG 66**

File No : **PSACR 24 of 2009**

CatchWords : Industrial Law (WA) - Jurisdiction of Public Service Arbitrator - Jurisdiction of Public Service Appeal Board - Construction of s 80E and s 80I(1)(a) of the *Industrial Relations Act 1979* (WA) - Principles of statutory interpretation applied - Whether appeal by an ex-public service officer lies to the Public Service Appeal Board under s 80I(1)(a) considered - Circumstances where jurisdiction of Public Service Appeal Board may oust jurisdiction of Public Service Arbitrator considered.

Legislation : *Acts Amendment and Repeal (Industrial Relations Act (No 2))* (WA)
Acts Amendment (Public Sector Management) Act 1994 (WA)
Acts Amendment (Public Service) Act 1987 (WA)
Industrial Relations Act 1979 (WA) s 7, s 7(1a), s 23, s 32, s 44, s 44(6)(ba), s 44(6)(bb), s 46, s 49, s 80C, s 80E, s 80E(1), s 80E(2), s 80E(5), s 80E(6), s 80E(7), s 80F, s 80F(1), s 80F(2), s 80G, s 80G(1), s 80H(1), s 80I, s 80I(1), s 80I(1)(a), s 80I(1)(b), s 80I(1)(c), s 80I(1)(d), s 80I(1)(e), s 80J, s 80J(b), s 80K, s 80L,
Industrial Relations Amendment Act (No 4) 1987 (WA)
Interpretation Act 1984 (WA) s 10, s 18
Public Sector Management Act 1994 (WA) s 6(2), s 43, s 51A, s 52, s 64, s 67, s 76(1)(a), s 76(1)(b), s 78, s 78(1), s 78(1)(b), s 80, s 86(3)(b), s 94, s 96, s 97, s 97(1)(a), s 101, s 102, s 103
Public Service Act 1904 (WA) s 48, s 49, s 50, s 51, s 52, s 53, s 54, s 55, s 56, s 57, s 59
Public Service Act 1978 (WA)
Public Service Arbitration Act 1966 (WA)
Public Service Arbitration Amendment Act 1997 (WA) s 7

Result : Appeal dismissed.

Representation:*Counsel:*

Appellant	:	Ms S Bhar and with her Ms C Reid
Respondent	:	Mr E Rea and with him Ms M Ross
Intervener	:	Mr R Andretich (of counsel)

*Reasons for Decision***SMITH AP****Background and Grounds of Appeal**

- 1 This is an appeal brought pursuant to s 49 of the *Industrial Relations Act 1979* (WA) (the Act). The appeal is against a decision made by the Public Service Arbitrator on 17 December 2009 dismissing an application made under s 44, s 80E and s 80G of the Act by The Civil Service Association of Western Australia Incorporated (the appellant). In the application the appellant sought an order that the Chief Executive Officer of the Department for Child Protection (the respondent) cease a disciplinary process brought against Mr van der Zanden a former public service officer employed by the respondent.
- 2 The matter was heard at first instance pursuant to a Memorandum of Matters Referred for Hearing and Determination made on 10 November 2009 under s 44 of the Act. The schedule to the Memorandum states as follows:

The Applicant says that:

1. It is an organisation of employees authorised to represent Mr Luke van der Zanden, a former employee of the Department for Child Protection ('the Respondent').
2. It is in dispute with the Respondent over its power to continue a breach of disciplinary process under the *Public Sector Management Act 1994* ('the Act'), when Mr van der Zanden is no longer its employee.
3. Mr van der Zanden was presented with a suspected breach of discipline letter dated 20 April 2009.
4. Mr van der Zanden provided his written response addressing the allegations to the Respondent on 8 May 2009.
5. After Mr van der Zanden had submitted his response his fixed term contract of employment expired as at 4 June 2009 and was not renewed.
6. On 11 June 2009, the Respondent sent Mr van der Zanden a letter notifying him that an investigation into the suspected breaches of discipline would be commenced pursuant to s 81(2) of the Act.
7. The Respondent advised the Applicant in a letter dated 17 September 2009 that it would continue with the investigation notwithstanding the cessation of employment.
8. The Respondent has no power under the Act to pursue a disciplinary investigation of a former employee.
9. Furthermore, the Act provides a statutory mechanism for regulating disciplinary investigations of current employees only.

The Applicant seeks an order that the Respondent ceases the disciplinary process immediately and any other orders the Public Service Arbitrator deems appropriate to resolve the dispute.

The Respondent says that:

1. There is no legislative impediment to its continuing to undertake an investigation upon the cessation of employment of the officer.
2. It is desirable and appropriate to continue with the investigation and reach a conclusion regarding Mr van der Zanden's conduct.
3. Objects to the orders sought.

- 3 After hearing the parties, the application was dismissed on grounds that the Public Service Arbitrator has no jurisdiction to hear and determine the matter in dispute under s 80E of the Act. The substance of the Public Service Arbitrator's decision was a finding that the Public Service Appeal Board had jurisdiction to hear and determine the claim pursuant to s 80I(1)(a) of the Act and jurisdiction of the Public Service Appeal Board is exclusive of the jurisdiction of the Public Service Arbitrator under s 80E of the Act. The effect of the decision of the Public Service Arbitrator was that the general jurisdiction of the Public Service Arbitrator is ousted by the specific jurisdiction conferred on the Public Service Appeal Board in s 80I(1)(a) of the Act. Section 80I(1)(a) confers jurisdiction on the Public Service Appeal Board to hear and determine an appeal by a public service officer in relation to an interpretation of any provision of the *Public Sector Management Act 1994* (PSM Act) concerning the conditions of service of public service officers.

- 4 The appellant's grounds of appeal are as follows:

1. The Public Service Arbitrator erred in law and in fact in finding that she had no jurisdiction to hear the application under s. 7 Industrial Relations Act 1979 ['IR Act'] - industrial matters because the jurisdiction of the Public Service Appeal Board[PSAB] prevailed under s. 80I IR Act.

Particulars:

- (a) S. 80I IR Act refers to '*conditions of service of public service officers.*' Mr van der Zanden's contract expired on 4 June 2009, and he had no conditions of service on foot as from that date. The provisions of the PSM Act could not apply to him.
 - (b) After the contract had expired, the Respondent indicated that it intended to continue with the investigation, and in effect the Respondent was imposing a condition, which was to take effect after termination within the meaning s. 7 IR Act.
 - (c) The decision involves a misconstruction of s. 80I(a) IR Act in the sense that it was not an appeal by a public service officer in relation to the Public Sector Management Act concerning the conditions of service.
 - (d) The PSAB had no jurisdiction to determine the subject matter of the application, and in this instance s. 80I did not oust the jurisdiction of the Arbitrator under s. 80E IR Act.
 - (e) In this particular instance the application of the rule in *generalia specialiabus [sic] non derogant* was an error of law because on the true construction of the IR Act and the facts, it could not apply.
2. In the alternative, the Public Service Arbitrator erred in law and in fact in finding set out in paragraph 39 that '*while the Arbitrator [had] jurisdiction which is broad and encompasses the issue in dispute, the Board's jurisdiction is more specific and specialised. The jurisdiction of the Board must prevail.*'

Particulars:

- (a) In addition to the particulars already set out in the previous ground of appeal, the issue of the differences between public service officers and government officers in paragraph 35 is not relevant to coming to a result;
 - (b) The reasoning in paragraph 36 is wrong because the matter focuses on the act of the Respondent to continue a disciplinary process without statutory authority.
- 5 The appellant's grounds of appeal also state that the appeal should lie because the matter is of such importance in the public interest. The appellant, however, is not required by s 49(2a) of the Act to satisfy the Full Bench that the matter is of importance in the public interest as the appeal is not against a 'finding'. A 'finding' is a decision that does not finally decide, determine or dispose of the matter to which the proceedings relate.

Intervention by the Minister

- 6 Because the appeal raised an issue about the operation of the provisions of the Act, in particular the jurisdiction of the Public Service Arbitrator to hear and determine a matter where a matter might otherwise be brought by way of application to the Public Service Appeal Board, the Full Bench invited the Minister for Commerce to intervene in these proceedings and make submissions as to the legal issues raised in the grounds of appeal. The Minister accepted the invitation and instructed counsel to appear and make oral and written submissions in respect of the grounds of appeal.

Statement of Agreed Facts

- 7 No evidence was led in the proceedings before the Commission. The jurisdictional argument was heard and determined by regard to the following agreed facts:
1. The Applicant is The Civil Service Association of Western Australia Incorporated ('the CSA').
 2. The CSA is a registered organisation of employees authorised to represent Mr Luke van der Zanden.
 3. The Respondent is the Director General, Department for Child Protection.
 4. Mr van der Zanden was employed with the Respondent pursuant to Section 64(1)(b) of the *Public Sector Management Act 1994* ('the Act') as a Residential Care Officer.
 5. The Respondent presented Mr van der Zanden with a suspected breach of discipline letter dated 20 April 2009 identifying three suspected breaches of discipline.
 6. Mr van der Zanden responded to the three allegations in writing and provided his response to the Respondent on 8 May 2009.
 7. Mr van der Zanden's fixed term contract of employment expired as at 4 June 2009. As of the expiration of Mr van der Zanden's fixed term contract Mr van der Zanden was no longer an employee of the Respondent.
 8. On 11 June 2009 the Respondent sent Mr van der Zanden a letter notifying him that an investigation into the suspected breaches of discipline would be commenced pursuant to section 81(2) of the the (sic)Act.
 9. On 11 September 2009 the Applicant sent the Respondent a letter stating that as Mr van der Zanden was no longer an employee of the Respondent and the Respondent had no ability to continue its investigation.
 10. On 17 September 2009 the Respondent wrote to the Applicant and advised that the Respondent believed that it did have the ability to continue its investigation.
 11. On 23 September 2009 the Applicant wrote to the Respondent requesting the disciplinary investigation be stayed until such time as the matter could be determined by the Public Service Arbitrator.
 12. The Respondent acceded to this request.

13. The Applicant contends that the Respondent does not have the power under the Act to continue the breach of discipline process against Mr van der Zanden.
14. The Respondent contends that it does have the power under the Act to continue the breach of discipline process against Mr van der Zanden."

The Findings made by the Public Service Arbitrator

- 8 When the matter was heard by the Public Service Arbitrator the respondent did not dispute the contention that the Arbitrator would have jurisdiction to hear and determine the matters in dispute. However the respondent contended that the jurisdiction of the Public Service Arbitrator had been ousted because the jurisdiction of the Public Service Arbitration Board is more particular to the matter.
- 9 The Public Service Arbitrator observed that the terms of the Matters Referred for Hearing and Determination and the parties' submissions made it clear that the dispute did not simply involve a question of interpretation and a consequential declaration as to the meaning of the provisions of the PSM Act. She found the interpretation of the provisions of the PSM Act would deal with matters going beyond that interpretation, to include, if power exists to continue investigation and whether the respondent should be prevented from doing so. This would include also questions of merit and may involve the issuing of orders to require the respondent to cease the investigation.
- 10 The Public Service Arbitrator considered whether the jurisdiction of the Arbitrator was ousted by the jurisdiction of the Public Service Appeal Board on account of the principle of *generalia specialibus non derogant*. This Latin maxim of statutory interpretation when translated means that where there is a conflict between general and specific legislative provisions, the specific provisions prevail. In considering this issue, the Public Service Arbitrator analysed the jurisdiction of the Arbitrator in s 80E of the Act and the jurisdiction of the Public Service Appeal Board in s 80I of the Act. The Public Service Arbitrator observed that the Arbitrator's jurisdiction under s 80E of the Act is an exclusive jurisdiction to inquire into and deal with any 'industrial matter' relating to a government officer. The Public Service Arbitrator had regard to the definition of an 'industrial matter' in s 7 of the Act which relevantly provides in relation to the issue in dispute between the parties that an 'industrial matter' means:

any matter affecting or relating or pertaining to the work, privileges, rights, or duties of employers or employees in any industry or of any employer or employee therein and, without limiting the generality of that meaning, includes any matter affecting or relating or pertaining to -

...

 - (b) the hours of employment, leave of absence, sex, age, qualification, or status of employees and the mode, terms, and conditions of employment including conditions which are to take effect after the termination of employment;
- 11 The Public Service Arbitrator also had regard to the observations of Wheeler and Le Miere JJ in *Director General Department of Justice v Civil Service Association of Western Australia Incorporated* [2005] WASCA 244 where their Honours found that in order to determine how to 'deal with' an industrial matter the Arbitrator must find relevant facts [30] and they went on to state:

Where, as is presently the case, the way in which officers in the public service deal with each other is the subject of principles and requirements contained in legislation such as the PSM Act, it will often be desirable for the Arbitrator to consider whether the behaviour of individuals involved in the industrial matter has been in conformity with those principles and requirements. Again, findings of that kind would not be made as an end in themselves, but would be made in order to determine how, in the broad statutory context, it would be appropriate to deal with the industrial matter.

It will on occasion, as part of that process, be necessary for the Arbitrator to undertake a consideration of the relevant statutes, so as to ascertain how they apply to the facts as found. That exercise is undertaken, not in order authoritatively to declare the meaning of the statutory provision, but again as a step in the process of ascertaining what is required, in the statutory context, to deal with the industrial matter [31] - [32].
- 12 The Public Service Arbitrator set out the statutory powers of the Arbitrator to review an employer's decision and observed that pursuant to s 80E(5) of the Act, the employer's decision can be reviewed, nullified, modified or varied by the Arbitrator in the course of the exercise of jurisdiction and the Arbitrator has very wide powers to deal with the industrial matter for the purpose of resolution. In respect of the Public Service Appeal Board's jurisdiction under s 80I(1)(a), the Public Service Arbitrator observed that the Public Service Appeal Board has power to hear and determine 'an appeal by any public service officer against any decision of an employing authority in relation to an interpretation of any provision of the PSM Act concerning conditions of service ... of public service officers'. The Public Service Arbitrator held that s 80I(1)(a) does not simply provide for an appeal against the employing authority's interpretation of a provision of the PSM Act. Rather it provides for an appeal against any decision in relation to an interpretation of any provision of the PSM Act concerning conditions of service of public service officers. For this reason, the Public Service Arbitrator made the finding that the power in s 80I(1)(a) is not a power to make a declaration that can be characterised as a bare or bald interpretation as discussed by the Full Bench in *Crewe and Sons Pty Ltd v AMWSU* (1989) 69 WAIG 2624.
- 13 The Public Service Arbitrator then went on to examine the meaning of the term 'conditions of service' in s 80I(1)(a) and observed whilst the term is not defined, that such conditions could be found in a number of provisions of the PSM Act. These are contained in Part 3 of the PSM Act, in particular s 64 to s 67 which deal with appointments; transfers within and between departments and organisations; secondments and vacation of office; Part 5 – Substandard performance and disciplinary matters, including rights to procedural fairness and rights of appeal; Part 6 – Redeployment and redundancy. Other miscellaneous conditions including s 102 – Employees not to engage in activities unconnected with their functions.

- 14 The Public Service Arbitrator pointed out that the jurisdiction of the Public Service Appeal Board includes the power to adjust all such matters under s 80I(1) of the Act and in this matter the adjustment would be to the decision of the employing authority in relation to the interpretation of any provision of the PSM Act concerning conditions of service of public service officers. The Public Service Arbitrator found that the jurisdiction of the Public Service Appeal Board in this matter would provide for the adjustment of the employer's decision in relation to the interpretation of a provision of the PSM Act concerning whether the conditions of service include the capacity of the employer to instigate or continue to investigate a suspected breach of discipline when the employment has ended.
- 15 The Public Service Arbitrator then turned her mind as to whether the principle of *generalia specialibus non derogant* applies and made the following findings:
- (a) Section 80I(1)(a) of the Act is limited to persons who are public service officers who are a subset of government officers, whereas the Public Service Arbitrator's jurisdiction is broader, dealing with government officers.
 - (b) In respect of the subject matter of the application, the Public Service Appeal Board's jurisdiction covers the dispute as to the employer's decision in relation to an interpretation of the PSM Act concerning conditions of service of public service officers. This is more narrowly focussed on the issue in dispute, than a dispute about an industrial matter in respect of conditions which are to take effect after termination of employment. This is because the dispute is about the particular decision of the respondent, which relies upon an interpretation of the provisions of the PSM Act which relate to a condition of service, being the disciplinary process.
 - (c) When regard is had to the discussion about the application of the principle of *generalia specialibus non derogant* in the decision of the Full Bench in *Bellamy v Chairman, Public Service Board* (1986) 66 WAIG 1579, it follows that the legislature intended that there be a special and particular tribunal whose purpose was to deal with a claim of the nature referred for hearing and determination in this matter. This special tribunal is the Public Service Appeal Board. Consequently the jurisdiction of the Public Service Appeal Board must prevail over the general jurisdiction of the Public Service Arbitrator whose jurisdiction is broad and also encompasses the issue in dispute.

The Appellant's Submissions

- 16 The appellant argues that the Public Service Arbitrator misconstrued the application of s 80I(1)(a) of the Act in relation to the facts in issue. In particular they say the Public Service Arbitrator misconstrued s 80I(1)(a) by applying the maxim *generalia specialibus non derogant*, as this rule is only applied when two inconsistent provisions cannot be reconciled as a matter of ordinary interpretation and the maxim is a rule of last resort in overcoming direct statutory inconsistencies (Gifford D, *Statutory Interpretation* (1990) 111).
- 17 The appellant points out that the application was initiated as a registered organisation on its own behalf under s 80F of the Act which gives the appellant standing to apply to the Public Service Arbitrator. The application was not brought under s 80J of the Act. Section 80J provides that the appellant may bring an application under s 80I on behalf of the public service officer. The appellant contends that it is not acting as an agent of a member. They also say that individual employees have limited access to the Public Service Arbitrator and that this dispute was not one that an employee could have brought before the Commission under s 80E of the Act. Consequently the appellant says that the application properly invoked the jurisdiction of the Public Service Arbitrator as an 'industrial matter' pursuant to the definition in s 7 of the Act, as an industrial matter in paragraph (b) of the definition extends to any matter affecting, or relating, or pertaining to, conditions of employment which are to take effect after the termination of employment.
- 18 The appellant also says that the jurisdiction of the Public Service Arbitrator in relation to conditions of employment which are to take effect after termination of employment is explicit and there is no competing provision in the PSM Act to collide with, or override, it. The appellant also makes a submission that s 80I(1)(a) of the Act is for the benefit of public service officers who have contracts of employment on foot and that the PSM Act prescribes no conditions of service which are to take effect after the termination of employment. The appellant argues that s 80I(1)(a) of the Act cannot be invoked to deprive the appellant from making a s 44 application as Mr van der Zanden's contract of employment effluxed by time on 4 June 2009. On 11 June 2009, the respondent notified its former employee of its intention to commence an investigation when there was no employment relationship in existence. The contention that sits behind this submission is that once a person has ceased to hold office as a public service officer, they cannot bring an application under s 80I(1) and s 80J of the Act as at the time of making the application, the person cannot be characterised as a public service officer within the meaning of s 80I(1) and s 80K.
- 19 The appellant contends that if the maxim *generalia specialibus non derogant* should be applied, the jurisdiction of the Public Service Arbitrator to deal with conditions which are to take effect after termination of employment is a more specific power than the general power found in s 80I(1)(a) which provides the Public Service Appeal Board with jurisdiction to interpret conditions concerning the conditions of service (other than salaries and allowances) of public service officers. The appellant also argues that maxim is only to be applied when two inconsistent provisions cannot be reconciled as a matter of ordinary interpretation. They contend the apparent conflict can be reconciled by ordinary interpretation. They also say that the reference to conditions of service in s 80I(1)(a) must be given a constrained interpretation because the terminology used in s 80I(1)(a) is conceptually different to the reference to conditions of employment in s 7 of the Act. In particular they make a submission that 'conditions of service' are a subset of the genus – 'conditions of employment', and conditions which are to take effect after termination of employment is another subset of the genus.
- 20 The appellant contends that conditions of employment and conditions of service are not always synonymous. In developing this submission they say that the classification or definition of 'conditions of service' and 'conditions which are to take effect after termination of employment' are subsets of the genus 'conditions of employment'. In particular they rely upon the dicta of Isaacs and Rich JJ in *Australia Tramway Employees Association v Prahan and Melvern Tramway Trust* [1913] HCA 53; (1913) 17 CLR 680 where their Honours observed:

[A]s to the phrase 'terms and conditions of employment or non-employment.' Read secundum subjectam materiam, as words in every document must be, the word 'employment' in relation to industrial disputes has a large meaning. It certainly includes in this place, the state of employment, the acts of service rendered by an employ e during his engagement, the performance of his part in the industry. The 'terms' of employment are the stipulations agreed to or otherwise existing on both sides upon which the service is performed. The 'conditions' of employment include all the elements that constitute the necessary requisites, attributes, qualifications, environment or other circumstances affecting the employment (693).

- 21 The appellant also relies upon the definition of 'service' in the New Shorter Oxford English Dictionary in support of its submission that conditions of service cease on cessation of office. The New Shorter Oxford English Dictionary (1993) defines service (among other things) as:
- II 7 The condition, status, or occupation of being a servant or employee, ...
 - II 8 The condition of a public servant ... in the employment of a ruler or the State
 - III 11 Performance of the duties of a servant; work undertaken according to instructions ...; a period of employment ...; An act or instance of serving.
- 22 The appellant contends that as Mr van der Zanden was not a public service officer from 4 June 2009, Part 5 of the PSM Act which deals with disciplinary matters, could not apply to him after that date. They say that s 76(1)(a) of the PSM Act applies to "all public service officers" only and former public service officers are not prescribed persons for the purposes of s 76(1)(b) of the PSM Act. The rights of appeal specified in s 78 of the PSM Act are limited to government officers, as public service officers and by the use of the term 'employee' in s 80 of the PSM Act, that term means an employee as a current public service officer.
- 23 The appellant also puts forward an argument that the Public Service Arbitrator's interpretation of the application of s 80I(1)(a) of the Act and the definition of 'industrial matter' in s 7 does not accord with the purpose and objects of the Act. In support of the submission the appellant relies upon s 18 of the *Interpretation Act 1984* which provides:
- In the interpretation of a provision of a written law, a construction that would promote the purpose or object underlying the written law (whether that purpose or object is expressly stated in the written law or not) shall be preferred to a construction that would not promote that purpose or object.
- 24 The appellant points out that the jurisdiction of the Public Service Arbitrator and the Public Service Appeal Board as constituent authorities were established in 1984, when Part IIA, Division 2 was inserted into the Act, by the *Acts Amendment and Repeal (Industrial Relations) Act (No 2)* – No 94 of 1984. The current s 80I(1)(a) was inserted into the Act by the *Acts Amendment (Public Sector Management) Act 1994* – No 32 of 1994 and assented to on 29 June 1994. Previously s 80I(1)(a) referred to interpretation of any provision of the *Public Service Act 1978*, and regulations made there under. The appellant contends that the effect of the 1994 amendments to s 80I was to continue parts of the determinative powers of the Public Service Appeal Board in respect of employer decisions. In 1994, the Public Service Board was abolished and its role devolved to employing authorities under the PSM Act. The Public Service Appeal Board was initially established by s 7 of the *Public Service Arbitration Amendment Act 1997*, which contained a similar power as exemplified in s 80I(1)(a). The function of the Public Service Arbitrator was established by the *Public Service Arbitration Act 1966*. This function predated the existence of the Public Service Appeal Board.
- 25 The appellant says that s 80I(1)(a) of the Act is a renovation of previous legislative changes enacted in 1984 and earlier. Consequently it is important to identify what conditions were set out in the Public Service Act and the PSM Act. The appellant points out that the *Public Service Act 1904* prescribed the following conditions of service:
- (a) The ability to make a deduction from salary for a fair rent: s 48.
 - (b) Calling upon an officer to retire or be transferred if incapable of performing duties: s 49.
 - (c) Forfeiture of office if convicted of an indictable offence: s 50.
 - (d) Deductions from salary for procuring penalties: s 51.
 - (e) Annual recreation leave of four weeks: s 52.
 - (f) Deduction from salary for unauthorised absence: s 53.
 - (g) Absence for illness or other pressing necessity: s 54.
 - (h) Leave without pay: s 55.
 - (i) Long service leave: s 56.
 - (j) Public service holidays: s 57.
 - (k) Mandatory retirement at 65 unless otherwise determined: s 59.
- 26 The 1904 Act was repealed in 1978 by the *Public Service Act 1978* – No 86 of 1978. The conditions of service identified from the 1904 Act were not included. In 1978, Part IV – Discipline, s 43 to s 53 became operative. These provisions became the forerunner of Part 5 of the PSM Act – Substandard performance and disciplinary matters. Part IV did not expressly cover former officers. Section 51 provided for an appeal from a decision of the Public Service Board to the Public Service Appeal Board and this provision became the model of the more elaborately written provisions in s 78 of the PSM Act.

- 27 The *Acts Amendment (Public Service) Act 1987* made further adjustments and inserted other structures, which became the model for the PSM Act. It shifted responsibilities to Chief Executive Officers from the Public Service Appeal Board and defined the State Executive Service, and organisations. Part 5 of the PSM Act disciplinary process did not exist in the *Public Service Act 1978* until 1978. None of the 1904 conditions were repeated in the PSM Act or the PSM Regulations. The public service conditions of service identified in the 1904 Act were superseded by the conditions in either the Public Service Salaries Agreement 1985 (PSA AG 5 of 1985) or the Public Service General Conditions of Service and Allowances Award (PSA A 4 of 1989), or earlier, and thereafter by the Public Service Award 1992.
- 28 The appellant submits that because the 1904 public service conditions have not been replicated in the PSM Act or its immediate predecessor, the *Public Service Act 1978*, it is probable that s 80I(1)(a) of the Act and its previous formats were redundant or inserted on the basis of extreme caution. The appellant says that this is a situation which has been described in Gifford as:
- [I]t is equally possible for a conflict to arise between different sections of the same Act. This can occur either as a result of sloppy draftsmanship or as a result of repeated amendments passed over a period of many years, creating a patchwork Act which is not the work of any one individual (112).
- 29 For these reasons the appellant says the application of the maxim *generalia specialibus non derogant* is not apposite.
- 30 The appellant also makes the submission that the decision in *Bellamy* is no longer good law because of amendments made to the Act in 1987 by the enactment of the *Industrial Relations Amendment Act (No 4) 1987*. These amendments included the insertion of s 44(6)(ba) and s 44(6)(bb) of the Act. The appellant says it follows that the object, and the remedial purpose of the 1987 amendments prevent the operational application of *generalia specialibus non derogant* and that *Bellamy* is only correct on its jurisdictional facts. In support of this submission they say that the Second Reading Speech to the 1987 amendments given by the Honourable J Berenson in the Legislative Council set out the policy of those amendments. In particular they referred to the following passage of Hansard:
- This package of amendments, in essence, extends, clarifies, and improves the procedures and jurisdiction of the Industrial Relations Commission, its constituent parts, and the Industrial Appeals Court to enable the conciliation and arbitration process to function more expeditiously for the mutual benefit of all concerned.
- That body serves the State extremely well ... but as a result of the now famous Robe River dispute, subsequent decisions of the Industrial Appeals Court have revealed shortcomings in the extent of the Commission's powers to make interim orders against parties continuing to inflame the situation during the dispute settling process. It was agreed by all parties involved in the tripartite consultations that the Commission must have wide powers in order to be able to deal with the cause while controlling the symptoms of the disputation. (Hansard, 1987, (798-800).
- 31 The appellant also says the 1984 Act was also remedial, because it located the jurisdictions of both the Public Service Arbitrator and the Public Service Appeal Board in the Industrial Relations Commission itself, amongst other things. Indeed the powers of the Public Service Arbitrator were broadened, and those powers that existed under the *Public Service Arbitration Act* were redrafted, and became part of s 80E. The remedial nature of this legislation is indicated from the Second Reading Speech of the Honourable D Dans MLC (Hansard, 1984, (1053-1058).

The Respondent's Submissions

- 32 The respondent argues that the definition of 'industrial matter' in s 7 of the Act has no bearing on the jurisdiction of the Public Service Arbitrator in this matter. It is conceded, however, that the Public Service Arbitrator, but for the jurisdiction of the Public Service Appeal Board under s 80I(1)(a) of the Act, would have jurisdiction to deal with the application. The respondent says that the provisions of the PSM Act formed part of the conditions of employment of Mr van der Zanden's fixed term contract. The respondent says it follows therefore that the respondent's decision to continue the disciplinary process following the expiry of Mr van der Zanden's fixed term contract did not of itself, impose a condition that which was to take effect after the expiry of the contract. The respondent says that the appellant should have brought an application as an appeal to the Public Service Appeal Board to deal with the matter in dispute between the parties. The respondent points out the only grounds the appellant relied upon in its application to seek the assistance of the Public Service Arbitrator was to seek an order that the respondent cease the disciplinary process on grounds that the respondent had no power to continue the process in relation to Mr van der Zanden. The respondent also points that at no stage has the appellant claimed that the respondent was acting harshly or unfairly in its dealing with Mr van der Zanden, nor has any claim been put forward that he was denied procedural fairness or natural justice.
- 33 The respondent says that the jurisdiction to deal with the subject matter of the application before the Public Service Arbitrator clearly falls within the meaning and intention of s 80I(1)(a) of the Act and therefore within the exclusive jurisdiction of the Public Service Appeal Board, thereby ousting the jurisdiction of the Public Service Arbitrator. The respondent also says that the appellant, in challenging the respondent's power to continue the disciplinary process following the ending of the employer-employee relationship, ought to have filed an appeal to the Public Service Appeal Board, as the subject matter of the application to the Public Service Arbitrator amounted to an argument in, or as to the correctness or otherwise of the respondent's interpretation of the provisions of the PSM Act as they relate to Mr van der Zanden.
- 34 The respondent accepts that, pursuant to s 80E(1) of the Act, the Public Service Arbitrator has 'exclusive jurisdiction to enquire and deal with any industrial matter relating to a government officer' but, in doing so, says that the generality of the Public Service Arbitrator's jurisdiction is limited by the specific matters allocated by the legislature, to the Public Service Appeal Board pursuant to s 80I(1) of the Act. Consequently, the respondent says that the Public Service Arbitrator correctly applied the rule *generalia specialibus non derogant*.

- 35 The respondent contends that the subject matter of the application to the Public Service Arbitrator was whether or not the respondent in continuing the disciplinary process acted without statutory authority is matter that cannot be determined other than by way of an interpretation of the PSM Act.
- 36 The respondent points out that the appellant clearly filed the application on behalf of Mr van der Zanden and claimed to represent Mr van der Zanden in schedule A of the application. Further it was made clear in submissions before the Public Service Arbitrator that the application relates not to government officers generally but only to Mr van der Zanden. The application at first instance did not, for example, purport to deal with an industrial matter which affects government officers generally nor did it purport to deal with an industrial matter relating to public service officers generally. To the contrary the application at first instance purported:
- (a) To represent Mr van der Zanden; and
 - (b) To be in dispute with the respondent's decision to continue the disciplinary process under the PSM Act when Mr van der Zanden was no longer its employee.
- 37 The respondent says the Public Service Arbitrator did not have the power to intervene in the application due to the fact that the subject matter of the application went to a decision of the respondent made pursuant to Part 5 of the PSM Act to continue a disciplinary process commenced prior to Mr van der Zanden's contract of employment having ended due to the effluxion of time. The respondent contends that the two inconsistent provisions under the Act to be reconciled are:
- (a) The jurisdiction of the Public Service Arbitrator under s 80E of the Act to deal with any 'industrial matter'; and
 - (b) The exclusive jurisdiction of the Public Service Appeal Board to deal with specific matters pursuant to s 80I(1) of the Act, all of which raise 'industrial matters' which are incapable of being dealt with by the Public Service Arbitrator.
- 38 The respondent contends that when one reads the whole of s 80I it is clear that a person does not have to be a public service officer at the time an appeal is lodged. For example, a government officer whose employment has come to an end because of dismissal can appeal the dismissal under s 80I(1)(b) of the Act.
- 39 The respondent says it was open to the appellant to essentially file the same application on behalf of Mr van der Zanden for hearing by the Public Service Appeal Board. It was also open to Mr van der Zanden to file essentially the same application on his own behalf.
- 40 The respondent contends the Act does not preclude public service officers or government officers from seeking a remedy under s 80I(1)(a) to (e) subsequent to the termination of the contract of employment as it says that Part 5 of the PSM Act contemplates the continuation of the disciplinary process in the absence of an ongoing employment relationship.
- 41 The respondent accepts that conditions of employment and conditions of service are not always synonymous but says that this is irrelevant in the face of the specific matters which may be appealed to the Public Service Appeal Board pursuant to s 80I(1)(a) of the Act.
- 42 The respondent argues that the interpretation placed on s 80I(1)(a) of the Act by the Public Service Arbitrator is not in conflict with the definition of 'industrial matter' in s 7 of the Act. In particular, they say that the definition of 'industrial matter' in s 7, deals with the general interpretation of an industrial matter as it relates to the general jurisdiction of the Public Service Arbitrator whereas s 80I of the Act deals with specific matters (which are also industrial matters) which come within the jurisdiction of the Public Service Appeal Board.
- 43 The respondent does not quarrel with the history of the enactments which led to the creation of the Public Service Appeal Board, the Public Service Arbitrator, and the history of amendments to the *Public Service Act 1904* but says that these enactments have no relevance to the issue in dispute in this appeal.
- 44 The respondent maintains that the *Bellamy* decision remains good law for the purpose of determining the jurisdiction of the constituent authorities of the Public Service Arbitrator and the Public Service Appeal Board.

The Minister's Submissions

- 45 Counsel for the Minister submits that it is clear that the substantial issue between the parties is whether the respondent can continue a disciplinary process, commenced under Part 5 of the PSM Act, after the respondent's member Mr van der Zanden ceased to be a public service officer but this appeal is not about whether proceedings may be continued against an employee who ceases to be a public service officer but to what constituent authority that question can be referred and by whom.
- 46 Counsel points out that Part 5 of the PSM Act contains comprehensive provisions, supported by regulations made under the PSM Act, which deal with breach of discipline proceedings against public service officers.
- 47 It is pointed out that s 80E(1) of the Act confers upon a Public Service Arbitrator exclusive jurisdiction to inquire into and deal with any 'industrial matter' relating to government officers, a group of government officers or government officers generally. Public service officers are by s 80C of the Act 'government officers'. Section 80F(1) of the Act provides, except in limited circumstances, not relevant here, that an industrial matter concerning a 'government officer' can only be referred by an employer, organisation, association or by the Minister.
- 48 The Public Service Appeal Board is constituted under s 80H(1) of the Act. Section 80I(1)(a) of the Act provides the Public Service Appeal Board with jurisdiction to hear an appeal by any public service officer against any decision of employing authority in relation to an interpretation of any provision of the PSM Act, and any provision of the regulations made under that Act, concerning conditions of service (other than salaries and allowances) of public service officers.

- 49 It is important to note that only specific decisions of employing authorities can be the subject of an appeal to the Public Service Appeal Board and are not identified by reference to being an 'industrial matter'.
- 50 Section 80J(b) enables either the public service officer concerned or an organisation on his or her behalf to institute an appeal under s 80I.
- 51 The Minister says that conditions of service of public service officers are to be found in:
- (a) The Public Service Award 1992 and the Public Service General Agreement 2008 (the Agreement);
 - (b) The contract of employment; and
 - (c) The PSM Act and the Regulations made there under.
- 52 It has not been submitted that there are any relevant provisions in the Agreements or in a contract of employment. Part 5 of the PSM Act deals comprehensively with disciplinary proceedings that may be commenced against a public service officer and are properly considered conditions of service. Part 5 prescribes the circumstances under which disciplinary proceedings may be commenced, the process to be followed and the penalties that are available when a breach of discipline is found, where 'a person has committed a breach of discipline while serving as an employee' in a 'public sector body'.
- 53 An appeal under s 80I(1)(a) must concern a decision in relation to an interpretation of any provision under the PSM Act concerning conditions of service of public service officers. That an appeal may be instituted by or on behalf of a public service officer after employment has ceased, is clear, as appeals are available against decisions to dismiss: s 80I(1)(c) and s 80I(1)(e).
- 54 The issue squarely raised in these proceedings involves an interpretation of Part 5 of the PSM Act, that is, whether it is possible to bring to an end disciplinary proceedings against a former public service officer when those proceedings were commenced at the time when he was a public service officer.
- 55 It is contended that it simply must be a condition of service that you are amenable to some sort of penalty for transgression of employment when you are employed as a public service officer. It is inarguable that that is not a condition of service and it cannot be a condition which takes effect after employment has been completed. It is a condition of service of a public service officer that he or she will be amenable to some sort of punishment or penalty as a result of a disciplinary breach that occurred whilst employed, as a serving officer.
- 56 It is argued by the Minister that the continuation of a disciplinary process is a condition of service and is not a condition which takes effect after service has ended.
- 57 The Minister agrees with the submissions made on behalf of the respondent that this was an application made on behalf of Mr van der Zanden, a former public service officer and the application concerned the interpretation of the provisions of the PSM Act. Prior to the enactment of s 7(1a) of the Act which provides that a matter relating to the dismissal of an employee by an employer; or the refusal of an employer to allow an employee a benefit under his contract of service remains an industrial matter for the purpose of the Act even though their relationship of employee and employer has ended. It might have been argued at one time that no industrial matter arose in the case of unfair dismissal once the dismissal had taken effect, because the relationship of employer and employee (upon which the Commission's jurisdiction is founded) had come to an end: see Industrial Appeal Court in *Robe River Iron Associates v Association of Draughting, Supervisory and Technical Employees of WA* (1987) 68 WAIG 11 (Pepler's case). Mr Andretich on behalf of the Minister directed the Full Bench's attention to s 7(1a) of the Act which only extends the jurisdiction of the Commission to deal with a matter relating to a dismissal of an employee or the refusal to allow a contractual benefit. The Minister says this provision does not extend to the matter which was before the Public Service Arbitrator as the subject matter before the Public Service Arbitrator was a statutory condition of employment. The disciplinary provisions in Part 5 of the PSM Act apply as a matter of statute. The Minister says it follows therefore that as this matter does not come within the extension in s 7(1a) as the jurisdiction of the Public Service Arbitrator relies upon an employment relationship being on foot. Consequently if the Public Service Arbitrator has no jurisdiction because an industrial matter is not raised, the only application that can be made is under s 80I(1)(a) of the Act to the Public Service Appeal Board.
- 58 It is also argued on behalf of the Minister that the power to consider conditions of service in s 80I(1)(a) is very wide. In *Smith v Federal Commissioner of Taxation* (1987) 164 CLR 513 Toohey J stated that it may be accepted that there will be always be a question of degree involved where the issue is the relationship between two subject matters. The words 'in relation to' are wide words which do more, at least without reference to context, than signify the need for there to be some relationship or connection between the two subject matters.
- 59 It is contended that the decision under consideration can fairly be described as one which relates to the interpretation of the provisions of the PSM Act concerning conditions of service of public service officers. That is, whether Part 5 provides the power to continue disciplinary proceedings after a public service officer has resigned. It is said that whether the disciplinary process should be continued or whether it is an abuse of the disciplinary process as a matter of merit to continue the process after Mr van der Zanden's fixed term contract has come to an end is a matter going to the individual merits of Mr van der Zanden's position which has not at this point been argued and this is a matter that can be dealt with by the Public Service Appeal Board under s 80I(1)(a) of the Act, and that is the proper forum for those issues to be raised and determined.
- 60 The scheme of the Act is not for a constituent authority or the Commission to have concurrent jurisdiction over matters in respect of which jurisdiction has been specifically conferred. The scheme of the Act is clear. Where a matter is one in respect of which the Public Service Appeal Board has jurisdiction, relief cannot be sought from the Public Service Arbitrator or the Commission, and is only available to the persons specified in the relevant section. It is not a sensible interpretation that the legislation intended relief could be sought from either the Public Service Arbitrator or the Public Service Appeal Board in

respect of matters where jurisdiction has been specifically conferred upon the Public Service Appeal Board. The Commissioner, with respect, correctly set out the approach to be followed in construing the relevant provisions in paragraph [37] of her reasons and correctly concluded that the legislature intended that the Public Service Appeal Board, only, could hear and determine the powers of an employing authority in relation to the disciplinary process conducted under the PSM Act against Mr van der Zanden.

The Appellant's Submissions in Reply

61 The appellant was granted leave to file and serve written submissions following the hearing of the appeal on 11 February 2010. The appellant filed written submissions in reply on 26 February 2010. In the written submissions the appellant made a number of comprehensive submissions in respect of the following matters.

62 The appellant submits that respondent's and Minister's submissions are unsustainable as a matter of interpretation, in particular their submissions are not in accord with s 6(2) of the PSM Act and s 80E of the Act, or the objects and purpose of the Act. Section 6(2) of the PSM Act provides:

Except to the extent to which a provision of this Act specifies otherwise, the *Industrial Relations Act 1979* applies to and in relation to matters dealt with by this Act.

63 Consequently it said that s 6(2) requires an express provision of the PSM Act to override the provisions of the Act.

64 The appellant points out the jurisdiction exercised by the Public Service Arbitrator under s 80E(1) is not expressly trammelled by the jurisdiction of the Public Service Appeal Board under s 80I, because s 80E is not expressly subject to s 80I. Under s 80I(1) the Public Service Appeal Board is subject to s 52 and s 94 of the PSM Act. Neither s 80E nor s 80I is expressed as subject to any other provisions of the Act. The absence of this type of restriction from both jurisdictions contrasts with s 23 of the Act which sets out the general jurisdiction of the Commission as being 'subject to this Act'. This means that the general jurisdiction of the Commission is displaced by either the jurisdiction of the Public Service Arbitrator or the Public Service Appeal Board as the case may be. Hence in this context Bellamy was rightly decided, but can not be extended to the current controversy.

65 The appellant says the jurisdiction of the Public Service Arbitrator under s 80E is, however, subject to Division 3 of Part II of the Act which deals with the power of the Commission to make general orders, including orders for public sector discipline under s 51A. Otherwise, the jurisdiction of the Public Service Arbitrator under s 80E, is subject to subsections (6) and (7) of s 80E. These subsections deal with referring matters to the Commission in Court Session or to the Full Bench, which are not relevant to this matter; or to public sector standards as referred to in s 97(1)(a) of the PSM Act.

66 Section 80I does not expressly exclude the appellant from making an application under s 80E. Ouster of jurisdiction should not be effected by implication, but by express intendment: *Owen J in Bateman Project Engineering Pty Ltd v Resolute Ltd* [2000] WASC 284. Section 80I is not like s 80E(7) which ousts the jurisdiction of the Public Service Arbitrator with respect to public sector standards under s 97 of the PSM Act, except for those standards relating to substandard performance or discipline because of the operation of s 96 of the PSM Act.

67 During the course of the appellant's submissions the appellant was asked by the Bench why the 1987 changes to s 44 of the Act was significant and relevant to the jurisdiction of the Public Service Arbitrator under s 80E(1). The appellant says the changes to the Act initiated in 1984 and 1987 were remedial. Consequently they argue that the object and purpose of the amendments must be considered as paramount rather than a minor canon like *generalia specialibus non derogant*. They also say the same rationale applies to the 2002 amendments to the definition of 'industrial matter' by the enactment of the *Labour Relations Reform Act 2002*. The appellant also argues that amendments made in 2002 to the definition of 'industrial matter' in s 7 of the Act broadened the scope of matters that the Commission may deal with as industrial matters and extend beyond the existence of an employment relationship. In 2002 by the enactment of the *Labour Relations Reform Act 2002* the following words were inserted into the definition of 'industrial matter' following immediately after s 7(i):

and also includes any matter of an industrial nature the subject of an industrial dispute or the subject of a situation that may give rise to an industrial dispute but does not include —

68 In *Director General, Department of Justice v Civil Service Association of Western Australia Incorporated* (2004) WAIRC 13765 Sharkey P stated, with whom Gregor C and Kenner C agreed:

Most specifically, there is not required to be any direct relationship, as required by the authorities, before the amendments of 2002 were enacted. The words of an 'industrial nature' are a clear recognition that now there is not to be required to be an employment relationship provided that there is a dispute, the matter is one of an industrial nature and/or there is a situation likely to give rise to a dispute [33].

69 The appellant contends that the 2002 amendments and the observations made by the Full Bench in that case, contrary to the respondent's and Minister's submissions, has the effect that the line of reasoning considered in *Pepler's* case with respect to limiting the application of the words in s 7 - 'including conditions which are to take effect after the termination of employment' can no longer stand.

70 They say that in 1987 there were changes to the jurisdiction of the Public Service Arbitrator in s 80E by virtue of amendments to s 44 of the Act. However, there were no changes to the jurisdiction of the Public Service Appeal Board at that time. They point out pursuant to s 80G(1) of the Act, s 44 applies to the exercise of the jurisdiction of the Public Service Arbitrator. The appellant contends the s 44 amendments in Division 2C Part II of the Act enhanced both the conciliation and arbitration powers of the Public Service Arbitrator to make interim orders in the case of harsh, oppressive or unfair dismissal, and other orders 'as will ... (i) prevent the deterioration of industrial relations in respect of the matter in question until conciliation or arbitration has resolved the matter'. They say it follows from these amendments that as the Public Service Arbitrator's powers

and jurisdiction were enhanced in 1987, and not the Public Service Appeal Board's jurisdiction, it is difficult to apply the principle *generalia specialibus non derogant* because s 80E cannot be considered 'impliedly repealed by a later inconsistent special [provision]'; see Gifford at p 111 and the authorities cited therein. This submission also applies to the 2002 amendments to the definition of 'industrial matter' as the jurisdiction of the Public Service Appeal Board in s 80I(1)(a) remained unchanged.

- 71 The appellant disputes the submission made on behalf of the Minister that disciplinary provisions of the PSM Act in Part 5, Division 3 can be classified as conditions of service or employment. The appellant says that more likely the statutory provisions impose a status or burden on the employee and vest a right or power in the employer, and thus on the basis of this classification, the disciplinary incidents would be within the power of the Public Service Arbitrator in the absence of a general order for public sector discipline. In *Civil Service Association of Western Australia Inc v Director General of Department for Community Development* [2002] WASCA 241, the Industrial Appeal Court held unanimously that the Public Service Arbitrator had power to intervene in the PSM Act disciplinary processes if it found that the allegations were baseless. The appellant says that it can be implied from this decision that the disciplinary process is not a condition of service for the purposes of s 80I(1)(a).
- 72 The appellant argues that the disciplinary provisions of the PSM Act are not terms of contract. In support of this submission they rely upon the observations of Scott J in *Burswood Resort (Management) Ltd v Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch* [2002] WASCA 355 at [22] and [23] in which his Honour made observations about the statutory status of an industrial agreement once freely and voluntarily made and registered. They also rely upon the observations of McHugh and Gummow JJ in *Byrne and Frew v Australian Airlines Ltd* [1995] HCA 24 who approved the observations of Gibbs J in *Australian Broadcasting Commission v Industrial Court (SA)* (1977) 138 CLR 399 who with other members of the Court considered the terms of the 1972 South Australian Act which empowered the Industrial Court to order re-employment of employees or temporary employees of the Australian Broadcasting Commission. In respect of these provisions Gibbs J observed that:
- Those provisions do not require a new term to be implied in every contract of employment. They do not give a quasi-contractual right to every employee. They confer jurisdiction and power upon the industrial Court to make orders of the kind therein described. The jurisdiction is not limited to cases in which the dismissal has been in breach of contract or otherwise wrongful. ... In other words s 15(1)(e) is not a part of the State law regarding contracts of employment (403).
- 73 The appellant points out that the agreed statement of facts evinces a dispute of an industrial nature and so does Schedule A attached to the s 44 application. They also point out that the Public Service Arbitrator accepted there was a dispute between the parties. The issue was which authority had jurisdiction. However, the appellant says that the Public Service Arbitrator wrongly concluded that the disciplinary process related to a condition of service.
- 74 In the appellant's written submissions filed on 4 February 2010, the appellant identifies what it says are conditions of service in the PSM Act. They now say in their written submissions filed on 26 February 2010, that they omitted to include modes of employment under s 64 of the PSM Act as a condition of service and should have done so.
- 75 The appellant also says that while the jurisdiction of the Public Service Arbitrator is constrained by the existence of public sector standards pursuant to s 80E(7) of the Act, the jurisdiction of the Public Service Appeal Board under s 80I(1) or elsewhere is not. They say this means that a decision of an employing authority with respect to conditions, like modes of employment or transfer may be appealed even if the appeal raises an issue of a breach of a public sector standard in passing or otherwise. The absence of a privative provision in s 80I(1) tends to support the appellant's broad submission that the Public Service Arbitrator has jurisdiction to determine this dispute.
- 76 The appellant says they are not seeking a 'bald' interpretation of the PSM Act. They say they are seeking a particular end, the cessation of the investigation on the grounds of a lack of statutory authority.
- 77 The appellant has standing in their own right to invoke s 80E(1) rather than to institute an appeal under s 80I. There is a conceptual difference between the notion of industrial dispute and an appeal. Further they say that s 80J(b) does not give the appellant status as an applicant or appellant. Under s 80J(b) the appellant as an industrial association is a mere agent of the appealing employee. They contend that given the history of and evolution of the definition of 'industrial matter' it was not the intention of the legislature to limit union initiated disputes under s 80E by implication.
- 78 Whether one provision excludes the operation of another was considered in *Minister for Immigration and Multicultural and Indigenous Affairs v Nystrom* (2006) 228 CLR 566; [2006] HCA 50; and applied by the Full Bench in *The Liquor, Hospitality and Miscellaneous Union, Western Australian Branch v The Roman Catholic Bishop of Bunbury Chancery Office* (2007) 87 WAIG 1147. The appellant contends that applying Gleeson CJ's observations in *Nystrom* the two provisions, s 80E and s 80I, are not 'repugnant, in the sense that they contain conflicting commands which can not both be obeyed, or produce irreconcilable legal rights or obligations'. The appellant says that neither the respondent nor the Minister has identified any repugnancy. There are no conflicting commands nor irreconcilable rights or duties.
- 79 The appellant also says that the observations of Gummow and Hayne JJ in *Nystrom* should also be applied as s 80I and s 80E do not cover the 'same power' or the 'same subject matter'. They also contend that s 80I is not declared exhaustive by its provisions. Consequently they say one provision does not encroach on the other. They also contend that the structure and application of s 80E and s 80I(1)(a) is different, and so the reasoning by the Full Bench in *The Roman Catholic Bishop of Bunbury Chancery Office* which concerned the application of s 44 and s 46 with respect to applications for interpretation is not an apposite analogy. They say in the words of Heydon and Crennan JJ in *Nystrom*, the powers of the Public Service Arbitrator set out in s 80E(5) of the Act are different from the powers 'to adjust' set out for the Public Service Appeal Board in s 80I(1) with respect to the criteria for their exercise and consequences. They contend that both s 80E and s 80I are special powers, which 'are consonant with each other'.

- 80 Consequently the appellant argues that the Minister's submission that the observations of Toohey J in *Smith* cannot withstand scrutiny because of the decision in *Nystrom*, including the application of its principles in *The Roman Catholic Bishop of Bunbury Chancery Office* by the Full Bench.
- 81 The appellant also argues that the decision of Kenner C in *Civil Service Association of Western Australia Incorporated v Disability Services Commission* [2005] WAIRC 01349 and the arguments considered when the matter went on appeal in *Civil Service Association of Western Australia v Disabilities Services Commission* [2005] WAIRC 02043 set out similar arguments presented by the appellant in this matter to the arguments presented in the *Disability Services Commission* cases. Further they say there was an erroneous reliance on *Bellamy* in the *Disability Services Commission* cases and a failure to consider the 1987 amendments to the Act. However, they point out that the *Disability Services Commission* matter and this appeal demonstrate an ongoing controversy and vexed question in which there is a public interest about the jurisdiction of the Public Service Arbitrator and jurisdiction of the Public Service Appeal Board.

Conclusion

- 82 The first question that must be resolved in this appeal is whether the Public Service Arbitrator had jurisdiction to deal with the matters in dispute but for the jurisdiction of the Public Service Appeal Board. If the answer to that question is yes, then the next question that must be answered is whether the Public Service Appeal Board had jurisdiction to deal with the matters in dispute. If the answer to that question is no, then no conflict between s 80E and s 80I would arise. If, however, the answer is yes, then the issue whether the maxim *generalalia specialibus non derogant* applies to oust the jurisdiction of the Public Service Arbitrator must be considered.

(a) Jurisdiction of the Public Service Arbitrator

- 83 The powers of the Public Service Arbitrator which are relevant to this appeal are contained in s 80E(1), s 80E(2), s 80E(5), s 80F(1), s 80F(2) and s 80G of the Act. Section 80E(1), s 80E(2) and s 80E(5) of the Act provides:
- (1) Subject to Division 3 of Part II and subsections (6) and (7), an Arbitrator has exclusive jurisdiction to enquire into and deal with any industrial matter relating to a government officer, a group of government officers or government officers generally.
 - (2) Without limiting the generality of subsection (1) the jurisdiction conferred by that subsection includes jurisdiction to deal with —
 - (a) a claim in respect of the salary, range of salary or title allocated to the office occupied by a government officer and, where a range of salary was allocated to the office occupied by him, in respect of the particular salary within that range of salary allocated to him; and
 - (b) a claim in respect of a decision of an employer to downgrade any office that is vacant.
 - ...
 - (5) Nothing in subsection (1) or (2) shall affect or interfere with the exercise by an employer in relation to any government officer, or office under his administration, of any power in relation to any matter within the jurisdiction of an Arbitrator, but any act, matter or thing done by an employer in relation to any such matter is liable to be reviewed, nullified, modified or varied by an Arbitrator in the course of the exercise by him of his jurisdiction in respect of that matter under this Division.
- 84 Section 80F(1) and (2) of the Act provides:
- (1) Subject to subsections (2) and (3) an industrial matter may be referred to an Arbitrator under section 80E by an employer, organisation or association or by the Minister.
 - (2) A claim mentioned in section 80E(2)(a) may be referred to an Arbitrator by the government officer concerned, or by an organisation on his behalf, or by his employer.
- 85 Section 80G of the Act provides:
- (1) Subject to this Division, the provisions of Part II Divisions 2 to 2G that apply to or in relation to the exercise of the jurisdiction of the Commission constituted by a commissioner shall apply with such modifications as are prescribed and such other modifications as may be necessary or appropriate, to the exercise by an Arbitrator of his jurisdiction under this Act.
 - (2) For the purposes of subsection (1), section 49 shall not apply to a decision of an Arbitrator on a claim mentioned in section 80E(2).
- 86 It has long been established that paragraph (b) of the definition of 'industrial matter' in s 7 of the Act extends to claims by former employees in respect of matters that come within this provision. Paragraph (b) of the definition of 'industrial matter' in s 7 of the Act provides:

industrial matter means any matter affecting or relating or pertaining to the work, privileges, rights, or duties of employers or employees in any industry or of any employer or employee therein and, without limiting the generality of that meaning, includes any matter affecting or relating or pertaining to —

- (b) the hours of employment, leave of absence, sex, age, qualification, or status of employees and the mode, terms, and conditions of employment including conditions which are to take effect after the termination of employment;

- 87 Whether conditions of employment that take effect after an employment relationship has ceased can be considered an 'industrial matter' was raised in *Totalisator Agency Board v Federated Clerks' Union of Australia, Industrial Union of Workers, WA Branch* (1980) 60 WAIG 624. Prior to *Pepler's* case and the amendment to s 7(1a) to extend the definition of 'industrial matter' and the amendment of the definition of 'industrial matter' in (b) to include the words 'which are to take effect after the termination of employment' the Industrial Appeal Court was called upon to consider the scope of the words 'industrial matters' in the *Industrial Arbitration Act 1912*. The Court held an 'industrial matter' includes the question of alternative employment with another employer in redundancy, even though it related to a matter which was to come into effect after the employment relationship had ended. Brindsen J with whom Smith J agreed held that the foundation of the clause in the award in question was an existing employment relationship whereby any employer bound by the award who had an alternative position available was required to offer that position to the employee of another employer affected by the redundancy order. His Honour found the matter was an industrial matter as the matter affected or related to the rights or privileges of a worker in an industry. The Presiding Judge of the Industrial Appeal Court, Wallace J made a similar finding. He, however, also observed that paragraph (b) of the definition of 'industrial matter' in the 1979 Act would put the matter completely beyond doubt. In *Amalgamated Metal Workers and Shipwrights Union of Australia, WA Branch v Bell Bros Pty Ltd* (1983) 63 WAIG 1547 the Full Bench applied the reasoning in *Totalisator Agency Board* and held a claim by a former employee to be paid pro rata long service leave following retrenchment by his employer was an 'industrial matter'.
- 88 In my view these decisions put the issue whether disciplinary proceedings can be continued post employment under Part 5 of the PSM Act beyond doubt. It is clear that such a matter arises out of the employment relationship as disciplinary action under Part 5 is a matter relating to or pertaining to terms and conditions of employment which are to take effect after the termination of employment. In absence of considering the issue whether the Public Service Appeal Board has jurisdiction to hear and determine this matter or whether s 80I(1)(a) ousts the jurisdiction of the Public Service Arbitrator, the jurisdiction of the Public Service Arbitrator was but for the determination of that issue properly enlivened in this matter.
- 89 It is also correct at law that the appellant is empowered under s 80F to bring an application under s 80E in their own right. When an application is made by an organisation under s 80E, the organisation does not act as an agent for any member of the organisation even though the rights of a member or members may be directly affected by the issue or issues in dispute: *R v Dunlop Rubber; Ex Parte FMWU* (1957) 97 CLR 71, 81 - 85 (Dixon CJ, Webb, Fullagar, Kitto and Taylor JJ). Therefore, the fact that the application before the Public Service Arbitrator in this matter relates only to Mr van der Zanden, does not have the effect that the appellant acts as an agent for Mr van der Zanden. This issue, however, in my view is not determinative in the resolution of this appeal.

(b) Jurisdiction of the Public Service Appeal Board

- 90 The power of the Public Service Appeal Board to hear and determine a decision in relation to an interpretation of the PSM Act is set out in s 80I(1)(a) of the Act. Section 80J is also relevant to this appeal. Section 80I(1) provides:

- (1) Subject to section 52 of the *Public Sector Management Act 1994* and subsection (3) of this section, a Board has jurisdiction to hear and determine —
- (a) an appeal by any public service officer against any decision of an employing authority in relation to an interpretation of any provision of the *Public Sector Management Act 1994*, and any provision of the regulations made under that Act, concerning the conditions of service (other than salaries and allowances) of public service officers;
 - (b) an appeal by a government officer, who is the holder of an office included in the Special Division of the Public Service for the purposes of section 6(1) of the *Salaries and Allowances Act 1975*, under section 78 of the *Public Sector Management Act 1994* against a decision referred to in subsection (1)(b) of that section;
 - (c) an appeal, other than an appeal under section 78(1) of the *Public Sector Management Act 1994*, by any government officer who occupies a position that carries a salary not lower than the prescribed salary from a decision, determination or recommendation of the employer of that government officer that the government officer be dismissed;
 - (d) an appeal by a government officer, other than a person referred to in paragraph (b), under section 78 of the *Public Sector Management Act 1994* against a decision referred to in subsection (1)(b) of that section;
 - (e) an appeal, other than an appeal under section 78(1) of the *Public Sector Management Act 1994*, by any government officer who occupies a position that carries a salary lower than the prescribed salary from a decision, determination or recommendation of the employer of that government officer that the government officer be dismissed,

and to adjust all such matters as are referred to in paragraphs (a), (b), (c), (d) and (e).

- 91 Section 80J provides:

An appeal under section 80I —

- (a) shall be instituted in the prescribed manner and within the prescribed time;
- (b) may be instituted by the public service officer or other government officer concerned or by an organisation on his behalf.

92 A central issue sitting behind the appellant's arguments is whether the Public Service Appeal Board has jurisdiction to hear and determine an appeal under s 80I(1)(a) by a former public service officer. The exercise of jurisdiction of the Public Service Appeal Board to hear and determine an appeal under s 80I is contained in s 80L of the Act and s 78(1) of the PSM Act. Section 80L of the Act provides:

- (1) Subject to this Division the provisions of sections 22B, 26(1) and (3), 27, 28, 31(1), (2), (3), (5) and (6), 34(3) and (4) and 36 that apply to and in relation to the exercise of the jurisdiction under this Act of the Commission constituted by a commissioner shall apply, with such modifications as are prescribed and such other modifications as may be necessary, to the exercise by a Board of its jurisdiction under this Act.
- (2) For the purposes of subsection (1) section 31(1) shall apply as if paragraph (c) were deleted and the following paragraph were substituted —
 "
 - (c) by a legal practitioner.
 "

93 Section 78(1) of the PSM Act provides:

- (1) Subject to subsection (3) and to section 52, an employee who —
 - (a) is a Government officer within the meaning of section 80C of the *Industrial Relations Act 1979*; and
 - (b) is aggrieved by a decision made in the exercise of a power under section 79(3)(b) or (c) or (4), 82, 86(3)(b), (8)(a), (9)(b)(ii) or (10)(a), 87(3)(a), 88(1)(b)(ii) or 92(1),
 may appeal against that decision to the Industrial Commission constituted by a Public Service Appeal Board appointed under Division 2 of Part IIA of the *Industrial Relations Act 1979*, and that Public Service Appeal Board has jurisdiction to hear and determine that appeal under and subject to that Division.

94 It is notable that s 78 of the PSM Act does not apply to an appeal under s 80I(1)(a) of the Act. Whereas the general jurisdiction of the Commission under s 23 of the Act and the jurisdiction of the Public Service Arbitrator under s 80E of the Act is in respect of an 'industrial matter', the jurisdiction of the Public Service Appeal Board is not confined to or defined by reference to an 'industrial matter' but by the express terms of the relevant provisions that confer jurisdiction on the Public Service Appeal Board. In respect of s 80I(1)(a) jurisdiction is conferred upon the Public Service Appeal Board to hear an appeal against a decision in relation to an interpretation of any provision to the PSM Act, any provision of any regulations made under that Act, concerning conditions of service (other than salaries and allowances) of public service officers.

95 I do not agree that the term 'conditions of service' in s 80I(1)(a) should be read narrowly as the appellant contends. Historically, officers who are employed by the Crown or government agencies were career appointments and career appointments are still made under the PSM Act. These officers receive a salary for holding office as a public service officer. In the past they were appointed as 'public servants'. The term 'conditions of service' in s 80I(1)(a) of the Act in my view has no special meaning and perhaps can be said to have been used in s 80(1)(a) because of the statutory context of appointment of public service officers rather than employment at common law. This does not mean that the majority of persons appointed to positions under the PSM Act would not be regarded as employees at common law. At common law the term 'conditions of service' can be construed as broadly as the term 'conditions of employment': see the brief observations of Kirby J in *Westwood v Lightly* (1984) 2 FCR 41 (50 - 51) in relation to the expression 'terms and conditions of service'. In my opinion the term 'conditions of service' is wide enough to encompass all statutory and contractual terms of appointments. It follows therefore that the Public Service Arbitrator did not err in finding that the provisions of Part 5 of the PSM Act are conditions of service. Part 5 contains a statutory code of conditions which apply to substandard performance and disciplinary matters in relation to, among others, public service officers.

96 A more difficult issue is whether the appellant may institute an appeal on behalf of an ex-public service officer under s 80I(1) and s 80J(b) of the Act. Can the circumstances of a person whose employment as a public service officer has ceased but who wishes to appeal a decision that relates to a condition of service or conditions of service that applied during his or her employment be characterised as 'an appeal by any public service officer' within the meaning of s 80I(1) of the Act?

97 The words 'an appeal by any public service officer' should not be construed in isolation or without regard to the whole of s 80I and without regard to the legislative scheme as a whole. I recently observed in *Liquor, Hospitality and Miscellaneous Union, Western Australian Branch v Director General, Department of Education and Training* (2010) 90 WAIG 127 the modern approach to statutory construction requires courts and tribunals when construing legislation to have regard to the legislative scheme. In particular I said:

As Ritter AP observed in *Kenji Auto Parts Pty Ltd t/as SSS Auto Parts (WA) v Fisk* (2007) 87 WAIG 328 [38] statutory construction involves a consideration and analysis of the meaning of the words used in a section in the context of the legislation and legislative scheme as a whole, to try to discern the intention of the legislature: *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355 (381) (McHugh, Gummow, Kirby and Hayne JJ); and *Wilson v Anderson* [2002] HCA 29; (2002) 213 CLR 401 [8] (Gleeson CJ). Courts must seek to ascertain the statutory purpose and legislative intention from the words used in the statute (and can use other aids as are legitimately available). Where the will of Parliament is clear, a court or tribunal must give effect to that clearly expressed will [16].

98 In *Project Blue Sky Inc*, McHugh, Gummow, Kirby and Hayne JJ observed at 381-382:

The primary object of statutory construction is to construe the relevant provision so that it is consistent with the language and purpose of all the provisions of the statute (see *Taylor v Public Service Board (NSW)* (1976) 137 CLR 208 at 213, per

Barwick CJ). The meaning of the provision must be determined 'by reference to the language of the instrument viewed as a whole' (*Cooper Brookes (Wollongong) Pty Ltd v Federal Commissioner of Taxation* (1981) 147 CLR 297 at 320, per Mason and Wilson JJ. See also *South West Water Authority v Rumble's* [1985] AC 609 at 617, per Lord Scarman, 'in the context of the legislation read as a whole'). In *Commissioner for Railways (NSW) v Agalianos* (1955) 92 CLR 390 at 397, Dixon CJ pointed out that 'the context, the general purpose and policy of a provision and its consistency and fairness are surer guides to its meaning than the logic with which it is constructed'. Thus, the process of construction must always begin by examining the context of the provision that is being construed (*Toronto Suburban Railway Co v Toronto Corporation* [1915] AC 590 at 597; *Minister for Lands (NSW) v Jeremias* (1917) 23 CLR 322 at 332; *K & S Lake City Freighters Pty Ltd v Gordon & Gotch Ltd* (1985) 157 CLR 309 at 312, per Gibbs CJ; at 315, per Mason J; at 321, per Deane J) [69].

A legislative instrument must be construed on the prima facie basis that its provisions are intended to give effect to harmonious goals (*Ross v The Queen* (1979) 141 CLR 432 at 440, per Gibbs J). Where conflict appears to arise from the language of particular provisions, the conflict must be alleviated, so far as possible, by adjusting the meaning of the competing provisions to achieve that result which will best give effect to the purpose and language of those provisions while maintaining the unity of all the statutory provisions (See *Australian Alliance Assurance Co Ltd v Attorney-General (Q)* [1916] St R Qd 135 at 161, per Cooper CJ; *Minister for Resources v Dover Fisheries Pty Ltd* (1993) 43 FCR 565 at 574, per Gummow J). Reconciling conflicting provisions will often require the court 'to determine which is the leading provision and which the subordinate provision, and which must give way to the other' (*Institute of Patent Agents v Lockwood* [1894] AC 347 at 360, per Lord Herschell LC). Only by determining the hierarchy of the provisions will it be possible in many cases to give each provision the meaning which best gives effect to its purpose and language while maintaining the unity of the statutory scheme [70].

Furthermore, a court construing a statutory provision must strive to give meaning to every word of the provision (*The Commonwealth v Baume* (1905) 2 CLR 405 at 414, per Griffith CJ; at 419, per O'Connor J; *Chu Kheng Lim v Minister for Immigration Local Government & Ethnic Affairs* (1992) 176 CLR 1 at 12-13, per Mason CJ). In *The Commonwealth v Baume* at 414 Griffith CJ cited *R v Berchet* ((1688) 1 Show KB 106 [89 ER 480]) to support the proposition that it was 'a known rule in the interpretation of Statutes that such a sense is to be made upon the whole as that no clause, sentence, or word shall prove superfluous, void, or insignificant, if by any other construction they may all be made useful and pertinent' [71].

- 99 The obligation on a court or tribunal when construing legislation is to prefer a construction that will promote the purpose of legislation and to avoid the construction that would not promote that purpose or object: s 18 of the *Interpretation Act 1984*. Context is an aid to statutory interpretation. In *Palgo Holdings Pty Ltd v Gowans* (2005) 221 CLR 249 Kirby J noted there are three interpretative principles:

Purposive interpretation: The first principle holds that a purposive and not a literal approach (*Fothergill v Monarch Airlines Ltd* [1981] AC 251 at 272-273, 275, 280, 290) is the method of statutory construction that now prevails (*Kingston v Keprose Pty Ltd* (1987) 11 NSWLR 404 at 423, per McHugh JA, approved in *Bropho v Western Australia* (1990) 171 CLR 1 at 20):

'A search for the grammatical meaning still constitutes the starting point. But if the grammatical meaning of a provision does not give effect to the purpose of the legislation, the grammatical meaning cannot prevail. It must give way to the construction which will promote the purpose or object of the Act.' [35].

Courts are no longer satisfied with a literal or grammatical meaning of words that does not conform to the presumed legislative intention, including the policy that can be discerned from the law in question (*Cooper Brookes (Wollongong) Pty Ltd v Federal Commissioner of Taxation* (1981) 147 CLR 297 at 321). As Lord Diplock explained, in an extrajudicial comment (Referring to *Inland Revenue Commissioners v Ayrshire Employers Mutual Insurance Association Ltd* [1946] 1 All ER 637 at 641), "if ... the Courts can identify the target of Parliamentary legislation their proper function is to see that it is hit: not merely to record that it has been missed" (Diplock, "The Courts as Legislators", in *The Lawyer and Justice* (1978) 263, at p 274, cited in *Kingston* (1987) 11 NSWLR 404 at 424) [36].

Contextual interpretation: The second principle holds that the meaning of words in legislation is not derived by taking a word in isolation and construing it as if it existed in a vacuum. In the law, context is critical (*R (Daly) v Home Secretary* [2001] 2 AC 532 at 548 [28], per Lord Steyn). In a statute, a word (if undefined) normally takes its meaning from the surrounding text. Isolating a word, such as "pawned", and affording it meaning torn from its context is a discredited approach to interpretation, given the way that language is ordinarily used and understood by human beings (*Collector of Customs v Agfa-Gevaert Ltd* (1996) 186 CLR 389 at 396-397, citing *R v Brown* [1996] AC 543 at 561) [37].

Access to extrinsic materials: The third principle holds that courts, in construing contested statutory language, may have resort to extrinsic materials, in order to throw light on the meaning of that language and the purpose of Parliament (cf *Interpretation Act 1987* (NSW), s 34(1)). This development allows a court, resolving the question, to consider a wider range of materials than was previously available to judges. Such materials may not contradict the statutory text (*Re Bolton; Ex parte Beane* (1987) 162 CLR 514 at 518). However, where, as here, there is ambiguity in the statutory text – such that there is a question as to whether the language has a *strict* meaning of a particular kind or is used in a more *common* sense of everyday speech – courts now have access to extrinsic materials, to help resolve that ambiguity. In this case, such extrinsic materials include the Minister's Second Reading Speech, made in support of the Bill that became the Act that contains the contested expression (*Interpretation Act 1987* (NSW), s 34(2)(f)) [38].

Time was, not so long ago, that Australian lawyers could say with reasonable confidence that this Court consistently applied the foregoing principles, which are obviously inter-related. That trend was encouraged by legislative instruction

(*Acts Interpretation Act 1901* (Cth), s 15AA; *Interpretation Act 1987* (NSW), s 33; *Interpretation of Legislation Act 1984* (Vict), s 35(a); *Acts Interpretation Act 1954* (Q), s 14A; *Acts Interpretation Act 1915* (SA), s 22; *Interpretation Act 1984* (WA), s 18; *Acts Interpretation Act 1931* (Tas), s 8A; *Legislation Act 2001* (ACT), s 139; *Interpretation Act* (NT), s 62A). Obviously, there are limits to any interpretation that involves an apparent departure from requirements that appear to be demanded by the language of the legislation. Moreover, interpretation is a text-based activity (*Trust Co of Australia Ltd v Commissioner of State Revenue (Q)* (2003) 77 ALJR 1019 at 1029 [68]; 197 ALR 297 at 310; *Network Ten Pty Ltd v TCN Channel Nine Pty Ltd* (2004) 218 CLR 271 at 305-306 [87]) in which divergences of opinion are common and inescapable (*Federal Commissioner of Taxation v Scully* (2000) 201 CLR 148 at 175-176 [54]; *News Ltd v South Sydney District Rugby League Football Club Ltd* (2003) 215 CLR 563 at 580 [42]) [39].

Because the approach taken by this Court to problems of statutory interpretation is influential upon all Australian courts, we should be on guard against any temptation to return to the dark days of literalism (*Federal Commissioner of Taxation v Ryan* (2000) 201 CLR 109 at 146 [82]). Above all, this Court should strive to be consistent. In all cases, but especially in legislation enacted to achieve important social objectives, the purposive approach is the correct one to follow [40].

- 100 It is also notable that under s 80I(1)(b) and (d) an appeal to the Public Service Appeal Board lies by a 'government officer' against a decision under s 78(1)(b) of the PSM Act. Under s 78(1)(b) of the PSM Act an employee who is a 'government officer' may appeal a decision (amongst others) made in the exercise of a power under s 86(3)(b) which includes a power to dismiss. An appeal by a 'government officer' other than an appeal under s 78(1)(b) also lies against a decision to dismiss under s 80I(1)(e) of the Act. Pursuant to s 80J an appeal is required to be instituted within the prescribed time. The time prescribed under the regulations is 21 days after the date of the decision: r 107 of the *Industrial Relations Commission Regulations 2005*. Whilst the time prescribed is not material, it is a matter of common sense that in a majority of matters an application is unlikely to be filed prior to a decision to dismiss taking effect, so that at the time of making a decision the person concerned would have ceased to hold office as a 'government officer'. Consequently if s 80I was to be construed as conferring jurisdiction on the Public Service Appeal Board to hear appeals by 'government officers' (or public service officers in the case of an appeal under s 80I(1)(a)) whose contracts of employment are still on foot, the legislative scheme of appeals to the Public Service Appeal Board would be frustrated to a large extent as one of the most important categories of appeals the Public Service Appeal Board has jurisdiction to hear and determine are appeals against a decision to dismiss.
- 101 Whilst s 80I(1)(a) does not expressly contemplate an appeal against a dismissal, as the provision provides for an appeal against any decision in relation to an interpretation of any provision of the PSM Act and any provision of the regulations made under that Act, concerning conditions of service, a decision could be made under the PSM Act which has the effect of, or concerned, conditions of employment that are to take effect on or following termination of employment. For example, a decision about compensation for early termination of employment which raises an interpretation of s 101 of the PSM Act in respect of maximum compensation payable on early termination of employment could be made by an employing authority. If s 80I(a) is interpreted to confine appeals to persons who serve as public service officers at the time an application is lodged such an appeal under s 80I(1)(a) of the PSM Act would not lie, if s 80I was to be construed as not applying to an ex-employee. Another example where s 80I(a) could not be enlivened if the provision is construed in this way is in relation to a dispute about a decision made under s 103 of the PSM Act and the interpretation of that provision in respect of re-appointment of an unsuccessful electoral candidate who had been a public service officer and who had resigned prior to nominating for election as required by s 103.
- 102 For these reasons, I am of the opinion that without considering the jurisdiction of the Public Service Arbitrator to deal with the matters in dispute in the application, the Public Service Appeal Board would have jurisdiction to hear and determine an appeal under s 80I(1)(a) which raises the matters that are raised in the application.

(c) Generalia specialibus non derogant

- 103 In *Hungry Jacks Pty Ltd v Wilkins* (1991) 71 WAIG 1751 Nicholson J conveniently summarised the law in respect of the canon of construction, *generalia specialibus non derogant* as follows at (1755):

As stated by O'Connor J in *Goodwin v. Phillips* (1908) 7 CLR 1 at 14 it is:

'Where there is a general provision which, if applied in its entirety, would neutralize a special provision dealing with the same subject matter, the special provision must be read as a proviso to the general provision, and the general provision, in so far (*sic*) as it is inconsistent with the special provision, must be deemed not to apply.'

This is a principle applicable to determining the effect of a later statute on an earlier statute and for resolving a conflict between two sections of the one act: see D C Pearce, *Statutory Interpretation in Australia* (1988) at 83 and 149. In *The Bank Officials' Association (South Australian Branch) v. The Savings Bank of South Australia* (1923) 32 CLR 276 Isaacs and Rich JJ (at 289-290) described the principle as follows:

'As to the second ground, namely, the maximum *Generalia specialibus non derogant*, the first requisite is to get a clear understanding of its meaning. In *Barker v. Edger* (1898) A.C., at p.754 it is said:- 'The general maxim is, *Generalia specialibus non derogant*. When the Legislature has given its attention to a separate subject, and made provision for it, the presumption is that a subsequent general enactment is not intended to interfere with the special provision unless it manifests that intention very clearly. Each enactment must be construed in that respect according to its own subject matter and its own terms.' Now, the first thing we have to understand is what is the meaning of 'separate subject' and 'a subsequent general enactment.' In *Blackpool Corporation v. Starr Estate Co.* (1922) 1 A.C., at p.34 Viscount Haldane, as to that rule of construction, says:- 'It is that wherever Parliament in an earlier statute has directed its attention to an individual case and has made provision for it unambiguously, there arises a presumption that if in a subsequent statute the Legislature lays down a general principle, that general principle is not to be taken as meant to rip up what the Legislature had before

provided for individually, unless an intention to do so is specially declared. A merely general rule is not enough, even though by its terms it is stated so widely that it would, taken by itself, cover special cases of the kind I have referred to. An intention to deal with them may, of course, be manifested, but the presumption is that language which is in its character only general refers to subject matter appropriate to class as distinguished from individual treatment. Individual rights arising out of individual treatment are presumed not to have been intended to be interfered with unless the contrary is clearly manifest.' Viscount Cave, the present Lord Chancellor, quoted with approval (1922) 1 A.C., at p.38 the rule in *Barker v. Edger* (1898) A.C., at p.754. Lord Cave also, for himself, said: 'The rule is clear that a general statute will not, in the absence of clear words, be construed as derogating from special provisions in a previous statute.' The language in those two cases – and they are in accordance with previous authorities – shows that the subject matter in the earlier Act must be the same as that in the later Act before the maximum can have any possible application.

...'

The principle has recently been recognized by Deane J in *Refrigerated Express Lines (A/Asia) Pty Ltd v. Australian Meat and Live-Stock Corporation* (1980) 29 ALR 333 at 347 where he referred to the statement by Romilly MR in *Pretty v. Solly* (1859) 26 Beav 606 at 610 that:

'The rule is, that wherever there is a particular enactment and a general enactment in the same statute, and the latter, taken in its most comprehensive sense, would overrule the former, the particular enactment must be taken to be operative ...'.

104 Where two procedures in an enactment are provided for, the maxim *expressum facit cessare tacitum* may also become relevant. This maxim when translated means where a particular procedure is designated to achieve something, other procedures are thereby excluded.

105 In *Nystrom*, Gummow and Hayne JJ explained that where there are two powers available in an enactment in a particular matter whether as the same power, the same subject matter or whether the general power encroaches on the subject matter exhaustively governed by the special power, it must be possible to say that the statute in question confers only one power to take the relevant action. Their Honours stated [54] - [55]:

Underlying *Anthony Hordern* and later cases is the notion 'that affirmative words appointing or limiting an order or form of things may have also a negative force and forbid the doing of the thing otherwise'. This statement was made by Dixon CJ, McTiernan, Fullagar and Kitto JJ in *R v Kirby; Ex parte Boilermakers' Society of Australia* ((1956) 94 CLR 254 at 270. See also *APLA Ltd v Legal Services Commissioner (NSW)* (2005) 224 CLR 322 at 409 [241] and applied to Ch III of the *Constitution* as a 'very evident example'. Counsel for the Minister, in oral argument, invoked the maxim *expressum facit cessare tacitum* (when there is express mention of certain things, then anything not mentioned is excluded), and its affinity with the above statement will be apparent. But, whilst 'rules' or principles of construction may offer reassurance, they are no substitute for consideration of the whole of the particular text, the construction of which is disputed, and of its subject, scope and purpose.

Anthony Hordern ((1932) 47 CLR 1) concerned the *Commonwealth Conciliation and Arbitration Act 1904* (Cth) (the Conciliation and Arbitration Act) which apparently contained two powers for the making of an award with respect to union preferences. Section 40 empowered the Court of Conciliation and Arbitration by award to give preferential employment to members of unions over other persons, subject to certain conditions, including that such an award was to be made only 'other things being equal'. The power in s 40 was not expressly confined to the situation where there was an industrial dispute about preference. However a judge of the Court, acting under the general powers in ss 24(2) and 38(a) to hear and determine industrial disputes, made an order unconditionally requiring certain employers to give preference to union members in employing female workers. This Court by majority (Gavan Duffy CJ and Dixon J, McTiernan J, Starke and Evatt JJ dissenting) held that those general powers did not authorise the judge to make an award which 'ignored the exception[s]' ((1932) 47 CLR 1 at 8) contained in s 40. McTiernan J concluded as follows ((1932) 47 CLR 1 at 20):

"Reading the Act as a whole, there does not appear to me to be any reason for holding that Parliament intended to give to the Court two powers, entirely different in scope, to order 'preference'. I do not think that the Legislature intended that, in a case in which preference was in dispute, the Court should be free to make any award it deemed fit and that the award might be entirely unconditional, whereas, in a case in which preference was not in dispute, the Court should be fettered and its award moulded by the provisions of s 40."

This is a rather more compendious expression of what was said by Gavan Duffy CJ and Dixon J in the passage set out earlier in these reasons. As a matter of construction (and not as one of implied repeal) there was only one power which could be relied upon to make awards giving preferential employment to union members.

106 The history of the enactment of the jurisdiction of the Public Service Arbitrator and the Public Service Appeal Board are set out at length in the appellant's submissions. In relation to the conclusions drawn by the appellant in relation to that history, I do not agree that:

- (a) the jurisdiction of the Public Service Arbitrator can be characterised as a more specific power than the jurisdiction of the Public Service Appeal Board;
- (b) because of amendments made to the Act in 1987 and 2002 that s 80E can be considered a 'later enactment'; and
- (c) s 80I(1)(a) is a redundant provision.

107 It is often contestable as which enactment is the special and which is the general: *Bank Officials' Association (SA Branch)* (297) (Higgins J). The jurisdiction of the Public Service Arbitrator by operation of s 80E(1) is substantially the same as the

general jurisdiction of the Commission in respect of 'industrial matters'. Whilst the jurisdiction of the Public Service Arbitrator can only be considered a special power when compared to general jurisdiction of the Commission, in respect of an industrial matter, when regard is had to the scheme of the Act, the jurisdiction of the Public Service Arbitrator is special only when compared to the general jurisdiction. It is special in that it only applies to government officers.

- 108 The definition of 'industrial matter' in s 7 and extended in s 80E(2) covers a very wide variety of matters which are matters of an industrial nature: *Hotcopper Australia Ltd v Saab* (2002) 117 IR 256. On the other hand the jurisdiction of the Public Service Appeal Board is solely confined to special matters in s 80I of the Act. When the jurisdiction of the Public Service Appeal Board under s 80I is compared to the jurisdiction of the Public Service Arbitrator under s 80E it is clear that the power in s 80E can be said to be a general power and the power under s 80I a specific power. The Public Service Appeal Board has no general jurisdiction to deal with any matters other than appeals against specified decisions by an employing authority. Unlike s 80E, the jurisdiction of the Public Service Appeal Board conferred by s 80I can not be invoked to review any decision of an industrial nature of an employing authority. Section 80I(1)(a) is even more specific as it only applies to 'public service officers' and not to other categories of 'government officers'. In addition, the Public Service Appeal Board only has power to hear and determine an appeal, and to adjust all matters referred to in s 80I(1)(a) to (e). In contrast the Public Service Arbitrator has broad power to conciliate and arbitrate, including the power to make interim orders under s 32 and s 44 of the Act.
- 109 There is a strong presumption that the legislature does not intend to contradict itself but intends both provisions to operate within their given sphere: *Butler v Attorney-General (Vic)* (1961) 106 CLR 268 (276) (Fullagar J); *Saraswati v R* (1991) 172 CLR 1 (17) (Gaudron J) and *Dossett v TKJ Nominees Pty Ltd* (2003) 218 CLR 1 (437)-(438) per Gummow, Hayne and Heydon JJ.
- 110 The amendments to s 44 of the Act in 1987 to extend the definition of 'industrial matter' and the amendments in 2002 can not have the effect at law of characterising s 80E as a later enactment, as s 80E was not amended by the enactment of these provisions. In any event even if s 80E could be regarded as a later enactment the maxim of generalia specialibus non derogant may still apply as both provisions are in the same enactment.
- 111 I also do not agree that s 80I(1)(a) is a redundant provision. It is important to note that both the Public Service Appeal Board and the Public Service Arbitrator were established as constituent authorities under the Act at the same time by the *Acts Amendment and Repeal (Industrial Relations Act (No 2) – No 94 of 1984)* by the enactment of Part IIA Constituent Authorities of the Act. Section 80I(1)(a) was amended by the *Acts Amendment (Public Sector Management) Act 1994*. The only change to s 80I(1)(a) was to change the reference to the *Public Service Act 1978* to the PSM Act. With respect it does not follow that because the conditions of service in the *Public Service Act 1904* were not replicated in the PSM Act that s 80I(1)(a) was redundant or retained on the basis of extreme caution. By the time s 80I(1)(a) was enacted in 1984, the majority of the conditions of service the appellant relies upon were not to be found in the *Public Service Act 1978*. The PSM Act is not an Act of Parliament that amended the *Public Service Act 1904*. It repealed that Act in its entirety and brought about a substantially new scheme of management of public sector employment, including management of public service officers. One of the most notable changes was that the position of Public Service Commissioner was abolished and public service officers who had been appointed by the Public Service Commissioner were deemed to be appointed and holding office under the PSM Act: Schedule 5 of the PSM Act. The effect of this legislative change is that public service officers were deemed to be employed by an 'employing authority' within the meaning of s 5 of the PSM Act. In addition a substantial part of the PSM Act only applies to public service officers. These are the provisions that form part of Part 3 of the Act in s 34 to s 67. The Public Service Appeal Board and the Public Service Arbitrator have no jurisdiction to deal with a decision of an employing authority in relation to a Chief Executive Officer. However, there are many conditions of service in Part 3 and Part 5 of the PSM Act that could be the subject of a decision in relation to the interpretation concerning conditions of service. For example, a decision made by an employing authority under s 43 to appoint a person to a SES post. If there is a debate about the meaning of a SES post in s 43 of the PSM Act, s 80I(1)(a) may be enlivened. A question of relevance in these proceedings is whether in those circumstances would the jurisdiction of the Public Service Arbitrator be ousted. Whether it would occur would, in my view, depend upon the facts of the particular matter.
- 112 When the scheme of the Act, in particular the establishment of the constituent authorities in the Act is examined it is apparent that the Public Service Appeal Board was established and continues to be constituted to deal with decisions of employing authorities that deal with specific matters that involve a single individual, that is a public service officer where an appeal is instituted under s 80I(1)(a) or a government officer under s 80I(1)(a) to (e) or perhaps a number of public service officers or government officers in respect of a decision of an employing authority through the operation of s 10 of the *Interpretation Act 1984* which requires words in the singular to also include the plural. This is also reflected in s 80J as the appellant as an organisation registered under the Act to represent the interests of a large number of public service officers and government officers is unable to institute an appeal on its own behalf. It can only act as an agent in an appeal. Further s 80I(1) only applies when a relevant decision is made by an employing authority. Section 80E is not so confined and the power under s 80E can be invoked in many matters where the jurisdiction in s 80I(1) is not raised. For example, if there is a dispute about whether SES posts should be created in an organisation pursuant to s 43 of the PSM Act, the Public Service Arbitrator would have jurisdiction to deal with the matter as the circumstances of the dispute would give rise to an 'industrial matter'. However, no appeal could be instituted to the Public Service Appeal Board if no decision had been made by an employing authority or alternatively on the facts there was no dispute about the interpretation of s 43 or any other provision of the PSM Act or regulations made under the PSM Act so as to enliven the jurisdiction of the Public Service Appeal Board under s 80I(1)(a) of the Act.
- 113 Having considered the establishment of the constituent authorities of the Public Service Appeal Board and the Public Service Arbitrator under the Act, I agree the maxim of generalia specialibus non derogant does not apply as it can not be said that the provisions of s 80E impliedly repeals s 80I. Nor is there an irreconcilable conflict between the two provisions. In my view the two provisions can stand together. However it does not follow from this finding that the Public Service Arbitrator has jurisdiction to deal with matters in dispute between the parties in this matter.

114 I do not agree that it was intended that the two jurisdictions operate cumulatively. To find otherwise would have the effect that where the pre-conditions are raised for the filing of an appeal to the Public Service Appeal Board by an individual public service officer or other government officer, the same facts and issues could be raised in an application to the Public Service Arbitrator. Such a result could leave the Public Service Appeal Board little if any work to do under the provisions of the Act. Alternatively, applications raising the same matters could be brought in two forums as it would be possible for the appellant as an organisation to bring an application under s 80E(1) in relation to the same issue in respect of a particular public service officer or government officer that is the subject of an appeal by the public service officer or other government officer under s 80I(1) of the Act acting on his or her own behalf. This could lead to conflicting decisions being made in respect of the same decision of an employing authority. Such a result was in my view not intended as it is clear from the express terms of s 80I when considered together with the jurisdiction of the Public Service Arbitrator that the scheme of the Act in establishing two Constituent Authorities is such that a small number of matters which deal with specific decisions by employing authorities be reviewed only by the Public Service Appeal Board by way of an appeal and not by conciliation and arbitration by a Public Service Arbitrator.

115 In this matter as the jurisdiction of the Public Service Appeal Board is capable of being enlivened by the subject matter of the application before the Public Service Arbitrator, the jurisdiction of the Public Service Arbitrator is excluded.

116 For these reasons I would make an order that the appeal be dismissed.

KENNER C:

117 This is an appeal under s 49 of the Industrial Relations Act 1979 (“the Act”) from a decision of a Public Service Arbitrator (“the Arbitrator”) of 17 December 2009. The background to the matter is as follows.

The Background

118 The proceedings at first instance before the Arbitrator concerned a dispute between the applicant and the respondent as to whether disciplinary proceedings commenced by the respondent under s 81 of the Public Sector Management Act 1994 (“the PSM Act”) could continue after the employee concerned, Mr van der Zanden, ceased to be an employee. The relevant factual issues at first instance were set out in a Statement of Agreed Facts appearing at par 2 of the Arbitrator’s reason for decision as follows:

- “1. The Applicant is the Civil Service Association of Western Australia Incorporated (“the CSA”).
2. The CSA is a registered organisation of employees authorised to represent Mr Luke van der Zanden.
3. The Respondent is the Director General, Department for Child Protection.
4. Mr van der Zanden was employed with the Respondent pursuant to Section 64(1)(b) of the *Public Sector Management Act 1994* (“the Act”) as a Residential Care Officer.
5. The Respondent presented Mr van der Zanden with a suspected breach of discipline letter dated 20 April 2009 identifying three suspected breaches of discipline.
6. Mr van der Zanden responded to the three allegations in writing and provided his response to the Respondent on 8 May 2009.
7. Mr van der Zanden’s fixed term contract of employment expired as at 4 June 2009. As of the expiration of Mr van der Zanden’s fixed term contract Mr van der Zanden was no longer an employee of the Respondent.
8. On 11 June 2009 the Respondent sent Mr van der Zanden a letter notifying him that an investigation into the suspected breaches of discipline would be commenced pursuant to section 81(2) of the (sic) Act.
9. On 11 September 2009 the Applicant sent the Respondent a letter stating that as Mr van der Zanden was no longer an employee of the Respondent the Respondent had no ability to continue its investigation.
10. On 17 September 2009 the Respondent wrote to the Applicant and advised that the Respondent believed that it did have the ability to continue its investigation.
11. On 23 September 2009 the Applicant wrote to the Respondent requesting the disciplinary investigation be stayed until such time as the matter could be determined by the Public Service Arbitrator.
12. The Respondent acceded to this request.
13. The Applicant contends that the Respondent does not have the power under the Act to continue the breach of discipline process against Mr van der Zanden.
14. The Respondent contends that it does have the power under the Act to continue the breach of discipline process against Mr van der Zanden.”

119 In the proceedings at first instance, the respondent challenged the jurisdiction of the Arbitrator to hear the matter, on the ground that the claim was properly within the jurisdiction of the Public Service Appeal Board (“the Appeal Board”) under s 80I(1)(a) of the Act. It was contended that relying upon a decision of the Full Bench of the Commission in *Ronald Thomas Bellamy v Chairman, Public Service Board* (1986) 66 WAIG 1579, the specific jurisdiction of the Appeal Board overrode the general jurisdiction of the Arbitrator as to the subject matter of the dispute, applying the *generalia specialibus* principle of statutory interpretation.

120 The Arbitrator upheld the respondent’s submissions in relation to jurisdiction, and dismissed application at first instance. The Arbitrator concluded at par 39 of her reasons for decision that the jurisdiction of the Arbitrator was broad and whilst including the subject matter of the dispute before her, the narrow and specific nature of the Appeal Board’s jurisdiction meant that the latter jurisdiction prevailed.

Grounds of Appeal

121 The two grounds of appeal essentially go to the same issue, that being the jurisdiction of the Appeal Board under s 80I(1)(a) to entertain the applicant's claim at first instance. It was contended that the Appeal Board's jurisdiction did not extend to a public service officer who ceased to be an employee and the relevant "conditions of service" referred to in s 80I(1)(a) of the Act do not include disciplinary matters under the PSM Act. The grounds of appeal allege that the *generalia specialibus* principle of interpretation did not apply as the dispute at first instance did not fall within the Appeal Board's jurisdiction. It was contended that the dispute fell fairly and squarely within the jurisdiction of the Arbitrator when read with the definition of "industrial matter" under s 7 of the Act.

Public Interest

122 It was also asserted in the notice of appeal, that the appeal lay to the Full Bench because the matter was of importance in the public interest for the purposes of s 49(2a) of the Act. However, it is clear that the order issued by the Arbitrator on 17 December 2009 finally determined the matter at first instance and thus was not an "finding" in respect of which s 49(2a) of the Act applies. It is not therefore necessary to deal with this matter.

The Issues

123 The questions to be addressed on this appeal appear to be as follows:

- (a) whether the application at first instance was properly within the jurisdiction of the Appeal Board under s 80I(1)(a) of the Act;
- (b) if so, whether the subject matter of the application was also within the jurisdiction of the Arbitrator under s 80E(1) of the Act; and
- (c) if the answer to both (a) and (b) is yes, whether by the operation of the principle dealt with by the Full Bench in *Bellamy*, the jurisdiction of the Arbitrator was, as to that subject matter, ousted.

Scope of s 80I(1)(a) Act

124 Part IIA of the Act establishes the constituent authorities of the Commission which includes the Arbitrator, the Appeal Board and the Railways Classification Board. The jurisdiction of the Arbitrator and the Appeal Board is set out in Division 2. The Appeal Board is constituted under s 80H of the Act. The Appeal Board's jurisdiction, in terms of the nature of the appeals that may be made to it, are set out in s 80I(1) which relevantly provides as follows:

"80I. Appeals

- (1) Subject to section 52 of the *Public Sector Management Act 1994* and subsection (3) of this section, a Board has jurisdiction to hear and determine —
 - (a) an appeal by any public service officer against any decision of an employing authority in relation to an interpretation of any provision of the *Public Sector Management Act 1994*, and any provision of the regulations made under that Act, concerning the conditions of service (other than salaries and allowances) of public service officers;
 - (b) an appeal by a government officer, who is the holder of an office included in the Special Division of the Public Service for the purposes of section 6(1) of the *Salaries and Allowances Act 1975*, under section 78 of the *Public Sector Management Act 1994* against a decision referred to in subsection (1)(b) of that section;
 - (c) an appeal, other than an appeal under section 78(1) of the *Public Sector Management Act 1994*, by any government officer who occupies a position that carries a salary not lower than the prescribed salary from a decision, determination or recommendation of the employer of that government officer that the government officer be dismissed;
 - (d) an appeal by a government officer, other than a person referred to in paragraph (b), under section 78 of the *Public Sector Management Act 1994* against a decision referred to in subsection (1) (b) of that section;
 - (e) an appeal, other than an appeal under section 78(1) of the *Public Sector Management Act 1994*, by any government officer who occupies a position that carries a salary lower than the prescribed salary from a decision, determination or recommendation of the employer of that government officer that the government officer be dismissed,

and to adjust all such matters as are referred to in paragraphs (a), (b), (c), (d) and (e)."

125 Appeals may be instituted to the Appeal Board either by the relevant officer or by an organisation on his or her behalf under s 80(J) of the Act. Whilst similar to the jurisdiction of the Arbitrator, certain parts of Part II Division 2 of the Act as they apply to the Commission apply to the exercise of the jurisdiction of the Appeal Board, but not all such powers. For example, unlike the Arbitrator, the Appeal Board has no conciliation powers.

126 An appeal under s 80(I)(1)(a) is open to any "public service officer". By s 7 of the Act, a "public service officer" means a person so described within the meaning of PSM Act. By s 3 of the PSM Act, a "public service officer" "means executive officer, permanent officer or term officer employed in the Public Service under Part 3". It was common ground that Mr van der Zanden was appointed under s 64(1) of the PSM Act and was therefore a public service officer during his employment. Whether the jurisdiction of the Appeal Board can be invoked after the service of a public service officer ceases is a matter I consider later in these reasons.

127 It was also not in issue at first instance that the respondent was an “employing authority” for the purposes of s 5 of the PSM Act.

128 I accept, without necessarily deciding the matter, for present purposes, that the subject matter of the dispute at first instance, that being the respondent’s continuation of disciplinary proceedings against Mr van den Zanden was a “decision” for the purposes of s 80I (1)(a) of the Act. That is, the respondent’s continuation of the disciplinary process against Mr van der Zanden over the objection of the applicant, involved a conclusion or determination by the respondent to continue to proceed with the relevant investigation.

Conditions of Service

129 A central issue arising on the appeal is whether the disciplinary process as set out in the PSM Act, can be regarded as “conditions of service” for the purposes of s 80I(1)(a) of the Act.

130 The appellant in detailed submissions contended that the subject matter of discipline against public service officers, could not, on a proper construction of the legislation, be so described. The appellant set out the history of the PSM Act and its predecessors, and submitted that under predecessor legislation to the PSM Act, conditions of service such as leave entitlements, deductions from salary, retirement arrangements, and other matters, were, but are no longer, contained in legislation but rather, in various industrial instruments applicable to government officers generally.

131 The submission seemed to be therefore, that as such conditions of service are no longer prescribed in the PSM Act, then s 80I(1)(a) of the Act, has little or no work to do under the current legislation.

132 Whilst the respondent did not take issue with the submissions of the appellant in relation to the history of the PSM Act, it questioned the relevance of this statutory history to the contentions advanced on the appeal.

133 The Minister, who was invited to and is thereby taken to have been granted leave to intervene under s 30(1) of the Act, submitted that the disciplinary provisions contained in Part 5 of the PSM Act, can reasonably and properly be considered as part of a government officer’s conditions of service, along with other conditions of service contained within the relevant industrial instruments and the officer’s contract of employment.

134 An allied submission in relation to this issue by the appellant was “conditions of service” can only be reasonably construed as applying to a serving public service officer, as no conditions of service can have application after termination of employment. It was therefore contended that Mr van der Zanden could not bring an appeal before the Appeal Board once his employment with the respondent had ceased.

135 For the following reasons, I do not accept the appellant’s submissions in relation to these issues.

136 In my view, there is no reason, on its ordinary and natural meaning, to give the phrase “conditions of service” a restricted meaning. In *Australian Tramway Employees Association v Prahran and Malvern Tramway Trust* (1913) 17 CLR 680 Isaacs and Rich JJ said at 693:

“the terms of employment are the stipulations agreed to or otherwise existing on both sides upon which the service is performed. The “conditions” of employment include all the elements that constitute the necessary requisites, attributes, qualifications, environment or other circumstances affecting the employment.”

137 The width of expressions such as “terms and conditions of service”, “conditions of service” and the like, have been repeatedly recognised: *The Queen v Booth*; *Ex Parte Administrative and Clerical Officers Association* (1978) 141 CLR 257; *The Queen v Findlay*; *Ex Parte Commonwealth Steamship Owners Association* (1953) 90 CLR 621; *Westwood v Lightly and Ors* (1984) 7 IR 104.

138 Accordingly, taking the phrase in its context, which I do not consider should be limited by the reference to “salaries and allowances” in s 80I(1)(a) of the Act, I see no basis to construe the phrase “conditions of service” in a limited fashion. A disciplinary process, to which an employee is subject in the workplace, is plainly a “circumstance affecting the employment” or part of the “environment” of the employment of public service officers under the PSM Act.

139 I now consider the submission that the reference to “conditions of service” cannot have application to an appellant who was formerly, but is no longer, a public service officer.

140 Whilst each of the types of appeals to the Appeal Board set out in s 80I(1) of the Act, must be considered to be separate heads of jurisdiction of the Appeal Board, it is plain by s 80I(1)(c) and (e), that former government officers who have been dismissed, are able to appeal against such decisions. Hence, the Appeal Board’s jurisdiction extends to those persons whose employment as a government officer has ceased.

141 Whilst it may be, as the appellant’s submissions infer, that in the current legislation, s 80I(1) (a) of the Act has little work to do, there are other parts of the legislation, other than those presently under consideration, where it may operate. For example, without expressing a concluded view on the matter, Part 6 of the PSM Act deals with redeployment and redundancy of employees. By s 94 of the PSM Act, the Governor may make regulations under s 108 prescribing arrangements for redeployment, retraining and redundancy for employees who are surplus to the requirements of any department or organisation and other circumstances.

142 It is quite conceivable that a public service officer who is aggrieved by a decision of an employing authority in relation to the operation of Part 6 and the relevant regulations, as to the circumstances of their redundancy, could, despite the terms of s 95 of the PSM Act, institute an appeal under s 80I(1)(a). Furthermore, a matter may conceivably arise under the terms of Part 8 Miscellaneous of the PSM Act, concerning a decision by an employing authority as to the interpretation of provisions of this Part in relation to a former employee.

- 143 I do not therefore think that it would have been the intention of the Parliament to exclude from the jurisdiction of the Appeal Board under s 80I(1)(a), such former employees. There may well be proper and legitimate issues concerning decisions in relation to the interpretation of the PSM Act and regulations, which such employees may wish to contest before the Appeal Board. In my view, to read the jurisdiction of the Appeal Board down to confine it only to serving public service officers would be inconsistent with the construction of the section within the context of the PSM Act as a whole.
- 144 On the basis of the foregoing analysis, I therefore accept that the decision of the respondent, in applying the terms of s 81 of the PSM Act, that the disciplinary process commenced against Mr van der Zanden, continue after the cessation of his employment, was amenable to an appeal by him against that decision under s 80I(1)(a) of the Act and was therefore within the jurisdiction of the Appeal Board.

Jurisdiction of the Arbitrator

- 145 It seemed to have been accepted at first instance that the appellant's application concerning Mr van der Zanden was within the jurisdiction of the Arbitrator. At pars 15-21 of her reasons for decision, the Arbitrator set out the relevant provisions of the Act in relation to the Arbitrator's jurisdiction and concluded at par 22 that "Therefore the Arbitrator has very wide powers to deal with the industrial matter for the purpose of its resolution. In any event, it is the respondent's contention that the Arbitrator would have jurisdiction but for it being ousted because the jurisdiction of the Board is more particular in this matter."
- 146 The Arbitrator then went on to consider the jurisdiction of the Appeal Board, and found that it, being more particular, overrode the Arbitrator's general jurisdiction in relation to the matter before her.
- 147 There does not appear to have been any detailed determination by the Arbitrator as to whether the application at first instance was within her jurisdiction, rather the focus from the reasons for decision, appears to have been on the nature of the Appeal Board's jurisdiction to entertain the appellant's claim.
- 148 Notwithstanding this, for the following reasons, briefly expressed, in my opinion the application at first instance fell within the jurisdiction of the Arbitrator.
- 149 As set out in the reasons for decision at first instance, the jurisdiction of the Arbitrator is prescribed under s 80E of the Act, which gives the Arbitrator "exclusive jurisdiction to inquire into and deal with any industrial matter relating to a government officer, a group of government officers or government officers generally." Thus it is plain that the jurisdiction of the Arbitrator is dependant upon the matter before it being an "industrial matter" as defined in s 7 of the Act.
- 150 There were a number of submissions made by the parties on the appeal in relation to this issue. In short, the appellant contended that the subject matter of the proceedings at first instance dealing with the discipline of Mr van der Zanden continuing after the termination of his employment, fell within the definition of "industrial matter" as "including conditions which are to take effect after the termination of employment;" This does not appear to have been challenged by the respondent in any substantive way.
- 151 The Minister on the other hand, contended that the subject matter of the dispute at first instance, properly characterised, did not concern conditions taking effect after the termination of employment, but rather, conditions which took affect whilst Mr van der Zanden was an employee employed as a public service officer. As Mr van der Zanden's employment had come to an end, at the time of the institution of the proceedings at first instance, there could no longer be an industrial matter in respect of which the Arbitrator could exercise jurisdiction. It was also submitted on behalf of the Minister that s 7(1a) of the Act, which extends the definition of industrial matter to include matters relating to the dismissal of an employee or a refusal or failure to allow an employee a benefit under a contract of employment, has no application to the present circumstances.
- 152 It was thus contended by the Minister, that the only jurisdiction available was that of the Appeal Board.
- 153 The meaning of "industrial matter" for the purposes of s 7 is very broad and should not be artificially read down or restrained. In par (i) of the definition of "industrial matter", by amendments to the Act made in 2002, the definition was extended to provide "and also includes any matter of an industrial nature the subject of an industrial dispute or the subject of a situation that may give rise to an industrial dispute..."
- 154 It is not necessary that there be an employment relationship on foot, as a necessary element of an "industrial matter" within the extended definition. As long as the subject matter of the particular dispute has some industrial character, it can be properly described as having an "industrial nature": *The Director General of the Department of Justice v The Civil Service Association of Western Australia (Inc.)* (2004) 85 WAIG 629.
- 155 In my view, it is plain that a dispute about the application of disciplinary provisions to an existing and former employee of an employer is a matter that has an industrial character so as to bring it within the extended definition. Disciplinary provisions operate normally, on existing employment relationships and there have been many disputes before the Commission concerning such matters. Such matters do not loose their industrial character or flavour, simply because the particular dispute in issue concerns the application of disciplinary provisions after the employment relationship has come to an end.
- 156 In any event, it is reasonably clear, on authority in this jurisdiction, that a matter may remain an industrial matter, within the terms of the general definition in s 7 of the Act, after employment has come to an end: *Totalisator Agency Board v Federated Clerks Union of Australia, Industrial Union of Workers, WA Branch* (1980) 60 WAIG 624.

Is the Jurisdiction of the Arbitrator Ousted?

- 157 The issue that then arises is whether, if the dispute at first instance falls within the jurisdiction of both the Arbitrator and the Appeal Board, the principles discussed and applied in *Bellamy* have application. *Bellamy*, the Full Bench held that the general jurisdiction of the Commission to enquire into and deal with an industrial matter under s 23 of the Act, concerning the dismissal of a government officer, was ousted by the specific jurisdiction of the Appeal Board to entertain appeals against the dismissal of government officers, applying the *generalia specialibus* principle.

158 For the purposes of the application of that principle, “repugnancy” does not necessarily involve a direct conflict between the relevant statutory provisions. As was said by Deane J in *Refrigerated Express Lines (A/Asia) Pty Ltd v Australian Meat and Live Stock Corporation and Others* (1980) 29 ALR 333 at 347:

“Repugnancy can be present in cases where there is no direct contradictions between the relevant legislative provisions. It is present where it appears, as a matter of construction, that special provisions were intended exhaustively to govern their particular subject matter and where general provisions, if held to be applicable to the particular subject matter, would constitute a departure from that intention by encroaching on that subject matter.”

159 There was a submission by the appellant that *Bellamy* is no longer good law as a consequence of amendments to the Act in 1987. These amendments included the insertion of s 44(6)(ba) and (bb) into the Act in relation to the Commission’s conciliation powers. Having considered these matters, I do not regard them as relevant to the continuation of the authority of *Bellamy*.

160 In this case, the principles dealt with *Bellamy* have, in my view, equal application to the exercise of the jurisdiction of the Arbitrator and the Appeal Board, as to the exercise of jurisdiction by the Arbitrator and that of the Commission under s 23 of the Act, which was specifically considered in *Bellamy*.

161 I dealt with this issue in a somewhat different context, in *The Civil Service Association of Western Australia Incorporated v Chief Executive Officer Disability Services Commission* (2005) 85 WAIG 3082. In that case the issue was whether the Arbitrator had jurisdiction to make an interim reinstatement order, pending the hearing and determination of an appeal from such a dismissal to the Appeal Board. I concluded that the jurisdiction of the Arbitrator was excluded and I said as follows at pars 14-19 :

“Therefore, the legislature in this State, has prescribed a specific jurisdiction under the Act for government officers, and within that jurisdiction, has also distinguished between appeals under s 80I to the Appeal Board, and the general jurisdiction of an Arbitrator under s 80E of the Act. The Arbitrator’s “exclusive jurisdiction”, must in my opinion, be read under the Act, as subject to the jurisdiction and powers of the Appeal Board in s 80I, otherwise the whole of the Appeal Board’s jurisdiction and powers would be otiose.

In *Pearce and Geddes*, the learned authors, in relation to the *generalia specialibus non derogant* principle observed as follows:

“[4.30] *The principle that provisions of general application give way to specific provision when in conflict is discussed fully in [7.18]-[7.21] relating to repealing Acts. But the approach is also applicable to the resolution of internal conflicts between sections within an Act: Perpetual Executors and Trustees Assoc of Australia Ltd v FCT (1948) 77 CLR 1 at 29. An Act may well contain provisions of a general nature and also provision relating to a particular subject matter. It is commonsense that the drafter will have intended the general provisions to give way should they be applicable to the same subject matter as is dealt with specifically: Refrigerated Express Lines (A’ Asia) Pty Ltd v. Australian Meat and Live-stock Corp (1980) 29 ALR 333 at 347. A particular example of the approach in question was demonstrated in Commercial Radio Coffs Harbour Ltd v Fuller (1986) 66 ALR 217. Gibbs CJ and Brennan J at 219 ruled that a general provision making non-compliance with a provision of the Act an offence had to be read down if another law prohibited the activity that the Act required. See also Smith v R (1994) 125 ALR 385 at 391.*”

In dealing with the application of the principle within a particular Act, the learned authors further said at par 4.30:

“*The generalia specialibus rule should, it is suggested, be observed more strictly in the interpretation of provisions in a particular Act than in the case of the separate enactments. In the latter circumstance, it may well be that the drafter did not consider the effect of the competing Acts. When a single document is being considered, however, the drafter will be more likely to have relied on the rule. White v Mason [1958] VR 79 affords a good example of this. ‘Licensed premises’ were expressly excluded from the operation of a part of the Health Act 1956 that required the registration of premises selling food. Without such exclusion the part would normally have been taken to have applied to those premises. The Act also contained general catch-all provisions. Herring CJ considered that the express exclusion of licensed premises from the part of the Act that would otherwise specifically have applied to them indicated an intention that they should also be excluded from the general provisions of the Act.*”

It was this principle of statutory interpretation that the Full Bench relied upon in *Bellamy*.

It is clear from the plain language of the relevant provisions of the Act, that the Appeal Board’s jurisdiction is relatively narrow and specific to deal with appeals brought in respect of the matters set out in s 80I(1)(a) to (e) and it has the power is to “adjust all such matters”. By contrast, the jurisdiction and powers of an Arbitrator under s 80E of the Act, are general and broad, and in my view, the remedies available under both s 80E(5) and under s 80I(1) are different. There may be some scope for conflict if there was to be concurrent jurisdiction.

In my opinion, taking the legislation as a whole, applying the principle of interpretation referred to above, the draftsman of Division 2 of Part IIA of the Act, did not intend there to be concurrent jurisdiction exercised by both the Arbitrator and the Appeal Board in relation to remedies for the dismissal of government officers. Government officers who are dismissed in the circumstances set out in s 80I(1) only have available to them the jurisdiction of the Appeal Board in respect of an appeal commenced under s 80I of the Act.”

162 Having considered the submissions of the parties on the present appeal, there has been no basis put to cause me to depart from the views I expressed in *Disability Services Commission*. The principles applied in that case have equal application to the present circumstances in my opinion. Part IIA Division 2 of the Act makes special provision in s 80I for appeals against certain decisions of employing authorities under the PSM Act. One of those types of decisions is that which is the subject of

this appeal and s 80I(1)(a) provides for such appeals in specific terms. Those specific terms are an indication that the Parliament intended that the Appeal Board's jurisdiction be invoked in such cases, and not the general jurisdiction of the Arbitrator under s 80E(1) of the Act.

163 By s 80I(1) of the Act, the Appeal Board has the power to "adjust" all such matters as are referred to it in pars (a), (b), (c), (d) and (e). The power of the Appeal Board to "adjust" a decision is referable to the particular jurisdiction to the Appeal Board that is invoked. "Adjust" in context, includes the power to reform the particular decision under appeal in some way: *Johnson v State Government Insurance Commission* (1997) 77 WAIG 2619 per Anderson J. An obvious means of reforming the decision taken by the respondent at first instance would be to reverse it, to discontinue the disciplinary investigation into Mr van der Zanden. The scope of powers of the Appeal Board are not limited to a declaration following the interpretation of the relevant provisions of the PSM Act or regulations, as is the case under s 46 of the Act, involving the Commission's powers to interpret awards and industrial agreements.

Conclusion

164 For the foregoing reasons, in my view, the Appeal Board's jurisdiction ousted the jurisdiction of the Arbitrator in the circumstances of this case. I would therefore dismiss the appeal.

MAYMAN C:

165 I have had the benefit of reading the reasons for decision of her Honour, the Acting President. I agree with those reasons and have nothing further to add.

2010 WAIRC 00207

	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION	
PARTIES	THE CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA INCORPORATED	APPELLANT
	-and-	
	DIRECTOR-GENERAL, DEPARTMENT FOR CHILD PROTECTION	RESPONDENT
	-and-	
	MINISTER FOR COMMERCE	INTERVENER
CORAM	FULL BENCH	
	THE HONOURABLE J H SMITH, ACTING PRESIDENT	
	COMMISSIONER S J KENNER	
	COMMISSIONER S M MAYMAN	
DATE	THURSDAY, 15 APRIL 2010	
FILE NO/S	FBA 1 OF 2010	
CITATION NO.	2010 WAIRC 00207	

Result	Order issued
Appearances	
Appellant	Ms S Bhar and with her Ms C Reid
Respondent	Mr E Rea and with him Ms M Ross
Intervener	Mr R Andretich (of counsel)

Order

This appeal having come on for hearing before the Full Bench on 11 February 2010, and having heard Ms Bhar on behalf of the appellant, Mr Rea on behalf of the respondent and Mr Andretich (of counsel) on behalf of the intervener, and reasons for decision having been delivered on 15 April 2010, the Full Bench, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders —

THAT the appeal be and is hereby dismissed.

[L.S.]

By the Full Bench
(Sgd.) J H SMITH,
Acting President.

FULL BENCH—Unions—Declarations made under Section 71—

2010 WAIRC 00115

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

FULL BENCH

CITATION : 2010 WAIRC 00115

CORAM : THE HONOURABLE J H SMITH, ACTING PRESIDENT
CHIEF COMMISSIONER A R BEECH
COMMISSIONER J L HARRISON

HEARD : MONDAY, 8 MARCH 2010

DELIVERED : TUESDAY, 16 MARCH 2010

FILE NO. : FBM 1 OF 2010

BETWEEN : THE BREWERIES & BOTTLEYARDS EMPLOYEES' INDUSTRIAL UNION OF WORKERS OF WESTERN AUSTRALIA

Applicant

AND

(NOT APPLICABLE)

Respondent

CatchWords : *Industrial Law (WA) – Application pursuant to s 71 for a declaration relating to qualifications of persons for membership of a State Branch of a Federal organisation and offices which exist with the Branch – Application granted.*

Legislation : *Industrial Relations Act 1979 (WA) s 71, s 71(1), s 71(2), s 71(3), s 71(4); Fair Work (Registered Organisations) Act 2009 (Cth) s 26(1).*

Result : Declaration issued

Representation:

Counsel:

Applicant : Mr D H Schapper

Solicitors:

Applicant : Derek Schapper – Barrister & Solicitors

Reasons for Decision

THE FULL BENCH:

- 1 This is an application made under s 71(2) of the *Industrial Relations Act 1979 (WA)* (the Act) for a declaration that pursuant to s 71(2) of the Act the rules of the counterpart Federal body prescribing the offices which exist in the Branch are deemed to be the same as the rules prescribing the offices which exist in the State organisation in accordance with s 71(1) and s 71(4) of the Act.
- 2 Obtaining a declaration is the first step towards the applicant being able to obtain a s 71 certificate to enable the offices that exist in its rules to be held by persons holding corresponding offices in its counterpart Federal body. A certificate will also enable it to make an agreement with its Federal organisation relating to the management and control of funds.
- 3 The application was unopposed by any of the organisation's members. At the conclusion of the hearing on 8 March 2010, the Full Bench informed counsel for the applicant that the grounds of the application had been made out and that a declaration would be made. On 8 March 2010, a declaration was made in the following terms:
 - (a) The Breweries and Bottleyards Employees' Industrial Union of Workers of Western Australia is the counterpart Federal body of The Breweries and Bottleyards Employees' Industrial Union of Workers of Western Australia;
 - (b) The rules of the applicant and its counterpart Federal body relating to the qualifications of persons for membership are deemed to be the same, in accordance with s 71(2) of the Act;
 - (c) The rules of the counterpart Federal body prescribing the offices which exist in the Branch are deemed to be the same as the rules of the applicant prescribing the offices which exist in the applicant, in accordance with s 71(4) of the Act.
- 4 The reasons for making the declaration are as follows.

- 5 The counterpart Federal body of the applicant is The Breweries and Bottleyards Employees' Industrial Union of Workers of Western Australia. The counterpart Federal body was registered as an association of employees under s 26(1) of the *Fair Work (Registered Organisations) Act 2009* (Cth) on 1 February 2010. The counterpart Federal body's rules are essentially identical to the rules of the applicant. The counterpart Federal body only covers members who reside in the State of Western Australia.
- 6 Pursuant to s 71(1) of the Act a counterpart Federal body, in relation to a State organisation, means a Western Australian Branch of an organisation of employees registered under the Commonwealth Act the rules of which:
- (a) relating to the qualifications of persons for membership; and
 - (b) prescribing the offices which shall exist within the Branch,
- are, or, in accordance with this section, are deemed to be, the same as the rules of the State organisation relating to the corresponding subject matter;
- 7 By operation of s 71(2) of the Act the rules of the State organisation and its counterpart Federal body relating to the qualifications of persons for membership are deemed to be the same if, in the opinion of the Full Bench, they are substantially the same. Further s 71(3) provides:
- The Full Bench may form the opinion that the rules referred to in subsection (2) are substantially the same notwithstanding that a person who is —
- (a) eligible to be a member of the State organisation is, by reason of his being a member of a particular class of persons, ineligible to be a member of that State organisation's counterpart Federal body; or
 - (b) eligible to be a member of the counterpart Federal body is, for the reason referred to in paragraph (a), ineligible to be a member of the State organisation.
- 8 When determining whether the offices that exist in the Branch are the same as the offices of the applicant, it is necessary for the Full Bench to consider the functions and powers of each office based on a consideration of the similarity or otherwise of the content of the rules: *Jones v Civil Service Association Inc* (2003) 84 WAIG 4 (Pullin J) [35].
- 9 The eligibility for membership rule in the counterpart Federal body is contained in r 3 – Constitution. It is identical to the eligibility for membership rule in r 3 – Constitution of the rules of the applicant. In addition, the offices that are prescribed to exist in r 10, r 11, r 12, r 13, r 14 and r 15 of the rules of the counterpart Federal body are identical to the offices that are prescribed to exist in r 10, r 11, r 12, r 13, r 14 and r 15 of the rules of the applicant. In light of these rules, we formed the view that a declaration should be granted. Whilst the rules are identical we formed the opinion that s 71(1) of the Act does not enable a declaration to be made that the rules in relation to membership and the prescription of offices are identical but simply that they are deemed to be the same.

2010 WAIRC 00107

	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION	
PARTIES	THE BREWERIES & BOTTLEYARDS EMPLOYEES' INDUSTRIAL UNION OF WORKERS OF WESTERN AUSTRALIA	APPLICANT
	-and-	
	(NOT APPLICABLE)	RESPONDENT
CORAM	FULL BENCH THE HONOURABLE J H SMITH, ACTING PRESIDENT CHIEF COMMISSIONER A R BEECH COMMISSIONER J L HARRISON	
DATE	MONDAY, 8 MARCH 2010	
FILE NO/S	FBM 1 OF 2010	
CITATION NO.	2010 WAIRC 00107	
Result	Declaration issued	
Appearances		
Applicant	Mr D H Schapper (of counsel)	

Declaration

This matter having come on for hearing before the Full Bench on Monday, 8 March 2010, and having heard Mr D H Schapper, of counsel, on behalf of the applicant, the Full Bench pursuant to its powers in s 71 of the *Industrial Relations Act 1979* (the Act), hereby declares that —

- (a) The Breweries and Bottleyards Employees' Industrial Union of Workers of Western Australia is the counterpart Federal body of The Breweries and Bottleyards Employees' Industrial Union of Workers of Western Australia;
- (b) The rules of the applicant and its counterpart Federal body relating to the qualifications of persons for membership are deemed to be the same, in accordance with s 71(2) of the Act;
- (c) The rules of the counterpart Federal body prescribing the offices which exist in the Branch are deemed to be the same as the rules of the applicant prescribing the offices which exist in the applicant, in accordance with s 71(4) of the Act.

By the Full Bench
(Sgd.) J H SMITH,
Acting President.

[L.S.]

FULL BENCH—Procedural Directions and Orders—

2010 WAIRC 00177

PARTIES	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION WESTERN AUSTRALIAN PRINCIPALS' FEDERATION	APPLICANT
	-and- STATE SCHOOL TEACHERS' UNION OF WESTERN AUSTRALIA (INC) JENNIFER BROZ EDMUND FREDRICK TREVOR VAUGHAN	OBJECTORS
CORAM	FULL BENCH THE HONOURABLE J H SMITH, ACTING PRESIDENT ACTING SENIOR COMMISSIONER P E SCOTT COMMISSIONER S M MAYMAN	
DATE	THURSDAY, 1 APRIL 2010	
FILE NO/S	FBM 7 OF 2009	
CITATION NO.	2010 WAIRC 00177	

Result	Order issued
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Order

HAVING heard Mr Kemp (of counsel) on behalf of the applicant and Mr Millman (of counsel) on behalf of the objector State School Teachers' Union of Western Australia (Inc), and by consent, it is ordered that:—

1. Order 5 made by the Full Bench on 29 January 2010 be extended to 14 April 2010.
2. The matter be listed for further directions in the week commencing 19 April 2010.
3. The Directions Hearing listed for Thursday, 1 April 2010 be otherwise vacated.
4. There be liberty to apply.

By the Full Bench
(Sgd.) J H SMITH,
Acting President.

[L.S.]

PRESIDENT—Unions—Matters dealt with under Section 66—

2010 WAIRC 00176

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PRESIDENT

CITATION	:	2010 WAIRC 00176
CORAM	:	THE HONOURABLE J H SMITH, ACTING PRESIDENT
HEARD	:	WEDNESDAY, 3 FEBRUARY 2010, THURSDAY, 4 FEBRUARY 2010
DELIVERED	:	THURSDAY, 1 APRIL 2010
FILE NO.	:	PRES 9 OF 2009
BETWEEN	:	ANTHONY D MULLEN, CHRISTOPHER C SHARPE
		Applicants
		AND
		ANNE GISBORNE, PRESIDENT OF THE STATE SCHOOL TEACHERS UNION OF WESTERN AUSTRALIA (INC)
		Respondent
		AND
		THE STATE SCHOOL TEACHERS' UNION OF WA (INCORPORATED)
		Intervener

CatchWords	:	Industrial Law (WA) – Application pursuant to s 66 of the <i>Industrial Relations Act 1979</i> (WA) – Construction of the rules of an organisation – Nature of jurisdiction and powers of President under s 66 – Interpretation of rules of the Union – Whether an elected delegate to State Council who is an employee is required to resign employment from the Union – Declaration made that the true interpretation of r 25(f) is the term 'office' includes the office of delegate to State Council.
Legislation	:	<i>Industrial Relations Act 1979</i> (WA) s 6(ab), s 6(f), s 7, s 7(1), s 26, s 27, s 27(1)(l), s 27(1)(v), s 62, s 62(2), s 66
Result	:	Declaration made
Representation:		
Counsel:		
Applicants	:	In person
Respondent	:	Ms N McGuinness (as agent)
Intervener	:	Mr R C Kenzie QC and Mr S Millman (of Counsel)

Reasons for Decision

Background

- 1 This is an application by Mr Anthony D Mullen and Mr Christopher C Sharpe. The applicants seek orders pursuant to s 66 of the *Industrial Relations Act 1979* (WA) (the Act) in relation to a dispute that arose in 2007 in relation to the interpretation of r 25(f) of the rules of The State School Teachers' Union of WA (Incorporated) (the Union).
- 2 This matter raises an interpretation of r 25(f) of the rules of the Union. In particular whether the terms of the sub-rule applies to the position of delegate to State Council or only to the 'offices' specifically referred to in r 25, that is whether the prohibition contained in r 25(f) applies only to the office and officers of President, Senior Vice-President, Ordinary members of the Executive, the Aboriginal or Torres Strait Islander representative and the General Secretary. Rule 25 provides:

25 - OFFICERS

- | | | |
|-----|------|--|
| (a) | (i) | Subject to the provision of sub-rules (b) and (c) of this rule, the Executive shall consist of the President of the Union, Senior Vice-President, Vice-President, and such other number of additional members to be known as Ordinary members, as determined from time to time by State Council. |
| | (ii) | There shall be a designated position on the Executive for an Aboriginal or Torres Strait Islander representative. This position shall be elected by and from the Aboriginal and Torres Strait Islander members of the Union. |

"That Executive

- (a) notes that Chris Sharpe and Tony Mullen did not resign from their employment with the Union before the commencement of their terms of office as district delegates to State Council.
 - (b) find that under the rules of the Union that failure to so resign renders Chris Sharpe and Tony Mullen ineligible to hold office as district delegates to State Council.
 - (c) hereby dismisses Chris Sharpe from office as a district delegate to State Council.
 - (d) hereby dismisses Tony Mullen from office as a district delegate to State Council.
 - (e) directs the Union President to report this resolution to the next meeting of State Council.'
- 6 The central issue in this matter is whether the true interpretation of the rules of the Union is that employees of the Union who are members of the Union and elected as delegates to the State Council are able to continue to hold office as delegates of the State Council whilst they continue to be employed by the Union.
- 7 It is conceded by the respondent and the intervener that pursuant to the rules of the Union the applicants as employees of the Union were eligible to be elected as delegates to State Council but prior to commencing a term office in each case they were required to resign their employment.
- 8 Whilst the respondent was represented by counsel in this matter the intervener took up the running of the defence to the application, and the respondent adopted the submissions made on behalf of the intervener.

Relevant SSTU Rule Change Decisions

- 9 In these reasons for decision the following reasons for decision of the Full Bench which deal with relevant applications to register variations of the rules of the Union are considered and referred to as follows:
- (a) *Re State School Teachers Union of WA (Inc)* (1993) 73 WAIG 1471 (*the 1993 Rule Change Case*).
 - (b) *Re State School Teachers Union of WA (Inc)* (1994) 74 WAIG 1731 (*the 1994 Rule Change Case*).
 - (c) *Re State School Teachers Union of WA (Inc)* (1998) 78 WAIG 1123 (*the 1998 Rule Change Case*).
- 10 These decisions deal with applications to register changes to the rules to allow employees of the Union to become members of the Union. Another application of relevance is APPL 409 of 1994 which was an application to the Registrar to register changes to the rules which once registered inserted r 19(h) and r 19(i) (which are now r 25(f) and r 25(g)) of the rules of the Union. After the evidence was heard in this matter, the Commission file containing APPL 409 of 1994 was made available to the parties and the intervener for inspection and the parties and the intervener were invited to make written submissions about documents contained on the file.

The Evidence

- 11 Anthony Mullen gave evidence on behalf of both of the applicants. Mr Mullen and the other witnesses who gave evidence, gave their evidence partly in writing in witness statements. They also gave oral evidence.
- 12 Mr Mullen has been a member of the Union since 1979. Since 1990 he has been employed by the Union continuously. During this time he has held appointed industrial staff positions. He is currently the Union's training officer which is a position he has held since 2005. From 1979 until 1990 he was a 'Full Member' of the Union. From 1990 to 1992 he was an 'Appointed Member' and from 1992 to 1998 he was an 'Associate Member'. In 1998 he again became a 'Full Member' as a result of a change to the rules of the Union.
- 13 In Mr Mullen's witness statement he set out the history of an alteration to the rules of the Union in 1998 which led to industrial officers employed by the Union being entitled to obtain full membership. In 1998 r 4(a)(vii) was made. Rule 4(a)(vii) states:
- The State School Teachers' Union of W.A. (Incorporated) shall consist of an unlimited number of persons employed or usually employed in the following categories:-
- (a) **FULL MEMBERS:**
 - ...
 - (vii) Any employee of the SSTUWA (Inc) provided that such persons are not eligible for membership of the Australian Municipal, Administrative, Clerical and Services Union of Employees, W.A., Clerical and Administrative Branch.
- 14 Mr Mullen pointed out that the new r 4(a)(vii) replaced the old r 5(g) which applied to Union members employed by the Union. Rule 5(g) stated:
- (g) Appointed members shall be entitled to all rights, privileges and benefits of membership of the Union, except
 - (i) the right to attend State Council as a delegate, and
 - (ii) the right to stand for office.
- 15 Mr Mullen says that this rule change was achieved after years of struggle by members of the Union and staff of the Union to have the rights of industrial staff employees restored as Full Members of the Union.
- 16 Since the time Mr Mullen has been a Full Member of the Union he has nominated for and been elected to various Union Committees, including Psychology Services, Editorial, UnionsWA/Trades and Labour Council as well as State Council. He also testified that other industrial staff employees of the Union have also nominated for and were elected to State Council since

1998. In particular, in 1999 Matt Farrell, who was an industrial advocate employed by the Union, was elected as a State Council delegate for the Perth District. He attended and participated fully in State Council meetings in June and November of that year. Mr Mullen also said there was another employee of the Union who participated fully as a State Council delegate without objection. In 2006, Lydia Cavallaro was elected as a State Council delegate for the Fremantle district. At that time she was employed as a teacher by the Department of Education and Training but was subsequently employed by the Union as an Organiser/Field Officer for three months from October to December 2006. Whilst employed by the Union she attended and participated fully in State Council as an elected delegate in November 2006.

- 17 Attached to Mr Mullen's witness statement are documents marked TM4, TM5 and TM 6. TM4 records that in 2003, four employees of the Union were members of Union Committees and eight employees were delegates to UnionsWA Council. TM5 records that in 2004, seven employees were members of Union Committees, 10 employees were Union delegates to UnionsWA Council and two employees were proxy delegates to UnionsWA Council. TM6 records that in 2007, seven employees were members of Union Committees and nine employees were delegates to UnionsWA Council.
- 18 In late January 2007, nominations were called for various Union Committees, namely Aboriginal Education Committee, B-Legits Committee, Country Matters Working Party Committee, International Committee, Psychology Services Committee and Women's Committee. Seven employee members nominated and were elected to those committees. Mr Mullen says that no objections were lodged following the declaration of the results by the Returning Officer in accordance with r 32(i) and (j).
- 19 In April 2007, Mr Mullen and Chris Sharpe nominated for two vacancies in State Council as delegates from the Perth District. They nominated after nominations had closed for State Council for that year because there were still vacancies for some State Council districts including the District of Perth and the Union Returning Officer had reopened nominations for these positions in accordance with r 32(m)(iv). On 1 May 2007 the Union Returning Officer declared Mr Mullen and Mr Sharpe to be duly elected as State Council delegates pursuant to r 32(j). A total of 13 delegates were elected in 2007 to represent the Perth District out of an entitlement of 15. Two delegate positions representing the Perth District remained unfilled and there were no nominations for the two alternate delegate positions from the Perth District. No objections were lodge under r 32(i) to either Mr Mullen or Mr Sharpe being elected as State Council delegates.
- 20 Prior to a meeting of the State Council on 16 and 17 June 2007, Mr Sharpe and Mr Mullen were named in the State Council agenda papers as being delegates representing the Perth District. The agenda papers were distributed to all branches and worksites about three weeks before the State Council meeting. Mr Sharpe and Mr Mullen attended the State Council on 16 and 17 June 2007 as delegates. No objection was raised during proceedings about their election or participation in the State Council. They both fully participated in that State Council meeting as delegates and the decisions of State Council were subsequently published by the Union with their participation recorded.
- 21 On 18 July 2007, Mr Sharpe and Mr Mullen received a generic letter addressed to all State Councillors signed by the then President of the Union, Mike Keely, Senior Vice President Anne Gisborne and Mr Kelly, the General Secretary. In the letter all Councillors were thanked for their participation in the June 2007 State Council.
- 22 Shortly after receipt of that letter the Executive deliberated on the issue whether the applicants were entitled to hold the office as delegate whilst employed by the Union. At that time the applicants were unaware that the issue was being considered by the Executive. At a meeting of the Executive on 3 and 4 August 2007 the Executive received a report which was titled 'Union Employees as Delegates to State Council'. The report stated as follows:

Background

1. Members of Executive will recall that, at the most recent meeting of State Council, two members of the union who are also members of the union's industrial staff, participated as district delegates to Council.
2. Questions have arisen as to the validity of those staff members serving the union in both capacities at the same time. Legal advice has been sought.

Advice

3. The advice that has been received concludes that the holding of an elected office in the union is incompatible with continuing service as an employee of the union.
4. This conclusion arises from rule 25(f), which states

Any employee of the SSTUWA who is elected to an office of the Union shall resign their employment with the Union by no later than the day that that person commences his or her term of office.
5. We are advised that the effect of this rule is that it is permissible for a member of staff to nominate for election, and it is valid for a member of staff to be declared elected while remaining an employee. However, if the employee has not resigned such employment before commencing his or her term of office, then as soon as that term of office commences, the person concerned ceases to be eligible to hold that office.

The rule does not affect the employment relationship. In other words, the election to office as a district delegate to Council does not, we are advised, operate to 'automatically' (or otherwise) terminate the employment relationship.
6. State Council has a power to dismiss from office any person elected to an office within the Union who has ceased according to the rules of the Union to be eligible to hold the office. That power comes from rule 23(b)(iv). We are advised that this power affords the appropriate remedy under the rules to deal with the present circumstance.
7. Executive has a general authority under the rules to exercise State Council's powers (with some exceptions, none of which are presently relevant). Executive's power in that regard comes from rules 24(a) and 24(d).

8. It follows that Executive has a power to dismiss from office any person elected to an office within the Union who has ceased according to the rules of the Union to be eligible to hold the office.

Correspondence

9. I have written to the two members concerned. Copies of those letters are attached to this report. In summary, I have drawn their attention to the issues discussed above, and informed them that I intended to raise the matter at Executive. The members were invited to provide a written submission that could be considered by Executive at the same time as it received this report.
10. *[say whether any response received, and if so, attach copy/copies]*

Options

11. There appear to be three options available to Executive:
- (A) Resolve to dismiss the two members concerned from their offices as district delegates to State Council.
- (B) Refer the matter to the next meeting of State Council for State Council to determine.
- (C) Direct that draft rule changes be prepared which would authorise the simultaneous holding of
- i. an elected office in the union (or at least, the office of district delegate to State Council); and
 - ii. a position of employment with the union.

Recommendation

12. Option (A) is recommended to Executive, and the following resolution is offered for consideration:

That Executive

- (a) *notes that Chris Sharpe and Tony Mullen did not resign from their employment with the union before the commencement of their terms of office as district delegates to State Council;*
 - (b) *finds that under the rules of the union the failure to so resign renders Chris Sharpe and Tony Mullen ineligible to hold office as district delegates to State Council;*
 - (c) *hereby dismisses Chris Sharpe from office as a district delegate to State Council;*
 - (d) *hereby dismisses Tony Mullen from office as a district delegate to State Council; and*
 - (e) *directs the Union President to report this resolution to the next meeting of State Council.*
- 23 On 8 August 2007, four days after the Executive meeting on 3 and 4 August 2007, the President of the Union, Mr Keely delivered letters to Mr Sharpe and Mr Mullen raising this issue. The letters were dated 31 July 2007. Each letter stated as follows:

Re: Eligibility to hold office as delegate to State Council

I note that, in the most recent district elections for the office of delegates to State Council, you nominated for and were declared elected to the office of delegate to State Council for the Perth district. At all relevant times, you have been and remain an employee of the Union.

The position of delegate to State Council is an "office" of the Union within the meaning of rule 25(f). By operation of that rule, you were required to resign from your employment with the Union before your term of office as State Council delegate commenced. You did not tender your resignation before your term commenced.

I have received advice to the effect that, in circumstances where rule 25(f) applies and you have not resigned from your employment, you ceased to be eligible to hold office as a State Council delegate from the day on which your term commenced.

State Council is empowered to dismiss from office any person who has ceased to be eligible to remain in that office under the rules of the Union. See rule 23(b)(iv). Executive is entitled to exercise that power, between meetings of State Council.

Please note that I intend to report the above circumstances to Executive at its meeting on 14 September 2007. Executive may, in its absolute discretion, resolve to dismiss you from your position as delegate to State Council pursuant to the powers noted above.

If you wish to make any submission in relation to the above matters which you would wish to have Executive take into account, please let me have those submissions prior to Executive by Friday 31st August 2007.

- 24 After the applicants received the letter they requested a copy of report provided to the Executive which dealt with this matter. A copy of the report was provided to them on 31 August 2007.

- 25 Both Mr Mullen and Mr Sharpe responded to the letters dated 31 July 2007 on 5 September 2007. In each letter they stated:

I am in receipt of your letter dated 31 July 2007, which you handed to me on 6 August, and a copy of the report you presented to the SSTUWA Executive titled 'Union Employees as Delegates to State Council' which you gave to me on 31 August 2007.

I am not, however, in receipt of a copy of the legal advice from Slater and Gordon commissioned by the SSTUWA, which I requested from you on 31 August 2007.

I note that the report refers to three options available to Executive and that you are intending to recommend Option A.

This is premised on Rule 25 and in particular Rule 25(f). Rule 25 relates to 'Officers' and defines these as the President of the Union, Senior Vice President, Vice President, General Secretary and ordinary members of Executive, including an Aboriginal & Torres Strait Islander representative. Rule 25(f) refers and applies solely to these Officers.

As such it is my view that this rule does not apply to me or my situation as a State Council delegate. Rather, Rule 25(f) applies to those Officers and Executive members specifically referred to in Rule 25 and as such requires those Officers and Executive members, upon their election, to resign from their employment with the Union prior to the commencement of their term of office.

It has been the practice of the SSTUWA in recent years when employees of the Union have been elected as State Council delegates for them to maintain their employment with the Union and be accredited as elected State Council delegates.

Given that there is clearly a dispute about the eligibility of Union employees to be State Council delegates and the interpretation of Rule 25, and that Rule 12 proposes that such disputes are referred to a Dispute Resolution Committee, I suggest this is the proper course of action in this circumstance. Under the provisions of Rule 12(a)(ii) I request that a Dispute Resolution Committee be convened to consider this matter and that Rule 11 be applied in respect to hearing the dispute.

In the event that you discuss this matter further with Executive I will be pleased to make a more detailed submission for Executive's consideration.

26 The matter was not referred to a Dispute Resolution Committee. At the next meeting of the Union Executive on 14 September 2007, the Executive passed the following resolution:

1. That the President report.
2. That the report be received.
3. That Executive
 - (a) notes that Chris Sharpe and Tony Mullen did not resign from their employment with the Union before the commencement of their terms of office as district delegates to State Council.
 - (b) find that under the rules of the Union that failure to so resign renders Chris Sharpe and Tony Mullen ineligible to hold office as district delegates to State Council.
 - (c) hereby dismisses Chris Sharpe from office as a district delegate to State Council.
 - (d) hereby dismisses Tony Mullen from office as a district delegate to State Council.
 - (e) directs the Union President to report this resolution to the next meeting of State Council.

27 The minutes of the Union Executive of 14 September 2007 record that debate and decisions on this issue were taken in camera.

28 Despite the fact that the Executive of the Union dismissed the applicants from office as district delegates to State Council in September 2007, three weeks prior to a State Council meeting planned for 17 and 18 November 2007, the Union distributed agenda papers to all branches and worksites which listed the names of the applicants as delegates for the Perth District.

29 The applicants were not informed of the decision of Executive until just before the meeting of State Council. On 16 November 2007, Mr Keely wrote letters to Mr Sharpe and Mr Mullen in which they were informed of the decision of Executive made on 14 September 2007. The letter also stated that they would not be recognised as State Council delegates at the State Council meeting on 17 and 18 November 2007.

30 Notwithstanding advice by Mr Keely, both Mr Sharpe and Mr Mullen registered as delegates to State Council on 17 November 2007 and took their places at the table with other delegates from the Perth District.

31 The dismissal of the applicants as delegates was dealt with as the second item of business. Following debate the State Council carried the following resolutions:

1. That a senior officer report.
2. That the report be received.
3. That the Executive decision be endorsed.

32 Mr Mullen gave evidence that they were not given an opportunity to address State Council about the issue before the matter was voted on. However, Mr Sharpe did address the State Council after the resolution was passed and thereafter Mr Sharpe and Mr Mullen took no further part in the proceedings of State Council as delegates.

33 The applicants contend that r 25 which provides that an employee of the Union is required to resign if they are elected to an office, only applies to an office of the Union that are specifically named in r 25, that is the offices that comprise the Union Executive, being the Union President, Senior Vice President, Vice President, ordinary Executive members, an Aboriginal or Torres Strait Islander representative and the General Secretary.

34 Mr Mullen raised a number of occasions since 1998 when the applicants say r 25(f) and r 25(g) have been invoked. In 1998 Mr Kelly, the present Union General Secretary, was employed as an Organiser by the Union. He relinquished his employment with the Union upon being elected as General Secretary at the beginning of 1999 as he was required to do so pursuant to r 25(f). There have been two occasions when r 25(g) has been properly invoked. In about 2004, Trevor Vaughan who was an elected Executive Officer of the Union was appointed to a position as an employee of the Union. He resigned his elected

position as an Officer of the Executive upon taking up employment. Sometime in 2007, Bronwyn Croghan who was an elected officer of the Executive was appointed to a position as an employee of the Union and she too resigned her elected position as an officer of the Executive upon taking up her employment.

- 35 Mr Mullen testified that when he participated in the State Council as a delegate in 2007 he participated in debates and moved a motion on the second day which he says would assist management in putting a view across to the members of State Council. He also pointed out that his dismissal as a delegate, created an extraordinary vacancy in the Perth District but no steps were taken to replace him.
- 36 When cross-examined Mr Mullen was asked to explain why he did not bring an application to the Commission immediately after he was dismissed as a delegate in November 2007. In response he said that in 2008 there was a major industrial campaign run by the Union which meant that they did not have any energy to take up the issue until 2009.
- 37 Mr Matt Farrell gave evidence on behalf of the applicants. He was a member of the Union from 1968 until his retirement in 2004. He is currently a member of the SSTUWA's Retired Teachers' Association. From 1996 until 2004 he was employed by the Union as an industrial advocate. Whilst employed he was a Full Member of the Union except for the period between 1996 and 1998 when he was an associate member. In 1999 he nominated for election as a delegate to State Council to represent the district of Perth. No objections were lodged in respect of his candidature and he was notified by the Union's Returning Officer that he had been duly elected. He participated fully in State Council meetings as a delegate without restriction in June 1999 and November 1999.
- 38 Mr Geoffrey Davis also gave evidence on behalf of the applicants. He has been the Returning Officer of the Union since 1999. Mr Davis conducts all internal elections in the Union including the annual election of delegates to State Council of the Union. He is a Life Member of the Union. He first joined the Union in February 1954 and served for a long period in various Union positions. He has held the positions of Branch Officer, Executive Member, delegate to conferences of the Australian Teachers' Federation and has represented the Union on such bodies as the Public Examinations Board of the University of WA and the Board of Secondary Education.
- 39 Mr Davis testified that nominations for delegates to State Council are called at the beginning of the school year through advertisements in the Union magazine, *The Western Teacher*. Nominations are made by the completion of a nomination form requiring a proposer and seconder as well as details of the nominee. All of whom must be from the same district. Nomination forms are checked to ensure that the nominee, the proposer and seconder are all from the appropriate district and are all financial members of the Union.
- 40 In April 2007, Mr Davis received nominations from Mr Mullen and Mr Sharpe to be delegates from the Perth District. He checked their nomination forms and found that they were Full Members of the Union and their proposers and seconders were all financial. He satisfied himself that the Union rules had been properly followed in respect to the election process and there had been no objections. He then declared Mr Mullen and Mr Sharpe duly elected as State Council delegates. Following publication of a list of delegates to State Council he met with Ms Anne Gisborne, the Acting President of the Union and the General Secretary, Mr Kelly and was asked to explain why he had accepted the nominations of Mr Mullen and Mr Sharpe. He explained that, in his view, r 5 entitled Mr Mullen and Mr Sharpe to be elected as they were Full Members of the Union. He says his explanation appeared to be accepted.
- 41 Some weeks before the November 2007 State Council meeting Mr Davis was advised by the President, Mr Michael Keely that the Union had had legal advice that Mr Mullen and Mr Sharpe were not eligible under r 25(f) to be delegates to State Council and that the Executive had decided to move a motion at the November Council meeting to remove them from their positions of delegates. When the matter came before the State Council in November 2007 Mr Davis explained his actions as Returning Officer in accepting the nominations.

The Intervener's Submissions

- 42 Senior Counsel on behalf of the intervener, Mr R C Kenzie QC points out that the central point in this case concerns the scope of r 25(f) of the Union rules which provides:
- Any employee of the SSTUWA who is elected to an office of the Union shall resign their employment with the Union by no later than the day that that person commences his or her term of office.
- 43 The intervener contends that at the time the Executive and State Council made the resolutions in question Mr Mullen and Mr Sharpe held the 'office' of delegate to State Council of the Union. The intervener also points out it is not disputed by the applicants that at all material times they were employees of the Union who had not resigned their employment by the day that they assumed the office of delegate to State Council.
- 44 The intervener says that this proceeding is of historical note. They say that the applicants did not have the energy to take this on in 2007. Consequently the application is moot. The intervener points out that pursuant to r 23(a)(xiii) the election of delegates to State Council is conducted annually. Accordingly, the issue raised by the applicants concerning the holding of an office is in relation to a term that has long since expired. In relation to the applicants' claim that they were denied natural justice, the intervener points out no remedy can be provided to them, even if their term of office was truncated by the dismissal, as any right to hold office has long since expired. The intervener also contends that in the absence of any suggestion that there is anyone currently purporting to occupy both the position of delegate to State Council and hold employment within their Union, the issues raised by the applicants are theoretical only and moot.
- 45 In addition they point out orders which are directed to the rectification of asserted historical breaches of rules which are not directed to secure the performance of an existing obligation are beyond the purview of s 66: *Stacey v Civil Service Association of Western Australia (Inc)* (2007) 87 WAIG 1229 [273] - [274], [291], [295] - [300], [302] - [303].

- 46 Consequently the intervener says that pursuant to s 27 of the Act the Commission should exercise its discretion to refrain from further determining this matter on grounds that further proceedings are not necessary or desirable in the public interest as the question before the Commission in this matter is hypothetical. The intervener says that for these reasons it is not appropriate to make an order that the decisions of the Union Executive and State Council be rescinded. However, it is conceded that if the Commission is of the view that the application should not be dismissed and if there is a finding made in favour of the applicants, then it would be open to the Commission to make a declaration declaring the true interpretation of r 25(f) where the Commission was satisfied that there was a need to do that for the purposes of resolving an active conflict in the organisation: *Stacey* [273] - [274].
- 47 The intervener points out that r 4(a) is a rule about acquiring membership of the Union. Pursuant to r 4(a)(vi) if the applicants resign whilst they are employees of the Union they would still be members of the Union because they would be a person elected to an office in the Union.
- 48 The central issue in this matter is what is encompassed by the prohibition in r 25(f) by the use of the word 'office'. It appears to be suggested by the applicants that there is some relation between r 25(f) and the nominated officers who appear specifically in r 25(a)(i). In response the intervener says it is manifest that r 25 is designed to embrace persons holding office other than those identified by r 25(a)(i). The provision contemplates other people who are not in those positions. In particular r 25(f) also deals with the aspects of the 'office' of General Secretary. They also say there is nothing within r 25(f) that confines its operation to the particular offices identified in r 25(a)(i). It would be paradoxical if r 25(f) covered only those offices identified in r 25(a)(i) and not the position of General Secretary. They also say that where the drafters had intended an aspect of r 25 to be confined in its operation to members of the Executive, this has been made clear (see, for example, r 25(b) which is specifically confined to the position of 'a member of the Executive'). Rule 25(b) stands in contrast in its operation to r 25(f).
- 49 It is submitted that it is clear that the term 'office' used in r 25(f) should be applied more broadly than the applicants contend and should be considered in the context of the rules as a whole. It is at least broad enough to embrace the position of any person who is elected as a delegate to State Council. There are many provisions within the rules that identify persons not included in r 25(a)(i) who are regarded as the holders of an 'office' – these include r 23(a)(xv) which specifically identifies 'the office of delegates to State Council'. This sub-rule is part of r 23 – State Council which, inter alia:
- (a) constitutes the State Council as 'the governing body of the Union' and 'the supreme decision-making authority of the Union' subject to membership referendum;
 - (b) specifically provides that State Council consists of designated positions and delegates elected from each District, in accordance with the provision of the rules; and
 - (c) constitutes State Council as the body capable of making, amending or rescinding the rules and determining such other fundamental matters identified within r 23(b).
- 50 In construing r 25(f) the Commission should look at the way in which the rules as a composite whole use the term "office". In particular r 23(a)(xv) refers to the office of a delegate. Rule 23(a)(xv) provides:
- In the event of a casual or extraordinary vacancy arising in the office of delegate to State Council, the casual vacancy shall be filled by an election in as far as practicable the same mode as is prescribed by these rules for the election of that State Council delegate and any person so elected shall hold office for the unexpired portion of the term of the State Council delegate he or she is elected to replace.
- 51 The intervener contends that as the rules specifically identify in their text the position of delegate of State Council as an 'office', it is also important to have regard to the fact that State Council is the supreme decision-making body of the Union and it makes, and/or is capable of making all of the big decisions for the Union including decisions which obviously have the potential to come into conflict with the interests of employees of the Union. The rules also specifically provide that members of the Council be elected from the District in accordance with the rules that apply to the election of offices. Consequently it follows that the members of Council are elected to an 'office' pursuant to the provisions of the rules which provide for an election to office.
- 52 They also point out that in identifying the office of delegate to State Council in r 25(a)(xv), this is contrary to the process for taking up a position on the sub-committees identified in the applicants' evidence. For example, the sub-committees which relate to the Trades and Labor Council of WA, are positions not mandated to be elected under the rules. The intervener says that it is clear that r 25 is not confined in its operation to any particular office but should be construed to mean if you are elected to an office you have to give up your position as an employee. They say that r 25 is textually designed to address the potential for conflict which exists in relation to delegates to State Council just as much as it does to any position in the Executive because decisions that can be made by State Council are as fundamental as any decision that can be made by the Executive.
- 53 The interveners say that the definition of 'office' in s 7(1) of the Act is not relevantly controlling in this matter. Section 7(1) of the Act defines 'office' in relation to an organisation as meaning, inter alia:
- (a) the office of a member of the committee of management of the organisation;
 - ...
 - (d) an office within the organisation for the filling of which an election is conducted within the organisation; and
 - ...
- but does not include the office of any person who is an employee of the organisation and who does not have a vote on the committee of management of the organisation;

- 54 Whilst the intervener acknowledges that in *Dornan v State School Teachers Union of WA (Inc)* (1991) 72 WAIG 998, Sharkey P approached the matter before the Commission on the basis that the rules of the Union should not be read to conflict with the meaning of 'office' in s 7 of the Act, it is clear that the rules must be given their full effect according to their terms.
- 55 The intervener says that you should not read the definition of 'office' into the rules of an organisation like r 25(f), as to do so would require every reference to the word 'office' in an organisation's rules to read as referring only to an 'office' as defined in s 7 of the Act. There are many Federal and State decisions that demonstrate that the notion of what is an 'office' within an organisation is not straightforward. Nor is an issue that is able to be addressed simply by identification of the title of an office or indeed whether the office is one that requires the holding of an election. In *Landeryou v Taylor* (1969) 15 FLR 147 (154-157) (applied in *The Australian Workers' Union, West Australian Branch, Industrial Union of Workers v BHP Iron Ore Limited* [2001] WAIRC 3420; (2001) 81 WAIG 2633.[20] and *Burswood Resort (Management) Limited v Federated Liquor and Allied Industries Employees' Union of Australia, West Australian Branch, Union of Workers* (1999) 80 WAIG 308), the Federal Court made it plain that the definition of an 'office' or an 'officer' in a statute did not assist in determining whether a holder of the particular position in an organisation was the holder of an 'office'. The task of a court of a tribunal is to construe the rules of the organisation and that the statutory provisions must be read in light of the ordinary meaning of the word 'office'. The mere holding of an election is not an absolute test, the position must carry with it some administrative or executive duties or some substantial degree of responsibility: *Landeryou* at 154. Whether a person can be so described as an officer or a holder of an office is dependent on the duties and responsibilities of the position held: see *Australian Workers' Union, West Australian Branch, Industrial Union of Workers* [20] and the cases therein.
- 56 In this matter the rules specifically identify that a delegate to State Council is the holder of an office (r 23(a)(xv)). The rules are to be considered in context and the reference in a rule such as r 25(f) to an 'office' is to be read in a manner consistent with the entire rules of the Union, including r 23(a)(xv). Similarly, the concept of 'office' in the rules plainly applies to positions other than those identified in r 25: see r 20(c), r 32(a)(ii) referring to 'any office to be filled by election', r 32(e)(vi) and r 32(k)(ii). Rules 23(a)(xv) and 25(f) are to be read in context and consistently. They are not to be read on the basis that the concept of 'office' is different as between the two sub-rules. If the draftsman has determined that, for the purposes of the rule, a delegate to State Council is identified as the holder of an office, r 25(f) is not to be approached on the basis that the word 'office' is artificially to be determined simply by reference to its statutory meaning.
- 57 Consequently the intervener argues that in the face of r 23(a)(xv) the question of whether a delegate to State Council is the holder of an 'office' within the meaning of r 25(f) is not dependent on a finding that the definition of 'office' in s 7 of the Act is attracted. In particular, it is not dependent on a determination that a delegate to State Council is a 'member of the committee of management of the organisation' within the meaning of the definition of subparagraph (a) of the definition of 'office' in s 7(1). It may be noted that a delegate to State Council is a holder of an office within the organisation 'for the filling of which an election is conducted within the organisation'. The question of whether the exclusion within s 7 of the Act providing that the definition of 'office' does not include the office of any person who is an employee of the organisation and who does not have a vote on the committee of management of the organisation, is not in point.
- 58 The intervener says their submissions are consistent with the decision of the Full Bench in *the 1998 Rule Change Case*. In a dissenting judgment, Sharkey P specifically construed r 25 (which was then r 26) as requiring a person elected as a delegate and a member of State Council to resign. President Sharkey set out the history of the two previous applications to alter the rules of the applicant organisation to allow employees of the Union to be eligible for membership, which were *the 1993 Rule Change Case* and *the 1994 Rule Change Case*. Sharkey P had regard to the concerns raised about conflicts of interest in *the 1993 Rule Change Case*. In particular he said (1126):

In the first case, the Full Bench observed that it would be contrary to the democratic control of the applicant organisation by its members to permit their employees to be eligible for membership (per Sharkey P at page 1475). The Full Bench also observed that the independence of the union's Executive would be potentially compromised by persons attempting to be both master and servant with the resultant legal and operating difficulties (per Fielding C (as he then was) at page 1476).

- 59 His Honour, Sharkey P then went on to observe that even if he was to allow the change in rules that (1127):
- If rule 4 is authorised to be altered in terms of the application herein, then an employee will be able to hold office and will be able to be an officer if elected as a delegate and a member of State Council, the governing body of the applicant organisation, provided that he/she resigns if elected (see rule 26).
- 60 The intervener contends there is nothing to suggest that the majority considered that Sharkey P's construction of the rule was erroneous. The intervener argues that Fielding SC (with whom Parks C agreed), confined his comments about the effect of r 26(f) (now r 25(f)) to the potential for conflict involving the person who was both an employee and a member of the management committee of the Union and that it is open to draw this conclusion from the opening paragraph from Fielding SC's reasons for decision in which he said:

I have had the advantage of reading in draft form the reasons for decision prepared by the President in this matter. The nature of the application and the supporting arguments and counter-arguments are set out in those reasons. No useful purpose is to be gained from repeating them again.

Not without some diffidence I have come to the view that the application should, on this occasion, be granted in its amended terms. I confess that there is much to be said for the arguments advanced by the President for rejecting the application. In particular, I consider it important that a person should not be both an employee and a member of the management committee of the union. The potential for conflict of interest in such circumstances is obvious. In this respect the formula adopted in the membership rule of the Civil Service Association approved by the Full Bench in *The Civil Service Association of Western Australia v The Federated Clerks' Union of Australia, Industrial Union of Workers, WA Branch* (1971) 71 WAIG 1780 has much to commend it.

However, in this case if the application is granted in its amended form, the rules of the Applicant will operate in much the same way as do those of the Civil Service Association and prevent a member from being both an employee and an executive officer of the union. Sub-rules 26(f) and 26(g) of the Applicant's rules require an employee to resign no later than the date on which he or she takes up office as a member of the executive committee and vice versa. Thus, the position is unlikely to arise where there is a conflict of interest of the kind which the Full Bench has said on a number of occasions, most notably in *Re an application by the State School Teacher's Union of WA (Inc)* (1993) 73 WAIG 1471, is undesirable (1127).

- 61 The intervener says there is nothing in Fielding SC's judgment to suggest that he was expressing a view contrary to Sharkey P about the effect of r 26(f) and r 26(g) (now r 25(f) and r 25(g)). What Fielding SC was saying was that the rule change can be made because there is no problem with conflict. One of the alterations to the rules that was requested in that matter was the deletion of r 5(g) which applied to employees of the Union who were at that time Appointed Members. Rule 5(g) provided: 'Appointed Members shall be entitled to all rights, privileges and benefits of membership of this Union, except (i) the right to attend State Council as a delegate, and (ii) the right to stand for office.' This provision was deleted in 1998 by the decision of the majority in *the 1998 Rule Change Case*. The impact of the deletion of that provision is that the right to stand for office was given but no right to attend State Council was provided by the removal of r 5(g) because of the command in r 25(f) that requires a person who is elected to an office to resign their employment with the Union.
- 62 The intervener says that it is important to contrast the effect of r 25(f) and r 25(g). In contrast to r 25(g), r 25(f) is constituted as a command and does not stipulate the consequences of a failure to comply. Rule 25(g) makes it clear that, if an officer of the Union is appointed as an employee, they will cease to hold their position on and from the date of commencement of employment. Obviously, r 25(f) is not to be read as impacting on employment in the event of an election to office. Both provisions are part of a scheme designed to avoid the incompatibility of holding office with employment. The provisions introduce notions designed to deal with incompatibility of a nature seen in cases such as *Egan v Maher (No 2)* (1978) 35 FLR 252, 258, 260, 262, - 264; *Mellor v Horn* (1988) 25 IR 157, 160 -161 and *Johnson v Beitseen* (1989) FCA 80 [44]-[46].
- 63 In the event of a refusal to resign by an officer who is an employee, the effect of r 25(f) is that the holding of the office is impliedly terminated ipso facto because the rules say that the existence of employment and the holding of an office is incompatible. Alternatively, the intervener contends the person holding the office is rendered ineligible to continue to hold the office, opening the way for the Executive or State Council to make a decision to that effect. The intervener says that it does not matter which construction is accepted, if at the end of the day the Executive acts to dismiss the person in question from office. It is said that there can not be any doubt that the Executive was empowered to act pursuant to r 23(b)(iv), as the Executive has power to dismiss from office any person elected to an office within the Union who has ceased according to the rules of the Union to be eligible to hold office.
- 64 The intervener also contends that the applicants' complaint that they were denied procedural fairness cannot be made out. The applicants complain that they were not able to participate in the deliberations of Executive at the meeting of Executive on 3 and 4 August 2007. The intervener relevantly points out that no decision was made in relation to the termination of the holding of office by either applicant at that meeting. The applicants were provided with a letter addressing the issue to the Executive and afforded an opportunity to advance submissions as to why they did not fall foul of r 25(f) prior to the Executive making a decision to dismiss them from office. The applicants clearly availed themselves that opportunity and made written submissions.
- 65 The applicants also complain that the debate and the decision of the Executive was taken in camera so that the applicants were unable to participate. The applicants were, however, not members of the Executive and in circumstances where they were invited to provide written submissions in relation to that matter and did so, there can be no suggestion that procedural fairness was lacking.
- 66 As to the State Council's endorsement in November 2007 of the decision to dismiss, the evidence of Mr Mullen establishes that the issue was debated by State Council and an opportunity was given for State Council to be addressed by the applicants in relation to the issue. Mr Sharpe availed himself of this opportunity but there is no evidence that Mr Mullen was denied such an opportunity.
- 67 The fact that the Union did not accede to request to have the matter dealt with by a dispute resolution committee is entirely irrelevant. The question was one of compliance with the rules. An organisation cannot be called to account for taking action required by its rules on the basis that some other course of action might be considered appropriate.

The Applicants' Submissions

(a) The Applicants' Oral Submissions

- 68 At the conclusion of the evidence both applicants made oral submissions in this matter. Mr Mullen on behalf of the applicants made an opening submission in which he addressed a number of rules of the Union which the applicants say are of some importance in interpreting r 25(f) of the Union's rules. The applicants contend that r 3(a) is arguably is the most important objective which states that it is an object of the Union to watch over and protect the interests of its members without reservation or exclusion.
- 69 Mr Mullen stated without objection that the Union is made up of approximately 14,500 members and those members form branches. The branches are usually elected in February of each year and at any one time there can be up to 700 branches within the Union. Each branch usually consists of a Convener, Secretary, Treasurer, Union Representative, Women's Contact Officer, other Deputies and other positions. Each Branch is based at a worksite. The Branches are divided into geographical districts and each Branch has one delegate to their local District Council. District Councils meet twice a year in terms 1 and 3. In 2009 there were 16 District Councils. Members of Executive are elected by the entire membership for a two-year term.

Elections take place in about October. Any financial member can nominate and the Executive consists of three senior officers, 14 ordinary members and one Aboriginal and Torres Strait Islander member, who is elected from amongst Aboriginal and Torres Strait Islander members. Nominations open in February each year for State Council. Any member can nominate and elections are conducted within the districts only. Delegates are elected within each district to State Council. In 2009 the State Council consisted of approximately 138 delegates and a total of 19 officers. The Executive consists of 18 officers which consists of the three senior officers, 14 ordinary members and one Aboriginal and Torres Strait Islander member. In addition, there is the General Secretary who is not a member of the Executive. The position of General Secretary is an elected position. The holder of that office is elected for a four-year period. The Executive constitutes the committee of management within the meaning of the definition of 'office' in s 7 of the Act. The Executive is elected across the membership by a process involving the Australian Electoral Commission, whereas any other election for any office in the Union is conducted by the Union's Returning Officer.

- 70 The applicants point out that they are enrolled as Full Members of the Union under r 4(a)(vii). Pursuant to r 4(a)(vii) any employee of the Union is entitled to enrol as a Full Member provided they are not eligible for membership of the Australian Municipal, Administrative, Clerical and Services Union of Employees, WA, Clerical and Administrative Branch. The effect of this rule is that the industrial employees of the Union as opposed to clerical and administrative employees are eligible to be Full Members of the Union. Mr Mullen also stated without objection that there are currently 19 industrial employees of the Union. In 1998 there was a change in the rules to enable industrial employees of the Union to enrol as Full Members of the Union. Prior to this rule change, industrial employees were eligible to enrol as Appointed Members. Since 1998 when the rule change came into effect, industrial employees have as Full Members paid the same scale of membership fees as other Full Members. The applicants argue because r 5(a) provides that Full Members shall be entitled to all rights, privileges and benefits of membership of the Union, the effect of the decisions of the Executive in September 2007 and State Council in November 2007 to dismiss the applicants as delegates to State Council is to deny all rights, privileges and benefits of membership of the Union within the meaning of r 5(a).
- 71 Rule 11 – Breach of Rules provides for the procedure for breaches of rules and creates offences with which a member may be charged. Pursuant to r 11(a)(ii), it is an offence if a member breaches or fails to comply with any provision of the rules. Further, under r 11(a)(v) it is an offence if a member wrongly holds out as occupying any office or position in the Union or as being entitled to represent the Union in any capacity (to which charge it shall be a defence that the member believed bona fide and on reasonable grounds that she/he was entitled to act). The applicants point out that no allegation of a breach of rules against either of them has been made in relation to their status as State Council delegates and employees.
- 72 The applicants also say that r 12 – Dispute Resolution Committee is relevant to this matter. Rule 12 establishes a Dispute Resolution Committee, whereby under r 12(a)(ii) a Dispute Resolution Committee consisting of three members is empowered to consider and to make recommendations to the Executive in relation to any dispute a member or members may have concerning the application or interpretation of any rule. The applicants point out that no Dispute Resolution Committee was convened as requested by the applicants to deal with the issue in dispute.
- 73 Both Mr Mullen and Mr Sharpe contend that they should have been given an opportunity to participate in the Executive's deliberations about their status as State Council delegates. They say that they were not afforded natural justice, as they were not allowed to participate in the deliberations. They also say that in failing to do so the Union breached its Administrative Instruction 800.33 which is titled 'Union as a Model Employer'. Administrative Instruction 800.33 provides:
- That the SSTU act as a model employer and exemplar with the SSTU management body ensuring that all staff are treated professionally, with respect and that the SSTU Code of Ethics and democratic decision making processes are acted upon, namely:
- (iii) that when decisions are being made those parties who will be affected be directly involved.
- 74 Rule 23 establishes the State Council. The applicants say that throughout r 23 the term 'delegates' is used consistently and can be distinguished as being separate from 'officers' and 'offices' of the Union. The applicants point out that r 23(a)(iii) defines the composition of State Council as the President, Senior Vice President, Vice President, Ordinary Executive Members, General Secretary and delegates elected from each district, in accordance with the provisions of r 23 and r 32 – Elections for Office. The applicants say that there is a distinction between officers who are elected members of the Executive and delegates to State Council who are elected within a district. Delegates from districts have a one-year tenure on State Council. Officers who are elected to the Executive have a two-year tenure on State Council, whilst the officer elected as General Secretary has a tenure of four years on State Council.
- 75 The applicants point out that there is no requirement in r 23 for employee members of the Union who are elected as delegates to State Council to resign their employment with the Union. This they say is in clear contrast to the provision of r 25 which deals with 'officers'. Rule 23(b)(iv) gives State Council the power to dismiss any State Council delegate who has been found guilty in accordance with the rules of the Union or who has ceased according to the rules of the Union to be eligible to hold office. The Executive in this matter found no guilt on behalf of the applicants as no allegations were made against them under r 11 and there was no Dispute Resolution Committee convened under r 12. The Executive determined that the applicants ceased to be eligible to hold office because they failed to resign from their employment with the Union. They say if they had resigned their employment with the Union they would have ceased to be eligible to be members of the Union under r 4 as they would have been unemployed and ineligible to retain their membership as they would not be officers and they would not be able to rely upon the proviso in r 4(a)(viii) which provides that:
- (viii) ... Notwithstanding the above, any person who is not registered with the relevant employer as available for work, and has not worked as a teacher for at least two years and who no longer has a contract of employment with the relevant employer shall not be eligible for membership under this subrule.

Hence they say they would have been ineligible to be delegates at State Council to represent the Perth district in 2007 if they resigned from their employment.

- 76 The applicants argue that the State Council meeting in November 2007 assumed without proper justification that it had the power to endorse the dismissal of the applicants by the Executive. The State Council acted without finding if the applicants were guilty of any substantial breach of the rules of the Union and without proving that the applicants had ceased being eligible to hold 'office' according to the rules of the Union.
- 77 The applicants point out that pursuant to r 24(a) and r 24(b) the Executive has power to control the affairs of the Union between meetings of State Council. The Executive assumed on 14 September 2007 it could exercise the power of State Council to dismiss from office any person elected to an office within the Union who have ceased according to the rules of the Union to be eligible to hold office. The minutes of that meeting indicate the decisions were made in camera. Consequently the applicants say it follows therefore no process employing natural justice was used to assist the decision-making.
- 78 The applicants made a submission that their dismissal from office constituted an irregularity in the election process. During the course of proceedings I informed the applicants that I did not see that this was a matter that could be properly raised as it is not in dispute that they were entitled to stand for and be elected as delegates to State Council.
- 79 The applicants argue that the restrictions in r 25(f) and r 25(g) are solely confined to members of the Executive and the General Secretary is supported by custom and practice in relation to employees of the Union who have been elected to the position of General Secretary or as State Council delegates. They point to the evidence given by Mr Farrell and by Mr Mullen which establishes that Mr Farrell whilst an employee of the Union was elected a delegate to State Council in 1999 and Ms Cavallaro attended State Council as a delegate in November 2006 when she was an employee of the Union. On neither of those occasions was any issue raised with those persons participating in State Council meetings as a duly elected delegate. The applicants also point to the fact that the current General Secretary who was employed as an organiser by the Union in 1998 stood for the elected position of General Secretary in January 1999 and upon being elected to office, resigned as an employee of the Union in accordance with the requirements of r 25(g) of the rules.
- 80 The applicants also make a submission that their application is supported by a number of provisions in the Act including the objects in s 6(ab) and s 6(f) of the Act. They rely upon s 26 of the Act which requires the Commission to act according to equity, good conscience, and the substantial merits of the case without regard to technicalities or legal forms and have regard for the interests of the persons immediately concerned whether directly affected or not and, where appropriate, for the interests of the community as a whole. The applicants also rely upon s 27(1)(l) and s 27(1)(v) of the Act which enable the Commission to amend applications and give directions and do all such things as are necessary or expedient for the expeditious and just hearing and determination of the matter.
- 81 The applicants say that the construction of the rules of an organisation should be construed in according to the principles discussed by Ritter AP in *Stacey* at [93]. The applicants' view of the rules of the Union is that the document is essentially evolutionary. They contend the rules have internal inconsistencies but it is notable that there is a requirement of the rules that any changes be endorsed by members. Consequently they say the rules are very much the manifestation of the wishes of the members. They say the rules should be read as they stand and are designed to provide direction in relation to regulation of discrete areas of the operation of the organisation. The applicants also point out in *Stacey* at [331] and [332] Ritter AP adopted the principle that the rules of the Union cannot be supplemented by implied terms as distinct from permitting the ascertainment of the meaning of the rules upon their true construction. Consequently the applicants argue that where rules state matters expressly that should determine the application of those rules.
- 82 The applicants say the most significant decision that the Commission must consider in this matter is *the 1998 Rule Change Case*. They say that the reasons for decision of Fielding SC with whom Parks C agreed, was the view of the majority which at the end of the day prevails over the views of Sharkey P. However the applicants say they acknowledge that the views of Sharkey P are nevertheless important and significant because he was a member of the Full Bench. Mr Sharpe who made submissions on behalf of both of the applicants in respect of this issue conceded that the principles or notion of conflict of interest or undue power and influence are matters which properly occupied the mind of the Full Bench in *the 1998 Rule Change Case*.
- 83 The applicants say that the reasons for decision of Fielding SC with whom Parks C agreed, were distinguishable to the reasons for decision given by Sharkey P. They point out at page 1127 Sharkey P made the following observation:

If rule 4 is authorised to be altered in terms of the application herein, then an employee will be able to hold office and will be able to be an officer if elected as a delegate and a member of State Council, the governing body of the applicant organisation, provided that he/she resigns if elected (see rule 26).

- 84 The applicants say that when one analyses the language used by Fielding SC in his decision he used quite different language, in particular he said that it is important that a person should not be both an employee and a member of the management committee of the Union. He did not use the words "governing body" which was the term used by Sharkey P. At pages 1127-1128 Fielding SC stated:

Not without some diffidence I have come to the view that the application should, on this occasion, be granted in its amended terms. I confess that there is much to be said for the arguments advanced by the President for rejecting the application. In particular, I consider it important that a person should not be both an employee and a member of the management committee of the union. The potential for conflict of interest in such circumstances is obvious. In this respect the formula adopted in the membership rule of the Civil Service Association approved by the Full Bench in *The Civil Service Association of Western Australia v. The Federated Clerks' Union of Australia, Industrial Union of Workers, WA Branch (1991) 71 WAIG 1780* has much to commend it. However, in this case if the application is granted in its

amended form, the rules of the Applicant will operate in much the same way as do those of the Civil Service Association and prevent a member from being both an employee and an executive officer of the union. Sub-rules 26(f) and 26(g) of the Applicant's rules require an employee to resign no later than the date on which he or she takes up office as a member of the executive committee and vice versa. Thus, the position is unlikely to arise where there is a conflict of interest of the kind which the Full Bench has said on a number of occasions, most notably in *Re an application by the State School Teacher's Union of WA (Inc) (1993) 73 WAIG 1471*, is undesirable.

- 85 The State Council is not the management committee of the Union. The State Council comprises 157 members and is a State Council. It only meets twice a year. The applicants point out that Fielding SC talks about his reservations about employees being members of the management committee of the Union and that the potential for conflict of interest in such circumstances is obvious. They say in this respect Fielding SC agreed with Sharkey P, but significantly, it must be assumed that Fielding SC's choice of words was deliberate. Senior Commissioner Fielding was concerned about a conflict of interest arising where a person was a member to the committee of management and an employee. He did not raise any issue of conflict in relation to State Council and he could have done so. He could have talked about governing bodies plural, as Sharkey P had done. The applicants point out that Fielding SC then goes on to discuss if the application is granted the rules of the Union will operate much the same way as do those of the Civil Service Association Incorporated Western Australia and prevent a member from being both an employee and an executive officer of the Union and to r 26(f) and r 26(g) will establish a prohibition on being both an employee and a member of the Executive.
- 86 The applicants say the plain interpretation of the findings made by Fielding SC is that the provisions of r 25 (which was r 26) prevent a person from being both a member of the management committee and an employee, but not a member of the governing body, the State Council. They contend r 25 is solely focussed on a prohibition on members of the Executive and the Secretary of the Union. They also say there is no need to make a reference to State Council in r 25 because there is nothing in the rule that establishes State Council prevent or limit employees being delegates to State Council in the same way that r 25 does in respect of the Executive and there is nothing in relation to any of the other rules that establish the representative bodies of the Branches, District Councils, State Councils, and Committees in relation to which all of those positions require elections which prevents employees from nominating for those positions and being elected to them.
- 87 The applicants agree with the argument put forward on behalf of the intervener that the definition of 'office' in s 7 of the Act does not have any application in this matter as that statutory provision is not consistent with the use of the word 'office' in the rules of the Union.

(b) The Applicants' Written Submissions

- 88 The applicants filed written submissions in reply to the intervener's submissions on 25 February 2010. In their written submissions they also made submissions about the effect of APPL 409 of 1994 which was an application by the Union to the Registrar to register variations to the rules of Union to create the State Council as a body and insert r 19(f) and r 19(g) (now r 25(f) and r 25(g)) into the rules. The applicants say that notwithstanding their contention that the rules of the Union should be read as a whole, r 25 only applies to specified designated 'officers' of the Union. These are the 'officers' that comprise the Union Executive, that is the President, Senior Vice President, Vice President, and Ordinary members, including an Aboriginal and Torres Strait Islander representative and the General Secretary who is not a member of the management committee, the Executive, but is specifically mentioned in r 25.
- 89 The applicants also say that r 25(f) and r 25(g) safeguard against an employee being a member of the Union's management committee, the Executive, and address a concern that was repeatedly expressed by the Full Bench on several occasions during the 1990s. Rule 25(f) is express in requiring an employee who is elected as an officer of the Executive or General Secretary to resign his or her employment with the Union and r 25(g) is express in requiring an officer of the Executive or General Secretary who is appointed as an employee to resign as officer of the Executive or General Secretary. The action required of an employee by r 25(f) in resigning his or her employment before taking up an elected officer position on the Executive or General Secretary position is mandatory and the action required of an officer of the Executive or General Secretary by r 25(g) in resigning prior to taking up employment with the Union is also mandatory.
- 90 The applicants submit that this construction is consistent with the discussion of the meaning of 'officer' in *Landeryou*. Spicer CJ observed at page 148: "True it is that the words 'office' and 'officer' are words of indefinite content, but they do, I think, indicate a position or the holder of a position which carries with it some administrative or executive duties or some substantial degree of responsibility." Dunphy and Joske JJ said at page 154: "'The word office is of indefinite content', but as the most relevant for the purposes of this case the following – 'A position or place to which certain duties are attached especially one of a more or less public character'." The applicants submit these observations are consistent with the intent and purpose of r 25 - Officers as the officers expressly referred to in r 25 have administrative and executive duties which carry substantial authority and represent the public face of the Union to members and the wider community. In contrast they say that other Union positions, such as each Branch, District Council, State Council and other Union committees and representative bodies do not carry the same weight of responsibility, authority and profile that the designated officers referred to in r 25 do.
- 91 In response to the issue raised on behalf of the intervener that there are many provisions within the rules of the Union that identify persons not included in r 25 as 'officers' and that r 23(a)(xv) uses the term 'the office of delegate to State Council', the applicants say that the term 'office of delegate to State Council' is used just once (in r 23(a)(xv)). The dominant term used in r 23(a) is 'delegate(s) to State Council' which is used seven times. In addition derivative terms such as 'State Council delegate' and 'district delegate to State Council' are also used in r 23(a). These are the terms which are consistently used in r 23(a), rather than the aberration 'office of delegate to State Council' which appears in the final and most recently added, sub-rule of r 23(a).

- 92 The term 'office' occurs at various places in the rules of the Union. Rule 32 - Elections for Office refers to the various offices of the Union for which elections are conducted internally by the Union Returning Officer and that the offices in r 32(a)(i), are listed as being its Branches (r 21), District Council (r 22), State Council (r 23) and committees and bodies that are filled for a one-year term. The applicants contend these 'offices' should be contrasted with the term 'officers' defined in and covered by the provisions of r 25 and which are elected positions for terms of between two and four years for which elections are conducted externally by the Electoral Commission Western Australia.
- 93 The applicants agree with the intervener's submission that through r 23(a)(i), that State Council is 'the governing body of the Union'. They also agree that State Council pursuant to r 23(a)(iii), consists of two categories of members, they are those that make up the Union Executive Committee and the General Secretary referred to in r 25 and delegates elected from each district referred to in r 23. Whilst employees are expressly prohibited from holding elected officer positions designated in r 25 whilst maintaining their employment, the applicants say there is no such express or implied prohibition in r 23 or in any other rule.
- 94 The applicants submit that the meaning of r 25 and the past practice of:
- (a) allowing employees to carry out the duties and functions as delegates to State Council;
 - (b) only requiring employees to resign when elected to an Executive position or the position of General Secretary; and
 - (c) requiring a person who is an Executive officer to resign from office when taking up a position as an employee;
- is consistent with the 'doctrine of incompatible offices' referred to by the intervener and considered in *Egan v Maher (No 2)*; *Mellor v Horn* and *Beitseen v Johnson* (1989) 29 IR 336, 336 - 338.
- 95 The applicants submit the doctrine of incompatible offices was addressed under r 19 in 1994 (currently r 25). That is, there is a conflict of interest between duties as an employee and duties as an Executive member. Rule 19 (currently r 25) is explicit about incompatible offices. The incompatible offices are President, Senior Vice-President, Vice-President, Ordinary Executive members, including an Aboriginal or Torres Strait Islander representative, General Secretary and employees of the Union who are eligible to be members. Should any member holding one of these 'offices' be elected or appointed to another of these 'offices', that member is required to vacate the first by resignation. That is the scope of r 25 and it is the result of careful and deliberate amendments to the rules overwhelmingly supported by Union members.
- 96 The applicants say that when the history of amendments made to the rules since 1994 is examined there is no mention in any of the proposed and actual rule changes or reasons for amendment that the position of elected delegate to State Council is incompatible with the position of an appointed employee. The applicants also make a submission without objection, that like all delegates to State Council, employee delegates to State Council attend State Council outside normal work hours and conduct their duties as delegates as unpaid volunteers. They also contend that like all delegates to State Council, employee delegates to State Council perform duties which are not incompatible with their paid work. Consequently, they say that the scope of r 25 does not extend to, nor include State Council delegates.
- 97 In relation to the submission made on behalf of the intervener that the application is of historical interest only and has no currency at the present time the applicants say that submission has been overtaken by the fact that Mr Mullen has recently nominated for election as a delegate to State Council in 2010 prior to the close of nominations on 26 February 2010. The applicants say that given that this matter raises a current controversy the Commission is required to make a determination on the true interpretation of relevant rules in this matter.
- 98 The applicants point out that the intervener's submissions make no objection to an employee nominating for an office within the Union, including Branch positions, delegates to District Council, delegates to State Council and membership of Union committees and other representative bodies, on the basis that the employee is required to resign his or her employment upon being elected. Such a requirement, the applicants submit, would be patently absurd and would be a breach of s 6(f) of the Act which has as one of its objects to encourage the democratic control of registered unions and the full participation by members of such a union in the affairs of a union.
- 99 The applicants say that the net effect of the intervener's position is that an employee who did nominate and became elected to a Branch position, or delegate to District Council, or delegate to State Council, or member of a Union committee and other representative body would have to resign his or her employment with the Union. In the event the employee was to resign, he or she would, on the face of it, no longer be eligible for membership of the Union, and would, therefore, not be eligible to take up the elected position. This proposition, the applicants say is patently not supported by the rules of the Union, save and except for the express requirement that an employee cannot be elected as an officer on the Union's management committee, (the Executive), or to the officer position of General Secretary and maintain his or her employment at the same time, and vice versa, under the provisions of r 25(f) and r 25(g).
- 100 APPL 409 of 1994 was an application by the Union to register changes to a large number of rules of the Union which were considered and endorsed by the SSTUWA Conference in 1993. The rule changes brought about major changes to the Union's democratic and decision making processes and structures; the most significant of which was the replacement of the annual conference by the bi-annual State Council.
- 101 In a document attached to APPL 409 of 1994 and titled 'The 95th Annual Conference Decisions' published in *The WA Teachers' Journal* in December 1993 the amendments to the rules were explained.
- (a) Under the title 'WHY THE CHANGE?' at page 222:

Delegates to Conference will appreciate that over the years Conference has increasingly been unable to complete its business. In 1991, for instance, Conference failed to address more than half the business on its agenda. What is more unfortunate is that most of the items not considered were branch initiated.

Clearly this does little for engendering interest at rank and file level.

There are a number of reasons why this might be the case. Not the least of these is the unwieldy size of Conference. Conference generally has about 400 delegates in attendance out of a potential 700. It meets only once a year which also makes it impossible to be as responsive from a policy position as the Union should be.

It means, in fact, that members have very little say in what actually occurs in our Union and how it should be run.

As a result, last year's Conference resolved that 1992 should see a trial of a Council structure, once in Term 2 and once in Term 3.

The Council structure to be trialled is different to previous trials. Its clear intent is to democratise the Union in both its structure and processes. If successful it will make the Union more responsive, more pro-active and, above all, more accessible to the members.

- (b) Under the title 'TRIAL STRUCTURE' the Council structure is described at page 222:

State Council will meet twice a year, rather than the current only once a year for Conference. It will also be smaller than Conference, comprising about 150 delegates.

Delegates will be district delegates. Anyone can nominate to be a delegate from their district.

- (c) Under the title 'COUNCIL STRUCTURE' on page 221:

Following on from the Council Structure report to the 1992 Conference (attached as Background Paper 1), work continued on the further development and trialling of the proposed structure. This included direct membership input to formulation of the Council Structure as articulated in the proposed new Rules 17, 18 and 19, the input being provided at both District and State Council levels.

- (d) Under the title 'STATE COUNCIL' on page 224:

5.1 That State Council consist of the Executive and elected Delegates from each district.

5.2 The Delegates to State Council be elected by and from the members in the District to which the Delegate's Branch is aligned.

102 The applicants submit that the development of the State Council structure was supported by members of the Union in the interest of facilitating and promoting the democratic processes of the Union and to provide a forum where all members were entitled to have a voice through their respective districts and branches. A number of related rule changes were endorsed to enable the intent to be reflected in practice.

103 Two rule changes endorsed with the requisite two-thirds majority and a quorum present at the 1993 Conference were also published in *The WA Teachers' Journal* in December 1993 and were in respect to r 19 titled 'Officers'. Rule 19 is now r 25. At page 127 of the document titled 'The 95th Annual Conference Decisions' it was stated:

PROPOSED AMENDMENT:

That Rule 19 – OFFICERS – be amended by the addition of a new paragraph (h) as follows:

- (h) Notwithstanding the provisions of any other rule, the persons eligible to nominate for the position of General Secretary shall be:
- (i) all financial Members, and/or
 - (ii) any employee of the SSTUWA, and /or
 - (iii) for the purposes of the first such election only, the person holding the appointed position of the General Secretary immediately prior to that election.

REASON OR [sic] AMENDMENT:

Paragraph (h) permits all financial members and employees of the SSTUWA to stand for election for the position of General Secretary and also gives the incumbent General Secretary the right to stand for election for that position.

This amendment will assist in providing the best possible field of candidates for the position of General Secretary.

104 The applicants point out that the effect of this amendment was to make the previously appointed General Secretary's position an elected position, with the first election being held in 1994 and the elected officer commencing his four-year term of office at the beginning of 1995.

105 The second change sought to r 19 was to add two new paragraphs (h) and (i) as follows:

- (h) Any employee of the SSTUWA who is elected to an office of the Union shall resign their employment with the Union by no later than the day that that person commences his or her term of office.
- (i) Any elected Officer of the SSTUWA who is appointed as an employee of the Union shall cease to hold their position of Office on and from the day that that person commences employment with the Union.

106 Under the heading 'REASON FOR AMENDMENT', at page 127-128 of the document titled 'The 95th Annual Conference Decisions' it was stated:

Executive wishes to ensure that any appointed employee who nominates for Executive office and (vice-versa) does not face a conflict of interest between their duties as an employee and their duties as an Executive member.

107 The applicants submit the intention of members of the Union in supporting the amendment to r 19 by adding paragraphs (h) and (i) was clear, namely that the Union was anxious to ensure that any conflict of interest that would likely result from employees being officers of the Executive at the same time would not be able to arise by virtue of employees not being permitted to be Executive officers and Executive officers not being permitted to be Union employees. They contend that this is consistent with the discussion by Full Benches of the Commission in respect to applications made by the Union in *the 1993 Rule Change Case* and in *the 1994 Rule Change Case* which in each matter the Union sought to amend the rules of the Union to enable Union employees to be Full Members of the Union.

108 In June 1996 the Union in *The WA Teachers' Journal* published a document titled 'CONSTITUTIONAL AMENDMENTS PASSED AT JUNE 1996 STATE COUNCIL' which stated as follows:

SC.15 Rule 4 – Membership

PROPOSED AMENDMENT:

That Rule 4 – MEMBERSHIP – be amended by the deletion of paragraph (g) and the insertion of a new paragraph (a)(vi) as follows:

- (a) (vi) Any employee of the SSTUWA (inc.) provided that such persons are not eligible for membership of the Australian Municipal, Administrative, Clerical and Services Union of Employee, W.A., Clerical and Administrative Branch.

REASONS FOR AMENDMENT:

This amendment permits employees of the SSTUWA (inc.), other than those eligible to be members of the other Union identified, to become full members.

The provision of full membership rights to employees of the SSTUWA (inc.) is believed to be a desirable Union objective. It will permit the full participation of those employees in the affairs of the Union, thereby eliminating the current restrictions that apply.

109 The Full Bench in *the 1998 Rule Change Case* removed any potential conflict of interest by inserting provisions in the rules of the Union similar to those in the rules of The Civil Service Association of Western Australia Incorporated which made it impossible for employees of the Union to be Executive officers and vice versa. The applicants also contend that the inclusion of parts (h) and (i) above in r 19 (subsequently re-numbered r 25(f) and r 25(g)) were sufficient for the majority in the Full Bench decision in *the 1998 Rule Change Case* to be satisfied that any potential conflict of interest had been successfully addressed and to approve the amendment to the rules of the Union to permit industrial employees to be eligible to be Full Members of the Union.

110 The applicants say that the intention of the changes to the rules approved by the majority of the Full Bench in 1998 was (with the exception of the restrictions set out in r 25(f) and r 25(g) which prevented employees from holding Executive office), to enable the full and equal participation of employees in the affairs of the Union. That as Full Members, employees of the Union were entitled to all rights, privileges and benefits of membership of the Union (r 5(a)).

111 The applicants in their written submission filed on 25 February 2010 also sought to provide a document signed by the General Secretary of the Union and dated 15 February 2010. The document sets out allegations in relation to an act of suspected misconduct by Mr Mullen. Having reviewed the document I am of the opinion that the matters stated therein are not relevant to this application before the Commission.

The Intervener's Further Submissions

112 The intervener filed its submissions in respect of the significance of the contents of the application made by the Union in APPL 409 of 1994 on 10 March 2009. This was the application that resulted in the insertion of parts (h) and (i) of the rule that was subsequently renumbered as r 25(f) and r 25(g).

113 The intervener accepts that extrinsic material may assist in relation to the interpretation of rules of an organisation where necessary to remove ambiguities. However, they say the authorities emphasise that great care must be taken in relation to the use of extrinsic material and that the weight which can properly be attached to it depends on its nature: *Electrical Trades Union of Australia v Waterside Workers' Federation of Australia [No 2]* (1982) 59 FLR 78 (83). The views of persons drafting an application as to the intentions of members, or the reasons why such changes were advanced are not in the same category as considered decisions of industrial tribunals as to the meaning of rules: *Electrical Trades Union of Australia* (83). The intervener contends evidence as to what the drafters of the application considered to be 'the intention of the members' in advancing an amendment to the rules, or what was published in the Union journal, are not probative and certainly not a substitute for the text of the rule considered in the context of the rules as a whole. If any significance at all is to be placed on the nature and text of APPL 409 of 1994, it is submitted that what is significant is that the relevant sub-rules were inserted as part of a complex of rules which saw the insertion of a State Council structure on a trial basis for the first time.

114 The intervener submits that the materials in question provide absolutely no basis for drawing a distinction, for the purposes of r 25(f), between members of the State Council who make up the Union Executive Committee (together with the General Secretary) and other members of State Council who are elected as delegates pursuant to r 23. All of these persons, regardless of whether they are on State Council by virtue of r 23 or r 25, are members of 'the governing body of the Union' and the supreme decision-making body of the Union.

115 They also contend that the text of the application provides absolutely no basis for a departure from an interpretation of the rules based on their text - a text which must accommodate the reference to officers in r 25(f) and the acknowledgment that a delegate to State Council is an officer as stipulated in r 23(a)(xv).

116 In response to the applicants' advice that Mr Mullen has nominated for the State Council in 2010 and that he has no intention of resigning his employment in order to participate as a delegate, the intervener says it does not resile from its submissions that in reliance on *Stacey*, s 66 is not a vehicle for adjudicating on matters which are only of historical significance within a union. The intervener also submits that, even if the applicants' new assertion as to Mr Mullen's nomination and intentions is taken into account to substantiate the proposition that the interpretation of r 25(f) is of more than historical interest, it provides absolutely no foundation for the claim for relief in respect of the rescission of decisions taken in respect of office holding that has been overtaken by subsequent elections.

Conclusion and Findings

(a) Structure of the SSTUWA

117 Pursuant to r 23 – State Council of the rules of the Union, the supreme governing body of the Union is the State Council (r 23(a)(i)). Under r 23(a)(ii) subject to any referendum of members, State Council is the supreme decision-making authority of the Union and policy directives issued by State Council are required to be adhered to by all members. State Council consists of the President, Senior Vice President, Vice President, ordinary Executive Members, General Secretary and delegates elected from each District, in accordance with the provisions of r 23 and r 32 – Elections for Office (r 23(a)(iii)). State Council is required to meet at least twice per year as determined by the Executive (r 23(a)(xiv)). The powers of State Council are set out under r 23(b) which provides as follows:

State Council shall have power to control and manage the business and affairs of the Union subject always to these Rules and without limiting the generality of this power shall have power to:

- (i) Subject to the requirements of these rules, make, amend or rescind these rules.
- (ii) Determine entrance fees and subscriptions for members and persons eligible to be members of the Union and impose levies on such members.
- (iii) Appoint or remove a qualified auditor, for any purpose for which an audit is required in connection with the accounts of the Union.
- (iv) Dismiss from office any person elected to an office within the Union who has been found guilty in accordance with the Rules of the Union of misappropriation of the funds of the Union, a substantial breach of the Rules of the Union, serious and wilful misconduct or gross neglect of duty in relation to his/her office or who has ceased according to the rules of the Union to be eligible to hold the office.
- (v) Refer any question to a referendum of members of the Union. The decision of a referendum is binding on State Council.
- (vi) Do all things necessary or convenient to the exercise of the foregoing power or any powers conferred by the rules of the Union.

118 Between meetings of State Council, the Executive exercises all powers of the State Council subject to a number of conditions. This was provided for in r 24 – Powers of Executive. Rule 24(a), r 24(b) and r 24(d) provides as follows (now r 24(a) and r 24(b)):

- (a) Subject to sub-rule (b) of this Rule the Executive shall control the affairs of the Union in accordance with this Constitution.
- (b)
 - (i) Executive shall abide by and conform to all decisions and directions of State Council.
 - (ii) That should any circumstances arise in the post-State Council period which, in the opinion of Executive, may have resulted in a State Council Decision other than that arrived at, a Referendum of the full Union membership must be held before the original State Council Decision can be varied.
- ...
- (d) Between meetings of the State Council, the management of the Union shall be vested in the Executive which shall have all the powers necessary to administer the Union including the authority to transfer funds from one Union account to another. No power to impose a levy, or determine entrance fees and subscriptions [excepting as provided in Rule 7(iv)], or expressly reserved for itself by State Council, shall be exercised by the Executive.

119 Under r 25 – Officers, the Executive is composed of the President of the Union, Senior Vice-President, Vice-President, and another number of additional members to be known as Ordinary members, as determined from time to time by State Council (r 25(a)(i)).

120 As set out in r 23, State Council is composed of a number of delegates from each District. Pursuant to r 22 – Districts/District Council, the State is divided into Districts as determined by State Council. Each District also comprises a number of Branches (r 22(a)).

121 At a level below Districts are Branches. Pursuant to r 21 – Branches, members of each worksite constitutes a Branch (r 21(a)). Each Branch has a committee.

122 Rule 4 – Membership, provides for the categories of persons who are eligible to be members of Union. Pursuant to r 4(a)(vii) employees of the Union are entitled to be members provided that they are not eligible for membership of the Australian Municipal, Administrative, Clerical and Services Union of Employees, W.A., Clerical and Administrative Branch. There are other categories of members under r 4 which are Honorary Life Members, Honorary Members, Special Category Membership, Retired Teachers Members and Associate Members. The entitlement of each of the categories of members is provided for in r 5 – Entitlements. Rule 5(a) provides in respect of Full Members that they are entitled to all rights, privileges and benefits of

membership of the Union. It is notable that r 5 expressly provides that Honorary Life Members are also entitled to all rights, privileges and benefits available to Full Members except that they shall not stand for office. Honorary Members are also entitled to the same rights and privileges as Full Members except they are not entitled to be represented at State Council or to hold Union office or to vote in elections for Union office. Special Category Members also have the same rights and privileges as Full Members except that they are not entitled to form a Branch, hold Union office, or vote at elections for a Union office. Retired Teacher Members are not eligible to stand for election to any office of the Union or to vote at such an election but shall be entitled to all other rights, privileges and benefits of membership except as otherwise provided by the rules and provided that the use of the facilities at Union headquarters shall be by decision of the Executive. In relation to Associate Members, they are not entitled to be represented at conference, nor be eligible to stand for election to an office of the Union, nor to vote at such elections, nor receive industrial assistance but shall be entitled to use the facilities at Union headquarters and have other social benefits as decided by Executive from time to time.

123 Pursuant to r 27 – Duties of President, Senior Vice-President and Vice-President, the President and Senior Vice-President are full-time paid officers of the Union.

124 It is also notable that pursuant to r 32 – Elections for Office, nominations for all offices of the Union, its Branches, delegates to District Council and State Council are required to be in writing, signed by the nominee and endorsed by two financial members proposing and seconding the nomination (r 32(a)(i)). Rule 32 also deals with the election of offices in the Branches and District Council.

(b) Is the application moot?

125 The extent of its jurisdiction and powers of the President under s 66 of the Act was reviewed and considered at length by Ritter AP in *Stacey*. In *Stacey* his Honour had regard to two cases which considered the question whether s 66 can be used to secure performance of making orders for the purpose of remedying past breaches of rules. The first was *WALEDFCU v Schmid* (1996) 76 WAIG 639. In that matter an order had been made pursuant to s 66 that the union through its general committee order the trustees to institute legal proceedings to recover sums paid by the respondent to a number of officers of the union in previous years. It was submitted in an appeal to the Industrial Appeal Court against that decision that the order was beyond the power of the President when exercising jurisdiction under s 66 of the Act as the power to compel observance of rules could only be exercised to secure performance of existing obligations under the rules of a union and did not extend to the making of orders for the purpose of remedying past breaches of the rules. The Industrial Appeal Court found that the relevant rule of the organisation did impose a continuing obligation upon the general committee of the union generally to protect its property and funds from misappropriation and specifically to direct the general trustees to take legal proceedings against any officer or member of the union guilty of misappropriating any of its funds. Consequently the order was within power conferred by the President by s 66(2) of the Act. The second case was a decision of Sharkey P in *Luby v Secretary, The Australian Nursing Federation, Industrial Union of Workers, Perth* (2002) 82 WAIG 2124. In that matter Sharkey P expressed an opinion that orders can be made relating to past non-observance of a rule where the purpose is to secure the performance of an existing obligation. In *Stacey*, Ritter AP had regard to these decisions and concluded 'that the purpose of s 66 is not to correct long ago breaches which now have no relevance to how an organisation is running' [274].

126 In *Stacey* [279] Ritter AP also set out the relevant principles that can be distilled from the authorities in respect of the nature of the jurisdiction and the type of orders that can be made under s 62(2) of the Act:

- (a) An order for the purposes of the section must involve a command to someone to do something. (*CMEWUA v UFTIU* (1991) 71 WAIG 563)
- (b) Section 66(2)(d) empowers the President to interpret a rule for the purpose of deciding whether to make an order or direction (*UFTIU* at page 569). Further or alternatively in the case of controversy an interested party may seek a declaration about the true interpretation of a rule. (*Robertson re CSA* (2003) 83 WAIG 3938; [2003] WASC 284 at paragraph [54])
- (c) The President may exercise jurisdiction under s66 where there has been an improper exercise of powers, contrary to the rules. (*Carter v Drake* (1991) 72 WAIG 2501 at 2504)
- (d) Sections 66(2)(e) and (f) contain the only powers which the President may exercise under s66 in connection with election irregularities. (*Harken v Dornan and Others* (1992) 72 WAIG 1727)
- (e) Declarations about the validity of meetings by an organisation are outside the power of the President under s66 unless as a matter of law the meetings were invalid. (*Carter v Drake* (1993) 73 WAIG 3308 at 3311, and see below). Therefore the President may declare invalid resolutions passed at meetings where the meetings were conducted in breach of the rules and the breach had the legal effect of invalidity. (*WALEDFCU v Schmid* (1996) 76 WAIG 3380 at 3382)
- (f) An order for the purpose of requiring an organisation to act in accordance with its rules is within power. (*WALEDFCU v Schmid* (1996) 76 WAIG 639)
- (g) If the grounds have been established for the making of an order under s66, the President does not have a discretion to refuse to make such an order. (*Robertson*)
- (h) The purpose of the power given in s66(2) is to ensure that the persons identified in s66(1) have a means of enforcing the rules of an organisation. (*Robertson*)
- (i) Due to s26(2) the President in considering what order to make under a s66 application is not restricted to the specific claim made. (*Robertson*)

127 When regard is had to these principles, even if a finding is made that the applicants were eligible to hold office as district delegates to State Council in 2007, it is clear that it is not open under s 66 to make the orders in the form sought by the applicants as the breaches of the rules of the Union relate to events which have long passed and the terms of office have long expired. However, the President in considering what order to make under a s 66 application is not restricted to the specific claim made. As Mr Mullen has sought nomination to be elected as a delegate to State Council in 2010, I do not agree the subject matter of the application is moot as there is presently a live controversy as to whether Mr Mullen can hold office as a delegate to State Council whilst he is employed by the Union. Consequently it is open in this matter to make a declaration of a true interpretation of the rules of the Union, in particular whether r 25(f) applies to an employee of the Union who is elected to the position of delegate to State Council.

(c) Interpretation of Rules

128 It is established at law that the rules of an organisation should not be interpreted strictly and literally but broadly. In *Hospital Salaried Officers Association of Western Australia (Union of Workers) v Minister for Health* (1981) 61 WAIG 616, Brinsden J said:

The rules of a registered union of workers can only be changed in the manner prescribed by the statute, and the rules as registered from time to time are final and the only expression of them. That seems to me to be the only point in the case. It says nothing about the necessity to interpret the rules of a union strictly and literally but simply makes the point that the rules alone are to be looked at and not any collateral undertaking. Subsequent conduct of the parties may only be considered if such rules are in truth ambiguous and then only to resolve the ambiguity.

Generally speaking the correct approach to the interpretation of a union rule is to interpret it in the same manner as any other [sic] document. It must be remembered however that union rules are not necessarily drafted by skilled draftsmen. It is therefore necessary I think in construing a union rule not to place too literal adherence to the strict technical meaning of words but to view the matter broadly in an endeavour to give it a meaning consistent with the intention of the draftsman of the rule. This approach has been endorsed in relation to awards: see *Geo A. Bond & Co. Ltd. (In Liq.) v. McKenzie* (1929) A.R. 499 at 503-4 referred to in *Federal Industrial Law by Mills and Sorrell* 5th Ed at p.522. I also said much the same thing in the unreported decision of *Bradley v. The Homes of Peace* 1005/1978, judgment delivered 21st December, 1978 at p.13-14 (618).

129 Whilst Brinsden J made these observations in 1981, the approach to the interpretation of rules of registered organisations has remained unchanged. In *Stacey, Ritter AP* observed [92] – [93]:

A similar approach has been adopted by the High Court in the construction of union eligibility rules. In *Re Anti-Cancer Council of Victoria; Ex Parte State Public Services Federation* (1992) 175 CLR 442 at 448, Mason CJ, Brennan and Gaudron JJ said it 'is well settled that union eligibility rules are to be interpreted liberally and according to their ordinary and popular meaning'. Their Honours cited a number of decisions in support of this proposition including *The Queen v Isaac; Ex Parte Transport Workers' Union* (1985) 159 CLR 323 decision, where Wilson J at 340 said:-

'In construing the eligibility clause in the constitution of an organization, it is necessary to bear in mind the nature of the instrument in which the words appear and the purposes that it is intended to serve. The rule now in question bears ample indication on its face that it has been prepared without the assistance of a skilled draftsman. It has been amended from time to time, probably in response to the exigencies attending the industrial affairs of the union and without regard to the effect of the amendment on the internal consistency of the clause as a whole. It follows that the words of the rule should be given a wide meaning and interpreted according to their ordinary or popular denotation rather than by reference to some narrow or formal construction: Reg. v Cohen; Ex parte Motor Accidents Insurance Board; Reg. v McKenzie; Ex parte Actors and Announcers Equity. Nevertheless, notwithstanding this generosity of approach, the meaning of the words remains a legal question to be determined by the application of the ordinary rules which govern the construction of written documents: Reg. v Aird; Ex parte Australian Workers' Union; McKenzie.' (Footnotes omitted)

French J in *Re Election for Office in Transport Workers' Union of Australia, Western Australian Branch* (1992) 40 IR 245 at 253 said that the "preferred approach to the construction of union rules which requires them to be construed not technically or narrowly but broadly and liberally and not "subjected to the same meticulous scrutiny as a deed carefully prepared by lawyers."'. His Honour cited *R v Holmes; Ex Parte Public Service Association (NSW)* (1977) 140 CLR 63 per Gibbs J at 73 and *Re An Election in the Australian Collieries Staff Association (NSW Branch)* (1990) 26 FCR 499 per Lockhart J at 502. The reasons of French J were cited with approval by Mansfield J in *Thomas v Hanson* [2001] FCA 539 at [20]. Authorities cited by the applicant set out a similar method of approach. (*Delron Cleaning Pty Ltd T/A Delron Hospitality Management* (2004) 84 WAIG 2527 at [40] and *FMWU v GW Smith and KJ Rose* (1988) 68 WAIG 1010.

130 In construing the rules of a union a Court or Tribunal may have regard to prior amendments to the rules. In *Community and Public Sector Union v EDS Australia* (2003) 129 IR 7 it was accepted that the words of an eligibility clause should be given a wide meaning, being interpreted to the ordinary and popular denotation and for regard being had to the history of amendments to a rules [62]; [74] (see the discussion in *Electrical Trades Union of Australia* (Bowen CJ, Evatt and Deane JJ) (82 - 83)). Notwithstanding that it is permissible to have regard to any relevant history of amendments to the rules of an organisation and to the fact that the rules are usually drawn by union officials who are not trained in the drafting of legal instruments, the question of the meaning of the terms used in a rule remains a legal question (*R v Aird; ex parte Australian Workers' Union* (1973) 129 CLR 654, 659 (Barwick CJ).

(d) **The Scope of Rule 25(f)**

- 131 A submission is made by the applicants that if during 2007 they had resigned their employment they would not be entitled to retain membership of the Union and thus retain their positions as delegates. If the position of delegate to State Council can be regarded as an 'office' within the meaning of r 4(a)(vi) then their contention is not correct. Once elected to a position as a delegate to State Council each would be regarded as a 'person elected to an office in the State School Teachers' Union of Western Australia' within the meaning of that phrase in r 4(a)(v) and as such would retain their rights as a Full Member of the Union pursuant to r 4(a)(v) and r 5(a) of the rules of the Union. It is clear that the proviso to r 4(a) would not apply to employees of the Union or to persons holding 'office' in the Union as it is apparent from the terms of the proviso that it is intended to apply to persons who are registered for work with the Department of Education and Training or any other institution referred to in r 4(a)(i). In addition, if the proviso was to be construed to apply to r 4(a)(vi) it would mean that only employees of the Union who are registered with the Union for work are eligible to be members which would have the effect that members of the Executive would not be eligible to be members of the Union.
- 132 The central question in this application is quite simple and it is whether the requirement in r 25(f) that a person who is an employee of the Union who is elected to an office of the Union is required to resign their employment with the Union before commencing the term of office applies only to the Executive and the General Secretary of the Union or whether it extends to other persons who are elected to an office of the Union. In determining this issue the first and perhaps most important or determinative issue that must be considered is the meaning of the word 'office of the Union'. The parties agree that the definition of 'office' in s 7 of the Act should not be applied to ascertaining the meaning of the term 'office' in r 25(f) of the rules. It is clear to me that proposition is correct. Under s 7 of the Act offices of an organisation covered by the definition of 'office' in s 7 of the Act are subject to specific statutory duties which are imposed on industrial organisations under Division 4 of Part 2 of the Act. For example, elections must be conducted in accordance with the provisions of the Act only in relation to an 'office' as defined in s 7 of the Act. In my opinion the decision of Sharkey P in *Dorman* is distinguishable as the issue considered in 1992 in that matter was whether the General Secretary of the Union was eligible to be a member of the Union, which turned on whether he was elected or appointed to an office in the Union. In making the finding the General Secretary was not the holder of an 'office' within the meaning of the rules and s 7 of the Act of the Union Sharkey P had regard to the fact that at that time the position of General Secretary was not a position filled by election.
- 133 It is apparent when regard is had to the rules of the Union in their entirety that many 'offices' are created in the rules beyond the 'offices' and 'officers' that form part of the committee of management of the Union (the Executive). It is only 'offices' that form part of a committee of management of an organisation that are regulated by the Division 4 of Part 2 of the Act.
- 134 Rule 23(a) establishes the constitution of State Council. The applicants' contention that a State Council delegate is referred to holding an 'office' only once in r 23(a) is not correct. In fact the reference to holding 'office' occurs in two sub-rules. Rule 23(a)(iii) refers to delegates holding office until successors are re-elected. Rule 23(a)(xv) also has a similar requirement in relation to a casual vacancy. Whilst a State Council delegate is referred to as the holder of an 'office' twice in these clauses, I do not consider this to be material. However, it is material that r 23(a)(iii) requires that delegates to State Council be elected in accordance with the provisions of r 23 and r 32 – Elections for Office. Whilst it could be said that under r 32(a)(i) that there is a distinction between 'offices of the Union' and 'delegates to District Council and State Council and other committees or bodies as require elections', it is plain that pursuant to r 32 the nomination for election to the position of a delegate to State Council is regarded as an election to an office within the meaning of an election to an office within r 32. For example, r 32(a)(ii) provides:
- (ii) Subject to Rule 21 - Branches, Rule 22 - Districts/District Council and Rule 23 - State Council all financial members of the Union shall be eligible to nominate for any Office to be filled by election.
- 135 Similar references to nominating for an 'office' in r 32(a)(iii), (iv) and (v) also apply to delegates to State Council. In addition the process to be adopted for the election of delegates to State Council, r 32(e)(iii) requires that the ballot paper is to list the title of the office for which an election is to be held and following each title shall list the names of candidates in sequence determined by lot by the Returning Officer.
- 136 There are also other references in the rules of the Union to rights and obligations in respect of an 'office' of the Union which clearly would cover the position of delegate to State Council. This includes r 5 and the entitlements of Honorary Life Members, Honorary Members, Special Category Members, Retired Teacher Members and Associate Members. In relation to each of those categories, none are entitled to stand for office or hold office. The wording in relation to each of those categories is not exactly the same. For example, Honorary Life Members are prohibited from standing for office, whereas Honorary Members are not entitled to be represented at State Council or to hold Union office or to vote in elections for Union office. Special Category Members are prohibited from holding Union office or voting at elections for a Union office. Retired Teacher Members are not eligible to stand for election to any office of the Union or to vote at such an election. Associate Members are not entitled to be represented at conference nor are they eligible to stand for election to an office of the Union or vote at such elections.
- 137 When the duties and powers of State Council under r 23 are analysed it is clear that duties of a delegate to State Council carries a substantial degree of responsibility. The duties and powers are not diluted by the fact that State Council only meets twice a year or by the fact that there are a large number of delegates to State Council. State Council is a body that is not only the supreme decision making authority of the Union but also has a specific power to make decisions and give directions to the Executive. Pursuant to r 24 – Powers of Executive the Executive is required under r 24(b)(i) to abide by and conform to all decisions and directions of the State Council. State Council under r 23(b) has the power to control and manage the business and affairs of the Union. In participating as a member of State Council a delegate as part of State Council, has the power to exercise collectively with other delegates and other members of State Council significant powers. In contrast, there are no

provisions of the rules of the Union that expressly use the term 'office' as referring only to a member of the Executive or to the General Secretary. From these provisions a strong inference can be drawn that a delegate to State Council can be described as the holder of an 'office'. In considering this issue it is also of assistance to have regard to the history of the making of r 25(f) and r 25(g) together with the making of r 4(a)(vi).

- 138 Prior to the making of r 19(h) and (i) (which is now r 25(f) and r 25(g)) in 1994 an alteration to the rules of the Union was endorsed at the Union's annual conference in 1991 to create a special category of membership for employees called 'Appointed Members'. Appointed Members included those who were employed by the Union but who were restricted from being able to attend conferences, to become delegates or from being allowed to stand for office. In *the 1993 Rule Change Case*, the Union sought to register an alteration to the rules to delete the Appointed Members clause which would have the effect of giving full membership rights to persons employed by the Union as a General Secretary, an advocate, an organiser, a research officer, a librarian or a women's officer. When this application was considered by the Full Bench r 19(h) and r 19(i) had not been registered. The Full Bench in *the 1993 Rule Change Case* refused the application to delete the Appointed Members clause. Commissioner Fielding observed that one of the reasons for refusing the application was that the proposed change gave rise to the potential for a conflict of interest. In particular he said:

Rule 28 of the Applicant's Rules effectively gives the General Secretary responsibility, 'subject to the authority of Executive', to manage the day to day affairs of the Applicant, including the right to appoint and dismiss employees, other than those appointed by conference or elected by the membership. If, as seems possible, the General Secretary and certain other employees, some of whom by virtue of their job have a high profile in the Union, could theoretically form the majority of the Executive, there could well be difficulties in managing properly the affairs of the Applicant. As the Objector puts it, 'the independence of the Union's Executive will be potentially compromised by persons attempting to be both master and servant with resultant legal and operating difficulties' for the Applicant (1476).

- 139 In *the 1993 Rule Change Case* the Full Bench rejected the application because there were no safeguards to protect the Union from being controlled by the employees; that Full Member entitlement would extend only to a few selected employees; and there was potential for membership overlapping with other organisations. The following year the Union brought a second application to amend the rules in a similar, but not identical, vein. In *the 1994 Rule Change Case*, the Union sought to register a variation to the rules of the Union that would delete the Appointed Members clause and to exclude from membership those employees eligible for membership of the Federated Clerks' Union of Australia, Industrial Union of Workers, WA Branch. The application failed on procedural grounds as the Full Bench was not satisfied that the application was authorised in accordance with the rules of the Union.
- 140 On 12 August 1994, a Deputy Registrar of the Commission registered alterations to the rules pursuant to s 62 of the Act in APPL 409 of 1994. Among the alterations registered were the additions to the rules in r 19(h) and r 19(i) and the creation of State Council.
- 141 It is notable that at the time r 19(h) and r 19(i) were made employees of the Union could not stand for office as a member of the Executive or State Council because at that time Appointed Members were defined under r 4 of the rules as 'any employee of the SSTUWA appointed to a position as General Secretary, Industrial Advocate, Industrial Organiser, Librarian, Industrial Research Officer or Women's Officer'. Pursuant to r 5(g) – Entitlements, Appointed Members whilst entitled to all the rights, privileges and benefits of the membership of the Union had no right to attend State Council as a delegate or to stand for office. At that time no employees of the Union could stand for office as a member the Executive as the only employees of the Union who were able to be members of the Union were Appointed Members. When r 19(h) and r 19(i) came into effect in 1994, the only office for which an Appointed Member could nominate would have been the position of General Secretary because at that time r 26(e) expressly provided:

Notwithstanding the provisions of any other rule, the persons eligible to nominate for the position of General Secretary shall be:

- (i) all financial Members, and/or
- (ii) any employee of the SSTUWA, and/or
- (iii) for the purposes of the first such election only, the person holding the appointed position of the General Secretary immediately prior to that election.

- 142 As set out in the applicants' submissions this sub-rule of r 26 was created by the registration of the amendments of the rules in APPL 409 of 1994. Importantly, this amendment was made at the same time as the alterations to the rule which brought into effect r 19(h) and r 19(i) (now r 25(f) and r 25(g)). It is of interest that the reason given for the creation of r 19(h) and r 19(i) was that the Executive wished to ensure that any employee who nominated for Executive office and vice versa could not face a conflict of interest between their duties as an employee and their duties as an Executive member. A General Secretary is not a member of the Executive and was not a member of an Executive at that time. Consequently, the reasons given to the annual conference in 1993 did not with respect make a great deal of sense because at that time r 5(g) prohibited employees of the Union who were members of the Union, to stand for office. Consequently, it could not be said that r 19(h) would operate in the way contemplated in the reasons given to the membership when those amendments were considered by the members of the Union. For this reason the stated reasons for the amendment to create r 19(h) and r 19(i) are not of assistance in this matter.
- 143 It is also notable that in *the 1994 Rule Change Case* the Full Bench had regard to the application before the Registrar in APPL 409 of 1994. At page 1731 of *the 1994 Rule Change Case* the Full Bench observed that an application had been made to the Registrar to vary r 19 which governs the rights and obligations of officers so as to stipulate that an officer of the Union cannot also be an employee of the Union. In respect of that proposed change to r 19, the Full Bench whilst it rejected the application to register the amendments to delete the category of Appointed Members, observed in relation to the proposed changes to r 19:

Although we continue to doubt the wisdom of members of a union being employees of that union, the Full Bench in *The Civil Service Association of Western Australia Incorporated v. Federated Clerks' Union of Australia, Industrial Union of Workers, WA Branch and Another* (1991) 71 WAIG 1780 sanctioned such an arrangement with safeguards of the kind now proposed and in the interests of consistency the Full Bench should not, without good reason, adopt a different course on this occasion. The proposed change to Rule 19 would, if made, effectively achieve the same safeguards, albeit it somewhat obtusely, as those found to be acceptable by the Full Bench in *The Civil Service Association of Western Australia Incorporated v. Federated Clerks' Union of Australia, Industrial Union of Workers, WA Branch and Another* (supra). Thus if and when the Registrar registered the alterations to Rule 19, the grounds of the objection based on employees holding office in the Union would lose its force (1732).

144 The decision given by the Full Bench in *The Civil Service Association of Western Australia Incorporated v Federated Clerks' Union of Australia, Industrial Union of Workers, WA Branch* (1991) 71 WAIG 1780 is not of assistance in this matter. When the reasons of the Full Bench are reviewed it appears the Full Bench did not deal with or consider whether employees could hold any office in the Civil Service Association of Western Australia Incorporated other than President, Senior Vice President, Junior Vice President, Honorary Treasurer or Executive Committee member. The objection made in that case and the issue of concern discussed in that matter was whether an employee could interfere in an election as an employee.

145 In *the 1998 Rule Change Case*, Sharkey P, who was in the minority, considered the history of the applications made by the Union to alter the rules to allow for employees of the Union to become Full Members. After considering the passage referred to by the Full Bench in *the 1994 Rule Change Case*, Sharkey P observed:

By virtue of rule 4(g), any employee of the applicant organisation who is appointed to a position as general secretary, industrial advocate, industrial organiser, librarian, industrial research officer or women's officer becomes an appointed member of the applicant organisation.

By virtue of rule 5(g), there is no limitation on the rights, privileges and benefits of that membership, except that they have no right to attend State Council as a delegate, and they have no right to stand for office.

Those rules are in conflict with rule 26(f) and (g). Under rule 26(f), an employee who is elected to an office of the "union" is required to resign his/her employment by no later than the day that that person commences his/her term of office. However, as rule 4(g) reads, an employee cannot stand for office. By virtue of rule 26(g), any elected officer of the "union" who is appointed as an employee ceases automatically to hold office on and from the day when he/she commences that employment. Again, the sub-rule has no effect currently because an employee cannot stand for office, let alone occupy office.

If rule 4 is authorised to be altered in terms of the application herein, then an employee will be able to hold office and will be able to be an officer if elected as a delegate and a member of State Council, the governing body of the applicant organisation, provided that he/she resigns if elected (see rule 26).

However, employees would also remain as appointed members with the restrictions placed on that membership until rule 4(g) and/or rule 5(g) are altered. That by itself is an unsatisfactory state of affairs causing uncertainty and ambiguity which militate against me finding for the applicant organisation.

I am persuaded that weight should be attached, as it was in *Re an application by the CSA (op cit) (FB)*, and as it was expressed in [Re an application by the SSTUWA 73 WAIG 1471 at 1475-1476 \(FB\)](#), to the undesirability of employees as distinct from officers being made ineligible for membership. The misgivings expressed in those cases by the Full Bench arise from the facts similar to those in this case. I do not think that it contributes to the democratic control of the applicant organisation that employees should be able to find a path in their employment to office in the applicant organisation, nor that they should have any role but to serve the applicant organisation. There are undesirable potential conflicts for employees who might be eligible for and might be intent on seeking office. Having the employees as members of the State Council, which they are bound to serve, is illustrative of this. That this problem was recognised by the Full Bench in *Re an application by the CSA (op cit) (FB)* is significant. Nothing was said to distinguish that decision from this as a matter of principle, or to persuade me that it should not be applied.

Not all sets of rules to which I have referred or been referred provide for the organisation's employee membership is of interest. Indeed, some are more exclusive of the membership of employees than the current rules of the applicant organisation. That the applicant organisation has been pursuing this alteration consistently is relevant, but not significant in the light of the factors to which I refer. The number of employees involved presently does not detract from the obvious significance of organisers and advocates as employees in the scheme of things, and the potential influence which such employees can wield.

The current rules, unaltered, enable employees to enjoy the benefits of membership now. Employees are precluded from standing for office. However, there is nothing to prevent their resigning, becoming full members, and being elected to office. (That situation is a situation which I said might obtain) (see [Re an application by the SSTUWA 73 WAIG 1471 at 1475 \(FB\)](#)). The status quo is not unfavourable to employees. They have a right to vote in elections, for example.

I am not, having regard, as I do, to all of the evidence, all of the submissions and all of the authorities, and having regard to s.6(a), (c), (e) and (f) of the Act, including the welfare of the applicant organisation from the direct evidence and the inferences which I have drawn, persuaded by the applicant organisation that its case for alteration, by the insertion of the new rule 4(a)(vi), is made out.

I am satisfied that an appropriate form of membership for employees is that which is contained in the CSA's rules and which in another and similar form seems to be contained in the applicant organisation's rules. I would, for those reasons, dismiss the application (1127).

- 146 The essence of Sharkey P's reasons for decision seems to be that he was of the view that it was undesirable that employees of the Union have a career path which took them from being employees to being an officer of the Union. This was not an issue that Fielding SC was concerned with. Senior Commissioner Fielding took a different view in his reasons which formed the majority view of the Full Bench as Parks C agreed with the reasons given by Fielding SC. Senior Commissioner Fielding was concerned as to whether it was important that a person should not be both an employee and a member for management committee of the Union as a potential for conflict of interest in such circumstances was obvious. He was of the opinion that r 26(f) and r 26(g) of the rules made it plain that a conflict of interest that the Full Bench had been concerned with previously would not arise. Whilst Fielding SC made observations about r 26(f) and r 26(g) in respect of prohibition in respect of becoming a member of the Executive committee and vice versa, he did not consider the position of whether an employee would be prohibited from holding office as a delegate to State Council whilst being an employee. Senior Commissioner Fielding's reasons for decision were largely concerned with the desirability of whether employees of the Union should be able to join and become members of the Union who is their employer. For this reason I am of the view that the reasoning of Fielding SC in *the 1998 Rule Change Case* can be confined to a finding that r 25(f) only applies to employees of the Union who stand for and are elected to office as members of the Executive and did not consider the issue whether r 26(f) (now r 25(f)) requires an employee elected to the position of delegate to State Council to resign by no later than the day that person commences his or her term of office.
- 147 What, however, is the effect of the amendments made in *the 1998 Rule Change Case*? Is it open in any event to infer from the effect of the amendments made by the registration or the alterations of rules in *the 1998 Rule Change Case* that r 25(f) only applies to the Executive and to the General Secretary? After carefully considering the whole of the rules of the Union together with the history of amendments to r 25 and r 4, I have concluded that the answer to that question is no. I am not persuaded that the applicants' contention that r 25(f) should be construed as confined to the 'offices' of the Executive and the General Secretary. Whilst it is agreed that each holder of a position in the Executive and the General Secretary is the holder of an 'office' within the meaning of r 25(f) it is clear that r 25(f) is not restricted in application to these 'offices'. If it were otherwise r 25(f) could have been expressed to say so in the same way that the prohibition in r 25(b) is expressed only to apply to the member of the Executive. Rule 25 is not a rule that can be said in any sense to establish and deal with all of the rights and duties of the Executive and the General Secretary. Their powers and duties are contained in a number of rules outside of r 25.
- 148 When regard is had to the whole of the rules of the Union, I am satisfied that the position of delegate to State can be characterised at common law as an 'office'. The applicants' contention that State Council delegates do not carry the weight of responsibility, authority and profile that members of the Executive and the General Secretary do, may be correct in one sense, in that the Executive is a smaller body that meets more often than State Council. However, it does not follow that members of State Council do not have a substantial degree of responsibility. A State Council as a body is able to direct the members of the Executive and the members of the Executive are required by the rules to carry out those directions. Consequently a conflict of interest is likely to arise if an employee of the Union is able as part of a collective body to direct the management body of the Union. In such a capacity the employee delegate to State Council would be both employer as part of a collective body and employee.
- 149 The application of r 5(a) – Entitlements of Full Members does not assist the applicants' argument as the 'rights, privileges and benefits of membership' is subject to the conditions set out in the rules that attach to those rights, privileges and benefits. Rule 25(e) and r 25(f) applies to all Full Members and is a condition to a right of all Full Members to hold office, or to become an employee of the Union.
- 150 By deleting r 5(g) – Appointed Members in 1998, employees of the Union gained the right to stand for office but they did not obtain the right to attend State Council as a delegate whilst they remained an employee because of the operation of r 25(f).
- 151 It is also apparent the rules should not be read in the manner contended by the applicants as such a narrow construction would lead to an odd construction of r 23(b)(iv), if pursuant to r 23(b)(iv) State Council could only dismiss persons elected to office as a member of the Executive and the General Secretary and not delegates to State Council. To construe the rules to read the term 'office' as not applying to delegates to State Council would mean that State Council and the Executive acting through r 24(d) (now r 24(b)) could not dismiss a delegate to State Council where that delegate had been found guilty of misappropriation of the funds of the Union, or a substantial breach of the rules of the Union, or a serious and wilful misconduct or neglect of duty.
- 152 It is immaterial that employees of the Union had attended State Council as delegates without objection prior to 2007, as past practice cannot stand as a bar to the plain and ordinary meaning of a rule. There is no provision in the rules from which an inference can be drawn that the concept of 'office' in r 25(f) is to be read more narrowly than the concept of 'office' in r 32(a)(ii) as r 32(a)(ii) applies to the office of State delegate. There is nothing in this sub-rule or in r 25 or any other rule of the Union that expresses an intention that the meaning of the word 'office' in r 25(f) should be different to the meaning of the word 'office' in r 32(a)(ii).
- 153 In addition it is not material that this dispute was not referred to a Dispute Resolution Committee convened under r 12 of the rules of the Union as there is a specific power in r 23(b)(iv) and r 24(d) (now r 24(b)) to dismiss a person from office where that person is not eligible to hold office.
- 154 Sections 6(ab) and s 6(f) of the Act do not assist the applicants in their argument as s 6(ab) and s 6(f) can not be construed to entitle employees of an organisation to participate in decisions of decision-making bodies of an organisation without regard to the principles that apply to conflicts of interest.
- 155 Given that little if any evidence was given about the duties and functions of the positions that constitute various committees of the Union, it is not open in these proceedings to determine whether the holder of any of these positions on the various committees could be considered to be a holder of an 'office' within the meaning of the rules.

(e) Procedural Fairness

- 156 The minutes of the meeting of the Executive on 3 and 4 August 2007 record that the Executive received the report which set out a summary of advice about holding of an elected office by an employee. It is apparent from the minutes and from the evidence given in these proceedings that no decision was made at that meeting other than to receive the report as the interest of the applicants were not affected by the mere provision of the report.
- 157 In these circumstances, it is not until a decision maker proposes to act on the report that a duty to provide procedural fairness arises. The applicants were provided with a copy of the report prior to the Executive making a decision about the matters raised in the report. The applicants were also provided with an opportunity to provide a written submission to the Executive prior to the Executive making its decision which they took up and provided a written submission to the Secretary by letter dated 5 September 2007 (Exhibit 4, document TM14).
- 158 A duty to act fairly does not extend to any duty to allow the applicants to participate in any meeting of the Executive, only to allow the applicants to be heard. At common law a duty to be heard can be satisfied by an opportunity to provide a written submission. The SSTUWA Administrative Instruction 800.33 does not extend the duty to act fairly and be heard, as a right to be directly involved in a decision, to participating in the making of a decision by the Executive. In any event the SSTUWA Administrative Instruction 800.33 arguably did not apply to the decision made by the Executive, as the Instruction only applies to the organisation in its capacity as an employer. The decision in question was not a dismissal of an employee by an employer.
- 159 The applicants also take issue with the decision made by State Council to endorse the decision made by the Executive on grounds of a failure to accord procedural fairness. This argument with respect is also groundless as the decision made by the Executive to dismiss the applicants from office by its terms took effect on 14 September 2007. All that occurred at the November meeting of State Council in 2007 was that State Council received a report that the decision had been made. The fact that State Council passed a resolution to endorse the decision of the Executive had no effect in law as the Executive was expressly empowered by r 24(d) and r 23(b)(iv) of the rules of the Union to exercise the power of State Council to dismiss the applicants from office.
- 160 For these reasons I will make a declaration that the true interpretation of r 25(f) is that the word 'office' includes the office of delegate to State Council.

2010 WAIRC 00179

ALLEGED BREACH OF UNION RULES

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

ANTHONY D MULLEN, CHRISTOPHER C SHARPE

APPLICANTS

AND

ANNE GISBORNE, PRESIDENT OF THE STATE SCHOOL TEACHERS UNION OF WESTERN AUSTRALIA (INC)

RESPONDENT

AND

THE STATE SCHOOL TEACHERS' UNION OF WA (INCORPORATED)

INTERVENER**CORAM**

THE HONOURABLE J H SMITH, ACTING PRESIDENT

DATE

1 APRIL 2010 (CORRIGENDUM WEDNESDAY, 7 APRIL 2010)

FILE NO/S

PRES 9 OF 2009

CITATION NO.

2010 WAIRC 00179

CORRIGENDUM

1. In the second line of [148] of the Reasons for Decision of 1 April 2010 after the words "delegate to State " insert the word "Council ".

[L.S.]

(Sgd.) The Honourable J H SMITH,
Acting President.

Dated: Thursday, 7 April 2010

2010 WAIRC 00182

PARTIES	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION ANTHONY D MULLEN, CHRISTOPHER C SHARPE	APPLICANT
	-and- ANNE GISBORNE, PRESIDENT OF THE STATE SCHOOL TEACHERS UNION OF WESTERN AUSTRALIA (INC.)	RESPONDENT
	-and- THE STATE SCHOOL TEACHERS UNION OF WESTERN AUSTRALIA (INC)	INTERVENER
CORAM	THE HONOURABLE J H SMITH, ACTING PRESIDENT	
DATE	WEDNESDAY, 7 APRIL 2010	
FILE NO/S	PRES 9 OF 2009	
CITATION NO.	2010 WAIRC 00182	

Result	Declaration and Order made
Appearances	
Applicants	In person
Respondent	Ms N McGuinness (as agent)
Intervener	Mr R C Kenzie QC and Mr S Millman (of counsel)

Declaration and Order

This matter having come on for hearing before me on Wednesday, 3 February 2010 and Thursday, 4 February 2010, and having heard the applicants in person, Ms N McGuinness (as agent), on behalf of the respondent and Mr R C Kenzie QC and Mr S Millman (of counsel), on behalf of the intervener, and reasons for decision having been delivered on Friday, 1 April 2010, pursuant to the powers conferred on the President by the *Industrial Relations Act 1979* hereby —

1. DECLARES that the true interpretation of r 25(f) of the rules of The State School Teachers' Union of W.A. (Incorporated) is that the word office in this sub-rule includes the office of delegate to State Council; and
2. ORDERS that the application is otherwise dismissed.

[L.S.]

(Sgd.) J H SMITH,
Acting President.

2010 WAIRC 00116

PARTIES	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION MR REVELI KEITH AFFLECK	APPLICANT
	-and- AUSTRALIAN MANUFACTURING WORKERS UNION	RESPONDENT
CORAM	THE HONOURABLE J H SMITH, ACTING PRESIDENT	
DATE	TUESDAY, 16 MARCH 2010	
FILE NO/S	PRES 2 OF 2010	
CITATION NO.	2010 WAIRC 00116	

Result	Order made
Appearances	
Applicant	In person
Respondent	Mr R F Humphreys (of counsel)

Order

This matter having come on for a directions hearing before me on Tuesday, 9 March 2010, and having heard the applicant and Mr R F Humphreys, of counsel, on behalf of the respondent, the Acting President, pursuant to the powers conferred under the *Industrial Relations Act 1979*, hereby orders that —

1. Paragraphs 2, 3 and 4 of the Statement of Claim are withdrawn;
2. The applicant in paragraph 1 of the Statement of Claim seeks a declaration of the true interpretation of rule 2(4) of the rules of The Automotive, Food, Metals, Engineering, Printing & Kindred Industries Union of Workers – Western Australian Branch as it relates to the applicant's claim in paragraph 1 of the Statement of Claim;
3. The respondent file and serve its response to the applicant's application by 4:00 pm on Tuesday, 23 March 2010 by post and by email;
4. The application be adjourned to a directions hearing at 111 St Georges Terrace, Perth in Court 3 (Level 18) on Thursday, 25 March 2010 at 9:30 o'clock in the forenoon.

(Sgd.) J H SMITH,
Acting President.

[L.S.]

2010 WAIRC 00168

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

MR REVELI KEITH AFFLECK

APPLICANT

-and-

AUSTRALIAN MANUFACTURING WORKERS UNION

RESPONDENT

CORAM

THE HONOURABLE J H SMITH, ACTING PRESIDENT

DATE

WEDNESDAY, 31 MARCH 2010

FILE NO/S

PRES 2 OF 2010

CITATION NO.

2010 WAIRC 00168

Result	Order made
Appearances	
Applicant	In person
Respondent	Mr R F Humphreys (of counsel)

Order

This matter having come on for a directions hearing before me on Thursday, 25 March 2010, and having heard Mr R K Affleck on his own behalf as applicant, and Mr R F Humphreys, of counsel, on behalf of the respondent, the Acting President, pursuant to the powers conferred under the *Industrial Relations Act 1979*, hereby orders that —

1. The applicant by 4:00 pm on Monday, 12 April 2010, to file and serve an outline of his facts and contentions relied on by him specifying but not limited to:
 - (a) the business, trade, manufacture, undertaking, calling or service of any employer who has employed him in an occupation specified in r 2.4 of the rules of the respondent;
 - (b) his usual occupation;
 - (c) his history of employment in the printing industry; and
 - (d) whether he holds any qualification in the printing industry.
2. The respondent by 4:00 pm on Monday, 19 April 2010, to file and serve its outline of facts and contentions relied upon by it in support of its contention that the applicant is not eligible for membership of the respondent.
3. The applicant by 4:00 pm on Monday, 12 April 2010, to provide a list of documents of all documents relevant to the issue of his eligibility for membership of the respondent, including but not limited to:

- (a) his current contract of employment;
 - (b) his occupational history;
 - (c) evidence of the identity of his employer and his employer's business activities; and
 - (d) evidence of his trade qualifications.
4. The respondent by 4:00 pm on Monday, 19 April 2010, to provide a list of documents of all documents relevant to the issue of the applicant's eligibility for membership, including but not limited to:
 - (a) any applications for membership completed by the applicant;
 - (b) membership records relating to the applicant; and
 - (c) correspondence between the parties.
 5. The matter be set down for hearing for a day on Thursday, 29 April 2010 at 9:30 am in Court 2 on the 18th Floor, 111 St Georges Terrace, Perth.
 6. There be liberty to apply.

[L.S.]

(Sgd.) J H SMITH,
Acting President.**2010 WAIRC 00202****PARTIES**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
THE REGISTRAR OF THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS
COMMISSION

APPLICANT**-and-**

THE DISABLED WORKERS' UNION OF WESTERN AUSTRALIA

RESPONDENT**CORAM**

THE HONOURABLE J H SMITH, ACTING PRESIDENT

DATE

TUESDAY, 13 APRIL 2010

FILE NO/S

PRES 1 OF 2009

CITATION NO.

2010 WAIRC 00202

Result

Order made

Appearances**Applicant**

Mr R Andretich (of counsel)

Respondent

Mr K Trainer, as agent

Order

This matter having come on for a directions hearing before me on 23 March 2010, and having heard Mr R Andretich (of counsel) on behalf of the applicant, and Mr Trainer, as agent on behalf of the respondent, the Acting President, pursuant to the powers conferred under the *Industrial Relations Act 1979*, hereby orders that —

The application be adjourned to a directions hearing at 111 St Georges Terrace, Perth in Court 3 (Level 18) on Tuesday, 22 June 2010 at 9:30 o'clock in the forenoon.

[L.S.]

(Sgd.) J H SMITH,
Acting President.

AWARDS/AGREEMENTS AND ORDERS—Application for variation of— No variation resulting—

2010 WAIRC 00122

GOVERNMENT OFFICERS SALARIES, ALLOWANCES AND CONDITIONS AWARD 1989

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
(COMMISSION'S OWN MOTION)

PARTIES**APPLICANT**

-v-
(NOT APPLICABLE)

RESPONDENT**CORAM**

PUBLIC SERVICE ARBITRATOR
ACTING SENIOR COMMISSIONER P E SCOTT

DATE

FRIDAY, 19 MARCH 2010

FILE NO

P 19 OF 2007

CITATION NO.

2010 WAIRC 00122

Result

Application Dismissed

Representation

Ms C Holmes, for Department of Commerce
Ms J O'Keefe, for The Civil Service Association of Western Australia Incorporated

Order

HAVING heard Ms C Holmes on behalf of the Department of Commerce and Ms J O'Keefe on behalf of The Civil Service Association of Western Australia Incorporated, the Commission, pursuant to the powers conferred under the Industrial Relations Act 1979, hereby orders:

THAT this application be, and is hereby dismissed.

[L.S.]

(Sgd.) P E SCOTT,
Acting Senior Commissioner,
Public Service Arbitrator.

2010 WAIRC 00118

STOREMEN (GOVERNMENT) CONSOLIDATED AWARD 1979

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
DEPARTMENT OF CONSUMER AND EMPLOYMENT PROTECTION

PARTIES**APPLICANT**

-v-
THE SHOP DISTRIBUTIVE AND ALLIED EMPLOYEES'
ASSOCIATION OF WESTERN AUSTRALIA

RESPONDENT**CORAM**

COMMISSIONER J L HARRISON

DATE

TUESDAY, 16 MARCH 2010

FILE NO/S

APPL 822 OF 2005

CITATION NO.

2010 WAIRC 00118

Result

Discontinued

Order

WHEREAS this is an application to vary the *Storemen (Government) Consolidated Award 1979*; and

WHEREAS the Commission contacted the applicant on a number of occasions requesting advice as to its intentions in relation to this matter; and

WHEREAS on 28 October 2009 the applicant advised the Commission that it no longer wished to proceed with this application and would be discontinuing this application; and

WHEREAS on 15 December 2009 the applicant filed a Notice of Withdrawal or Discontinuance form in respect of the application; NOW THEREFORE the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby discontinued

[L.S.]

(Sgd.) J L HARRISON,
Commissioner.

2010 WAIRC 00123

PUBLIC SERVICE AWARD 1992

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
(COMMISSION'S OWN MOTION)

PARTIES

APPLICANT

-v-
(NOT APPLICABLE)

RESPONDENT

CORAM

PUBLIC SERVICE ARBITRATOR
ACTING SENIOR COMMISSIONER P E SCOTT

DATE

FRIDAY, 19 MARCH 2010

FILE NO

P 21 OF 2007

CITATION NO.

2010 WAIRC 00123

Result

Application Dismissed

Representation

Ms C Holmes, for Department of Commerce
Ms J O'Keefe, for The Civil Service Association of Western Australia Incorporated

Order

HAVING heard Ms C Holmes on behalf of the Department of Commerce and Ms J O'Keefe on behalf of The Civil Service Association of Western Australia Incorporated, the Commission, pursuant to the powers conferred under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby dismissed.

[L.S.]

(Sgd.) P E SCOTT,
Acting Senior Commissioner,
Public Service Arbitrator.

2010 WAIRC 00124

WA HEALTH - HSU AWARD 2006

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
(COMMISSION'S OWN MOTION)

PARTIES

APPLICANT

-v-
(NOT APPLICABLE)

RESPONDENT

CORAM

PUBLIC SERVICE ARBITRATOR
ACTING SENIOR COMMISSIONER P E SCOTT

DATE

FRIDAY, 19 MARCH 2010

FILE NO

P 22 OF 2007

CITATION NO.

2010 WAIRC 00124

Result Application Dismissed

Representation

Ms C Holmes, for Department of Commerce

Mr J Ross, for Department of Health

Mr D Ellis, for the Health Services Union of Western Australia (Union of Workers)

Order

HAVING heard Ms C Holmes on behalf of the Department of Commerce; Mr J Ross on behalf of the Department of Health and Mr D Ellis on behalf of the Health Services Union of Western Australia (Union of Workers), the Commission, pursuant to the powers conferred under the Industrial Relations Act 1979, hereby orders:

THAT this application be, and is hereby dismissed.

[L.S.]

(Sgd.) P E SCOTT,
Acting Senior Commissioner,
Public Service Arbitrator.

AGREEMENTS—Industrial—Retirement from—

2010 WAIRC 00157

NOTICE

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. P 13 of 2010

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Director General, Department of Culture and the Arts will cease to be a party to the Ministry for Culture & the Arts – Art Gallery of Western Australia Enterprise Bargaining Agreement 1996, No PSAAG 5 of 1997 on and from the 25th day of April 2010.

DATED THIS 29th DAY OF MARCH 2010.

[L.S.]

(Sgd.) J SPURLING,
Registrar.

2010 WAIRC 00158

NOTICE

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. P 12 of 2010

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Director General, Department of Culture and the Arts will cease to be a party to the Ministry for Culture & the Arts – ArtsWA Division (Enterprise Bargaining) Agreement, No PSAAG 6 of 1997 on and from the 25th day of April 2010.

DATED THIS 29th DAY OF MARCH 2010.

[L.S.]

(Sgd.) J SPURLING,
Registrar.

2010 WAIRC 00159**NOTICE****WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION**

No. P 15 of 2010

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Director General, Department of Culture and the Arts will cease to be a party to the Ministry for Culture & the Arts, LISWA Service Division Enterprise Bargaining Agreement 1997, No PSGAG 6 of 1997 on and from the 25th day of April 2010.

DATED THIS 29th DAY OF MARCH 2010.

[L.S.]

(Sgd.) J SPURLING,
Registrar.**2010 WAIRC 00160****NOTICE****WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION**

No. P 11 of 2010

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Director General, Department of Culture and the Arts will cease to be a party to the Ministry for Culture & the Arts (Perth Theatre Trust) Enterprise Bargaining Agreement – 1997, No PSGAG 4 of 1997 on and from the 25th day of April 2010.

DATED THIS 29th DAY OF MARCH 2010.

[L.S.]

(Sgd.) J SPURLING,
Registrar.**2010 WAIRC 00161****NOTICE****WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION**

No. P 14 of 2010

IN THE MATTER of the Industrial Relations Act 1979

and

IN THE MATTER of the filing in the Office of the Registrar of a Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Director General, Department of Culture and the Arts will cease to be a party to the Ministry for Culture & the Arts – (Western Australian Museum Division) Enterprise Bargaining Agreement, No PSGAG 5 of 1997 on and from the 25th day of April 2010.

DATED THIS 29th DAY OF MARCH 2010.

[L.S.]

(Sgd.) J SPURLING,
Registrar.

CANCELLATION OF—Awards/Agreements/Respondents—

2010 WAIRC 00200

S.47 CANCELLATION OF THE JENNY CRAIG EMPLOYEES AWARD, 1995

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	ON THE COMMISSION'S OWN MOTION
CORAM	CHIEF COMMISSIONER A R BEECH ACTING SENIOR COMMISSIONER P E SCOTT COMMISSIONER J L HARRISON
HEARD	MONDAY, 27 AUGUST 2007, WEDNESDAY, 5 DECEMBER 2007, FRIDAY, 16 OCTOBER 2009, WRITTEN SUBMISSIONS - TUESDAY, 16 FEBRUARY 2010
DELIVERED	MONDAY, 12 APRIL 2010
FILE NO.	APPL 50 OF 2007
CITATION NO.	2010 WAIRC 00200

CatchWords	Award - Award applies to single employer - Employer constitutional corporation - Effect of Fair Work Act 2009 on award - Whether there is an employee to whom the award applies - Award cancelled - Industrial Relations Act 1979 (WA) s 47(1); Fair Work Act 2009 (Cth) s 26(1), 26(2), 26(2)(c), 27(1), 27(2)
Result	Award cancelled
Representation	Mr D Jones, Chamber of Commerce and Industry, WA, on behalf of the employer Ms J O'Keefe and later Mr J Nicholas and later Mr K Sneddon and later Ms S Holt, on behalf of the Liquor, Hospitality and Miscellaneous Union Mr D Robinson and later Mr D Ellis and later Ms S McGurk, on behalf of the Trades and Labor Council of WA

Reasons for Decision

Background

- 1 This is the unanimous decision of the Commission in Court Session. This is an application to cancel the Jenny Craig Employees' Award, 1995 ("the Award"). Although written final submissions were received on 16 February 2010, the application has a considerable history. It was made on the Commission's own motion on 17 May 2007 in response to a letter from the Chamber of Commerce and Industry WA ("CCIWA") on behalf of the employer Jenny Craig Weight Loss Centres Pty Ltd requesting that the Award be cancelled.
- 2 At the direction of the Chief Commissioner pursuant to s 47(3) of *Industrial Relations Act, 1979* (WA) ("the Act"), the Registrar made enquiries on the matters raised by the employer and reported to the Chief Commissioner. A Notice of intention to cancel the Award was published in the Western Australian Industrial Gazette on 27 June 2007. Notices of Objection were filed by the Trades and Labor Council of WA ("TLC") and the Liquor, Hospitality and Miscellaneous Union ("LHMU") on 27 July 2007. On 6 August 2007, the application was listed for hearing for 27 August 2007 and a Directions order was issued on 29 August 2007 setting dates for submissions and dates of hearing of 4 and 5 December 2007. Notices pursuant to s 78B of the *Judiciary Act 1903* (Cth) were sent to the Attorneys General by CCIWA on 7 September 2007.
- 3 All submissions were received by 23 November 2007 but on 29 November 2007 CCIWA requested an adjournment of the December hearing dates and new hearing dates were set for 5 and 6 February 2008. On 4 January 2008, CCIWA requested an adjournment of these dates, and this was granted by an order issuing on 4 February 2008.
- 4 On 16 July 2009, CCIWA requested that the Commission continue its investigation to have the Award cancelled. The request was heard on 16 October 2009 and concluded on the basis that CCIWA would file written submissions which were received on 16 February 2010. The LHMU was given the opportunity to comment on the submissions but advised that it did not wish to do so and the LHMU indicated that it did not oppose the cancellation of the Award. The TLC no longer objected to the cancellation of the Award.

The Award

- 5 Although the application to cancel the Award pre-dates the coming into effect of the *Fair Work Act 2009* ("FW Act"), it must now be considered in the context of that Act. The effect on the Award of the "Work Choices" amendments to the *Workplace Relations Act 1996* (Cth) ("WR Act") on 27 March 2006, with the corresponding creation of the "Notional Agreements Preserving State Awards" ("NAPSAs"), only forms part of the background. What this decision concerns is the Award made by the Commission under the Act which, by virtue of s 37(4) of the Act, remains in force until it is cancelled, suspended, or replaced under the Act.

6 The scope clause of the Award (1995) 75 WAIG 2746 at 2750 is as follows:

4. - SCOPE

This Award shall apply to all employees of Jenny Craig Weight Loss Centres Pty Ltd employed in the callings contained in Clause 11. - Wages of this Award.

The Employer Party to the Award

7 The Award expressly provides that it applies only to employees of Jenny Craig Weight Loss Centres Pty Ltd and Schedule B of the Award lists only one respondent to it, that being Jenny Craig Weight Loss Centres Pty Ltd ((1995) 75 WAIG 2746 at 2762). The Award therefore is not a common rule award which extends to and binds all employees employed in any calling mentioned in the Award in the industry or industries to which the Award applies.

8 The parties agree that the employer is a constitutional corporation. We think that is clearly so, given its corporate structure and we accept the submission that it earns its income from its trading activities (submission from CCIWA at [1.8] and see too *Aboriginal Legal Service of WA Inc v Lawrence* [2008] WASCA 254; (2008) 89 WAIG 243; 178 IR 168, per Steytler P at [39] and following). We therefore find that the employer is a trading corporation and the employer is thus a “national system employer” as defined in s 14(a) of the FW Act.

The Effect of s 26 of the *Fair Work Act 2009* on the Award

9 The issue to be considered is not the effect of the FW Act upon the jurisdiction of the Commission to enquire into and deal with an industrial matter relating to a “national system employer” as defined in s 14(a) of the FW Act, as it is clear that the Commission does not have that jurisdiction for the reasons set out in *Aboriginal Legal Service* referred to above and later in the decision of the Full Bench of the Commission in *Krysti Guest v Kimberley Land Council* (2009) 89 WAIG 2063 at [52] – [69]; [2009] WAIRC 00668 (and see *Endeavour Coal Pty Limited v Construction, Forestry, Mining and Energy Union* [2007] FCAFC 177, (2007) 173 IR 276; *Tristar Steering and Suspension Ltd v IRC of NSW* [2007] FCAFC 50, (2007) 161 IR 469). Although those decisions all relate to the WR Act we consider the reasoning contained therein is applicable to the corresponding effect of the FW Act.

10 Rather, the issue is whether as a result of the operation of the FW Act, there is no longer an employee to whom the Award applies. Mr Jones, who appears for the employer, has drawn attention to s 26(1) and (2) of the FW Act which provide as follows:

26 Act excludes State or Territory industrial laws

- (1) This Act is intended to apply to the exclusion of all State or Territory industrial laws so far as they would otherwise apply in relation to a national system employee or a national system employer.
- (2) A State or Territory industrial law is:
 - (a) a general State industrial law; or
 - (b) an Act of a State or Territory that applies to employment generally and has one or more of the following as its main purpose or one or more of its main purposes:
 - (i) regulating workplace relations (including industrial matters, industrial activity, collective bargaining, industrial disputes and industrial action);
 - (ii) providing for the establishment or enforcement of terms and conditions of employment;
 - (iii) providing for the making and enforcement of agreements (including individual agreements and collective agreements), and other industrial instruments or orders, determining terms and conditions of employment;
 - (iv) prohibiting conduct relating to a person’s membership or non membership of an industrial association;
 - (v) providing for rights and remedies connected with the termination of employment;
 - (vi) providing for rights and remedies connected with conduct that adversely affects an employee in his or her employment; or
 - (c) a law of a State or Territory that applies to employment generally and deals with leave (other than long service leave or leave for victims of crime); or
 - (d) a law of a State or Territory providing for a court or tribunal constituted by a law of the State or Territory to make an order in relation to equal remuneration for work of equal or comparable value; or
 - (e) a law of a State or Territory providing for the variation or setting aside of rights and obligations arising under a contract of employment, or another arrangement for employment, that a court or tribunal finds is unfair; or
 - (f) a law of a State or Territory that entitles a representative of a trade union to enter premises; or
 - (g) an instrument made under a law described in paragraph (a), (b), (c), (d), (e) or (f), so far as the instrument is of a legislative character; or

- (h) either of the following:
- (i) a law that is a law of a State or Territory;
 - (ii) an instrument of a legislative character made under such a law;
- that is prescribed by the regulations.

- 11 A combination of s 26(1), (2)(a) and (3)(c) of the FW Act identifies the Act as a State industrial law. Accordingly, subject to s 27, the FW Act is intended to apply to the exclusion of the Act so far as the Act would otherwise apply in relation to a national system employee or employer.
- 12 Relevantly, we note s 26(2)(g) of the FW Act which includes in the definition of a “State or Territory industrial law” an instrument made under the Act so far as the instrument is of a legislative character. Is the Award an instrument made under the Act which is of a legislative character? The Award is made under the Act and it is therefore an instrument made under a law described in s 26(2)(g) of the FW Act.
- 13 The Act defines an award in s 7(1) as an award made by the Commission under the Act. An award is also described as an “industrial instrument” for the purposes of s 29AA(5) of the Act which is as follows:

- (5) In this section —
- industrial instrument** means —
- (a) an award;
 - (b) an order of the Commission under this Act that is not an order prescribed by regulations made by the Governor for the purposes of this section;
 - (c) an industrial agreement; or
 - (d) an employer-employee agreement.

This definition is repeated for the purposes of s 49D of the Act and an “instrument” for the purposes of ss 83 and 98 also includes an award. Describing an award as an “instrument” is consistent with the ordinary meaning of the word which includes a “formal legal document, as a contract, promissory note, deed, grant etc.” (Macquarie Dictionary, Third edition, page 1105).

- 14 When making an Award the Commission exercises a legislative function as Smith C (as she then was) observed in *The Chief Executive Officer, Public Transport Authority v. The Australian Rail, Tram And Bus Industry Union Of Employees, West Australian Branch* [2006] WAIRC 03455, (2006) 86 WAIG 74 at [19] and see too *Summit Constructions and Others v. The Association of Draughting, Supervisory and Technical Employees, Western Australian Branch* (1991) 71 WAIG 3136 at 3137.
- 15 Section 26(2)(g) of the FW Act includes as a State industrial law an instrument made under a State industrial law which has a legislative character and given the normal meanings of the words “instrument” and “legislative” in s 26(2)(g) of the FW Act this leads us to conclude that the Award is an instrument made under the Act which is of a legislative character.

Conclusion Regarding the Effect of s 26 of the *Fair Work Act 2009* on the Award

- 16 We find that the FW Act applies to a national system employer or employee to the exclusion of the State or Territory industrial laws referred to in s 26(1) and (2) of the FW Act, and that the State or Territory industrial laws referred to for the purposes of this matter include both the Act and, by virtue of s 26(2)(g) of the FW Act, the Award. We conclude that the operation of s 26 of the FW Act means that the Award and any amendment or variation made to it can have no application to any employee whose conditions of employment would otherwise be covered by it. To put it another way, even if the employer employs an employee who would *prima facie* be covered by the Award, s 26 of the FW Act means that it does not and cannot apply to that employee and any future amendment or variation made to the Award under the Act can therefore have no effect upon such an employee.
- 17 This conclusion is consistent with the conclusion of the Federal Court in the *Endeavour Coal* case referred to above in relation to the corresponding effect of the WR Act. In that matter, the Full Court at [58] referred to the scheme of industrial regulation provided for in the WR Act and held at [59] that a feature of that scheme was to limit the role of State legislatures in prescribing legislatively, and of State industrial tribunals in prescribing by instruments they make or approve, the wages or salaries and the terms and conditions of employment of employees of constitutional corporations. Applying that reasoning to the effect of s 26 of the FW Act upon the Act and the Award leads us to the conclusion that there is no employee to whom the Award applies.

The Effect of s 27 of the *Fair Work Act 2009* on the Award

- 18 Relevantly, s 27(1)(c) of the FW Act provides that s 26 does not apply to a law of a State or Territory so far as the law deals with any non-excluded matters. The non-excluded matters are set out in s 27(2). For present purposes we draw attention to the following non-excluded matters:
- Superannuation (s 27(2)(a)).
 - Long service leave (s 27(2)(g)).
 - Declaration, prescription or substitution of public holidays, except in relation to the rights and obligations of an employee or employer in relation to public holidays (s 27(2)(j)).
- 19 The Award contains clauses with respect to each of these matters in clauses 15 – Public Holidays, 19 – Long Service Leave and 24 – Superannuation (see (1995) 75 WAIG 2746 at 2753, 2754 and 2760). We raised with the parties whether s 27(2) of the FW Act operates such that those clauses continue to have application to constitutional corporations to the extent that they fit within the description of the non-excluded matters in s 27(2)(a), (g) and (j) respectively.

- 20 We agree with the written submission of Mr Jones that s 27(1) and (2) operate in respect of a law of a State or Territory so far as the law deals with any non-excluded matter. If, as we have found, the Award is a “State or Territory industrial law” in s 26 of the FW Act, is the Award a “law of a State or Territory” so far as it deals with any non-excluded matter?
- 21 We conclude that it is not for the following reasons. The meaning of the words “State and Territory laws” in s 27 can be illustrated by reference to the laws contained in s 27(1A). They are Acts of the respective State or Territory Parliaments. The Award is not an Act of Parliament, neither is it a law as such; it was held by the Supreme Court of WA that an award is not equivalent, in itself, to a law of the State in *White and Company v. Coastal District Committee, Amalgamated Society of Engineers* (1922) 25 WALR 88 where Draper J concluded at 95:
- “It is clear from this that an award itself is not a law, but merely the determination of a tribunal, which, when taken in conjunction with the Arbitration Act, has the force of law”.
- 22 The FW Act does not regard an award as a law of a State or Territory. It specifically includes an instrument made under a State industrial law as part of the description in s 26 of the State or Territory industrial laws which are to be excluded by the FW Act but that does not elevate an award to a law of a State or Territory as referred to in s 27 of the FW Act. Section 27 refers to “a law of a State or Territory”; not to a “State or Territory industrial law”.
- 23 We conclude that the Award itself is not “a law of a State or Territory” for the purposes of s 27(1) and (2) of the FW Act, and therefore neither are clauses 15, 19 and 24 within it which make provision for long service leave, public holidays and superannuation respectively. In reaching this conclusion we take into account the conclusion of the Federal Court in the *Endeavour Coal* matter (referred to above) at [70] that the general award-making power conferred upon the Industrial Relations Commission of NSW by ss 10 and 11 of the *Industrial Relations Act, 1996* (NSW) did not give that Commission the power to make an award binding a constitutional corporation in relation to long service leave. In our view that conclusion applies to the circumstances before us: the operation of ss 26 and 27 of the FW Act would mean that this Commission would not have the power to make an award in relation to superannuation, long service leave, or the declaration, prescription or substitution of public holidays binding upon a constitutional corporation.
- 24 Correspondingly, whatever may have been the effect of State awards being transmogrified (as referred to in passing in *Endeavour Coal* at [68]) into NAPSAs for the purposes of the *WR Act*, we are satisfied that s 26 of the FW Act means that the Award now does not apply to employees of an employer which is a constitutional corporation and that s 27 does not condition that conclusion.

Section 47(1) of the Act and Conclusion

- 25 As a result, we are of the opinion that there is no employee to whom the Award applies. The Act makes specific provision for such a situation by conferring power on the Commission to cancel an award. Section 47(1) of the Act provides as follows:
- (1) Subject to subsections (3), (4) and (5), where, in the opinion of the Commission, there is no employee to whom an award or industrial agreement applies, the Commission may on its own motion, by order, cancel that award or industrial agreement.
- 26 We consider that subsections 47(3) and (4) of the Act have been complied with: the Registrar was directed on 18 January 2007 to make enquiries following the request from the CCIWA and reported in writing on 17 May 2007 (s 47(3)(a)); the Registrar was required to give general notice on 27 June 2007 and did so including by service of a copy of the notice upon the named parties to the Award (s 47(3)(b)); notices of objection were received within 30 days of the publication of the notice (s 47(4)).
- 27 There is no submission before us not to cancel the Award and any suggestion that its cancellation would be premature was an earlier suggestion made in the context of the March 2006 “Work Choices” amendments to the *WR Act* and if made now would not be valid. We are unable to see any detriment arising from its cancellation. Moreover, there is a definite advantage accruing from the removal of an award which is clearly redundant: while it remains, there is likely to be a presumption of validity and to be attempts to vary it to ensure its currency; these are to be avoided and will be avoided by its cancellation.

The Order to Issue

- 28 Accordingly, we will order that the Award be cancelled.

2010 WAIRC 00199

S.47 CANCELLATION OF THE JENNY CRAIG EMPLOYEES AWARD, 1995

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

ON THE COMMISSION'S OWN MOTION

CORAM

CHIEF COMMISSIONER A R BEECH
ACTING SENIOR COMMISSIONER P E SCOTT
COMMISSIONER J L HARRISON

DATE

MONDAY, 12 APRIL 2010

FILE NO/S

APPL 50 OF 2007

CITATION NO.

2010 WAIRC 00199

Result

Award cancelled

Order

HAVING HEARD Mr D Jones, Chamber of Commerce and Industry, WA, on behalf of the employer; Ms J O'Keefe and later Mr J Nicholas and later Mr K Sneddon and later Ms S Holt, on behalf of the Liquor, Hospitality and Miscellaneous Union; and Mr D Robinson and later Mr D Ellis and later Ms S McGurk, on behalf of the Trades and Labor Council of WA;

NOW THEREFORE, the Commission in Court Session, pursuant to the powers conferred by s 47(1) of the *Industrial Relations Act 1979*, does hereby order:

THAT the following award be cancelled:

JENNY CRAIG EMPLOYEES AWARD, 1995

(Sgd.) A R BEECH,
Chief Commissioner,
Commission In Court Session.

[L.S.]

POLICE ACT 1892—APPEAL—Matters Pertaining To—

2009 WAIRC 01285

APPEAL AGAINST A DECISION OF THE COMMISSIONER OF POLICE TO TAKE REMOVAL ACTION

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

AM

APPELLANT

-v-

COMMISSIONER OF POLICE

RESPONDENT

CORAM

CHIEF COMMISSIONER A R BEECH

COMMISSIONER J L HARRISON

COMMISSIONER S M MAYMAN

HEARD

MONDAY, 4 MAY 2009, WEDNESDAY, 12 AUGUST 2009, THURSDAY, 8 OCTOBER 2009,
THURSDAY, 12 NOVEMBER 2009

DELIVERED

FRIDAY, 4 DECEMBER 2009

FILE NO.

APPL 8 OF 2008

CITATION NO.

2009 WAIRC 01285

CatchWords

Removal of Police Officer - Loss of confidence by Commissioner of Police - Officer convicted of criminal offence - Conviction overturned on appeal - Whether removal harsh, oppressive or unfair - Police Act 1892 (WA) s 33L(1), (5)(a), s 33P, s 33Q(4), s 33R, s 33R(8), s 33R(10)(b), s 33Us, s 33W, s 33XU

Result

Removal was harsh, oppressive or unfair and removal from office is and is to be taken to have always been of no effect

Representation

Appellant

Ms K Vernon, of counsel

Respondent

Mr R Andretich, of counsel

Reasons for Decision

BEECH CC:

- 1 This is an appeal pursuant to s 33P of the *Police Act 1892* ("the Police Act"). By that Act a member of the Police Force who has been removed from office may appeal on the ground that the decision of the Commissioner of Police to take removal action relating to the member was harsh, oppressive or unfair.

Background

- 2 On 15 May 2006, the Commissioner of Police issued a Notice of Intention to Remove AM from the Police Force. The Notice stated that the Commissioner of Police had lost confidence in AM's suitability having regard to the matter set out in an attached Summary of Investigation, as well as statements obtained, which suggested that between 1 September 2001 and 31 October 2001 at Kalgoorlie, he sexually penetrated a person without her consent in a circumstance of aggravation in that at the time she was over the age of 13 years and under the age of 16 years (Tab 6 of Commissioner of Police's Documents). AM had

been a member of the Police Force for a period of approximately 12 months prior to being served with the Notice of Intention to Remove and at the time of the alleged incident giving rise to the loss of confidence nomination he was not a member of the Police Force.

- 3 AM's Response to the Commissioner's Loss of Confidence notice is dated 7 June 2006 (Tab 5). He emphatically denied the allegation and noted that he had been charged with a criminal offence arising from the alleged incident, that he had entered a plea of not guilty and continued to maintain his innocence. His submission was that the allegation had no substance or foundation and would be defended before a jury which would assess the evidence which is an advantage that the Commissioner of Police did not have. Further, the Commissioner of Police's loss of confidence was based upon untested statements of individuals. AM submitted (at [23]) that bearing in mind the presumption of innocence and the fact that it is equally in the public interest that the Police Force be seen to uphold such fundamental principles, public confidence is best served by the loss of confidence process being held in abeyance pending the disposition of the criminal charge.
- 4 On 31 July 2006, the Acting Commissioner of Police advised AM that he was prepared not to take removal action pending the outcome of the criminal trial in relation to the charges preferred against him under s 326 of the Criminal Code (Tab 2). AM was then stood down on full pay pending the outcome.
- 5 On 12 February 2008, following a trial in the District Court of Western Australia before a Judge alone, AM was convicted of the charge of sexual penetration without consent of a child over the age of 13 years and under the age of 16 years ([2008] WADC 20) and was imprisoned. On that same day, the Commissioner of Police informed AM that, further to the Notice of Intention to Remove of 17 May 2006, the Minister for Police approved his removal from the Police Force on 12 February 2008 (Tab 1).
- 6 AM appealed against his conviction and on 6 March 2008, AM also appealed to the WAIRC against his removal. As he had appealed against his conviction, and pursuant to s 33T of the Police Act, his appeal to the WAIRC was adjourned pending the outcome of the appeal against his conviction ((2008) 88 WAIG 203; 2299 and (2009) 89 WAIG 380). On 26 September 2008, the Court of Appeal (WA) allowed the appeal and ordered a retrial ([2008] WASCA 196). Subsequently the Director of Public Prosecutions ("DPP") discontinued the proceedings against AM with the result that there was not, and will not be, a retrial.
- 7 For the purposes of his appeal to the WAIRC, leave was granted at a hearing on 12 August 2009 to AM to tender as new evidence pursuant to s 33R of the Police Act a copy of the judgment of the Court of Appeal and a copy of the DPP's notice of the discontinuance of proceedings against AM. As a consequence of the tendering of new evidence, and pursuant to s 33R(8) of the Police Act, on 11 September 2009 the Commissioner of Police filed reformulated reasons for the removal of AM from the Police Force and also tendered as new evidence a copy of the decision of the District Court of Western Australia.

The Appeal -

The Case Presented by the Commissioner of Police

- 8 The Commissioner of Police's reformulated reasons for removing AM note (at [5]) that he had been prepared to accede to AM's request to defer a final decision in his case principally because the allegation was of an extremely serious nature and all of the evidence was at that time untested. As AM had been convicted, he removed him from the Police Force and the mere fact that he had been convicted, together with the fact of his imprisonment, made this necessary and he saw no need to revisit his reasons for requiring AM to show cause prior to removing him from office (at [7]).
- 9 The Commissioner of Police stated that as AM's conviction has now been quashed it is no longer appropriate to rely solely on the fact of the conviction as providing a sufficient basis for his removal and he considered whether on the material available to him he had cause to lose confidence in AM's suitability to remain as a Police Officer. The Commissioner referred to the District Court trial noting that the District Court Judge accepted the complainant's evidence (i.e. the person allegedly sexually penetrated) as truthful and reliable, and did not consider AM's evidence to be persuasive and that "it did not have a ring of truth about it". The Commissioner of Police referred to what he described as the long standing principle of a trial judge enjoying the advantage of hearing and observing the demeanour of witnesses in assessing their credibility.
- 10 The Commissioner of Police noted that AM's appeal to the Court of Appeal was on four grounds. The first challenged the admissibility of TL's evidence; the second challenged the weight accorded to TL's evidence by the District Court Judge; the third challenged the sufficiency of the *Longman* direction (*Longman v. The Queen* (1989) 168 CLR 79) given by the judge while the fourth ground of appeal contended that the verdict was not reasonably open and was unsafe and unsatisfactory. The Commissioner noted that AM had been successful on the third ground of appeal only. The Commissioner of Police considered that, having regard to the nature of the power afforded to him to remove a Police Officer in whom he has lost confidence, even if the District Court Judge had given herself the appropriate *Longman* direction and had been unable to satisfy herself as to AM's guilt, it would still be open to the Commissioner of Police to have regard to the Judge's observations about AM's evidence and that of the complainant. Given the advantage the trial judge had in hearing and observing the demeanour of witnesses and assessing their credibility, the Commissioner of Police believed that the District Court Judge's observations regarding the truthfulness of the complainant's evidence, in contrast to the unpersuasive nature of AM's evidence was sufficiently compelling to give rise to a significant doubt in the mind of the Commissioner of Police as to the suitability of AM to be a Police Officer having regard to his conduct, honesty and integrity (at [21]).
- 11 The Commissioner of Police stated that the fact that all three Judges of the Court of Appeal dismissed the fourth ground of appeal which related to the verdict of guilty not being reasonably open to the trial judge, and instead considered that there was ample evidence to support the verdict of guilty, thus fortifying his doubts about the suitability of AM to remain as a Police Officer. The Commissioner of Police set out (at [22]) each of the comments of the trial judges to which he was there referring.

- 12 The Commissioner of Police maintains that it is enough that in good faith he considers that the officer is not fit to occupy the office of constable or that there was real doubt about the officer's suitability to be a member of the Police Force (at [23]). He concluded that having regard to the observations of the District Court Judge and the decision of the Court of Appeal on the fourth ground of appeal, he was satisfied that there was sufficient doubt about AM's suitability to be a Police Officer having regard to his honesty, integrity and conduct.
- 13 The reformulated reasons (at [25]) states that the Commissioner of Police relies upon the Summary of Facts and Issues of Law, and the matters set out in reply, which are in his response of 30 June 2009. For completeness, that response refers to s 33W of the Police Act which provides:

33W. Effect of charge for an offence or an acquittal

To avoid doubt, it is declared that if a member —

- (a) has been charged with committing an offence; or
- (b) has been acquitted of an offence,

that charge, the existence of proceedings relating to that charge or the acquittal does not preclude the Commissioner of Police from taking any action under this Part in relation to any matter, act or omission relating to or being an element of the offence.

- 14 In the submissions made in support of the reformulated reasons, Mr Andretich, who appeared for the Commissioner of Police, maintained that not only was the Court of Appeal unanimous in rejecting the fourth ground of appeal that the District Court Judge's verdict on the evidence was not available and unsafe, but there was also no criticism of the District Court Judge's determinations as to the credit of witnesses. Therefore, the Commissioner of Police was entitled to find that there was sufficient credible evidence to reasonably suspect, or find that the offence was committed by AM such that he no longer had confidence in him serving as a Police Officer.

The Case Presented by AM

- 15 AM's amended grounds of appeal are as follows:
- "1. The Notice of Removal dated 12 February 2008 and served on 13 February 2008 provides no detail of why removal action was effected, however it is assumed the only reason was the Appellant's conviction for the offence of sexual penetration without consent in the District Court of Western Australia on 12 February 2008.
 - 2. As at the date of the Removal, the disposition of the criminal charge preferred against the Appellant had not been finally determined.
 - 3. When the Court of Appeal quashed the Appellant's conviction and ordered a retrial on 26 September 2008, and the Director of Public Prosecutions subsequently discontinued the charge on 5 February 2009, the reason for the Removal on the basis of criminal conviction alone became invalid."
- 16 In support of Ground 1, AM claims that as the Commissioner of Police's Notice of 12 February 2008 removing him from office (Tab 1) does not give reasons for the decision to remove him it is a breach of s 33L(5)(a) of the Police Act which says:
- (a) the notice under subsection (3)(b) shall advise the member of the reasons for the decision;
- 17 Ms Vernon submitted that the requirement to give reasons is a fundamental component of natural justice and the failure of the Commissioner of Police to do so is therefore a substantive breach. This is significant because the provisions of s 33X of the Police Act would only excuse this failure on the part of the Commissioner of Police if the failure to give reasons is not substantive.
- 18 In relation to Ground 2, it is argued on behalf of AM, that although s 33W means that the Commissioner of Police is not precluded from acting to remove AM, he had decided to wait for the outcome of the criminal trial in relation to the charges preferred against AM. Referring to the wording in s 33T of the Police Act, Ms Vernon submitted that a criminal charge is not "finally determined" until there has been a finding of a court that is no longer subject to a statutory right of appeal. The criminal charge had not been finally determined at the time the removal took effect because the time for AM to lodge an appeal against his conviction had not expired and in that respect, the action of the Commissioner of Police deprived AM of his right to be able to demonstrate his innocence to the Commissioner of Police.
- 19 In relation to Ground 3, Ms Vernon submitted that the Commissioner of Police's reliance on the decision of the Court of Appeal that the appeal would not be upheld on the fourth ground cannot be elevated above the ultimate finding of the Court of Appeal which overturned AM's conviction. Ms Vernon submitted that the Commissioner of Police had relied upon selected sections of the judgments, however a reading of the reasons of the three Judges show that the facts which constituted the foundation for the conviction had ceased to exist. Ms Vernon referred in detail to the comments of the three Judges of the Court of Appeal which led them to allowing the appeal.
- 20 On behalf of AM, Ms Vernon submitted that the Court of Appeal could have chosen not to overturn the conviction and could still have dismissed the appeal if it considered that no substantial miscarriage of justice had occurred. Even though the Court of Appeal ordered a retrial, AM's conviction does not stand which means that the facts which formed the foundation for the conviction were therefore overturned and the retrial would mean that there would have to be a redetermination of the facts, as that redetermination of the facts may have led to a conviction or it may have resulted in an acquittal. This gives back to AM

the presumption of innocence until such time as a retrial reaches a conclusion that he is guilty. In essence the Court of Appeal had set aside the conviction of AM and as a result this set aside everything that resulted in AM's conviction, and the overturning of the conviction nullified the findings of the District Court Judge regarding the credibility of the complainant and of the witness and of AM. Specifically, the District Court Judge found that AM was guilty based in part upon her observations of the witnesses and findings as to credibility. The ordering of a retrial would not mean that it would be heard before the same Judge.

The Commissioner of Police's Response

- 21 On behalf of the Commissioner of Police, Mr Andretich submitted that in relation to the Notice of Removal (Tab 1) and whether it contained the reasons for the removal, circumstances had moved beyond it with the reformulated reasons dated 11 September 2009. The Commissioner had deferred his consideration of the removal but acted when AM was convicted, and AM's conviction demonstrated his unsuitability to remain within the Police Force. The trial process had then been completed and he submitted that AM had not suffered any prejudice as a result of his removal at that time. Furthermore, there was no obligation on the Commissioner of Police to wait for the expiry of the appeal period.
- 22 Mr Andretich further submitted that the substantial matter was whether there was sufficient material before the Commissioner of Police to allow him to reach the decision which he reached. In Mr Andretich's submission, the judgments of the District Court Judge and the Appeal Justices formed the material which the Commissioner of Police could have, and should have, taken into account in the decision he reached, and the material and the judgments upon which the Commissioner of Police relied are not dissimilar to the material contained in the summary of investigation. His reliance on the Court of Appeal judgment was informed by the comments of caution made by the Judges. The Commissioner could be heartened that the evidence before him had been tested and had been pronounced upon by a judicial officer.

Consideration – Ground 1

- 23 In relation to Ground 1 of the Appeal, in my view the Notice of Removal given to AM on 12 February 2008 (Tab 1) does not comply with s 33L(5) of the Police Act. Section 33L(5) requires the Notice of Removal to advise the reasons for the decision to take removal action. The Notice given to AM commences with the words "Further to the Notice of Intention to Remove from the Police Force of Western Australia dated 17 May 2006, ..." but provides no reasons for the decision to take removal action. In the absence of words such as "For the reasons set out in the Notice of Intention to Remove...", the reasons for the Commissioner's removal need to be assumed to be the same as the reasons set out in the Notice of Intention to Remove, even if it be an assumption made with confidence.
- 24 The significant point is that a member of the Police Force who has been removed should not have to assume what the reasons are for his or her removal. They may not be the same as the reasons set out in the Notice of Intention to Remove. The Notice of Intention to Remove may, depending on the circumstances, contain a number of reasons why the Commissioner has lost confidence in an officer's suitability to remain a member of the Police Force. Pursuant to s 33L(2) of the Police Act, the officer may within 21 days make a written submission to the Commissioner of Police in respect of those reasons. Pursuant to s 33L(3) the Commissioner of Police is then to decide whether or not to take removal action and in so doing take into account any written submissions received from the officer. Therefore the reasons for the Commissioner of Police deciding to remove an officer may be all or only some of the reasons set out in the Notice of Intention to Remove.
- 25 It is for that reason, I suspect, that the Police Act requires separately in s 33L(1) that the Commissioner of Police's written Notice of Intention to Remove set out the grounds upon which the Commissioner of Police does not have confidence in the member's suitability to continue as a member, and in s 33L(5)(a) that the Commissioner advise the member of the reasons for the decision to take removal action. This recognises that the eventual reasons for deciding to remove a member may differ from the grounds for intending to remove the member. Therefore, a mere reference in the Notice of Removal to the earlier Notice of Intention to Remove does not satisfy the requirement to give reasons for the decision to remove the member.
- 26 The failure of the Commissioner of Police to comply with the procedure described under Division 2, which includes s 33L of the Police Act, shall not be invalid or called into question if the failure is not substantive (s 33X of the Police Act). Ordinarily, a failure to provide reasons for decision where an officer is removed from office might materially affect the right of the officer to appeal his or her removal under s 33P of the Police Act. This is because the officer would not know the basis upon which the decision to remove had been made. Therefore, the requirement on the Commissioner of Police in s 33L(5)(a) to provide reasons for the decision to remove an officer is a substantive, and not procedural, requirement.
- 27 In the context of this matter, it is pertinent to consider whether any prejudice was occasioned to AM by the failure of the Notice of Removal to contain the reasons for the decision to remove him. It was not submitted on behalf of AM that he had suffered any prejudice directly from the failure of the notice to contain the reasons (transcript page 20). I do not think AM has suffered any prejudice. The Notice of Intention to Remove (Tab 6) contains only one reason why the Commissioner of Police lost confidence in AM's suitability to continue as a member of the Police Force, that is, statements obtained by the Commissioner of Police suggesting that AM sexually penetrated a person without her consent in circumstances of aggravation. Where only one reason, albeit a most serious accusation, forms the basis for the Commissioner's loss of confidence in AM, it is not unreasonable to argue, as Mr Andretich submitted, that the reference in the Notice of Removal to the Notice of Intention to Remove makes it plain that the reasons for the Commissioner's decision to remove AM are the reasons set out in the Notice of Intention to Remove.
- 28 Further, I consider the failure to provide the reasons for removing AM is overtaken by the subsequent granting of leave to AM to tender new evidence and, as a consequence, the Commissioner of Police reformulating his reasons for not having confidence in AM's suitability to continue as a member. Section 33R(10)(b) obliges us to consider the reformulated reasons as if they had been reasons given to AM under s 33L(5)(a) of the Police Act. In effect, the reformulated reasons replace the original Notice

of Removal. Importantly, AM amended his grounds of appeal subsequent to the reformulated reasons and I consider that by the time of the hearing of his appeal, any prejudice to AM from the original Notice would have been overcome by these later events. Therefore, despite the Notice of Removal not containing the reasons for the Commissioner's decision to remove AM, I would not uphold the appeal on this ground.

Ground 2

- 29 In relation to Ground 2, AM submits that at the date of his removal the disposition of the criminal charge against him had not been finally determined. The point being made, as I understand it, is that the Commissioner of Police ought to have waited until the appeal period against AM's conviction had expired, a period we are informed of 21 days, particularly given his earlier decision not to proceed with the removal pending the outcome of the criminal charge against AM. In response, the Commissioner of Police submits that there is no obligation upon him to wait for that appeal period to expire. I agree with this submission in part, because of the terms of s 33W which I have set out earlier in these reasons.
- 30 The Commissioner of Police states (in the reformulated reasons at [7]) that AM's conviction served to reinforce his concern about AM's suitability to remain a member of Police Force and as he had been convicted, the Commissioner of Police proceeded to remove him; the mere fact that AM had been convicted, together with the fact of his imprisonment, made it necessary in the view of the Commissioner of Police. In my view, the Commissioner of Police has a discretion to wait for the expiry of an appeal period before removing an officer who has been convicted of an offence, however each case will need to be looked at on its merits. Notwithstanding that discretion, I consider that the criminal proceedings had concluded with the decision of the District Court, not 21 days after that decision. The lodging of an appeal by AM means that decision may or may not be overturned, however until it was overturned the decision of the District Court stood and AM was convicted and in custody. It was not harsh, oppressive or unfair, in the context of maintaining public confidence in the integrity, honesty, conduct and standard of performance of members of the Police Force, that the Commissioner of Police proceeded to remove him at that precise point in time. For those reasons, Ground 2 is not made out.

Ground 3

- 31 In Ground 3, AM argues that the quashing of his conviction and the ordering of a retrial, and the DPP's subsequent discontinuance of the proceedings against him, means that the reason for his removal on the basis of the criminal conviction alone became invalid. As Ms Vernon in these proceedings emphasises, the three Judges of the Court of Appeal upheld the appeal against the decision of the District Court Judge on the basis that there had been a substantial miscarriage of justice.
- 32 In my view, this ground requires a consideration of the Commissioner of Police's reformulated reasons because the Commissioner of Police states in them at [8] that as AM's conviction has now been quashed it is no longer appropriate to rely solely on the fact of the conviction as providing a sufficient basis for his removal and he considered whether on the material available to him he had cause to lose confidence in AM's suitability to remain a Police Officer.
- 33 As I have set out earlier, the Commissioner of Police relies upon the District Court Judge's decision where Her Honour found the complainant's evidence truthful and reliable ([2008] WADC 20 at [33]) and did not consider AM's evidence to be persuasive, and that all three judges of the Court of Appeal dismissed the fourth ground of appeal that the verdict was not reasonably open to the trial judge. The Commissioner of Police was therefore satisfied that there was sufficient doubt about AM's suitability to be a Police Officer.
- 34 This reliance requires a careful examination of the judgments of the Court of Appeal. When assessing the impact of the District Court Judge's failure to correctly apply the appropriate *Longman* direction, Steytler P held at [17] that a substantial delay in making a complaint will ordinarily have a number of consequences including that "[t]he evidence of the complainant cannot be adequately tested, making it dangerous to convict on that evidence alone, although the trier of fact can convict on that evidence alone if satisfied of its truth and accuracy". He noted that in the present case the District Court Judge had concluded that any prejudice to AM from the delay was minimal and there were no real dangers arising from the delay. Steytler P stated at [20] that there were material shortcomings from this analysis in that there had been real prejudice to AM and, at [21], the acceptance of TL's evidence did not overcome the dangers arising from the delay. These errors were central to the decision of the District Court Judge that it was safe to convict essentially on the strength of the complainant's evidence.
- 35 In other words, in my view, His Honour is saying that it was not safe to convict AM essentially on the strength of the complainant's evidence because there had been real prejudice to AM arising from the delay, and the acceptance of TL's evidence did not overcome those dangers. This must call into question the weight which now can be attached to the District Court Judge's observation that the complainant's evidence was truthful and reliable, because as Steytler P has said "[t]he evidence of the complainant cannot be adequately tested, making it dangerous to convict on that evidence alone...". The balance of His Honour's sentence, "although the trier of fact can convict on that evidence alone if satisfied of its truth and accuracy", did not change this finding; it led to the conclusion that there should be a retrial.
- 36 The conclusion that there should be a retrial is most important: although Steytler P states at [23] that this is a case in which it would be open to a trier of fact to convict and like Miller JA held that nothing raised in Ground 4 would inevitably make it unreasonable, insupportable or dangerous to convict AM, a retrial necessarily carries with it the presumption that AM is innocent of the charge laid against him. It will be up to the prosecution in another trial to prove AM's guilt beyond reasonable doubt and unless and until that occurs, AM remains innocent of the charge. If the charge against AM remains unproven, the issue for the WAIRC becomes whether his removal in these circumstances is harsh, oppressive or unfair. I shall return to this issue subsequently.
- 37 Miller JA dismissed the fourth ground of appeal. His Honour at [187] found that there was ample evidence to support the verdict of guilty and that once the evidence of the complainant was accepted as credible and persuasive and the evidence of AM was rejected, it was necessary only for the trial judge to carefully scrutinise the evidence of the complainant before acting upon it. It could not be said that a verdict of guilty was unreasonable, incapable of being supported having regard to the

evidence or in any way unsafe or unsatisfactory. However, Miller JA held earlier at [146] that an error had been made by the District Court Judge in that what was missing from the *Longman* direction given by her was a direction that the delay had in fact made it difficult to test the complainant's evidence; the delay had caused actual prejudice to AM, rather than possible prejudice. A second error (see [147] – [149]) was that the District Court Judge had elevated the evidence of TL to that of a confession such that any prejudice to AM occasioned by the delay in being charged was minimal.

- 38 At [150] and following, Miller JA then noted that that under s 30(4) of the *Criminal Appeals Act 2004* (WA) even if a ground of appeal might be decided in favour of AM, the Court of Appeal may dismiss the appeal if it considers that no substantial miscarriage of justice has occurred. He did not dismiss the appeal, holding that the District Court Judge's failure to properly direct herself in accordance with the *Longman* direction (that is, as he had earlier stated, that the delay had in fact made it difficult to test the complainant's evidence and the evidence of TL did not make minimal any prejudice to AM occasioned by the delay in being charged) constituted "a serious breach of the presuppositions of the trial process" which denied the application of s 30(4). His Honour concluded that it is impossible to assess the impact of the irregularity on the fairness of the trial.
- 39 Murray AJA at [190] agreed with both Steytler P and Miller JA that the appeal should be allowed and a new trial ordered. In relation to the fourth ground, at [196] he agreed with them both that the proposition that the verdict and decision of the District Court Judge was unreasonable or cannot be supported, having regard to the evidence, is not made good.
- 40 It is Murray AJA's consideration of the applicability of the *Longman* direction to which I draw particular attention. His Honour stated at [202] that the need for the *Longman* direction arises "where, for any reason, the reliability of a witness, upon the acceptance of whose evidence the prosecution case solely or substantially relies, comes into question...". His Honour at [204] agreed with both Steytler P and Miller JA that the lapse of time between the alleged commission of the offence and AM being charged and the trial, meant that there was an incapacity for either side to gather evidence which might enable the credibility of the complainant to be thoroughly examined in the context of a body of evidence concerned with the events of the night in question.
- 41 Murray AJA noted at [205] that the District Court Judge spoke approvingly of the complainant as witness and then referred to matters arising from the *Longman* direction. At [206] his Honour stated:
- 206 Her Honour then referred to matters under the heading 'Longman warning'. In other words, it seems to me that her Honour reversed the appropriate order of consideration of the issues. Before considering the extent to which she needed to carefully scrutinise the evidence of the complainant, having regard to the various challenges made to its reliability, her Honour had already expressed the view that she accepted the complainant's evidence as being truthful and reliable. In my view, her Honour was in error in that regard.
- 42 His Honour found at [207] that the District Court Judge thereby reversed the appropriate order of consideration of the issues and was thereby in error. I set out his Honour's conclusions (omitting references):
- 210 The evidence of TL was certainly important in the case. If accepted, as it was, the appellant had made statements contradicting his evidence and that of his mother that he had no opportunity to commit the offence. But that evidence, relevant only in that way and having no probative value to support the complainant's evidence that the appellant did commit the offence in the circumstances she alleged, was not material to the process of carefully scrutinising the complainant's evidence, having regard to the matters of forensic disadvantage which the case raised, before the complainant was accepted as a truthful witness.
- 211 Rather, what the trial judge did in this case, it seems to me, was that, having already accepted the complainant as a truthful witness, her Honour did not adequately and appropriately evaluate the reliability of her evidence, having regard to the obvious elements of forensic disadvantage which the case threw up.
- 212 That error having been made, there has been a substantial miscarriage of justice because the appellant has been deprived of a trial in which the complainant's evidence, upon which the case against him so substantially depended, was appropriately and thoroughly tested for its reliability before it was accepted as evidence of truth.
- 213 For those reasons, I concur in the view that it would be appropriate in this case to allow the appeal, quash the conviction and order a retrial.
- 43 In the reformulated reasons at [19] the Commissioner of Police states:
- As I understand the point of the Court of Appeal's decision, while it may be unsafe to convict the appellant in the absence of an appropriate warning as to the disadvantage caused by the delay, it does not mean Her Honour was not entitled to find that the complainant was a credible witness or that the appellant was unpersuasive.
- 44 As I have set out above, the judgment of Murray AJA makes it clear that the District Court Judge's acceptance of the complainant as a truthful witness was an error because it was made before adequately and appropriately evaluating the reliability of her evidence, having regard to the obvious elements of forensic disadvantage which the case threw up. It led to a substantial miscarriage of justice. In my view this is the same conclusion reached by Steytler P at [22], that the errors were central to the decision of the District Court Judge that it was safe to convict essentially on the strength of the complainant's

evidence, and by Miller JA at [146] that an error had been made by the District Court Judge in that what was missing from the *Longman* direction given by her was a direction that the delay had in fact made it difficult to test the complainant's evidence.

- 45 It follows that the comments of Steytler P at [23] (that this is a case in which it would be open to a trier of fact to convict AM); Miller JA at [187] (that there was ample evidence to support the verdict of guilty) and Murray AJA at [196] (that the proposition that the verdict and decision of the District Court Judge was unreasonable or cannot be supported, having regard to the evidence, is not made good) upon which the Commissioner of Police relies in the reformulated reasons at [22] are comments which are to be read in the context of the judgments as a whole. It is correct that the fourth ground of appeal was dismissed and that Steytler P and Miller JA respectively held that it would be open to a trier of fact to convict and there was ample evidence to support the verdict of guilty. However, the observations of the District Court Judge regarding both the complainant's truthfulness and AM's unpersuasiveness were found to be part of an error which resulted in a substantial miscarriage of justice. Their decision means that in order to decide those issues and whether there will finally be a verdict of guilty there will need to be a retrial. In the absence of a retrial, those issues of credibility are and remain undecided.
- 46 I therefore conclude that the reliance by the Commissioner of Police on the observations of the District Court Judge and the respective judgments of the Court of Appeal as to the fourth ground of AM's appeal is, with respect, not reasonably open to him. When the respective judgments are read as a whole, they do not form a reasonable basis for him to be satisfied that there is a sufficient doubt about AM's suitability to be a Police Officer. To hold otherwise is to say AM's removal is fair on the basis of observations regarding credibility made by the District Court Judge in proceedings which were subsequently overturned or on the basis of certain comments made by the three Judges of the Court of Appeal which when read in context were themselves not sufficient to lead them to dismiss AM's appeal.
- 47 As Mr Andretich submitted, the Commissioner of Police did also have before him the material contained in the Summary of Investigation. However, there are two difficulties with the material contained in the Summary of Investigation. First, it is not clear that the Commissioner of Police relied upon this material in the reformulation of his reasons. The reformulated reasons show at [7] that AM's conviction and imprisonment alone were the deciding factors in the Commissioner of Police's decision to remove AM because he "saw no need to revisit [his] reasons for requiring the appellant to show cause prior to removing him from office" and the fact of conviction and imprisonment made his removal necessary.
- 48 The Commissioner of Police may not have relied upon this material due to the second difficulty which is that prior to AM's conviction, the Commissioner of Police recognised that the material contained in the Summary of Investigation was untested. It was, as Mr Andretich stated, a suspicion and therefore, properly in my view, the Commissioner of Police decided not to take removal action pending the outcome of the criminal trial in relation to the charges preferred against AM under s 326 of the Criminal Code (Tab 2). The fact is that the material contained in the Summary of Investigation remains untested. The reformulated reasons at [25] states that the Commissioner of Police relies upon the Summary of Facts in his response of 30 June 2009, however to the extent that the Summary of Facts states as fact the allegation made against AM (particularly [3] to [6]), the Commissioner of Police is not able to fairly rely upon the Summary at all: the allegation still remains an allegation and it has not been established as a fact. Therefore the earlier decision of the Commissioner of Police not to take removal action pending the outcome of the criminal trial in relation to the charges remains. I find Ground 3 is made out.

Conclusion

- 49 The essential question before us is whether the decision of the Commissioner of Police to remove AM was harsh, oppressive or unfair (*McKay v Commissioner of Police* [2006] WASC 189 at [25]; (2006) 155 IR 336). The test whether the decision of the Commissioner of Police to remove AM was harsh, oppressive or unfair is whether the legal right of the Commissioner of Police to remove AM has been exercised so harshly or oppressively against him as to amount to an abuse of that right (*Carlyon v Commissioner of Police* (2004) 85 WAIG 708 at 724; [2004] WAIRC 11966 at [181], applying *The Undercliffe Nursing Home v. The Federated Miscellaneous Workers' Union of Australia, Hospital, Service and Miscellaneous, W.A. Branch* (1985) 65 WAIG 385 per Brinsden J at 386). That test necessarily involves a consideration of all of the circumstances including those set out in s 33Q(4) of the Police Act.
- 50 Having regard to the interests of AM (which we are required to do under s 33Q(4)(a) of the Police Act), I consider there is much force in the submission of Ms Vernon that in the circumstances where a retrial was ordered, AM is entitled to the presumption of innocence. If that was not the case, the Court of Appeal would not have upheld the appeal and ordered a retrial. The fact that there will not be a retrial does not remove that presumption and it remains.
- 51 The interests of AM include the material contained in the background to his Response to the Commissioner's Loss of Confidence Notice (Tab 5, page 4) which refers to a seemingly unblemished service of 11½ years as a member of the Victoria Police, including having been awarded the Police Service Medal for Diligent and Ethical Service, and a number of written commendations and references attesting both to his ability as a Police Officer and to his character.
- 52 We are also to have regard to the public interest which is taken to include the importance of maintaining public confidence in the integrity, honesty, conduct and standard of performance of members of the Police Force, and the special nature of the relationship between the Commissioner of Police and members of the Force. Maintaining public confidence in the Police Force is a matter of fundamental importance. The allegation against AM in the material in the Summary of Investigation is very serious; the fact remains, however, that after a trial before a Judge of the District Court and the subsequent appeal, the allegation (in the form of the criminal charge) ultimately has not been proven.
- 53 AM was convicted and imprisoned. If this appeal was to be decided on those two circumstances alone I would dismiss the appeal. However, as Mr Andretich observed in relation to Ground 1, correctly in my respectful observation, circumstances have moved beyond the removal of 12 February 2008 with the reformulated reasons of 11 September 2009. The new evidence before us demonstrates that the conviction resulted from a trial process where, per Miller JA, it is impossible to assess the impact of the irregularity on the fairness of the trial and the conviction was quashed and AM was released.

- 54 Further, although the conduct alleged is very serious, it does not refer to AM's conduct or performance as a Police Officer although I add that if the allegation had been proven, the fact that AM was not a Police Officer at the time it occurred would not prevent a finding that that the Commissioner of Police had lost confidence in his suitability to be a Police Officer on the basis of a lack of integrity or honesty. In these circumstances, I do not consider that public confidence in the integrity, honesty, conduct and standard of performance of members of the Police Force is compromised.
- 55 In relation to the special nature of the relationship between the Commissioner of Police and members of the Police Force, the position of the Commissioner of Police in relation to AM cannot reasonably be significantly different today from the position in July 2006 when he was not prepared to take removal action pending the outcome of the criminal trial. Whilst I accord considerable respect to the perceptions of the Commissioner of Police regarding that relationship and its special nature, in this case the outcome of the criminal trial will not be known, the State having discontinued its proceedings against AM. AM is still presumed to be innocent; the observations of the District Court Judge regarding the credibility of both the complainant and AM respectively came from a trial process where, per Miller JA, it is impossible to assess the impact of the irregularity on the fairness of the trial and which warranted a retrial; and the comments of the Judges of the Court of Appeal referred to and relied upon at [22] of the reformulated reasons are to be read in the context of the judgments as a whole which held the errors made by the District Court Judge required the appeal to be upheld and a retrial ordered.
- 56 In this case, the above analysis of the judgments of the Court of Appeal shows that the reformulated reasons for removing AM do not rest upon a strong foundation. The allegation against AM which led to the loss of confidence is the same as the offence for which AM was charged and for which he is still presumed to be innocent. In this circumstance, the fact that the allegation does not relate to AM's service as a Police Officer becomes important: AM's record of service as a Police Officer both in Victoria and for the relatively short time in WA is not questioned. Taking into account his interest and the public interest in s 33Q(4)(b), I conclude on the basis of the new evidence before us that it was unfair to remove AM from the Police Force. It was unfair because notwithstanding s 33W, the Commissioner of Police had decided not to take removal action pending the outcome of the criminal trial and that outcome has left the allegation against AM unproven and, in respect of the reformulated reasons, the observations made by the District Court Judge and the selected comments of the Judges of the Court of Appeal relied upon do not take into account the reasons why AM's appeal was upheld. I find Ground 3 is made out and that AM has discharged the onus upon him of showing the Commissioner of Police's decision to take removal action relating to him was harsh, oppressive or unfair.

Orders to be made

- 57 Section 33U of the Police Act applies if the WAIRC decides on an appeal that the decision to take removal action relating to an appellant was harsh, oppressive or unfair. Neither party addressed the issues which arise for consideration out of that section. There is no submission before us that it is impracticable for it to be taken that AM's removal from office is, and had always been, of no effect (s 33U(2)). I would declare the removal of AM to be harsh, oppressive or unfair and make the order envisaged under s 33U(2). However, it would not be my intention to thereby include the period during which AM was imprisoned, that being a period when he was unavailable to discharge the duties of office. I would request the parties to confer on the order to issue and provide the WAIRC with a draft order within 14 days of the issuance of this decision.

HARRISON C:

- 58 I have read the reasons for decision and I agree with those reasons and have nothing to add.

MAYMAN C:

- 59 I have had the opportunity of reading in draft form the reasons of the Chief Commissioner in this matter. I agree with the reasons given and have nothing further to add.

2010 WAIRC 00061

APPEAL AGAINST A DECISION OF THE COMMISSIONER OF POLICE TO TAKE REMOVAL ACTION

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

AM

APPELLANT

-v-

COMMISSIONER OF POLICE

RESPONDENT

CORAM

CHIEF COMMISSIONER A R BEECH

COMMISSIONER J L HARRISON

COMMISSIONER S M MAYMAN

HEARD

BY WRITTEN SUBMISSIONS 8, 22 JANUARY 2010

DELIVERED

THURSDAY, 11 FEBRUARY 2010

FILE NO.

APPL 8 OF 2008

CITATION NO.

2010 WAIRC 00061

Catchwords	Removal of Police Officer - Loss of confidence by Commissioner of Police - Whether it is impracticable for it to be taken that removal from office is, and had always been, of no effect - Police Act 1892 (WA) s 33Q(4), s 33S, s 33U, s 33U(2)
Result	Order to issue that removal of police officer is and is to be taken to have always been of no effect
Representation	
Appellant	Ms D Scaddan (of counsel) by written submission
Respondent	Ms KA Vernon (of counsel) by written submission

Further Reasons for Decision

- 1 This is our unanimous decision. We published our reasons for decision in this matter on 4 December 2009. Paragraph 57 of the Chief Commissioner's reasons, which was agreed to by Harrison and Mayman CC, stated as follows:
 57. Section 33U of the Police Act applies if the WAIRC decides on an appeal that the decision to take removal action relating to an appellant was harsh, oppressive or unfair. Neither party addressed the issues which arise for consideration out of that section. There is no submission before us that it is impracticable for it to be taken that AM's removal from office is, and had always been, of no effect (s 33U(2)). I would declare the removal of AM to be harsh, oppressive or unfair and make the order envisaged under s 33U(2). However, it would not be my intention to thereby include the period during which AM was imprisoned, that being a period when he was unavailable to discharge the duties of office. I would request the parties to confer on the order to issue and provide the WAIRC with a draft order within 14 days of the issuance of this decision.
- 2 On 10 December 2009, the Commissioner of Police wrote stating that he had not been invited to make submissions as to whether it was appropriate to invoke s 33U(3) of the *Police Act 1892* ("the Police Act") and he remained unaware that there was a need to address the WAIRC on the issue until the WAIRC's decision was known. The Commissioner noted the form of words used in [57] and asked for some indication as to whether or not the WAIRC was prepared to entertain submissions with respect to s 33U(3) or whether the WAIRC had made its final decision in that regard.
- 3 In response, on 10 December 2009, AM opposed what was seen by him as a re-opening of the matter and submitted that it was no longer open to the Commissioner of Police to seek such an opportunity. AM's notice of appeal always sought an order under s 33U(2) and a respondent (that is, the Commissioner of Police) must respond to all aspects of the appeal including the appropriateness of the relief sought. It is not for a respondent to wait to find out the outcome of the principal finding and then seek to address the WAIRC on the relief, nor wait to be invited to make submissions on the relief. Further, AM submitted that the scheme in s 33 of the Police Act does not contemplate that there will be a separate enquiry after the decision is delivered. In the view of AM, the issue should have been raised by the Commissioner of Police at the hearing of the appeal, and as the respondent did not submit that the relief sought would be inappropriate, AM did not deal with it in his submissions. AM provided a minute of proposed order on 11 December 2009.
- 4 On 17 December 2009, the Chief Commissioner's Associate was instructed to advise the parties that we had considered the correspondence and were prepared to agree to receive submissions with respect to s 33U(3) as requested by the Commissioner of Police. Our reasons for doing so now follow.
- 5 The conclusions in [57] show the intention of the WAIRC. That intention had not yet been given effect by the issuing of an order. Indeed, both AM and the Commissioner of Police are to return to the WAIRC with a draft order. We consider we have the power to receive submissions with respect to s 33U(3) and that it is a matter for our discretion whether to do so.
- 6 In the exercise of that discretion we gave weight to the fact that s 33U was not the subject of any evidence or submissions in the appeal. This may have been because in proceeding on an appeal under s 33Q(1), the WAIRC is first to consider the Commissioner of Police's reasons for deciding to take removal action; this may not include the Commissioner of Police's submissions why the relief sought is opposed because no issue of relief will arise until after the removal has occurred and an appeal is lodged under s 33P.
- 7 Further, the second requirement is to consider the case presented by AM as to why the decision was harsh, oppressive or unfair; the case presented did not specifically address AM's current circumstances for the purposes of any order to issue under s 33U. It is therefore understandable that the third requirement in s 33Q(1)(c), that of considering the case presented by the Commissioner of Police in answer to AM's case, may not have addressed the matter.
- 8 To the extent that our preparedness to receive submissions on the operation of s 33U in this matter is effectively re-opening the matter, we proceeded on the assumption that the parties did not wish to specifically address the relief sought. That was not the case and therefore the parties have not been heard on that matter. That is a proper basis for re-opening (*Wentworth v. Woollahra Municipal Council and Others* (1981) 149 CLR 672 at 684). We note the Commissioner of Police is not seeking to re-argue his case and seeks to address only the issue of the operation of s 33U(3). In the circumstances we would not wish to deny the opportunity of either party to put submissions regarding s 33U. Only one previous decision of the WAIRC has given consideration to s 33U and, in the distinguishable circumstances of that case, that consideration did not extend to s 33U(3) (*Maria Letizia Jones v. Commissioner of Police* ((2007) 87 WAIG 1101; [2007] WAIRC 00440)
- 9 Accordingly, we indicated our preparedness to receive submissions. On 8 January 2010 the Commissioner of Police provided a further written submission to which AM responded on 22 January 2010 in a further written submission. We thank both parties for the assistance this has provided to us.

10 The Commissioner of Police referred to s 33U(3) and (4). They provide as follows:

- (3) If, and only if, the WAIRC considers that it is impracticable for it to be taken that the appellant's removal from office is and has always been of no effect, the Commission may instead of making an order under subsection (2), subject to subsections (5) and (6), order the Commissioner of Police to pay the appellant an amount of compensation for loss or injury caused by the removal.
- (4) In considering whether or not it is impracticable for it to be taken that the appellant's removal from office is and has always been of no effect it is relevant to consider —
 - (a) whether the position occupied by the appellant at the time of his or her removal is vacant; and
 - (b) whether there is another suitable vacant position in the Police Force.

11 In relation to s 33U(4)(a) and (b), the Commissioner of Police advised that the position occupied by AM at the time of his removal is not vacant, however another position commensurate with AM's rank, experience and training is available. This advice is not disputed by AM and we accept it and find accordingly.

The Further Submissions of the Commissioner of Police

- 12 In summary, the significant point made by the Commissioner of Police is that s 33U(3) obliges the WAIRC to consider whether or not it is impracticable for it to be taken that AM's removal from office is and has always been of no effect. The fact that s 33U(4) requires the WAIRC to have regard to the matters in sub-paragraphs (a) and (b) does not preclude the WAIRC from also considering other matters. In other words, the matters in sub-paragraphs (a) and (b) are not exhaustive. To interpret s 33U(4) as requiring the Commissioner of Police to reinstate a police officer subject only to the limited matters referred in sub-paragraph (a) and (b) creates a situation that is more restrictive than the general law pertaining to the reinstatement of employees. The Commissioner of Police referred to *Bienke v. Minister for Primary Industries and Energy* (1994) 125 ALR 151 and to *Murphyores Inc Pty Ltd v. Commonwealth of Australia* (1976) 136 CLR 1 to support the submissions.
- 13 The Commissioner of Police further submits that, given the special relationship between the Commissioner of Police and police officers, any loss of trust is more significant than a breakdown of trust in an ordinary employment relationship. In this case, the Commissioner of Police has lost trust in AM. If the reason for the loss of trust was because of performance-related issues, the relationship between the Commissioner of Police and the police officer may not be irretrievably destroyed in the event the WAIRC found that the Commissioner of Police had not done all that he was required to do to remedy the officer's performance prior to taking removal action. However in a case such as this, the loss of confidence by the Commissioner of Police does not allow any prospect of any remedial activity by which the officer can regain that trust. The Commissioner of Police is now in the difficult position of having to assign duties to the appellant that requires the exercise of extensive police powers when interacting with the community where the Commissioner of Police believes that AM represents a risk to the community.
- 14 Furthermore, as the Commissioner of Police has lost confidence in AM, and continues not to trust him in the performance of his duties as a police officer, this may permit his credibility to be questioned if ever AM himself was to give evidence in court proceedings. The Commissioner of Police points out that the Court of Appeal did not acquit AM; it ordered a re-trial.

The Further Submission of AM

- 15 In summary, AM points out that the availability of another suitable vacant position in the police force favours a finding that it is not impracticable to make the order contemplated by s 33U(2) of the Police Act. AM states that the authorities relied upon by the Commissioner of Police in support of the submission that the WAIRC is not restricted to the consideration in s 33U(4) are distinguishable from the facts of this matter. He submits that s 33U(4) does not provide the WAIRC with the same wide powers as the general industrial relations legislation and there is no reason for inferring that the expressed considerations are not exhaustive. If the considerations expressed in s 33U(4) are not exhaustive such that other considerations may be taken into account, AM submits that the practicability of reinstatement does not depend on notions of loss of confidence in the employee. Whether there has been a loss of trust and confidence is a relevant consideration in determining whether reinstatement is practicable, provided that such loss of trust and confidence is soundly and rationally based.
- 16 AM considers the fact that the Commissioner of Police is said to "harbour a suspicion" about him suggests that AM's successful appeal, the dropping of the charge by the Director of Public Prosecutions without re-trial, and the WAIRC's decision, is apparently irrelevant to the Commissioner of Police. AM submits that the Commissioner of Police's suspicion is not a sound and rational basis for the Commissioner of Police to conclude that reinstatement is impracticable. AM submits that trust and confidence are the hallmarks of every employer-employee relationship and are not unique to the Commissioner of Police and police officers. AM may be assigned any number of positions within the WA Police which may not require him to exercise the extensive powers of a police officer.
- 17 In any event, the Commissioner of Police's decision to remove AM is not taken on the basis that there was any doubt about AM's performance or operational abilities. There is no evidence to support the Commissioner of Police's belief that AM represents a risk to the community. AM rejects any suggestion that his credibility is likely to be questioned if he was called upon to give evidence as part of his duties. The fact that the Court of Appeal ordered a re-trial in preference to an acquittal is irrelevant to whether it is impracticable to re-instate AM. Concluding that re-instatement is impracticable would effectively operate to punish AM for a crime of which he has not been convicted. It would deprive AM of the benefit of the WAIRC's decision that his removal was harsh, oppressive or unfair and give AM the same outcome as the removal which had been found to be unfair.

Consideration

18 The first issue is whether, when the WAIRC is considering whether or not it is impracticable for it to be taken that the appellant's removal from office is and has always been of no effect, we are restricted only to the matters set out in s 33U(4). In *Commissioner of Police for New South Wales v. Industrial Relations Commission of New South Wales and Raymond Sewell* [2009] NSWCA 198 at [73], (2009) 185 IR 458 at 469 Spigelman CJ, with whom Macfarlan and Young JJA agreed, stated:

A statutory requirement to "have regard to" a specific matter, requires the Court to give the matter weight as a fundamental element in the decision-making process (*R v Hunt; Ex parte Sean Investments Pty Ltd* [1979] HCA 32; (1979) 180 CLR 322 at 329; *R v Toohey; Ex parte Meneling Station Pty Ltd* [1982] HCA 69; (1982) 158 CLR 327 at 333, 337-338; *Zhang v Canterbury City Council* [2001] NSWCA 167; (2001) 51 NSWLR 589 at [71]- [73]). An equivalent formulation is that the matter so identified must be the focal point of the decision-making process (see *Evans v Marmont* (1997) 42 NSWLR 70 at 79-80; *Zhang supra* at [73]).

19 In this case, the language of s 33U(4) states that when considering whether or not it is impracticable for it to be taken that the appellant's removal from office is and has always been of no effect "it is relevant to consider" the matters set out in s 33U(4)(a) and (b). We consider there is little practical difference between a statutory requirement to "have regard to" matters and a statutory requirement making them a relevant consideration: in both cases, those matters are elevated into matters which are obliged to be considered. We consider the matters set out in s 33U(4)(a) and (b) are fundamental elements in the decision-making process when considering whether or not it is impracticable for it to be taken that the appellant's removal from office is and has always been of no effect. The fact that another position commensurate with AM's rank, experience and training is available means to that extent it is not impracticable for it to be taken that AM's removal from office is and always has been of no effect.

20 We agree with the submission of the Commissioner of Police that s 33(4) does not preclude the WAIRC from also taking other matters into consideration. This is because firstly, the language of s 33U(4) does not itself restrict the WAIRC's consideration to the matters set out in sub-paragraphs (a) and (b): it makes them relevant considerations; it does not state that they are the only considerations.

21 Secondly, s 33Q(4) provides that the WAIRC is to have regard to the interests of the appellant and to the public interest "in determining the appeal" (underlining added). The language does not restrict those matters only to determining whether the removal of a police officer was harsh, oppressive or unfair. In other words, we consider the words "in determining the appeal" embrace both whether the removal of a police officer was harsh, oppressive or unfair and the relief to be ordered, if applicable.

22 Thirdly, s 33S applies s 26(1)(a) of the *Industrial Relations Act 1979* ("the IR Act") (subject to Part II of the Police Act with any necessary modifications) to and in relation to an appeal and a determination of an appeal instituted under Part II B of the Police Act. Section 26(1)(a) is as follows:

Commission to act according to equity and good conscience

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

(a) shall act according to equity, good conscience, and the substantial merits of the case without regard to technicalities or legal forms;

23 We conclude that the requirement on the WAIRC to act in accordance with equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms is a requirement which argues against a narrow interpretation of s 33U(4). Those three reasons, taken together, lead us to conclude that the Commissioner of Police is correct in his submission that in considering whether or not it is impracticable for it to be taken that AM's removal from office is and always has been of no effect, the WAIRC is not restricted to the matters set out in s 33U(4)(a) and (b).

24 We also now take into account the submission that notwithstanding our conclusion that AM's removal was harsh, it remains the case that the Commissioner of Police continues to harbour a suspicion about AM and, therefore, has lost trust in him, that the Commissioner of Police believes AM represents a risk to the community and that notwithstanding that AM's conviction was quashed, it remains the case that the Court of Appeal ordered a re-trial in preference to acquitting AM.

25 In our earlier reasons at [55], we noted that we accorded considerable respect to the perceptions of the Commissioner of Police regarding the special nature of the relationship between the Commissioner of Police and members of the police force. The fact that the Commissioner of Police continues to harbour a suspicion about AM, and therefore has lost trust in him, is not to be treated lightly by the WAIRC. However, with respect, the fact that the Commissioner of Police continues to harbour a suspicion about AM and therefore, has lost trust in him cannot be determinative of AM's appeal. By providing an appeal to the WAIRC in Part IIB of the Police Act, Parliament has given the power to the WAIRC to find that the removal of a police officer is harsh, oppressive or unfair and, pursuant to s 33U(2) the power to order that the removal from office is and is to be taken to have always been of no effect notwithstanding that the Commissioner of Police has lost confidence in that police officer.

26 Section 33L of the Police Act provides that the Commissioner of Police may lose confidence in a member's suitability to continue as a member, having regard to the member's integrity, honesty, competence, performance or conduct. The process of appeal to the WAIRC, and the relief which the WAIRC may order does not depend upon which of those five reasons forms the reason for the loss of confidence. In the Commissioner of Police's submission, he places emphasis upon the doubt he has regarding AM's integrity. In *Commissioner of Police for New South Wales v. Industrial Relations Commission of New South Wales* (cited above at [18]) the New South Wales Court of Appeal considered whether there had been jurisdictional error on the part of the Full Bench of the Industrial Relations Commission of NSW refusing leave to appeal against a decision of that Commission that the removal of a police officer on the basis of the Police Commissioner's loss of confidence in him was harsh in all of the circumstances, and ordered reinstatement. In considering that matter, Spigelman CJ, with whom Macfarlan and Young JJA agreed, stated at paragraphs [75] and [76] (IR 458 at 470):

The central significance for the decision-making process in the Industrial Relations Commission of any issue of integrity that has been raised and of the Commissioner's role in the legislative scheme can be accepted. Nevertheless, the entire point of the provision for review in Div 1C of the Police Act is precisely to enable the Industrial Relations Commission to overturn the Commissioner's decision on the basis of a finding, to be made by the Industrial Relations Commission, "that the removal is harsh, unreasonable or unjust".

It cannot be, and it is not directly, suggested that the Police Commissioner's decision on matters of this kind can be regarded as determinative. Without saying so, as a matter of substance, that is what the applicant sought to achieve in this Court. Of course, that is inconsistent with the conferral of a power of review on the Industrial Relations Commission.

- 27 We consider those comments to be applicable in the circumstances of this case.
- 28 The power given to the WAIRC in s 33U(2) to order that AM's removal from office is to be taken to have always been of no effect is analogous to the power given to the WAIRC in the general jurisdiction of the IR Act to order the reinstatement of an employee who has been harshly, oppressively or unfairly dismissed. In such cases, the WAIRC has recognised that reinstatement should not be ordered where it is impracticable, nor where management has a genuine distrust or lack of confidence in the employee, nor if reinstatement would adversely affect staff morale or general discipline. This was stated by the Full Bench of the Commission in *Max Winkless Pty Ltd v Graham Lindsay Bell* (1986) 66 WAIG 847 at 848 and the Full Bench continued:
- "In other words reinstatement should not be contemplated without full regard for the consequences and that we take to be the import of the views expressed in *Slonim v. Fellows* (1984) 8 IR 175 by Wilson J at 181 that the power to order re-employment "will always be a power to be exercised with caution having regard to the circumstances of the case".
- 29 A similar approach has been adopted by the Industrial Relations Commission of NSW in dealing with reviews by that Commission when reviewing an order removing a police officer from the police service in that State: *Van Huisstede v. Commissioner of Police* [2000] NSWIRComm 97; (2000) 98 IR 57. In that matter, Walton J concluded at [249] (IR 57 at 120):
- "The proposed reinstatement of a police officer whose integrity has been impugned is a matter of some gravity having regard to the position of trust and responsibility occupied by the members of the police force in our society. However, the remedy of reinstatement is clearly provided by the Act. The capacity of an officer to seek the review by the Commission of his or her removal under s 181E is itself evidence that the legislature did not intend either the making of an order removing the officer or the fact of allegations being raised against the officer to of itself preclude reinstatement."
- 30 A similar view was also expressed in *Oswald v. New South Wales Police Service* (1999) 90 IR 42 at 67.
- 31 In this case, we acknowledge that the Commissioner of Police continues to harbour a suspicion about AM and therefore has lost trust in him. Given our conclusion that this cannot be determinative of whether it is impracticable for it to be taken that AM's removal from office is and has always been of no effect, it is necessary to objectively consider the reasons given why the Commissioner of Police holds that view. To the extent that it is for the same reasons given in the Commissioner of Police's reformulated reasons, we have considered those in our earlier Reasons for Decision and given our conclusions why we consider the reformulated reasons do not rest upon a strong foundation.
- 32 The Commissioner of Police also refers to a likelihood that AM's credibility might be questioned if he was called upon to give evidence. In the absence of any precedent or supporting authority for this submission, we regard the likelihood as remote and do not accord it great weight. The Commissioner of Police again points to the fact that the Court of Appeal ordered a re-trial in preference to acquitting AM. We are not entirely sure of the point being made. We observe that the Commissioner of Police's decision in July 2006 was not to take removal action pending the outcome of the criminal trial (Tab 2 of Commissioner of Police's documents). This was based upon the advice that while there is a separation between criminal prosecution and the loss of confidence process, the loss of confidence nomination was based upon the result of a criminal investigation (Tab 3). The criminal trial did not finally determine the matter.
- 33 In relation to the public interest, it is vital to the integrity of the police force that its members be, and be seen to be, above reproach (*Minister of Police and Commissioner of Police v. Desmond John Smith* (1993) 73 WAIG 2311 at 2323 and per Fielding C at 2327; *Police Service Board and Another v. Morris* (1984) 156 CLR 397 at [412]). However, we consider here that an order that AM's removal is and is to be taken to have always been of no effect given the quashing of the conviction and the discontinuance of the proceedings by the Director of Public Prosecutions, thus leaving AM presumed innocent until proven otherwise, will not have an adverse effect upon the public perception of the integrity of the members of the police force.
- 34 We consider that the harbouring by the Commissioner of Police of a suspicion about AM with his resulting loss of confidence in him, viewed objectively, in circumstances where the conviction against AM has been quashed and a retrial was ordered and did not take place means that AM is entitled to the presumption of innocence. Given that another position commensurate with AM's rank, experience and training is available, the fact that AM is not convicted of any offence and that there is no basis to doubt AM's integrity, honesty, competence, performance or conduct from his past service as a police officer, leads to the conclusion that it is not impracticable to order that AM's removal from office is to be taken to have always been of no effect. We propose to make an order to that effect and we again request the parties to confer on the order to issue and provide the WAIRC with a draft order within 14 days of the issuance of this decision.
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2010 WAIRC 00174

APPEAL AGAINST A DECISION OF THE COMMISSIONER OF POLICE TO TAKE REMOVAL ACTION

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

AM

APPELLANT

-v-

COMMISSIONER OF POLICE

RESPONDENT

CORAM

CHIEF COMMISSIONER A R BEECH

COMMISSIONER J L HARRISON

COMMISSIONER S M MAYMAN

DATE

THURSDAY, 1 APRIL 2010

FILE NO.

APPL 8 OF 2008

CITATION NO.

2010 WAIRC 00174

Result

Order issued

Representation

Appellant

Ms K Vernon (of counsel)

Respondent

Ms D Scaddan (of counsel)

Supplementary Reasons for Decision

- 1 This is our unanimous decision. In accordance with our request, both parties provided the WAIRC with draft Minutes of Proposed Orders and were further heard in relation to those drafts. Only two issues of significance arise for consideration.
- 2 Although both parties' drafts contained draft orders that would either create an entitlement for AM to be paid a salary from 12 October 2008 or to order the Commissioner of Police to pay AM an amount comprising the total remuneration and accrued entitlements he would have received from 12 October 2008, we conclude that there is no power in s 33U of the *Police Act, 1892* ("the Police Act") for the WAIRC to issue such orders.
- 3 The powers given to the WAIRC in s 33U(2) and (3) of the Police Act once the WAIRC decides that the decision to take removal action relating to AM was harsh, oppressive or unfair are either to order that his removal from office is and is to be taken to have always been of no effect or if, and only if, the WAIRC considers that it is impracticable for it to be taken that the appellant's removal from office is and has always been of no effect, to order the Commissioner of Police to pay AM an amount of compensation for loss or injury caused by the removal.
- 4 It appears to us that as we have decided that the decision to take removal action relating to AM was harsh, oppressive or unfair, and that it is not impracticable for it to be taken that the appellant's removal from office is and has always been of no effect, the only order we are empowered to make is an order that his removal from office is and is to be taken to have always been of no effect.
- 5 In the absence of a clear power to do so it is not open to the WAIRC to go beyond that and by further order create an entitlement to payment of salary or entitlements not earned during the period of AM's removal. The payment would not be wages earned and accrued and in their essential character would be compensatory: *Dellys v. Elderslie Finance Corporation Ltd* [2002] WASCA 161 at [34]. Such orders would effectively be to order compensation to be paid when there is no express power to do so unless the WAIRC considers that it is impracticable for it to be taken that the appellant's removal from office is and has always been of no effect (and see *City of Geraldton v. Cooling* [2000] WASCA 346; (2000) 80 WAIG 5341 in respect of s 23A of the *Industrial Relations Act, 1979* ("the IR Act")). In our view, such further orders could not be said to be an exercise of the WAIRC's powers which are incidental and necessary to the exercise of the jurisdiction or the powers conferred on the WAIRC under Part IIB of the Police Act (*Robe River Iron Associates v. Association of Draughting, Supervisory and Technical Employees of WA* (1987) 68 WAIG 11 per Kennedy J at 17 and see too *City of Geraldton -v- Cooling* (above) at [19]).
- 6 We will therefore order that AM's removal from office is and is to be taken to have always been of no effect. We have previously stated that such an order is not to include the period during which AM was imprisoned, that being a period when he was unavailable to discharge the duties of office. Accordingly AM's removal from office is and is to be taken to have always been of no effect from 12 October 2008, being the date of his release from prison.
- 7 The second issue is that the Commissioner of Police proposes that the WAIRC order that compliance with any orders to issue is to be 21 days after they have been made. This is opposed by AM. The Commissioner of Police informed the WAIRC that he intends to appeal the decision in this matter and an order that AM's removal from office is and is to be taken to have always been of no effect would mean that AM would be in a position as a member of the Police Force which he might not be entitled

to occupy. The Commissioner of Police does not have confidence in AM, and, in order to comply with the order, a particular position would need to be identified for AM. Issues with respect to AM having been out of the police environment for up to 2 years would also need to be dealt with.

8 The Commissioner of Police relies on s 33U(9) which is as follows:

(9) An order under this section may require that it be complied with within a specified time.

9 The Commissioner of Police states that s 33U(9) applies to the whole of s 33U and in the context of an order under s 33U(2) it can only mean either enabling one party to appeal or to enable the Commissioner of Police to make good the order.

10 We have considered the submission of the Commissioner of Police but have reached a different conclusion in relation to the operation of s 33U(9). We consider the matters which the Commissioner of Police is obliged to address in order to comply with an order under s 33U(2) are no different in principle from the matters facing any employer when an order issues in the general jurisdiction of the WAIRC requiring the reinstatement of an employee whose dismissal has been found to be harsh, oppressive or unfair. A comparable provision exists in s 23A(11) of the IR Act and we are not aware of any authority or practice which shows it is used to defer the operation of an order on the basis of a stated intention by one party to appeal the order. We do not consider it appropriate to make an order in the terms sought, given our decision that it is not impracticable to order that AM's removal is and is to be taken to have always been of no effect. For those reasons we decline to issue the order sought.

11 An order now issues that pursuant to s 33U(1) of the Police Act, the Commissioner of Police's decision to remove AM from office was harsh, oppressive or unfair and that pursuant to s 33U(2) of the Police Act, AM's removal from office is and is to be taken to have always been of no effect from 12 October 2008.

12 Order accordingly.

2010 WAIRC 00175

APPEAL AGAINST A DECISION OF THE COMMISSIONER OF POLICE TO TAKE REMOVAL ACTION

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

AM

APPELLANT

-v-

COMMISSIONER OF POLICE

RESPONDENT

CORAM

CHIEF COMMISSIONER A R BEECH
COMMISSIONER J L HARRISON
COMMISSIONER S M MAYMAN

DATE

THURSDAY, 1 APRIL 2010

FILE NO/S

APPL 8 OF 2008

CITATION NO.

2010 WAIRC 00175

Result

Order issued

Representation

Appellant

Ms K Vernon (of counsel)

Respondent

Mr R Andretich (of counsel) and later Ms D Scaddan (of counsel)

Order

HAVING HEARD Ms K Vernon (of counsel) for the appellant and Mr R Andretich (of counsel) and later Ms D Scaddan (of counsel) for the respondent, the WAIRC having published its reasons for decision on 4 December 2009 and 11 February 2010 and having heard the parties further on 31 March 2010 on the orders to issue, hereby orders:

1. THAT pursuant to s 33U(1) of the *Police Act, 1892* the respondent's decision to remove the appellant from office was harsh, oppressive or unfair;
2. THAT pursuant to s 33U(2) of the *Police Act, 1892* the appellant's removal from office is and is to be taken to have always been of no effect from 12 October 2008.

(Sgd.) A R BEECH,
Chief Commissioner,

[L.S.]

On Behalf of the Western Australian Industrial Relations Commission.

UNFAIR DISMISSAL/CONTRACTUAL ENTITLEMENTS—

2010 WAIRC 00148

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

PHILLIP WAYNE BARTLETT

APPLICANT

-v-

ABORIGINAL ALCOHOL AND DRUG SERVICE (INC)

RESPONDENT**CORAM** COMMISSIONER S M MAYMAN**HEARD** TUESDAY, 23 FEBRUARY 2010**DELIVERED** MONDAY, 29 MARCH 2010**FILE NO.** U 229 OF 2009**CITATION NO.** 2010 WAIRC 00148

CatchWords Industrial Law (WA) – Jurisdictional issue – Procedure for hearing matter – Principles *Springdale Comfort Pty Ltd t/as Dalfield Home v Building Trades Association of Unions of Western Australia (Association of Workers)* – Declaration issued

Result Declaration issued

Representation

Applicant Mr P Bartlett

Respondent Mr S Bibby (as agent)

Reasons for Decision

- 1 These are my reasons for decision regarding a preliminary matter raised by the Aboriginal Alcohol and Drug Service (Inc) (the respondent) regarding how the matter ought be heard.
- 2 Mr Phillip Wayne Bartlett (the applicant) lodged a claim for unfair dismissal in the Western Australian Industrial Relations Commission (the Commission). The respondent lodged a jurisdictional objection stating that the applicant was not constructively dismissed but rather resigned and therefore the Commission was unable to proceed with the claim.
- 3 The initial conciliation conference was adjourned to allow for the jurisdictional issue to be heard and determined. On 23 February 2010 the application was listed for a directions hearing. After hearing from the parties the matter was adjourned into conference and private discussions were held between the respondent and the applicant regarding potential settlement. Settlement did not occur and the respondent requested the jurisdictional issue be heard and determined separately. The applicant later advised that he had re-considered his position and wished the jurisdictional and merit issues be heard together.
- 4 On 19 March 2010, the Commission contacted the parties and provided them with an opportunity to put submissions in writing as to whether the matters ought be heard separately or joined. The Commission has received those submissions and thanks the parties for their prompt response.

Applicant

- 5 It is the view of the applicant that the jurisdictional and merit issues ought be heard together in that:
 - much of the quantity and content in relation to both the jurisdictional and merit issues are one and the same;
 - to hear the matters separately would lead to confusion and additional expenditure of time and resources for all parties;
 - the evidence required to be presented is weighty and cumbersome and may prejudice the applicant's ability to present the case if separated into the specific matters of jurisdiction and merit; and
 - the applicant lives in the north of Western Australia and will be travelling to Perth for the proceedings.

Respondent

- 6 The views of the respondent are that the:
 - principles reflected in the Industrial Appeal Court decision in *Springdale Comfort Pty Ltd t/as Dalfield Home v Building Trades Association of Unions of Western Australia (Association of Workers)* (1986) 67 WAIG 325, 330 are binding on the Commission. In this regard his Honour, Rowland J noted:

Once a question of jurisdiction is raised the Commission must determine that question under s 24 before exercising power to resolve the dispute before it under s 44.

- the onus of establishing that the Commission has jurisdiction lies with the party making the application before the Commission, in accordance with the principles from *Springdale Comfort*;
- when questions or issues of jurisdiction were raised the jurisdictional issue was to be heard first and failure to do so would be in breach of the *Industrial Relations Act 1979* (the Act);
- the applicant was not constructively dismissed but rather terminated his contract following consideration of his position with the organisation; and
- accordingly it would be procedurally improper, unfair and unjust for the respondent to furnish further expense dealing with both the jurisdictional and merit issues together.

Conclusion

7 Having considered each of the parties' submissions I turn to the primary question for the Commission to consider, that being whether the jurisdictional issue raised by the respondent ought be heard separately from the merit matter raised by the applicant. With respect to the issue as to whether the applicant was constructively dismissed or resigned in *Mohazab v Dick Smith Electronics Pty Ltd (No 2)* (1995) 62 IR 200, Lee, Moore and Marshall JJ stated:

In these proceedings it is unnecessary and undesirable to endeavour to formulate an exhaustive description of what is termination at the initiative of the employer but plainly an important feature is that the act of the employer results directly or consequentially in the termination of the employment and the employment relationship is not voluntarily left by the employee. That is, had the employer not taken the action it did, the employee would have remained in the employment relationship.

- 8 Clearly, the respondent's view is that the jurisdictional aspect should be heard separately from the merit aspect of the proceedings. On my reading of *Springdale Comfort*, there is no barrier to hearing the issues of jurisdiction and merit at the same time. What the decision does establish is that the jurisdictional aspect must be determined at first instance.
- 9 On that basis, it is the Commission's determination, on the balance of convenience, that the preliminary and merit matters ought be heard together and in accordance with the principles of *Springdale Comfort*, the jurisdictional aspect be determined as a preliminary point.
- 10 A declaration will issue accordingly.

2010 WAIRC 00149

	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION	
PARTIES	PHILLIP WAYNE BARTLETT	APPLICANT
	-v-	
	ABORIGINAL ALCOHOL AND DRUG SERVICE (INC)	RESPONDENT
CORAM	COMMISSIONER S M MAYMAN	
DATE	MONDAY, 29 MARCH 2010	
FILE NO.	U 229 OF 2009	
CITATION NO.	2010 WAIRC 00149	
Result	Declaration issued.	
Representation		
Applicant	Mr P Bartlett	
Respondent	Mr S Bibby (as agent)	

Declaration

HAVING heard Mr P Barlett as the applicant on his own behalf and Mr S Bibby (as agent) on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby:

DECLARES that the jurisdictional and merit matters in the aforementioned proceedings be listed and heard together and the jurisdictional matter raised by the respondent be determined as a preliminary point.

[L.S.]

(Sgd.) S M MAYMAN,
Commissioner.

2010 WAIRC 00136

PARTIES	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION ROY HARRY BRICE	APPLICANT
	-v-	
	COLIN AND KAREN OLSEN	RESPONDENT
CORAM	ACTING SENIOR COMMISSIONER P E SCOTT	
DATE	THURSDAY, 25 MARCH 2010	
FILE NO/S	U 4 OF 2010	
CITATION NO.	2010 WAIRC 00136	
Result	Application dismissed	

Order

WHEREAS this is an application pursuant to Section 29(1)(b)(i) of the *Industrial Relations Act 1979*; and
 WHEREAS on the 25th day of March 2010 the Commission convened a conference for the purpose of conciliating between the parties; and
 WHEREAS at the conference the parties reached agreement in respect of the application and agreed to an order issuing reflecting that agreement; and
 WHEREAS at the conference the parties waived their rights to speak to the Minutes of Proposed Order;
 NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders that:

1. The respondent shall pay to the applicant the sum of \$4,600 net in full and final settlement of all matters relating to the applicant's employment by the respondent save for workers' compensation entitlements.
2. Such payment shall be made by the close of business on the 15th day of April 2010.
3. The application otherwise be, and is hereby dismissed.

[L.S.]

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

2010 WAIRC 00111

PARTIES	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION NICOLA ELIZABETH BULL	APPLICANT
	-v-	
	MACMAHON CONTRACTORS PTY LTD	RESPONDENT
CORAM	ACTING SENIOR COMMISSIONER P E SCOTT	
DATE	THURSDAY, 11 MARCH 2010	
FILE NO/S	B 195 OF 2009	
CITATION NO.	2010 WAIRC 00111	
Result	Application dismissed	

Order

WHEREAS this is an application pursuant to Section 29(1)(b)(ii) of the *Industrial Relations Act 1979*; and
 WHEREAS on the 2nd day of December 2009 the Commission convened a conference for the purpose of conciliating between the parties, however, agreement was not reached; and
 WHEREAS the application was set down for hearing and determination on the 4th day of March 2010; and

WHEREAS at the hearing the applicant's representative sought leave to withdraw the application and the respondent's representative consented to the application being withdrawn;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby dismissed.

[L.S.]

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

2010 WAIRC 00127

	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION	
PARTIES	SUZANNE CARNELL	APPLICANT
	-v-	
	JOHN KENNETH FENTON - COASTWAY TRANSPORT	RESPONDENT
CORAM	ACTING SENIOR COMMISSIONER P E SCOTT	
DATE	TUESDAY, 23 MARCH 2010	
FILE NO/S	U 215 OF 2009	
CITATION NO.	2010 WAIRC 00127	

Result	Application dismissed
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Order

WHEREAS this is an application pursuant to Section 29(1)(b)(i) of the *Industrial Relations Act 1979*; and

WHEREAS on the 25th day of February 2010 the Commission convened a conference for the purpose of conciliating between the parties; and

WHEREAS at the conclusion of the conference the parties agreed to a settlement in respect of the application;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby dismissed.

[L.S.]

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

2010 WAIRC 00132

	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION	
PARTIES	MARY-ANNE GOULDEN	APPLICANT
	-v-	
	RAMADAN ABAS (PRESIDENTIAL CONTRACT SERVICES)	RESPONDENT
CORAM	COMMISSIONER J L HARRISON	
DATE	WEDNESDAY, 24 MARCH 2010	
FILE NO/S	U 191 OF 2009	
CITATION NO.	2010 WAIRC 00132	

Result	Dismissed
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Order

WHEREAS this is an application pursuant to s 29(1)(b)(i) of the *Industrial Relations Act 1979* (“the Act”); and

WHEREAS on 21 October 2009 the Commission wrote to the applicant to advise that service of the application should be effected in accordance with the Regulations under the *Industrial Relations Act 1979* by 4 November 2009 however, this did not occur; and

WHEREAS on 5 November 2009 the Commission left a message on the applicant’s answering machine requesting that she contact the Commission with respect to her application however, there was no response; and

WHEREAS on 25 November 2009 the Commission wrote to the applicant to advise that if no written or verbal advice was received from the applicant by the close of business on 9 December 2009 the matter would be listed for a show cause hearing as to why the matter should not be dismissed pursuant to s 27(1) of the Act; and

WHEREAS the applicant did not contact the Commission nor was service of the application effected by this date; and

WHEREAS the matter was listed for a show cause hearing on 19 March 2010 and the applicant was advised that non-attendance by the applicant at these proceedings would result in an order being issued dismissing the application for want of prosecution; and

WHEREAS the applicant did not attend the show cause hearing on 19 March 2010 nor did she advise the Commission beforehand as to any reason why she was unable to attend the hearing; and

WHEREAS the Commission is satisfied that the applicant has been given numerous opportunities to pursue her claim and has chosen not to do so;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby dismissed.

[L.S.]

(Sgd.) J L HARRISON,
Commissioner.

2010 WAIRC 00197

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
RICHARD HARGROVE

PARTIES

APPLICANT

-v-

SEVENTH DAY ADVENTIST CHURCH

RESPONDENT

CORAM COMMISSIONER S J KENNER
HEARD BY WRITTEN SUBMISSIONS FILED 12 MARCH, 18 MARCH, 22 MARCH AND 6 APRIL 2010
DELIVERED FRIDAY, 9 APRIL 2010
FILE NO. B 264 OF 2009
CITATION NO. 2010 WAIRC 00197

Catchwords Industrial Law-Denied contractual benefits-Preliminary issue as to capacity of industrial agent to appear-Industrial agent struck off the Roll of Legal Practitioners in WA-Repeal of former legislation-Principles of statutory interpretation discussed

Legislation *Industrial Relations Act 1979* s 29(1)(b)(ii); s 31; s 112A
Legal Practice Act 2003 s 31; s 123; s 124; s 203
Legal Profession Act 2008 s 11; s 12; s 18; s 28; s 53; s 595; s 605
Legal Practitioners Act 1893 s77A
Interpretation Act 1984 s 18; s 19; s 37(1)(a)

Result Declaration issued

Representation

Applicant Mr P Mullally as agent

Respondent Ms J McCubbin of counsel

Amicus curiae Mr R Andretich of counsel

- 1 The substantive claim in this matter is one by the applicant under s 29(1)(b)(ii) of the Industrial Relations Act 1979 (“the Act”) for the sum of \$344,849.50 as contractual benefits allegedly denied by the respondent.
- 2 A preliminary issue has arisen in these proceedings relating to the capacity of the applicant’s industrial agent Mr Mullally, to act on behalf of the applicant under s 31 of the Act. Specifically, the issue arises as to whether Mr Mullally, as a legal practitioner who was struck off the Roll of Legal Practitioners in this State in May 2001, can appear as an industrial agent in proceedings before the Commission, given the terms of the Legal Profession Act 2008 (“the LP Act 2008”) and in light of an earlier decision of the Commission in *Enright v Sleeppeeze Bedding Australia Pty Ltd* (2004) 84 WAIG 305. In *Enright* the Commission concluded that under the terms of the former Legal Practice Act 2003 (“the LP Act 2003”) Mr Mullally, and another legal practitioner struck off the Roll, could not appear as agents in proceedings before the Commission.
- 3 The issue that arises in this matter is whether the repeal of the LP Act 2003 and the enactment of the LP Act 2008 in May 2008, means that Mr Mullally continues to be excluded from appearing before the Commission. This seems to be the first occasion in which the matter has arisen for determination since the decision of the Commission in *Enright*.
- 4 The preliminary issue was heard on the written submissions of the parties. The Attorney General of Western Australia appeared *amicus curiae* through Mr Andretich of counsel. Given that the substantive matter is to be heard on 19 April 2010 it is necessary to determine this issue with some urgency.

Contentions of the Parties

- 5 The thrust of Mr Mullally’s submission is that the former s 203(1) of the LP Act 2003, which was to the effect that a legal practitioner struck off the Roll of Practitioners was not able to represent any person in a statutory tribunal or court, and which was the basis of the decision of the Commission in *Enright*, was not carried over into the LP Act 2008 on the repeal of the former legislation and the enactment of the new legislation.
- 6 It was therefore submitted that given that the LP Act 2008 does not contain any express prohibition upon struck off legal practitioners appearing in a court or statutory tribunal then there is no impediment to Mr Mullally continuing to act for the applicant and appear for him in these proceedings.
- 7 In particular, reference is made to s 112A(3)(b) and (d) of the Act, which provides the basis for Mr Mullally to appear as a registered industrial agent. Section 12 of the LP Act 2008, is in similar terms to s 123(3)(c) of the former LP Act 2003, which permitted persons other than certificated legal practitioners, to engage in legal practice under the authority of a law of the State.
- 8 It was the submission of Mr Mullally, that given the continuation of this statutory authority in s 12(3)(a) of the LP Act 2008, and in the absence of any provision resembling s 203(1) of the former LP Act 2003, the circumstances regarding his capacity to appear before the Commission have materially changed.
- 9 Whilst the matter is essentially one for Mr Mullally, the respondent was given the opportunity to and did, make a brief submission in relation to this issue. It was submitted by Ms McCubbin that the principles discussed in *Enright* still have application under the LP Act 2008 and Mr Mullally’s loss of capacity to appear as an agent, as a struck off legal practitioner, under the LP Act 2003, would continue under the current legislation. Furthermore, it was submitted that an issue arises, as to whether Mr Mullally’s status as a person disqualified from appearing before the Commission, can be revived on the repeal of the LP Act 2003, and the enactment of the LP Act 2008, given the terms of s 37(1)(a) of the Interpretation Act 1984.
- 10 On behalf of the Attorney General, Mr Andretich made a number of submissions. It was contended that as a “disqualified person” under the LP Act 2008, by s 12(2) of the LP Act 2008, a person cannot engage in legal practice unless he or she is an Australian legal practitioner, being an Australia lawyer holding a current practising certificate. As Mr Mullally has been struck off the Roll of Practitioners, he is unable to engage in legal practice under the LP Act 2008.
- 11 In reliance upon *Barristers Board v Palm Management Pty Ltd* (1984) WAR 101 and *Barristers Board v Central Tax Services Pty Ltd* (1984) 16 ATR 115, Mr Andretich submitted that for the purposes for s 12 of the LP Act 2008, Mr Mullally, in advising and appearing for the applicant in these proceedings, is plainly engaging in work in connection with the administration of the law, and thus legal practice, for the purposes of the LP Act 2008.
- 12 As there are comprehensive provisions throughout the LP Act 2008 precluding a disqualified person from engaging in legal practice, and an object of the legislation is to protect the public by ensuring that only those persons with the necessary qualifications and fitness of character can engage in legal practice, it was contended by the Attorney General that any inconsistency between the effect of the LP Act 2008 and s 112A of the Act, should be resolved in favour of the former. It was thus submitted that it would be a perverse construction of the legislation and contrary to its intention, for Mr Mullally, as a disqualified person who has been considered unfit to engage in legal practice, to be regarded as able to engage in legal practice by the operation of s 112A of the Act.
- 13 Mr Mullally requested and was granted the opportunity to file a written submission in reply to those made by the respondent and the Attorney General. Mr Mullally referred to the repeal of the LP Act 2003 and the enactment of the LP Act 2008 as a progressive development in legislation regulating the legal profession. In particular, giving effect to recommendations of the Productivity Commission regarding restrictions on trade in professional services.
- 14 It was submitted that the Standing Committee of State Attorneys General, the Law Council of Australia and the Council of Australian Governments pursued the principles arising from the Productivity Commission Review and which ultimately has lead to a national model law for the legal profession. This model law was substantively the basis for the enactment of the LP Act 2008 in this State. Reference was made to various observations in debates in the State Parliament regarding the origins of the LP Act 2008 in this regard.

- 15 Furthermore, Mr Mullally submitted that the submissions of the Attorney General do not reflect accepted canons of statutory interpretation and represent a gloss on the plain meaning of the legislative provisions as now contained in the LP Act 2008. It was contended, in reliance upon relevant authority in relation to the interpretation of statutes, and the terms of ss 18 and 19 of the Interpretation Act 1984, that the primary task of any court or tribunal in the interpretation of statutory provisions is to consider the language of the statute within the context of its purpose overall.
- 16 In particular, Mr Mullally submitted that it is significant that the terms of s 203 of the former LP Act 2003, have been re-enacted only in part in the LP Act 2008, but not the relevant part for consideration in this matter. Those parts of the former s 203 dealing with prohibitions on a person struck off the Roll acting as an executor or trustee have been re-enacted whereas the prohibition upon such practitioners appearing in a court or tribunal, the subject of consideration in *Enright*, has not been re-enacted.
- 17 It was submitted that this is very significant as the Parliament has deliberately chosen not to include the former prohibition in the new legislation. Additionally, it was submitted that for example, in the Workers' Compensation and Injury Management Act 1981, a prohibition was introduced into that legislation in 2005, to preclude a person who has been struck off the Roll of Practitioners in this State from representing a party in proceedings under that legislation. It was contended that no similar provision was inserted into the Act.
- 18 The overall submission of Mr Mullally is that the Attorney General, in his submission, is requesting the Commission to ignore the plain terms of the legislation and to draw upon a prohibition that was in the former LP Act 2003 but which was not carried over into the LP Act 2008. It was submitted that there is no conflict between the terms of s 112A of the Act and LP Act 2008, as there is no material distinction between a person who has never been entitled to practice as a legal practitioner and one who has been disqualified from practice, for the purposes of s 12(3)(a) of the LP Act 2008. Furthermore, given the terms of s 112A(4) and (5) of the Act, the community is protected by the requirement for registered industrial agents to hold professional indemnity insurance and comply with a Code of Conduct made under the Industrial Relations Commission Regulations 2005.
- 19 In response to the respondent's submissions, Mr Mullally contended that there is no basis for the conclusion in *Enright* to be carried forward under the LP Act 2008. Mr Mullally submitted that in representing the applicant in these proceedings, he is not doing so as legal practitioner but rather as an industrial agent acting lawfully in accordance with the provisions of s 112A of the Act.

Consideration

- 20 Under the former LP Act 2003, by Part 9-Unqualified and prohibited practice, a person was not to engage in legal practice unless that person was a certificated legal practitioner: s 123(1). In s 123(3)(c) of the former LP Act 2003, an exception to s 123(1) existed if the person concerned was "authorised by a written law" to do so.
- 21 By s 112A(3) of the Act as it then was, a person could appear before the Commission and provide advice and services in relation to industrial matters "for the purposes of s 123(3)(c) of the LP Act 2003". Thus the effect of these provisions was to enable a person to act as a registered industrial agent without contravening the LP Act 2003, whilst not being a certificated legal practitioner.
- 22 The operation of s 123(3)(c) of the LP Act 2003, was however, qualified by the terms of s 203(1) of the former LP Act 2003, which arose for consideration in *Enright*. Section 203(1) of the former LP Act 2003 provided as follows:
- (1) A legal practitioner struck off the Roll of Practitioners or suspended from practice is not entitled —
 - (a) to engage in legal practice until the legal practitioner has been re-admitted, or the period of suspension has elapsed, as the case requires;
 - (b) without limiting paragraph (a) to represent any person in a statutory tribunal or a court."
- 23 In *Enright*, Beech SC (as he then was) concluded that s 203(1) expressed a legislative purpose such that legal practitioners struck off the Roll of Practitioners, prior to or after the commencement of the former LP Act 2003, were precluded from acting as industrial agents under s 31 of the Act. This was held to be consistent with the purpose and object of the former LP Act 2003, to provide an effective means of regulation of the legal profession such that persons considered unfit to practice law in this State, were not able to engage in any form of legal practice or legal work.
- 24 The LP Act 2008 substantially commenced on 1 March 2009. By s 598, it repealed the LP Act 2003.
- 25 By s 605 of the LP Act 2008, the Roll of Practitioners kept under s 31 of the former LP Act 2003, continues as the "local roll" under s 28 of the LP Act 2008.
- 26 Similar transitional provisions existed under the former LP Act 2003, to the effect that the Roll of Practitioners under the predecessor Legal Practitioners Act 1893, from which Mr Mullally was struck off as a legal practitioner in 2001, continued as the Roll from 2003.
- 27 On this basis, I am satisfied that Mr Mullally is a person who is a "disqualified person" as described in s 3 of the LP Act 2008, as a person whose name has been removed from an Australian Roll.
- 28 The LP Act 2008 was enacted to give effect to the move towards a national legal profession and its terms appear to have been based substantially on the "national model law" for the legal profession, at least as this was described in the Parliamentary debates leading to its enactment (See Western Australia, *Parliamentary Debates*, Legislative Assembly, 25 October 2007, pp 6695d-6696a (Mr JA McGinty, Attorney General)).
- 29 Part 3 of the LP Act 2008 deals with "Reservation of legal work and related matters". By s 11, the purposes of Part 3 are "to protect the public interest in the proper administration of justice by ensuring that legal work is carried out only by those who are properly qualified to do so". Protection of consumers is also a stated purpose.

30 For present purposes s 12 of the LP Act 2008 is important. It relevantly provides as follows:

12. Prohibition on engaging in legal practice when not entitled

(1) In this section —

“*legal work*” means —

- (a) any work in connection with the administration of law; or
- (b) drawing or preparing any deed, instrument or writing relating to or in any manner dealing with or affecting —
 - (i) real or personal estate or any interest in real or personal estate; or
 - (ii) any proceedings at law, civil or criminal, or in equity;

“*public officer*” has the meaning given in *The Criminal Code*.

(2) A person must not engage in legal practice in this jurisdiction unless the person is an Australian legal practitioner.

Penalty: a fine of \$20 000.

(3) Subsection (2) does not apply to engaging in legal practice of the following kinds —

- (a) legal practice engaged in under the authority of a law of this jurisdiction or of the Commonwealth;
- (b) legal practice engaged in by an incorporated legal practice in accordance with Part 7 Division 2;
- (c) the practice of foreign law by an Australian-registered foreign lawyer in accordance with Part 8;
- (d) appearing or defending in person in a court;
- (e) drawing or preparing a transfer under the *Transfer of Land Act 1893*;
- (f) a public officer doing legal work in the course of his or her duties;
- (g) a person doing legal work under the supervision of an Australian legal practitioner, as a paid employee of a law practice or in the course of approved legal training;
- (h) legal practice of a kind prescribed by the regulations.

31 Mr Mullally, in providing advice to and representation of the applicant in this case, in my opinion, is clearly undertaking “legal work” as defined: *Legal Practice Board v Frichot* [2006] WASC 230. This includes the giving of legal advice to persons as to their rights and obligations under the law and the preparation of legal instruments by which legal rights are obtained, secured or given away. Undoubtedly, appearances before a court or tribunal must also be characterised as work “in connection with the administration of law” for the purposes of s 12(1)(a) of the LP Act 2008, set out above.

32 I therefore conclude that Mr Mullally, in acting for and on behalf of the applicant in these proceedings, is performing “legal work” and is also “engaging in legal practice” for the purposes of the relevant provisions of the LP Act 2008.

33 The next issue for consideration is the effect of s 112A of the Act. Section 112A(3) provides as follows:

“(3) For the purposes of section 12 of the *Legal Profession Act 2008* a person who is —

- (a) registered under this section;
- (b) acting under a contract of employment for a person who is registered under this section; or
- (c) an employee or officer of any organisation, the Council, the Chamber, the Mines and Metals Association, or a prescribed body or class of body, acting on behalf of that body, is authorised to —
- (d) appear for a party, person or body under section 31, 81E or 91; and
- (e) provide advice and other services in relation to industrial matters.”

34 The prohibition in s 12(2) of the LP Act 2008 on a person engaging in legal practice unless the person is an Australian legal practitioner is subject to the various exceptions in s 12(3), set out above. The relevant provision for present purposes is s 12(3)(a) to the effect that it is not an offence for a person to engage in legal practice without being an Australian legal practitioner, if the legal practice concerned is “engaged in under the authority of a law of this jurisdiction or of the Commonwealth”.

35 Section 12 of the LP Act 2008 is in similar terms to the former ss123 and 124 of the former LP Act 2003. Importantly, under the former LP Act 2003, the effect of s 203(1) was to expressly preclude a legal practitioner struck off the Roll of Practitioners, from appearing in a court or statutory tribunal. Any conflict between this provision and s 112A(3) of the Act, was plainly to be resolved in favour of the former, as was concluded in *Enright*. It was this provision that was central to the Commission’s conclusion in that case, that Mr Mullally, as a legal practitioner struck off the Roll of Practitioners, could not act as an industrial agent under s 31 of the Act, despite the apparent width of s 112A(3) of the Act.

- 36 On the repeal of the LP Act 2003, and the enactment of the LP Act 2008, the Parliament seems to have turned its mind to the terms of s 203 of the former LP Act 2003. This provision has not been re-enacted in whole in the LP Act 2008, but it has been re-enacted in part.
- 37 By s 203(2) and (3) of the former LP Act 2003, a legal practitioner struck off the Roll of Practitioners, was precluded from acting as a trustee of a trust or executor of a will, without the leave of the Supreme Court. This provision has been re-enacted in the LP Act 2008 as s 18, to the effect that a “prohibited person” (that being a person whose name has been removed from an Australian roll) is not to act as executor of a will or trustee of a trust without the leave of the Supreme Court.
- 38 Importantly for present purposes, s 203(1), dealing with the prohibition on legal practitioners struck off the Roll of Practitioners, from appearing in a court or tribunal, has not been re-enacted in the LP Act 2008.
- 39 Whether this is a consequence of the alignment of the LP Act 2008 with the national model law for the legal profession, as referred in the Parliamentary debates for the Legal Profession Bill 2007, is not clear. The fact remains however, that the prohibition in the former LP Act 2003, that was central to the decision of the Commission in *Enright*, was not continued in the LP Act 2008, on the repeal of the former legislation. However, s 123(3)(c) of the former LP Act 2003, was in substance continued in the new s 12(3)(a) of the LP Act 2008, set out above. A consequential amendment to s 112A(3) of the Act, reflects this.
- 40 It is trite that in the interpretation of a statute a purposive approach to construction should be adopted. No ambiguity is necessary before applying such an approach. In *Mills v Meeking* (1990) 169 CLR 214 Dawson J observed at pp. 233-234 as follows:

“The requirement that a court should have regard to the purpose or object of an Act is hardly novel. It has always been the cardinal rule of statutory interpretation that a court should strive to give effect to the intention of Parliament. In doing so the purpose of the legislation may be all-important. As Viscount Dilhorne observed in *Stock v Frank Jones (Tipton) Ltd* (1978) 1 WLR 231 at p234; (1978) 1 All ER 948 at p951:

‘It is now fashionable to talk of a purposive construction of a statute, but it has been recognised since the 17th century that it is the task of the judiciary in interpreting an Act to seek to interpret it “according to the intent of them that made it” (Coke 4 Inst. 330).’

The difficulty has been in ascertaining the intention of Parliament rather than in giving effect to it when it is known. Indeed, as everyone knows, the intention of Parliament is somewhat of a fiction. Individual members of Parliament, or even the government, do not necessarily mean the same thing by voting on a Bill or, in some cases, anything at all. The collective will of the legislature must therefore be taken to have been expressed in the language of the enactment itself, even though that language has been selected by the draftsman, who is not a member of Parliament.”

- 41 In *Project Blue Sky v Australian Broadcasting Authority* (1998) 194 CLR 355 McHugh, Gummow, Kirby and Hayne JJ at pars 69 and 71 observed as follows:

“69. The primary object of statutory construction is to construe the relevant provision so that it is consistent with the language and purpose of all the provisions of the statute [45]. The meaning of the provision must be determined “by reference to the language of the instrument viewed as a whole” [46]. In *Commissioner for Railways (NSW) v Agalinos* [47], Dixon CJ pointed out that “the context, the general purpose and policy of a provision and its consistency with fairness are surer guides to its meaning than the logic with which it is constructed”. Thus, the process of construction must always begin by examining the context of the provision that is being construed [48]...

71. Furthermore, a court construing a statutory provision must strive to give meaning to every word of the provision [52]. In *The Commonwealth v Baume* [53] Griffith CJ cited *R v Berchet* [54] to support the proposition that it was “a known rule in the interpretation of Statutes that such a sense is to be made upon the whole as that no clause, sentence, or word shall prove superfluous, void, or insignificant, if by any other construction they may all be made useful and pertinent.”

- 42 Furthermore, recently, in *Network Ten Pty Ltd v TCN Channel Nine* (2004) 218 CLR 273 McHugh ACJ, Gummow and Hayne JJ said at pars 10-12 as follows:

10. “The submissions for Nine initially eschewed any detailed consideration of the anterior legal and historical context in the United Kingdom; this was despite the significance of the British legislation which then followed, upon the later Australian legislation. Nine also stressed the significance of what was said to be the plain words of the provisions of the Act immediately in issue and sought to discount any reaction to the decision of the Full Court which emphasised that the construction favoured by the Full Court appeared to be at odds with the overall scheme of the Act. Accordingly, it is convenient now to restate several of the relevant principles or precepts of statutory interpretation.

11. In *Newcastle City Council v GIO General Ltd* (8), McHugh J observed:

“[A] court is permitted to have regard to the words used by the legislature in their legal and historical context and, in appropriate cases, to give them a meaning that will give effect to any purpose of the legislation that can be deduced from that context.”

His Honour went on to refer to what had been said in the joint judgement in *CIC Insurance Ltd v Bankstown Football Club Ltd* (9). There, Brennan CJ, Dawson, Toohey and Gummow JJ said (10):

“It is well settled that at common law, apart from any reliance upon s 15AB of the *Acts Interpretation Act 1901* (Cth), the court may have regard to reports of law reform bodies to ascertain the mischief which a statute is intended to cure (11). Moreover, the modern approach to statutory interpretation (a) insists that the context be considered in the first instance, not merely at some later stage when ambiguity might be thought to arise, and (b) uses ‘context’ in its widest sense to include such things as the existing state of the law and the mischief which, by legitimate means such as those just mentioned, one may discern the statute was intended to remedy (12). Instances of general words in a statute being so constrained by their context are numerous. In particular, as McHugh JA pointed out in *Isherwood v Butler Pollnow Pty Ltd* (13), if the apparently plain words of a provision are read in the light of the mischief which the statute was designed to overcome and the objects of the legislation, they may wear a very different appearance. Further, inconvenience or improbability of result may assist the court in preferring to the literal meaning an alternative construction which, by the steps identified above, is reasonably open and more closely conforms to the legislative intent (14).

43 And further at par 87 Kirby J said:

“I accept wholeheartedly that the contemporary approach of this Court to the interpretation of contested statutory language is the purposive approach (76). However, adopting that approach does not justify judicial neglect of the language of the statute, whether in preference for historical or other materials, perceived legal policy or any other reason (77). A purposive construction is supported by s 15AA of the *Acts Interpretation Act 1901* (Cth). But that section also does not permit a court to ignore the words of the Act. Ultimately in every case, statutory construction is a text-based activity (78). It cannot be otherwise.”

- 44 As noted above, there are limits to the purposive rule of construction. A court or tribunal is not permitted to rewrite a statute to give effect to what it considers to be its evident purpose: *Meeling; R v L* (1994) 122 ALR 464.
- 45 As discussed in the authorities, the task of a court or tribunal in construing a statute is to examine the language used by the draftsman to ascertain the meaning of the statutory provision in its ordinary and natural sense, consistent with the text and purposes of the statute as a whole.
- 46 It is the evident purpose of s 12(3) of the LP Act 2008, to provide a range of exceptions to the general disqualification created by s 12(2), preventing persons who are not Australian legal practitioners, from engaging in legal practice or otherwise performing legal work as defined. In the present case, in my opinion, there is no conflict between the provisions of the LP Act 2008 and the Act. The combined effect of s 12(3)(a) of the LP Act 2008 and s 112A(3) of the Act, constitute an exception to the prohibition on a non-legal practitioner from engaging in legal work and legal practice under consideration. If, as the respondent contends, s 37(1)(a) of the Interpretation Act 1984 has any work to do, then the failure to re-enact s203(1) of the former LP Act 2003 manifests a contrary intention in my opinion.
- 47 The position now under the LP Act 2008 as it applies to persons such as Mr Mullally is substantially as it was by the operation of s77A of the former Legal Practitioners Act 1893. This provided that the general prohibition on persons other than certified legal practitioners performing legal work did not apply to those doing such work authorised by a written law.
- 48 There was in my opinion, under the former LP Act 2003, a conflict between ss123,124 and 203 of that legislation, and s 112A(3) of the Act, which by the force of the former s 203(1), had to be resolved in its favour.

Conclusion

- 49 Whilst on one view this may not rest entirely comfortably with in part, the purposes of the LP Act 2008, I am compelled to conclude that by its terms, as now enacted, the LP Act 2008 does not preclude Mr Mullally from acting as an industrial agent under s 31 of the Act in matters before the Commission. In my opinion, it would be a bridge too far to read the LP Act 2008, as if s 203(1) of the former LP Act 2003 had not been repealed and essentially rewrite this provision back into the legislation. To take this step, in my opinion, would be to fall foul of the authorities referred to above. It would go much further than the insertion of a mere word or two to overcome a drafting omission, to give effect to the evident purpose of a statute applying the purposive approach to construction.
- 50 If my conclusions in relation to this matter are seen to be undesirable, then these are matters ultimately for the legislature in this State.
- 51 I will declare accordingly.
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2010 WAIRC 00204

PARTIES WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
RICHARD HARGROVE **APPLICANT**

-v-
SEVENTH DAY ADVENTIST CHURCH **RESPONDENT**

CORAM COMMISSIONER S J KENNER
DATE WEDNESDAY, 14 APRIL 2010
FILE NO/S B 264 OF 2009
CITATION NO. 2010 WAIRC 00204

Result Declaration issued
Representation
Applicant Mr P Mullally as agent
Respondent Ms J McCubbin of counsel
Amicus curiae Mr R Andretich of counsel

Declaration

HAVING heard Mr Mullally as agent on behalf of the applicant, Ms McCubbin of counsel on behalf of the respondent and Mr Andretich of counsel as amicus curiae on behalf of the Attorney General of Western Australia, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, ("the Act") hereby declares-

THAT Mr P Mullally be and is hereby authorised to appear as an industrial agent under the Industrial Relations Act 1979 in proceedings before the Commission.

(Sgd.) S J KENNER,
Commissioner.

[L.S.]

2010 WAIRC 00135

PARTIES WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
NIKKI JAMES **APPLICANT**

-v-
ABINGDON MINIATURE VILLAGE
IAN AND SONIA KLOPPER **RESPONDENT**

CORAM ACTING SENIOR COMMISSIONER P E SCOTT
DATE THURSDAY, 25 MARCH 2010
FILE NO/S U 262 OF 2009
CITATION NO. 2010 WAIRC 00135

Result Application dismissed

Order

WHEREAS this is an application pursuant to Section 29(1)(b)(i) of the *Industrial Relations Act 1979*; and
WHEREAS on the 24th day of February 2010 the Commission convened a conference for the purpose of conciliating between the parties; and
WHEREAS at the conclusion of the conference the respondent made an offer of settlement to the applicant and the applicant sought time to consider that offer; and
WHEREAS on the 16th day of March 2010 the applicant advised the Commission that the matter had settled; and

WHEREAS on the 17th day of March 2010 the applicant filed a Notice of Discontinuance in respect of the application;
NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby dismissed.

[L.S.]

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

2010 WAIRC 00112

	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION	
PARTIES	STEPHEN LINDEN	APPLICANT
	-v-	
	STANTONS INTERNATIONAL	RESPONDENT
CORAM	ACTING SENIOR COMMISSIONER P E SCOTT	
DATE	THURSDAY, 11 MARCH 2010	
FILE NO/S	B 185 OF 2009	
CITATION NO.	2010 WAIRC 00112	
Result	Application dismissed	

Order

WHEREAS this is an application pursuant to Section 29(1)(b)(ii) of the *Industrial Relations Act 1979*; and
WHEREAS the application was set down for hearing and determination of the issue of jurisdiction on the 19th day of February 2010; and
WHEREAS at the hearing at the conclusion of the respondent's submissions, the applicant sought an adjournment to enable him to respond to the issue; and
WHEREAS at the hearing the parties agreed to proceed by way of written submissions; and
WHEREAS on the 2nd day of March 2010 the applicant filed a Notice of Discontinuance in respect of the application;
NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby dismissed.

[L.S.]

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

2010 WAIRC 00144

	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION	
PARTIES	MR STEPHEN THOMAS MASON	APPLICANT
	-v-	
	DARREN STEVEN ELSEGOOD, BRADLEY KEITH ELSEGOOD, KYLIE MAY ELSEGOOD-SMITH, DAVID KEITH ELSEGOOD, SUNNY MAY ELSEGOOD AND SUNLIFE PTY LTD (ACN # 009415614) IN FAMILY PARTNERSHIP TRADING AS COMBINED METAL INDUSTRIES (ABN# 32737967619)	RESPONDENT
CORAM	COMMISSIONER J L HARRISON	
DATE	MONDAY, 29 MARCH 2010	
FILE NO/S	U 197 OF 2009	
CITATION NO.	2010 WAIRC 00144	

Result	Discontinued
Representation	
Applicant	Mr S Mason on his own behalf
Respondent	Mr G McCorry as agent

Order

WHEREAS this is an application pursuant to s 29(1)(b)(i) of the *Industrial Relations Act 1979*; and

WHEREAS on 26 November 2009, and with the consent of the parties, the Commission convened a conference for the purpose of conciliating between the parties however, no agreement was reached; and

WHEREAS the matter was set down for hearing on 21 January 2010 as to whether the application should be accepted out of time; and

WHEREAS on 20 January 2010 the applicant requested that the hearing be adjourned for one month and, given the respondent's consent, the hearing was vacated; and

WHEREAS on 23 February 2010 the applicant advised the Commission that he wished to discontinue the matter; and

WHEREAS on 25 February 2010 the respondent consented to the matter being discontinued;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby discontinued.

[L.S.]

(Sgd.) J L HARRISON,
Commissioner.

2010 WAIRC 00145

PARTIES	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION IAN BRUCE MCKAY	
	-v-	
	STIRFRY ENTERPRISES PTY LTD	APPLICANT
		RESPONDENT
CORAM	COMMISSIONER J L HARRISON	
DATE	MONDAY, 29 MARCH 2010	
FILE NO/S	B 42 OF 2009	
CITATION NO.	2010 WAIRC 00145	

Result	Dismissed
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Order

WHEREAS this is an application pursuant to s 29(1)(b)(ii) of the *Industrial Relations Act 1979* ("the Act"); and

WHEREAS the Commission set down a conference on 7 May 2009 for the purpose of conciliating between the parties; and

WHEREAS on 29 April 2009 the Commission was advised that the respondent had been placed into voluntary liquidation on 5 March 2009; and

WHEREAS on 1 May 2009 the Commission wrote to the applicant to advise that as the respondent had been placed into voluntary liquidation this may prevent the Commission from exercising any jurisdiction in relation to the application and as the respondent's liquidator indicated that they would not be attending the conference set down on 7 May 2009, the conference was vacated; and

FURTHER the applicant was informed that the matter would be left open for 90 days to allow time for him to obtain advice and to consider his position; and

WHEREAS on 7 October 2009 the applicant advised that he would not be proceeding with the matter and undertook to lodge a Notice of Withdrawal or Discontinuance form in the Commission however, this did not occur; and

WHEREAS on 1 December 2009 the Commission wrote to the applicant about lodging a Notice of Withdrawal or Discontinuance form however, there was no response; and

WHEREAS the matter was listed for a show cause hearing on 19 March 2010 as to why the matter should not be dismissed pursuant to s 27(1) of the Act; and

FURTHER the applicant was advised that non-attendance by the applicant at these proceedings would result in an order being issued dismissing the application; and

WHEREAS the applicant did not attend the show cause hearing on 19 March 2010 nor did he advise the Commission beforehand as to any reason why he was unable to attend the hearing;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby dismissed.

(Sgd.) J L HARRISON,
Commissioner.

[L.S.]

2010 WAIRC 00137

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

GEORGE MOULE

APPLICANT

-v-

VASCOS HOLDINGS PTY LTD T/A AVANTI ELECTRICS

RESPONDENT

CORAM COMMISSIONER J L HARRISON

DATE FRIDAY, 26 MARCH 2010

FILE NO/S U 179 OF 2009

CITATION NO. 2010 WAIRC 00137

Result Dismissed

Order

WHEREAS this is an application pursuant to s 29(1)(b)(i) of the *Industrial Relations Act 1979* ("the Act"); and

WHEREAS on 14 October 2009 the applicant's representative advised the Commission that the matter was presently being pursued at Fair Work Australia and undertook to inform the Commission if the matter was resolved; and

WHEREAS on 7 December 2009 the applicant's representative advised the Commission that the matter had been resolved and a Notice of Withdrawal or Discontinuance form would be lodged in the Commission however, this did not occur; and

WHEREAS on 25 February 2010 the Commission wrote to the applicant requesting a Notice of Withdrawal or Discontinuance form be lodged by 8 March 2010; and

WHEREAS as the Notice of Withdrawal or Discontinuance form was not lodged in the Commission by this date the matter was listed for a show cause hearing on 19 March 2010 as to why the matter should not be dismissed pursuant to s 27(1) of the Act; and

FURTHER the applicant was advised that non-attendance by the applicant at these proceedings would result in an order being issued dismissing the application for want of prosecution; and

WHEREAS the applicant did not attend the show cause hearing on 19 March 2010 nor did he advise the Commission beforehand as to any reason why he was unable to attend the hearing;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby dismissed.

(Sgd.) J L HARRISON,
Commissioner.

[L.S.]

2010 WAIRC 00117

PARTIES WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
REBECCA ANNE ROWE **APPLICANT**

-v-
AFREYA HAIR AND BEAUTY **RESPONDENT**

CORAM COMMISSIONER J L HARRISON
DATE TUESDAY, 16 MARCH 2010
FILE NO/S U 230 OF 2009
CITATION NO. 2010 WAIRC 00117

Result Discontinued

Order

WHEREAS this is an application pursuant to s 29(1)(b)(i) of the *Industrial Relations Act 1979*; and
 WHEREAS on 18 December 2010 the Commission wrote to the applicant advising her that her application could not proceed without filing a Declaration of Service; and
 WHEREAS on 4 January 2010 the applicant lodged a Declaration of Service; and
 WHEREAS the Commission set down a conference on 23 February 2010 for the purpose of conciliating between the parties; and
 WHEREAS on 4 February 2010 the respondent's representative advised the Commission that the matter had settled; and
 WHEREAS on 5 February 2010 the applicant's representative confirmed that a settlement had been reached; and
 WHEREAS on 9 February 2010 the applicant filed a Notice of Withdrawal or Discontinuance in respect of the application and the conference was vacated; and
 WHEREAS the respondent consents to the matter being discontinued;
 NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby discontinued.

[L.S.]

(Sgd.) J L HARRISON,
Commissioner.

2010 WAIRC 00119

PARTIES WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
BROOKLAND STEPHANIE **APPLICANT**

-v-
ILUKA RESOURCES ENEABBA **RESPONDENT**

CORAM COMMISSIONER J L HARRISON
DATE TUESDAY, 16 MARCH 2010
FILE NO/S U 180 OF 2009
CITATION NO. 2010 WAIRC 00119

Result Discontinued

Representation

Applicant Ms S Brookland on her own behalf
Respondent Ms A Toohey and Mr S Bowler (of counsel)

Order

WHEREAS this is an application pursuant to s 29(1)(b)(i) of the *Industrial Relations Act 1979*; and

WHEREAS on 9 November 2009 the Commission convened a conference to deal with scheduling issues relating to the application being lodged out of time and the issue of jurisdiction raised by the respondent in its Notice of Answer and Counter-proposal; and

WHEREAS on 24 November 2009 the Commission wrote to the parties advising timeframes for filing and serving submissions with respect to the issue of jurisdiction raised by the respondent; and

WHEREAS on 8 January 2010, after the parties had filed their written submissions and prior to a decision issuing in relation to the issue of jurisdiction, the applicant advised the Commission that she did not wish to proceed with this application; and

WHEREAS on 12 January 2010 the applicant filed a Notice of Withdrawal or Discontinuance in respect of the application; and

WHEREAS on 4 February 2010 the respondent consented to the matter being discontinued;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby discontinued.

[L.S.]

(Sgd.) J L HARRISON,
Commissioner.

2010 WAIRC 00114

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

ODETTE STEWART

APPLICANT

-v-

KUNUNURRA WARINGARRI ABORIGINAL CORPORATION

RESPONDENT

CORAM COMMISSIONER S M MAYMAN

DATE MONDAY, 15 MARCH 2010

FILE NO/S B 146 OF 2009

CITATION NO. 2010 WAIRC 00114

Result Application discontinued

Representation

Applicant Mrs O Stewart

Respondent Ms A Toohey (of counsel)

Order

WHEREAS this is an application pursuant to section 29(1)(b)(ii) of the *Industrial Relations Act 1979*;

AND WHEREAS on 2 September 2009 and 7 September 2009 the Commission convened conferences for the purpose of conciliating between the parties;

AND WHEREAS at the conclusion of the conference held on 7 September 2009 agreement was reached between the parties;

AND WHEREAS 8 March 2010 the applicant filed a Notice of Discontinuance in respect of the application;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby discontinued.

[L.S.]

(Sgd.) S M MAYMAN,
Commissioner.

2010 WAIRC 00113

PARTIES WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
ODETTE STEWART **APPLICANT**

-v-
KUNUNURRA WARINGARRI ABORIGINAL CORPORATION **RESPONDENT**

CORAM COMMISSIONER S M MAYMAN
DATE MONDAY, 15 MARCH 2010
FILE NO/S U 146 OF 2009
CITATION NO. 2010 WAIRC 00113

Result Application discontinued
Representation
Applicant Mrs O Stewart
Respondent Ms A Toohey (of counsel)

Order

WHEREAS this is an application pursuant to section 29(1)(b)(i) of the *Industrial Relations Act 1979*;
AND WHEREAS on 2 September 2009 and 7 September 2009 the Commission convened conferences for the purpose of conciliating between the parties;
AND WHEREAS at the conclusion of the conference held on 7 September 2009 agreement was reached between the parties;
AND WHEREAS 8 March 2010 the applicant filed a Notice of Discontinuance in respect of the application;
NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby discontinued.

(Sgd.) S M MAYMAN,
Commissioner.

[L.S.]

2010 WAIRC 00196

PARTIES WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
GLENYS WATT **APPLICANT**

-v-
DJOORAMINDA **RESPONDENT**

CORAM COMMISSIONER J L HARRISON
DATE FRIDAY, 9 APRIL 2010
FILE NO/S U 204 OF 2009
CITATION NO. 2010 WAIRC 00196

Result Discontinued
Representation
Applicant Ms G Watt on her own behalf
Respondent Mr B Jackson (of counsel) and Ms C Broers

Order

WHEREAS this is an application pursuant to s 29(1)(b)(i) of the *Industrial Relations Act 1979*; and

WHEREAS on 18 December 2009 the Commission convened a conference for the purpose of scheduling a hearing with respect to the application being lodged out of time and the issue of jurisdiction raised in the respondent's Notice of Answer and Counter-proposal lodged in the Commission on 6 November 2009; and

WHEREAS at the conference held on 18 December 2009 issues were raised about whether or not the applicant had been terminated and the respondent was given further time to obtain information; and

WHEREAS on 17 February 2010 and 19 February 2010 the Commission convened further conferences; and

WHEREAS at the conclusion of the conference on 19 February 2010 the parties reached an agreement in principle in respect of the application; and

WHEREAS on 4 March 2010 the applicant filed a Notice of Withdrawal or Discontinuance in respect of the application; and

WHEREAS on 17 March 2010 the respondent consented to the matter being discontinued;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby discontinued.

[L.S.]

(Sgd.) J L HARRISON,
Commissioner.

2010 WAIRC 00146

	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION	
PARTIES	TRACY WILKINSON	APPLICANT
	-v-	
	STIRLING SKILLS TRAINING INC. TRADING AS JOBS WEST	RESPONDENT
CORAM	COMMISSIONER J L HARRISON	
DATE	MONDAY, 29 MARCH 2010	
FILE NO/S	B 104 OF 2009	
CITATION NO.	2010 WAIRC 00146	
Result	Dismissed	
Representation		
Applicant	Ms T Wilkinson on her own behalf	
Respondent	Mr J Theodorsen as agent	

Order

WHEREAS this is an application pursuant to s 29(1)(b)(ii) of the *Industrial Relations Act 1979* ("the Act"); and

WHEREAS on 2 and 15 July 2009 the Commission convened conferences for the purpose of conciliating between the parties; and

WHEREAS at the conclusion of the conference held on 15 July 2009 the parties reached an agreement in principle in respect of the application; and

WHEREAS the Commission contacted the applicant on a number of occasions about lodging a Notice of Withdrawal or Discontinuance form however this did not occur; and

WHEREAS the matter was listed for a show cause hearing on 19 March 2010 as to why the matter should not be dismissed pursuant to s 27(1) of the Act; and

FURTHER the applicant was advised that non-attendance by the applicant at these proceedings would result in an order being issued dismissing the application; and

WHEREAS the applicant did not attend the show cause hearing on 19 March 2010 nor did she advise the Commission beforehand as to any reason why she was unable to attend the hearing;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby dismissed.

[L.S.]

(Sgd.) J L HARRISON,
Commissioner.

SECTION 29(1)(b)—Notation of—

Parties		Number	Commissioner	Result
Anne Marion Coyne	Kimberley Aboriginal Medical Services Council Inc.	U 220/2009	Chief Commissioner A R Beech	Discontinued
Colin Michael Adamson	Churches of Christ of WA Inc	U 154/2009	Chief Commissioner A R Beech	Discontinued
David Geoffrey Crowley	Tiwest Pty Ltd	B 226/2009	Commissioner S J Kenner	Discontinued
Eleanor Mary Criddle	Ms Belinda Bailey - CEO Rural Health West	U 9/2010	Chief Commissioner A R Beech	Discontinued
Linda Sutherland Skinner	Outcare Incorporated	U 241/2009	Commissioner S J Kenner	Discontinued
Mariana Fili Smith	Mr Wayne Adrian Collinson and Ms Elizabeth Collinson	U 194/2009	Chief Commissioner A R Beech	Discontinued

CONFERENCES—Matters arising out of—

2010 WAIRC 00134

DISPUTE RE PUBLIC HOLIDAY ENTITLEMENTS FOR PART TIME EMPLOYEES

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

HEALTH SERVICES UNION OF WESTERN AUSTRALIA (UNION OF WORKERS)

APPLICANT

-v-

THE DIRECTOR GENERAL OF HEALTH IN RIGHT OF THE MINISTER FOR HEALTH AS
HEALTH CORPORATE NETWORK

RESPONDENT

CORAM

PUBLIC SERVICE ARBITRATOR
ACTING SENIOR COMMISSIONER P E SCOTT

DATE

THURSDAY, 25 MARCH 2010

FILE NO

PSAC 17 OF 2008

CITATION NO.

2010 WAIRC 00134

Result	Order Issued
Representation	
Applicant	Mr D Ellis
Respondent	Mr P Heslewood

Order

WHEREAS this is an application pursuant to section 44 of the *Industrial Relations Act 1979*; and

WHEREAS on Thursday, the 11th day of March 2010 the Public Service Arbitrator convened a further conference to deal with the issue of the calculation and non payment for public holidays for employees eligible to be members of the applicant union; and

WHEREAS at the conclusion of the conference it was agreed that an Order should issue to reflect the agreement of the parties for the finalisation of payments due to employees;

NOW THEREFORE, having heard Mr D Ellis on behalf of the Health Services Union (Union of Workers) and Mr P Heslewood on behalf of the respondent the Public Service Arbitrator hereby orders that:

Health Corporate Network shall pay to employees and former employees of the Metropolitan Health Services eligible to be members of the Health Services Union of Western Australia (Union of Workers) all arrears as claimed by those employees, prior to 31 March 2010, and former employees for public holidays referred to in the Order issued by the Public Service Arbitrator on 3 September 2009 [2009 WAIRC 00635], in respect of public holidays up to and including 31 January 2010 by no later than 29 April 2010.

(Sgd.) P E SCOTT,
Acting Senior Commissioner,
Public Service Arbitrator.

[L.S.]

CONFERENCES—Notation of—

Parties		Commissioner	Conference Number	Dates	Matter	Result
Health Services Union of Western Australia (Union of Workers)	Director General of Health in right of the Minister for Health as the Metropolitan Health Service	Scott Acting SC	PSAC 25/2009	13/11/2009	Dispute in relation to reclassification appeals	Discontinued
Liquor, Hospitality and Miscellaneous Union, Western Australian Branch	Department of Education and Training	Harrison C	C 32/2009	6/10/2009	Dispute in relation to paid planned personal leave being withdrawn from union member	Discontinued
The Civil Service Association of Western Australia Incorporated	Director General, Department for Communities	Scott Acting SC	PSAC 23/2009	19/10/2009	Dispute re work performance and status of union member	Discontinued
The Civil Service Association of Western Australia Incorporated	Director General, Department for Child Protection, Government of Western Australia	Scott Acting SC	PSAC 24/2009	28/10/2009 6/11/2009	Dispute re disciplinary process	Referred
The Civil Service Association of Western Australia Incorporated	The Commissioner of Police, Western Australia Police Service	Scott Acting SC	PSAC 1/2010	N/A	Dispute re Return to Work	Discontinued
The State School Teachers' Union of WA (Incorporated)	The Director General, Department of Education and Training	Harrison C	C 13/2009	7/04/2009 1/05/2009 4/05/2009 6/05/2009 4/06/2009	Dispute re unlawful and unfair downgrading of an employee from Level 4 to Level 3	Referred

PROCEDURAL DIRECTIONS AND ORDERS—**2010 WAIRC 00208**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

MICHAEL QUARRY

APPLICANT

-v-

DEPARTMENT OF EDUCATION & TRAINING

RESPONDENT**CORAM**

COMMISSIONER J L HARRISON

DATE

FRIDAY, 16 APRIL 2010

FILE NO/S

U 38 OF 2009

CITATION NO.

2010 WAIRC 00208

Result

Order issued

Representation**Applicant**

Mr M Quarry on his own behalf

Respondent

Mr D Leigh of Counsel

Order

WHEREAS this is an application pursuant to s 29(1)(b)(i) of *the Industrial Relations Act 1979* ("the Act") lodged on 3 March 2009; and

WHEREAS conciliation was unavailing and the parties were advised on 25 May 2009 that the matter was set down for hearing on 8, 9 and 10 September 2009; and

WHEREAS on 25 August 2009 the hearing dates were vacated as the applicant did not attend conferences set down on 14 and 21 August 2009 to deal with interlocutory matters with respect to the hearing; and

WHEREAS the matter was listed for a show cause hearing on 22 September 2009 and at the show cause hearing the applicant advised the Commission that he wished to proceed with his application and undertook to provide contact details where he could be reached during working hours; and

WHEREAS on 29 October 2009 and 10 December 2009 scheduling conferences were held in relation to the hearing of the matter; and

WHEREAS on 18 February 2010 the parties were advised that the application had been set down for hearing and determination on 13 and 14 April 2010; and

WHEREAS on 6 April 2010 the applicant wrote to the Commission requesting an adjournment of the hearing set down for 13 and 14 April 2010; and

WHEREAS on 7 April 2010 the respondent advised the Commission that it did not consent to an adjournment being granted; and

WHEREAS on 9 April 2010 the Commission convened a conference for the purpose of hearing further from the parties in relation to the request to adjourn the hearing; and

WHEREAS at the conference on 9 April 2010 the applicant advised the Commission that:

- the preparation required for the hearing was excessive and was causing a deterioration of his chronic medical condition and his objective was to protect his health;
- if the hearing was to proceed the presentation of his case was likely to lack focus and succinctness and he wanted to avoid frustrating or wasting the time of all involved and he wanted to ensure that he had a fair hearing;
- the applicant relied on a letter attached to his submissions which was a medical certificate from his psychiatrist, dated 1 April 2010, advising that the applicant's major depressive disorder has been deteriorating over the last few months and she recommended that as the applicant should reduce his level of stress over the next two months this application should be adjourned for that period; and

WHEREAS the respondent's representative argued that:

- the respondent did not consider that a further adjournment of this application was appropriate;
- there was no indication that the applicant's health issues will be lessened by the passage of time as confirmed by the applicant himself therefore if an adjournment is granted at this stage it is unclear if it will not lead to a further adjournment in the future;
- the respondent is concerned that the applicant did not attend scheduling conferences in August 2009 with respect to a hearing, the applicant has already once been obliged to show cause why the matter should not be struck out and further delays would be contrary to the requirement on the Commission to act expeditiously;
- the respondent has expended considerable time and effort in preparing its case and witnesses have been advised of the hearing dates and are ready to give evidence at the hearing on the dates set and at least one witness may not be available to give evidence if this application is adjourned;
- the prejudice to the respondent if the hearing is adjourned is with respect to increased costs and the continuing disruption of the respondent's staff in being requested to repeatedly prepare for this matter; and

WHEREAS after hearing from the parties and in deciding whether the Commission should exercise its discretion to grant the adjournment and whether a refusal to adjourn would result in a serious injustice to one party (*Myers v Myers* (1969) WAR 19), the Commission is of the view that an adjournment should be granted based on the medical evidence submitted by the applicant confirming that he has been experiencing difficulties preparing for his case and that he will require two months to complete this task without compromising his health; and

WHEREAS it is also my view that the disadvantage to the applicant is greater than the disadvantage to the respondent if an adjournment is not granted; and

WHEREAS in reaching this decision I am mindful of the possible disadvantage to the respondent if any of its witnesses are unavailable due to the adjournment of the hearing being granted and as a result will grant the respondent liberty to apply with respect to any programming order/s it believes may be necessary to overcome this disadvantage; and

WHEREAS it is my view that in the circumstances this application will be listed for a two day hearing in approximately three months time and the applicant is on notice that if he requests a further adjournment he will be required to bring evidence to the Commission in support of that adjournment;

NOW THEREFORE having heard Mr M Quarry on his own behalf and Mr D Leigh of counsel on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, and in particular s 27(1), hereby orders:

1. THAT the hearing of U 38 of 2009 scheduled for 13 and 14 April 2010 is adjourned to a date to be fixed.
2. THAT the respondent is granted liberty to apply to seek programming orders in relation to any disadvantage with respect to witness evidence that it may suffer as a result of this adjournment being granted.

(Sgd.) J L HARRISON,
Commissioner.

[L.S.]

PUBLIC SERVICE APPEAL BOARD—

2010 WAIRC 00120

APPEAL AGAINST THE DECISION MADE ON 4 DECEMBER 2008 IN RELATION TO REPRIMAND AND REDUCTION IN REMUNERATION

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

THOMAS BROCKLEHURST

APPELLANT

-v-

DIRECTOR GENERAL DEPARTMENT OF HEALTH

RESPONDENT**CORAM**

PUBLIC SERVICE APPEAL BOARD
 ACTING SENIOR COMMISSIONER P E SCOTT - CHAIRMAN
 MR W GREEN - BOARD MEMBER
 MR D SOLOSY - BOARD MEMBER

DATE

WEDNESDAY, 17 MARCH 2010

FILE NO

PSAB 21 OF 2008

CITATION NO.

2010 WAIRC 00120

Result

Appeal to the Public Service Appeal Board dismissed

Representation**Appellant**

Mr M Gunning, of Counsel

Respondent

Mr J Misso, of Counsel

Order

WHEREAS this is an appeal pursuant to section 80I of the Industrial Relations Act 1979; and

WHEREAS on the 8th day of March 2010 the Appellant's representative filed a Notice of Discontinuance in respect of the appeal;
 NOW THEREFORE, the Public Service Appeal Board, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders:

THAT this appeal be, and is hereby dismissed.

[L.S.]

(Sgd.) P E SCOTT,
 Acting Senior Commissioner,
 On behalf of the Public Service Appeal Board.

2010 WAIRC 00140

APPEAL AGAINST THE DECISION MADE ON 9 NOVEMBER 2009 RELATING TO TERMINATION OF EMPLOYMENT

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

JOHN MATHEW LONGA

APPELLANT

-v-

KALGOORLIE BOULDER CEMETERY BOARD

RESPONDENT**CORAM**

PUBLIC SERVICE APPEAL BOARD
 COMMISSIONER J L HARRISON - CHAIRMAN

DATE

FRIDAY, 26 MARCH 2010

FILE NO

PSAB 25 OF 2009

CITATION NO.

2010 WAIRC 00140

Result Withdrawn by leave

Order

WHEREAS this is an appeal to the Public Service Appeal Board lodged in the Commission pursuant to s 80I of the *Industrial Relations Act 1979*; and

WHEREAS on 21 January 2010 the appellant advised that he no longer wished to proceed with this application; and

WHEREAS on 4 February 2010 the appellant filed a Notice of Withdrawal or Discontinuance in respect of this appeal;

NOW THEREFORE, the Public Service Appeal Board, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby withdrawn by leave.

(Sgd.) J L HARRISON,
Commissioner,

[L.S.] On behalf of the Public Service Appeal Board.

2010 WAIRC 00153

APPEAL AGAINST THE DECISION MADE ON 30 SEPTEMBER 2009 RELATING TO SUSPENSION OF UNION MEMBER WITHOUT PAY

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

DANIEL PRESTAGE

APPELLANT

-v-

THE DIRECTOR-GENERAL, DEPARTMENT FOR CHILD PROTECTION

RESPONDENT

CORAM

PUBLIC SERVICE APPEAL BOARD
COMMISSIONER J L HARRISON - CHAIRMAN
MR G RICHARDS - BOARD MEMBER
MR R BECKER - BOARD MEMBER

HEARD

THURSDAY, 26 NOVEMBER 2009, FRIDAY, 5 FEBRUARY 2010

DELIVERED

TUESDAY, 30 MARCH 2010

FILE NO.

PSAB 16 OF 2009

CITATION NO.

2010 WAIRC 00153

Catchwords

Public Service Appeal Board – Appeal against decision to suspend without pay – Decision adjusted by setting the decision aside - Respondent erred in exercising its discretion unreasonably and unfairly– *Industrial Relations Act 1979* s 80I(1)(d); *Public Sector Management Act 1994* s 8, s 9, s 64(1)(a), s 76, s 81(1) and (2) and s 82(1) and (3); *Interpretation Act 1984* s 52(1); *Public Sector Management (General) Regulations 1994* r 16

Result

Appeal upheld

Representation

Appellant

Ms S Bhar and Mr S Farrell

Respondent

Mr D Hughes and Mr E Rea

Reasons for Decision

- 1 These are the unanimous Reasons for Decision of the Public Service Appeal Board (“the Board”).
- 2 On 7 October 2009 Daniel Prestage (“the appellant”) lodged an appeal to the Board pursuant to s 80I(1)(d) of the *Industrial Relations Act 1979* (“the Act”) against a decision to suspend him without pay made on 30 September 2009 by the Director-General, Department for Child Protection (“the respondent”).
- 3 The schedule attached to the appellant’s application is as follows:

“Schedule 1

1. Daniel Prestage, (“the Appellant”), is employed as a Youth and Family Support Worker by the Department of Child Protection (“the Respondent”) (sic)

2. On or about 30 September 2009, the Appellant received a letter from the Respondent advising him that the Respondent had decided to suspend him without pay pursuant to *s.82(1) of the Public Sector Management Act 1994* (“*the PSMA 1994*”). A copy of that letter is attached herewith and marked as “Attachment A”.
3. The Appellant is aggrieved by this decision of the Respondent made in the exercise of its power under *section 82 of the PSMA 1994* and appeals against that decision pursuant to *section 78(3)(b) of the PSMA 1994*.

Background

1. On 6 July 2009, the Respondent wrote to the Appellant advising him that he was suspected to have committed a breach of discipline under *section 80 of the PSMA 1994*. A copy of that letter is attached herewith and marked as “Attachment B”.
2. The suspected breach of discipline relates to allegations that on 29 June 2009, the Appellant breached the Western Australian Public Sector Code of Ethics which required the Appellant to treat people with respect, courtesy and sensitivity and recognise their interests, rights, safety and welfare.
3. The allegations specifically claimed that on the said date, the Appellant committed an act of aggravated sexual assault upon [name of person] and on an unspecified date in June 2009, the Appellant threatened to kill her or another person. Further, the acts are alleged to have taken place in the presence of the children of the relationship and the Respondent formed the view that such actions may be destructive of the Appellant’s authority and influence as its employee.
4. The Respondent specifically states in Attachment B (paragraph 4) that the above acts may be in breach of the Western Australian Public Sector Code of Ethics and other legislation, citing sections 9 and 80 of the *PSMA 1994*.
5. The Respondent provided the Appellant with the opportunity to respond to the allegations by 17 July 2009.
6. On 10 July 2009, the Respondent further wrote to the Appellant directing the Appellant that, in light of the disciplinary and criminal charges brought against him, he was to remain away from the workplace on full pay until further notice. The Respondent stated that its decision was based on the severity of the allegations against the Appellant, the likely review of the Appellant’s Working With Children card and the likely adverse impact on the Respondent’s reputation. A copy of the Respondent’s letter is attached herewith and marked as “Attachment C”.
7. On 4 August 2009, the Respondent again wrote to the Appellant referring to the allegation that the Appellant breached the Western Australian Public Sector Code of Ethics which required the Appellant to treat people with respect, courtesy and sensitivity and to recognise their interests, rights, safety and welfare.
8. The Respondent acknowledged the Appellant’s letter dated 24 July 2009 in which the Appellant exercised his right to not partake in any other process while his criminal proceedings were on-going. Nevertheless, the Respondent stated its intention to conduct its own investigation into the suspected breach of discipline and notified the Appellant that it intended to suspend the Appellant without pay until such time as outlined in section 82(2) or (3) of the *PSMA 1994*.
9. The Respondent outlined the following factors which it claims to have considered in the risk assessment and decision to pursue suspension without pay:
 - Potential risk of compromising the reputation of the organisation with the public;
 - Potential risk of adversely affecting the emotional well-being of any employee or client;
 - Potential impact on the effective operation of Departmental policies and programs;
 - The possibility of suspending with pay;
 - The appropriateness of moving the Appellant to another work location.
10. The Respondent further provided the Appellant with seven (7) days to provide the Respondent with reasons as to why the suspension without pay should not be imposed. A copy of the Respondent’s letter referred to in paragraphs 7-10 is attached herewith and marked as “Attachment D”.
11. On or about 6 August 2009, on behalf of the Appellant, solicitor Brian Lynch of Mony de Kerloy, Barristers and Solicitors, wrote to the Respondent advising the Respondent that the Appellant had entered a plea of not guilty with the court in relation to the charges against him and that the matter was before the court and due to go to trial.
12. Mr Lynch also requested that (sic) disciplinary process be stayed until the criminal investigation and/ or proceedings have concluded so as to afford natural justice to the Appellant. Mr Lynch further queried the basis on which the Respondent determined that the allegations amounted to a contravention of the code of ethics when the allegations had not been substantiated.
13. Mr Lynch also advised the Respondent that to suspend the Appellant without pay would have a severe adverse impact on the Appellant’s ability to meet his day to day obligations and also importantly, his ability to pay for his legal advice, which would in turn impact upon his ability to be adequately represented in his criminal proceedings. A copy of Mr Lynch’s letter dated 6 August 2009 is attached herewith and marked as “Attachment E”.

14. At about the same time, the Appellant sought the advice and representation of the Civil Service Association in the industrial aspects of this matter to minimise the burden of legal costs. The CSA sought an extension of time from the Respondent for the Appellant to submit his reasons as to why he should not be suspended without pay (sic)
15. On or about 14 August 2009, the Appellant provided the Respondent with a letter outlining the severe financial hardship he would endure as a result of the suspension without pay. The Appellant also notified the Respondent that the criminal proceedings may take up to 18 months to conclude. The Appellant stated that he understood that the Respondent's position might be that it would be inappropriate for the Appellant to work in the same role or with children and if the Respondent should maintain that opinion, that he would be willing to work in another role which did not have child based interaction. A copy of the Appellant's letter to the Respondent is attached herewith and marked as "Attachment F".
16. On 30 September 2009, the Respondent notified the Appellant that despite the arguments presented by the Appellant and Mr Lynch, the Respondent maintained its belief that suspending the Appellant without pay is an appropriate course of action and that such suspension will continue until disciplinary proceedings are concluded. A copy of the Respondent's letter is attached herewith and marked as "Attachment A".
17. The Appellant authorised the CSA to lodge this appeal.
18. The Respondent's decision to suspend the Appellant without pay is harsh and unreasonable. The Appellant has 5 years of service with the Respondent and an unblemished record. The Appellant and the CSA allege that the Respondent has not fully considered all the alternatives to suspending the Appellant without pay. Despite setting out the factors it claims to have considered in determining its decision, the Respondent has not afforded the Appellant the reasons for concluding that suspension without pay is the only, or most appropriate, course of action in this matter.
19. The CSA and the Appellant deny that not suspending the Appellant without pay will:
 - Potentially risk compromising the reputation of the organisation with the public;
 - Potentially risk adversely affecting the emotional well-being of any employee or client;
 - Potentially impact on the effective operation of Departmental policies and programs.
20. The CSA and the Appellant further allege that the Respondent did not fully consider the possibility of suspending the Appellant with pay or the appropriateness of moving the Appellant to another role or work location.
21. The Appellant is suffering from financial hardship as a result of the suspension because he has major financial commitments as outlined in Attachment F and the period of suspension without pay will be protracted beyond a reasonable time-frame taking into account the indeterminate length of the criminal proceedings and then the duration of the disciplinary process, which the Respondent should rightfully only initiate at the conclusion of the criminal proceedings so as to not interfere with the court proceedings.
22. The Appellant submits that if the suspension without pay was to continue indeterminately, he would have to file for bankruptcy and will lose his house, vehicle and other assets and will not be able to financially provide for his children, the youngest of whom is only about a month old.
23. The Appellant does not present a real risk to the Respondent's operations, and could have been placed in other activities outside of child involvement pending the outcome of the criminal proceedings.
24. *Section 82(3) of the PSMA 1994* allows for the reinstatement of the Appellant's pay at the discretion of the Respondent taking into account whether or not it is likely that the investigation and/ or subsequent processes may be lengthy or delayed or if the Appellant has submitted that he is suffering financial duress.
25. The decision of the Respondent to suspend the Appellant without pay further contravenes the principles of *Gregory Robert Ireland -v- The Director-General, Department of Health* [2008 WAIRC 00297] in that it is tantamount to prejudging the outcome of the disciplinary process and has taken into consideration factors which are irrelevant and therefore in breach of the rules of procedural fairness.

Relief Sought

1. Urgently the Appellant requests that the Board use its powers under section 80I(d) (sic) of the *Industrial Relations Act 1979* to hear this appeal and adjust the Respondent's decision to suspend her (sic) without pay.
 2. The Appellant requests that the Board orders the Respondent to reinstate all benefits due to her (sic) as if the decision had not been made effective from the date of the decision."
- 4 Attached to the Schedule of the application were Attachments A to F. Attachment A is a letter to the appellant dated 30 September 2009 from Cheryl Barnett, Executive Director Metropolitan Services, Department for Child Protection and is as follows (formal parts omitted):

"SUBJECT: NOTIFICATION OF SUSPENSION WITHOUT PAY

I refer to my letter dated 4 August 2009 regarding the notification that I intended to suspend you without pay and affording you the opportunity to provide reasons to me as to why the suspension without pay should not be imposed. I also refer to the letter from your Solicitor, Mr Brian Lynch of Mony De Kerloy, dated 10 August 2009 and your response received 14 August 2009.

I have carefully considered the arguments you have presented and those of Mr Lynch but believe that suspending you without pay is an appropriate course of action. Therefore, pursuant to section 82(1) of the Public Sector Management Act (sic) you are hereby suspended without pay from the date of this letter. This suspension shall continue until disciplinary proceedings are concluded.

In the event that no breach of discipline was committed, the Department will ensure that your pay during the period of suspension is restored.

Should you have any queries, please contact A/Manager Roger Nickerson on [telephone number].”

- 5 Attachment B is a letter to the appellant dated 6 July 2009 from Sandra Randall Acting Director Integrity and Screening, Department for Child Protection and is as follows (formal parts omitted):

“**SUBJECT: SUSPECTED BREACH OF DISCIPLINE**

It has come to my attention that you are suspected of having committed acts which may constitute a breach of discipline under section 80 of the *Public Sector Management Act 1994* (the Act).

Specifically, It (sic) is alleged that on 29 June 2009 at Coolbellup you breached the *Western Australian Public Sector Code of Ethics* that requires you to treat people with respect, courtesy and sensitivity and recognise their interests, rights, safety and welfare.

By way of further clarification, it is claimed that on 29 June 2009 you committed an act of aggravated sexual assault upon [name of person] and on an unspecified date in June 2009 you threatened to kill her or another person. Both acts are alleged to have been committed in the presence of the children of the relationship. Such actions may be destructive of your authority and influence as an employee of the Department for Child Protection.

As previously mentioned such acts/ actions may breach the *Western Australian Public Sector Code of Ethics* in addition to other legislation which governs your behaviour such as the;

Public Sector Management Act 1994, section nine which states in part;

9. General principles of official conduct

The principles of conduct that are to be observed by all public sector bodies and employees are that they-

- (a) are to comply with the provisions of -
 - (i) this Act and any other Act governing their conduct;
 - (ii) public sector standards and codes of ethics; and
 - (iii) any code of conduct applicable to the public sector body or employee concerned;

Public Sector Management Act 1994 section 80 which states in part;

80. Breaches of discipline

An employee who —

- (b) contravenes —
 - (i) any provision of this Act applicable to that employee; or
 - (ii) any public sector standard or code of ethics;
- a. commits an act of misconduct;
- commits a breach of discipline.

I would like to provide you with the opportunity to respond to these allegations.

In accordance with Section 81(1) of the Act, please forward to me a written explanation in respect to the above alleged breach of discipline by close of business on 17 July 2009. I will take your explanation into consideration in determining what, if any, further action is taken in respect of these allegations.

Please contact the Manager Investigations and Assessments Chantelle Horsford on [telephone number] should you have any queries.”

- 6 Attachment C is a letter to the appellant dated 10 July 2009 from Cheryl Barnett, Executive Director Metropolitan Services, Department for Child Protection and is as follows (formal parts omitted):

“**DIRECTION TO REMAIN ABSENT FROM WORK**

In view of the disciplinary charges that have been commenced against you and the criminal charges brought by Western Australia Police relating to events that are alleged to have occurred on or about 29 June 2009, you are directed to remain away from the workplace on full pay until further notice.

This decision takes into account the severity of the allegation against you, the likely review of your Working With Children card, and the likely adverse impact on the reputation of the Department.

I note that you have requested that Team Leader Rhonda Camilleri act as a liaison between yourself and the Department. Ms Camilleri can be contacted on [telephone number].

Should you have any queries regarding the disciplinary process please contact Manager Investigations and Assessments Chantelle Horsford on [telephone number].

I would like to remind you of the support services that are available to you through the PRIMEPSYCH Employee Assistance Program. These services can be accessed by calling [telephone number].”

- 7 Attachment D is a letter to the appellant dated 4 August 2009 from Cheryl Barnett, Executive Director Metropolitan Services, Department for Child Protection, and is as follows (formal parts omitted):

“**SUBJECT: NOTIFICATION OF INVESTIGATION INTO SUSPECTED BREACH OF DISCIPLINE**

I refer to the letter dated 6 July 2009 regarding the allegation against you, namely that on 29 June 2009, at Coolbellup, you breached the *Western Australian Public Sector Code of Ethics* that requires you to treat people with respect, courtesy and sensitivity and recognise their interests, rights, safety and welfare.

I also refer to your letter received on 24 July 2009 (sic). Whilst acknowledging your decision not to render an explanation relating to criminal proceedings, I continue to suspect that you may have committed the alleged breaches of discipline. I have therefore decided to notify you of the Department’s intention to initiate an investigation into the suspected breach of discipline, pursuant to section 81(2) of the *Public Sector Management Act 1994* (the Act).

I have directed Senior Investigator Roger Nickerson, with the Integrity and Screening Unit, to conduct the investigation pursuant to section 81(2) of the Act.

Pursuant to section 82(1) of the Act the Department intends to suspend you without pay. This suspension shall continue until such time as outlined in section 82(2) or (3) of the Act. However, before making the final decision to suspend you without pay, I will allow you the opportunity to submit reasons as to why this course of action should not be pursued (sic).

The following factors were considered in the risk assessment and decision to pursue suspending you without pay:

- Potential risk of compromising the reputation of the organisation with the public;
- Potential risk of adversely affecting the emotional well being of any employee or client;
- Potential impact on the effective operation of Departmental policies and programs;
- The possibility of suspending with pay;
- The appropriateness of moving you to another work location;

If you wish to provide reasons to me as to why the suspension without pay should not be imposed please do so in writing within seven (7) business days from receipt of this letter.

Please contact Mr Nickerson on [telephone number] should you have any queries.”

- 8 Attachment E is a letter to Ms Cheryl Barnett dated 6 August 2009 from Brian Lynch of Mony de Kerloy Barristers and Solicitors and is as follows (formal parts omitted):

“**DANIEL PRESTAGE — NOTIFICATION OF INVESTIGATION INTO SUSPECTED BREACH OF DISCIPLINE**

We act for Mr Prestage in relation to the criminal allegations recently brought against him by the Western Australian Police.

We have to hand a copy of your letter to our client dated 4 August 2009.

Our client has entered a plea of not guilty with the court in relation to the charges so levied against him. This matter is before the court and is due to go to trial to be determined by the court.

It is trite law that a person is not obliged to answer questions or render an explanation to matters relating to criminal proceedings in a parallel process (see *Hammond v the Commonwealth* (1982) 152 CLR and *Chapman v Director of Public Prosecutions* (2009) WASCA 66).

It is clear that the requirement for our client to give an explanation or to participate in a Breach of Discipline process would, therefore, amount to an improper interference with the administration of justice and a contempt of court. Thus the entire process under the *Public Sector Management Act 1994* must be stayed until the present criminal investigation (or any other criminal investigation) of this matter has concluded. It is clear that any response to you via the Breach of Discipline process may potentially prejudice our client’s case under any criminal investigation into these matters as anything he says may potentially be used against him. These concerns would deny our client the right to procedural fairness in the disciplinary process.

Further we do not see how an allegation of the charges against our client can possibly equate to a “*contravention of the code of ethics*” so alleged by you in your letter dated 6 July 2009 or indeed to anything other than the fact that an allegation has been made against our client, which remains as you are aware as an allegation until the conclusion of the trial of this matter. We seek confirmation as to what foundation you have relied on (be it documentation or otherwise) to confirm your suspicion that our client has committed the alleged breaches. In other words please explain your suspicion.

Should you proceed to suspend our client without pay, it will have a severely adverse impact on his ability to meet his day to day obligations and indeed his ability to pay for his legal advice, which would in turn impact upon his ability to be adequately represented in the criminal matter.

We request that the proposed Breach of Discipline process under the *Public Sector Management Act 1994* be suspended until such time as the current criminal investigation of these allegations has been concluded.

Our client reserves his rights in relation to this matter.”

- 9 Attachment F is an undated document written by the appellant. The appellant says in his application that this letter was provided to the respondent on or about 14 August 2009 and outlines what he says is the severe hardship he would endure as a result of being suspended without pay. The letter is as follows (formal parts omitted - verbatim account):

“To whom it may concern

I response to your letter; **Notifications of investigation into suspected breach of discipline**

I cannot say as to whether I breached the discipline dew the impact that it may have on the criminal allegations.

I understand that at this stage of the proceedings I am not able to work in the same capacity or role that I had prior to the allegations, I am willing to work in another Capacity or role that dose not contravenes the department’s authority when working with children.

This may be any role which does not have child based interaction.

I will be put in a position of financial distress if I am suspended with out pay. The impactions of this will affect my children’s maintenance, mortgage repayments, solicitor bills, and all monetary debts.

This will also inadvertently affect my extended family.

The solicitor cost is an important part of my life at the moment, as this will lead to a verdict of my innocence.

The trial may take up to 18 months before a verdict can be made.

I have the capacity to work at present, this is part of my bail conditions.

I have worked for the department for 5 years and have never at any time compromised the organization, The time I have worked for the department I have praised and promoted D.C.P.

Suspension with pay or the moving of me into another work location is my best options to continue my involvement with the department. The benefit of this for me and the Department are very easily seen

Once the criminal matters are dealt with I have every intention of returning back to the department, being what ever that role may be.

I am at this point still supporting three children and have a child dew in September, this will require money to support.

a list of the cost to live for me at present

I presently earn \$850 a week \$1700 per fort night.

At this point I am paying Maintenance for the children at \$150 a week.

Mortgage \$580

Car repayments \$208, I am not able to sell the car it is in my ex name.

Petrol \$30

Mobile \$30

Insurance \$150 per month

Isaacs Maintenance \$25 my olds son

Power Phone Gas very

Parents Board \$200 a week

Solicitor repayments any amount left

Thank you I will await your response.

Daniel Prestage.”

- 10 A statement of agreed facts was filed by the parties on 23 October 2009 in relation to this matter. This statement reads as follows:

- “1. Daniel Prestage, (“the Appellant”), is employed as a Youth and Family Support Worker by the Director General, Department for Child Protection (“the Respondent”).
2. The Appellant commenced employment with the Respondent on 4 July 2005 on a fixed term contract of employment.
3. The Appellant was permanently appointed to the role of Youth and Family Support Worker on 1 October 2008.
4. The Appellant has been continuously employed by the Respondent since 4 July 2005.
5. On or about 30 September 2009, the Appellant received a letter from the Respondent advising him that the Respondent had decided to suspend him without pay pursuant to *s.82(1) of the Public Sector Management Act 1994 (“the PSMA 1994”)*.
6. On 6 July 2009, the Respondent wrote to the Appellant advising him that he was suspected of having committed acts which may constitute a breach of discipline under *section 80 of the PSMA 1994*.
7. The suspected breach of discipline relates to allegations that on 29 June 2009, the Appellant breached the Western Australian Public Sector Code of Ethics which required the Appellant to treat people with respect, courtesy and sensitivity and recognise their interests, rights, safety and welfare.

8. The allegations specifically claimed that on the said date, the Appellant committed an act of aggravated sexual assault upon [name of person] and on an unspecified date in June 2009, the Appellant threatened to kill her or another person. Further, the acts are alleged to have taken place in the presence of the children of the relationship and the Respondent formed the view that such actions may be destructive of the Appellant's authority and influence as its employee.
9. The Respondent specifically states in its letter dated 6 July 2009 that the above acts may be in breach of the Western Australian Public Sector Code of Ethics and other legislation, citing sections 9 and 80 of the *PSMA 1994*.
10. The Respondent provided the Appellant with the opportunity to respond to the allegations by 17 July 2009.
11. On 10 July 2009 the Applicant (sic) requested in a telephone conversation with the Respondent, that the Respondent grant an extension of the time for providing such a response, so that the Applicant (sic) could seek legal advice.
12. The Respondent agreed to an extension until 22 July 2009.
13. On 10 July 2009, the Respondent further wrote to the Appellant directing the Appellant that, in light of the disciplinary and criminal charges brought against him, he was to remain away from the workplace on full pay until further notice. The Respondent stated that its decision was based on the severity of the allegations against the Appellant, the likely review of the Appellant's Working With Children card and the likely adverse impact on the Respondent's reputation.
14. On 17 July 2009, the Appellant wrote to the Respondent, via email, requesting that the Respondent suspend its breach of discipline process until such time as the current criminal investigation has been concluded.
15. On 4 August 2009, the Respondent again wrote to the Appellant referring to the allegation that the Appellant breached the Western Australian Public Sector Code of Ethics which required the Appellant to treat people with respect, courtesy and sensitivity and to recognise their interests, rights, safety and welfare.
16. The Respondent acknowledged the Appellant's unsigned and undated letter received on 17 July 2009 (which was mis-described as being received 24 July 2009) in which the Appellant requested that the Respondent suspend its breach of discipline process. The Respondent informed the Appellant that it continued to suspect that the Appellant had committed the alleged breaches of discipline and intended to conduct an investigation pursuant to *section 82(1) of the PSMA 1994*. The Respondent stated that Senior Investigator Roger Nickerson had been directed to conduct the investigation pursuant to *section 81(2) of the PSMA 1994*.
17. The Respondent notified the Appellant that, pursuant to *section 82(1) of the PSMA 1994* that it intended to suspend him without pay until such time as outlined in *section 82(2) or (3) of the PSMA 1994*.
18. The Respondent outlined the following factors which it considered in the risk assessment and decision to pursue suspension without pay:
 - Potential risk of compromising the reputation of the organisation with the public;
 - Potential risk of adversely affecting the emotional well-being of any employee or client;
 - Potential impact on the effective operation of Departmental policies and programs;
 - The possibility of suspending with pay;
 - The appropriateness of moving the Appellant to another work location.
19. The Respondent further provided the Appellant with seven (7) business days to provide the Respondent with reasons as to why the suspension without pay should not be imposed.
20. On or about 10 August 2009, on behalf of the Appellant, solicitor Brian Lynch of Mony de Kerloy, Barristers and Solicitors, wrote to the Respondent advising the Respondent that the Appellant had entered a plea of not guilty with the court in relation to the charges against him and that the matter was before the court and due to go to trial.
21. Mr Lynch requested that the disciplinary process be stayed until the criminal investigation and/or proceedings have concluded.
22. Mr Lynch also advised the Respondent that to suspend the Appellant without pay would have a severe adverse impact on the Appellant's ability to meet his day to day obligations and also, his ability to pay for his legal advice, which would in turn impact upon his ability to be adequately represented in the criminal proceedings.
23. On or about 14 August 2009, the Appellant provided the Respondent with a (sic) unsigned letter, submitted via email, outlining the severe financial hardship he would endure as a result of the suspension without pay. The Appellant also notified the Respondent that the criminal proceedings may take up to 18 months to conclude. The Appellant stated that he understood that the Respondent's position might be that it would be inappropriate for the Appellant to work in the same role or with children and if the Respondent should maintain that opinion, that he would be willing to work in another role which did not have child based interaction.
24. On 30 September 2009, the Respondent notified the Appellant that having carefully considered the arguments presented by the Appellant and Mr Lynch, the Respondent maintained its belief that suspending the Appellant without pay was an appropriate course of action and that such suspension will continue until disciplinary proceedings are concluded.
25. On 30 September 2009, the Respondent wrote to the Appellant's agent, solicitor, Brian Lynch and advised that the Respondent was willing to accede to Mr Lynch's request that the disciplinary process be suspended until such time as the current criminal investigations against his client had been concluded.

26. The Respondent also advised that due to the lengthy time period that was likely to pass before the criminal charges could be resolved that it believed that it would be unreasonable and contrary to the public interest for the Respondent to continue paying the Appellant.
 27. On 7 October 2009, the Appellant lodged a Form 11, Notice of appeal to the Public Service Appeal Board with the Western Australian Industrial Relations Commission appealing against the decision to suspend the Appellant without pay pursuant to section 82(1) of the *PSMA 1994*. The Appellant also lodged a Form 18, Warrant to appear as agent, authorising the Civil Service Association of Western Australia (Inc) to appear on his behalf in the matter of PSAB 16 of 2009.
 28. On 8 October 2009, the Appellant's agent, CSA, wrote to the Respondent advising that the Appellant had filed an appeal to the Public Service Appeal Board in relation to the Respondent's decision to suspend the Appellant without pay. The Appellant's agent requested the Respondent rescind its decision to suspend the Appellant without pay, or alternatively, to authorise the Appellant to seek casual alternative employment.
 29. On 9 October 2009, the Respondent wrote to the Applicant's (sic) agent, CSA, and advised that the Department had not received any information that would alter its position with regards to the decision to suspend the Appellant without pay. The Respondent stated that now that the matter had been referred to the Public Service Appeal Board that it was appropriate to have it determined in that jurisdiction.
 30. Furthermore the Respondent confirmed that all requests for secondary employment must be made in writing and provided the Appellant the appropriate policy document and form relating to such a request. The Respondent indicated that it would prioritise any such request in light of financial hardship which the Appellant's agent, CSA, referred to in the letter to the Respondent dated 7 October 2009."
- 11 A set of agreed documents was also filed by the parties on 23 October 2009. These documents are as follows:
- "The parties agree that the following correspondence contains the full written communication between the parties in relation to this matter:
1. Letter from the Respondent to the Appellant dated 6 July 2009.
 2. Letter from the Respondent to the Appellant dated 10 July 2009.
 3. Unsigned letter from Appellant to Respondent, sent via email, undated, received 17 July 2009.
 4. Letter from the Respondent to the Appellant dated 4 August 2009.
 5. Letter from Appellant's agent, solicitor, Brian Lynch, to the Respondent dated 10 August 2009.
 6. Unsigned letter from the Appellant to the Respondent, sent via email, undated, received 14 August 2009.
 7. Letter from the Respondent to the Appellant dated 30 September 2009.
 8. Letter from the Respondent to the Appellant's agent, solicitor, Brian Lynch dated 30 September 2009.
 9. Letter from the Appellant's agent, CSA to the Respondent dated 8 October 2009.
 10. Letter from the Respondent to the Appellant's agent, CSA dated 9 October 2009."
- 12 The parties filed written submissions in relation to this application, the appellant on 29 October 2009 and the respondent on 28 October 2009, and at a directions hearing held by the Board on 18 November 2009 and prior to these submissions being heard by the Board the appellant withdrew paragraphs 29 to 35 inclusive of their submissions but reserved its position to comment on the status of the respondent's investigation at a later stage.
- 13 The appellant is seeking that the following orders be issued by the Board:
- The decision of the respondent to suspend the appellant be adjusted by setting the decision aside.
 - The respondent to reinstate all benefits due to the appellant as if the decision had not been made effective from the date of the decision.
 - Any other orders the Board considers necessary.
- 14 The respondent opposes the issuance of these orders.

Submissions

Appellant

- 15 The appellant disputes the decision of the respondent to suspend him without pay pursuant to s 82(1) of the *Public Sector Management Act 1994* ("the PSM Act"). The appellant argues that whilst the power of an employing authority to suspend an employee without pay during the conduct of a disciplinary investigation is provided for under s 82 of the PSM Act this power is not unfettered. The appellant also argues that s 82(3) of the PSM Act provides the employing authority with the power to restore pay to an employee who has been suspended without pay, either on its own initiative or on the application of the employee.
- 16 The appellant argues that when exercising the power to suspend an employee, an employing authority must have regard to ss 8 and 9 of the PSM Act. Section 8 of the PSM Act provides at paragraph (c) that employees are to be treated fairly and consistently and are not to be subject to arbitrary or capricious administrative acts and s 9 of the PSM Act outlines the general principles of official conduct to be observed by all public sector bodies and employees. The appellant submits that whilst ss 8

and 9 of the PSM Act place certain broad obligations on the respondent in the exercise of its power to suspend an employee without pay, any decision taken in relation to such suspension must also be in accordance with the Disciplinary Procedures Guide issued by the Department of the Premier and Cabinet in November 2007 ("the Guide").

- 17 The appellant submits that the Guide makes it clear that suspension should not be used to penalise an employee, nor to make an example of them and suspension should be considered a "risk management strategy". The appellant also submits that the Guide sets out an objective approach to the consideration of the issue of suspension and ought to be highly persuasive to both the respondent and the Board.
- 18 The appellant has notified the respondent that he is suffering financial duress as a result of being suspended without pay and the appellant's solicitor has provided submissions as to the effect of suspension without pay on the appellant (see Agreed Documents Items Nos 5 and 6). As the investigation process will be lengthy given that the principles of natural justice require the respondent to suspend its investigation pending the outcome of the criminal proceedings, which is estimated to be around 18 months, this detriment to the appellant will be ongoing.
- 19 The appellant maintains that the Guide has not been fairly and appropriately applied to him. The appellant made submissions about the following factors which the respondent considered in its risk assessment and decision to suspend the appellant without pay:
- potential risk of compromising the reputation of the organisation with the public;
 - potential risk of adversely affecting the emotional well-being of any employee or client;
 - potential impact on the effective operation of Departmental policies and programs;
 - the possibility of suspending with pay;
 - the appropriateness of moving the appellant to another work location.

The appellant denies that by not suspending him without pay he poses a potential risk of compromising the reputation of the respondent's organisation with the public on the basis that the public is unaware of this matter as the allegations have not yet been substantiated. The appellant also rejects the respondent's claim that by not suspending him this has the potential risk of adversely affecting the emotional well being of its other employees and clients as no other employee or client of the respondent is involved in this matter and the person who made the allegations is neither an employee of the respondent nor a client. Furthermore, the respondent has provided no evidence that by not suspending the appellant without pay this will have any potential impact on the effective operation of Departmental policies and programs and unless and until such further evidence is provided by the respondent, the appellant denies that this is a relevant factor to be considered as part of its risk assessment of the appellant remaining at work. There was also no evidence of any potential negative impact on the respondent's employees particularly given that the allegations against the appellant are not work related. The appellant also claims that the monitoring device he is required to wear under his bail conditions is not visible to clients and other employees and there was no evidence that the appellant's prior or current conduct demonstrates a risk that he will prejudice the investigation or inquiry and none of the appellant's colleagues were witness to the alleged misconduct and no documentation or records held at the appellant's workplace are involved in the alleged misconduct.

- 20 The appellant argues that the failure to provide natural justice to an employee may result in the disciplinary process being found to be void (see Clause 2.6 of the Guide) and as natural justice is central to the disciplinary process, the respondent should be mindful that a criminal charge cannot lead to a presumption of guilt.
- 21 Section 81(2) of the PSM Act provides that an investigation into a suspected breach of discipline is to be carried out in accordance with prescribed procedures. Regulation 16 of the *Public Sector Management (General) Regulations 1994* prescribes the procedures as:

"For the purposes of section 81(2) of the Act, the prescribed procedures in accordance with which a suspected breach of discipline is to be investigated are that the respondent is notified in writing -

- (a) that an investigation of the suspected breach of discipline is being initiated and of the purpose of that investigation;
- (b) that the investigation referred to in paragraph (a) will lead to a finding being made in respect of, and may lead to action being taken against, the respondent under Division 3 of Part 5 of the Act and of the range of possible findings and possible action;
- (c) of the steps which may be taken in the conduct of that investigation prior to the making of a finding, and the taking of any action, against the respondent;
- (d) of any interviews or meetings which the respondent is required to attend; and
- (e) of his or her right to have present during any interviews or meetings attended by the respondent a representative capable of providing advice to the respondent."

The appellant argues that these procedures make it plain that the employee suspected of a breach of discipline is to be afforded procedural fairness and a fundamental tenet of the rules of procedural fairness is that a decision-maker is not to prejudge whether a person has committed a breach of discipline and the appellant argues that the respondent's decision to suspend the appellant without pay has involved the respondent prejudging the outcome of the disciplinary process and has taken into consideration irrelevant factors (see *Mr Gregory Robert Ireland -v- The Director-General, Department of Health* (2008) 88 WAIG 489 ["the Ireland decision"]). The appellant submits that when he was notified of the respondent's intention to initiate an investigation into the suspected breach of discipline pursuant to s 81(2) of the PSM Act he was not given any other further information about the investigation as outlined in the prescribed procedures (see letter dated 4 August 2009 Agreed Documents Item No 4).

- 22 The appellant wishes to return to work rather than be suspended with pay and he has indicated a willingness to work in an alternative location should the respondent maintain the view that it is not appropriate for him to work with children whilst the criminal proceedings and/or investigation is ongoing. As a last resort, should the respondent not be able to find an alternative work location for the appellant, he will accept suspension with pay and whilst this will not preclude the respondent's perceived pre-judgment of the outcome of the matter, suspending the appellant with pay will alleviate the severe financial hardship the appellant is currently facing and will allow him to maintain his house, car, assets and child support and maintenance payments. The appellant's conduct that he is alleged to have undertaken took place outside of the workplace and is therefore irrelevant to the work that he undertakes and the appellant submits that the detriment to him by not being reinstated to a position with the respondent is greater than the detriment suffered by the respondent's employees or clients if he was to remain suspended without pay.
- 23 The appellant argues that the Guide must be applied in determining any decision to suspend without pay and such a decision must be viewed only as a risk management strategy and the appellant argues that there are alternatives to suspending him without pay. The appellant submits that the respondent did not fully consider the option of relocating the appellant to another role or work location and maintains that the appellant does not pose a real risk to the respondent's operations and can be placed in activities outside of child involvement pending the outcome of the criminal proceedings if the respondent maintains this as the preferable option including an administrative support position. The respondent is also aware that the appellant has previously worked in other roles and the appellant argues that the respondent has the capacity to re-employ him and there is no need for a specific position to be available, only for work to be provided to him. As the respondent is one of the largest public service organisations in Western Australia and as the appellant is prepared to work anywhere throughout Western Australia this increases the pool of opportunities available to him. The appellant maintains that he has gained a range of skills whilst working with the respondent over five years as part of his current role involves undertaking administrative duties, he could undertake project work and deal with ministerial and phone enquiries. Furthermore, the respondent undertakes a range of activities where there is no interaction with clients.
- 24 The appellant argues that the prospect of him being able to undertake outside employment is unlikely given his bail conditions and the close monitoring that he would be subject to, including random visits and phone calls. In the circumstances it is unlikely that the appellant would be able to obtain alternative employment.
- 25 The appellant argues that an employee facing a criminal charge is entitled to request that the disciplinary process be put into abeyance and in this instance this request was rightly granted and this should not be held against the appellant in considering suspension without pay (see *Health Services Union of Western Australia (Union of Workers) v Director General of Health in right of the Minister for Health as the Metropolitan Health Service, the South West Health Board and the WA Country Health Service* (2008) 88 WAIG 543 ["the HSU decision"]).
- 26 The appellant claims that notwithstanding the respondent's concern about the appellant's bail conditions that he would be subject to, the respondent has an obligation to the appellant as an employee, which is greater than a potential employer would have with respect to the appellant. The appellant also argues that the respondent did not give sufficient weight to him having no prior convictions and five years of good service when deciding that he should be suspended without pay. The appellant therefore argues that the respondent's decision to suspend him without pay was harsh and unreasonable in the circumstances.

Respondent

- 27 The respondent argues that it was appropriate to suspend the appellant without pay until the outcome of the investigation into the appellant's alleged breach of discipline. The respondent is an employing authority charged with the protection of children throughout the state of Western Australia and works with children and families to establish and promote functional living environments for both children and the families with whom they have contact. The respondent works with the most vulnerable children and families who have often been traumatised through violence and abuse and it is the respondent's responsibility to promote and ensure the safety of children and families with which it has contact.
- 28 The appellant is employed as a Youth and Family Support Worker and in this position he is required to build and maintain relationships with young people and their families, in particular those reluctant to access services of the respondent and/or Police and one of the primary goals of the position is to engage with young people and/or family groups to develop a trusting and respectful relationship. The nature of the work is such that the appellant was required to work unsupervised at most times with children and families (see Job Description Form Attachment 1 to respondent's Outline of Submissions lodged on 28 October 2009).
- 29 The respondent maintains that the appellant is a public service officer employed pursuant to s 64(1)(a) of the PSM Act and in accordance with s 76 of the PSM Act the provisions of Part 5 - Substandard Performance and Disciplinary Matters of the PSM Act govern the method of the respondent conducting substandard performance and disciplinary actions. On 6 July 2009, in accordance with s 81(1) of the PSM Act, the appellant was advised that he was suspected of having committed a breach of discipline and he was provided with a reasonable opportunity to submit an explanation. On 4 August 2009, in accordance with s 81(2) of the PSM Act, the respondent advised the appellant that whilst acknowledging receipt of the appellant's letter to the respondent dated 17 July 2009 it continued to believe that the appellant may have committed a breach of discipline and he was advised that the respondent would be initiating an investigation into the suspected breach and the appellant was advised that Mr Roger Nickerson, Senior Investigator had been directed to conduct an investigation into the suspected breach of discipline. The respondent also advised the appellant that it was considering suspending him without pay pursuant to s 82(1) of the PSM Act and provided him a reasonable opportunity to make a submission as to why such a suspension should not be imposed.
- 30 On 30 September 2009 the respondent advised the appellant that it had decided to suspend the appellant without pay pursuant to s 82(1) of the PSM Act. Section 82(1) of the PSM Act provides that:

“If an investigation is initiated under section 81, the employing authority may at any time before proceedings against the respondent are terminated within the meaning of subsection (2) suspend the respondent, if still its employee, without pay.”

The respondent argues that s 82(1) of the PSM Act does not include specific factors to be considered when an employing authority is deciding whether suspension without pay is appropriate. In the absence of express factors to be considered when making such a determination the respondent must determine relevant factors to be taken into account on the basis that; “... they must be determined by implication from the subject-matter, scope and purpose of the Act” (see *Minister for Aboriginal Affairs v Peko-Wallsend Ltd* (1986) 162 CLR 24 at 39 per Mason J).

- 31 The respondent notes the contents of the Guide (see Attachment 2 to respondent’s Outline of Submissions lodged on 28 October 2009). The respondent submits that the Guide does not hold the force of law however provides what is considered best practice throughout the Western Australian public sector when employing authorities are utilising the disciplinary provisions contained in the PSM Act. The respondent relies on *the Ireland decision* at paragraph 73 where the Board stated that:

“The next question that follows is whether the respondent erred in failing to have regard to, or sufficient regard to, the matters set out in Clause 3.2 of the Disciplinary Procedures Guide. Employment policies which provide guidance on the exercise of a discretion are desirable to ensure employees are treated equally and consistently. This requirement is reflected in s 8(1)(c) of the PSM Act.”

Given this statement in *the Ireland decision* the respondent submits that taking into account the factors outlined in Clause 3.2 of the Guide has been approved by the Board. Clause 3.2 provides, in part, as follows:

“Suspension [without pay] in disciplinary matters should not be automatically applied, rather, it must be viewed as a risk management strategy. When determining if it is appropriate for a respondent to be suspended, the employing authority may wish to consider if not suspending the employee risks:

- compromising the reputation of the organisation with the public;
- the emotional or physical well being of any employee or client;
- the effective operation of any agency policies or programs; or
- prejudicing the disciplinary investigation inquiry i.e. if there is a risk the respondent could tamper with records required for the investigation.”

- 32 The respondent argues that it is under no legislative obligation to move an employee to another work location rather than suspend them without pay pursuant to s 82 of the PSM Act notwithstanding the Guide stating at Clause 3.2 that:

“... it may be deemed more appropriate to move the employee to another work location for the period of the disciplinary process.”

- 33 The respondent is aware that employers may suspend employees with pay pursuant to s 52 of the *Interpretation Act 1984* which states at s 52(1) that:

- “(1) Where a written law confers a power or imposes a duty upon a person to make an appointment to an office or position, including an acting appointment, the person having such power or duty shall also have the power —
- (a) to remove or suspend a person so appointed to an office or position, and to reappoint or reinstate, any person appointed in exercise of such power or duty;”

- 34 The appropriateness of suspending an employee with pay during a disciplinary investigation that has been stayed at the request of an employee was considered in *Health Services Union of Western Australia (Union of Workers) v Director General of Health in right of the Minister for Health as the Metropolitan Health Service, the South West Health Board and the WA Country Health Service* (2007) 87 WAIG 3120 where Scott C, as she was then, at paragraph 37 stated that:

“... given the lengthy period which was likely to pass before the criminal charges could be resolved, it would be unreasonable and contrary to the public interest for the respondent to be required to continue to pay Mr Moodie while he was providing no work. This period of delay was beyond the control of the respondent and the respondent was unable to conclude its investigation through no fault of its own. This is as a consequence of agreeing to Mr Moodie’s request. It is of no benefit to the respondent to have such a delay, although it is to Mr Moodie’s benefit”

- 35 The respondent submits that this consideration formed part of Scott C’s (as she was then) decision that the merits of the case favoured suspension without pay and the respondent argues that this process was approved by Beech CC on appeal in *the HSU decision* where he stated at 582:

“The duty on the Arbitrator to decide the matter according to equity, good conscience and the substantial merits of the case entitled her to consider all of the circumstances before her. The Arbitrator did go on to consider ... the lengthy delay before a trial, and that the deferral of the disciplinary proceedings was at Mr Moodie’s request, all merited suspension without pay. This led the Arbitrator to dismiss the matter.

... whilst the Arbitrator followed a correct process ...”

The respondent therefore submits that the appropriateness of continuing to pay an employee during an investigation which has been stayed at his or her request favours suspension without, as opposed to with, pay, especially if the period is likely to be lengthy.

- 36 The respondent submits that when deciding whether to suspend the appellant without pay it took the following relevant factors into consideration based on the Guide. The respondent considered the possible damage to its reputation should the public become aware that the respondent continued to provide the appellant with work following such serious disciplinary allegations being put to him. The respondent argues that the nature and severity of the disciplinary allegations put to the appellant namely undertaking non-consensual sexual acts in the presence of children and threatening to kill persons in the presence of children are extremely serious and should it become public knowledge that the respondent continued to provide him work during the period of investigation its credibility would suffer severe damage in both the short and long term and this would also impact on the ability of the respondent to fulfil its statutory obligations under the *Children and Community Service Act 2004*.
- 37 The respondent determined that the emotional well being of clients and/or staff may be impacted by the appellant remaining at work and the operation of the respondent's policies and programs may be compromised as the respondent has a duty of care to its clients to ensure that its employees behave appropriately to undertake the work for which they are employed. At the time the respondent decided to suspend the appellant without pay the respondent had put the current disciplinary allegations to the appellant and he had declined to provide any response to the allegations. On the information available to the respondent at the time the respondent therefore determined that the appellant provided both an emotional and physical risk to both the employees and clients of the respondent. The respondent is also aware that the appellant is required to wear a monitoring device to track his whereabouts when released on bail following him pleading not guilty to the criminal charges and the respondent took into account that should employees or clients become aware of the presence of such a device this would cause them distress. The respondent also maintains that its clients are quite often in a distressed, vulnerable or fragile emotional state and the presence and possible exposure of such a device would be likely to have a detrimental effect on their well being. The respondent claims that its clients may also suffer indirect emotional or physical harm due to adverse opinions being formed by the public about the conduct of the respondent's business, leading to an impaired ability to provide appropriate services to its clients through damage to the respondent's credibility.
- 38 The respondent also argues that if it was to reinstate the appellant, the appellant is subject to scrutiny given his bail conditions and he would be subject to random visits and phone calls and this could have a negative impact on employees and clients within the respondent's organisation.
- 39 Prior to suspending the appellant without pay the respondent reviewed the suitability and availability of alternative positions in which to temporarily place the appellant for the duration of the disciplinary process and the respondent determined that no suitable alternative positions were available within the respondent's operations. In reaching this decision the respondent took into account that in light of the current disciplinary allegations against the appellant he was not suitable to be placed into a role with child and client contact which was agreed to by the appellant (see Agreed Documents Item No 6). The respondent also considered the nature of the respondent's business whereby most positions within the Department undertake work involving child and client contact and the skill sets and experience which the appellant possessed as evidenced by the appellant's resume submitted to the respondent on 18 July 2008. After assessing alternative positions within the respondent's operations, which includes approximately 2,800 employees, roughly two thirds of whom work directly with clients, the respondent identified that there were no suitable alternative positions available with the respondent at the time the decision was made to suspend him without pay. The respondent disputes the appellant's claim that he has previously worked in varied roles with the respondent and claims that the appellant has only worked in one other role and as this role involved directly supervising and caring for children and having regard to the appellant's disciplinary charges this would be unsuitable and administrative skills are not an important part of the duties undertaken by the appellant and as a result there would be little meaningful work for him to undertake. The respondent also maintains that it would be difficult to provide alternative employment for the appellant given the current financial constraints facing the respondent. In the respondent's regional offices there are not many support services and limited non-frontline services and at the time of the hearing there were no positions available that the respondent has deemed suitable for the appellant within its State-wide operations. Research and project work generally is completed by employees at a higher level than the appellant and the appellant does not have the necessary skills to undertake these roles.
- 40 The respondent also considered the option of suspending the appellant with pay. The respondent decided that it was not appropriate to suspend the appellant with pay due to the lengthy time period which was likely to elapse prior to the disciplinary investigation concluding and the disciplinary investigation having been stayed at the request of the appellant and as such was not under the control of the respondent. Furthermore the respondent determined that to continue to pay the appellant during this period would damage the reputation of the respondent if the public became aware of the nature of the disciplinary proceedings and that the respondent had continued to pay the appellant during this period.
- 41 The respondent stated that sometimes employees who are subject to disciplinary proceedings are suspended with pay however this is usually in a situation where a matter is dealt with quickly. The respondent also maintained that it does not always suspend people without pay even if an allegation against an employee is serious and each matter is considered on its own merits.
- 42 The respondent dispute that its decision to suspend the appellant is harsh and unreasonable and the respondent denies that it has not fully considered alternatives to suspending the appellant without pay.
- 43 The respondent submits that it is not required to advise the appellant of the reasons for concluding that suspension without pay is the most appropriate course of action and submits that procedural fairness and natural justice only requires the appellant to be provided with the opportunity to be heard prior to the respondent taking any action which will be detrimental to the appellant and to take any submissions into account prior to making such a determination. The respondent submits that at all times it provided the appellant with a reasonable opportunity to make submissions about him being suspended without pay and it took his submissions into account when making its decision and the lengthy period of time between providing the appellant an opportunity to make a submission regarding the proposed decision to suspend him without pay and the time at which such a decision was made, approximately eight weeks, confirms that the respondent took the matter of suspending the appellant

without pay extremely seriously. Additionally, at the time the decision to suspend the appellant without pay was made the respondent was aware that such a decision was likely to cause financial hardship to the appellant. In recognition of the financial hardship to which the appellant referred the respondent indicated that if the appellant raised the possibility of undertaking work external to the respondent's operations the respondent would prioritise any request however, no request had been made by the appellant.

- 44 The respondent submits that the appellant has misconstrued s 82(3) of the PSM Act. Whilst s 82(3) provides for the reinstatement of pay to an employee who has been suspended without pay it provides no guidance on what factors should be taken into account. The respondent also submits that the appellant has misapplied the authority of *the Ireland decision* as the respondent at no time took into account irrelevant factors, such as those taken into account in that case, and has at no time made any determination that would prejudice the outcome of the disciplinary investigation.
- 45 In summary the respondent submits that it has a right to suspend the appellant without pay pursuant to s 82 of the PSM Act and argues this action should be viewed as a risk management strategy taking into account relevant factors. The respondent contends that it exercised its discretion to suspend the appellant fairly and reasonably taking into account these relevant factors as outlined in its submissions and the respondent's letter to the appellant dated 30 September 2009 (see Agreed Documents Item No 7). The respondent submits that the appellant was at all times afforded procedural fairness and natural justice and the respondent maintains its opinion that suspending the appellant without pay in this instance was, and continues to be, appropriate.
- 46 The respondent argues that the authority contained in *the HSU decision* can be relied upon by the respondent because this appeal was only upheld on a procedural matter and the original decision therefore remains on point.
- 47 The respondent maintains that it has a statutory duty of care towards children and families and the decision to suspend the appellant without pay was appropriate in all of the circumstances and in making this decision the appellant was afforded procedural fairness and natural justice. Furthermore the respondent did not take into account irrelevant factors and this decision was not made lightly.

Further documentation

- 48 At the end of the hearing the Board asked the parties for additional documentation and in accordance with this request on 2 December 2009 the appellant forwarded a copy of a document detailing the charges against him and the respondent forwarded a copy of the following documents:
- Best Practice Manual Discipline (2) – the respondent's policy on disciplinary processes;
 - An employee guide to the department's processes – as listed in the forms and appendices in the respondent's policy;
 - Guide for Managers – as listed in the forms and appendices in the respondent's policy;
 - Discipline flow chart – as listed in the forms and appendices in the respondent's policy; and
 - Sexual Assault Resource Centre ("SARC") referral form.

The respondent also confirmed that the above policy documents are those that were current at the time the SARC notification with respect to the incidents the appellant was alleged to have been involved in was received by the respondent and therefore formed the basis of the ongoing discipline investigation into the appellant.

Further submissions

- 49 After receiving additional documentation from the parties and after the Board had considered the parties' submissions, a letter was sent to the respondent asking it to provide further details about the review it conducted of its operations and the conclusion it reached that no suitable alternative employment was available for the appellant to undertake and the respondent did so by 21 January 2010.
- 50 The respondent maintained that prior to suspending the appellant without pay it reviewed the roles available that did not involve working with clients, namely children or families and the respondent determined that three broad categories of work fitted this criteria. These areas were administrative support, client support and management/project work. The respondent then stated that it was its view that in each of these areas it was inappropriate for the appellant to undertake any role given the appellant's skills and expertise and the nature of the duties in one instance.
- 51 The appellant responded to the information provided by the respondent about its consideration of alternative duties for him to undertake and contested the basis upon which the respondent reached the view that no positions and/or roles were suitable for him to undertake and sought the opportunity to request further information from the respondent in relation to this issue.
- 52 After considering the parties' submissions the Board asked the appellant to identify suitable positions it believed the appellant could undertake within the respondent's operations by 3 February 2010 and the Board indicated to the parties that it would reconvene on 5 February 2010 to hear further from the parties with respect to this issue and the disposition of this application.
- 53 In submissions filed by the appellant on 3 February 2010 at the request of the Board whereby the appellant was to identify suitable positions which he could undertake within the respondent's operations the appellant reiterated previous submission that as the respondent is a large employer it has a wide range of suitable positions or work available for the appellant to undertake on a State-wide basis given the appellant's skills and experience. The appellant also claimed that the respondent had failed to adequately review possible positions for the appellant which did not involve client contact.
- 54 After hearing further from the parties on 5 February 2010 the Board issued the following orders and advised the parties that the reasons for their issuance would follow:

- “1. THAT the respondent’s decision made on 30 September 2009 to stand down the appellant without pay be set aside.
2. THAT the respondent employ the appellant in a suitable alternative position commencing 8 February 2010 and pay him at his substantive Level 4 position from that date.
3. THAT the respondent pay the appellant an amount of money in respect of all of the remuneration lost by him by reason of his stand down as if he had worked continuously in the employment of the respondent between 30 September 2009 and 8 February 2010.
4. THAT the respondent re-instate the appellant’s accrued entitlements and that his service with the respondent be regarded as continuous for all purposes including long service leave.”

55 The Board’s reasons for issuing these orders now follow.

Findings and conclusions

56 Some of the relevant principles with respect to a decision to suspend an employee without pay pursuant to the PSM Act are contained in *the Ireland decision* at paragraphs 57 to 64 which read, in part:

“An administrative decision maker is bound to take into account relevant considerations. However, a failure to take into account a relevant consideration is only fatal to a decision if a decision maker takes into account a matter that he or she is bound to take into account (*Minister for Aboriginal Affairs v Peko-Wallsend Ltd* (1986) 162 CLR 24 at 39 per Mason J). Conversely the taking into account of an irrelevant consideration can also lead to error. In *Peko* Mason J said at pages 39-40:

- "(b) What factors a decision-maker is bound to consider in making the decision is determined by construction of the statute conferring the discretion. If the statute expressly states the considerations to be taken into account, it will often be necessary for the court to decide whether those enumerated factors are exhaustive or merely inclusive. If the relevant factors — and in this context I use this expression to refer to the factors which the decision-maker is bound to consider — are not expressly stated, they must be determined by implication from the subject-matter, scope and purpose of the Act. In the context of judicial review on the ground of taking into account irrelevant considerations, this Court has held that, where a statute confers a discretion which in its terms is unconfined, the factors that may be taken into account in the exercise of the discretion are similarly unconfined, except in so far as there may be found in the subject-matter, scope and purpose of the statute some implied limitation on the factors to which the decision-maker may legitimately have regard: see *Reg v Australian Broadcasting Tribunal; Ex parte 2HD Pty Ltd* ((1979) 144 CLR 45 at 49-50), adopting the earlier formulations of Dixon J in *Swan Hill Corporation v Bradbury* ((1937) 56 CLR 746 at 757-758), and *Water Conservation and Irrigation Commission (NSW) v Browning* ((1947) 74 CLR 492 at 505). By analogy, where the ground of review is that a relevant consideration has not been taken into account and the discretion is unconfined by the terms of the statute, the court will not find that the decision-maker is bound to take a particular matter into account unless an implication that he is bound to do so is to be found in the subject-matter, scope and purpose of the Act."

In *Project Blue Sky v Australian Broadcasting Authority* (1998) 194 CLR 355 McHugh, Gummow, Kirby and Hayne JJ stated:

"The primary object of statutory construction is to construe the relevant provision so that it is consistent with the language and purpose of all the provisions of the statute (See *Taylor v Public Service Board (NSW)* (1976) 137 CLR 208 at 213, per Barwick CJ). The meaning of the provision must be determined "by reference to the language of the instrument viewed as a whole" (*Cooper Brookes (Wollongong) Pty Ltd v Federal Commissioner of Taxation* (1981) 147 CLR 297 at 320, per Mason and Wilson JJ. See also *South West Water Authority v Rumble's* [1985] AC 609 at 617, per Lord Scarman, "in the context of the legislation read as a whole"). In *Commissioner for Railways (NSW) v Agalianos* ((1955) 92 CLR 390 at 397), Dixon CJ pointed out that "the context, the general purpose and policy of a provision and its consistency and fairness are surer guides to its meaning than the logic with which it is constructed". Thus, the process of construction must always begin by examining the context of the provision that is being construed (*Toronto Suburban Railway Co v Toronto Corporation* [1915] AC 590 at 597; *Minister for Lands (NSW) v Jeremias* (1917) 23 CLR 322 at 332; *K & S Lake City Freighters Pty Ltd v Gordon & Gotch Ltd* (1985) 157 CLR 309 at 312, per Gibbs CJ; at 315, per Mason J; at 321, per Deane J)."

The PSM Act is an Act of Parliament which comprehensively provides for the administration and management of the public sector and the public service. Among other matters the PSM Act deals with and regulates the selection, appointment, standards of conduct and termination of employment of employees. Part 5 of the PSM Act deals with substandard performance and disciplinary matters of public service officers.

Sections 80, 81 and 82 of the PSM Act provide:

"80. Breaches of discipline

An employee who —

- (a) disobeys or disregards a lawful order;
- (b) contravenes —
 - (i) any provision of this Act applicable to that employee; or
 - (ii) any public sector standard or code of ethics;

- (c) commits an act of misconduct;
- (d) is negligent or careless in the performance of his or her functions; or
- (e) commits an act of victimisation within the meaning of section 15 of the *Public Interest Disclosure Act 2003*,

commits a breach of discipline.

81. Procedure when breach of discipline suspected

- (1) An employing authority may, when it suspects that a person has committed a breach of discipline whilst serving as an employee in its public sector body and has given the person such notice in writing of the nature of the suspected breach of discipline as is prescribed, give the person a reasonable opportunity to submit an explanation to the employing authority.
- (2) After having given the respondent the reasonable opportunity referred to in subsection (1), the employing authority may —
 - (a) if it is not the Minister, investigate or direct another person to investigate; or
 - (b) if it is the Minister, direct another person to investigate,
 the suspected breach of discipline in accordance with prescribed procedures.
- (3) A person to whom a direction is given under subsection (2) shall comply with that direction.
- (4) A direction shall not be given under subsection (2) to the Commissioner.

82. Suspension without pay

- (1) If an investigation is initiated under section 81, the employing authority may at any time before proceedings against the respondent are terminated within the meaning of subsection (2) suspend the respondent, if still its employee, without pay.
- (2) When proceedings against a respondent for a suspected breach of discipline are terminated by —
 - (a) the taking of action under section 83 or 84 that is not cancelled under section 85, or the taking of action under section 86(3), 88(1) or 89; or
 - (b) a finding that no breach of discipline was committed by the respondent,
 the employing authority shall terminate any suspension of the respondent without pay under subsection (1) and, if no breach of discipline has been found to have been committed by the respondent, restore to the respondent the pay of which the respondent has been deprived during the period of that suspension.
- (3) An employing authority may, in relation to an employee who has been suspended without pay under subsection (1), on its own initiative or on the application of that employee restore pay to that employee for such period as the employing authority thinks fit.

...

Section 82 is contained in Part 5 of the PSM Act. Part 5 deals with inquiries, penalties and disciplinary action that can be taken by employing authorities against public service officers and other officers and employees defined in s 76(1) of the PSM Act. Section 82 is part of Division 3 which deals with breaches of discipline. Sections 80, 81, 83 and 86 determine the process of investigation of breaches of discipline under s 80 of the PSM Act. Section 81 provides for an employee suspected of a breach of discipline to be given a reasonable opportunity to submit an explanation to the employing authority prior to a decision being made whether to initiate an investigation into the suspected breach of discipline. After the employee is afforded a reasonable explanation and an investigation is initiated, the employing authority may suspend the employee without pay. Sections 81, 82, 83, 84 and 85 make it clear a decision to suspend without pay is to be made independently from any findings or decisions made following an investigation into a suspected breach of discipline.

Pursuant to s 81(2) an investigation into a suspected breach of discipline is to be carried out in accordance with prescribed procedures. Regulation 16 of the *Public Sector Management (General) Regulations 1994* prescribes the procedures as:

"For the purposes of section 81(2) of the Act, the prescribed procedures in accordance with which a suspected breach of discipline is to be investigated are that the respondent is notified in writing —

- (a) that an investigation of the suspected breach of discipline is being initiated and of the purpose of that investigation;
- (b) that the investigation referred to in paragraph (a) will lead to a finding being made in respect of, and may lead to action being taken against, the respondent under Division 3 of Part 5 of the Act and of the range of possible findings and possible action;
- (c) of the steps which may be taken in the conduct of that investigation prior to the making of a finding, and the taking of any action, against the respondent;
- (d) of any interviews or meetings which the respondent is required to attend; and

- (e) of his or her right to have present during any interviews or meetings attended by the respondent a representative capable of providing advice to the respondent."

These procedures make it plain that the employee suspected of a breach of discipline is to be afforded procedural fairness. A fundamental tenet of the rules of procedural fairness is that a decision-maker is not to prejudice whether a person has committed a breach of discipline.

Section 82(1) and (2) contemplates that a decision to suspend without pay is to be made when an investigation into a suspected breach of discipline is initiated and prior to the conclusion of the investigation. Section 82(2) makes it clear that suspension without pay is to be terminated by the employing authority if a finding is made that:

- (a) a minor breach of discipline is committed;
- (b) a serious breach of discipline has been committed and the employee is charged with a serious breach of discipline and the charge is admitted by the employee under s 86(3); or
- (c) no breach of discipline was committed."

- 57 The chronology of events with respect to the events leading up to the appellant's suspension without pay is not in dispute.
- 58 The appellant was advised on 6 July 2009 that the respondent suspected him of having committed acts which may constitute a breach of discipline pursuant to s 80 of the PSM Act and the appellant was given an opportunity to respond to allegations put to him. The allegations involve claims that the appellant had committed an act of aggravated sexual assault upon a person and on an unspecified date in June 2009 the appellant threatened to kill her or another person and these acts were alleged to have taken place in the presence of children.
- 59 On 10 July 2009 the respondent advised the appellant that it was standing him down on full pay until further notice based on the severity of the allegations against him, the likely review of the appellant's Working With Children card and the likely adverse impact on the respondent's reputation.
- 60 On 17 July 2009 the appellant wrote to the respondent requesting that it suspend its breach of discipline process until the criminal investigation into the allegations against him was concluded and subsequent to receiving this letter the respondent advised the appellant by letter dated 4 August 2009 that it intended to suspend him without pay (see Paragraph 7).
- 61 On or about 10 August 2009 the appellant's lawyer wrote to the respondent indicating that the appellant had pleaded not guilty to the criminal charges against him, and again requested that the disciplinary process against the appellant be stayed pending the conclusion of the criminal proceedings against the appellant. He also advised the respondent that suspending the appellant would lead to him experiencing difficulties meeting his day to day obligations and his ability to pay for legal representation.
- 62 On or about 14 August 2009 the appellant wrote to the respondent outlining reasons why he should not be suspended without pay and he highlighted the severe financial hardship he, his dependants and family would suffer as a result of being suspended without pay. In support of his claims he provided a breakdown of how his salary meets his financial obligations and he stated that any residual amount would contribute to his legal costs. The appellant also advised the respondent that criminal proceedings against him could take up to 18 months and he indicated that in the interim he would be willing to work with the respondent in a role with no child-based interaction.
- 63 After receiving the appellant's response the respondent wrote to the appellant on 30 September 2009 suspending the appellant without pay until disciplinary proceedings against the appellant were concluded (see Paragraph 4). On this date the respondent also wrote to the appellant's solicitor, Mr Lynch, agreeing to stay the disciplinary proceedings against the appellant pending finalisation of the criminal proceedings against the appellant. In this letter the respondent stated that due to the lengthy period for the criminal charges against the appellant to be resolved it would be unreasonable and contrary to the public interest for the respondent to be required to continue to pay the appellant whilst he was not providing work. This letter reads as follows (formal parts omitted):

"MR DANIEL PRESTAGE

Thank you for your letter dated 10 August 2009 advising that you act for Mr Daniel Prestage in relation to criminal allegations recently brought against him.

As you would understand, the Department for Child Protection is obliged to investigate allegations of misconduct in a timely manner whilst, at the same time, ensuring that the employee has a reasonable opportunity to respond to the allegations.

With reference to your request, the grant of such a stay is discretionary and in deciding how the discretion should be exercised, all the relevant factors must be balanced. In particular, the discretion involves consideration of the public interest in the investigation of a suspected breach of discipline balanced against your client's interest in maintaining his silence.

Having taken into account all relevant factors, I am willing to accede to your request on this occasion. However, the Department reserves the right to progress the matter of its own accord in the future, irrespective of any criminal charges Mr Prestage may be facing, should it be deemed necessary.

Your letter also seeks clarification as to what foundation the Department relies on to confirm suspicion that Mr Prestage has committed a breach of discipline. This advice has been clarified previously in the allegation put to Mr Prestage on 6 July 2009.

With respect to the Department's intention to suspend Mr Prestage without pay, I have decided that given the lengthy period which is likely to pass before the criminal charges could be resolved, it would be unreasonable and contrary to the public interest for the Department to be required to continue to pay Mr Prestage while he is providing no work.

If you have any queries in relation to this matter, please contact Ms Sandy Randall, A/Director, Integrity and Screening Unit on [telephone number].”

(Agreed Documents Item No 8)

64 The Statement of Agreed Facts confirms that the appellant has been employed by the respondent for over four years as a Youth and Family Support Worker and in this role he works with vulnerable children and their families. It is also the case that the disciplinary proceedings against the appellant relate to alleged incidents that are not work related and the parties involved, apart from the appellant, are not employees of the respondent.

65 It is desirable to apply policies which provide guidance when making a discretionary decision to ensure that employees are treated equally and consistently. This is consistent with s 8(1)(c) of the PSM Act which provides as follows:

“(1) The principles of human resource management that are to be observed in and in relation to the Public Sector are that —

...

(c) employees are to be treated fairly and consistently and are not to be subjected to arbitrary or capricious administrative acts;”

66 The respondent maintained that it applied the provisions of the Guide issued by the Department of Premier and Cabinet in November 2007 when deciding to suspend the appellant without pay. This document provides that an employee’s suspension should not be automatically applied. Clause 3.2 of the Guide states, in part, as follows:

“Suspension should **not** be used as a tool by management to make an example of the respondent. This amounts to pre-judging the matter and is not in line with the principles of natural justice, as outlined in subsection 2.6.

Suspension in disciplinary matters should not be automatically applied, rather, it must be viewed as a risk management strategy. When determining if it is appropriate for a respondent to be suspended, the employing authority may wish to consider if not suspending the employee risks:

- compromising the reputation of the organisation with the public;
- the emotional or physical well-being of any employee or client;
- the effective operation of any agency policies or programs; or
- prejudicing the disciplinary investigation or inquiry i.e. if there is a risk the respondent could tamper with records required in the investigation.

Even if the agency has answered yes to these questions, **suspension is not the only option**; it may be deemed more appropriate to move the employee to another work location for the period of the disciplinary process.”

(see Respondent’s Outline of Submissions lodged 28 October 2009 – Attachment 2)

67 The respondent’s policy ‘An Employee Guide to the Department’s Discipline Process’ dated June 2009, a copy of which was provided to the Board on 2 December 2009, also applies when an employee is suspected of committing a breach of discipline, including misconduct. Page 6 of this policy provides, in part, as follows:

“Will I be removed or suspended during the investigation process?”

In exceptional circumstances the decision-maker may consider suspending an employee without pay. Specific procedures will apply and employees will be given an opportunity to respond to the decision-maker’s proposal to suspend. If at the completion of the process it is found that no breach of discipline has been committed, the employee will be reimbursed any salary and commuted allowance for the period that it was terminated.

In some instances it will be preferable to negotiate a temporary transfer to an alternative workplace; in which case the employee will be paid for work done in fulfilling the duties of that position. Alternatively, the employee may be ordered to remain away from the workplace on full pay.”

It is clear that the above extract provides that it is only in exceptional circumstances that an employee is suspended without pay and this policy also contemplates that an employee may be temporarily transferred, by negotiation, to an alternative workplace or an employee may be required to remain away from the workplace on full pay. It is also the case that, as submitted at the hearing by the respondent, on occasions the respondent suspends employees with pay who are subject to disciplinary proceedings, usually when proceedings are expeditiously finalised, the respondent also submitted that it does not always suspend employees without pay when subjected to disciplinary proceedings when an allegation against an employee is serious and it maintained that each decision to suspend an employee is considered on its own merits.

68 After carefully considering the submissions of both parties and relevant documentation the Board finds that the respondent erred and exercised its discretion unreasonably and unfairly when it decided to suspend the appellant without pay.

69 There was no dispute and the Board finds that s 82 of the PSM Act allows the respondent to suspend the appellant without pay pending the finalisation of an investigation into an alleged breach of discipline.

70 The Boards makes the following findings with respect to the factors considered by the respondent when deciding whether to suspend the appellant without pay and the additional factor in the Guide not considered by the respondent. Whilst the respondent was not legally bound to follow the factors contained in the Guide, as it chose to apply all but one of these factors, correctly in the Board’s view, a review of their application to the appellant’s situation is necessary to determine whether or not, in all of the circumstances, the appellant should have been suspended without pay.

Potential risk of compromising the reputation of the organisation with the public

- 71 The Board agrees with the appellant's claim that the general public is unaware of the issues surrounding the charges against the appellant and in any event these allegations have not yet been tested nor substantiated. Furthermore, the Board accepts that there is a public interest in an employee being entitled to a just and fair process with respect to allegations against him or her prior to any judgement being made about his or her actions.

Potential risk of adversely affecting the emotional well being of any employee or client

- 72 The respondent provided no evidence that the emotional well being of its employees would be adversely affected if the appellant was not suspended without pay. Furthermore, the appellant has indicated that he is prepared to accept employment in a role which has no client contact so no clients could be adversely impacted by the appellant remaining as an employee and attending the work place. The Board also accepts and takes into account that the allegations against the appellant do not relate to any matter arising out of work related issues and no one employed at the appellant's workplace is involved in the subject matter of the criminal proceedings against the appellant. The Board rejects the respondent's claim that the requirement on the appellant to wear a monitoring device to track his whereabouts whilst on bail would cause distress to other employees as there was no evidence to support this claim and the respondent's reliance on this causing distress to clients is irrelevant on the basis that if the appellant was provided with alternative employment he would not be working with clients. The Board also rejects the respondent's claim that clients may suffer indirect emotional or physical harm due to adverse opinions being formed by the public with respect to the conduct of the respondent's business if the charges against the appellant became public for the reasons given in the previous paragraph.

Potential impact on the effective operation of Departmental policies and programs

- 73 The Board is unaware of any evidence confirming that by having the appellant remain at work this would have an adverse impact on the operation of the respondent's policies and programmes. The Board therefore does not consider this factor to be given any weight in support of the respondent's decision to suspend the appellant without pay.

The possibility of suspending with pay

- 74 The Board notes that the respondent has the option to suspend an employee with pay and it chose not to do so in this instance, based on the timeframe for disposing of the criminal charges against the appellant being lengthy (see Agreed Documents Item No 8). In any event the Board does not consider this to be a desirable option for the appellant when taking into account the lengthy period for the criminal charges against the appellant and the respondent's disciplinary process to be finalised.

The appropriateness of moving the appellant to another work location

- 75 The appellant is a Level 2/4 employee with over four years of unblemished service with the respondent. Given the appellant's experience with the respondent and the administrative and other duties he has undertaken during this period the Board finds that he is capable of undertaking duties relevant to a number of positions within the respondent's operations. In reaching this conclusion the Board takes into account that the respondent employs a number of employees in Level 2 to Level 5 positions undertaking administrative and related functions (see Respondent's Additional Submissions dated 21 January 2010). As the respondent is a large employer with offices throughout Western Australia and as the appellant is prepared to work in any of the respondent's locations throughout Western Australia the Board therefore finds that it is appropriate that the appellant be found suitable alternative employment pending the finalisation of the disciplinary process.
- 76 Another factor contained in the Guide issued by the Department of Premier and Cabinet which the respondent did not appear to consider is the following:

"Prejudicing the disciplinary investigation or inquiry i.e. if there is a risk the respondent could tamper with records required in the investigation."

The Board is of the view that there is no disadvantage to the respondent if the appellant remains at work as the allegations against the appellant relate to a matter which is not work related.

- 77 Issues with respect to pre-judging the outcome of a disciplinary investigation are not to be considered when deciding whether or not to suspend an employee pending the completion of the investigation into a suspected breach of discipline as any decision made under s 82(1) of the PSM Act must preserve the integrity of the investigation under s 81(2) of the PSM Act and any disciplinary inquiry which may follow under s 86(4) of the PSM Act (see *the Ireland decision*).
- 78 Even though the respondent maintained that it did not rely on the specifics of the allegations against the appellant when deciding to suspend the appellant without pay, the Board finds that the nature of the allegations against the appellant did influence the respondent's decision to suspend him without pay. The respondent's letter to the appellant dated 10 July 2009 when the appellant was initially suspended with pay refers to the severity of the allegations influencing its decision to suspend the appellant with pay (see Paragraph 6) and correspondence sent by the respondent to the appellant's lawyers dated 30 September 2009 states that as the criminal charges against the appellant would take some time to be resolved it would be unreasonable and contrary to the public interest to pay the appellant whilst he was "providing no work". This implies, in the Board's view, that following on from the respondent's decision to suspend the appellant with pay, due in part to the severity of the nature of the allegations against the appellant, it was now appropriate to suspend the appellant without pay due to the extensive time frame for dealing with the criminal charges against the appellant, based on public interest considerations.
- 79 The Board also finds that the respondent erred when it determined that it was not in the public interest to pay the appellant whilst the criminal proceedings against him were being finalised as stated in its letter to the appellant's lawyers on 30 September 2009. This letter confirms that it reached its decision to suspend the appellant without pay, as opposed to suspending him with pay, because of the length of time for the criminal proceedings to take their course. The finalisation of

criminal proceedings against the appellant is a matter over which the appellant has no control and there is authority for the proposition that delaying disciplinary proceedings pending the finalisation of criminal proceedings can be in the public interest. In *the HSU decision* his Honour the Acting President stated the following at paragraphs 210 to 218:

“(v) The Fairness of Suspension Without Pay and the Public Interest

The respondent submitted it was not in the public interest for Mr Moodie to be paid whilst suspended, whatever his personal circumstances. I do not accept this to be necessarily so.

In my opinion in considering this issue it needs to be borne in mind the reasons why it was appropriate for the disciplinary process against Mr Moodie not to continue pending the hearing and determination of the criminal charges. As stated in the letter from Tottle Partners dated 19 October 2006 to continue with the disciplinary process could cause unfairness to Mr Moodie in the criminal proceedings. His response to the report might have involved the surrender of his right to silence, a fundamental right of an accused in the criminal process. On the other hand to not comment on the report could lead to Mr Moodie’s dismissal. Also if the disciplinary proceedings were decided against him then this could prejudice his trial. It is these difficulties which made a decision to defer the disciplinary process fair and appropriate.

That this was a proper way to proceed has been acknowledged by courts which have recognised that an injunction might be granted to restrain disciplinary processes pending the finalisation of parallel criminal proceedings. (See for example *Bannister v Director General, Department of Corrective Services* [2005] 1 Qd R 117 and *Lee v Naismith* [1990] VR 235).

In *Re Martin; ex parte Dipane* (2005) 30WAR 164, Roberts-Smith JA, with whom Steytler P and Miller AJA agreed, said at [41] that interference with “*an accused’s right to silence ... is a relevant (and may be a decisive) factor in determining that disciplinary or other administrative proceedings ought not be concluded pending the outcome of relevant criminal proceedings*”.

The issue was also considered by the Full Court of the Supreme Court of Western Australia in *De Castro Martins and Others v Racing Penalties Appeal Tribunal of Western Australia and Another* (Unreported, Library No 970519C, 10 October 1997). Steytler J, with whom Kennedy J agreed, at page 10 quoted with approval the reasons of Hope JA in *Edelstein v Richmond* (1987) 11 NSWLR 51 at 59. Hope JA said that views, “*have been expressed and implemented that so long as related criminal proceedings may be instituted or are pending, it is generally undesirable that disciplinary proceedings should be dealt with ... A possibly stronger view was expressed by McHugh JA in Herron v McGregor* (1986) 6 NSWLR 246 at 266 that, while criminal proceedings are pending, it was only proper that disciplinary proceedings should not be brought on for hearing.” In *Martins* an application to the Racing Penalties Tribunal against a greyhound trainer alleged a breach of a racing rule. The actions involved in this alleged breach could also be the subject of criminal charges. The trainer requested the Tribunal to adjourn the hearing of the disciplinary charge pending a decision being made about whether criminal charges would also be laid. The adjournment was not granted. Steytler J decided the adjournment ought to have been granted in part because of the trainer’s “*right to silence*”.

In *Bannister*, corrective service officers were committed for trial for an alleged assault. They sought an order that the respondent be restrained from proceeding with disciplinary action about the same incident under the *Public Service Act 1996* (Qld) until the criminal proceedings had been concluded. The application was refused because the applicants had already surrendered their right to silence to the extent of providing responses to the disciplinary charges. However Holmes J endorsed what Hope JA said in *Edelstein*. His Honour said the possibility of the use, against the applicants in their criminal trial, of evidence derived from statements made in the disciplinary proceedings was a proper consideration in the exercise of the discretion to grant an injunction ([17]).

A similar issue was considered by Southwell J in *Lee v Naismith*. There was an inquiry by the Pharmacy Board against a pharmacist who asserted criminal proceedings might also be brought against him for the same incident. It was held in the circumstances that there was no more than a fanciful possibility of this and therefore an injunction would not be granted. His Honour referred with approval however to the reasons of McHugh JA in *Herron v McGregor* at 66 and quoted above, in the reasons of Hope JA in *Edelstein*.

As I have said, on the basis of these authorities and the fundamental principles of the rights to silence and a fair trial, the decision by the respondent not to proceed with the disciplinary proceedings against Mr Moodie was a fair and appropriate one. It was a decision taken by a public officer and it was in the public interest, as well as that of Mr Moodie, to try and ensure there was a fair trial. In these circumstances reliance upon the “*public interest*” argument of the respondent, accepted by the Arbitrator at [37] of her reasons, about “*expenditure of public funds*” can be over-emphasised.

In my opinion it was not inevitable that the respondent would have rejected a submission that, given the deferral of the disciplinary process was the fair thing to do, it was not inappropriate for the respondent to continue to pay the salary of Mr Moodie.”

80 The Board is also of the opinion that there are no exceptional circumstances, as provided for in the respondent’s policy document ‘An Employee Guide to the Department’s Discipline Process’, which would warrant the appellant’s suspension without pay.

81 Given the above findings and when taking into account all of the circumstances the Board concludes that the respondent erred and exercised its discretion unreasonably and unfairly when it decided to suspend the appellant without pay. In the circumstances a suitable alternative position should have been found for the appellant instead of him being suspended without pay. It follows that the respondent’s decision made on 30 September 2009 to stand down the appellant without pay should be set aside and the orders set out in Paragraph 54 which issued on 5 February 2010 confirm this decision and deal with consequential issues.

2010 WAIRC 00052

APPEAL AGAINST THE DECISION MADE ON 30 SEPTEMBER 2009 RELATING TO SUSPENSION OF UNION MEMBER WITHOUT PAY

PARTIES	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION DANIEL PRESTAGE	APPELLANT
	-v-	
	THE DIRECTOR-GENERAL, DEPARTMENT FOR CHILD PROTECTION	RESPONDENT
CORAM	PUBLIC SERVICE APPEAL BOARD COMMISSIONER J L HARRISON - CHAIRMAN MR G RICHARDS - BOARD MEMBER MR R BECKER - BOARD MEMBER	
DATE	FRIDAY, 5 FEBRUARY 2010	
FILE NO	PSAB 16 OF 2009	
CITATION NO.	2010 WAIRC 00052	

Result	Order issued
Representation	
Appellant	Ms S Bhar and Mr S Farrell
Respondent	Mr D Hughes

Order

HAVING HEARD Ms S Bhar and Mr S Farrell on behalf of the appellant and Mr D Hughes and later Mr E Rea on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act, 1979*, hereby orders:

1. THAT the respondent's decision made on 30 September 2009 to stand down the appellant without pay be set aside.
2. THAT the respondent employ the appellant in a suitable alternative position commencing 8 February 2010 and pay him at his substantive Level 4 position from that date.
3. THAT the respondent pay the appellant an amount of money in respect of all of the remuneration lost by him by reason of his stand down as if he had worked continuously in the employment of the respondent between 30 September 2009 and 8 February 2010.
4. THAT the respondent re-instate the appellant's accrued entitlements and that his service with the respondent be regarded as continuous for all purposes including long service leave.

(Sgd.) J L HARRISON,
Commissioner,

[L.S.]

On behalf of the Public Service Appeal Board.

2010 WAIRC 00138

APPEAL AGAINST DECISION MADE BY RESPONDENT RE STATUS OF EMPLOYMENT

PARTIES	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION FRANIA SHARP; SUSAN WARING; WENDY POWLES; JUDITH MARGARET WICKHAM; SHANE MELVILLE; JOHAN WILLERS	APPELLANTS
	-v-	
	WORKCOVER WA	RESPONDENT
CORAM	PUBLIC SERVICE APPEAL BOARD ACTING SENIOR COMMISSIONER P E SCOTT - CHAIRMAN MS B CONWAY - BOARD MEMBER MR A PITTOCK - BOARD MEMBER	
DATE	FRIDAY, 26 MARCH 2010	
FILE NO.	PSAB 30 OF 2009, PSAB 31 OF 2009, PSAB 32 OF 2009, PSAB 33 OF 2009, PSAB 34 OF 2009, PSAB 35 OF 2009	
CITATION NO.	2010 WAIRC 00138	

Result Direction issued

Direction

WHEREAS these are appeals to the Public Service Appeal Board (the Board) pursuant to Section 80I of the *Industrial Relations Act 1979*, and

WHEREAS these appeals were set down for a scheduling hearing on the 25th day of March 2010; and

WHEREAS the parties agreed to Directions issuing for the purpose of preparation for hearing of the appeals;

NOW THEREFORE, the Board, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby directs:

1. THAT the respondent within fourteen (14) days file and serve full and complete particulars of its defence to these appeals.
2. THAT the parties within fourteen (14) days after point 1, exchange copies of those documents upon which they intend to rely in prosecuting/defending their respective claims.
3. THAT the parties no later than fourteen (14) days prior to the date of the hearing file a joint signed Statement of Agreed Facts. The appellants do draw and serve on the respondent the first draft of this joint Statement and the parties do settle and sign this joint Statement without undue delay and so as to comply with this Direction.
4. THAT these appeals be listed for simultaneous hearing at a time to be fixed.
5. THAT there shall be liberty to apply.

(Sgd.) J L HARRISON,
Commissioner,

On behalf of the Public Service Appeal Board.

[L.S.]

EMPLOYMENT DISPUTE RESOLUTION MATTERS—Notation of—

The following were matters before the Commission under the Employment Dispute Resolution Act 2008 that concluded without an order issuing.

Application Number	Matter	Commissioner	Dates	Result
APPL 27/2009	Request for mediation	Beech CC	26/03/2009 09/04/2009	Concluded
APPL 1/2010	Request for mediation re terms of resignation	Kenner C	01/02/2010	Concluded

RECLASSIFICATION APPEALS—

2010 WAIRC 00167

PARTIES WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
KERRY PHILLIP BRENNAN

APPELLANT

-v-

DEPARTMENT OF COMMERCE

RESPONDENT

CORAM PUBLIC SERVICE ARBITRATOR
ACTING SENIOR COMMISSIONER P E SCOTT

DATE WEDNESDAY, 31 MARCH 2010

FILE NO PSA 30 OF 2009

CITATION NO. 2010 WAIRC 00167

Result Appeal dismissed

Order

WHEREAS this is a reclassification appeal made pursuant to the *Industrial Relations Act 1979*; and

WHEREAS on Monday, the 15th day of March 2010, the appellant filed a Notice of Discontinuance in respect of the appeal;
NOW THEREFORE, the Public Service Arbitrator, pursuant to the powers conferred under the *Industrial Relations Act 1979*, hereby orders:

THAT this appeal be, and is hereby dismissed.

[L.S.]

(Sgd.) P E SCOTT,
Acting Senior Commissioner,
Public Service Arbitrator.

2010 WAIRC 00183

	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION	
PARTIES	JOHAN MARITZ WILLERS & OTHERS	APPLICANTS
	-v-	
	WORKCOVER, WESTERN AUSTRALIAN AUTHORITY	RESPONDENT
CORAM	PUBLIC SERVICE ARBITRATOR ACTING SENIOR COMMISSIONER P E SCOTT	
HEARD	WEDNESDAY, 26 MARCH 2008, FRIDAY, 18 SEPTEMBER 2009, THURSDAY, 5 MARCH 2009, MONDAY, 21 SEPTEMBER 2009, MONDAY, 8 FEBRUARY 2010, TUESDAY, 9 FEBRUARY 2010, WEDNESDAY, 10 FEBRUARY 2010	
DELIVERED	FRIDAY, 9 APRIL 2010	
FILE NO.	PSA 24 - 34 & 43 OF 2007	
CITATION NO.	2010 WAIRC 00183	

CatchWords	Public Service Arbitrator – Industrial Law (WA) – Classification level of WorkCover Arbitrator – History of workers’ compensation regimes – Work value assessment – Classification determination in public sector – Broad-banded classification structure – Comparisons with other positions and offices – BIPERS assessments – Mercer CED assessment – Whether Public Service Arbitrator required to find manifest error – Requirements of Industrial Relations Act 1979 – Public Service Arbitrator’s jurisdictions and powers – Fixing Remuneration – Role and functions of Arbitrator – Requirement to “act judicially” – Salaries and Allowances Tribunal’s jurisdiction – <i>Industrial Relations Act 1979</i> (WA) s 80E(1) and (5) – <i>Workers’ Compensation and Injury Management Act 1981</i> (WA) Parts XI, XII and XVII, Division 3, s 176, 179, 187, 286, 287(1), (2), 293 – <i>Public Sector Management Act 1994</i> (WA) s 3(2) – <i>Approved Procedures 1 and 2</i> – <i>State Administrative Tribunal Act 2004</i> (WA) – <i>Criminal Injuries Compensation Act 2003</i> (WA) Schedule 1 – <i>Public Service Award 1992 – Government Officers Salaries, Allowances and Conditions Award 1989</i> .
Result	Applications Dismissed
Representation	
Applicant	Mr P Fraser of counsel
Respondent	Mr R Hooker of counsel

Reasons for Decision

- 1 The applicants occupy the positions of Arbitrators within the Dispute Resolution Directorate (DRD) of WorkCover WA.
- 2 The applicants say that the position of Arbitrator, when originally created in 2005, was incorrectly assessed and classified within the General Division of the Public Service Award 1992 at Level 9. They seek a reclassification of the position and although the Public Service Arbitrator does not have the power to order that the positions be within the jurisdiction of the Salaries and Allowances Tribunal, that such a recommendation issue.
- 3 At the commencement of proceedings the parties submitted a statement of agreed facts in following terms:

“STATEMENT OF AGREED FACTS

Historical background

1. Prior to November 2005 the Workers Compensation jurisdiction in Western Australia was conducted by a Conciliation and Review Directorate. It comprised a Workers’ Compensation Magistrate, Conciliation Officers and Review Officers, and other officers.
2. The Conciliation Officers were classified Level 7, and Review Officers were classified Level 9, according to the classification provisions of the Public Service Award 1992.

3. On 8 July 1997, Commissioner Gregor in the Western Australian Industrial Relations Commission (**WAIRC**) gave his decision on an application by four Review Officers for reclassification of their positions. Upon hearing the evidence the application was dismissed.
4. In October 2004 the then Review Officers, (*sic*) lodged an application with the WAIRC for reclassification of their positions. Those applications were, however, withdrawn on 4 February 2005 as the then newly appointed Chief Executive Officer (**CEO**) of the Respondent undertook to arrange a comprehensive review of their positions.
5. On 14 November 2005, amendments to the *Workers (sic) Compensation and Injury Management Act 1981 (WCIMA)* were proclaimed. The WCIMA as amended abolished the Conciliation and Review Directorate and created in its place a new Dispute Resolution Directorate (**DRD**) comprising a Commissioner (a District Court judge), a Director, arbitrators and other officers of the DRD.
6. On 11 March 2005, Ms Maureen Giorgio (*sic*) of Price Advertising and Consulting assessed the position of arbitrator (**Arbitrator**) as Level 9 based on the BIPERS classification system. Ms Giorgio (*sic*) was critical of the BIPERS system noting that because of the hierarchical nature of the evaluation, and the emphasis on scoring managerial roles higher in some areas compared to individual specialist positions, the system does not cater adequately for positions such as the arbitrator position. She recommended that an alternative job evaluation system be applied but concluded that the BIPERS assessment appeared to support a Level 9 classification.
7. The Department of the Premier and Cabinet classified the position of Arbitrator at Level 9 within the Public Service Award Framework on 6 May 2005.
8. The Director's position was classified Class 1.
9. On 2 November 2005, 9 Arbitrators were employed pursuant to a contract which contained a fixed term period of up to 5 years.
10. By operation of transitional provisions to the amending legislation all former Review Officers were eligible for appointment to the position of Arbitrator. Four of the five active former Review Officers applied, despite not being legally qualified, and all four were successful in being selected for the position of Arbitrator. These Review Officers were appointed using the same merit selection process as the other candidates into the Position on 2 November 2005. These additional Arbitrators are permanent public servants.
11. In September 2007 the Applicants commenced proceedings in the WAIRC to have the position of Arbitrator reclassified.
12. The Respondent commissioned an independent classification review of the position from CXC Consultants Exchange.
13. The resulting report (**the CXC Report**) submitted on 3 December 2007 concluded that the position of Arbitrator was correctly classified.
14. The Respondent accepted the CXC Report and declined to reclassify the position of Arbitrator. The Applicants were informed of this decision on 6 December 2007.
15. The Specified Callings salary scales in the Public Service Award General Agreement (*sic*) were reviewed by State Government and the Civil Service Association of WA Inc, and on 13 March 2008 the WAIRC issued an order whereby a new pay scale would apply to specified callings, including relevantly, Arbitrators.
16. As a consequence of the Agreement, legally qualified Arbitrators received a pay increase, retrospective to 1 July 2007, of at least 8%.
17. Five of the legally qualified Arbitrators are currently paid at the Specified Calling Level 6.3, being \$134,656. Three of the legally qualified Arbitrators are paid an additional \$3,648 per annum in accordance with clause 12 (5) (c) of the Public Service Award 1992. The non legally qualified Arbitrators are currently paid \$126,873 per annum. The Director is currently paid at Specified Callings Level 7, being \$142,244.
18. All rates of pay shown were accurate as of 1 March 2009.
19. The Applicants requested that the Respondent commission an alternative classification assessment from Mercer Consultants.
20. The Public Service Arbitrator issued a recommendation, in the course of the proceedings described at paragraph 15 above, that the Respondent commission an alternative classification assessment from Mercer Consultants, as requested by the Applicants.
21. The Respondent sought and obtained approval from the Department of Premier and Cabinet to seek such an assessment outside the public sector guidelines for classification of senior positions, and commissioned an assessment from Mercer Consultants, in compliance with the Public Service Arbitrator's recommendation.
22. Mercer Consultants delivered a report, as commissioned, on 4 November 2008, sent under cover of a letter to the Respondent dated 10 November 2008.
23. Mercer Consultants concluded that the position of Arbitrator fell below the minimum threshold for a Class 1 position, thereby confirming the Level 9 classification.
24. In the present proceedings the Applicants seek to challenge the finding that the position of Arbitrator should be classified at Level 9."

THE EVIDENCE

Applicants' Evidence

- 4 The applicants called evidence from Professor Robert Guthrie of Curtin University, Professor in Workers Compensation and Workplace Law. Professor Guthrie gave an outline of the history of the development of workers compensation bodies in Western Australia since the Workers Compensation Board (the Board) was created in 1948. He gave evidence as to the structure of that Board, headed by a person with the status of a District Court Judge. He described changes in constitution of the Board in the 1980's and difficulties in efficiency and workflow at that time. He also noted that there were two lay Board members, not legally qualified, but who were experienced in industrial relations and workers compensation matters. He described changes in the chairmanship of the Board over time and the manner in which the Board operated in respect of the application of the rules of evidence and the formal processes involved in hearings before the Board.
- 5 He stated that in 1993 the Workers Compensation Board was abolished and a system intended to be less legalistic was established involving the appointment of Conciliation Officers and Review Officers where there was a two stage process: conciliation by Conciliation Officers, and if that did not resolve the matter, then determination by a Review Officer. He outlined a number of the difficulties arising with that system and in particular the complexity of some of the matters which came before the Conciliation Officers and Review Officers at the time, including stress claims. He also dealt with changes occurring on the basis of medical panels which provided expert medical assessments to assist in the determination of claims. Although those medical panels' decisions were not subject to appeal, in the late 1980's they were subject to prerogative writs.
- 6 Professor Guthrie described the difficulties of a system where parties were not able to be legally represented however they could have their cases prepared by legal practitioners or could be represented by a number of other persons.
- 7 Professor Guthrie also described the circumstances in the early 1990's when consideration was given in Western Australia to a revised system, as a consequence of which, a new body was established by statute which abolished the conciliation and review process and set up an arbitration system. This was headed by a Commissioner, who was a District Court Judge, and Arbitrators with a dual function of conciliation and, if that did not resolve the matter, arbitration.
- 8 He described the "front loading" system which was established as part of those changes, which required that the all materials associated with a claim be submitted with the application. He also described the different manner in which a Review Officer's and Conciliation Officer's work is now undertaken by the Arbitrator, who is a legal practitioner with a number of years' experience, with parties being represented by legal practitioners.
- 9 Professor Guthrie was involved in the selection process for the appointment of Arbitrators and he described the criteria that were applied by the selection panel including:
 1. Legal qualification;
 2. Knowledge and background in workers' compensation or in industrial relations;
 3. An ability to "collate, integrate and assess evidence";
 4. The ability to write decisions in a prompt and coherent manner. (T62)
- 10 Professor Guthrie also noted the requirement to be able to understand the weight that should be attached to medical reports and "understand something about the aetiology of conditions and diseases". He also set out other issues which an Arbitrator would be required consider such as the definition of "worker" and the breadth of that definition, and the complexity arising from the requirement to understand the industrial relationship.
- 11 Professor Guthrie described the advantages of having lawyers involved in the process as compared with the previous system of conciliation and review which excluded legally qualified persons and pursued a more informal and less legalistic approach.
- 12 He noted that the importance of alternative dispute resolution within the workers' compensation process had generally been accepted within the legal community over the last two decades.
- 13 Professor Guthrie noted that the role of the Arbitrator in the current system of referrals to the medical panel requires a level of understanding in reading medical reports, particularly where there may be conflicting reports and that this adds complexity to the role of the Arbitrator. Whilst the Arbitrator may refer matters to the medical panel this is not necessarily required and experienced Arbitrators may undertake an assessment from within their own experience and competence.
- 14 Professor Guthrie said that the front loading system provided an opportunity for all the information to be before the Arbitrator undertaking conciliation. He said that, in theory, this provided for the prospect of an Arbitrator being fully armed with all of the information, being more effective in conciliation, and that if conciliation did not resolve the matter, move immediately to arbitration.
- 15 Professor Guthrie dealt also with issues of an Arbitrator conducting conciliation and arbitration of the same matter, involving a risk of actual or apprehended bias, and how this could be remedied by a competent Arbitrator being able to recognise the potential for such a situation and disqualify themselves.
- 16 Peter Morris Nisbet, the inaugural Commissioner of the Dispute Resolution Directorate of the respondent from October 2005 to November 2007, gave evidence of his role in that Directorate. He described it as directional; to set up the rules and framework within which matters were to proceed; to issue practice directions as points of clarification in the operation of the rules; to sit on appeals from Arbitrators' decisions which included deciding whether an appeal should lie on a question of law; and to determine matters referred by the Arbitrators on contentious and difficult questions. He said his main role was sitting as an appeal judge in those circumstances.

- 17 Mr Nisbet described the Arbitrators' roles as being to facilitate conciliation of disputes between various parties, including insurers or self insured and injured workers, and where that conciliation was unavailing, to arbitrate. Those determinations included issues of fact and law requiring statutory interpretation. Appeals do not lie from decisions of the Arbitrator on questions of fact, but with leave, on a question of law.
- 18 Mr Nisbet noted that Arbitrators require a good knowledge of the Workers' Compensation legislation, including previous interpretations of the current legislation and making comparisons with former legislation; the skills for statutory interpretation; knowledge of other areas of law, including employment law; contract law (including illegality of contract); a knowledge of the rules of evidence (even though they were not bound by those rules); issues such as abuse of process; principles of equity including issue estoppel and res judicata; and the tort of wrongful imprisonment. He noted they were required to undertake a process of reasoning in acceptance or rejection of evidence like any "other determinative fact... Magistrate, Judge, you know, or Commissioner" dealing with matters such as those. (T95)
- 19 Mr Nisbet also gave evidence about the role of Arbitrators in dealing with interlocutory matters such as further discovery, particulars and applications for extensions of time in which to file documents. He compared this with the Conciliation and Review Directorate where "there were no rules at all, a worker or an insurer just filed an application and then it meandered through the Conciliation (and) Review Directorate and it was formless andwith respect, everybody.....a bit of a gormless sort of procedure as well. Had no structure. And it was meant...and lawyers were excluded, which in my opinion caused more problems than it cured." (T96) He noted there are now rules which provide for a quick turnaround. This was necessary because it is well known that the longer an injured worker remains in the workers' compensation system, the lower the prospects for rehabilitation.
- 20 Mr Nisbet gave evidence about the role performed by District Court Registrars in dealing with interlocutory applications, discovery of documents, the taxing of accounts and the like. He said that the Deputy Registrar's decision-making power involves the whole gamut of the District Court's civil jurisdiction. (T101) He compared and contrasted the roles of Registrar of the District Court and the Arbitrators, noting that the decision of the Arbitrator was final whereas no decision of the Registrar is final and can always be reviewed by a judge of the District Court.
- 21 Mr Nisbet expressed the view that if it were implemented effectively and understood by the litigants, front loading would have an important benefit of enabling conciliation, undertaken by an Arbitrator, to occur more effectively and to achieve the desired end of less matters being arbitrated. Where conciliation was unsuccessful there was a flurry of interlocutory activity involving the Arbitrator dealing with applications such as those for extensions of time, particulars, further discovery and to adduce additional medical evidence.
- 22 He compared this with the old system of Conciliation and Review where there was a series of rolling applications but the Officers had no real power to stop the parties from filing documents and were not supported by any Rules. Mr Nisbet agreed that the Review Officers had the power to control all of the matters that were necessary to get a matter ready for hearing and determination on review, and that the only appeal from a Review Officer was to a Compensation Magistrate on a matter of law. In those circumstances there was a significant degree of finality to a Review Officer's determination on the facts.
- 23 Mr Nisbet noted that the Arbitrators are appointed under the *Public Service Management Act 1994 (PSM Act)*, and in the performance of their duties, they are required act judicially rather than being judicial officers.
- 24 The applicants called evidence from Shane Melville, one of the applicants in this matter. Currently, Mr Melville is Acting Director of the Dispute Resolution Directorate however his substantive position is that of Arbitrator. Mr Melville is a legal practitioner and gave evidence as to his experience and areas of practice since he commenced articles in 1983.
- 25 Mr Melville gave evidence of how he deals with disputes which come before him, of the difference between dealing with matters under Parts XI and XII of the *WCIM Act* and the operation of the system of front loading. Mr Melville also gave evidence of the requirements of the Rules and how matters proceed through the system. Mr Melville's evidence dealt with the requirement for Arbitrators to have some level of understanding of medical reports for the purposes of reaching conclusions about injuries. He described the levels of authority of Arbitrators in awarding weekly payments, the payment of medical expenses and other matters, including the interim processes provided under Part XII of the *WCMI Act* and for final determinations under Part XI.
- 26 He noted the requirements to consider jurisdiction issues, including whether the person falls within the definition of "worker". He described this in the following way:
- "So you satisfy yourself that you've got jurisdiction to deal with the dispute; you satisfy yourself that the evidence meets the statutory criteria; and then you exercise your discretion having regard to all the evidence that's been filed, including that from, for example, the employer or the respondent, whether you should make the order. Sometimes matters are so complex you can order that the matter be dealt with instead pursuant to part 11 because it's simply the detail and the complexity of the evidence, and the depth of the evidence is too much, really, to justify a summary disposition of the matter. You can hold a hearing, but the act says we don't hold a formal hearing, but I do on occasions get the parties together on the phone, particularly if it looks like one party or the other has a good case, but there's a sort of technical deficiency in the evidence, I might give them an opportunity to remedy that." (T113)
- 27 Mr Melville said that these applications are rarely consented to and therefore there is a need for a determination.
- 28 Mr Melville explained his approach in dealing with conciliation conferences and arbitration. He noted that there is a need to read all of the documents that have been filed and identify the issues between the parties, both legal and factual, to read the evidence that has been filed in preparation for conciliation and for the purpose of the matter proceeding to arbitration.
- 29 Mr Melville described the challenges of conciliating between parties, as to whether they are represented by a lawyer or a lay person, or being unrepresented, and where there are two unrepresented parties. He noted that there may be a difference

- between the level and competency of that representation. Those representatives may take different approaches depending upon whether they are more senior lawyers or relatively junior, as compared with representatives of insurance companies who may be very experienced in dealing with workers' compensation law. Mr Melville is of the view that overall, although not exclusively, it is better to have lawyers in the system, the exception being where there is an unrepresented litigant against an inexperienced or less than objective lawyer who may exploit the disparity between the relative experiences and knowledge.
- 30 Mr Melville described the complexities arising from stress claims, and dealing with parties with unrealistic expectations.
- 31 In respect of medical assessment panels, to which Arbitrators may refer questions for assessment, Mr Melville says that this requires the preparation of appropriate questions and identification of relevant documents to be forwarded to the panel. He noted that the panel's decision is binding on everyone, including the Arbitrator. Mr Melville did not recall personally having referred a question to a medical assessment panel, although he has inherited some files and seen other files where questions have been sent to the medical assessment panel.
- 32 Mr Melville gave evidence of the circumstances of referring a question of law to the Commissioner and how that practice operates.
- 33 In respect of the areas of law an Arbitrator needs to be familiar with in order to perform the role, Mr Melville described it as including the *WCIM Act*; contract law; statutory interpretation; the *Trade Practices Act 1974*; remedies; the law of negligence as it relates to the tortious concept of causation in apportioning liability between joint tortfeasors; being familiar with the circumstances under which a matter can proceed against a company in liquidation as opposed to a voluntary winding up or a creditor's involuntary winding up; aspects of insurance law to enable dispute resolution between insurers; industrial/employment relations law including familiarity with awards and certain provisions relating to the *Industrial Relations Act 1979 (IR Act)*.
- 34 Mr Melville gave evidence of the system of delegations operating within the Directorate and that he had undertaken certain duties under delegations from the Director.
- 35 Mr Melville gave evidence of the involvement of a Legal Officer within the Directorate and its impact upon Arbitrators being asked to do work under delegation. He noted that the creation of the Legal Officer position had taken away some work from Arbitrators.
- 36 Mr Melville said that he had given evidence as to his personal experience but that he had some understanding of trends in respect of all of the Arbitrators and that his role as Acting Director had given him a lot more information and insight into the way the Arbitrators operate.
- 37 Mr Melville gave evidence about situations of apprehension of bias and how that would affect the allocation and performance of work by Arbitrators undertaking conciliation and arbitration of the same dispute.
- 38 Mr Melville noted that under the previous Conciliation and Review system, Review Officers dealt with applications of an interlocutory character, however, he noted that the more detailed processes and rules, with specified timeframes for filing various documents of the current system did not apply. This meant that Review Officers did not have to deal with the question of filing documents late, except where the Review Officer had issued an order that documents be filed within certain times. Under the Review system, the document was simply filed or, if not filed, then produced on the day of hearing.
- 39 Mr Melville estimated that the time recorded on the audio recording equipment for times when Arbitrators sit in hearing would be between fifteen and twenty hours per month, including in interlocutory hearings and some forms of conciliation. He said:
- "If what you're referring to as arbitration is simply the hearing such as we're having now, then I would accept happily...I'd accept 10 to 15 hours a month on average. If you, in referring to arbitration...you're including all of the...what I would describe as hearings that form part and parcel of it; more particularly the directions hearings and the interlocutory applications then I would say considerably more." (T132)
- 40 Mr Melville gave an assessment of the number of contested arbitrations involving significant complexity. He agreed that "decision makers in workers compensation in this state have had to deal with (issues of relative complexity including) credibility contests" and disputes as to law and fact, for many decades. (T133)
- 41 Mr Melville was asked about part of Mr Orrell's report of December 2007 where Mr Orrell had said that in respect of delegation of Part IV matters by the Director to an Arbitrator that the Arbitrators had individually and collectively refused to accept any such delegated functions from the Director. Mr Melville said that he thought there was a refusal to do certain tasks but the reality was quite different because he had accepted delegated functions from the Director and as Acting Director he had delegated functions to other Arbitrators who had never raised an issue in respect of it.
- 42 Helen Louisa Porter, the Chief Assessor of Criminal Injuries Compensation gave evidence. This included that the position is a statutory office, rather than a public service office. The salary for the position is fixed by the Governor on recommendation from the Public Sector Commissioner. It is in some way fixed to the salary of a magistrate.
- 43 Ms Porter gave evidence of her background and experience including as a legal practitioner and in particular, in the area of criminal court work.
- 44 According to Ms Porter, the work of an Assessor under the *Criminal Injuries Compensation Act 2003 (WA)* involves the hearing and determination of claims for compensation and applications by the Department of the Attorney General to attempt to recover the funds paid in cases where there is a convicted offender. The great bulk of claims are dealt with on the papers with there being only sixteen hearings out of some 1100 awards granted in the previous year. The process requires information-gathering and the Assessor examines the material provided and considers whether additional information is necessary from, for example, the police, hospitals, medical practitioners, local government authorities, insurers and others.

- 45 The powers of the Assessor include investigative powers to seek information on any matter which is relevant. This work is often undertaken with the support of clerical officers acting under direction. The Assessors may request further information from applicants. Consideration is given to whether the offender ought to be notified and particular issues of sensitivity are taken into account in that decision.
- 46 Ms Porter gave evidence that a formal hearing may be undertaken where there are areas of contention and one or the other party indicates that there is information best put orally. There may be a need to deal with medical evidence which is contested or contradictory. There are issues of whether the applicant's conduct was reasonable and this can involve consideration on what Ms Porter described as a very personal view of the circumstances. (T139) There are cases where the injuries may have been caused by the commission of an offence but there may also be contributing factors in the background of the injured person.
- 47 The hearing is undertaken in an inquisitorial manner, her role being what Ms Porter described as "a kind of a blend of counsel and judicial officer in a sense that I know what I want to know; I know what information that I'm looking for...the nature of it...and I tend to ask more questions in that process than a normal judicial officer would..." (T140) More than half of the applicants are unrepresented in hearings so the Assessor takes a very directive approach to the hearing, having issued subpoenas and notices to gather information.
- 48 The complexities which arise in the matter include whether there has been an offence; if there has been a conviction, what was the conviction was for; whether the offence had anything to do with the injury; and whether other conduct which might have caused the injury but for which no person was charged. Ms Porter noted that the outcome of the prosecution can be remarkably complex in relation to questions of causation and contribution by the applicant.
- 49 The determination of compensation amounts may require an analysis of financial documents to establish the pre-incident earning capacity of the person. There is a need to determine real losses, of claimed future loss of earnings and to consider the statutory maxima.
- 50 In a separate process, the Assessor undertakes a role in recovering sums of money from the offenders for the award made in favour of an applicant for compensation. The application is brought by representatives of the Department of the Attorney General for the debt to be created and pursued. The recoverable amount may or may not be the full amount of the award and this might arise in circumstances where the extent of the injury exceeded the criminality of the conduct.
- 51 There are issues of public interest, including whether it is appropriate for the State to pursue the recovery in circumstances where the level of injury was significant and the level of criminality of conduct was less so. There are various issues of judgment to be applied in those cases.
- 52 Evidence was given by Michael John Harding by way of a statement which became exhibit A7. The respondent did not object to the tendering of this document and Mr Harding was not required for cross-examination.
- 53 Mr Harding's evidence was that he was formerly a Principal Registrar of the District Court of Western Australia. He described his professional qualifications and experience until his retirement on 3 March 2004. When he was appointed to the position of Principal Registrar on 3 March 1987 the position was a Level 7 officer in the public service. He described the circumstances of the complement of the Court at the time and noted that over the years the volume of business in the Court increased, that there were further Registrars appointed, including two Deputy Registrars, and when he retired there were 23 judges of the Court. Mr Harding described his duties including deciding upon and issuing orders in interlocutory applications in matters pending before the Court. Those matters were heard in chambers and were in respect of procedural matters, for example discovery, answers to interrogatories, further and better particulars, strike-out applications, and to take evidence *de bene esse*.
- 54 He noted that the parties were usually represented by legal practitioners and he described the manner in which matters were dealt with, that he would deliver an *ex tempore* decision with reasons or reserve his decision.
- 55 Mr Harding described the inter-relationship between the work of the District Court under section 93D of the *Workers' Compensation and Rehabilitation Act* in the period 1993-1999 and the matters he dealt with, noting that the degree of disability of the worker was required to be not less than 30% or future pecuniary loss of not less than an amount prescribed under the Act, and that degree of disability was determined by Review Officers at the Conciliation and Review Directorate. The Registrars of the District Court had to determine the future pecuniary loss. There was a right of appeal against those decisions to a District Court judge. He described changes since then and the impact upon his work as a Registrar.
- 56 Mr Harding also described the work in conducting pre-trial conferences on actions entered for trial. These matters related to all of the civil work of the District Court.
- 57 Mr Harding also referred to the duties of Registrars in taxation of costs saying that he retained to himself the more complex issues.
- 58 Mr Harding gave evidence of his other duties as Principal Registrar.
- 59 There was evidence as to efforts made which resulted in remuneration for Registrars being set by reference to the salaries of the District Court judges, and that those salaries are reviewed by the Salaries and Allowances Tribunal.

Respondent's Evidence

- 60 The respondent called evidence from Murray Peter Orrell, the Principal Consultant with CXC Consulting Pty Ltd (CXC). Mr Orrell gave evidence of his experience in industrial relations matters in government and in assessing classifications of positions within the public sector of Western Australia.

- 61 Mr Orrell was engaged through CXC by the respondent to review the classification of the position of Arbitrator in 2007. He obtained the appropriate papers from the organisation, met with the Arbitrators, with the Chief Executive Officer and the Director, Dispute Resolution Directorate. He prepared a report which he says is in accordance with Approved Procedures. His report (exhibit R1) sets out his methodology and findings.
- 62 Mr Orrell noted at page 2 of his report that the Arbitrators made reference to the similarity between their role and those of District Court Registrars and Magistrates, but also that “they indicated that Arbitrators should be remunerated with a package that is intermediate between an Ordinary Member and Senior Member of the State Administrative Tribunal”. He said that the Arbitrators’ main focus was in relation to the roles of Ordinary Member and Senior Member of the State Administrative Tribunal and that there was very little said in relation to a comparison with the District Court Registrars and Magistrates. In papers presented by the Arbitrators to the Department dated 17 May 2007, the Arbitrators had said:
- “While a very compelling case could be argued that Arbitrators (*sic*) duties are such that they should be remunerated at District Court Registrar or perhaps Magisterial levels, we accept that such an outcome would be resisted by the W.A. judiciary, WorkCover WA, and the Department of Premier and Cabinet.” (*Ex R2 – Supplemental Information in Support of Reclassification of Arbitrator, Dispute Resolution Directorate*)
- 63 Mr Orrell says that because the Arbitrators did not provide any substantial material in relation to the duties and responsibilities of District Court Registrars, he did not pursue that comparison any further. Rather, the matter was considered on the basis on the salaries of Ordinary and Senior Members of the State Administrative Tribunal because that was the approach taken by the Arbitrators.
- 64 Mr Orrell explained that the Arbitrators had prepared a revised job description form which, although it was not accepted by the management of WorkCover, he examined and considered. His assessment was based on change in work value from the previous role of Review Officer as well as the original job description form. He examined the exercise of judicial and arbitral functions and the methods used in dealing with claims through conciliation, teleconferences, directional hearings, hearings and the like. He considered that the changes referred to by the Arbitrators did not reflect changes in the nature of duties and responsibilities or an increase in the work value of the position.
- 65 Mr Orrell’s assessment was that the exercise of independent and discretionary powers contained within section 187 of the *WCIM Act* was not a new area of responsibility and existed prior to 2005.
- 66 His view was that the requirement to issue orders and written reasons for decision, and the decisions being final and binding on the parties and on superior courts, did not constitute a significant net addition to work value and that this was adequately catered for in the existing classification at Level 9.
- 67 In his view, dealing with interlocutory applications, determination and issuing of orders, and that orders are not appealable, were not new but had been part of the previous legislation.
- 68 As to proposed Duty 9 - the conduct of taxation of costs, this was not contained in the current job description form but was something previously taken into account.
- 69 As to proposed Duty 10 - delegation of authority from the Director, whilst this was not in the current job description form, the Director had the power to delegate and Mr Orrell was of the understanding that apart from the period of four months before the arrival of a Legal Officer who now performed those functions, Arbitrators had individually and collectively refused to accept delegations of functions from the Director. This meant that this was not a new or added responsibility for the position.
- 70 As to providing guidance and assistance to and monitoring of staff, Mr Orrell said it was acknowledged that this was undertaken by the Manager of Client Services and his view was that the Arbitrators had a working relationship with these officers but the end of line responsibility rested with the Client Services Manager. There was no change in the duties and responsibilities of the Arbitrator in that regard.
- 71 Mr Orrell’s view of monitoring the performance of agents and legal practitioners and reporting unprofessional behaviour was that, at best, this represented a minor change in duties and responsibilities.
- 72 Involvement in community liaison and representing the Chief Executive Officer and Director on external committees and working parties was not a significant change to the duties and responsibilities. This type of responsibility occurs across Levels 5 to 8 in other positions with which Mr Orrell had dealt.
- 73 Although formally a new duty, liaising with the Commissioner and Director was not a significant change in duty or responsibility and not all Arbitrators were involved in this requirement.
- 74 Mr Orrell had also considered Ms Giorgi’s report and the work undertaken by former Chief Commissioner Coleman and former Commissioner George. Mr Orrell said that he concluded that there was no significant increase in the work value of the position of Arbitrator. He recognised there were some changes in duties and responsibilities but they did not constitute a significant net addition to work value in the terms required by the Wage Fixation Principles. Therefore reclassification was not warranted.
- 75 Mr Orrell also undertook a BIPERS assessment. This required the applicants to fill in a job evaluation questionnaire. Ten factors were considered and points were allocated against each for the degrees associated with those factors. He described the various factors and how he had come to his score. He came to the conclusion that the position should be scored in the range between 507 and 512, which corresponded with Level 8 according to the BIPERS classification scores. He noted that Price Consultancy had scored them between 492 and 510, but described an error in the arithmetic which arrived at this score.
- 76 In regard to factor 6: Instructions Received, Mr Orrell noted that the Arbitrators claimed a degree of 15 on the basis that they were autonomous in respect of the work they undertook and the decisions they made. He found that this factor did not really

- apply specifically to the Arbitrator position, but considered that it could be interpreted to apply to the fact that the Arbitrators cannot be directed in terms of the decisions that they make. Accordingly, he allocated a degree of 15, which is the highest that can be allocated for that factor.
- 77 In respect of factor 7: Influence on Results, he noted that the Arbitrators claimed a degree of 11 based around dispute resolution. His view was that the role of the Director of Dispute Resolution took responsibility for a functional area and that at best it could be said that the Arbitrators were responsible for a work area which had a large influence on the dispute resolution function and a large influence on WorkCover's results.
- 78 Factor 8: Size of Organisation is unrelated to the individual position. WorkCover is a Group 3 organisation.
- 79 In respect of factor 10: Subordination Level, Mr Orrell noted that Arbitrators are administratively at the third level of management. However he says he recognised that in the exercise of the statutory responsibility, they are at a second level of management responsibility, through to the Minister under s 289 of the *WCMI Act*. In this case he split the score to take account of this dichotomy, allocating the higher level for one and the lower for the other.
- 80 Having undertaken that scoring process, Mr Orrell also drew comparisons with the State Administrative Tribunal positions referred to by the applicants. He noted that the Salaries and Allowances Tribunal determines the salaries and conditions for those positions in accordance with the decision with the legislature. He examined the State Administrative Tribunal positions and noted that they were still under the control of the *PSM Act* and that the State Administrative Tribunal's functions and powers are established under the *State Administrative Tribunal Act* as well as there being jurisdiction gained from more than 130 other, enabling Acts. This provides a far broader range of responsibilities than applies to the Arbitrators, who operate under one primary act being the *WCIM Act*.
- 81 Under cross-examination Mr Orrell noted that he had approached the examination of the Arbitrator's position on the basis of a claim of change in work value on the basis that this was what he had been instructed to do, but he had also been instructed to review the classification of Arbitrator, not simply look at work value change. He says that he did examine work value change but also conducted a BIPERS assessment and then considered comparative positions.
- 82 Mr Orrell acknowledged that Ms Giorgi's report indicated difficulties with using the BIPERS tool for the purpose of an assessment where she had stated that the BIPERS job evaluation system emphasised scoring management roles higher than some specialist type functions and that the BIPERS system did not cater adequately for positions such as Arbitrators. Mr Orrell said that he did not believe that that was the case, saying that the system had been in existence since around 1985 and had been used for positions across the public sector in administrative, clerical, management, general and specialist positions both in the professional division of the public service and within the hospital sector. Mr Orrell said that the way in which he had conducted the assessment was that he recognised the specialist role particularly of Arbitrator in terms of the factors to be considered. He said that in the Subordination Level, he had been liberal in his interpretation of the factors, and what he described as generous in the scores he had allocated.
- 83 Mr Orrell acknowledged that he had provided a discussion paper to the Chief Executive Officer and the Director, Dispute Resolution in which he had commented that "my assessment places the position in the upper end of the range for a position classified as Level 8. The use of BIPERS, even with a very liberal interpretation of the factors, will only ever result in the positions being classified at Level 8 or 9. This is due to the fact that BIPERS is hierarchical in nature and does not make allowances for specialist positions like Arbitrators where they are required to operate independently by legislation." (T162) Mr Orrell says that whilst Arbitrators "start off behind the eight ball" (T163), in his assessment he made allowance for that. He believes that the BIPERS tool provides some discretion as to the various degrees that are allocated against each of the factors and that he had applied that approach in assessing the claim. He described how his and Ms Giorgi's views had diverged and how she had arrived at her scores whereas what he did was "looked at it from a different angle and that is that the Arbitrators were claiming responsibility for a functional area and that wasn't the case...that's the role of a Director...and they were responsible for work areas which have a large influence on both the dispute resolution function and a large influence on the agency's results, so in my assessment that's an appropriate degree to allocate". (T163)
- 84 Mr Orrell also gave evidence as to the impact of the size of the organisation on the overall scoring of the position and that due to it being a small organisation, it is a group three organisation. The score for factor 7: Influence on Results is combined with the score for factor 8: Size of Organisation, to achieve a result.
- 85 Mr Orrell explained how he dealt with the Subordination Level in factor 10, recognising that the Arbitrator has both an administrative line of responsibility (which was at the third level of management) to the Director, Dispute Resolution and a statutory responsibility at the second level of management through to the Minister and created what he described as "a range" in those circumstances. (T165)
- 86 Mr Orrell also gave evidence of the approach to comparison positions when looking at changing work value, as compared to classifying a new position. He noted that what Ms Giorgi did was look at the work value of the position, not change in work value, and that she had detailed in her report the key parts of the work value for the position.
- 87 Mr Orrell disagreed with the proposition that it is appropriate to examine the salary of comparable positions where the comparison positions are not within the same classification structure.
- 88 Robert Charles Butler, a Consultant with Mercer Australia Pty Ltd, gave evidence. Mr Butler described the process he had used to prepare a report for WorkCover on the approval of the Department of Premier and Cabinet using the Mercer CED methodology to assess the work value of the Arbitrator role. He was assisted by his associate, Adrienne Best. The process involved interviewing the incumbents, the Chief Executive Officer and the Director responsible for the Arbitrators; considering a number of submissions from the Arbitrators; evaluating the role; having an internal peer review of that evaluation and finalising the evaluation. He provided a report dated 4 November 2008 (exhibit R3).

- 89 The work value assessment involved reviewing all documentation and information from the submissions and the interviews which were conducted.
- 90 The preliminary work value outcome was discussed with WorkCover's Chief Executive and Director.
- 91 Mr Butler noted that in respect of the role of the Arbitrator, one of the practices of the Mercer CED methodology is to form a view of the level of independence of the role. He said the use of the word "judicial" is probably an unfortunate one in that Mercer was not in a position to say whether the position was a judicial one or not. Rather, the term referred to how an Arbitrator would be expected to act with a sense of fairness, to apply principles of natural justice, to form an independent view and methodically analyse the facts. (T171)
- 92 Mr Butler described the Mercer CED methodology as comprising a number of levels within each of the key factors of expertise, judgment and accountability, and a number of levels within each of the sub-factors. He noted that within the WA public sector, the Mercer CED methodology is only used above Level 8 and in the SES classification ranges. Class 1 within the public sector classification structure has a threshold of 1000 Mercer points.
- 93 Mr Butler noted that within the Mercer CED benchmarking and peer review process, they only benchmark against other positions that have been evaluated using that methodology, to ensure that they are comparing like with like. Therefore if a position had not been evaluated using that methodology, then direct comparisons could not properly be made with the same rigour.
- 94 The conclusion Mercer reached was that the position of Arbitrator had a high level of independence and could not be directed by WorkCover; was highly specialised; operated in a relatively complex area and spanned a range of activities; it required the exercise of reasoning that involved identification and resolution of fundamental problems on a case by case basis, and it operated in a relatively narrow field of law.
- 95 In assessing the information provided, Mr Butler was confident that from an expertise, judgment and accountability perspective and the application of methodology in a consistent way, a point score of 756 was reasonable and appropriate.
- 96 In cross-examination Mr Butler described how the initial assessment was done by himself and Ms Best individually and that they compared their assessments and came up with very minor differences. He described the internal peer review process and that in this case it was conducted by two of the most senior principals in the business, one of whom had extensive experience across a number of jurisdictions, including Western Australia, in evaluating roles in the judiciary and magistracy.
- 97 Mr Butler also gave evidence that he interviewed Mr John Young, a Deputy State Solicitor, who had previously had some involvement through the State Solicitor, in the role of Arbitrator.
- 98 Mr Butler described the process of considering each factor and the various ranges within those factors, noting that the Mercer CED methodology for each factor such as accountability or advice, involves starting at the lowest point of the particular scale of descriptors where the position matches the descriptor. The assessment continues up that scale to a point where the position no longer reflects the description in the scale. At that point, the assessment drops back to the one below, which is then seen as the best match.
- 99 Mr Butler explained that in the "expertise" factor, higher level positions are usually categorised with the Mercer CED system as being in the "F" or "G" ranges. They commenced by seeing if the Arbitrator position fell in the F- range, then looked at the F+ range and noted if there was anything that prevented them from saying that it fell within the F+ range, and settled on F. He noted that G is the higher range and this would apply to a Chief Executive or a Director General of a major government agency. An Executive Director of a large agency contributing to the broader strategic direction of the organisation; usually having a state-wide impact; developing and implementing high level policy and advising government on key areas of concern within their sphere of operation and speciality, would be expected to fall within the G- range.
- 100 Mr Butler explained that the traditional job evaluation system places significant emphasis on the management of resources, people and budgets, however the Mercer CED system looks at positions differently, taking account of those factors but also recognising that there are many positions particularly within government that are more advisory in nature and more policy-focused. Reference to "advice" or "advisory" was more appropriate for the Arbitrator position because "the value of the position lies more in the impact of the application of the expertise in determining matters rather than in managing a large set of resources". (T175) The impact of that advice is judged according to the breadth of its influence, for example Mr Butler said "higher level advice impacts on the whole organisation or an industry or a section of the community or the whole community". (T176) Mr Butler said that "[m]ost statutory office holders would be regarded as advisory, a lot of policy development roles, most positions in the judiciary and magistracy." (T176) The distinction to be drawn between the various roles is around the impact of the "advice" that is provided and, the level of influence that the position exercises, including the availability of alternative sources of advice.
- 101 Mr Butler noted that there are a number of roles in organisations both in public and private sectors that have both accountability for management of resources and also provide advice on policy or direction for the organisation. He said where there is no one predominant focus of the position, then an evaluation is conducted using both "advice" and "direct", and they err on the generous or higher side.
- 102 Mr Butler said that in undertaking conciliation, to try to obtain an agreement between the parties and in undertaking arbitration, including dealing with interlocutory applications, the Arbitrator would be considered to be performing an advice role. The impact or the breadth of that "advice" would result in a smaller score because it impacts only on the parties to the particular dispute. Mr Butler agreed that an assessment of a magistrate's role dealing with applications with only two parties would involve the same considerations, or the same system. He believed that the review and benchmarking processes referred to earlier included a range of evaluations which had been conducted which included roles such as a magistrate. However, he did not have the detailed evaluations in front of him to answer direct questions about those positions.

- 103 Mr Butler said that he believed that in their discussions with him, the Arbitrators had referred to particular positions at the State Administrative Tribunal and the District Court Registrar but that it was only possible to make general comparisons because the Mercer CED system had not been used to evaluate those positions.
- 104 Mr Butler provided a list of positions which had been used to benchmark and peer review the work value assessment for the position of Arbitrator (exhibit A11). They were Magistrate, Deputy State Ombudsman, Registrar Magistrates Court, Registrar Supreme Court, Deputy Chief Magistrate, Member Administrative Appeals Tribunal, Judicial Registrar, Industry Ombudsman, Electoral Commissioner (small State), Chair Transport Appeals Board and Chair Residential Tenancies Tribunal. He said that all of those positions fell below 1000 Mercer CED points, and that 1000 points is the minimum for Class 1.
- 105 Mr Butler also noted that roles such as Industrial Relations Commissioner, Chief Assessor of Criminal Injuries Compensation and Assessor of Criminal Injuries Compensation had been assessed in the past.
- 106 Mr Butler was referred to a comment at page 5 in his report that “the area of law relating to the arbitration role within WorkCover (was) relatively narrow when compared to other judicial roles”, and he said that this comment was trying to provide the client with a view or summary “of the key points that have been raised throughout the discovery process, the interviews and submissions, and we believe that that was the overall view of the people we spoke to.” (T179)

The Applicants’ Submissions

- 107 The applicants do not rely on changed work value but say that the position was wrongly classified from the outset.
- 108 The essence of the applicants’ position is that:
1. the BIPERS tool is not an appropriate mechanism for assessing the requirements of the position of Arbitrator. They say that both Ms Giorgi and Mr Orrell recognised that inappropriateness. The BIPERS tool is suited to the hierarchical structure where higher levels of positions bear higher levels of responsibility and authority for management of people and resources, as opposed to specialist positions such as Arbitrator. Positions which do not have management responsibility are unable to achieve the higher scores applicable to management positions because consideration is weighted in favour of management of numbers of employees, and financial and other resources. Specialist positions which have different types of authority, skill and knowledge are not adequately recognised.
 2. Ms Giorgi used as a comparative position that of the former Review Officer. The applicants say that this was not an appropriate comparison because the Review Officer operated under a different structure and system. The differences include that the Review Officer was operating in a lay system whereas the Arbitrator operates in the system where lawyers are present. The Review Officer system did not have the front loading approach and did not have the same interlocutory applications or Rules issued by the Commissioner which make the current system more formalised, structured and legalistic. Arbitrators are required to have knowledge of various areas of law and apply it in their work.
 3. The third assessment undertaken by Mercer, was also inappropriate because of its categorisation of the type of position and because of the comparative positions used in the assessment. The Mercer assessment gave insufficient weight to comparisons with like positions, categorised the position as “advice”, then undervalued the position by reference to the breadth or scope of the effect of that advice being limited to the competing parties. The applicants say that the points score for a Magistrate or District Court Registrar under the “advice” category demonstrates the flaw in that approach.
 4. There has been insufficient weight given to the work value of the position of Arbitrator.
 5. The requirement of the position to act judicially demonstrates the specialised nature of the function. Of itself the requirement to act judicially does not attract great weight but the context in which the position acts judicially is recognition of that specialist nature.

109 The applicants say that since Commissioner Gregor’s decision of the 8 July 1997, where he determined that positions within the broadbanded classifications structure were the only ones that could be used for comparison purposes, the Approved Procedures and the Senior Executive Classification Service Quality Framework have issued. According to the last such document, at page 3, external comparisons are now permissible. It allows for “comparison of both internal and external relativities, ie., like positions within the agency, the Public Sector and across Australia, with internal taking precedent (*sic*) taking over external. External comparisons should be examined more closely than simply reviewing the JDF”. (exhibit A1) The applicants reject that comparison positions outside the broadbanded structure cannot be used and say that if that is so then there is no comparable position within the broadbanded structure.

110 The applicants put forward a table of positions with statutory powers for comparative purposes. These positions are under the jurisdiction of the Salaries and Allowances Tribunal and are said to be similar to the Arbitrator albeit that they deal with different types of issues.

The Respondent’s Submissions

- 111 The respondent submits that:
1. It is necessary to view the position in the context in which the position fits within the statutory scheme including the *PSM Act* and the *WCIM Act* and taking account of history. Meaningful comparisons can only be made with like positions and those positions ought to be sourced within the public service of Western Australia.
 2. The Public Service Arbitrator ought to review the respondent’s decision for the purpose of finding manifest error and if it is found, correcting that by way of nullification, modification or variation (s 80E(5) of the IR Act). These terms suggest the correction not just of error but of material error.

3. The previous assessments of the position have not been demonstrated to have been in error but came to the right conclusion. The respondent says that if the Public Service Arbitrator were to stand in the shoes of the original decision-maker and come up with the “right” decision as opposed to discerning error, then the factual history of the positions is highly relevant. That history includes that Ms Giorgi reached a conclusion supported by the employing authority, Mr Orrell came to a third conclusion compatible with the outcome arrived at by Ms Giorgi and the employing authority, and Mr Butler of Mercer came to a similar conclusion using an entirely different classification process. In those circumstances there would need to be clear and cogent reasons why the correct or preferable decision ought to be different to the earlier outcomes.
4. Having regard to the history and context, the respondent says there is no material difference between the work done by the Arbitrator and the Review Officer which would have any consequence for work value. There have been what the respondent described as “swings and roundabouts”, that in some ways the role of Arbitrator is a bit harder than that of its predecessors, the Conciliation Officer and Review Officer, and in other ways a bit easier. The material difference is that the Arbitrator is better prepared in a more efficient system.
5. The applicants have not clearly demonstrated manifest error on the part of previous assessments of the position of Arbitrator, but simply say that the outcome of the Orrell report was wrong and they seek what the respondent describes as a fifth bite at the cherry.

If there was manifest error in the assessments, then the requirement is to come to a sensible conclusion, in the context of the legislative framework, rather than voiding the act done in breach. (*Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355)

The respondent says that if the Public Service Arbitrator’s role is to undertake the exercise of discretion afresh, then a very significant onus falls upon the applicants to demonstrate their case.

6. The respondent says that the applicants have misplaced a reliance on a characterisation of the functions of the position of Arbitrator as being “judicial”.
- 112 As to the criticism of Mr Orrell’s approach, the respondent noted Mr Orrell did not consider a comparison with the District Court Registrar because the applicants suggested that he should focus on the State Administrative Tribunal Positions and that is what he did. The respondent says that Mr Orrell was suitably flexible and sensible in the application of the Approved Procedure and the BIPERS tool.
- 113 The respondent says that the comparisons with District Court Registrars and Assessors of Criminal Injuries Compensation are not appropriate due to the different statutory sources of those positions and that they are not under Part 3 of the *PSM Act* but are remunerated under different schemes.
- 114 The respondent noted that there are many officers within the Public Sector who are required to investigate and deal with matters of complexity, involving emotion and requiring sensitivity, for example undertaking disciplinary or other public sector inquiries. The fact of there being no capacity to appeal against findings of fact made by the Arbitrator does not make a substantial difference to the issue of work value.

ISSUES AND CONCLUSIONS

Position of the Arbitrator

- 115 I note the Statement of Agreed Facts submitted by the parties at the commencement of the hearing, and set out in paragraph [3] of these Reasons.
- 116 The *WCIM Act* provides for the position of Arbitrator within the Dispute Resolution Directorate of the respondent in Division 3 of Part XVII. The Arbitrator is subject to the direction and control of the Director in the exercise of his functions (s 287(1)), however is not subject to such direction in respect of the decisions to be given on matters before the Arbitrator (s 287(2)).
- 117 The Commissioner makes Rules and issues practice notes with respect to the practice and procedure governing the jurisdiction, functions and proceedings of the Commissioner and the Arbitrators (s 293).
- 118 The Arbitrator is an “officer” of WorkCover (s 286), and a person cannot be an Arbitrator without the approval of the Minister.
- 119 The jurisdiction of the Arbitrator is set out in s 176 as being:

176. Exclusive jurisdiction

- (1) In this Part –
dispute means –
 - (a) a dispute in connection with a claim for compensation, or the liability to pay compensation, under this Act;
 - (b) a dispute in connection with an obligation imposed under Part IX;
 - (c) any other dispute or matter for which provision is made under this Act for determination by an arbitrator;
 - (d) any other matter of a kind prescribed by the regulations.
- (2) A proceeding for the determination of a dispute is not capable of being brought other than under this Part or Part XII.

- (3) Subject to this Act, arbitrators have exclusive jurisdiction to examine, hear and determine all disputes.

[Section 176 inserted by No. 42 of 2004 s. 130.]

The powers of the Arbitrator are set out in various sections in Parts XI and XII of the *WCIM Act*.

120 The Job Description Form effective from 1 July 2005 (JDF) (exhibit A5) notes the reporting hierarchy of the Dispute Resolution Directorate including that a number of Arbitrators report to the Director at Class 1 and the Chief Executive Officer at Group 1 (max) of the Special Division.

121 The JDF describes the role of Arbitrator as –

“The Arbitrator is responsible for settling disputed claims for compensation between the parties in a Workers’ Compensation claim. They exercise exclusive jurisdiction to examine, hear and determine disputes as defined in section 179 of the Workers’ Compensation & Injury Management Act, 1981. The Arbitrator has jurisdiction to make a monetary award or series of awards to a particular worker, and the determinations of the Arbitrator are final and binding.”

122 The duties in descending order of importance are:

- “1. Acts judicially in exercising exclusive jurisdiction to examine, hear and determine disputes as defined in section 179 of the Workers’ Compensation & Injury Management Act, 1981. (“The Act”)
2. Presides over hearings as to and makes final and binding determinations on, disputed claims for compensation in accordance with Part XI of the Act.
3. Uses best endeavours to bring the parties to a dispute to a settlement acceptable to all of them.
4. Produces written reason (*sic*) for determination identifying the findings of fact and law applied in coming to the determination.
5. Makes decisions under Part XII of the Act as to interim payments, suspensions or reduction orders and minor claims without formal hearing.
6. Issues interlocutory orders in disputes arising under the DRD Rules.
7. Reconsiders decisions when new information becomes available in accordance with s186 of the Act.
8. Provides information to parties pertaining to their appeal rights.
9. Conducts taxations of costs.”

123 The selection criteria are:

“ESSENTIAL

Qualifications/Experience

- Legal practitioner as defined in the Legal Practice Act, 2003.
- Relevant post admission experience in a legal role, preferably in dispute resolution.

Analytical, Problem solving and Decision making skills

- Proven ability to make determinations and resolve disputes.
- High level analytical skills and the capacity for impartial judgment.
- Ability to make sound and timely decisions.
- Proven ability to interpret and apply legislation.

Communication, Interpersonal and Negotiation skills

- High level written and verbal communication skills.
- Ability to undertake alternative dispute resolution especially in relation to conciliation and demonstrated high level negotiation skills.

DESIRABLE

- Previous experience in a quasi-judicial decision-making role.
- Previous experience in a workers’ compensation jurisdiction.
- Basic computer and keyboarding skills including experience with Microsoft office suite of applications.”

Jurisdiction and Powers of the Public Service Arbitrator

124 The jurisdiction of the Public Service Arbitrator is set out in s 80E of the *IR Act*. The relevant parts for the purposes of these matters are subsections (1) and (5) which provide as follows:

- (1) Subject to Division 3 of Part II and subsections (6) and (7), an Arbitrator has exclusive jurisdiction to enquire into and deal with any industrial matter relating to a government officer, a group of government officers or government officers generally.

.....

- (5) Nothing in subsection (1) or (2) shall affect or interfere with the exercise by an employer in relation to any government officer, or office under his administration, of any power in relation to any matter within the

jurisdiction of an Arbitrator, but any act, matter or thing done by an employer in relation to any such matter is liable to be reviewed, nullified, modified or varied by an Arbitrator in the course of the exercise by him of his jurisdiction in respect of that matter under this Division.

- 125 The Industrial Appeal Court in *Director General Department of Justice v Civil Service Association of Western Australia Incorporated* [2005] WASCA 244 dealt with the issue of the Public Service Arbitrator's powers in particular with regard to s 80E(1) and (5), and that the Public Service Arbitrator's jurisdiction is to deal with an industrial matter. Wheeler and Le Miere JJ at paragraphs 24 – 34 noted the following:

[24] The definition of "industrial matter" in the Act is a lengthy one, but in its core meaning is "any matter affecting or relating or pertaining to the work ... of employers or employees in any industry or of any employer or employee therein ...".

.....

[28] Turning, then, to the question of the proper construction of s 80E(5), read with s 80E(1), in our view the controversy which has arisen relates to a false issue. As we have noted, there is no power conferred by the Act upon the Arbitrator to engage in anything in the nature of "judicial review", or to make a bare declaration. That is jurisdiction of a kind quite different from the merits-based inquiry contemplated by s 80E. To the extent that the reasons of the Full Bench might be read as suggesting that there is such power, they are in error.

[29] However, the powers of the Arbitrator are very wide. They are to inquire into and deal with any industrial matter. To the extent necessary, the exercise by an employer in relation to a government officer of a power relating to that industrial matter may be reviewed, nullified, modified, or varied by the Arbitrator.

[30] An inquiry into an industrial matter will, where that industrial matter is affected by other legislation, or where the actions of persons involved in the industrial matter are, in some respect, governed by other legislation, involve an inquiry into what was done, in that legislative context. In order to determine how to "deal with" an industrial matter, the Arbitrator must find relevant facts. If it is the case that a relevant factual finding suggests that a person has been guilty of unlawful or improper conduct, that is a finding which it is open to the Arbitrator to make, not as an end in itself, but as a step in determining how the industrial matter is to be dealt with.

[31] Where, as is presently the case, the way in which officers in the public service deal with each other is the subject of principles and requirements contained in legislation such as the PSM Act, it will often be desirable for the Arbitrator to consider whether the behaviour of individuals involved in the industrial matter has been in conformity with those principles and requirements. Again, findings of that kind would not be made as an end in themselves, but would be made in order to determine how, in the broad statutory context, it would be appropriate to deal with the industrial matter.

[32] It will on occasion, as part of that process, be necessary for the Arbitrator to undertake a consideration of the relevant statutes, so as to ascertain how they apply to the facts as found. That exercise is undertaken, not in order authoritatively to declare the meaning of the statutory provision, but again as a step in the process of ascertaining what is required, in the statutory context, to deal with the industrial matter.

[33] Those conclusions may on occasion lead to the view that it is necessary in order to deal appropriately with the industrial matter, to nullify, modify, or vary an action or decision of an employer, pursuant to s 80E(5). That subsection does not confer any independent jurisdiction to quash those decisions, but only to do so to the extent necessary to ensure that the industrial matter is dealt with as contemplated by s 80E(1). Similarly, the word "reviewed" in s 80E(5) is plainly not intended to confer some independent power to review any decision of an employer, but only a power to review (and, if necessary, to differ from) the decision where it is necessary to do so as part of the process of dealing with an industrial matter.

[34] When s 80E(1) and (5) are understood in the way in which we have endeavoured to explain, the controversy about the Arbitrator's power of "judicial review" simply disappears. There is plainly no such independent power. Equally plainly, however, some of the questions which would be determined by a Court undertaking judicial review of the actions of government officers may be questions which it is necessary for an Arbitrator to consider and determine in order to deal with an industrial matter relating to those government officers. Those questions are dealt with by the Arbitrator, however, not in order to make an authoritative and binding determination concerning them, but as steps in the process of determining how the industrial matter is to be dealt with.

- 126 Hasluck J at paragraph 167 endorsed those comments.

- 127 It is my understanding of Wheeler and LeMiere JJ's comments that the powers of the Public Service Arbitrator are to enquire into and deal with any industrial matter. It is as part of that process that the Public Service Arbitrator may, in appropriate circumstances, review, nullify, modify or vary anything done by an employer in the exercise of any power. The Public Service Arbitrator does so in order to deal with the industrial matter. It requires that there be relevant findings of fact and dealing with the industrial matter. This does not require the Public Service Arbitrator to necessarily, as a first step, conclude that the employing authority has made a manifest error in the exercise of power but the power to review the decision of the employer is exercised "where it is necessary to do so as part of the process of dealing with an industrial matter". [33] Therefore I conclude that the Public Service Arbitrator is not limited to finding manifest error but may do so as part of the process where it is necessary to deal with the industrial matter.

Fixing Remuneration

- 128 Part of what the applicants seek is for the classification of the position of Arbitrator to be set by reference to a range of positions they say are comparable. Some of those positions have their salaries determined by the Salaries and Allowances Tribunal (eg the District Court Registrar and the Ordinary Member of the State Administrative Tribunal). The Chief Assessor of Criminal Injuries Compensation has a salary set by the Governor on recommendation from the Minister for Public Sector Management (*Criminal Injuries Compensation Act 2003* (WA) Schedule 1, Clause 3(4)).
- 129 The applicants say that amongst, other things, the salaries applicable to other positions ought to be taken into account.
- 130 This view seems reasonable on its face, however it ignores the reality of the way remuneration is fixed. There is no one, single wage or salary determination model applicable across all positions and offices within the public sector. Some are fixed by the Salaries and Allowance Tribunal, such as the Ordinary Member of the State Administrative Tribunal. Others are determined by the Governor on the advice of a Minister.
- 131 They may take account of salaries of like officers in other jurisdictions, or have a particular linkage or nexus.
- 132 This Commission and the Public Service Arbitrator fix remuneration according to a broad range of factors.
- 133 Remuneration is not fixed simply by reference to the salary of other positions which have some commonality of roles and responsibilities. It also takes account of the history of the position and its context. It takes account of the principles which applied at the time the remuneration was originally struck. It may take account of a range of elements of the job market such as attraction and retention, mobility, and conditions under which the work is performed. It is not simply a comparison of like with like, although that has a real role to play.
- 134 The fixing of remuneration for government officers within the public sector in WA has a number of particular elements. The first is that there is a need for consistency of treatment.
- 135 I have made these comments in respect of remuneration fixing generally, however, determination of classification is a branch of remuneration fixing which has its own criteria and processes, most particularly in the public sector.
- 136 The applicants have brought applications under s 80E of the *IR Act*. The Form 10 originally filed in each case sought an increase in the level of classification commensurate with Members of the State Administrative Tribunal. Therefore, they are required to demonstrate, not that the level of salary ought to be increased but that the level of classification ought to be increased. Therefore, the claims are to be determined by reference to the classification structure within the public sector and not by reference to the salary per se.

Classification of Positions Within Public Sector

- 137 Part of the process of classifying positions within the public sector is, by necessity, comparative. By this I mean that there needs to be a common thread linking all positions within the public sector, in particular those within the broad-banded classification structure set out in the *Public Service Award 1992*. Those positions may not be the same in terms of the types of duties and responsibilities, but there must be some means of working out how each position relates to others, even to unique positions. It is possible to group like positions, but all positions must be considered within the context of the overall structure. This is achieved by the application of indicators or levels of features of all positions and there being the ability to measure each position's features by reference to those levels.
- 138 The *PSM Act* authorises the Minister to approve in writing "any procedure or classification system" (s 3(2)). Approved Procedures 1 and 2 are such procedures. Division 3 – Public service officers other than executive officers of the *PSM Act* also deals with the appointment of public service officers to positions and classification levels, in accordance with approved procedures.
- 139 As Approved Procedure 1 notes, it is required that positions are assigned a classification level according to the *relative* worth of the job in comparison with like positions. An assessment is made through an evaluation of the critical factors in the job such as education, skills and responsibilities.
- 140 The particular factors used in determining the classification of a position are:
- The value of the work performed;
 - The responsibilities and skills required;
 - Comparisons of the work requirements of the job (internal and external) having similar duties, responsibility and skill requirements;
 - The structural relationships of the job; and
 - The indicative results of the approved job evaluation tool.
- 141 Approved Procedure 2 which deals with Senior Executive Service (SES) and Non-SES positions above Level 8 requires a similar approach, albeit that there are more checks through that process, such checks being undertaken externally to the employing authority. The SES Classification Quality Framework (part of exhibit A1), although no longer current, was current at the time the Arbitrator position was created. One of the objectives of Approved Procedures established under the *PSM Act* is "to ensure all senior executive officer positions are appropriately classified in a consistent manner across the public sector".
- 142 Therefore, to achieve a consistent approach, the same methodology ought to be applied across the broad-banded classification structure. This requires a common assessment tool. BIPERS has been the approved classification tool applicable to the public sector for some time. It is the job evaluation tool recognised as being applicable across the public service in both Approved Procedures 1 and 2. The SES Classification Quality Framework described the BIPERS system in the following manner:

“BIPERS is the classification system approved for the classification of SES positions. It is used as a guide to the classification level and is used in conjunction with the principles outlined above.

The BIPERS license in Australia is held by William M. Mercer Pty Limited.

BIPERS is a numerical rating system based on the following ten factors:

1.	EDUCATION	What is the minimum essential level of education required for the job?
2.	EXPERIENCE	How many years of varied and accumulated practical experience in related jobs are needed to perform this job?
3.	SCOPE OF ACTIVITIES	How varied are the activities performed and/or coordinated by the office holder?
4.	INTERPERSONAL SKILLS	How demanding is the job in terms of contacting, negotiating and gaining the cooperation of others inside and outside the agency?
5.	KINDS OF PROBLEMS	What type of analytical and creative ability is required for the position?
6.	INSTRUCTIONS	How much independence does the office RECEIVED holder have?
7.	INFLUENCE ON RESULTS	How important is the position to the achievement of overall results by the agency?
8.	SIZE OF THE AGENCY	What is the current Approved Average Staffing Level (expresses in Full Time Equivalents FTEs) and what is the current approved annual budget?
9.	PERSONNEL SUPERVISED	How many FTEs does the office holder OR CONTROLLED directly supervise and how many FTEs is the office holder responsible for?
10.	SUBORDINATION	Where is the position placed in the agency’s hierarchy?

A Job Evaluation Questionnaire (JEQ) is used to assess the ten factors and a numerical value is assigned to each of these factors. The total score is then compared to the points required for each for each classification level.” (exhibit A1)

- 143 It is true that a number of the factors applied in BIPERS relate to the management structure of the general public service involving positions which have control over people and resources. For example, Personnel Supervised is a factor which measures how many FTEs (full time equivalents) the position directly supervises or is responsible for.
- 144 Yet there are factors which relate not to the particular job but to the agency. The size of the agency is a factor which taken at its most objective would see like positions, with the same general level of skill and expertise but in different sized agencies, awarded different ratings because their agencies are of different sizes. The same situation applies with the factor of “Subordination” where the question is “Where is the position placed in the agency’s hierarchy?”
- 145 Therefore, it can be seen that an assessment of the level of classification of a position is made in the context of the organisation and the sector, not merely as a free-standing position, or only by comparison with positions requiring similar skills and expertise, without regard to the broader context.

The BIPERS Assessments of the Arbitrator Position

- 146 One cannot ignore the decision of the legislature to include the position of Arbitrator within the public service by virtue of it being “an officer of WorkCover WA” (s 286 of the *WCIM Act*). Therefore significant weight must be given to it being classified accordingly, that is in accordance with those classification mechanisms and processes applicable to the public service, which includes a BIPERS assessment. It is very important to note that a BIPERS assessment is only one part of the process; not the only or determinative part.
- 147 This is a matter which needs to be emphasised, given that the applicants have focussed very strongly on the BIPERS assessment in their challenge to the position being classified at Level 9.
- 148 Under the BIPERS job evaluation tool, job evaluation is undertaken according to assessment against a number of factors noted above being education; experience; scope of activity; interpersonal skills; kinds of problems; instructions received; influence on results; size of organisation; personnel supervised; and subordination level.
- 149 The applicants’ main contention is that the BIPERS assessments undertaken by both Ms Giorgi and Mr Orrell were flawed because the BIPERS tool is based on a hierarchical structure, and gives greater weight or value to positions of a managerial nature, with responsibility for personnel and resources. The existence of factor 9 Personnel Supervised or Controlled and factor 10 Subordination are said to demonstrate this.
- 150 There are many positions in the public sector which are assessed according to BIPERS but which, like the position of Arbitrator, are specialist positions. The specified callings contained within the *Public Service Award 1992* and the *Government Officers Salaries Allowance and Conditions Award 1989* both demonstrate this. Many specified callings positions may not fit comfortably into a hierarchical management system but nonetheless they are classified using BIPERS. If BIPERS were not able to be applied with some discretion and flexibility, then those positions too might arguably be under-valued. However, BIPERS is a system which is able to be flexibly applied.
- 151 I note in passing that in my experience in dealing with reclassification claims, when a job evaluation questionnaire is undertaken applicants for reclassification of their position score various factors higher than the independent assessor scores them. This demonstrates that, amongst other things, whilst BIPERS attempts to provide an objective assessment, the

application of the tool is subject to the view of the person undertaking the assessment. Job classification systems do not and should not be considered to provide absolutely determinative, objective, scientific answers. It may be said that the classification of positions within the public service is more art than science. If BIPERS were purely a scientific checklist, then all that would be necessary would be a strict assessment and a numerical rating according to the ten factors without regard to all of the other considerations referred to earlier and set out in the Approved Procedures. However, it is a tool which provides an *indication* of or guide to the range within which the position is likely to fall.

152 To some extent the applicants are correct, BIPERS is not an assessment tool designed to assess the position of Arbitrator. However that argument has only superficial attraction. BIPERS is a tool which can assess any position within the public sector because the assessment takes account of the position in context. That context includes the organisation and its size and the public sector generally. It is able to assess all of the possible permutations and combinations of job requirements such as the education level and experience required, the interpersonal skills, scope of activities and the kinds of problems addressed, as well as organisational factors and sector-wide factors relating to numbers of employees supervised, size of organisation and the subordination level. As Mr Orrell noted in his evidence, some factors are considered together and adjusted to take account of the position concerned. For example, the size of the unit and the influence on results are scored together according to a matrix. Factor 1 Education and factor 2 Experience are taken together and points are scored according to a matrix.

153 Ms Giorgi expressed the view that there was difficulty in scoring the Arbitrator position by reference to the factors of Instructions Received; Influence in Results; Size of the Agency and Subordination Level and recommended the application of an alternative job evaluation system. She did not identify any alternative system which might meet the deficit she perceived. Nonetheless, Ms Giorgi undertook an assessment comparing the position of Arbitrator with its predecessor under the previous structure, the Review Officer. She found that "the work value of the new Arbitrators is considered to be similar to that of the current Review Officers" (exhibit A9, p10), which was Level 9.

154 Mr Orrell says in his evidence that whilst he removed the statement which he had made in his Discussion Paper when preparing his final report, to the effect that BIPERS was a hierarchical tool which brought forth some difficulties from the assessment of these positions, nonetheless he adapted the assessment to take account of the factors applicable to these positions. For example, he gave the highest score in factor 6: Instructions, taking account of the fact that although the Director is administratively or managerially responsible for the Arbitrator, the Arbitrator cannot be directed in his or her work. Mr Orrell did this by interpreting the requirements and authority of the position in a way that was relevant, and the position received the benefit of that flexible approach by being awarded the highest score for that factor. He took a similar flexible approach to factor 10 Subordination.

155 BIPERS may not be a perfect match for these positions but it is clear that Mr Orrell has significant experience in applying the BIPERS tool for the purpose of arriving at an appropriate assessment for the very broad range of positions across the public service. BIPERS is an assessment tool which takes account of the hierarchical nature of the public service, but it is also a tool which takes account of education and experience, skill and independence. It can be adjusted and finetuned to take account of the multitudes of different positions. There is flexibility both of the tool and the assessor's application of it. I am not satisfied that the assessment of the position is wrong because BIPERS was used.

The Mercer CED Assessment

156 The challenges to the assessment by the applicants include that the factor which Mercer found to be applicable to the position was the "advice" factor because its comparisons were limited, the ultimate score was wrong and it did not recognise of the real value of the position. The full structure and methodology of the Mercer CED system is not before me, however, it is clear that this evaluation system is, like BIPERS, based on dividing the requirements of the job into factors, scoring the job against those factors, and comparing it with other positions.

157 The key characteristics of the Mercer CED system that were considered relevant to the role of the Arbitrator were expertise, judgment and accountability. There is nothing inherently inappropriate about that. From what is before me, I am unable to conclude that the allocation of the Arbitrator position into the "advice" category in the Mercer CED scheme is wrong, or that another categorisation was more appropriate.

158 The applicants say that the positions which Mercer used to benchmark this position all appear to be undervalued using the Mercer score because of the relationship between the salaries of those positions and the Class 1 salary. Mr Butler provided a list of such positions which fall below 1000 Mercer CED points, which is the minimum threshold for Class 1. There is no indication of where below that 1000 points each of those positions falls. One might conclude that if the positions referred to by Mr Butler as falling below 1000 points and thus below Class 1, are correctly assessed by Mercer CED then they are undervalued. However, that does not assist the applicants.

159 The Arbitrator position scored 756, which is approximately 25% less than the 1000 Mercer CED points. In those circumstances, it might be suggested that if 1000 points is the minimum for Class 1, then a score of 756 may be too low for a position classified at Level 9. Either way, it is a long way short of Class 1.

160 I note in passing that the assessment using the Mercer CED methodology arose at the applicants' request. It is surprising then that in making such a request they would not have been aware of the features and approach of that methodology which they now challenge.

161 As to the issue of comparison positions, the Mercer CED scheme only compares with positions it has already assessed. That seems logical. It does not appear to me that this makes the assessment unfair.

Comparisons Generally

162 I understand the applicants to be referring to a range of comparison positions for two purposes. The first is to demonstrate that by reference to particular positions, the position of Arbitrator is undervalued. The second is for the purpose of supporting the claim for a recommendation that the position of Arbitrator be within the jurisdiction of the Salaries and Allowances Tribunal. I will deal with that first aspect of comparison positions now.

1. The Review Officer

163 The applicants claim that Ms Giorgi ought not to have used the Review Officer position as a comparison because it operated under a different regime with different processes.

164 Having considered the evidence of Professor Guthrie, Mr Nisbett and Mr Melville, I conclude that the position of Review Officer was an entirely relevant comparison position. I note that the system under which the Arbitrator operates is designed with the presence of lawyers in mind, that it provides Rules and directions, that frontloading is practised and that Arbitrators also undertake conciliation. However, the evidence clearly demonstrates that the issues, the duties and responsibilities and the matters of complexity which confront the Arbitrator are very much the same as those which confronted the Review Officer. They both hear and determine much the same types of claims, deal with the same or largely the same issues of law, and operate with very similar procedures such as interlocutory applications. However, the Arbitrator deals with these in a more structured, perhaps more guided, way than the Review Officer. As the evidence demonstrates, there have been swings and roundabouts in the changes brought in 2005, however the net effect for the work value of the Arbitrator is that the position still does very much what the Conciliation Officer and the Review Officer did.

2. The District Court Registrar

165 The applicants do not say that the position of Arbitrator is equivalent to that of District Court Registrar, but that it performs similar functions, having a similar role.

166 Mr Orrell did not pursue this comparison because it was not really urged upon him by the applicants in their submission to him. However, in considering that comparison, I conclude that where the Arbitrator does similar things to those which the District Court Registrar does, as noted within the Mercer CED evaluation, the scope of the effect of the Arbitrator role is significantly less than that of the District Court Registrar. The District Court Registrar is required to exercise powers in relation to the broad area of civil law within the District Court's jurisdiction compared with the Arbitrator who exercises powers within a very narrow and constrained area. That area of law is limited to the *WCIM Act*, with the addition of some other areas of law and legal principles many of which confront decision-makers in the public sector generally.

167 The role of Arbitrator is also circumscribed by the Schedules to the *WCIM Act* which set out how certain payments are to be calculated including schedule 2 which is a table of compensation payable according to the nature of injury or impairment. Schedule 3 contains specified industrial diseases. The legislation itself provides detailed guidance and formulae to be applied. In addition, the Commissioner has set out detailed Rules which govern the manner in which matters are to be dealt with.

168 I recognise that the District Court also has its Rules and that the areas of law which the District Court Registrars apply may have prescribed amounts.

169 If the point which the applicants wish to be taken from this comparison is that roles are similar, then I accept that point. However, that does not resolve the issue of classification level as the scope and effect of the Arbitrator's role is significantly more restricted than that of the District Court Registrar.

3. State Administrative Tribunal Ordinary Members

170 The applicants have put very little, if any, evidence to substantiate a claim that this is an appropriate comparison. I note that the Form 10 – Notice of Appeal filed by the applicants sought this comparison, and that it was the one pursued when Mr Orrell undertook his assessment. The applicants have focused on the comparison with the District Court Registrar and the Chief Assessor of Criminal Injuries Compensation before me, yet they did not pursue those comparisons before Mr Orrell.

171 As Mr Hooker pointed out, the State Administrative Tribunal deals not merely with the *State Administrative Tribunal Act 2004* (WA) but also with literally dozens of enabling acts, and its scope of activities and breadth of influence is far broader than the Arbitrator's. Therefore, like the role of the District Court Registrar, but in different ways, the State Administrative Tribunal Ordinary Member role is broader than the role of Arbitrator. However, without more it is difficult to decide that this is a proper position to compare with the position of Arbitrator.

4. Assessor of Criminal Injuries Compensation

172 It is not my intention to examine the duties and powers of this position because there was no evidence of how the level of remuneration of this position is set, except that this is a statutory office, the salary is set by the Governor on recommendation from the Minister for Public Sector Management. There is nothing before me to say why it has been aligned to the salary of a magistrate. I am unable to conclude that it is appropriate to compare the Arbitrator position with this position without that information.

The Requirement to Act Judicially

173 The applicants say that the requirement on the Arbitrator to act judicially demonstrates the specialist nature of the position.

- 174 I have noted what Gregor C had to say when he dealt with an application by *Peter Brash and Others v WorkCover* in his decision of 8 July 1997. The applicants in that case occupied the positions of Review Officers under the Conciliation and Review arrangement referred to earlier in these Reasons. Theirs were the positions Ms Girogi used for comparison purposes. Gregor C found that there are many officers within the public service who are required to act judicially and that the Review Officer position was not unique in that regard.
- 175 Where the same argument of uniqueness or specialisation is relied upon by the applicants in this case, I respectfully agree with Gregor C. I have found that notwithstanding some swings and roundabouts, the higher level of the skills, responsibility and the work requirements of the Arbitrator are very much the same as the predecessor Review Officer.
- 176 I also note the definition of “judicially” set out in *Words and Phrases Legally Defined* (4th ed) Lexis Nexis, 2007 at P1296 as being:

“JUDICIALLY

Australia [Role of Refugee Review Tribunal.] ‘In carrying out that assessment, involving as it does a determination of great importance to an applicant, the Tribunal must act “judicially” and according to law. In so acting the Tribunal does not exercise judicial power, but by reason of the importance of its task, the Tribunal must observe the “practical requirements of fairness” appropriate for the exercise of judicial power. As Sedley J stated in *R v Higher Education Funding Council, ex parte Institute of Dental Surgery* [1994] 1 WLR 242 at 258:

In the modern state the decisions of administrative bodies can have a more immediate and profound impact on people’s lives than the decisions of courts, and public law has since *Ridge v Baldwin* [1964] AC 40 been alive to that fact. While the judicial character of a function may elevate the practical requirements of fairness above what they would otherwise be, for example by requiring contentious evidence to be given and tested orally, what makes it “judicial” in this sense is principally the nature of the issue it has to determine, not the formal status of the deciding body.

‘While the expression “acting judicially” is not now often used when referring to administrative decision making, it usefully comprehends concepts relevant to this appeal. (See: *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321 per Deane J at 365).

‘Failure of the Tribunal to act “judicially” will necessarily stamp the review procedure as one which did not accord an applicant practical fairness or justice. To act “judicially” and according to law the Tribunal must carry out its decision-making function rationally and reasonably and not arbitrarily. (See: *Bond* per Deane J at 366-367). That is to say, the Tribunal cannot determine the matter by a “tossing a coin” or by making a “snap decision” or by acting on instinct, a “hunch” or a “gut feeling”.’ *WAIJ v Minister for Immigration and Multicultural and Indigenous Affairs* [2004] FCAFC 74 at [19]-[21]; BC200401353, per Lee and Moore JJ.”

- 177 Therefore I find that the requirement to act judicially is to “observe the practical requirements of fairness”, to “carry out its decision-making functions rationally and reasonably and not arbitrarily”, not by “tossing a coin” or making a “snap decision”, acting on “instinct” or “a hunch” or “gut feeling”. This corresponds with the conclusion Mr Butler reached in his assessment of the position.
- 178 The requirement on the Arbitrator to act judicially is the same requirement which applies to many administrative decision-makers. It does not of itself demonstrate that the position is of a specialist nature.
- 179 I have considered all of the material before me. I can understand why the applicants might argue that the position of Arbitrator is under-classified if one looks at the so-called comparison positions in a superficial way. These applications relate to the classification of the positions, not to the salary.
- 180 Having examined the position in context, taking account of the work value of the position, the supposed shortcomings and flexibilities of the BIPERS assessments, the positions with which the applicants say comparison ought to be made, I am not persuaded that the position is under-classified at Level 9.
- 181 I noted earlier that the applicants appeared to have two purposes in making reference to the comparison positions. The applicants’ second purpose is to support their claim that there should be a recommendation that the position be within the jurisdiction of the Salaries and Allowances Tribunal.
- 182 The Salaries and Allowances Tribunal sets the salaries of positions specified in the *Salaries and Allowances Act 1975* (WA) and in other legislation. Those positions include officers holding offices included in the Special Division of the public service (s 6(d)).
- 183 Given that I am not satisfied that the position of Arbitrator is under-classified at Level 9 within the General Division of the public service, it would be inappropriate to recommend that it be dealt with by the Salaries and Allowances Tribunal.
- 184 I have noted that since the original allocation of classification, the position of Arbitrator has been recognised as a specified calling and its classification adjusted accordingly. Given that these applications relate to the original decision regarding the classification, I have not considered, nor been asked to consider the applications in the context of that allocation of specified calling.
- 185 It has not been demonstrated that there is error in the position of Arbitrator being classified at Level 9 or that it ought to have been classified at a higher level.
- 186 The applications will be dismissed.
-

2010 WAIRC 00184

PARTIES WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
 JOHAN MARITZ WILLERS **APPLICANT**

-v-
 WORKCOVER, WESTERN AUSTRALIAN AUTHORITY **RESPONDENT**

CORAM PUBLIC SERVICE ARBITRATOR
 ACTING SENIOR COMMISSIONER P E SCOTT

DATE FRIDAY, 9 APRIL 2010

FILE NO PSA 24 OF 2007

CITATION NO. 2010 WAIRC 00184

Result Application dismissed

Representation

Applicant Mr P Fraser of counsel

Respondent Mr R Hooker of counsel

Order

HAVING heard Mr P Fraser on behalf of the applicant and Mr R Hooker on behalf of the respondent, the Public Service Arbitrator, pursuant to the powers conferred under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby dismissed.

[L.S.]

(Sgd.) P E SCOTT,
 Acting Senior Commissioner,
 Public Service Arbitrator.

2010 WAIRC 00185

PARTIES WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
 AUBREY WARREN BIRKELBACH JR **APPLICANT**

-v-
 WORKCOVER WA **RESPONDENT**

CORAM PUBLIC SERVICE ARBITRATOR
 ACTING SENIOR COMMISSIONER P E SCOTT

DATE FRIDAY, 9 APRIL 2010

FILE NO PSA 25 OF 2007

CITATION NO. 2010 WAIRC 00185

Result Application dismissed

Representation

Applicant Mr P Fraser of counsel

Respondent Mr R Hooker of counsel

Order

HAVING heard Mr P Fraser on behalf of the applicant and Mr R Hooker on behalf of the respondent, the Public Service Arbitrator, pursuant to the powers conferred under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby dismissed.

[L.S.]

(Sgd.) P E SCOTT,
 Acting Senior Commissioner,
 Public Service Arbitrator.

2010 WAIRC 00186

PARTIES WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
D'ARCY KEVIN SPIVEY

APPLICANT

-v-

WORKCOVER WESTERN AUSTRALIA AUTHORITY

RESPONDENT

CORAM PUBLIC SERVICE ARBITRATOR
ACTING SENIOR COMMISSIONER P E SCOTT

DATE FRIDAY, 9 APRIL 2010

FILE NO PSA 26 OF 2007

CITATION NO. 2010 WAIRC 00186

Result Application dismissed

Representation

Applicant Mr P Fraser of counsel

Respondent Mr R Hooker of counsel

Order

HAVING heard Mr P Fraser on behalf of the applicant and Mr R Hooker on behalf of the respondent, the Public Service Arbitrator, pursuant to the powers conferred under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby dismissed.

[L.S.]

(Sgd.) P E SCOTT,
Acting Senior Commissioner,
Public Service Arbitrator.

2010 WAIRC 00187

PARTIES WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
FRANIA SHARP

APPLICANT

-v-

WORKCOVER WESTERN AUSTRALIA AUTHORITY

RESPONDENT

CORAM PUBLIC SERVICE ARBITRATOR
ACTING SENIOR COMMISSIONER P E SCOTT

DATE FRIDAY, 9 APRIL 2010

FILE NO PSA 27 OF 2007

CITATION NO. 2010 WAIRC 00187

Result Application dismissed

Representation

Applicant Mr P Fraser of counsel

Respondent Mr R Hooker of counsel

Order

HAVING heard Mr P Fraser on behalf of the applicant and Mr R Hooker on behalf of the respondent, the Public Service Arbitrator, pursuant to the powers conferred under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby dismissed.

[L.S.]

(Sgd.) P E SCOTT,
Acting Senior Commissioner,
Public Service Arbitrator.

2010 WAIRC 00188

PARTIES WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
DAVE MARTYN WHITFORD-HARVEY
APPLICANT

-v-
WORKCOVER, WESTERN AUSTRALIAN AUTHORITY
RESPONDENT

CORAM PUBLIC SERVICE ARBITRATOR
ACTING SENIOR COMMISSIONER P E SCOTT

DATE FRIDAY, 9 APRIL 2010

FILE NO PSA 28 OF 2007

CITATION NO. 2010 WAIRC 00188

Result Application dismissed

Representation

Applicant Mr P Fraser of counsel

Respondent Mr R Hooker of counsel

Order

HAVING heard Mr P Fraser on behalf of the applicant and Mr R Hooker on behalf of the respondent, the Public Service Arbitrator, pursuant to the powers conferred under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby dismissed.

[L.S.]

(Sgd.) P E SCOTT,
Acting Senior Commissioner,
Public Service Arbitrator.

2010 WAIRC 00189

PARTIES WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
PETER BRASH
APPLICANT

-v-
WORKCOVER, WESTERN AUSTRALIAN AUTHORITY
RESPONDENT

CORAM PUBLIC SERVICE ARBITRATOR
ACTING SENIOR COMMISSIONER P E SCOTT

DATE FRIDAY, 9 APRIL 2010

FILE NO PSA 29 OF 2007

CITATION NO. 2010 WAIRC 00189

Result Application dismissed

Representation

Applicant Mr P Fraser of counsel

Respondent Mr R Hooker of counsel

Order

HAVING heard Mr P Fraser on behalf of the applicant and Mr R Hooker on behalf of the respondent, the Public Service Arbitrator, pursuant to the powers conferred under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby dismissed.

[L.S.]

(Sgd.) P E SCOTT,
Acting Senior Commissioner,
Public Service Arbitrator.

2010 WAIRC 00190

PARTIES WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
WENDY MARGARET POWLES
APPLICANT

-v-
WORKCOVER WA AUTHORITY
RESPONDENT

CORAM PUBLIC SERVICE ARBITRATOR
ACTING SENIOR COMMISSIONER P E SCOTT

DATE FRIDAY, 9 APRIL 2010

FILE NO PSA 30 OF 2007

CITATION NO. 2010 WAIRC 00190

Result Application dismissed

Representation

Applicant Mr P Fraser of counsel

Respondent Mr R Hooker of counsel

Order

HAVING heard Mr P Fraser on behalf of the applicant and Mr R Hooker on behalf of the respondent, the Public Service Arbitrator, pursuant to the powers conferred under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby dismissed.

[L.S.]

(Sgd.) P E SCOTT,
Acting Senior Commissioner,
Public Service Arbitrator.

2010 WAIRC 00191

PARTIES WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
SUSAN LEE WARING
APPLICANT

-v-
WORKCOVER WESTERN AUSTRALIA AUTHORITY
RESPONDENT

CORAM PUBLIC SERVICE ARBITRATOR
ACTING SENIOR COMMISSIONER P E SCOTT

DATE FRIDAY, 9 APRIL 2010

FILE NO PSA 31 OF 2007

CITATION NO. 2010 WAIRC 00191

Result Application dismissed

Representation

Applicant Mr P Fraser of counsel

Respondent Mr R Hooker of counsel

Order

HAVING heard Mr P Fraser on behalf of the applicant and Mr R Hooker on behalf of the respondent, the Public Service Arbitrator, pursuant to the powers conferred under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby dismissed.

[L.S.]

(Sgd.) P E SCOTT,
Acting Senior Commissioner,
Public Service Arbitrator.

2010 WAIRC 00192

PARTIES WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
JACQUELINE FUREY **APPLICANT**

-v-
WORKCOVER WESTERN AUSTRALIAN AUTHORITY **RESPONDENT**

CORAM PUBLIC SERVICE ARBITRATOR
ACTING SENIOR COMMISSIONER P E SCOTT

DATE FRIDAY, 9 APRIL 2010

FILE NO PSA 32 OF 2007

CITATION NO. 2010 WAIRC 00192

Result Application dismissed

Representation

Applicant Mr P Fraser of counsel

Respondent Mr R Hooker of counsel

Order

HAVING heard Mr P Fraser on behalf of the applicant and Mr R Hooker on behalf of the respondent, the Public Service Arbitrator, pursuant to the powers conferred under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby dismissed.

[L.S.]

(Sgd.) P E SCOTT,
Acting Senior Commissioner,
Public Service Arbitrator.

2010 WAIRC 00193

PARTIES WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
JUDITH MARGARET WICKHAM **APPLICANT**

-v-
WORKCOVER WESTERN AUSTRALIA AUTHORITY **RESPONDENT**

CORAM PUBLIC SERVICE ARBITRATOR
ACTING SENIOR COMMISSIONER P E SCOTT

DATE FRIDAY, 9 APRIL 2010

FILE NO PSA 33 OF 2007

CITATION NO. 2010 WAIRC 00193

Result Application dismissed

Representation

Applicant Mr P Fraser of counsel

Respondent Mr R Hooker of counsel

Order

HAVING heard Mr P Fraser on behalf of the applicant and Mr R Hooker on behalf of the respondent, the Public Service Arbitrator, pursuant to the powers conferred under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby dismissed.

[L.S.]

(Sgd.) P E SCOTT,
Acting Senior Commissioner,
Public Service Arbitrator.

2010 WAIRC 00194

PARTIES WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
CHARLES ALLAN BRYDON

APPLICANT

-v-

WORKCOVER, WESTERN AUSTRALIA

RESPONDENT

CORAM PUBLIC SERVICE ARBITRATOR
ACTING SENIOR COMMISSIONER P E SCOTT

DATE FRIDAY, 9 APRIL 2010

FILE NO PSA 34 OF 2007

CITATION NO. 2010 WAIRC 00194

Result Application dismissed

Representation

Applicant Mr P Fraser of counsel

Respondent Mr R Hooker of counsel

Order

HAVING heard Mr P Fraser on behalf of the applicant and Mr R Hooker on behalf of the respondent, the Public Service Arbitrator, pursuant to the powers conferred under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby dismissed.

[L.S.]

(Sgd.) P E SCOTT,
Acting Senior Commissioner,
Public Service Arbitrator.

2010 WAIRC 00195

PARTIES WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
SHANE MELVILLE

APPLICANT

-v-

WORKCOVER WESTERN AUSTRALIAN AUTHORITY

RESPONDENT

CORAM PUBLIC SERVICE ARBITRATOR
ACTING SENIOR COMMISSIONER P E SCOTT

DATE FRIDAY, 9 APRIL 2010

FILE NO PSA 43 OF 2007

CITATION NO. 2010 WAIRC 00195

Result Application dismissed

Representation

Applicant Mr P Fraser of counsel

Respondent Mr R Hooker of counsel

Order

HAVING heard Mr P Fraser on behalf of the applicant and Mr R Hooker on behalf of the respondent, the Public Service Arbitrator, pursuant to the powers conferred under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby dismissed.

[L.S.]

(Sgd.) P E SCOTT,
Acting Senior Commissioner,
Public Service Arbitrator.

RECLASSIFICATION APPEALS—Notation of—

File Number	Appellant	Respondent	Commissioner	Decision	Finalisation Date
PSA 70/2008	Mr Barrie York	WorkCover Western Australia Authority	Scott Acting SC	Dismissed	27/11/2009
PSA 71/2008	Mr Valentin Fernandez	WorkCover Western Australia Authority	Scott Acting SC	Dismissed	27/11/2009
PSA 72/2008	Mr Kerry Dunlop	WorkCover Western Australia Authority	Scott Acting SC	Dismissed	27/11/2009
PSA 73/2008	Mr Christopher Forsyth	WorkCover Western Australia Authority	Scott Acting SC	Dismissed	27/11/2009
PSA 74/2008	Ms Jacqueline Frances Wallace	WorkCover Western Australia Authority	Scott Acting SC	Dismissed	27/11/2009

ROAD FREIGHT TRANSPORT INDUSTRY TRIBUNAL—Matters Dealt With—

2010 WAIRC 00121

REFERRAL OF DISPUTE RE TERMINATION OF CONTRACTS OF UNION MEMBERS

IN THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

SITTING AS

THE ROAD FREIGHT TRANSPORT INDUSTRY TRIBUNAL

PARTIESTRANSPORT WORKERS' UNION OF AUSTRALIA, INDUSTRIAL UNION OF WORKERS,
WESTERN AUSTRALIAN BRANCH**APPLICANT**

-v-

PMP PTY LTD

RESPONDENT**CORAM**

COMMISSIONER J L HARRISON

DATE

THURSDAY, 18 MARCH 2010

FILE NO/S

RFT 22 OF 2009

CITATION NO.

2010 WAIRC 00121

Result Discontinued**Representation****Applicant** Mr N Hodgson and Ms M Papa**Respondent** Mr S Edwards (of counsel)*Order*

WHEREAS the applicant filed a referral to the Road Freight Transport Industry Tribunal (the Tribunal) under s 40 of the *Owner-Drivers (Contracts and Disputes) Act 2007* on 3 November 2009; and

WHEREAS on 9 November 2009 the Tribunal convened a conciliation conference in respect of the matter; and

WHEREAS at the conclusion of the conference the applicant was given time to consider its position with respect to the application; and

WHEREAS the Tribunal contacted the applicant on a number of occasions requesting it advise its intentions with respect to this application; and

WHEREAS on 5 March 2010 the applicant advised the Tribunal that the matter had been resolved and requested the file be closed; and

WHEREAS on 8 March 2010 the respondent advised that it had no objection to the file being closed;

NOW THEREFORE, the Commission, sitting as the Road Freight Transport Industry Tribunal, pursuant to the powers conferred on it under the *Owner-Drivers (Contracts and Disputes) Act 2007* hereby orders –

THAT the application be and is hereby discontinued.

(Sgd.) J L HARRISON,
Commissioner.

[L.S.]



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CUMULATIVE CONTENTS AND DIGEST APPEAR AT THE END OF THIS PUBLICATION

INDUSTRIAL APPEAL COURT—Appeal against decision of Full Bench—

[2010] WASCA 53

JURISDICTION : WESTERN AUSTRALIAN INDUSTRIAL APPEAL COURT
CITATION : GUEST -v- KIMBERLEY LAND COUNCIL ABORIGINAL CORPORATION
 [2010] WASCA 53
CORAM : PULLIN J
 BUSS J
 KENNETH MARTIN J
HEARD : 4 MARCH 2010
DELIVERED : 25 MARCH 2010
FILE NO/S : IAC 3 of 2009
BETWEEN : KRYSTI GUEST
 Appellant
 AND
 KIMBERLEY LAND COUNCIL ABORIGINAL CORPORATION
 Respondent

ON APPEAL FROM:

Jurisdiction : WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
Coram : RITTER AP
 SCOTT C
 MAYMAN C
Citation : GUEST v KIMBERLEY LAND COUNCIL [2009] WAIRC 668; [2009] WAIRC 1155
File No : FBA 4 of 2009

Catchwords:

Industrial law - Appeal against dismissal of appeal - Whether court has jurisdiction to entertain appeal - Turns on own facts and circumstances

*Legislation:**Commonwealth Constitution*, s 51(xx), s 109*Industrial Relations Act 1979* (WA), s 7(1), s 34, s 49(2), s 90(1)(b)*Judiciary Act 1903* (Cth), s 78B*Workplace Relations Act 1996* (Cth), s 4(1), s 5, s 6, s 16*Result:*

Appeal dismissed

Category: B**Representation:***Counsel:*

Appellant	:	In person
Respondent	:	No appearance

Solicitors:

Appellant	:	In person
Respondent	:	Derek Schapper

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

Australian Competition & Consumer Commission v C G Berbatis Holdings Pty Ltd [1999] FCA 1151; (1999) 95 FCR 292

Gerhardy v Brown (1985) 159 CLR 70

Guest v Kimberley Land Council [2009] WAIRC 1155

Guest v Kimberley Land Council [2009] WAIRC 150

Guest v Kimberley Land Council [2009] WAIRC 443

Guest v Kimberley Land Council [2009] WAIRC 668

1 **PULLIN J:** This is an appeal by the appellant against an order of the Full Bench of the Western Australian Industrial Relations Commission (WAIC), whereby the Full Bench dismissed an appeal against an order of Commissioner Wood that 'the hearing of jurisdiction be reopened'.

2 The background is as follows. The appellant was employed by the respondent until she was dismissed on 27 October 2008. The appellant filed an application with the Commission alleging that the termination of her employment was harsh, oppressive and unfair and sought a reinstatement order. The respondent denied the allegation of unfair dismissal but also raised an issue about the jurisdiction of the Commission to hear and determine the application. It did this by claiming that it was a trading corporation and therefore a 'constitutional corporation' as defined in the *Workplace Relations Act 1996* (Cth) (WRA). If it were such an entity, then the Commission did not have jurisdiction to hear and determine the application.

3 Commissioner Wood decided he would consider the jurisdiction issue at a preliminary hearing. The commissioner conducted the hearing and then published reasons in which he concluded that the respondent bore the onus of proving that it was a constitutional corporation; that it had not discharged the onus; and that in consequence the Commission had jurisdiction: *Guest v Kimberley Land Council* [2009] WAIRC 150. The respondent filed an application for leave to appeal to the Full Bench against that decision pursuant to s 49(2) of the *Industrial Relations Act 1979* (WA) (IRA). The Full Bench pointed out that there had been no award, order or declaration as required by s 34 of the IRA and the appeal was adjourned to allow the respondent to consider its position. The respondent discontinued that appeal.

4 The respondent then applied to Commissioner Wood to reopen the hearing concerning jurisdiction. Commissioner Wood heard the application and made the order which was the subject of the appeal to the Full Bench, which resulted in the order, which is now the subject of the appeal to this court. Commissioner Wood's reasons for the order appear in *Guest v Kimberley Land Council* [2009] WAIRC 443. Those reasons reveal that Commissioner Wood reopened the hearing because he decided he had erred in his earlier reasons in deciding that the onus was on the respondent to prove that it was a trading corporation and therefore a constitutional corporation. Instead the commissioner found that the onus was on the appellant to establish that the Commission had jurisdiction.

5 The appellant appealed against the order of Commissioner Wood reopening the hearing. The appeal came before the Full Bench. It granted leave to appeal pursuant to s 49(2a) of the IRA, but then made an order dismissing the appeal. That is the order appealed against in these proceedings. The Full Bench in its reasons (see *Guest v Kimberley Land Council* [2009] WAIRC 668; [2009] WAIRC 1155) in effect, held that the commissioner erred in both his decisions. The Full Bench said that the jurisdictional issue did not turn upon, and could not be determined, by considering who bore the onus of proof.

6 In the course of the Full Bench's reasons, the Acting President referred to provisions of the *Commonwealth Constitution* and the WRA to explain why the Commission would be deprived of jurisdiction if the respondent was found to be a trading corporation. These included a reference to s 51(xx) and s 109 of the *Constitution* and s 4(1), s 5, s 6 and s 16 of the WRA, the combined effect being that if the respondent is a trading corporation, the Commission has no jurisdiction.

7 The Acting President said at [82]:

- (c) The determination of the question of whether the KLC was a trading corporation should have been determined as a constitutional or statutory fact in the way described by Brennan J in *Gerhardy v Brown* (1985) 159 CLR 70, 141 - 142.

8 The Acting President added at [84]:

This is because although Ms Guest has established that the Commissioner did err in his consideration of the onus of proof issue, this does not mean that the jurisdictional question should not have been reopened ... If the appeal is dismissed then the matter will remain with or be returned to the Commissioner who can then act in accordance with the order which was appealed against.

9 The Full Bench adjourned to allow further submissions to be made as to the appropriate course and for the appropriate orders to be made. After hearing submissions, the Full Bench published supplementary reasons (*Guest v Kimberley Land Council* [2009] WAIRC 1155) in which Ritter AP said:

The KLC submitted, as postulated at [84] of my reasons, that leave to appeal should be granted and the appeal dismissed. In summary, this was because:

- (a) Both decisions made by the Commissioner at first instance were in error because they were determined by the application of an onus of proof.
- (b) Whether or not the KLC is a trading corporation is a constitutional or statutory fact and the evidence to date does not allow a satisfactory finding to be made.
- (c) The unsatisfactory state of the evidence cannot be overcome or avoided by resort to an onus.
- (d) The re-opening of the hearing and the taking of additional evidence is the only way in which the present uncertainty about whether the KLC is a trading corporation can be overcome [3].

10 Ritter AP recorded the submissions of the appellant, these being to the effect that the Commissioner was in error in deciding to reopen the question of jurisdiction. In making this submission the appellant contended that the Full Bench erred in deciding that the question of whether the respondent is a trading corporation should be determined as a constitutional or statutory fact in accordance with the process described by Brennan J in *Gerhardy v Brown* (1985) 159 CLR 70 [4].

11 Ritter AP stated that he remained of the opinion that the issue which had to be determined by the commissioner was squarely within the observations made by Brennan J in *Gerhardy*. Ritter AP then affirmed his preliminary view that leave to appeal should be granted and the appeal dismissed. Commissioners Scott and Mayman agreed. Orders were made accordingly.

12 The appellant's grounds of appeal as amended at the hearing read:

The decision of the Full Bench is erroneous in law on the following grounds:-

1. The Full Bench erred in the construction or interpretation of the term 'trading corporation' in s51(xx) of the *Constitution* and s4 and s6 of the *Workplace Relations Act 2006* [sic] (Cth) by determining that, in accordance with the reasoning of Brennan J in *Gerhardy v Brown* 159 CLR 70 at 141-142 and subsequent authorities quoted by the Full Bench, the fact of whether the Respondent is a trading corporation:
 - a. is a 'constitutional fact' and not an ordinary jurisdictional fact between the parties; and
 - b. as a 'constitutional fact' is governed by exceptional rules of evidence and not ordinary rules of civil evidence.
2. The Full Bench erred in the construction and interpretation of the term 'trading corporation' in s4 and s6 of the *Workplace Relations Act 2006* [sic] (Cth) and s51(xx) of the *Constitution* by ordering that the appeal be dismissed and the matter returned to a single Commissioner to determine whether the Respondent is a trading corporation in accordance with its Reasons for Decision as to 'constitutional facts' and exceptional rules of evidence and procedure per Brennan J in *Gerhardy v Brown* 159 CLR 70 at 141-142.
3. The Full Bench erred in its interpretation or construction of 78B of the *Judiciary Act 1903* (Cth) by finding that it did not apply to the Full Bench's request for supplementary submissions on the interpretation or construction of the concept of 'constitutional fact' in general and the issue of whether or not the term 'trading corporation' was a constitutional fact or an ordinary fact in this matter.

This appeal notice is made pursuant to section 90(1)(b) of the *Industrial Relations Act 1979* (WA) on the ground that the order and reasons of the Full Bench identified in this notice are erroneous in law in that there has been an error in the construction or interpretation of the s4 and s6 of the *Workplace Relations Act 2006* [sic] (Cth) and s 51(xx) of the *Constitution* of Australia in the course of making the decision appealed against.

13 Section 90 of the IRA states that:

- (1) Subject to this section, an appeal lies to the Court in the manner prescribed from any decision of the ... Full Bench ...

- (a) on the ground that the decision is in excess of jurisdiction in that the matter the subject of the decision is not an industrial matter;
- (b) on the ground that the decision is erroneous in law in that there has been an error in the construction or interpretation of any Act, regulation, award, industrial agreement or order in the course of making the decision appealed against; or
- (c) on the ground that the appellant has been denied the right to be heard, but upon no other ground.

14 The appellant relies only upon s 90(1)(b) and contends in her written submissions that:

15. The basis of this appeal is that the Full Bench's decision is erroneous in law in interpreting or constructing [sic] the statutory provision 'trading corporation' in s 51(xx) of the *Constitution* and s 4 and s 6(1)(a) of the WRA as a 'constitutional fact' as opposed to an ordinary fact between the parties. This erroneous interpretation then leads to the Full Bench's further legal error that the standard rules of evidence do not apply in determining the statutory term 'trading corporation' because such standard evidentiary rules may be suspended when determining a 'constitutional fact'.

15 This was repeated in the appellant's oral submissions. I do not accept the appellant's submission. The decision of the Full Bench was the order it made - see the definition of 'decision' in s 7(1) of the IRA. The order was 'the appeal is dismissed'. 'In the course of making the decision' (see s 90(1)(b) of the IRA), it is true that Ritter AP referred to the *Constitution* and statutory provisions identified above, but they were merely referred to in order to explain why the Commission would have no jurisdiction if the respondent was a trading corporation. There was no construction or interpretation of any of these provisions. Having explained why the Commission had no jurisdiction if the respondent was a trading entity, the Full Bench then decided the issue before it, which was how Commissioner Wood had to approach the task of determining whether the respondent was or was not a trading corporation. It held that this had to be determined in the manner referred to by Brennan J in the *Gerhardy v Brown* case. Thus, grounds of appeal 1 and 2 which assert an error in the construction or interpretation of s 51(xx) of the *Constitution* and s 4 and s 6 of the WRA have no merit.

Section 78B of the Judiciary Act

Ground 3 alleges an error in the interpretation or construction of s 78B of the *Judiciary Act 1903* (Cth). The Full Bench rejected the submission that s 78B of the *Judiciary Act* applied and said at [7] of its supplementary reasons, that the points made in its earlier reasons were about the way in which the commissioner 'as a matter of onus and procedure' had decided to reopen the question of jurisdiction. The Full Bench said that the reasons also covered the basis upon which, and the way the Commission should receive evidence to determine whether a respondent is a trading corporation. The Full Bench said that those points did not involve a 'matter arising under the *Constitution* or involving its interpretation' which was the required criterion for the issuing of s 78B notices. The Full Bench also said that the characterisation of the respondent as a trading corporation or otherwise did not arise in the appeal. That is correct. No question about the construction or interpretation of s 78B arose. Ground 3 has no merit. In this court the appellant asserted that s 78B notices should be issued. Section 78B does not apply just because a party asserts that it applies. It is the duty of the court to decide whether s 78B applies: *Australian Competition & Consumer Commission v C G Berbatis Holdings Pty Ltd* [1999] FCA 1151; (1999) 95 FCR 292. For reasons given above, no matter arose under the *Constitution* or involved its interpretation and the court did not require s 78B notices to issue for that reason.

17 The appeal should be dismissed.

18 **BUSS J:** I agree with Pullin J. During oral submissions before this court, I asked the appellant to identify the statutory provision which she contended, for the purposes of s 90(1)(b) of the *Industrial Relations Act 1979* (WA), had been wrongly construed or interpreted by the Full Bench of the Commission. The appellant referred to the definition of 'constitutional corporation' in s 4(1) of the *Workplace Relations Act 1996* (Cth). The Full Bench did not construe or interpret this provision. No issue concerning the construction or interpretation of the definition of 'constitutional corporation', and no issue in relation to the proper application of that definition, is likely to arise in the pending proceedings before the Commission until the facts relevant to the characterisation of the respondent as a 'constitutional corporation' or not have been fully found. I am satisfied that this court does not have jurisdiction to entertain the purported appeal. It should be dismissed.

19 **KENNETH MARTIN J:** I agree with Pullin JA.

20 The appellant, in my view, has wholly failed to meet the requirements of s 90(1)(b) of the *Industrial Relations Act*, as regards her threshold obligation to identify a 'construction or interpretation' issue arising from any relevant quarter and sufficient to lay a jurisdictional foundation for an appeal to this court.

21 Rather, it seems to me that the appellant seeks to ventilate what is, in substance, a procedural grievance - over the manner in which the Commission would go about ascertaining whether or not the respondent is a trading corporation, from an evidentiary perspective. That substantive grievance does not identify an arguable construction or interpretation error arising in the course of the making of the decision by the Full Bench which is appealed.

2010 WAIRC 00257

AGAINST THE DECISION OF THE FULL BENCH IN MATTER NO. FBA 4 OF 2009 GIVEN ON 9 NOVEMBER 2009.

WESTERN AUSTRALIAN INDUSTRIAL APPEAL COURT

PARTIES

KRYSTI GUEST

APPELLANT

-v-

KIMBERLEY LAND COUNCIL ABORIGINAL CORPORATION

RESPONDENT**CORAM**

PULLIN J

BUSS J

KENNETH MARTIN J

DATE HEARD

THURSDAY, 4 MARCH 2010

DATE DELIVERED

THURSDAY, 25 MARCH 2010

FILE NO/S

IAC 3 OF 2009

CITATION NO.

2010 WAIRC 00257

Result

Appeal dismissed

Representation**Appellant**

Ms K Guest (In person)

Respondent

Mr D Schapper (of Counsel) for the Respondent

Order

HAVING HEARD Ms K Guest on her own behalf and Mr D Schapper (of Counsel), on behalf of the Respondent THE COURT HEREBY ORDERS THAT:-

The appeal is dismissed.

[L.S.]

(Sgd.) J SPURLING,
Clerk of Court.

FULL BENCH—Appeals against decision of Commission—

2010 WAIRC 00242

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

FULL BENCH

CITATION : 2010 WAIRC 00242
CORAM : THE HONOURABLE J H SMITH, ACTING PRESIDENT
 COMMISSIONER J L HARRISON
 COMMISSIONER S M MAYMAN
HEARD : THURSDAY, 22 APRIL 2010
DELIVERED : WEDNESDAY, 28 APRIL 2010
FILE NO. : FBA 2 OF 2010
BETWEEN : JOHN PALERMO
 Appellant
 AND
 CHARLES HENRY ROSENTHAL
 Respondent

ON APPEAL FROM:

Jurisdiction : Western Australian Industrial Relations Commission
Coram : Acting Senior Commissioner P E Scott
Citations : 2010 WAIRC 00006, 2010 WAIRC 00023
File No : U 10 of 2009, B 101 of 2009

CatchWords	:	Industrial Law (WA) - Decision of Commission was a 'finding' under s 49(2a) of the <i>Industrial Relations Act 1979</i> (WA) - what constitutes a 'decision' of the Commission considered - oral rulings not a decision within the meaning of s 49 of the Act - application to amend grounds of appeal - interlocutory order made - principles of case management considered - public interest requirement in s 49(2a) not satisfied - purpose of speaking to the minutes considered - application to amend dismissed - appeal dismissed - <i>Industrial Relations Act 1979</i> (WA) s 22B, s 27(1)(ha), s 27(1)(hb), s 32(2), s 34, s 35, s 36, s 49, s 49(2a).
Result	:	Application to amend appeal dismissed and appeal dismissed.
Representation:		
Appellant	:	Mr Tony Palermo (as agent)
Respondent	:	Ms A Bilich (of counsel)

Reasons for Decision

THE FULL BENCH:**Background**

1 This appeal was heard on 22 April 2010. At the conclusion of the hearing the parties were informed that the appeal and the application to amend the grounds of appeal would be dismissed. The following paragraphs of these reasons for decision set out the reasons why we reached that decision.

The Grounds of Appeal

- 2 The appellant in the notice of appeal seeks to institute an appeal against the decision of the Commission given on 15 January 2010 in U 10 of 2009 and B 101 of 2009. A 'decision' within the meaning of the *Industrial Relations Act 1979* (WA) (the Act) was not given on that day but reasons for decision were delivered. The 'decision' was given on 21 January 2010 in the form of an order. However in the schedule to the notice of appeal the grounds of appeal make it clear the appeal is against the order made by the Commission on 21 January 2010.
- 3 The order made on 21 January 2010 was made for the purpose of limiting the period for presentation of the parties' respective cases pursuant to s 27(1)(ha) of the Act. The order requires the parties present their witnesses and closing submissions within maximum periods.
- 4 The order was made by the Commission after it had commenced the hearing of the substantive applications before the Commission. The Acting Senior Commissioner in her reasons for decision said that she was concerned with the Commissioner's obligation to conduct hearings in an expeditious manner and do so in a manner which is fair to both sides. Prior to making the order the Commission had taken five days of evidence. The Acting Senior Commissioner took the view that it would be appropriate to determine the periods that are reasonably necessary for the fair and adequate presentation of the parties' respective cases to enable the hearing and determination of the applications to be completed.
- 5 The appellant seeks to appeal the order made on 21 January 2010 on grounds that he has not been afforded the right to be heard by the Commission in relation to the orders.
- 6 Prior to making the order on 21 January 2010 the Commission made an order on 5 November 2009 which also dealt with a number of interlocutory issues dealing with further and better particulars and other programming orders in respect of the identification of witnesses and programming the length of time for evidence to be completed and submissions.

Application to Amend the Grounds of Appeal

- 7 The appellant filed a supplementary appeal book on 23 February 2010 which contains an application to amend the grounds of appeal to add additional grounds of appeal. In the application to amend the grounds of appeal the appellant seeks to add a number of grounds of appeal to set aside a number of rulings made by the Commission which were oral rulings made during the course of the hearing of these applications on 31 August 2009 and 20 September 2009. The appellant also seeks an order that the Commission reimburse him for the cost incurred and for time lost as a result of the provision of an incorrect and unedited transcript in February 2010.
- 8 The schedule to the application to amend the grounds of appeal sets out a number of proposed supplementary grounds of appeal. These are set out in paragraphs 4, 8 and 9(3) of the application to amend. Paragraph 4 provides as follows:
 4. This schedule sets out the grounds of appeal supplementary to the application filed at the Commission on 1 February 2010. They are as follows:
 - (a) the ruling made by Acting Senior Commissioner P.E. Scott (**Commissioner**) on 20 September 2009 to refuse to allow me to continue to examine Chantel Rosenthal about computer records, and to refuse me to call Nadine Rosenthal to produce her computer and to submit to examination;
 - (b) the ruling made by the Commissioner on 31 August 2009 to refuse to allow me to call Laurie Rosenthal to produce stock and other records and to submit to examination; and
 - (c) the ruling made by the Commissioner on 31 August 2009 to refuse to allow me to examine the records of LS & NA Rosenthal Pty Ltd AC 092 127369 (**Company**), of which the Respondent, Chantel Rosenthal, Nadine Rosenthal and Laurie Rosenthal are directors and shareholders.

- 9 The appellant says in paragraph 4 and 8 that the Commissioner should have allowed him to call Chantel Rosenthal, Nadine Rosenthal and Laurie Rosenthal to be examined as witnesses. In paragraph 9(3) the appellant makes an application for reimbursement of costs in relation to time for charge-out loss as the result of the incorrect and unedited transcript being provided to him by the Commission. In the alternative the appellant seeks a full refund of the cost of fees paid of \$1,188. At the hearing of the appeal the Full Bench informed the appellant that this was not a matter that could properly form a ground of appeal as the provision of transcript was not a 'decision' of the Commission within the meaning of s 49 of the Act.

The Appellant's Submissions

- 10 The appellant's submissions and evidence relied upon about the speaking to the minutes of the order are set out in [44] and [56] of these reasons.
- 11 In support of the application to amend the grounds of appeal, the appellant requested an extension of time to file the applications due to delay caused by the Commission as he was provided with an incorrect copy of the transcript by the Commission.
- 12 The appellant's particulars filed on 8 June 2009 which state the reasons the respondent (applicant) was terminated are as follows: 'He was dismissed for serious misconduct, failing and refusing to attend to his duties, failing and refusing to attend to the carting of hay, failing and refusing to attending (sic) to legislative requirements and failing and refusing to attend to the welfare and other requirements of cattle'.
- 13 The appellant says he requires to continue to cross-examine Chantel Rosenthal about computer records as this part of the cross-examination was incomplete. In the supplementary appeal book, the appellant contends that during cross-examination Chantel Rosenthal admitted compiling farm notes for the respondent and she also admitted she had typed letters to Tony Palermo on a computer which belonged to Nadine Rosenthal, who is Mrs Rosenthal Snr. The appellant also claims that Tony Palermo had not received some of those letters and during cross-examination Tony Palermo, the agent for the appellant, asked Chantel Rosenthal to provide proof as to when the letters were actually typed. The appellant claims that she could not do so without producing Nadine Rosenthal's computer for examination. The appellant contends that the Acting Senior Commissioner erred by not requiring Nadine Rosenthal to appear to produce the computer and by not allowing Tony Palermo to continue to examine Chantel Rosenthal in relation to the computer. However during oral submissions to the Full Bench, the appellant's agent Tony Palermo informed the Full Bench that if the computer is produced, the appellant would not require Chantel Rosenthal to be recalled to give evidence.
- 14 In relation to the summonses to Mr and Mrs Rosenthal Snr, the appellant says that during the cross-examination of Chantel Rosenthal it became evident that Laurie Rosenthal, who is Mr Rosenthal Snr and his directors of LS and NA Rosenthal Pty Ltd carried the same stock for farming operations as the appellant did and, further, when the respondent (applicant) went on leave, he consigned (without the authority of the appellant) the farm and all stock to Laurie Rosenthal to manage. The company's farm is located across the road at about 100 metres from the appellant's farming operations. The appellant argues that he requires all stock records of the Rosenthal operations to be produced, although he admits that no allegation of theft of any stock is made against the respondent (applicant). Notwithstanding this admission, the appellant claims the production of records and the evidence that Mr Rosenthal Snr could give would be critical and instrumental to proving the case for dismissal.
- 15 The appellant says this is not a fishing exercise and that other than diaries which were produced to the Commission prior to the hearing he has not been able to reconcile missing cattle numbers.
- 16 The appellant also argues it is relevant for him to determine whether the respondent (applicant) appropriated diesel fuel, plant and equipment and hardware and other farm items that contributed to the dismissal action. Further the appellant says it is relevant for him to determine whether the respondent was also employed by LS and NA Rosenthal Pty Ltd whilst employed full-time by him.
- 17 During oral submissions before the Full Bench, the appellant's agent informed the Full Bench that the appellant now only seeks to call evidence from Mrs Rosenthal Snr about the computer and no other issue.
- 18 The appellant's agent also explained why the appellant wants to call Ms Consentino. He said the appellant wished to call her because one of his principal witnesses that he had intended to call had died. Shortly before the witness died Ms Consentino telephoned him and the appellant wishes to examine her about that matter.
- 19 The appellant argues that if Mr Laurie Rosenthal is called to give evidence then they may not need to call five or six of their witnesses including the appellant's agent, Mr Tony Palermo.

The Respondent's Submissions

- 20 The respondent points out that the appellant seeks to appeal discretionary decisions made by the Commission and that the approach to the Full Bench to the exercise of its discretion is canvassed notably in *Burswood Resort (Management) Ltd v The Australian Liquor, Hospitality and Miscellaneous Workers' Union, Western Australian Branch* [2000] WASCA 386 at [12] - [13] which in turn follows well established principles laid down in *House v The King* (1936) 55 CLR 499 (504 - 505) and *Norbis v Norbis* (1986) 161 CLR 513 (518 - 519).
- 21 The respondent also says the appeals have not complied with reg 102(3) of the *Industrial Relations Commission Regulations 2005* (the regulations) which requires a notice of appeal to 'specify the particulars relied on to demonstrate that it is against the weight of evidence and the specific reasons why it is alleged to be wrong in law'. As the decisions appealed against are 'findings' as defined in s 7 of the Act, reg 102(4) of the regulations requires the grounds of appeal to contain a statement setting out 'the reasons why it is considered that the appeal is of such importance that, in the public interest, an appeal should lie'. The respondent points out that neither the notice of appeal nor the application to amend the grounds of appeal satisfied this requirement.

- 22 Further the respondent says that the appeal and the amended application to amend the grounds of appeal must fail by virtue of s 49(2a) of the Act because none of the matters are of such importance that, in the public interest, an appeal should lie. The respondent also says that the appeal and the application to amend the appeal should fail because the appellant is not able to show an error of law in the exercise of discretion by the Acting Senior Commissioner.
- 23 In relation to the notice of appeal, the respondent points out that the grounds relate to an alleged lack of notice given to the appellant about the speaking to the minutes held on 21 January 2010. They also point out there is no complaint about the process leading to the draft orders been issued. Nor is there any complaint that the appellant did not have an adequate opportunity to make submissions prior to the issuing of reasons for decision.
- 24 The respondent says a speaking to the minutes under the Act only has a limited purpose: *Tan v Paris and Christie Kafetzis t/as Gabriel's Café* (1999) 79 WAIG 2987. In particular, he says the purpose of a speaking to the minutes is to ensure that the order reflects the Commission's intention and not to challenge the order itself.
- 25 The respondent also contends that in any event the order made by Acting Senior Commissioner Scott on 15 January 2010 limiting the time for presentation of the parties' cases arose as a result of the appellant's failure to provide particulars of its case despite being ordered to do so by the Acting Senior Commissioner on 5 November 2009.
- 26 In relation to the appellant's application to amend the grounds of appeal, the respondent says that before the appeal grounds can be amended an extension of time would have to be granted to the appellant as an appeal to the Full Bench must be brought within 21 days of the decision being appealed against (s 49(3) of the Act). The respondent submits that an extension of time should not be granted in these circumstances as the appellant has not provided an acceptable explanation for a delay as a significant period of time has lapsed since the decisions were made in August 2009 and September 2009.
- 27 In relation to the decision by Acting Senior Commissioner Scott to set aside the witness summonses, the respondent contends the submissions made by the appellant's agent showed the appellant's purposes for issuing the summonses were a fishing expedition and for an improper and ancillary purpose, namely to establish whether the witnesses had stolen cattle where it was not alleged in the proceedings that the respondent had stolen cattle or was dismissed for that reason.
- 28 In respect of recalling Chantel Rosenthal, the respondent says her evidence in relation to the computer was limited to verifying she had typed certain documents on certain dates using Nadine Rosenthal's computer. The respondent contends the appellant's purpose in demanding production of Nadine Rosenthal's computer was to disprove the witness' evidence about the dates on which she typed those letters. Consequently, the respondent submits there is no forensic purpose for the production of the computer and that the production of the computer had minimal purpose in the proceedings. A submission is also made that the Commission is not a forum for the appellant to retrospectively determine what the reason is for the termination of the respondent's (applicant's) employment.

The Appeal is Against a Finding or Findings

- 29 Pursuant to s 49(2) of the Act, an appeal lies to the Full Bench in the manner prescribed from any decision of the Commission. However, pursuant to s 49(2)(a) of the Act, an appeal does not lie under s 49 from a finding unless, in the opinion of the Full Bench, the matter is of such importance that, in the public interest, an appeal shall lie.
- 30 A 'decision' is defined in s 7 of the Act to include award, order, declaration or finding. A 'finding' is defined in s 7 of the Act to mean a decision, determination or ruling made in the course of proceedings that does not finally decide, determine or dispose of the matter to which the proceedings relate.
- 31 Section 34(1) of the Act provides:
- The decision of the Commission shall be in the form of an award, order, or declaration and shall in every case be signed and delivered by the commissioner constituting the Commission that heard the matter to which the decision relates or, in the case of a decision of the Commission in Court Session, shall be signed and delivered by the Senior Commissioner among the commissioners constituting the Commission in Court Session.
- 32 Section 35 of the Act relevantly provides:
- (1) Subject to this section, the decision of the Commission, except a direction, order or declaration under section 32 or an order for dismissal shall, before it is delivered, be drawn up in the form of minutes which shall be handed down to the parties concerned and, unless in any particular case the Commission otherwise determines, its reasons for decision shall be published at the same time.
 - (2) At the discretion of the commissioner giving the decision the minutes and reasons for decision may be handed down by the Registrar.
 - (3) The parties concerned shall, at a time fixed by the Commission, be entitled to speak to matters contained in the minutes of the decision and the Commission may, after hearing the parties, vary the terms of those minutes before they are delivered as the decision of the Commission.
 - (4) The Commission, with the consent of the parties, may waive the requirements of this section in any case in which it is of the opinion that the procedures therein prescribed are inappropriate or unnecessary.
- 33 Further, s 36 of the act provides:
- Every decision of the Commission shall —
- (a) be sealed with the seal of the Commission;
 - (b) be deposited in the office of the Registrar; and
 - (c) be open to inspection without charge during office hours by any person interested.

- 34 It is clear that the order made on 21 January 2010 is a 'finding' constituted by an order made by the Commission as the order did not dispose of the rights of the parties. It is an interlocutory order solely concerned with the mechanics of case management. Consequently, for an appeal to lie the Full Bench must form the opinion that the matter is of such importance that, in the public interest, an appeal should lie. Unless the Full Bench forms that opinion, the appellant does not have a right of appeal in respect of the order made on 21 January 2010.

Does an Appeal lie against rulings made during the course of a Hearing

- 35 A decision of the Commission is a document required to be signed and delivered. Before its delivery it has to be drawn up in the form of minutes. The minutes are either varied or not varied if there is a speaking to the minutes. The decision of the Commission is then delivered, sealed and deposited in the office of the Registrar and is open for inspection: *McCorry v Como Investments Pty Ltd* (1989) 69 WAIG 1000 (1003) (Kennedy J); *Registrar v Metal and Engineering Workers' Union of Western Australia* (1994) 74 WAIG 1487 (*Hamersley Iron*). Unless the decision is sealed there is no 'decision': *Como Investments Pty Ltd* (1001 - 1003) (Brinsden J).
- 36 In the *Hamersley Iron* matter, the Commission convened a compulsory conference under s 44 of the Act after employees of Hamersley employed at Tom Price had withdrawn their labour for an indefinite period. The Commissioner formed the opinion that it was necessary to intervene and to make an order prohibiting industrial action to prevent further deterioration of the industrial relations between the parties until further conciliation or, failing that, arbitration, had resolved the matter in dispute. On 19 June 1992, pursuant to its powers under s 44(6)(ba) of the Act, the Commissioner announced certain orders, which were subsequently incorporated into a formal order. The formal order was signed by the Commissioner and was deposited in the office of the Registrar on 23 September 1992. However the orders required that certain steps be taken by particular dates in June 1992. In October 1992, the Registrar commenced enforcement action against the respondent and a number of other unions, maintaining that the respondents had failed to take all such steps that were necessary to ensure the industrial action cease in accordance with the order. Breaches of the order were said to have occurred on dates in June 1992. It was argued on behalf of the respondents that at the time the breaches were said to have been committed there was no 'order' in existence. This argument was successful before the Full Bench who dismissed the enforcement application. The Registrar appealed to the Industrial Appeal Court who after hearing argument the majority of the Industrial Appeal Court dismissed the appeal.
- 37 Justice Kennedy explained the reasons of the majority for doing so as follows:

As I endeavoured to make clear in *McCorry's* case, in my opinion, a decision (which is defined to include an order) under the Act, except, perhaps, an oral order in conciliation proceedings under s 32(4), is a document. Until an oral order is put into the form of a document and signed and delivered, there is no order – cf *Holby v Hodgson* (1889) 24 QBD 103, at 107, per Lord Esher MR. Until that time there remains something to be done to perfect it. There is no general power to be found in the Act to make orders apply retrospectively. Whether a signed order, which has been delivered, still requires compliance with s 36, remains, for me, an open question. The answer to it may depend, to some extent, upon the meaning of the word 'delivered' in this context. Nevertheless, it is clear that the Act requires 'delivery' of the document after it has been signed. In *McCorry's* case, the signing, sealing and depositing of the document in the office of the Registrar all appear to have taken place on the same day. Having regard to the opening words of s 36 and to para (c), which requires that a decision be open to inspection, it may well be that the section merely addresses formalities to be complied with after the decision has been perfected. In contrast to ss 34 and 35, s 36 refers to 'every decision' and not 'the decision'. And it may well be that "delivery" of a decision by a Commissioner requires no more than the evincing of an intention, after signature, to have it operate (cf delivery of deeds, 12 Halsbury's Laws of England, 4th ed, para 1329). No suggestion was put before us, however, that if s 36 did not have to be complied with before the order came into effect, it would make any difference in the present case. The information we were given as to the normal procedure after orders have been signed strongly suggests that it would not, because, as in *McCorry's* case, the signing of the order and its depositing with the Registrar were likely to have occurred on the same day.

In my opinion, as the time when it is alleged that the respondents failed to take the steps required by the order, there was no breach of an existing order.

- 38 Consequently oral rulings made in the course of a hearing are not a 'decision' within the meaning of s 49 of the Act. As the Acting Senior Commissioner has made no 'decision' within the meaning of s 34, s 35 and s 36 of the Act in respect of the oral rulings complained of in August 2009 and September 2009 in the application to amend the notice of appeal, we are of the opinion that the application to amend should be dismissed on the basis that there is no 'decision' from which an appeal can be instituted. However, if it can be said the order made on 21 January 2010 disposes of these applications as the Acting Senior Commissioner reconsidered these applications in her reasons and dealt with the matter afresh, we are of the opinion the application should be dismissed as the matters raised in the application to amend are not of such importance that, in the public interest, an appeal should lie.

The terms of the Orders made on 5 November 2009 and 21 January 2010

- 39 It is clear from the grounds of appeal that the appellant does not seek to challenge the terms of the order made on 5 November 2009. The order made on 5 November 2009 and the reasons for decision set out in the order provided as follows:

WHEREAS this is an application by which the applicant claims that he has been unfairly dismissed from his employment with the respondent; and

WHEREAS on Thursday, the 23rd day of April 2009 the Commission issued Orders dealing with the Notice of Answer and Counter Proposal and matters of production and discovery; and

WHEREAS on Monday, the 11th day of May 2009 the Commission varied the Order of the 23rd day of April 2009; and

WHEREAS the matter proceeded to hearing on Monday, the 31st day of August 2009, Tuesday, the 1st day of September 2009, Wednesday, the 2nd day of September 2009, Tuesday, the 20th day of October 2009 and Wednesday, the 21st day of October 2009; and

WHEREAS the Commission expressed concern as to the pace at which the hearing was proceeding and discussed with the parties during the hearing of the 20th and 21st of October 2009 mechanisms for focusing the parties' attention on the issues in dispute between them and for specifying and limiting the times for the conduct of the hearing; and

WHEREAS the Commission noted that in accordance with the Orders previously issued by the Commission, the respondent filed and served a document dated the 8th day of June 2009 which provided some further and better particulars of the respondent's reasons for dismissal however, other matters continued to arise during the course of the hearing and it was difficult to determine whether they were matters upon which the respondent relies for its decision to terminate the employment and are thus relevant to the proceedings; and

WHEREAS the applicant sought a direction that the respondent file and serve further and better particulars of:

1. The applicant's alleged misconduct; and
2. The applicant's performance issues;

upon which it relies, in its decision to dismiss him; and

WHEREAS the respondent agreed to provide further and better particulars of those matters; and

WHEREAS the Commission sought from the respondent a timeframe in which he would be able to provide those further and better particulars of those matters and the respondent indicated that it would be approximately 60 days, that is by the 15th day of December 2009 due to his other business commitments; and

WHEREAS the Commission heard from the parties as to the appropriate timeframe for the filing and serving of such a document and the Commission has taken account of:

1. The timeframes provided for within the *Industrial Relations Act 1979* and the *Industrial Relations Commission Regulations 2005* for the filing and serving of claims and of Notices of Answer and Counter Proposal;
2. The fact that the respondent had previously filed and served some further and better particulars;
3. The hearing of the matter having proceeded for five days and that the respondent had been cross-examining the applicant, with some interruptions, over a number of days; and
4. The respondent's business commitments; and

WHEREAS the Commission is of the view that an appropriate period for the respondent to file and serve further and better particulars is a period of 28 days from Wednesday, the 21st day of October 2009 and that an order shall issue accordingly; and

WHEREAS by email dated the 20th day of October 2009 following the conclusion of the hearing of that day the applicant raised the issue of the Commission issuing directions limiting the period for presentation of the parties' respective cases pursuant to s 27(1)(ha) to ensure that the matter is conducted in a manner envisaged by s 26(1)(a); and

WHEREAS during the course of the hearing on 21st day of October 2009 the Commission heard from the applicant in elaboration on that matter and the respondent provided to the Commission a document expressing the respondent's view and further responded to the applicant's application; and

WHEREAS the Commission is of the view that in the circumstances of the manner in which the hearing of this matter has proceeded to date that it would be appropriate to determine the periods that are reasonably necessary for the fair and adequate presentation of the parties' respective cases and to require that the cases be presented within the respective periods; and

WHEREAS the Commission will require the parties to:

1. identify the names of their respective witnesses and how long they anticipate the examination of each such witness will take;
2. upon advice as to the names of the other party's witnesses and how long that party anticipates examination-in-chief will take, how long cross-examination will take; and
3. indicate the amount of time which will be required for the presentation of closing submissions or whether closing submissions ought to be made in writing and if so, the period to be allowed between the final day of hearing and the filing of closing submissions.

NOW THEREFORE, having heard Ms R Cosentino of counsel on behalf of the applicant and Mr T Palermo and Mr J Palermo, the Commission, pursuant to the powers conferred under the *Industrial Relations Act 1979*, hereby orders that:

1. The Respondent file and serve further and better particulars of facts and issues of:
 - (a) the applicant's alleged misconduct; and
 - (b) the applicant's performance issues,

upon which it relies as reasons for the termination of the applicant's employment no later than 28 days from Thursday, 5 November 2009;

2. The parties shall file and serve a list of the names of their witnesses and an estimate of the time necessary for examination in chief of each of those witnesses no later than 28 days from Thursday, 5 November 2009;
3. No later than 7 days after receipt of the other party's list of witnesses referred to in Order 2 above, each party shall file and serve a notice of the estimated length of time for the cross-examination of each of the other party's witnesses;
4. Reference to witnesses in Orders 2 and 3 above includes estimates of the time necessary to conclude the examination in chief of Victor John Matthews and the cross-examination of Charles Henry Rosenthal; and
5. The parties advise the Commission no later than 28 days from Thursday, 5 November 2009;
 - (a) an estimate of the length of time their closing submissions will take; and
 - (b) whether they would prefer to make closing submissions in writing; and
 - (c) if closing submissions are to be made in writing, the period to be allowed between the final day of hearing and the filing of closing submissions.
6. The parties advise the Commission of their unavailable dates for the resumption of the hearing in February and March 2010.

40 The material parts of the order made by the Commission on 21 January 2010 are that the Commission:

1. Declares that the periods set out in Order 2 hereunder are those reasonably necessary for the fair and adequate presentation of the parties' respective cases;
2. Orders that the parties shall present their cases in accordance with the maximum periods set out below:
 - (a) completion of the cross examination of the applicant, Charles Henry Rosenthal – a further day;
 - (b) completion of the evidence of Victor John Matthews:
 - (i) examination in chief – a further half day or 2.5 hours, whichever is greater;
 - (ii) cross examination – 1.5 hours.
 - (c) evidence of Tony Palermo:
 - (i) examination in chief – 2 hours;
 - (ii) cross examination – 1.5 hours.
 - (d) evidence of John Palermo:
 - (i) examination in chief – 2 hours;
 - (ii) cross examination – 30 minutes.
 - (e) evidence of Noel Nancarrow:
 - (i) examination in chief – 1 hour;
 - (ii) cross examination – 10 minutes.
 - (f) evidence of Todd Nancarrow, Bob Nancarrow, Michael Venn and Tim Venn:
 - (i) examination in chief – 1 hour each;
 - (ii) cross examination – by application, provided that it shall be no more than thirty minutes each.
 - (g) evidence of David Cabassi:
 - (i) examination in chief – one hour;
 - (ii) cross examination – 20 minutes.
3. Orders that closing submissions be made orally at the conclusion of the evidence, with each of the respondent and applicant being limited to 1 hour.
4. The hearing of this matter shall be re listed for a period of 5 days at which time it shall conclude unless further time is allowed.

Public Interest

- 41 The requirement to show public interest when an appeal is against a 'finding' is no mere technicality but serves an important function in the administration of justice under the Act by discouraging unnecessary appeals against interim and interlocutory decisions of the Commission. In other jurisdictions such aims are met by a requirement to obtain leave of a court to appeal an interlocutory order.

- 42 The effect of s 49(2a) of the Act is that no appeal against a 'finding' is competent until the Full Bench has reached the opinion that the matter is of such importance that, in the public interest, an appeal should lie. In *RRIA v AMWSU* (1989) 69 WAIG 1873, the Full Bench in respect of public interest considered the meaning of public interest in s 49(2a) of the Act. They observed (1879):

The words 'public interest' should not be narrowed to mean 'special or extra-ordinary circumstances', which is the test which the respondent applied, in that case. It is not the test.

An application may involve circumstances which are neither special nor extraordinary, but which are because of their very generality of great importance in the public interest (see *Re Australian Insurance Employees' Union; ex parte Academy Insurance Pty Ltd and Others* 78 ALR 466). We agree with that proposition. In *Re Gas Industry Award 104 CAR 376*, Wright and Moore J.J. and Gough C. said that the question of sufficient importance cannot be decided on the basis of case law. Each case will be a question of impression and judgment whether the appeal has the required degree of importance. We agree.

An appeal will not lie unless the Commission has formed a positive opinion on the public interest of the matter. Doubts or misgivings are not sufficient [see *Re Journalists Metropolitan Daily Newspapers Agreement* (1960) 94 CAR 760 at 768]. We agree also with that proposition.

Important questions with likely repercussions in other industries and substantial matters of law affecting jurisdiction can give rise to matters of sufficient importance in the public interest to justify an appeal.

Clearly, every allegation of an injustice being done to persons whose terms and conditions of employment are affected or who employ persons, whose terms and conditions are thereby affected, does not warrant a re-opening of an award or order, for example.

In *The Industrial Life Assurance Agents Union v. The AMP Society* 74 CAR 161, Kelly C.J. said at page 162:-

I think it should be shown on the face of the award or order that something has been dealt with by that order, which I should think, directly or certainly apparently affects the public interest.

It is obviously impossible to express any general standard or degree of importance which will satisfy the test of such importance. Every case must be viewed on its merits according to its individual circumstances [see *Federated Ship Painters and Dockers Union v. Adelaide Steamship Co.* (op. cit.)].

In the case of section 49(2) of the Act, public interest would not be identical however, to the concept as it might be applied in issuing an award for example [see *Re Chemists State Award* (1967) AR (NSW) 391].

- 43 Acting President Ritter in *MRTA of WA Inc v Tsakisiris* (2007) 87 WAIG 2795 also relevantly observed: 'the emphasis in s 49(2a) is upon the "matter" and the "public interest". It is not upon what might be important to the parties. Some broader public interest is the primary consideration [15]'.
 44 The grounds on which the appellant makes the application and the evidence which he relies upon in the appeal against the order made on 21 January 2010 are set out in the schedule of the notice of appeal as follows:

4. On 14 January 2010, Helen Evans, Associate to the Commissioner (Associate) sent an email to my agent, Tony Palermo, stating that a Reasons for Decision regarding the limitation of times for presentation of cases in this matter would be available for collection at the Commission's Registry after 11:30 am on Friday 15 February 2010 (Email). A copy of that email is attached as Annexure 1.
5. Neither I, nor Tony Palermo were available to collect the Reasons for Decision until Monday 18 January 2010. I understand that at about 2:00pm that afternoon, Tony Palermo attended at the Registry to collect the Reasons for Decision, and was provided with the proposed Orders and a Form 15 Notice of Hearing to be heard on 21 January 2010 at 4:30pm (Hearing).
6. I understand that Tony Palermo advised Registry officers Trudy and ~~Tony~~ Nick Lucano that I would not be able to appear at the Hearing because I would be overseas. Tony Palermo was advised by the Registry offices to contact the Associate to advise her of this, or alternatively, to explain this to the Commissioner at the Hearing. Tony Palermo attempted to contact the Associate by telephone, without success.
7. I was not able to give instructions to Tony Palermo during the period between Tony Palermo attending the Registry and before I travelled overseas to the Philippines at approximately 6:00am on the morning of Tuesday 19 January 2010. During that time I was pre-occupied in preparing for my overseas trip, and I understand that Tony Palermo attempted to contact the Associate by telephone, without success.
8. During my trip, I was at all times engaged in the affairs of a publicly listed company. I am Chairman of that company. I was accompanied by the company's geologist to appear before the Regional Director in Manila regarding the issue of mining permits. A copy of my travel itinerary is attached as Annexure 2. I understand that Tony Palermo attempted to produce this at the Hearing.
9. I understand that Tony Palermo attended the Hearing and that he advised the Commissioner that I was unable to attend the Hearing because I was overseas, and that at short notice he was unable to obtain my instructions in relation to the proposed Orders. I also understand that Tony Palermo advised that he was unable to contact me to discuss the matter and obtain instructions while I was overseas.

10. I also understand that at the Hearing, Tony Palermo queried why the Associate had not contacted him earlier to advise him of the date of the Hearing, and why the Associate had been non-contactable. Further, Tony Palermo advised the Commissioner that in his view the Hearing time would be a waster simply because the Associate had failed to arrange an appropriate hearing date and because of this had shown a lack of respect and courtesy by failing to call him to ask for dates on which both of us would be available to attend the Hearing.
11. The Commissioner ruled that I had been given sufficient notice of the Hearing Date, and made the Orders on that basis.
12. I also question the accuracy of the first paragraph of the Orders which state as follows:
 'Having heard from Ms R Cosentino of counsel on behalf of the Respondent and Mr T Palermo and the Appellant on his own behalf, by way of written correspondence...'
 In my view, the opening statement is incorrect as it states that the Commissioner has heard from both Tony Palermo and I, but we have in fact not been heard on this issue. Further compounding this issue is that I was not at the Commission to appear as I was overseas. If we had been heard, perhaps the Orders in their current form would not have been made.
13. Throughout this matter, the Commissioner has in my view acted in bias against me and in favour of the Respondent. The effect of the Orders is to reduce the length of time I have to properly conduct my case, which in my view will be required due to the Respondent's repeated refusal to answer questions put to him by both myself and Tony Palermo. On each occasion, the Commissioner has refused to require the Respondent answer such questions. On the basis that the Respondent continue to refuse to answer my questions, I will not be able to prove my case within the strict timeframes specified by the Order.
14. Further, in my view the Commissioner should not be handling both the hearing of this matter and its case management.
- 45 The appellant seeks orders before the Full Bench that:
- (1) the Orders be withdrawn;
 - (2) the hearing regarding the limiting of times for presentation of cases be rescheduled for a further hearing;
 - (3) the Commissioner be dismissed from her role and replaced with an independent Commissioner; and
 - (4) all matters be heard by a Senior Commissioner and not an Acting Senior Commissioner.
- 46 In the supplementary appeal book, the appellant seeks an order in effect that the grounds of appeal be amended and an order that the Commissioner allow the appellant to examine or cross-examine Chantel Rosenthal, Nadine Rosenthal and Laurie Rosenthal in relation to the matters set out in the proposed amended grounds of appeal.
- 47 In the unamended grounds of appeal, the appellant contends that he and Tony Palermo had not been heard prior to the Acting Senior Commissioner issuing her reasons for decision on 15 January 2010 and making the order on 21 January 2010. This however is not correct. In the order made on 5 November 2009 the order required that the parties file and serve a list of the names of their witnesses, an estimate of time necessary for examination-in-chief and a notice of estimated length of time for cross-examination of each of the other party's witnesses. They also were required to inform the Commission no later than 28 days from Thursday, 5 November 2009, an estimate of the length of time their closing submissions would take and whether they prefer to make closing submissions in writing. On 1 December 2009 the respondent's (applicant's) solicitors advised that its only witness was Charles Henry Rosenthal and the estimated re-examination of Mr Rosenthal would be 30 minutes' duration and the respondent (applicant) prefers to make oral closing submissions the duration of which was estimated to be 30 minutes.
- 48 The appellant filed its response in an email on 3 December 2009. The email dealt with the issue of particulars and also gave a list of witnesses and estimated duration for re-examination. The email stated as follows:
- Orders .Full response will be by next Tues as adv in prev email
 Brief response is as follows
 Order 1 a tba failing which what has already been provided stands
 b as for a above
 Order 2
 Charles Rosenthal 3 to 8 days
 Mr Rosenthal Senior 1 day
 Mrs Rosenthal Senior 3 hours
 C Rosenthal 3 hours
 Vic Mathews 2 to 4 days
 T Palermo 1 to 8 days
 John Palermo 6 hours

N Nancarrow 4 hours

T Nancarrow 4 hours

B Nancarrow 4 hours

M Venn 1 day

T Venn 2 days

D Cabassi 2 days

R Cosentino 2 hours

Order 5

A 2 days

B in writing

60 days

Order 6 tba by Tuesday but at present Feb and March are out April is ok First 2 weeks in May ok June and July are out (sic)

49 On 7 December 2009 the Commission received a letter from the appellant which addressed the terms of the order made on 5 November 2009 and reiterated the times for examination of witnesses contained in the email of 3 December 2009 and where the email had set out names of witnesses, the appellant provided first names to those initials. The appellant's letter said that the length of time for closing submissions was as previously advised, two days, and the preference was for closing submissions to be made orally. The appellant also sought in the letter that the Commission reconsider the previous decision to discharge summonses issued to Mr Rosenthal Snr and Mrs Rosenthal Snr.

50 The Acting Senior Commissioner's reasons for decision records that by letter dated 14 December 2009 the respondent's (applicant's) solicitors informed the Commission as follows:

In accordance with Order 3 we advise that the estimated length of time for cross-examination of the Respondent's witnesses is as follows:

1	Vic Matthews	1.5 hours
2	Tony Palermo	1.5 hours
3	John Palermo	0.5 hours
4	Noel Nancarrow	0.1 hours
5	Todd Nancarrow	0 hours
6	Bob Nancarrow	0 hours
7	Michael Venn	0 hours
8	Tim Venn	0 hours
9	David Cabassi	0.3 hours

The Acting Senior Commissioner observed in relation to the respondent's (applicant's) letter that the letter also expressed the view that the particulars of performance issues or misconduct relied upon by the respondent and set out in his letter of 7 December 2009 did not justify termination; that it was difficult to see how the evidence proposed by the respondent would be relevant; that the 'Defence' was as vaguely and broadly framed as it was 'merely to justify using the hearing as a lengthy and time wasting fishing exercise'. The letter questioned 'how Rachel Cosentino or the Applicant's parents can give admissible evidence relevant to this case' and requested the Commission to 'make orders limiting the time for presentation of the Defence without regard to the Respondent's letter of 7 December 2009'. The respondent's (applicant's) solicitors also submitted that it was entirely inappropriate for the respondent to name Mr Rosenthal Snr, Mrs Rosenthal Snr, Chantel Rosenthal and Rachel Cosentino as further witnesses, noting:

In relation to Mrs (sic) and Mrs Rosenthal Senior being witnesses, Senior Commissioner Scott has already made a determination disallowing the Respondent's Summons served on Mr and Mrs Rosenthal Senior. Mr and Mrs Rosenthal Senior advise that they have not otherwise been asked by the Respondent to give evidence on behalf of the Respondent.

Chantel Rosenthal was called as a witness by the Applicant. She has been cross examined, has completed her evidence to the Commission and has been discharged.

51 The Acting Senior Commissioner set out the issues and conclusions in her reasons for decision after considering the written correspondence from both parties. We will set out these reasons in full. They are as follows [10] - [27]:

I have considered the history of this matter. That history includes that the matter was listed for three days, and it was listed for a further two days, although some of that latter period was utilised for conciliation. Mr Rosenthal's evidence has already taken an inordinate time due to the way questions have been framed; an inefficient and time consuming method of cross-examination; a lack of clarity as to the reasons for dismissal, and due to Mr Rosenthal being reluctant to answer and unhelpful in answering questions such that he was required to be directed to answer on a number of occasions. The manner in which the respondent in particular has approached the hearing to date has lacked discipline and if such an

approach were to continue, it is conceivable that the hearing would drag on indefinitely. This is further evidenced by the lack of precision in the respondent's estimates of the length of time it will take for examination in chief of Mr Tony Palermo, the respondent's own agent, where the estimate is between one and eight days, and for Mr Matthews, a further two to four days.

The Commission is not obliged to allow parties to take as long as they please. It has an obligation to conduct hearings in an expeditious manner, and to do so in a manner which is fair to both sides. To allow one side to proceed in a manner which places no obligation on that party to conduct its case efficiently would be an inefficient use of the Commission's time, but also unfair and costly on the other party. Section 27(1)(ha) recognises the need for the Commission to impose limits in appropriate circumstances.

Reviewing the history of this matter has reinforced my view as to the need for and appropriateness of issuing orders for the purpose of limiting the period for presentation of the parties' respective cases pursuant to s 27(1)(ha) of the Industrial Relations Act, 1979 ("the Act") to ensure that the hearing is conducted in a manner envisaged by s 26(1)(a) of the Act, in particular by the respondent's proposals in respect of the length of time that it intends its witnesses to be under examination in chief.

I note also that the respondent suggests that Chantel Rosenthal be under examination for three hours, however, Chantel Marie Rosenthal, the wife of the applicant, gave evidence on 2 September 2009 and was cross-examined. Her evidence concluded that day. There is no indication as to why she ought to be recalled.

The respondent seeks that I reconsider my decision made early in proceedings to discharge summonses issued to Mr Rosenthal Snr and Mrs Rosenthal Snr. The suggestion contained within Mr Palermo's letter of 7 December is two-fold:

1. That if I do not reconsider that ruling then he "will have no alternative but to lodge an appeal against the ruling".
2. That evidence given by the applicant:
"of certain critical information that was processed on Mrs Rosenthal Senior's computer. Despite continuous requests, the computer has not been produced. Mrs Rosenthal Senior is required to give evidence not only of the ownership of the computer but of the information that was processed on her computer. I can have a computer analyst examine the computer either at or prior to the hearing continuing so as to reduce hearing time".

I have considered whether it is appropriate to reconsider my earlier decision regarding Mr and Mrs Rosenthal Snr being summonsed and my view on that matter has not changed.

The evidence given by Chantel Rosenthal as to her use of the computer stands. Appropriate conclusions can be drawn from that applying the rules of evidence. Furthermore, it would appear that Mr Palermo wishes to examine Mrs Rosenthal Snr not only as to the ownership of the computer but about the information that was processed on her computer. The only question which arose during Chantel Rosenthal's evidence was the date upon which a particular document was typed. Her evidence stands as it is and there is no indication as to why that evidence should or should not be accepted. Further, there is no indication as to what, if any, further evidence regarding "information that was processed on her computer" was necessary for the purpose of this hearing, and why Mrs Rosenthal Snr ought to be examined about that.

As to Mr Rosenthal Snr, the respondent says that he is required to give evidence:

"as it appears from what Mr Rosenthal (the applicant) has stated in cross-examination that at times while he was on leave he consigned the farm and all farming operations without authority to his father. His father needs to be cross-examined as to the duties he undertook, stock numbers consigned to him and stock numbers re-consigned upon completing his 'caretaking' role".

There is no indication as to how this information is relevant. It appears to go back to the question of stock numbers which Mr Palermo suggests were not as they ought to have been, whilst he denies there is any allegation of theft against the applicant.

The questions which are before the Commission relate to the applicant's performance of his duties. He has given evidence of the circumstances under which he took leave and his father undertook duties for him. I see no relevance in further examination of this issue in terms of evidence from Mr Rosenthal Snr. I am of the view that Mr Palermo is seeking to use this hearing to gather information for purposes other than responding to the claim before the Commission, a matter clarified with Mr Palermo early in proceedings.

In respect of the evidence of Victor John Matthews, he was under examination in chief on 2 September 2009 from 2:00pm until 4:00pm. For it to be suggested that his evidence in chief should now take between two and four days, without explanation, makes it difficult to accept that this is a fair and reasonable estimate of the time required of him. Further, an examination of the transcript of the examination in chief on that day demonstrates that his examination could have been far more efficiently and effectively conducted in a shorter period of time that it took to that point. There was also a great deal of repetition in the questioning of him. Accordingly, I am prepared to allow Mr Matthews' examination in chief for a further half-day or 2.5 hours.

As to the applicant, Charles Rosenthal, the respondent says that it requires him to be cross-examined for between three and eight further days. Mr Rosenthal has already been under cross-examination for almost all of 1 September 2009, for more than half of the morning on 2 September 2009, and all day on 20 October 2009. In deciding how much more time

should be allowed for the cross-examination of Mr Rosenthal, I note how long he has already been under cross-examination; how long the hearing was originally scheduled for; that Mr Rosenthal has, from time to time, been directed by me to answer questions put to him because of his lack of cooperation, and that during the hearing of 20 October 2009, Mr Palermo responded to a question regarding the timing of Mr Rosenthal's cross-examination and of Mr Matthews completing his evidence. Mr Palermo said:

"Yes. Mr Matthews has been programmed to be here tomorrow and, hopefully, we'll get through Mr Rosenthal's evidence today." (Transcript page 259).

In all of those circumstances, I conclude that one further day of cross-examination of Mr Rosenthal, the applicant, ought to be quite adequate.

As to examination of the respondent's own witnesses, the respondent suggests Mr Tony Palermo's evidence will take between one and eight days. Given that Mr Tony Palermo is conducting the case for the respondent, this is an extraordinarily inadequate and poor estimation and one is led to the conclusion that there has been no genuine attempt to make any proper estimate. One would have thought that Mr Palermo would know how long his evidence will take. In the circumstances, Mr Tony Palermo's evidence is to be scheduled for two hours.

As to John Palermo's evidence, it is suggested that his will take six hours. Given what I perceive to be gross over-estimations and unreasonable estimations of time for the respondent's witnesses, and not having any information as to what evidence John Palermo would give during that six hours, I intend to order that his evidence be limited to two hours.

Likewise, the estimates of the time for the evidence to be called of Noel Nancarrow, Todd Nancarrow, Bob Nancarrow, Michael Venn, Tim Venn and David Cabassi appear to be unreasonable. In the case of each of these witnesses, I will schedule their evidence for one hour each.

As to the respondent calling evidence from Rachel Cosentino, Ms Cosentino is the applicant's solicitor representing him during these proceedings. There is no explanation as to why she would be able to give any evidence of a relevant nature in this matter. In the absence of such an explanation, it is not my intention to provide any time for her to be examined by the respondent.

The times for cross-examination of the respondent's witnesses do not appear to be unreasonable given the times for examination in chief which I have set out above. However, where the applicant has indicated that "0 hours will be required for cross-examination", I will allow the applicant to apply to cross-examine those witnesses once their evidence has been given, provided that cross-examination is limited to 30 minutes in each case.

The closing submissions shall be made at the conclusion of the hearing, orally. The parties shall each have one hour for closing submissions.

Minutes of Proposed Orders shall issue reflecting these time limits.

- 52 Whilst the Acting Senior Commissioner in her reasons for decision reconsidered her decision not to allow Chantel Rosenthal to be recalled and to discharge the summonses issued to Mr Rosenthal Snr and Mrs Rosenthal Snr, the order made by the Acting Senior Commissioner on 21 January 2010 does not deal with this matter. The Acting Senior Commissioner, however, in her reasons for decision given on 15 January 2010 explained her reasons for refusing to allow Chantel Rosenthal to be recalled and for refusing to allow Mr and Mrs Rosenthal Snr to be called as witnesses. The Acting Senior Commissioner formed the view the examination of the affairs of the parents of the respondent (applicant) and the computer belonging to the mother of the respondent (applicant) went beyond what is necessary for the adequate presentation of the appellant's case. She also formed the opinion that there was no indication why the evidence about the date Chantel Rosenthal typed a document should not be accepted.
- 53 Even if it were the case that the order made on 21 January 2010 included an order to dismiss the application to recall Chantel Rosenthal and to order that Mr and Mrs Rosenthal Snr were not required to appear, or the order could be characterised as a 'decision' that disposed of that application, we are not persuaded that the Full Bench should interfere in such a decision. Appellate courts exercise particular caution in reviewing decisions on matters of practice and procedure: *Adam P Brown Male Fashions Pty Ltd v Phillip Morris Inc* (1981) 148 CLR 170 (177); *Commonwealth v Albany Port Authority* [2006] WASCA 185. In relation to the summonses that were sought to be set aside there is a discretion under s 33(2) of the Act for members of the Commission to control the conduct of a hearing. Pursuant to s 33(2) where a summons is issued to, and duly served on, a person to appear and give evidence before the Commission, the person may make application to the Commission for cause to be shown for him or her to so appear and, if on the hearing of the application such cause is not shown by the party seeking to call the person, the person is not required to so appear. Consequently, it is clear from s 33(2) that if a summons to a witness is objected to then the onus is on the party who summonsed the witness, to show cause why that person should appear.
- 54 The principles of case management must also be considered. One of the objectives of case management in most courts and tribunals, including the Supreme Court, is the reduction in trial and hearing times. In the Commission, this object is reflected in s 22B, s 27(1)(ha) and s 27(1)(hb) of the Act. Section 22B provides:

In the performance of its functions the Commission is to act with as much speed as the requirements of this Act and a proper consideration of the matter before it permit.

Section 27(1)(ha) and s 27(1)(hb) of the Act provides:

- (1) Except as otherwise provided in this Act, the Commission may, in relation to any matter before it —
- (ha) determine the periods that are reasonably necessary for the fair and adequate presentation of the respective cases of the parties to the proceedings and require that the cases be presented within the respective periods;

(hb) require evidence or argument to be presented in writing, and decide the matters on which it will hear oral evidence or argument;

- 55 In our opinion, the recent observations of Palmer J in *Tobin v Ezekeil* [2008] NSWSC 1108 where he said that litigants are not free to expend as much of the Court's resources as they wish [36], reflects an appropriate principle of case management that should be applied in matters before this Commission. His Honour also aptly said [37]:

Litigants are entitled to a fair opportunity to present their case; that does not mean that they can take as long as they like in doing so. The judicial time and administrative of this State's courts are strained by the press of litigants seeking to have their cases heard quickly and efficiently. No one litigant has the right to insist that his case will consume as much of the Court's time and resources as his own pockets will bear.

- 56 The appellant contends that any appeal before a Full Bench raises a matter of such importance, that, in the public interest, an appeal should lie as the decision creates a precedent and sets standards to be complied with by employers and employees. The appellant also submits that this matter is an unusual case because the respondent (applicant) has refused to answer questions when giving evidence in the hearing before the Acting Senior Commissioner. Alternatively, the appellant contends that the Full Bench should not have regard to s 49(2a) of the Act, as the appellant is unrepresented. However, it is not the case that every appeal before a Full Bench raises a matter of public interest. Not all appeals raise an issue of importance to other matters. Secondly, if it is the case that the respondent (applicant) has refused to answer questions that are material to the applicant's or respondent's case then that is a matter that the appellant can make a submission about at the conclusion of the hearing when the appellant makes his submission about the credibility and reliability of the evidence given by the respondent (applicant).
- 57 It is not open to the Full Bench to disregard the requirements of s 49(2a) of the Act. It is well established that s 49(2a) creates a mandatory obligation on members of the Full Bench to form the requisite opinion before an appeal against a finding can lie.
- 58 In this matter the orders only affect the affairs of the parties concerned and do not directly extend outside the affairs of the parties so concerned. The matters raised in the grounds of appeal and in the application to amend the grounds of appeal raise procedural matters relevant only to the parties that are not likely to be relevant to any one else. Nor do the grounds raise any matter of legal complexity. Consequently, no issue is raised for it to be important in the public interest that we should hear the appeal. Further for the reasons set out below in [59] - [64] of these reasons, we are of the opinion that the unamended grounds of appeal have no merit. Consequently we are of the view that the appeal should be dismissed.

Speaking to the Minutes and claim of bias

- 59 The purpose of speaking to the minutes of an order was considered by the Full Bench in *Steele v Clarke* (2003) 84 WAIG 17. President Sharkey with whom Coleman CC and Gregor C observed that the purpose of a speaking to the minutes is entirely limited and that the process exists pursuant to s 35 of the Act to enable the parties to put to the Commission matters directed to ensuring that the orders do issue to properly reflect the Commission's decision and reasons therefor [62]. The purpose of a speaking to the minutes is not to address why the reasons for decision are wrong but simply to consider whether the orders set out in the minutes of proposed orders reflect what the Commission says it will order in the reasons for decision. Historically the purpose of a speaking to the minutes was to give parties to a matter an opportunity to point out any provisions of an award that may have been unworkable in some way to render the award or order less perfect than the Commission intended to be: *Sheahan v State School Teachers Union of WA (Inc)* (1989) 69 WAIG 3267; *Tan v Paris and Christie Kafetzis t/as Gabriel's Café*.
- 60 After the Commission delivers reasons for decision and commits its decision to minutes, the Commission is required to fix a time at which the parties are afforded an opportunity to take advantage of the entitlement to speak to the minutes. As Sharkey P observed in *Steele* once minutes of an order issued:

The Commission had no other statutory function to carry out at that time other than to hear and determine, on the speaking to the minutes, the final form which the Commission's decision would take when it issued to be perfected by depositing in the office of the Registrar (see s36 of *the Act*). At the time fixed by the Commission the parties are entitled to speak to matters contained in the minutes (see s35(3) of *the Act*). It is not the time to bring fresh evidence or make submissions as to substance. It is not the time to argue an appeal or complain about the decision (see *Grade Pty Ltd v McCorry* (1993) 73 WAIG 2016 (FB) and also *CSA v Public Service Commission* (1937) 17 WAIG 22 at 23 per Dwyer P and *WA Government Tramways, Motor Omnibuses and River Ferries Employees Union of Workers, Perth v Commissioner of Railways* (1947) 27 WAIG 517 at 523 per Dunphy J) [66].

- 61 As the respondent (applicant) points out in their written submissions, the purpose of a speaking to the minutes is to ensure the orders reflect the Commission's intention (in reasons for decision) and not to challenge the order itself.
- 62 In this matter the Acting Senior Commissioner delivered her reasons for decision on 15 January 2010 together with the minutes of proposed order. It is apparent from the appellant's schedule set out in the appeal book that the appellant had notice that the reasons for decision and minutes would be available at the Commission's registry after 11:30 am on Friday, 15 January 2010. The appellant took no steps to obtain a copy of the reasons for decision or the minute of proposed order prior to his departure overseas on Tuesday, 19 January 2010. The appellant had appointed Tony Palermo as his agent in the matter before the Acting Senior Commissioner. It was in the appellant's control to obtain a copy of the reasons for decision and the minute of proposed order and to provide instructions to Mr Palermo prior to 21 January 2010. There is no requirement in the Act that the Commission is obliged to fix a date which the appellant personally was available to attend the speaking to the minutes. The appellant had appointed an agent who attended the speaking to the minutes. Further it is apparent from the submissions made by the appellant that the appellant simply wished to argue that the orders that the Acting Senior Commissioner made should

not be made. In our view this is not a proper purpose for a speaking to the minutes. It is clear that the terms of the order properly reflected the views reached by the Acting Senior Commissioner in respect of programming of witnesses and submissions. The only matter that could have been raised by the appellant is that an order should have been made to dismiss the application to recall Chantel Rosenthal and to order that Mr and Mrs Rosenthal Snr are not required to appear. However, for the reasons outlined, even if such an order had been made an appeal would not lie as such orders in this matter would not raise a matter of such importance that, in the public interest, an appeal should lie.

- 63 Although the appellant asserts that the Acting Senior Commissioner is biased against him because the order will reduce the length of time he will have to properly conduct his case and the Acting Senior Commissioner refused to require the respondent (applicant) to answer questions put in cross-examination, we are not satisfied on the material before us that such a claim can be made out. The mere fact that an interlocutory ruling or order is made that a party perceives to be unfavourable does not in itself give rise to an inference that a member of the Commission will not bring an impartial and unprejudiced mind to the resolution of the claims before the Commission. Actual bias is subject to a rigorous standard of proof and will only be upheld where the accusations are distinctly made and clearly proved: *Minister for Immigration & Multicultural Affairs v Jia Legeng* (2001) 205 CLR 507.
- 64 For these reasons we have reached the view that there is no merit in the appellant's unamended grounds of appeal. Even if we were satisfied that the matter was in the public interest we would dismiss the appeal on that ground.

2010 WAIRC 00241

	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION	
PARTIES	JOHN PALERMO	APPELLANT
	-and-	
	CHARLES HENRY ROSENTHAL	RESPONDENT
CORAM	FULL BENCH	
	THE HONOURABLE J H SMITH, ACTING PRESIDENT COMMISSIONER J L HARRISON COMMISSIONER S M MAYMAN	
DATE	WEDNESDAY, 28 APRIL 2010	
FILE NO/S	FBA 2 OF 2010	
CITATION NO.	2010 WAIRC 00241	

Result Application to amend grounds of appeal dismissed and appeal dismissed

Appearances

Appellant Mr Tony Palermo (as agent)

Respondent Ms A Bilich (of counsel)

Order

This appeal having come on for hearing before the Full Bench on 22 April 2010, and having heard Mr T Palermo as agent on behalf of the appellant and Ms Bilich of counsel on behalf of the respondent, and reasons for decision having been delivered on 28 April 2010, the Full Bench, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders that —

1. The application to amend the grounds of appeal is dismissed;
2. The appeal is dismissed.

By the Full Bench
(Sgd.) J H SMITH,
Acting President.

[L.S.]

FULL BENCH—Procedural Directions and Orders—

2010 WAIRC 00217

PARTIES	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION WESTERN AUSTRALIAN PRINCIPALS' FEDERATION	APPLICANT
	-and-	
	STATE SCHOOL TEACHERS' UNION OF WESTERN AUSTRALIA (INC) JENNIFER BROZ EDMUND FREDRICK BLACK TREVOR VAUGHAN	OBJECTORS
CORAM	FULL BENCH THE HONOURABLE J H SMITH, ACTING PRESIDENT ACTING SENIOR COMMISSIONER P E SCOTT COMMISSIONER S M MAYMAN	
DATE	WEDNESDAY, 21 APRIL 2010	
FILE NO/S	FBM 7 OF 2009	
CITATION NO.	2010 WAIRC 00217	
<hr/>		
Result	Order issued	

Order

HAVING heard Mr Kemp (of counsel) on behalf of the applicant and Mr Millman (of counsel) on behalf of the objector State School Teachers' Union of Western Australia (Inc), and by consent of all parties, the Full Bench orders that:—

1. On or before Friday, 28 May 2010, the union objector file and serve any affidavit material or evidence on which it seeks to rely at the hearing of the preliminary issue;
2. On or before Friday, 2 July 2010, the applicant file and serve any further/responsive affidavit material or evidence on which it seeks to rely at the hearing of the preliminary issue;
3. On or before Friday, 9 July 2010, the union objector file and serve an opening Outline of Submissions;
4. On or before Friday, 16 July 2010, the applicant file and serve its opening Outline of Submissions;
5. The matter be listed for a directions hearing in the week commencing Monday, 26 July 2010.
6. There be liberty to apply.

By the Full Bench
(Sgd.) J H SMITH,
Acting President.

[L.S.]

PUBLIC SERVICE ARBITRATOR—Awards/Agreements—Variation of—

2010 WAIRC 00237

	COUNTRY HIGH SCHOOL HOSTELS AUTHORITY RESIDENTIAL COLLEGE SUPERVISORY STAFF AWARD 2005	
PARTIES	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION THE CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA INCORPORATED	APPLICANT
	-v-	
	COUNTRY HIGH SCHOOLS HOSTELS AUTHORITY	RESPONDENT
CORAM	PUBLIC SERVICE ARBITRATOR ACTING SENIOR COMMISSIONER P E SCOTT	
DATE	WEDNESDAY, 28 APRIL 2010	
FILE NO/S	P 7 OF 2010	
CITATION NO.	2010 WAIRC 00237	

Result Award varied

Order

HAVING heard Mr M Sims on behalf of The Civil Service Association of Western Australia Incorporated and Mr A Harper as agent for the respondent, and by consent, the Public Service Arbitrator, pursuant to the powers conferred under the *Industrial Relations Act 1979*, hereby orders:

THAT the Country High School Hostels Authority Residential College Supervisory Staff Award 2005 (No PSAA 1 of 2005) be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 21st day of April 2010.

(Sgd.) P E SCOTT,
Acting Senior Commissioner,
Public Service Arbitrator.

[L.S.]

SCHEDULE

1. **Schedule D - Travelling, Transfer and Relieving Allowance: Delete this schedule and insert the following in lieu thereof:**

SCHEDULE D - TRAVELLING, TRANSFER AND RELIEVING ALLOWANCE

ITEM	PARTICULARS	<u>COLUMN A</u>	<u>COLUMN B</u>	<u>COLUMN C</u>
		DAILY RATE	DAILY RATE OFFICERS WITH DEPENDENTS: RELIEVING ALLOWANCE FOR PERIOD IN EXCESS OF 42 DAYS (CLAUSE 23.1(b)(ii)) TRANSFER ALLOWANCE FOR PERIOD IN EXCESS OF PRESCRIBED PERIOD (CLAUSE 26.3)	DAILY RATE OFFICERS WITHOUT DEPENDENTS RELIEVING ALLOWANCE FOR PERIOD IN EXCESS OF 42 DAYS (CLAUSE 23.1(b)(ii))
ALLOWANCE TO MEET INCIDENTAL EXPENSES				
		\$		
(1)	WA - South of 26° South Latitude	14.55		
(2)	WA - North of 26° South Latitude	21.75		
(3)	Interstate	21.75		
ACCOMMODATION INVOLVING AN OVERNIGHT STAY IN A HOTEL OR MOTEL				
		\$	\$	\$
(4)	WA - Metropolitan Hotel or Motel	305.45	152.70	101.80
(5)	Locality South of 26° South Latitude	208.55	104.30	69.50
(6)	Locality North of 26° South Latitude:			
	Broome	456.75	228.40	152.25
	Carnarvon	255.15	127.60	85.05
	Dampier	366.75	183.40	122.25
	Derby	342.25	171.15	114.10
	Exmouth	292.75	146.40	97.60
	Fitzroy Crossing	370.25	185.15	123.40
	Gascoyne Junction	291.75	145.90	97.25
	Halls Creek	200.75	100.40	66.90
	Karratha	445.75	222.90	148.60
	Kununurra	331.75	165.90	110.60
	Marble Bar	271.75	135.90	90.60

ITEM	PARTICULARS	<u>COLUMN A</u> DAILY RATE	<u>COLUMN B</u> DAILY RATE OFFICERS WITH DEPENDENTS: RELIEVING ALLOWANCE FOR PERIOD IN EXCESS OF 42 DAYS (CLAUSE 23.1(b)(ii)) TRANSFER ALLOWANCE FOR PERIOD IN EXCESS OF PRESCRIBED PERIOD (CLAUSE 26.3)	<u>COLUMN C</u> DAILY RATE OFFICERS WITHOUT DEPENDENTS RELIEVING ALLOWANCE FOR PERIOD IN EXCESS OF 42 DAYS (CLAUSE 23.1(b)(ii))
ACCOMMODATION INVOLVING AN OVERNIGHT STAY IN A HOTEL OR MOTEL— <i>continued</i>				
		\$	\$	\$
(6) — <i>continued</i>	Locality North of 26° South Latitude:			
	Newman	339.00	169.50	113.00
	Onslow	273.30	136.65	91.10
	Pannawonica	192.75	96.40	64.25
	Paraburdoo	259.75	129.90	86.60
	Port Hedland	367.15	183.60	122.40
	Roebourne	241.75	120.90	80.60
	Shark Bay	240.25	120.15	80.10
	Tom Price	320.25	160.15	106.75
	Turkey Creek	235.75	117.90	78.60
	Wickham	508.75	254.40	169.60
	Wyndham	254.75	127.40	84.90
(7)	Interstate - Capital City			
	Sydney	304.90	152.45	101.60
	Melbourne	288.55	144.30	96.15
	Other Capitals	270.10	135.05	89.95
(8)	Interstate – Other than Capital City	208.55	104.30	69.50
ACCOMMODATION INVOLVING AN OVERNIGHT STAY AT OTHER THAN A HOTEL OR MOTEL				
(9)	WA - South of 26° South Latitude	93.65		
(10)	WA - North of 26° South Latitude	129.60		
(11)	Interstate	129.60		
TRAVEL NOT INVOLVING AN OVERNIGHT STAY OR TRAVEL INVOLVING AN OVERNIGHT STAY WHERE ACCOMMODATION ONLY IS PROVIDED.				
(12)	WA - South of 26° South Latitude:			
	Breakfast	16.30		
	Lunch	16.30		
	Dinner	46.50		
(13)	WA - North of 26° South Latitude:			
	Breakfast	21.15		
	Lunch	33.65		
	Dinner	53.05		

ITEM	PARTICULARS	<u>COLUMN A</u> DAILY RATE	<u>COLUMN B</u> DAILY RATE OFFICERS WITH DEPENDENTS: RELIEVING ALLOWANCE FOR PERIOD IN EXCESS OF 42 DAYS (CLAUSE 23.1(b)(ii)) TRANSFER ALLOWANCE FOR PERIOD IN EXCESS OF PRESCRIBED PERIOD (CLAUSE 26.3)	<u>COLUMN C</u> DAILY RATE OFFICERS WITHOUT DEPENDENTS RELIEVING ALLOWANCE FOR PERIOD IN EXCESS OF 42 DAYS (CLAUSE 23.1(b)(ii))
TRAVEL NOT INVOLVING AN OVERNIGHT STAY OR TRAVEL INVOLVING AN OVERNIGHT STAY WHERE ACCOMMODATION ONLY IS PROVIDED.— <i>continued</i>				
(14)	Interstate:			
	Breakfast	21.15		
	Lunch	33.65		
	Dinner	53.05		
DEDUCTION FOR NORMAL LIVING EXPENSES (CLAUSE 27.5(a))				
		\$	\$	\$
(15)	Each Adult	26.25		
(16)	Each Child	4.50		
MIDDAY MEAL (CLAUSE 27.11)				
(17)	Rate per meal	6.35		
(18)	Maximum reimbursement per pay period	31.75		

The allowances prescribed in this schedule shall operate from the beginning of the first pay period commencing on or after 21 April 2010.

2010 WAIRC 00236

DEPARTMENT FOR COMMUNITY DEVELOPMENT (FAMILY RESOURCE WORKERS, WELFARE ASSISTANTS AND PARENT HELPERS) AWARD 1990

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

THE CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA INCORPORATED

APPLICANT

-v-

DIRECTOR GENERAL OF THE DEPARTMENT FOR CHILD PROTECTION AND DEPARTMENT FOR COMMUNITIES

RESPONDENTS

CORAM

PUBLIC SERVICE ARBITRATOR

ACTING SENIOR COMMISSIONER P E SCOTT

DATE

WEDNESDAY, 28 APRIL 2010

FILE NO/S

P 6 OF 2010

CITATION NO.

2010 WAIRC 00236

Result

Award varied

Order

HAVING heard Mr M Sims on behalf of The Civil Service Association of Western Australia Incorporated and Mr A Harper as agent for the respondents, and by consent, the Public Service Arbitrator, pursuant to the powers conferred under the *Industrial Relations Act 1979*, hereby orders:

THAT the Department for Community Development (Family Resource Workers, Welfare Assistants and Parent Helpers) Award 1990 (No PSAA 1 of 1989) be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 21st day of April 2010.

(Sgd.) P E SCOTT,
Acting Senior Commissioner,
Public Service Arbitrator.

[L.S.]

SCHEDULE

1. **Schedule D - Travelling Allowance: Delete this schedule and insert the following in lieu thereof:**

SCHEDULE D - TRAVELLING ALLOWANCE

ITEM	PARTICULARS	COLUMN A DAILY RATE	COLUMN B DAILY RATE OFFICERS WITH DEPENDENTS: RELIEVING ALLOWANCE FOR PERIOD IN EXCESS OF 42 DAYS (CLAUSE 47(1)(B)(II)) TRANSFER ALLOWANCE FOR PERIOD IN EXCESS OF PRESCRIBED PERIOD (CLAUSE 46(3))	COLUMN C DAILY RATE OFFICERS WITHOUT DEPENDENTS: RELIEVING ALLOWANCE FOR PERIOD IN EXCESS OF 42 DAYS (CLAUSE 47(1)(b)(ii))
	ALLOWANCE TO MEET INCIDENTAL EXPENSES			
		\$		
(1)	WA - SOUTH OF 26° SOUTH LATITUDE	14.55		
(2)	WA - NORTH OF 26° SOUTH LATITUDE	21.75		
(3)	INTERSTATE	21.75		
	ACCOMMODATION INVOLVING AN OVERNIGHT STAY IN A HOTEL OR MOTEL			
		\$	\$	\$
(4)	WA - METROPOLITAN HOTEL OR MOTEL	305.45	152.70	101.80
(5)	LOCALITY SOUTH OF 26° SOUTH LATITUDE	208.55	104.30	69.50
(6)	LOCALITY NORTH OF 26° SOUTH LATITUDE			
	BROOME	456.75	228.40	152.25
	CARNARVON	255.15	127.60	85.05
	DAMPIER	366.75	183.40	122.25
	DERBY	342.25	171.15	114.10
	EXMOUTH	292.75	146.40	97.60
	FITZROY CROSSING	370.25	185.15	123.40
	GASCOYNE JUNCTION	291.75	145.90	97.25
	HALLS CREEK	200.75	100.40	66.90
	KARRATHA	445.75	222.90	148.60
	KUNUNURRA	331.75	165.90	110.60
	MARBLE BAR	271.75	135.90	90.60
	NEWMAN	339.00	169.50	113.00
	ONSLOW	273.30	136.65	91.10
	PANNAWONICA	192.75	96.40	64.25
	PARABURDOO	259.75	129.90	86.60
	PORT HEDLAND	367.15	183.60	122.40
	ROEBOURNE	241.75	120.90	80.60

ITEM	PARTICULARS	COLUMN A DAILY RATE	COLUMN B DAILY RATE OFFICERS WITH DEPENDENTS: RELIEVING ALLOWANCE FOR PERIOD IN EXCESS OF 42 DAYS (CLAUSE 47(1)(B)(II)) TRANSFER ALLOWANCE FOR PERIOD IN EXCESS OF PRESCRIBED PERIOD (CLAUSE 46(3))	COLUMN C DAILY RATE OFFICERS WITHOUT DEPENDENTS: RELIEVING ALLOWANCE FOR PERIOD IN EXCESS OF 42 DAYS (CLAUSE 47(1)(b)(ii))
ACCOMMODATION INVOLVING AN OVERNIGHT STAY IN A HOTEL OR MOTEL— <i>continued</i>				
		\$	\$	\$
(6)— <i>continued</i>	LOCALITY NORTH OF 26° SOUTH LATITUDE			
	SHARK BAY	240.25	120.15	80.10
	TOM PRICE	320.25	160.15	106.75
	TURKEY CREEK	235.75	117.90	78.60
	WICKHAM	508.75	254.40	169.60
	WYNDHAM	254.75	127.40	84.90
(7)	INTERSTATE - CAPITAL CITY			
	SYDNEY	304.90	152.45	101.60
	MELBOURNE	288.55	144.30	96.15
	OTHER CAPITALS	270.10	135.05	89.95
(8)	INTERSTATE - OTHER THAN CAPITAL CITY	208.55	104.30	69.50
ACCOMMODATION INVOLVING AN OVERNIGHT STAY AT OTHER THAN A HOTEL OR MOTEL				
(9)	WA - SOUTH OF 26° SOUTH LATITUDE	93.65		
(10)	WA - NORTH OF 26° SOUTH LATITUDE	129.60		
(11)	INTERSTATE	129.60		
TRAVEL NOT INVOLVING AN OVERNIGHT STAY OR TRAVEL INVOLVING AN OVERNIGHT STAY WHERE ACCOMMODATION ONLY IS PROVIDED.				
(12)	WA - SOUTH OF 26° SOUTH LATITUDE:			
	BREAKFAST	16.30		
	LUNCH	16.30		
	DINNER	46.50		
(13)	WA - NORTH OF 26° SOUTH LATITUDE:			
	BREAKFAST	21.15		
	LUNCH	33.65		
	DINNER	53.05		
(14)	INTERSTATE:			
	BREAKFAST	21.15		
	LUNCH	33.65		
	DINNER	53.05		
DEDUCTION FOR NORMAL LIVING EXPENSES (CLAUSE 46(5))				
(15)	EACH ADULT	26.25		
(16)	EACH CHILD	4.50		

ITEM	PARTICULARS	COLUMN A DAILY RATE	COLUMN B DAILY RATE OFFICERS WITH DEPENDENTS: RELIEVING ALLOWANCE FOR PERIOD IN EXCESS OF 42 DAYS (CLAUSE 47(1)(B)(II)) TRANSFER ALLOWANCE FOR PERIOD IN EXCESS OF PRESCRIBED PERIOD (CLAUSE 46(3))	COLUMN C DAILY RATE OFFICERS WITHOUT DEPENDENTS: RELIEVING ALLOWANCE FOR PERIOD IN EXCESS OF 42 DAYS (CLAUSE 47(1)(b)(ii))
	MIDDAY MEAL (CLAUSE 36(12))			
(17)	RATE PER MEAL	6.35		
(18)	MAXIMUM REIMBURSEMENT PER PAY PERIOD	31.75		

The allowances prescribed in this Schedule shall operate from the beginning of the first pay period commencing on or after 21 April 2010.

2010 WAIRC 00238

**EDUCATION DEPARTMENT MINISTERIAL OFFICERS SALARIES ALLOWANCES AND CONDITIONS AWARD
1983 NO 5 OF 1983**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

THE CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA INCORPORATED

APPLICANT

-v-

DEPARTMENT OF EDUCATION

RESPONDENT

CORAM

PUBLIC SERVICE ARBITRATOR
ACTING SENIOR COMMISSIONER P E SCOTT

DATE

WEDNESDAY, 28 APRIL 2010

FILE NO/S

P 8 OF 2010

CITATION NO.

2010 WAIRC 00238

Result

Award varied

Order

HAVING heard Mr M Sims on behalf of The Civil Service Association of Western Australia Incorporated and Mr A Harper as agent for the respondents, and by consent, the Public Service Arbitrator, pursuant to the powers conferred under the *Industrial Relations Act 1979*, hereby orders:

THAT the Education Department Ministerial Officers Salaries Allowances and Conditions Award 1983, No 5 of 1983, be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 21st day of April 2010.

[L.S.]

(Sgd.) P E SCOTT,
Acting Senior Commissioner,
Public Service Arbitrator.

SCHEDULE

1. **Schedule H - Travelling, Transfer and Relieving Allowance: Delete this schedule and insert the following in lieu thereof:**

SCHEDULE H - TRAVELLING, TRANSFER AND RELIEVING ALLOWANCE

ITEM	PARTICULARS	COLUMN A	COLUMN B	COLUMN C
		DAILY RATE	DAILY RATE OFFICERS WITH DEPENDENTS: RELIEVING ALLOWANCE FOR PERIOD IN EXCESS OF 42 DAYS (CLAUSE 40(2)(b)) TRANSFER ALLOWANCE FOR PERIOD IN EXCESS OF PRESCRIBED PERIOD (CLAUSE 42(3))	DAILY RATE OFFICERS WITHOUT DEPENDENTS: RELIEVING ALLOWANCE FOR PERIOD IN EXCESS OF 42 DAYS (CLAUSE 40(2)(b))
ALLOWANCE TO MEET INCIDENTAL EXPENSES				
		\$		
(1)	WA - South of 26° South Latitude	14.55		
(2)	WA - North of 26° South Latitude	21.75		
(3)	Interstate	21.75		
ACCOMMODATION INVOLVING AN OVERNIGHT STAY IN A HOTEL OR MOTEL				
		\$	\$	\$
(4)	WA - Metropolitan Hotel or Motel	305.45	152.70	101.80
(5)	Locality South of 26° South Latitude	208.55	104.30	69.50
(6)	Locality North of 26° South Latitude			
	Broome	456.75	228.40	152.25
	Carnarvon	255.15	127.60	85.05
	Dampier	366.75	183.40	122.25
	Derby	342.25	171.15	114.10
	Exmouth	292.75	146.40	97.60
	Fitzroy Crossing	370.25	185.15	123.40
	Gascoyne Junction	291.75	145.90	97.25
	Halls Creek	200.75	100.40	66.90
	Karratha	445.75	222.90	148.60
	Kununurra	331.75	165.90	110.60
	Marble Bar	271.75	135.90	90.60
	Newman	339.00	169.50	113.00
	Onslow	273.30	136.65	91.10
	Pannawonica	192.75	96.40	64.25
	Paraburdoo	259.75	129.90	86.60
	Port Hedland	367.15	183.60	122.40
	Roebourne	241.75	120.90	80.60
	Shark Bay	240.25	120.15	80.10
	Tom Price	320.25	160.15	106.75
	Turkey Creek	235.75	117.90	78.60
	Wickham	508.75	254.40	169.60
	Wyndham	254.75	127.40	84.90

ITEM	PARTICULARS	COLUMN A DAILY RATE	COLUMN B DAILY RATE OFFICERS WITH DEPENDENTS: RELIEVING ALLOWANCE FOR PERIOD IN EXCESS OF 42 DAYS (CLAUSE 40(2)(b)) TRANSFER ALLOWANCE FOR PERIOD IN EXCESS OF PRESCRIBED PERIOD (CLAUSE 42(3))	COLUMN C DAILY RATE OFFICERS WITHOUT DEPENDENTS: RELIEVING ALLOWANCE FOR PERIOD IN EXCESS OF 42 DAYS (CLAUSE 40(2)(b))
(7)	Interstate - Capital City			
	Sydney	304.90	152.45	101.60
	Melbourne	288.55	144.30	96.15
	Other Capitals	270.10	135.05	89.95
(8)	Interstate – Other than Capital City	208.55	104.30	69.50
ACCOMMODATION INVOLVING AN OVERNIGHT STAY AT OTHER THAN A HOTEL OR MOTEL				
(9)	WA - South of 26° South Latitude	93.65		
(10)	WA - North of 26° South Latitude	129.60		
(11)	Interstate	129.60		
TRAVEL NOT INVOLVING AN OVERNIGHT STAY OR TRAVEL INVOLVING AN OVERNIGHT STAY WHERE ACCOMMODATION ONLY IS PROVIDED.				
		\$	\$	\$
(12)	WA – South of 26° South Latitude:			
	Breakfast	16.30		
	Lunch	16.30		
	Dinner	46.50		
(13)	WA – North of 26° South Latitude:			
	Breakfast	21.15		
	Lunch	33.65		
	Dinner	53.05		
(14)	Interstate:			
	Breakfast	21.15		
	Lunch	33.65		
	Dinner	53.05		
DEDUCTION FOR NORMAL LIVING EXPENSES (CLAUSE 42(5)(a))				
(15)	Each Adult	26.25		
(16)	Each Child	4.50		
MIDDAY MEAL (CLAUSE 43(11))				
(17)	Rate per meal	6.35		
(18)	Maximum reimbursement per pay period	31.75		

The allowances prescribed in this Schedule shall operate from the beginning of the first pay period commencing on or after 21 April 2010.

2. **Schedule B - Travelling, Transfer and Relieving Allowance: Delete this schedule and insert the following in lieu thereof:**

SCHEDULE B - CAMPING ALLOWANCE

South of 26° South Latitude

ITEM			RATE PER DAY
1	Permanent Camp	Cook provided by the Department	40.60
2	Permanent Camp	No cook provided by the Department	54.10
3	Other Camping	Cook provided by the Department	67.65
4	Other Camping	No cook provided	81.15

North of 26° South Latitude

ITEM			RATE PER DAY
1	Permanent Camp	Cook provided by the Department	58.55
2	Permanent Camp	No cook provided by the Department	72.10
3	Other Camping	Cook provided by the Department	85.60
4	Other Camping	No cook provided	99.15

2010 WAIRC 00239

ELECTORATE OFFICERS AWARD 1986

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

THE CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA INCORPORATED

APPLICANT

-v-

THE HONOURABLE SPEAKER OF THE LEGISLATIVE ASSEMBLY AND THE
HONOURABLE PRESIDENT OF THE LEGISLATIVE COUNCIL

RESPONDENTS

CORAM

PUBLIC SERVICE ARBITRATOR
ACTING SENIOR COMMISSIONER P E SCOTT

DATE

WEDNESDAY, 28 APRIL 2010

FILE NO/S

P 9 OF 2010

CITATION NO.

2010 WAIRC 00239

Result

Award varied

Order

HAVING heard Mr M Sims on behalf of The Civil Service Association of Western Australia Incorporated and Mr A Harper as agent for the respondents, and by consent, the Public Service Arbitrator, pursuant to the powers conferred under the *Industrial Relations Act 1979*, hereby orders:

THAT the Electorate Officers Award 1989 (No A 18 of 1986) be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 21st day of April 2010.

[L.S.]

(Sgd.) P E SCOTT,
Acting Senior Commissioner,
Public Service Arbitrator.

SCHEDULE

1. Schedule F - Travelling, Transfer Allowance: Delete this schedule and insert the following in lieu thereof:SCHEDULE F - TRAVELLING AND TRANSFER ALLOWANCE

ITEM	PARTICULARS	<u>COLUMN A</u>	<u>COLUMN B</u>
		DAILY RATE	DAILY RATE OFFICERS WITHOUT DEPENDENTS RELIEVING ALLOWANCE FOR PERIOD IN EXCESS OF 42 DAYS (CLAUSE 39(3))
ALLOWANCE TO MEET INCIDENTAL EXPENSES			
		\$	
(1)	WA - South of 26° South Latitude	14.55	
(2)	WA - North of 26° South Latitude	21.75	
(3)	Interstate	21.75	
ACCOMMODATION INVOLVING AN OVERNIGHT STAY IN A HOTEL OR MOTEL			
		\$	\$
(4)	WA - Metropolitan Hotel or Motel	305.45	152.70
(5)	Locality South of 26° South Latitude	208.55	104.30
(6)	Locality North of 26° South Latitude		
	Broome	456.75	228.40
	Carnarvon	255.15	127.60
	Dampier	366.75	183.40
	Derby	342.25	171.15
	Exmouth	292.75	146.40
	Fitzroy Crossing	370.25	185.15
	Gascoyne Junction	291.75	145.90
	Halls Creek	200.75	100.40
	Karratha	445.75	222.90
	Kununurra	331.75	165.90
	Marble Bar	271.75	135.90
	Newman	339.00	169.50
	Onslow	273.30	136.65
	Pannawonica	192.75	96.40
	Paraburdoo	259.75	129.90
	Port Hedland	367.15	183.60
	Roebourne	241.75	120.90
	Shark Bay	240.25	120.15
	Tom Price	320.25	160.15
	Turkey Creek	235.75	117.90
	Wickham	508.75	254.40
	Wyndham	254.75	127.40
(7)	Interstate - Capital City		
	Sydney	304.90	152.45
	Melbourne	288.55	144.30
	Other Capitals	270.10	135.05

ITEM	PARTICULARS	<u>COLUMN A</u>	<u>COLUMN B</u>
		DAILY RATE	DAILY RATE OFFICERS WITHOUT DEPENDENTS RELIEVING ALLOWANCE FOR PERIOD IN EXCESS OF 42 DAYS (CLAUSE 39(3))
ACCOMMODATION INVOLVING AN OVERNIGHT STAY IN A HOTEL OR MOTEL— <i>continued</i>			
		\$	\$
(8)	Interstate – Other than Capital City	208.55	104.30
ACCOMMODATION INVOLVING AN OVERNIGHT STAY AT OTHER THAN A HOTEL OR MOTEL			
(9)	WA - South of 26° South Latitude	93.65	
(10)	WA - North of 26° South Latitude	129.60	
(11)	Interstate	129.60	
TRAVEL NOT INVOLVING AN OVERNIGHT STAY OR TRAVEL INVOLVING AN OVERNIGHT STAY WHERE ACCOMMODATION ONLY IS PROVIDED.			
(12)	WA - South of 26° South Latitude:		
	Breakfast	16.30	
	Lunch	16.30	
	Dinner	46.50	
(13)	WA - North of 26° South Latitude		
	Breakfast	21.15	
	Lunch	33.65	
	Dinner	53.05	
(14)	Interstate		
	Breakfast	21.15	
	Lunch	33.65	
	Dinner	53.05	
DEDUCTION FOR NORMAL LIVING EXPENSES (CLAUSE 39(5)(a))			
(15)	Each Adult	26.25	
(16)	Each Child	4.50	
MIDDAY MEAL (CLAUSE 40(11))			
(17)	Rate per meal	6.35	
(18)	Maximum reimbursement per pay period	31.75	

The allowances prescribed in this Schedule shall operate from the beginning of the first pay period commencing on or after 21 April 2010.

2010 WAIRC 00232

GOVERNMENT OFFICERS SALARIES, ALLOWANCES AND CONDITIONS AWARD 1989

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

THE CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA INCORPORATED

APPLICANT

-v-

ANIMAL RESOURCES AUTHORITY AND OTHERS

RESPONDENTS**CORAM**

PUBLIC SERVICE ARBITRATOR

ACTING SENIOR COMMISSIONER P E SCOTT

DATE

WEDNESDAY, 28 APRIL 2010

FILE NO/S

P 1 OF 2010

CITATION NO.

2010 WAIRC 00232

Result

Award varied

Order

HAVING heard Mr M Sims on behalf of The Civil Service Association of Western Australia Incorporated and Mr A Harper as agent for the respondents, and by consent, the Public Service Arbitrator, pursuant to the powers conferred under the *Industrial Relations Act 1979*, hereby orders:

THAT the Government Officers Salaries, Allowances and Conditions Award 1989 (No PSAA 3 of 1989) be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 21st day of April 2010.

(Sgd.) P E SCOTT,
Acting Senior Commissioner,
Public Service Arbitrator.

[L.S.]

SCHEDULE

1. **Schedule J – Travelling, Transfer and Relieving Allowance: Delete this schedule and insert the following in lieu thereof:**

SCHEDULE J - TRAVELLING, TRANSFER AND RELIEVING ALLOWANCE

ITEM	PARTICULARS	<u>COLUMN A</u>	<u>COLUMN B</u>	<u>COLUMN C</u>
		DAILY RATE	DAILY RATE OFFICERS WITH DEPENDENTS: RELIEVING ALLOWANCE FOR PERIOD IN EXCESS OF 42 DAYS (CLAUSE 49(1)(b)(ii)) TRANSFER ALLOWANCE FOR PERIOD IN EXCESS OF PRESCRIBED PERIOD (CLAUSE 52(3))	DAILY RATE OFFICERS WITHOUT DEPENDENTS RELIEVING ALLOWANCE FOR PERIOD IN EXCESS OF 42 DAYS (CLAUSE 49(1)(b)(ii))
ALLOWANCE TO MEET INCIDENTAL EXPENSES				
		\$		
(1)	WA - South of 26° South Latitude	14.55		
(2)	WA - North of 26° South Latitude	21.75		
(3)	Interstate	21.75		
ACCOMMODATION INVOLVING AN OVERNIGHT STAY IN A HOTEL OR MOTEL				
		\$	\$	\$
(4)	WA - Metropolitan Hotel or Motel	305.45	152.70	101.80
(5)	Locality South of 26° South Latitude	208.55	104.30	69.50

ITEM	PARTICULARS	<u>COLUMN A</u>	<u>COLUMN B</u>	<u>COLUMN C</u>
		DAILY RATE	DAILY RATE OFFICERS WITH DEPENDENTS: RELIEVING ALLOWANCE FOR PERIOD IN EXCESS OF 42 DAYS (CLAUSE 49(1)(b)(ii)) TRANSFER ALLOWANCE FOR PERIOD IN EXCESS OF PRESCRIBED PERIOD (CLAUSE 52(3))	DAILY RATE OFFICERS WITHOUT DEPENDENTS RELIEVING ALLOWANCE FOR PERIOD IN EXCESS OF 42 DAYS (CLAUSE 49(1)(b)(ii))
ACCOMMODATION INVOLVING AN OVERNIGHT STAY IN A HOTEL OR MOTEL— <i>continued</i>				
		\$	\$	\$
(6)	Locality North of 26° South Latitude:			
	Broome	456.75	228.40	152.25
	Carnarvon	255.15	127.60	85.05
	Dampier	366.75	183.40	122.25
	Derby	342.25	171.15	114.10
	Exmouth	292.75	146.40	97.60
	Fitzroy Crossing	370.25	185.15	123.40
	Gascoyne Junction	291.75	145.90	97.25
	Halls Creek	200.75	100.40	66.90
	Karratha	445.75	222.90	148.60
	Kununurra	331.75	165.90	110.60
	Marble Bar	271.75	135.90	90.60
	Newman	339.00	169.50	113.00
	Onslow	273.30	136.65	91.10
	Pannawonica	192.75	96.40	64.25
	Paraburdoo	259.75	129.90	86.60
	Port Hedland	367.15	183.60	122.40
	Roebourne	241.75	120.90	80.60
	Shark Bay	240.25	120.15	80.10
	Tom Price	320.25	160.15	106.75
	Turkey Creek	235.75	117.90	78.60
	Wickham	508.75	254.40	169.60
	Wyndham	254.75	127.40	84.90
(7)	Interstate - Capital City			
	Sydney	304.90	152.45	101.60
	Melbourne	288.55	144.30	96.15
	Other Capitals	270.10	135.05	89.95
(8)	Interstate – Other than Capital City	208.55	104.30	69.50
ACCOMMODATION INVOLVING AN OVERNIGHT STAY AT OTHER THAN A HOTEL OR MOTEL				
(9)	WA - South of 26° South Latitude	93.65		
(10)	WA - North of 26° South Latitude	129.60		
(11)	Interstate	129.60		

ITEM	PARTICULARS	<u>COLUMN A</u> DAILY RATE	<u>COLUMN B</u> DAILY RATE OFFICERS WITH DEPENDENTS: RELIEVING ALLOWANCE FOR PERIOD IN EXCESS OF 42 DAYS (CLAUSE 49(1)(b)(ii)) TRANSFER ALLOWANCE FOR PERIOD IN EXCESS OF PRESCRIBED PERIOD (CLAUSE 52(3))	<u>COLUMN C</u> DAILY RATE OFFICERS WITHOUT DEPENDENTS RELIEVING ALLOWANCE FOR PERIOD IN EXCESS OF 42 DAYS (CLAUSE 49(1)(b)(ii))
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TRAVEL NOT INVOLVING AN OVERNIGHT STAY OR TRAVEL INVOLVING AN OVERNIGHT STAY WHERE ACCOMMODATION ONLY IS PROVIDED.

(12)	WA - South of 26° South Latitude:			
	Breakfast	16.30		
	Lunch	16.30		
	Dinner	46.50		
(13)	WA - North of 26° South Latitude:			
	Breakfast	21.15		
	Lunch	33.65		
	Dinner	53.05		
(14)	Interstate:			
	Breakfast	21.15		
	Lunch	33.65		
	Dinner	53.05		

DEDUCTION FOR NORMAL LIVING EXPENSES (Clause 52. - Transfer Allowance)

(15)	Each Adult	26.25		
(16)	Each Child	4.50		

MIDDAY MEAL (Clause 53. - Travelling Allowance)

(17)	Rate per meal	6.35		
(18)	Maximum reimbursement per pay period	31.75		

The allowances prescribed in this schedule shall operate from the beginning of the first pay period commencing on or after 21st April 2010.

2. Schedule F - Clause 41 - Camping Allowance: Delete this schedule and insert the following in lieu thereof:

SCHEDULE F - CLAUSE 41. - CAMPING ALLOWANCE

South of 26° South Latitude

ITEM			RATE PER DAY
(1)	Permanent Camp	Cook provided by the Department	40.60
(2)	Permanent Camp	No cook provided by the Department	54.10
(3)	Other Camping	Cook provided by the Department	67.65
(4)	Other Camping	No cook provided	81.15

North of 26° South Latitude

ITEM			RATE PER DAY
(1)	Permanent Camp	Cook provided by the Department	58.55
(2)	Permanent Camp	No cook provided by the Department	72.10
(3)	Other Camping	Cook provided by the Department	85.60
(4)	Other Camping	No cook provided	99.15

2010 WAIRC 00235

GOVERNMENT OFFICERS (SOCIAL TRAINERS) AWARD 1988

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

THE CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA INCORPORATED

APPLICANT

-v-

DISABILITY SERVICES COMMISSION

RESPONDENT**CORAM**

PUBLIC SERVICE ARBITRATOR

ACTING SENIOR COMMISSIONER P E SCOTT

DATE

WEDNESDAY, 28 APRIL 2010

FILE NO/S

P 5 OF 2010

CITATION NO.

2010 WAIRC 00235

Result

Award varied

Order

HAVING heard Mr M Sims on behalf of The Civil Service Association of Western Australia Incorporated and Mr A Harper as agent for the respondent, and by consent, the Public Service Arbitrator, pursuant to the powers conferred under the *Industrial Relations Act 1979*, hereby orders:

THAT the Government Officers (Social Trainers) Award 1988 (PSAA 20 of 1985) be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 21st day of April 2010.

(Sgd.) P E SCOTT,
Acting Senior Commissioner,
Public Service Arbitrator.

[L.S.]

SCHEDULE

1. **Schedule J - Travelling, Transfer and Relieving Allowance: Delete this schedule and insert the following in lieu thereof:**

SCHEDULE J - TRAVELLING, TRANSFER AND RELIEVING ALLOWANCE

ITEM	PARTICULARS	<u>COLUMN A</u>	<u>COLUMN B</u>	<u>COLUMN C</u>
		DAILY RATE	DAILY RATE OFFICERS WITH DEPENDENTS: RELIEVING ALLOWANCE FOR PERIOD IN EXCESS OF 42 DAYS (CLAUSE 45(2)(b)) TRANSFER ALLOWANCE FOR PERIOD IN EXCESS OF PRESCRIBED PERIOD (CLAUSE 47(3))	DAILY RATE OFFICERS WITHOUT DEPENDENTS RELIEVING ALLOWANCE FOR PERIOD IN EXCESS OF 42 DAYS (CLAUSE 45(2)(b))
ALLOWANCE TO MEET INCIDENTAL EXPENSES				
		\$		
(1)	WA - South of 26° South Latitude	14.55		
(2)	WA - North of 26° South Latitude	21.75		
(3)	Interstate	21.75		
ACCOMMODATION INVOLVING AN OVERNIGHT STAY IN A HOTEL OR MOTEL				
		\$	\$	\$
(4)	WA - Metropolitan Hotel or Motel	305.45	152.70	101.80
(5)	Locality South of 26° South Latitude	208.55	104.30	69.50

ITEM	PARTICULARS	<u>COLUMN A</u>	<u>COLUMN B</u>	<u>COLUMN C</u>
		DAILY RATE	DAILY RATE OFFICERS WITH DEPENDENTS: RELIEVING ALLOWANCE FOR PERIOD IN EXCESS OF 42 DAYS (CLAUSE 45(2)(b)) TRANSFER ALLOWANCE FOR PERIOD IN EXCESS OF PRESCRIBED PERIOD (CLAUSE 47(3))	DAILY RATE OFFICERS WITHOUT DEPENDENTS RELIEVING ALLOWANCE FOR PERIOD IN EXCESS OF 42 DAYS (CLAUSE 45(2)(b))
ACCOMMODATION INVOLVING AN OVERNIGHT STAY IN A HOTEL OR MOTEL— <i>continued</i>				
		\$	\$	\$
(6)	Locality North of 26° South Latitude:			
	Broome	456.75	228.40	152.25
	Carnarvon	255.15	127.60	85.05
	Dampier	366.75	183.40	122.25
	Derby	342.25	171.15	114.10
	Exmouth	292.75	146.40	97.60
	Fitzroy Crossing	370.25	185.15	123.40
	Gascoyne Junction	291.75	145.90	97.25
	Halls Creek	200.75	100.40	66.90
	Karratha	445.75	222.90	148.60
	Kununurra	331.75	165.90	110.60
	Marble Bar	271.75	135.90	90.60
	Newman	339.00	169.50	113.00
	Onslow	273.30	136.65	91.10
	Pannawonica	192.75	96.40	64.25
	Paraburdoo	259.75	129.90	86.60
	Port Hedland	367.15	183.60	122.40
	Roebourne	241.75	120.90	80.60
	Shark Bay	240.25	120.15	80.10
	Tom Price	320.25	160.15	106.75
	Turkey Creek	235.75	117.90	78.60
	Wickham	508.75	254.40	169.60
	Wyndham	254.75	127.40	84.90
(7)	Interstate - Capital City			
	Sydney	304.90	152.45	101.60
	Melbourne	288.55	144.30	96.15
	Other Capitals	270.10	135.05	89.95
(8)	Interstate – Other than Capital City	208.55	104.30	69.50
ACCOMMODATION INVOLVING AN OVERNIGHT STAY AT OTHER THAN A HOTEL OR MOTEL				
(9)	WA - South of 26° South Latitude	93.65		
(10)	WA - North of 26° South Latitude	129.60		
(11)	Interstate	129.60		

ITEM	PARTICULARS	<u>COLUMN A</u> DAILY RATE	<u>COLUMN B</u> DAILY RATE OFFICERS WITH DEPENDENTS: RELIEVING ALLOWANCE FOR PERIOD IN EXCESS OF 42 DAYS (CLAUSE 45(2)(b)) TRANSFER ALLOWANCE FOR PERIOD IN EXCESS OF PRESCRIBED PERIOD (CLAUSE 47(3))	<u>COLUMN C</u> DAILY RATE OFFICERS WITHOUT DEPENDENTS RELIEVING ALLOWANCE FOR PERIOD IN EXCESS OF 42 DAYS (CLAUSE 45(2)(b))
TRAVEL NOT INVOLVING AN OVERNIGHT STAY OR TRAVEL INVOLVING AN OVERNIGHT STAY WHERE ACCOMMODATION ONLY IS PROVIDED.				
(12)	WA - South of 26° South Latitude:			
	Breakfast	16.30		
	Lunch	16.30		
	Dinner	46.50		
(13)	WA - North of 26° South Latitude:			
	Breakfast	21.15		
	Lunch	33.65		
	Dinner	53.05		
(14)	Interstate:			
	Breakfast	21.15		
	Lunch	33.65		
	Dinner	53.05		
DEDUCTION FOR NORMAL LIVING EXPENSES (CLAUSE 47(5)(a))				
(15)	Each Adult	26.25		
(16)	Each Child	4.50		
MIDDAY MEAL (CLAUSE 48(11))				
(17)	Rate per meal	6.35		
(18)	Maximum reimbursement per pay period	31.75		

The allowances prescribed in this schedule shall operate from the beginning of the first pay period commencing on or after 21 April 2010.

2010 WAIRC 00234

JUVENILE CUSTODIAL OFFICERS' AWARD

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

THE CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA INCORPORATED

APPLICANT

-v-

COMMISSIONER, DEPARTMENT OF CORRECTIVE SERVICES AND ANOTHER

RESPONDENTS

CORAM

PUBLIC SERVICE ARBITRATOR

ACTING SENIOR COMMISSIONER P E SCOTT

DATE

WEDNESDAY, 28 APRIL 2010

FILE NO/S

P 3 OF 2010

CITATION NO.

2010 WAIRC 00234

Result Award varied

Order

HAVING heard Mr M Sims on behalf of The Civil Service Association of Western Australia Incorporated and Mr A Harper as agent for the respondents, and by consent, the Public Service Arbitrator, pursuant to the powers conferred under the *Industrial Relations Act 1979*, hereby orders:

THAT the Juvenile Custodial Officers' Award, No 3 of 1977, be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 21st day of April 2010.

(Sgd.) P E SCOTT,
Acting Senior Commissioner,
Public Service Arbitrator.

[L.S.]

SCHEDULE

- 1. Schedule D - Travelling, Transfer and Relieving Allowance: Delete this schedule and insert the following in lieu thereof:**

SCHEDULE D - TRAVELLING TRANSFER AND RELIEVING ALLOWANCE

ITEM	PARTICULARS	<u>COLUMN A</u>	<u>COLUMN B</u>	<u>COLUMN C</u>
		DAILY RATE	DAILY RATE EMPLOYEES WITH DEPENDENTS RELIEVING ALLOWANCE FOR PERIOD IN EXCESS OF 42 DAYS (CLAUSE 5.7 (2)(b) TRANSFER ALLOWANCE FOR PERIOD IN EXCESS OF PRESCRIBED PERIOD (CLAUSE 5.9 (3))	DAILY RATE EMPLOYEES WITHOUT DEPENDENTS RELIEVING ALLOWANCE FOR PERIOD IN EXCESS OF 42 DAYS (CLAUSE 5.7 (2)(b))
	ALLOWANCE TO MEET INCIDENTAL EXPENSES	\$		
(1)	WA - South of 26° South Latitude	14.55		
(2)	WA - North of 26° South Latitude	21.75		
(3)	Interstate	21.75		
	ACCOMMODATION INVOLVING AN OVERNIGHT STAY IN A HOTEL OR MOTEL			
		\$	\$	\$
(4)	WA - Metropolitan Hotel or Motel	305.45	152.70	101.80
(5)	Locality South of 26° South Latitude	208.55	104.30	69.50
(6)	Locality North of 26° South Latitude			
	Broome	456.75	228.40	152.25
	Carnarvon	255.15	127.60	85.05
	Dampier	366.75	183.40	122.25
	Derby	342.25	171.15	114.10
	Exmouth	292.75	146.40	97.60
	Fitzroy Crossing	370.25	185.15	123.40
	Gascoyne Junction	291.75	145.90	97.25

ITEM	PARTICULARS	<u>COLUMN A</u> DAILY RATE	<u>COLUMN B</u> DAILY RATE EMPLOYEES WITH DEPENDENTS RELIEVING ALLOWANCE FOR PERIOD IN EXCESS OF 42 DAYS (CLAUSE 5.7 (2)(b) TRANSFER ALLOWANCE FOR PERIOD IN EXCESS OF PRESCRIBED PERIOD (CLAUSE 5.9 (3))	<u>COLUMN C</u> DAILY RATE EMPLOYEES WITHOUT DEPENDENTS RELIEVING ALLOWANCE FOR PERIOD IN EXCESS OF 42 DAYS (CLAUSE 5.7 (2)(b))
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ACCOMMODATION INVOLVING AN OVERNIGHT STAY IN A HOTEL OR MOTEL—*continued*

		\$	\$	\$
(6)— <i>continued</i>	Locality North of 26o South Latitude			
	Halls Creek	200.75	100.40	66.90
	Karratha	445.75	222.90	148.60
	Kununurra	331.75	165.90	110.60
	Marble Bar	271.75	135.90	90.60
	Newman	339.00	169.50	113.00
	Onslow	273.30	136.65	91.10
	Pannawonica	192.75	96.40	64.25
	Paraburdoo	259.75	129.90	86.60
	Port Hedland	367.15	183.60	122.40
	Roebourne	241.75	120.90	80.60
	Shark Bay	240.25	120.15	80.10
	Tom Price	320.25	160.15	106.75
	Turkey Creek	235.75	117.90	78.60
	Wickham	508.75	254.40	169.60
	Wyndham	254.75	127.40	84.90
(7)	Interstate - Capital City			
	Sydney	304.90	152.45	101.60
	Melbourne	288.55	144.30	96.15
	Other Capitals	270.10	135.05	89.95
(8)	Interstate – Other			
	than Capital City	208.55	104.30	69.50

ITEM	PARTICULARS	<u>COLUMN A</u> DAILY RATE	<u>COLUMN B</u> DAILY RATE EMPLOYEES WITH DEPENDENTS RELIEVING ALLOWANCE FOR PERIOD IN EXCESS OF 42 DAYS (CLAUSE 5.7 (2)(b) TRANSFER ALLOWANCE FOR PERIOD IN EXCESS OF PRESCRIBED PERIOD (CLAUSE 5.9 (3))	<u>COLUMN C</u> DAILY RATE EMPLOYEES WITHOUT DEPENDENTS RELIEVING ALLOWANCE FOR PERIOD IN EXCESS OF 42 DAYS (CLAUSE 5.7 (2)(b))
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ACCOMMODATION INVOLVING AN OVERNIGHT STAY AT OTHER THAN A HOTEL OR MOTEL

(9)	WA - South of 26° South Latitude	93.65		
(10)	WA - North of 26° South Latitude	129.60		
(11)	Interstate	129.60		

TRAVEL NOT INVOLVING AN OVERNIGHT STAY OR TRAVEL INVOLVING AN OVERNIGHT STAY WHERE
ACCOMMODATION ONLY IS PROVIDED.

(12)	WA - South of 26° South Latitude:			
	Breakfast	16.30		
	Lunch	16.30		
	Dinner	46.50		
(13)	WA - North of 26° South Latitude			
	Breakfast	21.15		
	Lunch	33.65		
	Dinner	53.05		
(14)	Interstate			
	Breakfast	21.15		
	Lunch	33.65		
	Dinner	53.05		

DEDUCTION FOR NORMAL LIVING EXPENSES (CLAUSE 5.9.5(1))

(15)	Each Adult	26.25		
(16)	Each Child	4.50		

MIDDAY MEAL (CLAUSE 5.10.12)

(17)	Rate per meal	6.35		
(18)	Maximum reimbursement per pay period	31.75		

The allowances prescribed in this schedule shall operate from the beginning of the first pay period commencing on or after 21 April 2010.

2010 WAIRC 00233

PUBLIC SERVICE AWARD 1992

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

THE CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA INCORPORATED

APPLICANT

-v-

CURRICULUM COUNCIL OF WESTERN AUSTRALIA AND OTHERS

RESPONDENTS**CORAM**

PUBLIC SERVICE ARBITRATOR

ACTING SENIOR COMMISSIONER P E SCOTT

DATE

WEDNESDAY, 28 APRIL 2010

FILE NO/S

P 2 OF 2010

CITATION NO.

2010 WAIRC 00233

Result

Award varied

Order

HAVING heard Mr M Sims on behalf of The Civil Service Association of Western Australia Incorporated and Mr A Harper as agent for the respondents, and by consent, the Public Service Arbitrator, pursuant to the powers conferred under the *Industrial Relations Act 1979*, hereby orders:

THAT the Public Service Award 1992 (No PSAA 4 of 1989) be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 21st day of April 2010.

(Sgd.) P E SCOTT,
Acting Senior Commissioner,
Public Service Arbitrator.

[L.S.]

SCHEDULE

1. **Schedule I - Travelling, Transfer and Relieving Allowance: Delete this schedule and insert the following in lieu thereof:**

SCHEDULE I - TRAVELLING, TRANSFER AND RELIEVING ALLOWANCE

ITEM	PARTICULARS	COLUMN A	COLUMN B	COLUMN C
		DAILY RATE	DAILY RATE OFFICERS WITH DEPENDENTS: RELIEVING ALLOWANCE FOR PERIOD IN EXCESS OF 42 DAYS (CLAUSE 50(2)(b)) TRANSFER ALLOWANCE FOR PERIOD IN EXCESS OF PRESCRIBED PERIOD (CLAUSE 53(3))	DAILY RATE OFFICERS WITHOUT DEPENDENTS: RELIEVING ALLOWANCE FOR PERIOD IN EXCESS OF 42 DAYS (CLAUSE 50(2)(b))
	ALLOWANCE TO MEET INCIDENTAL EXPENSES	\$		
(1)	WA - South of 26° South Latitude	14.55		
(2)	WA - North of 26° South Latitude	21.75		
(3)	Interstate	21.75		
	ACCOMMODATION INVOLVING AN OVERNIGHT STAY IN A HOTEL OR MOTEL	\$	\$	\$
(4)	WA - Metropolitan Hotel or Motel	305.45	152.70	101.80
(5)	Locality South of 26° South Latitude	208.55	104.30	69.50

ITEM	PARTICULARS	COLUMN A DAILY RATE	COLUMN B DAILY RATE OFFICERS WITH DEPENDENTS: RELIEVING ALLOWANCE FOR PERIOD IN EXCESS OF 42 DAYS (CLAUSE 50(2)(b)) TRANSFER ALLOWANCE FOR PERIOD IN EXCESS OF PRESCRIBED PERIOD (CLAUSE 53(3))	COLUMN C DAILY RATE OFFICERS WITHOUT DEPENDENTS: RELIEVING ALLOWANCE FOR PERIOD IN EXCESS OF 42 DAYS (CLAUSE 50(2)(b))
ACCOMMODATION INVOLVING AN OVERNIGHT STAY IN A HOTEL OR MOTEL— <i>continued</i>				
		\$	\$	\$
(6)	Locality North of 26° South Latitude			
	Broome	456.75	228.40	152.25
	Carnarvon	255.15	127.60	85.05
	Dampier	366.75	183.40	122.25
	Derby	342.25	171.15	114.10
	Exmouth	292.75	146.40	97.60
	Fitzroy Crossing	370.25	185.15	123.40
	Gascoyne Junction	291.75	145.90	97.25
	Halls Creek	200.75	100.40	66.90
	Karratha	445.75	222.90	148.60
	Kununurra	331.75	165.90	110.60
	Marble Bar	271.75	135.90	90.60
	Newman	339.00	169.50	113.00
	Onslow	273.30	136.65	91.10
	Pannawonica	192.75	96.40	64.25
	Paraburdoo	259.75	129.90	86.60
	Port Hedland	367.15	183.60	122.40
	Roebourne	241.75	120.90	80.60
	Shark Bay	240.25	120.15	80.10
	Tom Price	320.25	160.15	106.75
	Turkey Creek	235.75	117.90	78.60
	Wickham	508.75	254.40	169.60
	Wyndham	254.75	127.40	84.90
(7)	Interstate - Capital City			
	Sydney	304.90	152.45	101.60
	Melbourne	288.55	144.30	96.15
	Other Capitals	270.10	135.05	89.95
(8)	Interstate – Other than Capital City	208.55	104.30	69.50
ACCOMMODATION INVOLVING AN OVERNIGHT STAY AT OTHER THAN A HOTEL OR MOTEL				
(9)	WA - South of 26° South Latitude	93.65		
(10)	WA - North of 26° South Latitude	129.60		
(11)	Interstate	129.60		

ITEM	PARTICULARS	COLUMN A DAILY RATE	COLUMN B DAILY RATE OFFICERS WITH DEPENDENTS: RELIEVING ALLOWANCE FOR PERIOD IN EXCESS OF 42 DAYS (CLAUSE 50(2)(b)) TRANSFER ALLOWANCE FOR PERIOD IN EXCESS OF PRESCRIBED PERIOD (CLAUSE 53(3))	COLUMN C DAILY RATE OFFICERS WITHOUT DEPENDENTS: RELIEVING ALLOWANCE FOR PERIOD IN EXCESS OF 42 DAYS (CLAUSE 50(2)(b))
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TRAVEL NOT INVOLVING AN OVERNIGHT STAY OR TRAVEL INVOLVING AN OVERNIGHT STAY WHERE ACCOMMODATION ONLY IS PROVIDED.

(12)	WA - South of 26° South Latitude:			
	Breakfast	16.30		
	Lunch	16.30		
	Dinner	46.50		
(13)	WA - North of 26° South Latitude:			
	Breakfast	21.15		
	Lunch	33.65		
	Dinner	53.05		
(14)	Interstate:			
	Breakfast	21.15		
	Lunch	33.65		
	Dinner	53.05		

DEDUCTION FOR NORMAL LIVING EXPENSES (CLAUSE 53(5)(a))

(15)	Each Adult	26.25		
(16)	Each Child	4.50		

MIDDAY MEAL (CLAUSE 54(11))

(17)	Rate per meal	6.35		
(18)	Maximum reimbursement per pay period	31.75		

The allowances prescribed in this Schedule shall operate from the beginning of the first pay period commencing on or after 21 April 2010.

2. Schedule C - Camping Allowance: Delete this schedule and insert the following in lieu thereof:

SCHEDULE C - CAMPING ALLOWANCE

South of 26° South Latitude

ITEM			RATE PER DAY
(1)	Permanent Camp	Cook provided by the Department	40.60
(2)	Permanent Camp	No cook provided by the Department	54.10
(3)	Other Camping	Cook provided by the Department	67.65
(4)	Other Camping	No cook provided	81.15

North of 26° South Latitude

ITEM			RATE PER DAY
(1)	Permanent Camp	Cook provided by the Department	58.55
(2)	Permanent Camp	No cook provided by the Department	72.10
(3)	Other Camping	Cook provided by the Department	85.60
(4)	Other Camping	No cook provided	99.15

INDUSTRIAL MAGISTRATE—Claims before—

2010 WAIRC 00258

	WESTERN AUSTRALIAN INDUSTRIAL MAGISTRATES COURT	
PARTIES	PARMINDER SINGH	CLAIMANT
	-v-	
	JAGUAR SECURITY SERVICES PTY LTD	RESPONDENT
CORAM	INDUSTRIAL MAGISTRATE G. CICCHINI	
HEARD	WEDNESDAY, 21 APRIL 2010	
DELIVERED	WEDNESDAY, 21 APRIL 2010	
CLAIM NO.	M 132 OF 2009	
CITATION NO.	2010 WAIRC 00258	

CatchWords	Claim for payment of wages dealt with as a small claims proceeding pursuant to s 548 of the Fair Work Act 2009, turns on its own facts.
Legislation	<i>Fair Work Act 2009</i> <i>Security Officers Award of 1981</i>
Cases Cited	Nil
Cases Referred to in Decision	Nil
Result	Claim Proven
Representation:	
Claimant	Mr P. Singh in person
Respondent	Mr J. Walizada Director of the Respondent appeared for it

REASONS FOR DECISION

(Given extemporaneously at the conclusion of the hearing, extracted from the transcript of proceedings and edited by His Honour)

- 1 On or about 1 February 2009, the Respondent employed the Claimant as a casual security officer and crowd controller. His employment was, at all material times governed by the *Security Officers Award of 1981*.
- 2 Between February and June of 2009 the Claimant regularly worked for the Respondent. He mainly worked as security officer at the Girrawheen Shopping Centre. At that place he worked daily Mondays to Fridays inclusive in two shifts between 8 am and 12 noon and thereafter between 3 pm and 8 pm.
- 3 On or about the end of May 2009, the Respondent discovered that the Claimant had been working privately for the Girrawheen Shopping Centre on weekends. The Respondent took the view that his conduct in that regard was illegal, inappropriate and conflicted with his fiduciary obligations to the Respondent. As a consequence the Respondent summarily dismissed him. The Respondent has since steadfastly refused to pay him his wages for the hours worked the preceding two weeks prior to his summary dismissal.
- 4 Subsequent to his dismissal, the Respondent has investigated the Claimant's conduct whilst employed for the Respondent and has come to the view that the Claimant had not worked all the hours he had claimed on his job sheets. The Respondent concluded that the Claimant owes it \$2,800. The alleged overpayment has only been brought to the Claimant's attention after his dismissal. The Respondent suggests that because the Claimant owes it \$2,800, that he should not receive his unpaid wages for work done preceding his summary dismissal.
- 5 On 19 November 2009 the Claimant lodged his claim seeking to recover \$1,656 being the value of his unpaid wages. The \$1,656 claimed represents 90 hours worked between 25 May 2009 and 5 June 2009 inclusive at the rate of \$18.40 per hour. I find that the hourly rate claimed is the correct rate applicable for his work at that time. In addition to his unpaid wages the Claimant also seeks the return of a \$100 deposit paid by him to the Respondent for a uniform supplied to him. He alleges that it was agreed that upon the completion of his employment with the Respondent, he would return his uniform to the Respondent and that his \$100 deposit would be returned to him. He has returned the uniform but his deposit has not been refunded.
- 6 The Claimant testified that he worked the hours claimed but he has not received payment. The Respondent, through its director Mr Walizada, suggests that although the Claimant worked for most of those hours, he did not work the entirety of the 90 hours claimed. Mr Walizada said that he visited the work location on the afternoon of 27 May 2009 and found the Claimant

not to be there. In assessing his evidence in this matter, I am not satisfied that he has a particularly accurate record of the date that he attended the site. He gave no explanation as to why 27 May 2009 particularly stuck in his mind. On the other hand the documentary evidence before me (Exhibits 2 and 3) being the relevant job cards and time sheets reflect that the hours claimed were worked. The job cards and the time sheets produced by the Claimant on their face have been approved and countersigned as being correct. The perusal of those documents demonstrates an acceptance of the times indicated thereon as having been worked.

- 7 The claimant in this matter in his evidence came across as being an honest and reliable witness. I accept his evidence. I have no reason to reject it and I prefer his evidence to Mr Walizada's evidence on issues in conflict. I accept on the balance of probabilities that the claimant has worked at least 90 hours for which he has not been paid.
- 8 The Respondent agrees that the Claimant has not been paid for his last two weeks work, subject to deduction to be made for hours not worked. However, it says, that the Claimant should not be paid any amounts because he owes it \$2,800. The Respondent says that any amount that the Claimant is entitled to receive should be set off against the \$2,800 owing to the Respondent. As indicated to the Respondent at the commencement of this hearing, this Court does not have jurisdictional ability to entertain the Respondent's counterclaim and set off. If the Respondent has a claim against the Claimant, it should pursue that in a Court of competent jurisdiction. There is nothing stopping the Respondent from doing that. It will, of course, be obliged to satisfy that Court of its claim against the Claimant. The fact that the Respondent believes it has a claim against the Claimant is not a factor that this Court can consider or take into account or indeed, determine in this proceeding.
- 9 The only issue determined by this Court is whether the claim is maintainable. As I have already said, I have accepted that the hours claimed to have been worked were worked and that the Claimant was not paid for those hours worked. Accordingly, the only question remaining is whether the summary termination of the Claimant somehow disentitles him to wages accrued prior to his termination. In that regard it is clear that the summary termination of an employment contract has the effect of discharging any obligation falling due, for performance after the date of termination. All obligations existing pre-determination remains enforceable. The Claimant's right to recover wages was not determined by his summary dismissal. It follows that the Claimant is entitled to be remunerated for the 90 hours that he worked at the rate of \$18.40 per hour. He is therefore entitled to the \$1,656 that he has claimed in that regard. Further, given that there was an agreement, as Mr Walizada confirmed concerning the return of the \$100 deposit upon the redelivery of the uniform and given that I am satisfied that the Respondent has received the uniform from the Claimant, the \$100 that was paid by the Claimant to the Respondent ought to be returned to him.
- 10 There will be judgment for the Claimant against the Respondent. I order that the Respondent pay to the Claimant firstly, the sum of \$1,656, less tax, being for outstanding wages; secondly an amount of \$100, being the return of the deposit paid by the Claimant, for his uniform; and thirdly an amount of \$40, being the value of the disbursement incurred by the Claimant in initiating this claim against the Respondent.

G. Cicchini
Magistrate

UNFAIR DISMISSAL/CONTRACTUAL ENTITLEMENTS—

2010 WAIRC 00229

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

ALICIA CASEY

APPLICANT

-v-

FOREVER GREEN GARDEN AND PET CENTRE

RESPONDENT

CORAM

COMMISSIONER S M MAYMAN

DATE

TUESDAY, 27 APRIL 2010

FILE NO/S

B 267 OF 2009

CITATION NO.

2010 WAIRC 00229

Result

Application discontinued

Representation

Applicant

Ms A. Casey

Respondent

Mr D Pascoe and Mrs A Pascoe

Order

WHEREAS this is an application pursuant to Section 29(1)(b)(ii) of the *Industrial Relations Act 1979*;

AND WHEREAS on 9 February 2010 and 24 March 2010 the Commission convened conferences for the purpose of conciliating between the parties;

AND WHEREAS at the conclusion of the conference held on 24 March 2010 agreement was reached between the parties;

AND WHEREAS on 1 April 2010 the applicant filed a Notice of Discontinuance in respect of the application;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby discontinued.

[L.S.]

(Sgd.) S M MAYMAN,
Commissioner.

2010 WAIRC 00228

	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION	
PARTIES	ALICIA CASEY	APPLICANT
	-v-	
	FOREVER GREEN GARDEN AND PET CENTRE	RESPONDENT
CORAM	COMMISSIONER S M MAYMAN	
DATE	TUESDAY, 27 APRIL 2010	
FILE NO/S	U 267 OF 2009	
CITATION NO.	2010 WAIRC 00228	

Result	Application discontinued
Representation	
Applicant	Ms A Casey
Respondent	Mr D. Pascoe and Mrs A Pascoe

Order

WHEREAS this is an application pursuant to Section 29(1)(b)(i) of the *Industrial Relations Act 1979*;

AND WHEREAS on 9 February 2010 and 24 March 2010 the Commission convened conferences for the purpose of conciliating between the parties;

AND WHEREAS at the conclusion of the conference held on 24 March 2010 agreement was reached between the parties;

AND WHEREAS on 1 April 2010 the applicant filed a Notice of Discontinuance in respect of the application;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby discontinued.

[L.S.]

(Sgd.) S M MAYMAN,
Commissioner.

2010 WAIRC 00249

	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION	
PARTIES	REBECCA BERNADETTE HAMLIN	APPLICANT
	-v-	
	JAMES MURRAY TRUST	RESPONDENT
CORAM	COMMISSIONER S M MAYMAN	
DATE	TUESDAY, 4 MAY 2010	
FILE NO/S	U 233 OF 2009	
CITATION NO.	2010 WAIRC 00249	

Result Application discontinued
Representation
Applicant Ms S Eggleston
Respondent Mr G McCorry

Order

WHEREAS this is an application pursuant to section 29(1)(b)(i) of the *Industrial Relations Act 1979*;
AND WHEREAS on 22 February 2010 the Commission convened a conference for the purpose of conciliating between the parties;
AND WHEREAS at the conclusion of the conference no agreement was able to be reached between the parties;
AND WHEREAS on 21 April 2010 the applicant filed a Notice of Discontinuance in respect of the application;
NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby discontinued.

[L.S.]

(Sgd.) S M MAYMAN,
Commissioner.

2010 WAIRC 00260

PARTIES WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
SUSAN MICHELLE HODGES **APPLICANT**

-v-

SWAN TAFE **RESPONDENT**

CORAM COMMISSIONER J L HARRISON

HEARD WEDNESDAY, 11 NOVEMBER 2009, FRIDAY, 13 NOVEMBER 2009, FRIDAY, 20 NOVEMBER 2009, TUESDAY, 15 DECEMBER 2009

DELIVERED TUESDAY, 11 MAY 2010

FILE NO. U 119 OF 2009

CITATION NO. 2010 WAIRC 00260

Catchwords Termination of employment - Claim of harsh, oppressive and unfair dismissal - Principles applied - Applicant not unfairly dismissed - Application dismissed - *Industrial Relations Act 1979* (WA) s 23A, s 27(1)(m) and s 29(1)(b)(i); *Public Sector Management Act 1994* s 102

Result Dismissed
Representation
Applicant Ms S Hodges on her own behalf
Respondent Mr M Taylor

Reasons for Decision

- On 30 June 2009 Susan Michelle Hodges (“the applicant”) lodged an application pursuant to s 29(1)(b)(i) of the *Industrial Relations Act 1979* (“the Act”) against Swan TAFE (“the respondent”) (“the College”) claiming that she was unfairly terminated on 28 February 2009. The respondent denies that the applicant was unfairly terminated on the basis that the applicant was a casual employee who ceased employment with the respondent when it decided not to offer her any further work after 23 February 2009 and the applicant was given the required one hour’s notice of termination prior to her ceasing employment with the respondent.

Background

- The applicant was employed by the respondent on a casual basis as a lecturer between April 2006 and February 2009. The applicant worked between seven and a half and 15 hours per week at the time she ceased employment with the respondent and she was paid approximately \$50.00 per hour for each hour worked. Her terms and conditions of employment were governed by the *Western Australian TAFE Lecturers’ Certified Agreement 2005* (“the 2005 Agreement”). The applicant mainly designed and delivered computer training courses to staff at the respondent’s Professional and Career Development (“PACD”)

section at its Jandakot Campus and she worked with Warehouse trainees from the respondent's Midland campus. In December 2008 the applicant was advised by the respondent that she was the successful candidate for a full-time position as an Occupational Health and Safety Lecturer ("the OHS Lecturer position") however after a dispute about the applicant undertaking contract work with the Royal Life Saving Society of Australia ("RLSS") ("outside work") in addition to this full-time position, the respondent withdrew the offer of employment for the OHS Lecturer position.

Change of name of the respondent

- 3 During the hearing the respondent advised the Commission that as at 25 November 2009 the respondent's name had been changed to Polytechnic West. Pursuant to the Commission's powers under s 27(1)(m) of the Act, which allows the Commission to correct, amend or waive any error, defect or irregularity whether in substance or in form, I will amend the name of the respondent in the Notice of Application to reflect the current name of the respondent and I will issue an order that Swan TAFE be deleted as the named respondent in this application and be substituted with Polytechnic West (see *Rai v Dogrin Pty Ltd* [2000] 80 WAIG 1375 and *Bridge Shipping Pty Ltd v Grand Shipping SA and Anor* [1991] 173 CLR 231).

Applicant's evidence

- 4 The applicant gave evidence that between April 2006 and February 2009 she conducted a range of computer training courses for the respondent. The applicant also trained Warehouse trainees for approximately two to five hours per week between October 2007 and February 2009. The applicant confirmed that as at June 2009 the respondent no longer trained these students.
- 5 The applicant taught the Swan Computer Drivers' Licence ("SCDL") course two days per week between June 2007 and December 2007 and one day per week between February 2008 and December 2008. The applicant also conducted other computer courses for the respondent including Photoshop, Web CT, Touch Typing, Advanced Power Point, Design of Templates and MS Project 2003, she completed administrative and course development duties from time to time and she developed resources and assisted other lecturers to develop their resources. The applicant gave evidence that she usually worked two days per week with the respondent.
- 6 The applicant stated that in November 2008 the acting manager of PACD Ms Johanna de Graaf sent her an email asking her if she was available to undertake a new course in Microsoft 2007 in Term 1, 2009 and continue with the SCDL course in Term 2, 2009. In response the applicant told her that she would be available to teach on Mondays as usual and she told Ms de Graaf that she could also work on Thursdays (see Exhibit A1). The applicant gave evidence that during a discussion she had with Ms de Graaf prior to receiving this email Ms de Graaf told the applicant that if the SCDL course was not being conducted by the respondent in 2009 she could conduct other computer training courses at PACD.
- 7 The applicant gave evidence that in October 2008 she applied for the OHS Lecturer position and she was interviewed for this position in November 2008. The applicant stated that on 12 December 2008 whilst at the respondent's Bentley campus undertaking administrative duties for a course she was to present in Term 1, 2009 she was advised by one of the respondent's lecturers, Ms Ros Paul, that as she was on the list of attendees for the new employee induction course in January 2009 she would not be required to deliver the respondent's induction training in January 2009, which she normally undertook in January and June of each year. The applicant stated that she understood that this meant that she had been successful in obtaining the OHS Lecturer position. As the applicant had not been notified by the respondent that she had been successful in obtaining the OHS Lecturer position she telephoned the Chairperson of the interview committee, Mr Greg Oliver after this discussion and he confirmed that the applicant had been recommended for appointment to the OHS Lecturer position and she would soon be receiving a letter of confirmation to this effect.
- 8 As the applicant wanted to continue teaching First Aid with the RLSS on a part-time basis, which she had been doing for some time, in addition to undertaking the OHS Lecturer position she contacted the respondent's Occupational Health and Safety Programme Manager Mr Kevin Doig on or about 18 December 2008 to obtain his consent to undertake this additional work. The applicant gave evidence that during her discussion with Mr Doig about this issue he initially agreed that she could continue to undertake First Aid training however he then told her that she could only run this course if students undertaking the course enrolled with the respondent and the applicant was employed by the respondent to conduct this course. The applicant disagreed with this proposal as she understood the respondent was not accredited to conduct this course and it was also not financially beneficial to her for the applicant to be employed by the respondent to run this course compared to being a contractor for the RLSS. The applicant then contacted the respondent's Manager of Human Resources, Mr Mark Taylor on 19 December 2008 to have Mr Doig's decision reviewed and she told him that Mr Doig had blackmailed her with his suggestion that she could only conduct the course if students undertaking First Aid training were enrolled with the respondent. In response the applicant was advised that she could take up the issue with the respondent's Managing Director, Mr Wayne Collyer or with Mr Taylor who would then raise it with him on her behalf when the College recommenced in early January 2009. The applicant gave evidence that she sent an email to Mr Taylor on 19 December 2008 detailing why she should be allowed to continue to conduct First Aid training in addition to the OHS Lecturer position and in this email she maintained that there was no conflict of interest in her undertaking this additional work (see Exhibit A2).
- 9 The applicant stated that on or about 6 January 2009 she received written confirmation from the respondent confirming that she had been recommended as the successful applicant for the OHS Lecturer position and she was advised at the time that this was a fixed term full-time vacancy with the possibility of the position being extended and/or the position being made permanent. Around this time the applicant contacted Mr Taylor about the issue of her continuing to undertake outside work and he advised her that he would take up this issue with Mr Collyer by the end of the week. When the applicant had not received a response from Mr Taylor about this issue she contacted him on or about 11 January 2009 and he told her that he had not yet taken the matter up with Mr Collyer. The applicant then told him that her application for undertaking additional work was an urgent matter as she had received the offer of full-time employment and Mr Taylor told her that he would speak to Mr Collyer early

the following week. The applicant gave evidence that on or about 13 January 2009 she contacted Mr Taylor and queried why the OHS Lecturer position was being offered to her on a contract and not permanent basis as previously advised to her and she and Mr Taylor then exchanged emails about the terms and conditions of the job offer and her undertaking outside employment (see Exhibit A4). The applicant maintained that Mr Doig deliberately tried to change the OHS Lecturer position to a contract position even though it was advertised as a full-time permanent position so that she would not take up this position. On 15 January 2009 Mr Taylor sent the applicant an email confirming that the OHS Lecturer position was a permanent appointment and the applicant was told that the issue of her undertaking outside employment had been sent to Mr Collyer for determination. The applicant stated that because of Mr Taylor's poor attitude towards her and his tardiness in handling the issue of her undertaking outside employment and the issues surrounding the terms of the OHS Lecturer position she lodged a formal complaint against him.

- 10 After Mr Collyer sent the applicant a letter on or about 21 January 2009 outlining the reasons for denying her the opportunity to undertake outside employment the applicant claimed that there were a number of statements in his letter which were incorrect (see Exhibit A5). The applicant maintained that she was a subcontractor to the RLSS and not an employee nor was she employed by another Registered Training Organisation and she stated that she did not have any contractual arrangement with the Scout Association of Australia. As the applicant believed that the issue of her undertaking outside employment remained unresolved she highlighted these concerns in an email to Ms Helen Murphy, a representative from the respondent's Human Resources section who attended a meeting she had with Mr Collyer on or about 16 January 2009 (see Exhibits A5 and A6). After the applicant had indicated to Mr Collyer, via her email to Ms Murphy, inaccuracies in his letter dated 21 January 2009 with respect to the reasons for refusing to approve her undertaking outside employment after reviewing the applicant's claims Mr Collyer again rejected the applicant's request to undertake outside employment by letter dated 28 January 2009 and he also told the applicant that she was required to contact Shared Services Recruitment and advise if she would be accepting or declining the respondent's offer of full-time employment by close of business on 29 January 2009 (see Exhibit A8). The applicant gave evidence that as she had not been advised to contact Shared Services in the letter she received from the respondent dated 6 January 2009, which informed her that she had been recommended for the OHS Lecturer position, she contacted Shared Services which advised her that it was assumed that she had accepted the job if she did not decline the position subsequent to receiving the letter dated 6 January 2009 and if no other applicant objected to her taking up this position then it was up to the respondent to confirm her appointment to the position in writing (see Exhibit A3). After receiving this advice the applicant sent an email to Mr Taylor on 29 January 2009 requesting that the appropriate documentation be sent to her about the OHS Lecturer position as detailed in the employee section of the document titled 'College Authorisation Procedure – 2.2 Selection and Appointment', Exhibit A9, and the applicant stated that when she contacted Mr Taylor by telephone on 29 January 2009 after sending this email he advised her that he had not received her email. Mr Taylor then told her that she either had to accept or decline the OHS Lecturer position and in response the applicant told him that she needed further information about the conditions of employment for the position and she told Mr Taylor that she would be accepting the position subject to a range of issues being resolved. The applicant gave evidence that Mr Taylor then told her that he would not send her an offer of employment until the applicant indicated whether or not she was accepting or declining the OHS Lecturer position and in response the applicant told Mr Taylor that she was not declining the position. The applicant gave evidence that during this conversation Mr Taylor told her that if she did not accept or decline the position "there and then" the respondent would rescind the job offer and the applicant stated that she told Mr Taylor that she did not appreciate being threatened by him on the basis that she had not been afforded due process in accordance with the respondent's normal processes for appointments to positions.
- 11 The applicant gave evidence that on or around 28 January 2009 she spoke to Mr Doig about why, as manager of this area, he had not contacted her to discuss the conditions of the OHS Lecturer position as Shared Services had advised her that this was the process and she also told him that she had not yet received a letter confirming her appointment to this position. In response he told the applicant that he was unaware that this was the process to be followed. The applicant maintained that Mr Doig had been informed that the period for people to notify the respondent of any breach of standard with respect to the selection process for the OHS Lecturer position had expired and he therefore knew that she should have been contacted to proceed with her appointment to the position and he did not do so. The applicant gave evidence that Mr Doig told her that he was meeting Mr Taylor on or around 30 January 2009 and he would raise these issues with Mr Taylor.
- 12 The applicant gave evidence that she subsequently received a letter from Mr Collyer dated 30 January 2009 withdrawing the offer of employment to the OHS Lecturer position due to the significant breakdown in the relationship between the applicant and the College and because the applicant did not commit to the OHS Lecturer position in a timely manner before classes were to commence (Exhibit A10). After receiving this letter the applicant contacted Mr Collyer to arrange a meeting with him but as she had other commitments on the only day he was available the following week the applicant had a telephone conversation with him on 3 February 2009. During this conversation the applicant denied that her relationship with the respondent had broken down and she informed him that she was still working casually at the College at PACD. In response Mr Collyer advised her that his decision would stand. The applicant gave evidence that she told Mr Collyer during this conversation that she had not been unwilling to commit to the OHS Lecturer position nor had she formally declined the position and as no contract for the OHS Lecturer position had been given to her she was not required to accept the position until this had been done. The applicant stated the following:

"He just dismissed anything that I said and ... and that the decision to rescind the offer stood and when I disputed that I had ... was unwilling to commit to the position, I simply stated that I hadn't been given the documentation. I hadn't been given a contract. I hadn't been given the confirmation; that I wasn't required to submit anything before I'd received those to state that I'd accept it and I hadn't formally declined the position and therefore considered that I had accepted until such time as I was presented with something which would cause me to decline the position."

(Transcript p 33)

- 13 The applicant stated that on 31 January 2009 she lodged a complaint with the respondent's complaints section about the actions of Mr Doig and Mr Taylor with respect to her appointment to the OHS Lecturer position. The applicant also disputed Mr Collyer's decision denying her application for approval to undertake outside work.
- 14 The applicant gave evidence that she returned to work at PACD on or around 2 February 2009 and spent the day preparing the MS Office 2007 course which she was scheduled to teach the following week. The applicant stated that on 9 February 2009 she told Ms de Graaf that the respondent had withdrawn the offer of the OHS Lecturer position and she was now available to continue working at PACD on an ongoing basis. The applicant also gave evidence that during a discussion she had with Ms de Graaf prior to this date Ms de Graaf told her that if the applicant did not accept the OHS Lecturer position she could continue to undertake casual work at the College at PACD.
- 15 The applicant gave evidence that when she was first told that she was to be offered the OHS Lecturer position in December 2008 she arranged for a friend Ms Justine Dunlop to undertake some of her casual computer training sessions and she liaised with Ms Dunlop in January 2009 about conducting the SCDL course.
- 16 The applicant stated that during a telephone conversation with Ms de Graaf on 12 February 2009 Ms de Graaf told her that she had been directed to review the 2009 computer training courses being offered by the respondent and as a result of this review the applicant would no longer be required to undertake casual work with the respondent after 23 February 2009. The applicant stated that during this conversation Ms de Graaf was upset and she told her that she was unhappy that she had to tell her of this decision and she apologised to her and told her that she was sorry.
- 17 The applicant gave evidence that as she had another commitment on 16 February 2009 Ms Dunlop undertook a computer training course for her on that day. Ms Dunlop also telephoned the applicant that day and told her that Ms de Graaf had told her that she could continue to conduct Microsoft 2007 courses which the applicant had previously undertaken after the applicant finished working at the College on 23 February 2009. The applicant stated that this conflicted with the advice Ms de Graaf had given her on 12 February 2009 that the respondent would not be conducting these courses and she called Ms de Graaf that day to clarify why Ms Dunlop was being employed to conduct this course and not her. In response Ms de Graaf told her that she was no longer to be employed by the respondent and she had received an email containing a directive to this effect from the respondent's management and its Human Resources section. Even though Ms de Graaf offered to send a copy of this directive to the applicant she did not receive it and on 17 February 2009 the applicant sent a written request to Ms de Graaf asking why Ms Dunlop and not the applicant had been asked to conduct computer training however she received no response (see Exhibit A13).
- 18 The applicant had a further discussion with Ms de Graaf on 20 February 2009 about the directive not to employ her and she gave evidence that during this discussion she was told by Ms de Graaf that she had been told she was not to provide the applicant with a copy of this directive and she was told to speak to Ms Annette Geikie. Ms Geikie told the applicant that the respondent was now using a pool of lecturers and when asked why the applicant was not part of this pool and why Ms Dunlop had been chosen to work at PACD instead of the applicant, Ms Geikie told her that the applicant had not been told that she was not to work for PACD. In reply the applicant told Ms Geikie that she was aware of a direction that she was not to work at PACD any more and Ms Geikie said that this was incorrect and she referred the applicant to her manager Ms Kath Finn. The applicant gave the following evidence:

"And then what happened?--Basically, she started to go on about a pool of lecturers and that they were not providing the work for just one lecturer any more and I asked her why I wasn't a part of that pool and she stated that I hadn't been told that I was not to work for PACD and I corrected her and said I was told and specifically told that the direction was that I was not to work at PACD any more and she stated that that was incorrect. I told her that I'd been told that the computer training was to cease at the end of the month and that there would then be a review of how the computer training would be ... would proceed at a later date and she told me that this again was incorrect. And when I asked her why Justine had been chosen to deliver the computer training over myself, she said, "That is an issue for management and you'll have to speak to Kath Finn," and I asked her if she could put me through to Kath Finn and she said, "She is on leave," and could not provide a date when she returned."

(Transcript p 39)

The applicant said she tried to contact Ms Finn several times but she did not return her calls. The applicant confirmed that her last day of work at PACD with the respondent was on 23 February 2009.

- 19 The applicant stated that as Ms Kim Wouters was dealing with a complaint she made to the respondent's complaints management unit about Mr Taylor and Mr Doig she told her that she had been removed from her casual teaching position at PACD which she believed was linked to the complaints she had made about Mr Taylor and Mr Doig.
- 20 The applicant gave evidence that the review panel dealing with her application to have the decision rescinding the offer of employment as a full-time OHS Lecturer overturned decided that as there were irreconcilable differences between herself and the respondent and as she continued to pursue the issue of undertaking outside employment the offer of employment would not be re-instated.
- 21 The applicant gave evidence about the completion of a Recognition of Prior Learning ("RPL") assessment with respect to a Certificate IV in Training and Assessment. The applicant stated that in December 2008 she was given the opportunity to complete an RPL assessment to obtain an upgraded Certificate IV in Training and Assessment free of charge because she was employed by the respondent and this assessment was scheduled to be completed at a meeting set down on 1 April 2009 however the applicant was unable to attend this meeting due to a personal commitment. When the applicant tried to arrange an alternative date she was told she would have to wait until Ms Geikie returned from leave. The applicant spoke to Ms Geikie on 23 June 2009 and she was told that as she was no longer employed by the respondent she was required to pay an enrolment fee

- to undertake the RPL assessment. The applicant disputed that she was no longer employed by the respondent as at 23 June 2009 as she remained available to work with Warehouse trainees and it was not until this date that she was told during her discussion with Ms Geikie that she would no longer be undertaking this role. The applicant stated that any fees to be paid for the RPL assessment were due at the time of her enrolment in December 2008 and she understood that as she was still enrolled in the course she did not have to pay the fees. The applicant also stated that she was not aware of any condition that as part of her enrolment in the course if she ceased to be an employee of the respondent she would then be liable to pay course fees.
- 22 The applicant tendered emails confirming that the respondent continued to conduct MS Office 2007 courses in March and April 2009 and a report containing other courses conducted by the respondent up to October 2009 (see Exhibits A21, A26 and A28).
- 23 The applicant gave evidence that she understood from a former employee of the respondent, Mr Tom Rynn, that a casual employee could only be replaced by a full-time or part-time lecturer therefore she should not have been replaced by Ms Dunlop.
- 24 The applicant stated that she currently is unemployed. In addition to working for the respondent on a casual basis the applicant worked with Racing and Wagering Western Australia five days per fortnight and she was made redundant from this position in October 2009. The applicant gave evidence she had applied for numerous casual positions with a range of training providers but had been unsuccessful in gaining employment. The applicant is seeking compensation in the form of lost wages for two days per week for the four terms in 2009.
- 25 Under cross-examination the applicant confirmed that she did not work with students in the Warehouse course after 23 February 2009.
- 26 The applicant stated that she was not seeking reinstatement to her former position with the respondent because she would be vulnerable as a casual employee given what had previously occurred.
- 27 The applicant re-iterated that on 12 December 2008 Ms de Graaf told her that if she did not take up the OHS Lecturer position she could work at PACD and she was told that Ms Dunlop would be ancillary to her undertaking this role.
- 28 The applicant stated that she did not formally accept the OHS Lecturer position offered to her by the respondent by 29 January 2009 as requested by Mr Collyer in his letter dated 28 January 2009 because she required details about the contractual arrangements associated with this position and Mr Taylor refused to give her this information which was a pre-condition to her accepting the position. The applicant also maintained that Shared Services advised her that as the breach period for this position had finished the respondent should have sent her details about her contract and did not do so (see Exhibit A9). The applicant also maintained that she had effectively accepted the OHS Lecturer position because she did not send the respondent a letter declining this position (see Exhibit A3). The applicant disputed that she would only accept the OHS Lecturer position if her request to undertake outside work was approved and she maintained that even though she made a serious allegation against Mr Doig she believed she could still work with him.
- 29 Ms Dunlop gave evidence that she conducted approximately four days of Microsoft Office training with the respondent from November 2007 onwards and she stated that she obtained this work with the applicant's assistance. Ms Dunlop stated that she understood she was a back-up lecturer when the applicant was unavailable or when there was sufficient students to run two classes. Ms Dunlop gave evidence that in December 2008 both the applicant and Ms de Graaf asked her if she would be interested in delivering the applicant's classes as the applicant was applying for a full-time position with the respondent and she was told that the training would be on Mondays in 2009 undertaking the Microsoft Office 2007 and the SCDL courses. Ms Dunlop gave evidence that after the applicant's offer of the OHS Lecturer position was rescinded she understood that she would not be delivering any further training for the respondent as she had only been employed if the applicant was unavailable. Ms Dunlop gave evidence that subsequent to 16 February 2009, which was the last day on which she worked for the respondent, Ms de Graaf contacted her via email to undertake work with the respondent and she stated that these offers ceased around the end of March 2009. Ms Dunlop stated that the applicant was more skilled than her with respect to conducting computer training and Ms Dunlop gave evidence that the applicant told her in the middle of February 2009 that it was up to her if she wanted to continuing working for the respondent.
- 30 Under cross-examination Ms Dunlop confirmed that she was the applicant's friend and she stated that she was not pressured by the applicant to cease working with the respondent. Ms Dunlop stated that she chose not to continue working with the respondent of her own accord as a result of the respondent's treatment of the applicant.

Respondent's evidence

- 31 Ms de Graaf is the manager of PACD, she is based at the respondent's Jandakot campus and she reports to Ms Geikie. Ms de Graaf has held this position since June 2008. In this role Ms de Graaf coordinates and oversees the training needs of the respondent's staff and she manages PACD's budget and human resources issues for two other employees as well as a number of casual and external staff employed at PACD. Ms de Graaf maintained that she was not given any order to terminate the applicant and she claimed that she has no authority to terminate an employee.
- 32 Ms de Graaf described the applicant as an effective lecturer in 2008 but in 2009 her demeanour changed after she applied for the OHS Lecturer position and Ms de Graaf gave evidence that the applicant became increasingly upset and agitated about problems she was experiencing about this position and she stated this issue consumed the applicant. Ms de Graaf stated that when the applicant contacted her outside of working hours on a number of occasions about issues she was having she told her to raise her concerns with the respondent's Human Resources section. Ms de Graaf stated that she received a number of calls from the applicant on 31 March 2009 both before and at work and Ms de Graaf gave evidence that when she finally spoke to the applicant on this date they "had quite a heated argument" and the applicant talked over her and insisted on knowing who gave the order to terminate her (T75). After this conversation Ms de Graaf sent an email to her manager Ms Geikie confirming the nature of her interactions with the applicant (see Exhibit R1).

- 33 In response to a request from Mr Taylor, Ms de Graaf sent an email to him on 13 July 2009 confirming the courses that the applicant taught and whether or not she had been replaced subsequent to ceasing employment with the respondent (Exhibit R2).
- 34 Ms de Graaf stated that the applicant usually worked for the respondent one day per week and on occasions she was unavailable to work for the respondent due to other commitments. Ms de Graaf stated that as the applicant had been offered the OHS Lecturer position she had to find a replacement for her and the respondent then looked at setting up a pool of employees to undertake computing training rather than relying on one casual lecturer. As a result during 2009 a number of casual lecturers or external facilitators delivered PACD's computer courses and Ms de Graaf stated that these employees were casual employees and were used on an as-needs basis.
- 35 Ms de Graaf confirmed that Ms Dunlop was employed by the respondent in 2008 and early 2009.
- 36 Ms de Graaf maintained that an email she sent to staff members on 23 February 2009 with respect to the SCDL course clarifies the basis upon which SCDL was no longer being offered by the respondent to its employees and she gave evidence that this was endorsed by the relevant standing committee.
- 37 Ms de Graaf stated that the email she wrote to the applicant on 27 November 2008 about her availability to undertake computer training for the respondent in 2009 was on the basis that she anticipated that the respondent would be conducting the SCDL course in 2009 (see Exhibit A1). Ms de Graaf stated that in January 2009 WestOne Services, which provides training for the Department of Education and Training, advised the respondent about difficulties with the respondent running the SCDL program as it was not compatible with the new Microsoft Office 2007 software and as a result SCDL computer training was unable to be offered to the applicant.
- 38 Ms de Graaf confirmed that the applicant had in the past sought and been guaranteed one full day of work per week and if no training was available to undertake the applicant would undertake administration work. Ms de Graaf stated that work was available for the applicant to undertake after she and Ms Geikie had completed a review into PACD's training calendar for 2009 in November 2008 but Ms Dunlop and not the applicant was offered work after February 2009 because her relationship with the applicant had become uncomfortable and the applicant was hostile towards the College, Mr Collyer and Mr Taylor. Ms de Graaf stated the following with respect to why the respondent preferred to employ Ms Dunlop over the applicant:
- "... you [the applicant] were under the expectation that when you came in and did delivery for us that we would give you a full day's work regardless of what numbers that we had. On instruction from my manager Annette Geikie I was told that we were no longer going to be delivering our training in that way and that hence the reason why Justine was offered ad hoc training, because we could call her in, whether it just be for a couple of hours to deliver training for half a day, whereas you were wanting employment for a full day and we could no longer offer that. It was no longer financially viable."
- (Transcript p 90)
- 39 Ms de Graaf maintained that during February 2009 both Ms Dunlop and the applicant were part of a pool of employees available to teach computing courses and the respondent's intention was to have Ms Dunlop work alongside the applicant so that she could upgrade her skills.
- 40 Ms de Graaf gave evidence that the training offered by PACD changed on a regular basis.
- 41 Ms de Graaf stated that as a result of the breakdown in the relationship between the applicant and herself and the respondent it was unlikely that she would offer the applicant further casual work at PACD even if work was available.
- 42 Under cross-examination Ms de Graaf confirmed that she allocated staff to deliver courses under the direction of Ms Geikie.
- 43 Ms de Graaf confirmed that she may have told the applicant that she could not see why there was a conflict of interest in her undertaking the OHS Lecturer position and her delivery of First Aid training and Ms de Graaf stated that as the applicant was upset at the time she gave her a phone number to access counselling. Ms de Graaf agreed that she provided her personal mobile telephone number to the applicant as well as other staff members for emergencies within work hours but she stated that this was not to be used to harass and abuse her.
- 44 Ms de Graaf denied that she was mistaken when she said that the applicant attempted to contact her on several occasions on her mobile telephone on 31 March 2009 and Ms de Graaf stated that when she arrived at work that day her staff told her that the applicant had left several messages saying that the applicant had made a number of calls to Ms de Graaf's mobile telephone.
- 45 Ms de Graaf stated that she was not specifically told not to employ the applicant and she maintained that the applicant was to be part of a pool of casual lecturers and would have remained in that pool if her attitude towards the respondent had not changed. Ms de Graaf stated that she was aware that the offer of full-time employment for the applicant had been withdrawn by the respondent by 16 February 2009 and she understood that the applicant would be seeking to have this decision overturned.
- 46 Ms de Graaf maintained that the email sent to the applicant on 27 November 2008 was sent prior to a final decision being made about courses PACD would conduct in 2009 and she stated that the review into training courses for 2009 was not completed until mid to late January 2009 (Exhibit A1).
- 47 Ms de Graaf stated that, subject to sufficient numbers being available to attend each course, the courses the applicant could have delivered in 2009 included the MS Office 2007 - Getting Up to Speed training once a week for three and a half hours, Introduction to Word Training once per month and courses during professional development week in April of each year. After Ms de Graaf reviewed the respondent's training report for 2009 she conceded that the applicant could have also conducted the

- following courses; Blackboard – Starting in CE6, Elluminate – Getting Started and Advanced, MS Office 2007 - Getting up to Speed, Touch Typing, Introduction to Word, Advanced CE6, MS 2007 - Introduction to Excel, MS 2007 - Introduction to Power Point, Advanced Power Point, MS 2007 - Introduction to Outlook and Microsoft Project 2003. Ms de Graaf confirmed that a number of these courses were offered by the respondent in Semester 1, 2009.
- 48 Ms de Graaf gave evidence that Ms Dunlop was asked by the respondent to undertake the MS Office 2007 - Getting Up to Speed training in Term 1, 2009 so that she could develop her skills for conducting courses during the respondent's induction week in April.
- 49 Ms de Graaf agreed that she told the applicant that if the respondent did not continue running the SCDL course she would be considered to deliver other courses, but she qualified this by saying that she never told the applicant that she would be the only person to undertake other courses and she stated that these courses were delivered on a range of days not just on a Monday when the applicant was available. Ms de Graaf then conceded that the applicant had also delivered training for the respondent on a number of Thursdays in 2008.
- 50 Ms de Graaf confirmed that on or about 12 February 2009 she contacted the applicant and told her that as a result of an email she had received from Ms Geikie the last course the applicant would be delivering would be on 23 February 2009 and she stated that it was possible that during this discussion she mentioned that the computer classes being conducted by the respondent would be reviewed at the end of the month.
- 51 Ms de Graaf confirmed that she contacted Ms Dunlop about delivering the MS Office 2007 – Getting Up to Speed courses that the applicant had already been scheduled to deliver.
- 52 Ms de Graaf stated that even though she confirmed in an email to the applicant on 11 February 2009 that training would proceed as planned for March 2009 this changed after receiving the email from Ms Geikie on the same date and she stated that she had to act on the direction contained in that email. Ms de Graaf stated that even though the respondent reviewed training in November 2008 no set time frames were made at that time about finalising the review and she had further discussions with Ms Geikie in early February 2009 about courses to be conducted at PACD.
- 53 Ms de Graaf stated that during discussions she had with the applicant on 12 and 16 February 2009 about her not undertaking training at PACD she told the applicant that this decision was not made by her. Ms de Graaf denied that she told the applicant on 12 February 2009 that she was “not paid enough to do this and they should do their own dirty work” (T139) and Ms de Graaf said it was possible that she had told the applicant on 12 February 2009 that she would arrange a lunch for the applicant on her last day of work but she said that this was not an unusual occurrence. Ms de Graaf denied that she asked Ms Geikie to review her decision to no longer offer the applicant the opportunity to undertake training courses and she denied she told the applicant during a conversation with the applicant on 16 February 2009 that she was unable to intervene in the matter as she was concerned about her permanent appointment to the position in which she was acting. Ms de Graaf stated that on 23 February 2009 she may have used her log-in code so the applicant could access her computer and Ms de Graaf stated that she was aware that the applicant had been removed from the staff email list as at this date and Ms Dunlop added as a result of a request from Ms Geikie.
- 54 Ms de Graaf maintained that she did not tell the applicant that she was no longer required to undertake work at PACD even though she agreed she sent an email to Mr Taylor on 17 February 2009 stating that she had told the applicant that “we no longer had any work for her” and she stated that the email only refers to that point in time (Exhibit A15).
- 55 Ms de Graaf gave evidence that even though she told the applicant in November 2008 that she would be training one day per week with PACD in 2009 this was before the respondent's training calendar had been reviewed and it was later decided that the SCDL course was no longer going to be conducted by the respondent in 2009.
- 56 Ms de Graaf stated that an alternative casual lecturer was used to conduct computer training subsequent to the applicant leaving the respondent in February 2009 and the same lecturer was being used by the respondent for the majority of other classes conducted at PACD due to his availability.
- 57 Ms de Graaf could not recall exactly when the applicant was unavailable to conduct training in 2008 but she stated that this occurred on occasions when the applicant had other commitments.
- 58 Ms de Graaf maintained that the applicant harassed her subsequent to being told that she no longer was required to undertake training with the respondent in February 2009 and Ms de Graaf recalled phone calls from the applicant on 31 March 2009 whereby she claimed the applicant harassed and abused her and demanded to know who issued an instruction to terminate her. When Ms de Graaf told her that she had not been given this instruction she maintained that the applicant said “Don't treat me like an effing child” (see Transcript page 150). Ms de Graaf stated that she was upset after this conversation and she instructed her staff not to put any further telephone calls from the applicant through to her.
- 59 Ms Geikie is the respondent's Manager of Training and Assessment and she has held this position since 2006. In this role she manages the respondent's training and assessment unit which is responsible for supporting lecturing staff at the College and she is also responsible and accountable for the functioning of PACD and to ensure that the professional development calendar is of value to the College's staff. Ms Geikie confirmed that she is Ms de Graaf's line manager. Ms Geikie gave evidence that in mid to late November 2008 she and Ms de Graaf reviewed the respondent's professional development training calendar for 2009 as part of its continuous improvement strategy.
- 60 Ms Geikie confirmed that in October 2008 some of the respondent's staff were given the opportunity to upgrade their qualifications to the current Certificate IV in Training and Assessment by way of an RPL assessment free of any payment of fees and Ms Geikie maintained that staff were told at the time that they had six months to complete this RPL process from the date of enrolment. Ms Geikie stated that at the end of June 2009 a letter was sent to the applicant stating that this offer had now been withdrawn as she was no longer employed by the respondent.

- 61 Ms Geikie stated that even though she was aware that the applicant had a grievance with the College in early 2009 this did not have any impact on the curriculum review undertaken by her.
- 62 Under cross-examination Ms Geikie confirmed that casual staff could be appointed by Ms de Graaf without her approval.
- 63 Ms Geikie maintained that the review of which courses PACD would conduct in 2009 went through to February 2009.
- 64 Ms Geikie stated that it was a mistake for Ms de Graaf to ask the applicant in November 2008 to conduct the SCDL course in 2009 and she did not approve this offer of employment and Ms Geikie stated that she was unaware that Ms de Graaf had guaranteed the applicant employment each Monday in 2009 but Ms Geikie then stated that Ms de Graaf was responsible for scheduling training. Ms Geikie stated that the respondent would always conduct computer training courses but it was not the respondent's intention to continue SCDL training in 2009. Ms Geikie stated that she wanted to have a pool of lecturers to undertake training at PACD.
- 65 Ms Geikie maintained that the RPL upgrade for the Certificate IV in Training and Assessment for the respondent's staff had a six month time limit and this information was contained in the respondent's RPL upgrade booklet and Ms Geikie confirmed that the applicant remained enrolled in this course as at June 2009. When asked if this would still entitle the applicant to be assessed without paying a fee Ms Geikie said that the respondent had a right to withdraw the applicant's enrolment and did so, given the six month time limit. Ms Geikie stated that she cancelled the initial appointment for the applicant to have her RPL assessed and this meeting was rescheduled to 2 April 2009 and she appointed another staff member to undertake this assessment as she was unavailable. Ms Geikie stated that there was no record of the applicant leaving messages for her on or about 2 April 2009 cancelling the assessment on that date.
- 66 Ms Geikie could not recall if she had a meeting with Ms de Graaf to review training in the two week period prior to generating the email she sent to Ms de Graaf dated 11 February 2009 removing the applicant from undertaking computer courses after 23 February 2009 but she stated that she would have discussed this issue with Ms de Graaf either by telephone or face-to-face prior to making any decisions (see Exhibit A12). Ms Geikie maintained that her email dated 11 February 2009 related to issues which were part of the review of training commenced in November 2008. Ms Geikie stated that Ms Dunlop was asked to undertake training courses after February 2009 and not the applicant because the respondent needed a pool of casual lecturers to deliver training and Ms Geikie understood that the applicant was told that she would be part of this pool. Ms Geikie stated that the decision to use a pool of lecturers at PACD was made in November 2008.
- 67 Ms Geikie stated that by the end of February 2009 and as a result of the applicant's hostility to the respondent and harassment of Ms de Graaf it was inappropriate to ask the applicant to conduct any further computer training. When it was put to Ms Geikie that the College had asked Ms Dunlop, who was not as experienced as the applicant and not available in March, to deliver courses that the applicant was scheduled to deliver which was a deliberate act to remove the applicant from PACD Ms Geikie denied this was the case as she understood that the applicant would be part of a pool of lecturers. Ms Geikie claimed that the applicant being part of a pool of lecturers would have been discussed with her in the last two weeks of February 2009 and Ms Geikie stated that the respondent uses a pool of lecturers at all times.
- 68 Ms Geikie maintained that after the applicant had asked for a letter of appreciation this was included in an email she sent on 12 February 2009 to Mr Taylor and Mr Frank Gannaway (Exhibit A30).
- 69 When asked why the applicant was not offered work in March 2009 when Ms Dunlop was not available Ms Geikie stated that the respondent wanted to retain a pool of casual employees and she stated that the applicant and Ms Dunlop were not the only employees who conducted computer training for the respondent on a casual basis in 2009.
- 70 Ms Geikie gave evidence that she was unaware if the respondent had given the applicant a written explanation as to why she was no longer required to work for the respondent. Ms Geikie stated that she kept the respondent's managers informed of issues relevant to the applicant by copying them into emails as she was aware that the applicant had lodged grievances against some of the respondent's employees.

Submissions

Applicant

- 71 The applicant claims that she was unfairly dismissed from her position at PACD on 23 February 2009 (see Exhibits A12 and A30).
- 72 The applicant submits that she had a casual contract of employment to conduct computer training for PACD every Monday during 2009 and on other days as required depending on her availability and this was a fixed term arrangement as confirmed in correspondence between herself and Ms de Graaf in November 2008 (see Exhibit A1). The applicant also claims that the email to her from Ms de Graaf dated 11 February 2009 confirms that she would be employed by the respondent to teach on a casual basis as normal in March 2009 and an email from Ms Geikie to Ms de Graaf dated 11 February 2009 also confirms that the respondent's computer training programme for 2009 scheduled the applicant to deliver training every Monday (see Exhibits A21 and A12). The applicant submits that in addition to this evidence she had an agreement with Ms de Graaf that if she did not commence full-time employment with the respondent in 2009 this arrangement would continue and if the applicant commenced full-time employment with the respondent then her position would be filled by Ms Dunlop.
- 73 The applicant argues that the respondent continued to offer MS Office 2007 training after the applicant ceased working with the respondent but this course and others were offered to other casual employees including Ms Dunlop even though the applicant was qualified and experienced to deliver all of the computer training offered by PACD during 2009 and no reason was given to the applicant as to why she had been replaced by Ms Dunlop.

- 74 During the applicant's employment with the respondent no performance issues were raised with her and feedback regarding her performance was always positive, as confirmed by the email from Ms de Graaf to Ms Hodges and Ms Geikie dated 9 October 2008. Furthermore, the applicant's experience and expertise in computer software training and training in general was far superior to that of Ms Dunlop.
- 75 The applicant disputes Ms de Graaf's claim that Ms Dunlop was to be used as a trainer instead of the applicant because she wanted Ms Dunlop to have more experience for the presentation of professional development days and the applicant rejects Ms Geikie's claim that she wanted to use a pool of lecturers as an explanation for not offering the applicant additional work after 23 February 2009 as only one lecturer Mr Brian Murray was used by the respondent in 2009.
- 76 The applicant argues that her enrolment in the course to upgrade her training and assessment qualifications via an RPL assessment was valid from December 2008 to December 2009 and the applicant claims that she had an agreement with the respondent that it pay or waive the fees for the course at the commencement of enrolment in December 2008. The applicant was unable to attend an assessment appointment in early April 2009 and subsequent appointments for the applicant to be assessed were cancelled by Ms Geikie or not rescheduled by her and in June 2009 Ms Geikie refused to assess the applicant without payment of \$850. Ms Geikie told her in June 2009 that she could not be assessed as she was no longer employed by the respondent however the applicant maintains that she was still working for the respondent on a casual basis with Warehouse students. The applicant argues that the payment of her enrolment fees for the RPL assessment became the responsibility of the respondent in December 2008 and as the applicant still had a current enrolment in the course this payment should have been honoured by the respondent and the applicant assessed on that enrolment. Additionally, if the applicant had still been employed by PACD in 2009 the issue of the payment for the RPL assessment would not have arisen.
- 77 The applicant submits that the respondent removed her as a casual employee at PACD so it did not have to respond to her complaints against Mr Doig and Mr Taylor or to have grounds for any decision to be overturned on review (see Exhibits A16 and A24). The applicant also maintains that she was not dismissed from PACD due to an apparent breakdown in the working relationship between herself and the respondent as she was still being offered work up to 11 February 2009 nor for any other PACD management issue as claimed by Ms de Graaf. The applicant maintains that she was terminated to support Mr Taylor's argument that there was a breakdown in the working relationship between the applicant and the respondent (see Exhibit A21).
- 78 The applicant argues that she was treated unfairly by the respondent when it refused to allow her to undertake outside work in addition to the OHS Lecturer position offered to her and in the way this matter was handled by Mr Doig and Mr Taylor. The applicant also claims that the respondent should not have rescinded the offer of full-time employment it made to her in January 2009. The applicant argues that the respondent did not follow its appointment policy with respect to this position even though the respondent had been advised by Shared Services on 20 January 2009 that the breach period had finished and there was no objection to the applicant being appointed to the full-time position. The applicant disputes that there was a breakdown in the relationship between her and the respondent as she was still working with the respondent without incident at the time the offer of the OHS Lecturer position with the respondent was rescinded and the applicant maintains that even though the applicant had lodged complaints about the conduct of some of the respondent's managers this does not constitute a breakdown of communication particularly when those managers were not following the College's protocol and policy or providing valid reasons for their decisions. The applicant also claims that all complaints and avenues she has lodged and followed have been lawful.
- 79 The applicant submits that Mr Taylor and several other of the respondent's senior managers were directly involved with her dismissal from PACD and this is confirmed by Mr Taylor being copied or addressed directly into all the correspondence from Ms Geikie and Ms de Graaf regarding her termination (Exhibits A12, A14, A15, A17, A20, R1, R2, R4, A30, A31 and A32). The applicant also submits that Mr Taylor became involved with her dismissal to ensure that the decision to rescind the offer of the OHS Lecturer position would not be overturned because if the applicant was still working for the respondent it could not be argued that the working relationship between the applicant and the respondent had broken down.
- 80 The applicant argues that she has no ill feelings towards any of the respondent's staff and she believes that she would have no problem working with any of the respondent's staff members as she did not hold grudges.
- 81 The applicant argues that she has been severely disadvantaged by her unfair dismissal. Since being made redundant by Racing and Wagering Western Australia in October 2009 the applicant has had no additional sources of income and due to the attitude of the respondent's management towards her the applicant is unlikely to secure any future employment with the respondent. The applicant has not been able to secure another casual or part-time position to make up the income lost by her dismissal by the respondent from her position at PACD as most lecturing positions are advertised and appointments made by the commencement of classes at the beginning of February in a teaching year and the applicant was dismissed shortly after this time. The applicant maintains that she would accept a full-time permanent position with the respondent as compensation for her unfair dismissal but not re-instatement in a casual position as the applicant believes the respondent would find reasons again to terminate her. In the alternative the applicant believes that as a remedy for her unfair termination it is appropriate that she be recompensed her loss of 7.5 hours per day based on working approximately 40 weeks in 2009, she is seeking an order that her enrolment in the RPL course be extended beyond 31 December 2009 so that she can be assessed free of charge and she requests that the Commission issue a direction that any bias be removed from any future applications she may make for employment with the respondent.

Respondent

- 82 The respondent argues that the applicant was not unfairly dismissed by the respondent as she was a casual employee who had an hourly contract of service in accordance with the provisions of the 2005 Agreement. Due to a curriculum change in 2009, the respondent had no need to employ the applicant as a casual lecturer in 2009 so the applicant's casual engagements with the respondent expired due to the effluxion of time in accordance with the 2005 Agreement.

- 83 The respondent argues that as the applicant's contract of employment was bound by Clause 21. - Casual of the 2005 Agreement the applicant did not have an expectation of ongoing employment. The respondent also claims that work is no longer available for the applicant to undertake with the respondent as PACD courses are now delivered by a number of presenters including private providers. The respondent relies on the following definition of casual employment in the Full Bench decision *Serco (Australia) Pty Limited v John Joseph Moreno* [1996] 76 WAIG 937 at 939 and the respondent argues that the applicant's terms of employment met this criteria:
- "The concept of casual employment within the common law of employment, untrammelled by award prescription, is generally taken to connote an employee who works under a series of separate and distinct contracts of employment entered into for a fixed period to meet the exigencies of particular work requirements of an employer, rather than under a single and ongoing contract of indefinite duration"
- 84 The respondent acknowledges that e-mails were sent by Ms de Graaf in 2008 advising the applicant that the respondent wanted her to deliver casual lecturing sessions however this proved to be incorrect when a review of the courses to be delivered by PACD was completed in late 2008 through to early 2009.
- 85 The respondent maintains that as a result of preparing for the applicant to be unavailable in 2009, as it was assumed her full-time employment with the College would commence in early 2009 and in addition to a coincidental change to the curriculum, the applicant was not offered any casual lecturing sessions after 23 February 2009. Even though an e-mail from Mr Taylor on 18 February 2009 to the applicant stated the applicant was no longer an employee, this was the Human Resources Directorate's belief at that time (see Exhibit A24).
- 86 The respondent rejects the applicant's claim that the rescission of the offer of full-time employment to the applicant in January 2009 was related to the respondent's decision not to offer her further work after February 2009. The respondent maintains that from the start of 2009 the applicant made a series of complaints to the College and made unproductive, abusive calls to a number of senior College staff members and as a result an untenable relationship developed between the applicant and the respondent. Additionally, the SCDL course the applicant was delivering in 2008 had no foreseeable expectation of ongoing delivery as at February 2009 and this course is currently not being delivered by the respondent (see Exhibit R3). It is acknowledged that additional computer training has been offered by PACD in 2009 but not the SCDL course and the applicant was not required to conduct these courses due to low enrolments and the applicant's lack of requisite skills or demeanour.
- 87 The respondent argues that when the applicant was offered a full-time permanent appointment with the respondent in 2009 she advised the respondent's Managing Director that she would not accept this position unless her secondary employment in a training role was approved and after considerable dialogue between the parties, the respondent withdrew this offer of employment on 30 January 2009. The respondent maintains that this decision was due to the respondent's view that the applicant's secondary employment was not in accordance with s 102 of the *Public Sector Management Act 1994* and because of the dysfunctional relationship that had developed between the applicant and the respondent (see Exhibit A10). The respondent also contends that the rescission of the offer of the OHS Lecturer position was a means of formalising the applicant's rejection of the offer of this position as a result of the applicant's refusal to acknowledge the respondent's decision not to approve her secondary employment. The respondent also contends that any issues concerning the withdrawal of the offer of permanent employment is outside the scope of this application which relates to the expiration of casual shifts being made available to the applicant. The respondent also argues that given the fractured relationship between the applicant, the respondent's Managing Director and two of the respondent's Directors, the respondent is unlikely to give future casual engagements to the applicant.
- 88 The respondent maintains that this application is vexatious and is ill conceived.
- 89 The respondent rejects the applicant's claim for completion of the RPL process for a Certificate IV in Training and Assessment which the respondent provided free for casual lecturers as the applicant's access to this qualification without paying the fee has been withdrawn. However, the respondent is willing to continue the applicant's enrolment in this RPL process on a fee for service basis. The respondent further claims that free access to a training course cannot be dealt with by the Commission given the terms of s 23A of the Act.
- 90 The respondent disputes the applicant's claim for compensation. The respondent maintains that the applicant has not been dismissed and argues that in any event given the respondent's 2009 training schedule it is unlikely that the applicant could have maintained any significant pattern of casual engagements throughout 2009. The respondent argues that Ms de Graaf did not terminate the applicant but on instructions from Ms Geikie informed her of a change to the respondent's curriculum which precluded her from being offered further lecturing sessions at that time. The respondent claims that the only relevance of the rescission of the permanent employment offer to this decision was that the applicant had become a dysfunctional employee as a result of how this issue was handled by her and Ms de Graaf elected not to offer further casual engagements to an individual who was not acting in the respondent's interests.
- 91 In summary the respondent contends that the applicant was not dismissed and that it is the employer's right to decide to whom casual employment is awarded. The respondent also argues that the change to the curriculum delivered by PACD was an independent process from the respondent's decision to rescind the offer of full-time employment to the applicant. The respondent also argues that the rescission of this offer of employment had no relationship with the cessation of the applicant's casual shifts however the subsequent significant decline in the applicant's demeanour did make her unattractive as a potential casual employee. As the respondent has no current need for the applicant's services and given the irreconcilable differences between the respondent and the applicant, it is inappropriate for the applicant to be employed or reinstated. It is also inappropriate to issue an order that the applicant be reinstated to the OHS Lecturer position previously offered to her by the respondent as this would be contrary to Public Sector Standards.

Findings and conclusions

- 92 I listened carefully to the evidence given by each witness and closely observed each witness and most of the evidence as well as documentation tendered by the parties was not in conflict.
- 93 I find that the applicant gave very detailed evidence and her evidence about her recollections of events was very clear and emphatic and the applicant tendered substantial documentation confirming the veracity of much of her evidence. In the circumstances I accept the evidence given by the applicant with one qualification. There was a conflict about whether or not the applicant harassed Ms de Graaf and was aggressive towards her when she made several phone calls to her on 31 March 2009. It appears that the applicant had direct contact with Ms de Graaf at least once that day and I find that the applicant was both forthright and aggressive towards Ms de Graaf when she spoke to her on this date given that the applicant was insistent at the time about finding out who had made the decision not to offer her any further casual employment at PACD after 23 February 2009.
- 94 Ms Dunlop gave her evidence in a forthright and clear manner and it is my view that she gave her evidence to the best of her recollection. I therefore accept her evidence.
- 95 In my view Ms de Graaf gave her evidence in a clear and consistent manner and to the best of her recollection. Whilst she had a different view to the applicant about the nature of some of her discussions with the applicant in my view not much turns on this conflict and even though there was a dispute between Ms de Graaf and the applicant about the applicant's interactions with her and her staff on 31 March 2009 her evidence in general was in accord with the evidence given by the applicant and documentation tendered at the hearing. In the circumstances I accept the evidence given by Ms de Graaf. It is my view that Ms Geikie was not as forthcoming on some issues as she could have been. In particular I find that Ms Geikie's evidence about the reasons for the respondent initially not offering the applicant casual employment after 23 February 2009 and the review she conducted about how PACD courses were to be delivered and which courses were going to be conducted in 2009 was unconvincing. In particular I take into account that Ms Geikie did not mention the use of a pool of employees as a reason for not employing the applicant after 23 February 2009 in the email sent to Ms de Graaf on 11 February 2009 however at the hearing she gave evidence that this was a major reason for not employing the applicant subsequent to this date (see Exhibit A12). I therefore treat the evidence given by Ms Geikie, in particular in relation to the issue of the reasons for not offering the applicant ongoing casual employment in 2009, with caution.
- 96 The applicant claims that she was employed by the respondent as a fixed-term casual employee. The tests relevant to whether or not an employee is employed under a casual contract of employment have been canvassed in a range of authorities (see *Serco (Australia) Pty Limited v John Joseph Moreno* [op cit] and *Melrose Farm Pty Ltd t/as Milesaway Tours v Milward* (2008) 88 WAIG 1751 and cases cited therein). The nature of fixed term employment was discussed in *Robert Gallotti v Argyle Diamonds Mines Pty Ltd* (2003) 83 WAIG 919 and *Katherine Stobie v The Director General Department, of Education and Training, Government of Western Australia* (2004) 84 WAIG 3178 (FBA).
- 97 The 2005 Agreement which applied to the applicant's employment with the respondent contains the following relevant provisions. Clause 18. - Modes of Employment provides:
- “18.1 Employees covered by this Agreement will be employed in the mode of either permanent, fixed term contract or casual employment. The employer will inform each employee of the terms and conditions of their employment prior to commencement. Permanent is the preferred mode of employment of the parties to the agreement.”
- Clause 20. - Fixed Term Contract provides in part as follows:
- “20.1 ‘Fixed term contract employee’ means an employee who is employed to carry out work of a finite duration. Circumstances where this mode of employment is appropriate include:
- Covering one-off periods of relief;
 - Work on projects with a finite life, where funding is not guaranteed past a certain date, or the work is subject to demand driven fluctuations, or is seasonal in nature;
 - Specific tasks or projects which shall mean a definable work activity which has a starting time and which is expected to be completed within an anticipated timeframe;
 - Roles where the skills and abilities required to perform a function are expected to vary over time;
- 20.2 An employee engaged on a fixed term contract will be notified in writing prior to the commencement of employment of the details of the work, the reason for the contract being for a fixed term, together with the conditions of employment, and the starting and finishing dates of the contract.”
- Clause 21. – Casual provides in part as follows:
- “21.1 Casual lecturers are employed by the hour and are entitled solely to the casual hourly rate of pay for each hour of lecturing worked. Casual lecturers are not entitled to the leave and other provisions in this agreement.”
- 98 The authorities make it clear that if an employee is employed on a fixed-term basis he or she is to be employed for a finite period with an agreed start and finish date. There was no evidence that this was the case with respect to the applicant's employment with the respondent over approximately three years and in any event the applicant conceded during the hearing that she was a casual employee and paid as such pursuant to the 2005 Agreement.
- 99 Even though the applicant was offered the opportunity to work Mondays and possibly a Thursday by Ms de Graaf in her email to the applicant dated 27 November 2008 and the applicant accepted this arrangement and it is also the case that on 11 February 2009 Ms de Graaf confirmed dates with respect to classes to be taught by the applicant in Term 1, 2009 in my

view these arrangements did not constitute a fixed-term contract between the applicant and the respondent. There was no agreement between the applicant and the respondent confirming specific start and finish dates for the applicant's employment with the respondent in 2009 and the applicant conceded that she had flexibility with respect to the days she would be available to work and that she did not always work two days each week due to personal and study related commitments. In the circumstances I find that the applicant was a casual employee who had an ongoing expectation of work with the respondent and was not employed by the respondent under a fixed-term contract of employment.

- 100 The applicant claims that she was unfairly dismissed when the respondent did not offer her any further casual employment at PACD subsequent to 23 February 2009. The test for determining whether a dismissal is unfair or not is well settled. The question is whether the employer acted harshly, unfairly or oppressively in dismissing the applicant as outlined by the Industrial Appeal Court in *Undercliffe Nursing Home v Federated Miscellaneous Workers Union of Australia, Hospital Service and Miscellaneous WA Branch* (1985) 65 WAIG 385. The onus is on the applicant to establish that the dismissal was, in all the circumstances, unfair. Whether the right of the employer to terminate the employment has been exercised so harshly or oppressively or unfairly against the applicant as to amount to an abuse of the right needs to be determined. A dismissal for a valid reason within the meaning of the Act may still be unfair if, for example, it is effected in a manner which is unfair. However, terminating an employment contract in a manner which is procedurally irregular may not of itself mean the dismissal is unfair (see *Shire of Esperance v Mouritz* (1991) 71 WAIG 891 and *Byrne v Australian Airlines* (1995) 61 IR 32). In *Shire of Esperance v Mouritz* (op cit), Kennedy J observed that unfair procedures adopted by an employer when dismissing an employee are only one element that needs to be considered when determining whether a dismissal was harsh or unjust.
- 101 The respondent claims that the Commission does not have jurisdiction to deal with this application on the basis that the applicant was not terminated as her contract of employment with the respondent ceased due to the effluxion of time when the applicant was given notice on 12 February 2009 that her services were no longer required subsequent to 23 February 2009. The respondent also argues that the applicant was not offered any further employment with the respondent after this date as the relationship between the applicant and the respondent had broken down.
- 102 The Commission's jurisdiction to entertain a claim of unfair dismissal does not depend on whether or not an employee was a casual employee but whether or not that employee was dismissed (see *Serco (Australia) Pty Limited v John Joseph Moreno* [op cit]).
- 103 Paragraph 2 sets out the background to the applicant's employment with the respondent.
- 104 Following is a chronology of relevant events and correspondence with respect to this application.

Chronology of events

27 November 2008	The respondent offers the applicant casual employment on Mondays for 2009 and asks for her availability on other days if more programmes are offered.	Exhibit A1
November 2008	Applicant attends an interview for the OHS Lecturer position	T15
12 December 2008	Applicant is made aware informally that she is the successful applicant for the OHS Lecturer position	T15-16
18 December 2008	The applicant contacts Mr Doig, the respondent's Occupational, Health and Safety Programme Manager to obtain consent to undertake outside employment in addition to the OHS Lecturer position. Mr Doig refuses the request.	T17-18
19 December 2008	The applicant contacts Mr Taylor to have the above decision reviewed and indicates to the respondent that unless she can teach Senior First Aid through the RLSS in addition to taking up the OHS Lecturer position the respondent would soon be formally offering her, she could not afford to take the position.	Exhibit A2
6 January 2009	The applicant is advised by the Shared Services Centre that she was recommended as the successful applicant for the OHS Lecturer position and if no breach of standard application is lodged by 20 January 2009 she will be confirmed in this position unless she indicates she does not wish to take up the position.	Exhibit A3
7 January 2009	The applicant indicates to the respondent that she has supplied sufficient information to it to demonstrate that there is no conflict of interest in her undertaking outside work and the OHS Lecturer position.	Exhibit A4
12 January 2009	The applicant seeks clarification from the respondent as to whether the OHS Lecturer position is permanent or a contract position and that it is a Level 7 position.	Exhibit A4
13 January 2009	The respondent advises the applicant the OHS Lecturer position is a Level 7, contract position with the possibility of it becoming a permanent position.	Exhibit A4
13 January 2009	The applicant advises the respondent that she understood the OHS Lecturer position was a permanent position.	Exhibit A4

15 January 2009	The respondent advises the applicant the OHS Lecturer position is permanent and that the issue of the applicant undertaking outside work has been sent to Mr Collyer for determination.	Exhibit A4
On or about 16 January 2009	Applicant meets Mr Collyer to discuss taking on outside work.	T28
21 January 2009	Mr Collyer writes to the applicant rejecting her request to undertake outside employment and setting out the reasons for his decision.	Exhibit A5
27 January 2009	The applicant disputes Mr Collyer's decision and details reasons for her view to Ms Murphy, a Human Resources representative.	Exhibit A6
28 January 2009	Mr Collyer advises the applicant that notwithstanding the additional information supplied by the applicant to Ms Murphy his original decision in relation to outside employment stands and he requires the applicant to contact Shared Services to accept or decline the OHS Lecturer position offer by 29 January 2009 as classes were due to commence on 2 February 2009.	Exhibit A8
28 January 2009	The applicant advises Mr Taylor that with respect to accepting or declining the OHS Lecturer position she has been offered she was seeking a letter of acceptance from the respondent to respond to and she indicates that the earliest she could commence in this position if this is sent to her within seven days, is late February 2009.	Exhibit A27
29 January 2009	The applicant advises Mr Taylor and Mr Doig that the respondent has not complied with the College's Selection and Appointment Process in relation to the OHS Lecturer position. The applicant also raises concerns about being threatened with the offer of the OHS position being rescinded when she has not been offered due process and she states that she will respond as to whether she would accept or decline the position once she has received the appropriate documentation.	Exhibit A9
30 January 2009	Mr Collyer rescinds the applicant's offer of the OHS Lecturer position.	Exhibit A10
31 January 2009	The applicant makes a formal complaint about the way in which Mr Doig and Mr Taylor handled the OHS Lecturer position offer and the issue of outside employment and she complains about the respondent's decision to rescind her offer of employment and she maintains that she has been bullied and blackmailed throughout this process. The applicant also claims that the delay in her acceptance of the position was because the respondent has not followed the correct appointment procedures and the applicant claims that Mr Collyer's letter refusing secondary employment was inaccurate and did not contain a valid reason for refusing her request.	Exhibit A11
2 February 2009	The applicant advises Mr Taylor of her objection to the withdrawal of her offer of full-time employment stating that any final decision by her to decline the OHS Lecturer position would be based on the terms of her contract of employment which she has not received and she maintains that she has complied with all requests made of her and then states that as she has not declined the position she has accepted it.	Exhibit A22
11 February 2009	At 11.35am Ms de Graaf advises Ms Dunlop and the applicant that due to a public holiday on 2 March 2009 and another course being conducted on 9 March 2009 there would be no work for them to undertake with PACD on these dates and classes would return to normal on 16 March 2009.	Exhibit A21
11 February 2009	At 11.36am Ms Geikie advises Ms de Graaf that she is to tell the applicant that she is no longer required to work at PACD as of 24 February 2009 as it was not cost effective to run courses previously conducted by the applicant and Ms Dunlop would be employed to deliver courses the applicant was scheduled to conduct on 16 March 2009, 23 March 2009, 30 March 2009 and 6 April 2009 as only one trainer was required by the respondent.	Exhibit A12
12 February 2009	The applicant is verbally advised by Ms de Graaf that she is no longer required to deliver training as at the close of business on 23 February 2009	Exhibit A30
17 February 2009	The applicant asks Ms de Graaf why Ms Dunlop was conducting courses previously undertaken by her.	Exhibit A13
17 February 2009	Ms Geikie advises Ms de Graaf to refer the applicant to Mr Taylor if she has any concerns and tells her not to provide a copy of the email to the applicant forwarded to her last week (Exhibit A12).	Exhibit A14

17 February 2009	Ms de Graaf emails Mr Taylor stating that the applicant has contacted her that morning claiming 'how dare we give training to Justine over her' and she states that the applicant is becoming 'very pushy' with her.	Exhibit A15
20 February 2009	Ms Geikie advises Mr Taylor that during a conversation with the applicant that day she advised her of the following: <ul style="list-style-type: none"> • Work for casual staff is not guaranteed. • More than one casual staff member is employed as a risk management strategy. • The applicant was not told that she would not be employed as a casual and a pool of persons would deliver training. 	Exhibit A31
23 February 2009	Ms de Graaf sends an email to the respondent's staff advising that PACD will no longer be offering the SCDL training.	Exhibit R3
3 March 2009	Ms de Graaf asks Ms Dunlop to work on 23 March 2009 and 21 to 23 April 2009 inclusive.	Exhibit A26
31 March 2009	Ms de Graaf advises Ms Geikie in an email that when the applicant had contacted her that morning she told the applicant that she had not been told to 'fire her' and that a pool of lecturers would be used to deliver training in Term 2. Ms de Graaf stated: <p>"She became very agitated with me and told me not to treat her like a child and wants to know why she hasn't been asked to do any more computing training with us and started yelling over the top of me, so I told her that I will not speak with her anymore, we have already had this conversation and then I hung up on her."</p>	Exhibit R1
27 May 2009	The respondent's review committee concludes that the respondent's decision to withdraw the OHS Lecturer position offer to the applicant should stand. The committee states the following: <p>"The Committee is of the view that there has been an irreconcilable breakdown in the working relationship between yourself and the College. Furthermore, the Committee considers that it is untenable to expect that a satisfactory resolution can be achieved regarding the impasse on your intent to pursue the issue of outside employment."</p>	Exhibit A25
13 July 2009	Ms de Graaf emails Mr Taylor confirming the applicant undertook 'MS Office 2007 - Getting Up to Speed' training which was now being taught by another lecturer.	Exhibit R2

- 105 The applicant claims that she had been employed by the respondent on an ongoing casual basis from April 2006 to February 2009 without incident and as she had sufficient skills and was available to conduct a range of computer training courses offered by PACD after 23 February 2009, which she had previously undertaken, the respondent should have continued to employ her at PACD after 23 February 2009. The respondent maintains that when it made its decision not to deliver the SCDL course subsequent to 23 February 2009, which the applicant had been scheduled to conduct, the applicant then became part of a pool of employees and she was to be employed by the respondent after this date to conduct alternative courses at PACD as and when required. The respondent also claims that soon after it made its decision to employ the applicant when it deemed appropriate as part of a pool of employees, its relationship with the applicant broke down and it decided that it was therefore not appropriate to offer the applicant any further work at PACD.
- 106 I find on the evidence that the applicant commenced work on a casual, ongoing basis with the respondent in April 2006 and the last day she worked for the respondent at PACD was 23 February 2009 as a result of Ms de Graaf telling the applicant on 12 February 2009 that she would not be required to work for the respondent after this date, after receiving a direction to this effect from her manager, Ms Geikie. The applicant was also retained by the respondent on a casual basis to deliver training to Warehouse trainees however it was not in dispute and I find that she did not undertake any duties with respect to this role after 23 February 2009. I find that the respondent had no difficulties throughout the applicant's casual employment as a lecturer with the quality of her teaching and her performance apart from the applicant once making negative comments to students about the College in early February 2009. I also find that up to 11 February 2009 the respondent was happy to continue employing the applicant in 2009 on an ongoing basis as Ms de Graaf emailed the applicant in November 2008 offering her the opportunity to deliver computer training courses and undertake administrative duties for the respondent for approximately two days per week during 2009 and she emailed the applicant on the morning of 11 February 2009 confirming that courses would not be run on 2 and 9 March 2009 and that her ongoing employment with the respondent as a casual lecturer would continue as normal from 16 March 2009 onwards (Exhibits A1 and A21).
- 107 I find that when the applicant was told by Ms de Graaf on 12 February 2009 that her services at PACD would no longer be required by the respondent after 23 February 2009 the applicant was dismissed by the respondent and I find that as at 11 February 2009 the respondent had decided that it would not offer the applicant any further casual lecturing duties at PACD. I have formed the view that the applicant was dismissed by the respondent and that her contract of employment with the

respondent did not cease due to the effluxion of time on the basis that even though the applicant was employed on a casual basis she had an ongoing expectation of work at PACD in 2009 subject to obtaining a full-time position with the respondent which did not eventuate (see Exhibits A1 and A21).

Was the applicant unfairly dismissed?

108 I find that the applicant was not offered any further work at PACD after 23 February 2009 even though there was work available for the applicant to undertake and that Ms de Graaf was aware in early February 2009 that the applicant's offer of employment in the OHS Lecturer position had been rescinded. It is clear on the evidence of Ms Dunlop and Ms de Graaf that PACD ran courses which the applicant was qualified and available to undertake after 23 February 2009 and she had the requisite skills to conduct these courses. I also accept the applicant's evidence that she was told by Ms de Graaf that she would be employed to deliver courses at PACD in 2009 if the SCDL course was cancelled however instead of offering the applicant the opportunity to undertake these courses Ms de Graaf asked Ms Dunlop to undertake the courses previously undertaken by the applicant even though Ms Dunlop was only employed at PACD to fill in when the applicant was unavailable.

109 I reject the respondent's claim that when the applicant was notified that her services would no longer be required after 23 February 2009 she was told that she would be part of a pool of casual employees and would be considered for ongoing employment with the respondent subsequent to this date as Ms de Graaf gave evidence that a pool of lecturers was not utilised by the respondent to conduct these courses (see Transcript p 146-147). I also note that when the applicant was told by Ms de Graaf on 12 February 2009 that her services were no longer required after 23 February 2009 both the applicant and Ms de Graaf gave evidence that no mention was made by Ms de Graaf of the applicant being part of a pool of casual employees to conduct PACD courses. Furthermore, Ms de Graaf sent an email to Mr Taylor on 17 February 2009 confirming that she had told the applicant that there was no further work for the applicant to undertake at PACD (Exhibit A15). It is also the case that no mention was made of the applicant being part of a pool of employees in Ms Geikie's email to Ms de Graaf dated 11 February 2009. This email reads as follows (formal parts omitted):

"I have been looking at the staffing arrangements at PACD and advise the following:

Currently there are two casual staff members employed to deliver PD workshops on behalf of PACD, Susan Hodges and Justine Dunlop. They are currently scheduled for the following:

Susan Hodges:

- Every Monday - delivers workshops as well as undertakes some administrative tasks.
- 23 February - MS 2007 and Elluminate
- 16 March - MS 2007 and WebCT - Part 1
- 23 March MS 2007 and WebCT - Part 2
- 30 March MS 2007 and Touch Typing
- 6 April MS 2007 and Touch Typing

Justine Dunlop:

- 16 February - MS Office in the morning, administrative duties in the afternoon
- 23 February MS 2007 at Bentley for 15 staff in the morning, sit in on Elluminate in the afternoon.

I do not consider this effective use of resources and require you to make the following changes:

1. Meet with Susan Hodges this week if possible to advise that she will no longer be required as of 24 February. If there are any issues please contact me immediately.
2. Justine Dunlop - schedule Justine to deliver workshops within her area of expertise.
3. As casual lecturers are paid at a rate that includes preparation and marking time, please do not employ casual staff to undertake administrative duties unless approved by me. Consideration for additional time could be arranged for example: to develop training manuals belong (sic) to Swan.

My reasons for your information:

- Elluminate is facilitated by WestOne Services and it is not cost effective for us to be paying to have a facilitator at Jandakot to trouble-shoot only. In-house support can be supplied by your team. We can review this at a later date if there are any issues.
- SCDL - has run its course and enrolments of 2-3 are not viable.
- WebCT - WestOne Services runs this training free of charge. Please enrol interested staff into the WestOne training.
- Justine Dunlop has the skills to deliver MS 2007 and Touch Typing - at this stage we only require one Trainer.

If you require clarification please do not hesitate to contact me to discuss further."

(Exhibit A12)

- 110 Even though I have found that the applicant was dismissed by the respondent, effective 23 February 2009 and that work was available for the applicant to undertake at PACD subsequent to this date and the respondent erroneously claimed that the applicant was in a pool of employees after this date and could be offered work as and when required by the respondent, it is my view that the respondent had good reason not to offer the applicant any further employment contracts either full-time or casual after 23 February 2009.
- 111 I find that by early February 2009 the applicant's professional and personal relationship with the respondent had broken down and in my view the applicant's confrontational and obstructionist manner with respect to her interactions with Mr Doig, Mr Taylor and Mr Collyer during December 2008 and January 2009 contributed to this breakdown.
- 112 After the applicant was informally advised on 12 December 2008 that she had been successful in being provisionally appointed to the OHS Lecturer position she contacted her future manager Mr Doig seeking permission to undertake outside work in addition to the OHS Lecturer position. When Mr Doig rejected her request and offered her an alternative arrangement to continue undertaking this outside work in addition to the OHS Lecturer position but as an employee of the respondent and not as a contractor to RLSS, the applicant complained to Mr Taylor on 19 December 2008 that she believed she was being blackmailed by Mr Doig which is a very serious accusation. I find on the evidence given by the applicant with respect to this issue however that Mr Doig's suggestion did not constitute blackmail as claimed by the applicant. The applicant also claimed that Mr Doig had initially offered her the OHS Lecturer position on a temporary basis, as opposed to a permanent appointment, so that she would not take up this position which again was another very serious accusation against her future manager but no evidence was given by the applicant to the respondent or at the hearing to justify this accusation. The applicant accused Mr Taylor of threatening her with the loss of the OHS Lecturer position during their conversation on 29 January 2009 which is another serious claim, when it appears on the applicant's own evidence that Mr Taylor was indicating to the applicant at the time that if she did not tell the respondent that she was accepting the OHS Lecturer position the offer of this position would be rescinded, which in my view was not an unreasonable request given that the College's courses for 2009 would soon be commencing and the applicant had know for some days that no one had contested her appointment to the OHS Lecturer position during the breach period and she was therefore successful in obtaining this position.
- 113 I find that complaints made by the applicant about Mr Collyer's ability to comprehend the nature of her application to undertake outside work demonstrates that the applicant lacked confidence in Mr Collyer's capacity to adequately fulfil his role. Even when Mr Collyer gave detailed reasons for deciding that it was inappropriate for the applicant to undertake outside work the applicant insisted that his decision was based on inaccurate information and that he had no valid reason for making this decision and in the applicant's correspondence to Ms Murphy dated 27 January 2009 the applicant claimed that she did not believe Mr Collyer was capable of properly understanding the arguments she had put in support of her view that she should be able to continue her outside work.
- 114 It was also the case that when the applicant contacted Ms de Graaf on or about 17 February 2009 she was aggressive towards her with respect to the respondent's decision to offer work to Ms Dunlop and I find that this was indicative of a deterioration in the applicant's personal relationship with some of the respondent's managers, including her own direct manager at the time with whom she had previously had a positive relationship (see Transcript p 120) (see Exhibit A15).
- 115 I find that the applicant's intransigence and her inability to interact positively and in a professional manner with the respondent and senior managers was also reflected in the way in which she handled the offer and acceptance of the OHS Lecturer position during January 2009. I find that during this period the applicant refused to indicate with any clarity that she would accept the OHS Lecturer position and I am of the view that the applicant deliberately delayed indicating that she would accept the OHS Lecturer position in order to pressure the respondent into allowing her to undertake outside work in addition to the OHS Lecturer position. I also find that unless and until the applicant was granted the opportunity to undertake outside work in addition to the OHS Lecturer position the applicant would not accept taking up the OHS Lecturer position offered to her by the respondent on 6 January 2009. In reaching this view I note that as early as 19 December 2008 the applicant made it clear to Mr Taylor that if she was unable to continuing undertaking outside work over and above the OHS Lecturer position then she would be worse off financially and she would therefore not be in a position to undertake the OHS Lecturer position offered to her by the respondent (see email dated 19 December 2008 - Exhibit A2). It was also the case that the applicant was advised on or about 6 January 2009 that if no breach of standard was lodged by 20 January 2009, which the applicant was aware had not occurred towards the end of January 2009, then the applicant would be the successful applicant in this position unless she indicated that she did not wish to take up the position (Exhibit A3). Furthermore, when Mr Collyer specifically asked the applicant to indicate whether or not she would take up the OHS Lecturer position by the close of business on 29 January 2009, in a letter dated 28 January 2009, in response the applicant sent an email to Mr Taylor on 28 January 2009 stating that the "process" is that a "letter of acceptance" should be provided to her. Again the applicant refused to accept or reject the OHS Lecture position (see Exhibits A8 and A27).
- 116 I reject the applicant's claim that she required further details about the OHS Lecturer position before accepting it and the applicant maintained that she delayed advising whether or not she would take up the offer of the OHS Lecturer position due to the respondent being confused in its handling of the offer of the position to her and she claimed that the respondent had not followed correct procedures with respect to the way in which it had offered her the OHS Lecturer position. I accept that the respondent was confused and, it appears, uninformed about the appropriate way in which the OHS Lecturer position should have been offered to the applicant and it gave the applicant varying information about the salary level and the status of the position, that is, whether it was a permanent position or a fixed-term contract position. However, the applicant was advised by Mr Taylor in mid January 2009 that the OHS Lecturer position was a Level 7 permanent position so she could not have been in no doubt about the status of the position and the terms of the offer of employment.

- 117 It is not surprising in my view that given the confrontational nature of the applicant's interactions with some of the respondent's senior staff, including the respondent's Managing Director, when seeking an opportunity to undertake outside work and given the inflexible and obstructionist manner in which the applicant dealt with the acceptance of the offer of the OHS Lecturer position that the respondent determined that the applicant's ongoing relationship with the respondent either as a full-time or casual employee was untenable as at the end of January 2009.
- 118 Although the respondent did not divulge to the applicant the real reason for not offering her ongoing casual employment at PACD after 23 February 2009 and even though the applicant could have conducted a range of PACD courses after 23 February 2009, I find that as at 11 February 2009 the working relationship between the applicant and the respondent was dysfunctional and had broken down and it was therefore open to the respondent not to offer the applicant ongoing casual contracts of employment at PACD after 23 February 2009. In the circumstances I find that even though the applicant was dismissed when the respondent refused to offer her further casual contracts of employment after 23 February 2009 her dismissal was not unfair.
- 119 The applicant is seeking an opportunity to complete an RPL assessment with respect to a Certificate IV qualification which was supposed to have been completed by the respondent on or about 1 April 2009 and for this to be effected by extending her enrolment in this course beyond 31 December 2009. The applicant also maintains that she be entitled to undertake this RPL assessment free of charge.
- 120 It is unfortunate that the applicant's RPL assessment was not completed in early April 2009 and it appears there was confusion between the applicant and the respondent about the applicant being able to attend a meeting on or about 1 April 2009 to complete this RPL process. It was also the case that the applicant was unable to pursue this issue with the respondent prior to 23 June 2009 when the applicant finally contacted Ms Geikie to resolve the issue.
- 121 I find that the applicant is not entitled to an order for the benefit of the RPL assessment free of charge even though it is my view that this issue is an industrial matter as it relates to an issue relevant to the applicant's employment with the respondent. I have reached this conclusion as I accept Ms Geikie's evidence that the applicant had six months to undertake the RPL assessment free of charge and the timeframe for this assessment had elapsed by the time the applicant contacted Ms Geikie about this issue in June 2009. I also decline to issue the order being sought by the applicant to extend the timeframe for the applicant's enrolment in the Certificate IV course beyond 31 December 2009 as it is my view that this is not an industrial matter for the purposes of this application and any extension of the applicant's enrolment in this course is a matter for the applicant and the respondent to resolve.
- 122 I find that it is inappropriate to order that the respondent offer the applicant a full-time OHS Lecturer position, nor is it appropriate to issue an order that the respondent be 'unbiased' towards the applicant when dealing with any job application she may make for future employment with the respondent. The offer of the OHS Lecturer position made to the applicant by the respondent in January 2009 was rescinded, properly in my view, at the end of January 2009 and I have already found that the applicant never intended to take up this position given the financial constraints on her not being able to undertake outside employment in addition to this position and that the working relationship between the applicant and the respondent had broken down in February 2009. Any further job opportunities with the respondent that the applicant may wish to follow up is a matter for the applicant. Additionally, any issue of 'bias' against a candidate for a position with the respondent which the applicant applies for is to be dealt with under the relevant Public Sector Standard.
- 123 An order will now issue dismissing this application.

2010 WAIRC 00259

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

SUSAN MICHELLE HODGES

APPLICANT

-v-

POLYTECHNIC WEST

RESPONDENT**CORAM**

COMMISSIONER J L HARRISON

DATE

TUESDAY, 11 MAY 2010

FILE NO/S

U 119 OF 2009

CITATION NO.

2010 WAIRC 00259

Result

Dismissed

Representation**Applicant**

Ms S Hodges on her own behalf

Respondent

Mr M Taylor

Order

HAVING HEARD Ms S Hodges on her own behalf and Mr M Taylor on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders –

1. THAT the name of the respondent be deleted and that Polytechnic West be substituted in lieu thereof.
2. THAT the application be and is hereby otherwise dismissed.

[L.S.]

(Sgd.) J L HARRISON,
Commissioner.**2010 WAIRC 00227**

	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION	
PARTIES	SIMON CLYDE LANGOULANT	APPLICANT
	-v-	
	AUTISM ASSOCIATION OF WESTERN AUSTRALIA (INC)	RESPONDENT
CORAM	COMMISSIONER S M MAYMAN	
DATE	TUESDAY, 27 APRIL 2010	
FILE NO/S	U 213 OF 2009	
CITATION NO.	2010 WAIRC 00227	
Result	Application discontinued	
Representation		
Applicant	Mr S C Langoulant	
Respondent	Ms M Ivanovski	

Order

WHEREAS this is an application pursuant to Section 29(1)(b)(i) of the *Industrial Relations Act 1979*;
 AND WHEREAS on 10 December 2009 the Commission convened a conference for the purpose of conciliating between the parties;
 AND WHEREAS at the conclusion of the conference agreement was reached between the parties;
 AND WHEREAS on 16 April 2010 the applicant filed a Notice of Discontinuance in respect of the application;
 NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby discontinued.

[L.S.]

(Sgd.) S M MAYMAN,
Commissioner.**2010 WAIRC 00056**

	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION	
PARTIES	FRANCIS JOHN LAWRENCE	APPLICANT
	-v-	
	TOWN OF CAMBRIDGE	RESPONDENT
CORAM	COMMISSIONER S J KENNER	
DATE	WEDNESDAY, 10 FEBRUARY 2010	
FILE NO.	U 7 OF 2010	
CITATION NO.	2010 WAIRC 00056	

Result	Direction issued
Representation	
Applicant	Mr K Trainer as agent
Respondent	Mr S White as agent

Direction

HAVING heard Mr K Trainer as agent on behalf of the applicant and Mr S White as agent on behalf of the respondent the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby directs –

- (1) THAT evidence in this matter the adduced by way of signed witness statements which will stand as the evidence in chief of the maker. Evidence other than that contained in the witness statements may only be adduced by leave of the Commission.
- (2) THAT the parties file and serve upon one another any signed witness statements upon which they intend to rely no later than 7 days prior to the date of hearing.
- (3) THAT the parties give notice to one another of witnesses they require to attend at the proceedings for the purposes of cross-examination no later than 3 days prior to the date of hearing.
- (4) THAT the applicant and respondent file and serve an outline of submissions and any list of authorities upon which they intend to rely no later than 3 days prior to the date of hearing.
- (5) THAT the parties have liberty to apply on short notice.

[L.S.]

(Sgd.) S J KENNER,
Commissioner.

2010 WAIRC 00267

PARTIES	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION FRANCIS JOHN LAWRENCE	APPLICANT
	-v-	
	TOWN OF CAMBRIDGE	RESPONDENT
CORAM	COMMISSIONER S J KENNER	
DATE	THURSDAY, 13 MAY 2010	
FILE NO/S	U 7 OF 2010	
CITATION NO.	2010 WAIRC 00267	

Result	Application discontinued by leave
Representation	
Applicant	Mr K Trainer, as agent
Respondent	Mr S White, as agent

Order

WHEREAS the applicant sought and was granted leave to discontinue the application, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders –

THAT the application be and is hereby discontinued by leave.

[L.S.]

(Sgd.) S J KENNER,
Commissioner.

2010 WAIRC 00224

PARTIES WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
RHONDA MAREE MACMURCHIE **APPLICANT**

-v-
THE SALVATION ARMY PROPERTY TRUST (WA) TRADING AS SEAFORTH GARDENS
SENIOR CITIZENS RESIDENCE **RESPONDENT**

CORAM COMMISSIONER S M MAYMAN
DATE TUESDAY, 27 APRIL 2010
FILE NO U 35 OF 2010
CITATION NO. 2010 WAIRC 00224

Result Application discontinued
Representation
Applicant No appearance
Respondent No appearance

Order

WHEREAS this is an application pursuant to Section 29(1)(b)(i) of the *Industrial Relations Act 1979*;
AND WHEREAS on 13 April 2010 the applicant filed a Notice of Discontinuance in respect of the application;
NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby discontinued.

[L.S.]

(Sgd.) S M MAYMAN,
Commissioner.

2010 WAIRC 00230

PARTIES WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
FRANK THOMAS PARKER **APPLICANT**

-v-
BLOODWOOD TREE ASSOC. INC. **RESPONDENT**

CORAM COMMISSIONER S M MAYMAN
DATE TUESDAY, 27 APRIL 2010
FILE NO/S U 187 OF 2009
CITATION NO. 2010 WAIRC 00230

Result Application discontinued
Representation
Applicant Mr F T Parker
Respondent Mr B Neville

Order

WHEREAS this is an application pursuant to section 29(1)(b)(i) of the *Industrial Relations Act 1979*;
AND WHEREAS on 3 November 2009 the Commission convened a conference for the purpose of conciliating between the parties;
AND WHEREAS at the conclusion of the conference held on 3 November 2010 an in-principal agreement was reached between the parties;

AMD WHEREAS on 20 January 2010 this matter was listed for hearing for the applicant to show cause why his application should not be dismissed;

AND WHEREAS the Commission declared an agreement not to have been reached (2010 WAIRC 00074);

AND WHEREAS on 14 April 2010 the Commission convened a further conference;

AND WHEREAS at the conclusion of the conference held on 14 April 2010 agreement was reached between the parties;

AND WHEREAS on 15 April 2010 the applicant filed a Notice of Discontinuance in respect of the application;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby discontinued.

[L.S.]

(Sgd.) S M MAYMAN,
Commissioner.

2010 WAIRC 00218

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

MARK ANDREW REID

APPLICANT

-v-

ABLE BUSINESS MACHINES

RESPONDENT

CORAM

ACTING SENIOR COMMISSIONER P E SCOTT

DATE

WEDNESDAY, 21 APRIL 2010

FILE NO/S

U 273 OF 2009

CITATION NO.

2010 WAIRC 00218

Result

Application dismissed

Order

WHEREAS this is an application pursuant to Section 29(1)(b)(i) of the *Industrial Relations Act 1979*; and

WHEREAS on the 25th day of February 2010 the Commission convened a scheduling hearing; and

WHEREAS at the conclusion of that hearing the parties sought time to attempt a resolution; and

WHEREAS at the conclusion of those discussions a resolution had not been reached; and

WHEREAS on the 25th day of February 2010 the Commission convened a conference for the purpose of conciliating between the parties; and

WHEREAS at the conclusion of that conference the Commission directed that the issue of the application for the claim to be received out of time would be set down for hearing and determination; and

WHEREAS the application was set down for hearing and determination of the issue of the application for the claim to be received out of time on the 30th day of April 2010; and

WHEREAS on the 15th day of April 2010 the applicant filed a Notice of Discontinuance in respect of the application;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby dismissed.

[L.S.]

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

2010 WAIRC 00209

PARTIES WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
CVETE (AKA CHRIS) RISTOSKI **APPLICANT**

-v-
THE TRUSTEE FOR THE JANSEN GRAY FAMILY TRUST TRADING AS GEOFF'S TREE
SERVICE PTY LTD **RESPONDENT**

CORAM COMMISSIONER S M MAYMAN
DATE MONDAY, 19 APRIL 2010
FILE NO/S U 178 OF 2009
CITATION NO. 2010 WAIRC 00209

Result Application dismissed
Representation
Applicant No appearance
Respondent No appearance

Order

WHEREAS this is an application pursuant to Section 29(1)(b)(i) of the *Industrial Relations Act 1979*;
AND WHEREAS this matter was listed for hearing on 26 March 2010 for the applicant to show cause why his application should not be dismissed;
AND WHEREAS the applicant failed to attend the hearing;
AND WHEREAS having no appearance by the applicant the Commission formed the view the application should be dismissed;
NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders -
THAT this application be, and is hereby, dismissed.

[L.S.]

(Sgd.) S M MAYMAN,
Commissioner.

2010 WAIRC 00019

PARTIES WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
JEANNINE TOOPI **APPLICANT**

-v-
CARE OPTIONS INC. **RESPONDENT**

CORAM COMMISSIONER S J KENNER
DATE WEDESDAY, 20 JANUARY
FILE NO/S U 232 OF 2009
CITATION NO. 2010 WAIRC 00019

Result Application adjourned
Representation
Applicant In person
Respondent Mr G McCorry, as agent

Order

WHEREAS the respondent sought and was granted leave to adjourn the application, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders –

THAT the application be and is hereby adjourned to a date to be fixed.

[L.S.]

(Sgd.) S J KENNER,
Commissioner.

2010 WAIRC 00082

	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION	
PARTIES	JEANNINE TOOPI	APPLICANT
	-v-	
	CARE OPTIONS INC.	RESPONDENT
CORAM	COMMISSIONER S J KENNER	
DATE	MONDAY, 22 FEBRUARY 2010	
FILE NO.	U 232 OF 2009	
CITATION NO.	2010 WAIRC 00082	

Result	Directions issued
Representation	
Applicant	In person.
Respondent	Mr G McCorry, as agent, and with him Mr M Patterson, as agent.

Direction

HAVING heard Ms J Toopi in person and Mr G McCorry and Mr M Patterson as agents on behalf of the respondent the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby directs –

- (1) THAT evidence in chief in this matter be adduced by way of signed witness statements which will stand as the evidence in chief of the maker. Evidence in chief other than that contained in the witness statements may only be adduced by leave of the Commission.
- (2) THAT the respondent file and serve upon the applicant any signed witness statements upon which it intends to rely no later than Monday 15 March 2010.
- (3) THAT the respondent file and serve upon the applicant an outline of submissions and any list of authorities upon which they intend to rely no later than 3 days prior to the date of hearing.
- (4) THAT the parties have liberty to apply on short notice.

[L.S.]

(Sgd.) S J KENNER,
Commissioner.

2010 WAIRC 00231

	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION	
PARTIES	JEANNINE TOOPI	APPLICANT
	-v-	
	CARE OPTIONS INC.	RESPONDENT
CORAM	COMMISSIONER S J KENNER	
DATE	TUESDAY, 27 APRIL 2010	
FILE NO/S	U 232 OF 2009	
CITATION NO.	2010 WAIRC 00231	

Result	Application discontinued by leave
Representation	
Applicant	In person
Respondent	Mr G McCorry, as agent

Order

WHEREAS the applicant sought and was granted leave to discontinue the application, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders –

THAT the application be and is hereby discontinued by leave.

[L.S.]

(Sgd.) S J KENNER,
Commissioner.**2010 WAIRC 00226**

PARTIES	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION JUSTINE YOUNG	APPLICANT
	-v- NECA W.A. GROUP TRAINING	RESPONDENT
CORAM	COMMISSIONER S M MAYMAN	
DATE	TUESDAY, 27 APRIL 2010	
FILE NO/S	B 182 OF 2009	
CITATION NO.	2010 WAIRC 00226	

Result	Application discontinued
Representation	
Applicant	Ms J Young
Respondent	Mr S Barry (of counsel)

Order

WHEREAS this is an application pursuant to Section 29(1)(b)(ii) of the *Industrial Relations Act 1979*;

AND WHEREAS on 10 November 2009, 9 December 2009, 19 January 2010 and 29 March 2010 the Commission convened conferences for the purpose of conciliating between the parties;

AND WHEREAS at the conclusion of the conference held on 29 March 2010 agreement was reached between the parties;

AND WHEREAS on 8 April 2010 the applicant filed a Notice of Discontinuance in respect of the application;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby discontinued.

[L.S.]

(Sgd.) S M MAYMAN,
Commissioner.

2010 WAIRC 00225

PARTIES WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
JUSTINE YOUNG **APPLICANT**

-v-
NECA W.A. GROUP TRAINING **RESPONDENT**

CORAM COMMISSIONER S M MAYMAN
DATE TUESDAY, 27 APRIL 2010
FILE NO U 182 OF 2009
CITATION NO. 2010 WAIRC 00225

Result Application discontinued
Representation
Applicant Ms J Young
Respondent Mr S Barry (of counsel)

Order

WHEREAS this is an application pursuant to Section 29(1)(b)(i) of the *Industrial Relations Act 1979*;
AND WHEREAS on 10 November 2009, 9 December 2009, 19 January 2010 and 29 March 2010 the Commission convened conferences for the purpose of conciliating between the parties;
AND WHEREAS at the conclusion of the conference held on 29 March 2010 agreement was reached between the parties;
AND WHEREAS on 8 April 2010 the applicant filed a Notice of Discontinuance in respect of the application;
NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:
THAT this application be, and is hereby discontinued.

[L.S.]

(Sgd.) S M MAYMAN,
Commissioner.

CONFERENCES—Matters arising out of—

2010 WAIRC 00219

DISPUTE RE IMPLEMENTATION OF NAPLAN TESTING PROGRAM

PARTIES WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
THE DIRECTOR GENERAL, DEPARTMENT OF EDUCATION **APPLICANT**

-v-
THE STATE SCHOOL TEACHERS' UNION OF WA (INCORPORATED) **RESPONDENT**

CORAM COMMISSIONER S J KENNER
HEARD WEDNESDAY, 21 APRIL 2010
DELIVERED WEDNESDAY, 21 APRIL 2010
FILE NO. C 12 OF 2010
CITATION NO. 2010 WAIRC 00219

Catchwords	Industrial law WA – Proposed action to ban NAPLAN testing in State Government Schools – Consideration of interests of parties and the public interest – Order to issue – Industrial Relations Act 1979 s26; s44 – School Education Act 1999 s63; s64; s233 –Public Sector Management Act 1994 s80.
Result	Order Issued
Representation	
Applicant	Mr K Dodd
Respondent	Mr M Amati

Reasons for Decision

Background

- 1 The matter presently before the Commission is an application for an urgent compulsory conference under s 44 of the Industrial Relations Act 1979 (“the Act”) whereby the applicant seeks an order that the respondent, its officers, agents, employees and members lift a ban on the administration of National Assessment Program Literacy and Numeracy (“NAPLAN”) testing scheduled to be conducted in schools throughout Western Australia from 11 to 13 May 2010.
- 2 Accordingly, an urgent compulsory conference was convened between the parties today.
- 3 At the conference, the Commission was informed that on 19 April 2010 the respondent issued a directive that teachers and administrators employed in government schools throughout the State participate in a national moratorium on the implementation of the NAPLAN. The moratorium follows a special executive meeting of the respondent held on 15 April 2010, which ratified the decision of the Federal Executive of the Australian Education Union (“the AEU”) to participate in a national moratorium on the implementation of NAPLAN for 2010.
- 4 The AEU Federal Executive decision declaring a national moratorium on the implementation of the 2010 NAPLAN tests was taken on 12 April 2010. The AEU Federal Executive resolutions taken on 12 April 2010, as reproduced in the respondent’s communication with members dated 19 April 2010 entitled “Stop League Tables”, attached to the notice of application, is as follows:

“RE STOP LEAGUE TABLES CAMPAIGN – April 12, 2010 Resolutions.

 - Despite the urging of the profession, the body of research and evidence and the repeated attempts by the AEU to negotiate a satisfactory outcome, the Federal Government has failed to introduce measures necessary to protect students, schools and school communities from the damaging effects of league tables and the incomplete, inaccurate and invalid representation of student data on the My School Website.
 - Given the Ethical and professional responsibility we cannot sit by and watch our students, schools and school communities continue to be damaged due to the Government’s intransigence.
 - Therefore, the AEU Federal Executive declares a national moratorium on the implementation and administration of NAPLAN 2010 until the profession’s concerns are addressed.

Branches and Associated Bodies are to take action to immediately implement the national moratorium. The action will include:

 1. Notification of the decision of the Federal Executive to members in all schools.
 2. Support for school union reps to distribute relevant information to the school parent body.
 3. Seeking workplace support from relevant state unions e.g. CPSU, LHMU”
- 5 In adopting the AEU Federal Executive decision of 12 April 2010, the respondent’s direction to members includes directions to not undertake any duties in relation to the NAPLAN implementation including the pre-test period, work on the scheduled days of testing and work on post test days.
- 6 NAPLAN testing commenced in 2008 nationally. In Western Australia, NAPLAN testing replaced former testing programmes including the WALNA and MSE9 programs of literacy and numeracy assessment.
- 7 NAPLAN testing is conducted throughout schools in Western Australia for students in years 3, 5, 7 and 9 and is undertaken nationally between 11 and 13 May 2010. The NAPLAN testing program includes testing in reading, writing, language conventions and various numeracy streams.
- 8 The NAPLAN testing program is a part of the National Education Agreement between the State, Territory and Commonwealth Governments. Importantly also for present purposes, the NAPLAN testing is a part of funding arrangements between the States, Territories and the Commonwealth.
- 9 NAPLAN tests were developed collaboratively by the States, Territories, private education sectors and the Commonwealth. The tests are intended to broadly reflect the curriculum content across all jurisdictions and the selection of test questions and test formats were designed so as to be familiar with students and teachers nationally. They have replaced all previous State and Territory based assessments.

10 Importantly for present purposes, the Commission was informed that, perhaps in anticipation of the respondent's adoption of the AEU national moratorium on NAPLAN testing, the Director General of the respondent issued an instruction under s 233 of the School Education Act 1999 ("the SE Act"). Section 233(1) of the SE Act enables the chief executive officer of the respondent to prepare and issue instructions to be observed by persons performing functions in the Department. Significantly, by s 233(4) a breach of such an instruction whilst not an offence is to be regarded for the purposes of s 80(a) of the Public Sector Management Act 1994 ("the PSM Act") as the disobedience of a lawful order.

11 The relevant instruction issued by the chief executive officer under s 233 of the SE Act on 12 April 2010 is in the following terms:

"I hereby instruct, pursuant to section 233 of the *School Education Act 1999* ('Act'), that principals, in accordance with their functions under section 63 of the Act and teachers, in accordance with their functions under section 64 of the Act, employed by the Department of Education will perform the duties necessary for the administration and implementation of the NAPLAN testing in public schools.

The National Education Agreement with the Commonwealth Government requires all Western Australian public schools to conduct the NAPLAN tests. In 2010 NAPLAN tests will be undertaken by students during the week of 11 to 13 May 2010, and in subsequent years at times nominated by the Commonwealth."

Submissions of Parties

12 Given that background to the present application, a number of submissions were made to the Commission.

13 On behalf of the applicant, it was contended that the respondent's decision to participate in the national moratorium on the implementation of NAPLAN testing in this State, will have serious implications for students, schools and communities. The NAPLAN testing will apply to approximately 115,000 students throughout the State, of which approximately 75,000 students are from government schools and who will be directly affected by the respondent's ban.

14 It was submitted that the ban on NAPLAN testing for students in years 3, 5, 7 and 9 scheduled for 2010 will materially impact on the ongoing program of testing and evaluation of student performance in government schools. The NAPLAN tests provide an important benchmark for the assessment of individual student performance across the four learning areas concerned. The failure of the respondent's members to administer the tests this year will mean that there will be no data from which evaluations made from the 2008 testing can be assessed and future testing will also be compromised.

15 Furthermore, and significantly, the applicant referred to the present funding arrangements between the State and the Commonwealth, under which the State receives close to some \$400m in direct funding. It was submitted that the failure to implement NAPLAN testing for 2010, will have an impact on funding arrangements to this State, including directly from reward payments in excess of \$15m, which are dependent on the implementation of the 2010 NAPLAN testing. Indirect financial implications arise from the funding of other educational programs which also dependant upon the NAPLAN testing results. Additionally, the applicant submitted that there are immediate costs of approximately \$1.5m, in terms of leasing venues and the employment of 240 NAPLAN testing markers. These arrangements have been in place for some time.

16 In this regard, the Commission was provided with a document entitled "NAPLAN – Established timetables" which includes a timetable for data analysis from the proposed NAPLAN 2010 testing. This makes it clear that there is a well planned and tight timetable from February through to December 2010, for the implementation of various activities in connection with this year's testing regime. It was submitted that if the respondent proceeds to not administer the NAPLAN testing as presently indicated, this timetable will be seriously disrupted. Additionally, other persons on the submissions of the applicant cannot be engaged to undertake the required work and the overall impact of the ban on the State Government education system will be significant.

17 A further submission was made that the applicant regards the NAPLAN testing results as one factor only to consider in the assessment of a school's performance. The applicant recognises concerns previously expressed by the respondent and its affiliates concerning the production of "league tables". In this regard, it was put to the Commission that any inappropriate or irresponsible use of the NAPLAN testing data by third parties, which either improperly or unfairly criticised particular schools, would be met with an appropriate response by the applicant.

18 On behalf of the respondent, it was contended that the NAPLAN testing per se is not the issue of concern. Rather the matter of in-principle concern, from a professional and ethical perspective of its members, is the inappropriate use of NAPLAN testing data to compile misleading league tables which unfairly purport to represent school performance.

19 It was submitted by the respondent that the use of NAPLAN results to provide aggregate scores for schools, which are then incorporated into the "My School" website, without other relevant information including demographics, school resources, class sizes and school facilities is misleading. The "My School" website, established by the Australian Curriculum Assessment and Reporting Authority ("the ACARA") also, in the view of the respondent, uses an inappropriate and misleading measure to compare schools, that being the Index of Community Socio-Educational Advantage ("the ICSEA").

20 In relation to league tables, the respondent submitted that it had raised these issues with the Commonwealth Minister for Education and her State counterparts. It was contended by the respondent that it had sought meaningful dialogue with Commonwealth and State Ministers to air its concerns but there has not been any consultation with it to address the primary objections to the use of the NAPLAN testing data in particular on the My School website. It is acknowledged by the respondent that the My School website is controlled by ACARA, an independent Commonwealth statutory authority. The respondent recognises that there may be some issues in relation to the ownership and control of the NAPLAN testing data over which the applicant may not have any direct influence.

- 21 In terms of the orders sought, the respondent opposes the making of orders by the Commission. It is submitted that the resolution taken by the respondent in support of the AEU national moratorium, is not a “ban” or “industrial action” which should be the subject of an order at this stage. Rather, the respondent submitted that it seeks the appropriate opportunity to engage with the relevant parties in order that its concerns about the use of NAPLAN testing data can be properly addressed. This has not occurred to date.

Consideration

- 22 The matter before the Commission not only directly concerns the parties concerned, but has a wider significance for the community in this State, which the Commission is required by s 26(1)(c) of the Act, to have regard to.
- 23 I recognise that the respondent and its members have expressed professional and ethical concerns in relation to the use of the NAPLAN testing data, and it considers that those concerns have not been appropriately responded to by those with whom they have been raised. In the final analysis, however it is the students in years 3, 5, 7 and 9 in State Government schools in Western Australia that will be the most directly affected if the NAPLAN testing does not proceed as planned between 11 and 13 May this year.
- 24 It was not seriously challenged, and I accept the submissions of the applicant, that there will be implications for the ongoing assessment of students if the NAPLAN testing is not performed. Additionally, there are significant financial implications to which the State Government will be exposed, if the NAPLAN testing is not conducted in accordance with the National Education Agreement between the State, Territory and Commonwealth Governments.
- 25 I am also of the view that it is plain that the present matter before me is “industrial matter” for the purposes of s 7 of the Act. The resolution of the respondent, to direct its members to not undertake any work in connection with the NAPLAN testing does constitute a ban or limitation upon the performance of work by the teachers and principals concerned and raises real issues in relation to compliance by teachers and principals with their contracts of employment, the relevant provisions of the Teachers (Public Sector Primary and Secondary Education) Award 1993, and the instruction issued by the chief executive officer of the respondent under s 233 of the SE Act referred to above.
- 26 I note also from the materials before the Commission at this early stage of the matter, that the timetable for the implementation of the NAPLAN testing program, contemplates that the release of the testing data by ACARA and various steps taken thereafter, are not scheduled to occur until from about mid September 2010. This would seem to provide some opportunity between now and then, for the respondent’s concerns in relation to in particular, third party usage of the NAPLAN testing data, to be progressed with the relevant parties. In other words, the NAPLAN testing can still be performed, and thus the benefit to the students concerned not lost, whilst providing a window of time for the respondent’s grievances to be further progressed.
- 27 I have carefully weighed up the material available before me at this stage of the matter. In my opinion, having regard to the clear public interest issues which arise in the present application, and whilst acknowledging the concerns raised by the respondent, in accordance with s 26(1) of the Act, the balance of convenience rests with the applicant in the granting of an order to the effect that the respondent’s members undertake the scheduled NAPLAN testing in this State between 11 and 13 May 2010 for the benefit of the affected State school children.

2010 WAIRC 00222

DISPUTE RE IMPLEMENTATION OF NAPLAN TESTING PROGRAM

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

THE DIRECTOR GENERAL, DEPARTMENT OF EDUCATION

APPLICANT

-v-

THE STATE SCHOOL TEACHERS' UNION OF WA (INCORPORATED)

RESPONDENT

CORAM

COMMISSIONER S J KENNER

HEARD

FRIDAY, 23 APRIL 2010, WEDNESDAY, 21 APRIL 2010

DELIVERED

FRIDAY, 23 APRIL 2010

FILE NO.

C 12 OF 2010

CITATION NO.

2010 WAIRC 00222

Catchwords

Industrial law WA – Proposed action to ban NAPLAN testing in State Government Schools – Minutes of proposed order issued – Speaking to the minutes of proposed order – Order issued

Result

Order issued

Representation

Applicant

M K Dodd

Respondent

Mr M Amati

Supplementary Reasons for Decision

- 1 A minute of proposed order and reasons for decision in connection with these proceedings were published on 21 April 2010. In accordance with the requirements of s 35 (3) of the Industrial Relations Act 1979 (“the Act”) the parties were afforded an opportunity to speak to the minutes of the proposed order. They have elected to do so.
- 2 In proceedings today, some brief submissions were made by both the applicant and the respondent and it is convenient to commence with those made by the respondent.
- 3 On the respondent’s behalf Mr Amati submitted that the terms of the proposed order should make it plain that the order extends only to the respondent organisation registered under the Act and not separately to employees or members. Mr Amati referred to the decision of the Full Bench in *The State School Teachers Union of W.A (Incorporated) v Director-General, Department of Education and Training* (2008) 88 WAIG 698 in this regard. I agree with Mr Amati’s submission. Those changes will be made.
- 4 A further matter raised by Mr Amati is the potential scope of proposed order two. The submission was that reference to “any activity” may be construed to limit the respondent’s right to voice its concerns to various groups in relation to NAPLAN testing, unconnected with industrial issues concerning the performance of duties by teachers and principals. I also agree with that submission. It is not the intention, nor could it be the effect, of the order, to limit or otherwise restrain the respondent from expressing its views in relation to such matters in appropriate forums. Orders of the Commission deal with industrial matters.
- 5 Mr Dodd on behalf of the applicant suggested that order one could, to be consistent with order two, also refer to “administration” of NAPLAN testing. I agree with that submission.
- 6 As to proposed order two, concerning the public expression of views by the respondent about NAPLAN testing, it was submitted that reference could be made to, for example, “industrial action” to make it clear that the intended effect of the proposed order is so limited. I consider there is merit in this submission also.
- 7 Having regard to the matters raised in the submissions, the Commission now issues the order.
- 8 As mentioned by the Commission during the course of the speaking to the minutes proceedings it is trite to observe that an order of the present kind is, by its nature, interim only. It is not a final order given the terms of s 44 of the Act: *Registrar v AMWSU* (1989) 69 WAIG 1904.
- 9 Furthermore, as also indicated during the hearing, it is the intention of the Commission to convene further proceedings under s 44 of the Act in connection with the present application, to endeavour to resolve the issues in dispute by conciliation and, if necessary, arbitration.

2010 WAIRC 00223

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

THE DIRECTOR GENERAL, DEPARTMENT OF EDUCATION

APPLICANT

-v-

THE STATE SCHOOL TEACHERS' UNION OF WA (INCORPORATED)

RESPONDENT**CORAM** COMMISSIONER S J KENNER**DATE** FRIDAY, 23 APRIL 2010**FILE NO/S** C 12 OF 2010**CITATION NO.** 2010 WAIRC 00223**Result** Order issued**Representation****Applicant** Mr K Dodd**Respondent** Mr M Amati*Order*

HAVING heard Mr K Dodd on behalf of the applicant and Mr M Amati on behalf of the respondent the Commission, pursuant to the powers conferred on it under s 44(6)(ba) of the Industrial Relations Act, 1979 hereby orders –

- (1) THAT the respondent, by its officers, employees and members, which is proposing to engage in industrial action concerning matters the subject of these proceedings, that is the implementation and administration of NAPLAN testing and any associated duties in May 2010, not engage in any such industrial action.

- (2) THAT the respondent, by its officers, employees and members, not engage in any further industrial action which is intended to, or may have the effect of, preventing or hindering the implementation and administration of NAPLAN testing in May 2010.
- (3) THAT the respondent, by its officers and employees immediately take all reasonable steps to inform its members about the terms of this order and the requirement that it be complied with.
- (4) THAT the applicant or the respondent may, on giving 24 hours notice to the other, apply to the Commission to vary, revoke or otherwise set aside the terms of this order.

(Sgd.) S J KENNER,
Commissioner.

[L.S.]

PROCEDURAL DIRECTIONS AND ORDERS—

2010 WAIRC 00210

DISPUTE RE CONDITIONS OF EMPLOYMENT FOR UNION MEMBER

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

LIQUOR HOSPITALITY AND MISCELLANEOUS UNION, WESTERN AUSTRALIAN
BRANCH

APPLICANT

-v-

DEPARTMENT OF HEALTH

RESPONDENT

CORAM COMMISSIONER S M MAYMAN
DATE MONDAY, 19 APRIL 2010
FILE NO/S C 38 OF 2009
CITATION NO. 2010 WAIRC 00210

Result	Order issued
Representation	
Applicant	Mr B Owen and Ms E Palmer
Respondent	Mr D Eacott and Mr C Gleeson

Order

WHEREAS this is an application pursuant to s 44 of the *Industrial Relations Act 1979* (“the Act”);

AND WHEREAS on Tuesday, 1 December 2009 the Commission conducted a conciliation conference between the parties pursuant to s 44 of the Act;

AND WHEREAS since the conference the parties have engaged in discussion and reached an agreement;

AND WHEREAS on Thursday, 16 March 2010 the parties advised the Commission that they had reached an agreement;

NOW THEREFORE the Commission pursuant to the powers conferred on it under the Act, and by consent, hereby orders:

1. THAT Ms Macintyre be provided with a permanent part time contract as an Enrolled Nurse Level 4 with the WA Country Health Service, South West Region at Collie Hospital engaged for 40 hours per fortnight effective on and from Monday 1 March 2010; and
2. That application C 38 of 2009 is hereby discontinued

(Sgd.) S M MAYMAN,
Commissioner.

[L.S.]

2010 WAIRC 00003

PARTIES WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
WESTERN AUSTRALIAN PRISON OFFICERS' UNION OF WORKERS

APPLICANT

-v-

THE MINISTER OF CORRECTIVE SERVICES

RESPONDENT

CORAM COMMISSIONER S J KENNER
DATE MONDAY, 11 JANUARY 2010
FILE NO. CR 42 OF 2009
CITATION NO. 2010 WAIRC 00003

Result Direction Issued**Representation****Applicant** Mr T Clark**Respondent** Mr P Budd*Direction*

HAVING heard Mr T Clark on behalf of the applicant and Mr P Budd on behalf of the respondent and by consent the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby directs –

1. THAT the applicant and respondent file and serve an outline of submissions and any list of authorities upon which they intend to rely no later than Friday 22 January 2010.

(Sgd.) S J KENNER,
Commissioner.

[L.S.]

2010 WAIRC 00215

**EDUCATION ASSISTANTS' (GOVERNMENT) GENERAL AGREEMENT 2010; GOVERNMENT SERVICES
(MISCELLANEOUS) GENERAL AGREEMENT 2010**

PARTIES WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
THE LIQUOR, HOSPITALITY AND MISCELLANEOUS UNION (WA BRANCH); THE
EXECUTIVE DIRECTOR DEPARTMENT OF EDUCATION; AND THE EXECUTIVE
DIRECTOR LABOUR RELATIONS DIVISION, DEPARTMENT OF COMMERCE

APPLICANTS

CORAM CHIEF COMMISSIONER A R BEECH
COMMISSIONER S J KENNER
COMMISSIONER S M MAYMAN
DATE MONDAY, 19 APRIL 2010
FILE NO/S AG 1 OF 2010, AG 3 OF 2010
CITATION NO. 2010 WAIRC 00215

Result Order issued*Order*

WHEREAS this matter was listed at the request of the parties to be heard over six days from and including 10 March 2010;
AND WHEREAS the parties did not complete their respective cases within that agreed time;
AND WHEREAS at the request of the parties the hearing of this matter will resume on 28, 29 and 30 April 2010;
AND WHEREAS the Commission in Court Session, being of the view that in order to ensure the parties complete the presentation of their respective cases within the time they have agreed it is appropriate to determine the periods that are reasonably necessary for the fair and adequate presentation of the respective cases of the parties and to require that the cases be presented within the respective periods;

AND having given the parties an opportunity to comment upon the Commission's intention,

NOW THEREFORE the Commission in Court Session, pursuant to s 27(1)(ha) of the *Industrial Relations Act, 1979* hereby orders as follows:

1. THAT all witness evidence be completed by Wednesday, 28 April 2010;
2. THAT oral submissions from the LHMU be completed by Thursday, 29 April 2010;
3. THAT oral submissions from the Government respondents be completed by Friday, 30 April 2010; and
4. THAT the hearing times on these days shall be between 9.30 am and 4.30 pm unless further varied by the Commission in Court Session.

(Sgd.) A R BEECH,
Chief Commissioner,
Commission In Court Session.

[L.S.]

2010 WAIRC 00245

DISPUTE RE OUTSTANDING ISSUES TO BE FINALISED

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

UNITED FIREFIGHTERS UNION OF AUSTRALIA WEST AUSTRALIAN BRANCH

APPLICANT

-v-

CHIEF OPERATIONS OFFICER - FIRE & EMERGENCY SERVICES AUTHORITY

RESPONDENT

CORAM COMMISSIONER J L HARRISON

DATE FRIDAY, 30 APRIL 2010

FILE NO/S C 16 OF 2010

CITATION NO. 2010 WAIRC 00245

Result Recommendations issued

Representation

Applicant Mr L Anderson and Mr G Geer

Respondent Ms M Kinsella

Recommendations

WHEREAS this application was lodged pursuant to s 44 of the *Industrial Relations Act, 1979* ("the Act") on 22 April 2010 whereby the United Firefighters Union of Australia, West Australian Branch ("the applicant") sought the Commission's assistance with respect to negotiations with the Fire and Emergency Services Authority ("the respondent") about issues arising out of firefighters using a new fire station on Wellington Street, East Perth; and

WHEREAS on 27 April 2010 the Commission convened a conference for the purpose of conciliating between the parties; and

WHEREAS at this conference the applicant advised the Commission that the parties were in dispute about a range of occupational health and safety issues and the applicant was seeking a commitment from the respondent that it remove all directions and orders with respect to staff relocating to the proposed Wellington Street station until all issues in dispute are resolved between the parties; and

WHEREAS at the conference the applicant maintained that the following five occupational health and safety issues were in dispute between the parties:

1. the proposed configuration of the Engine Room using four appliances and two small appliances made it unsafe for firefighters;
2. sleeping quarters did not comply with relevant building codes;
3. a traffic management trial needed to be undertaken prior to occupation;
4. four basins, not three, were required in the Tunic Room; and

5. the Locker Room doors should be removed and replaced with alternative doors; and

WHEREAS the respondent maintained that problems surrounding these issues had been dealt with and it was of the view that there were no occupational health and safety impediments preventing the relocation of fire fighting services to the Wellington Street station; and

WHEREAS at the conclusion of the conference the parties were required to meet on 28 April 2010 with a view to reaching agreement on the above five issues in dispute and advise the Commission of the outcome of the discussions; and

WHEREAS on 28 April 2010 the applicant advised the Commission that following this meeting no agreement had been reached between the parties on the issues in dispute; and

WHEREAS on 29 April 2010 the Commission conducted site inspections at the Wellington Street station in East Perth; and

WHEREAS on 30 April 2010 the Commission received minutes of the meeting held between the parties on 28 April 2010 along with relevant documentation; and

WHEREAS on 30 April 2010 the Commission convened a further conference; and

WHEREAS at this conference and immediately thereafter the parties referred the Commission to the documentation each party relied on in support of its contentions with respect to the five issues in dispute; and

FURTHER the Commission was also advised that the applicant wanted to discuss the installation of showers in the Tunic Room with the respondent; and

FURTHER the Commission was informed that the respondent had agreed to install four basins in the Tunic Room and the respondent had agreed to trial the use of sliding doors subsequent to the removal of doors to the Locker Rooms; and

WHEREAS the respondent confirmed that light tankers and the Ziegler pump would not be stationed at the Wellington Street station; and

WHEREAS the applicant stated that as a compromise position it would accept the issues in dispute being trialled over a period of six weeks after the occupation of the Wellington Street station using two appliances; and

WHEREAS the respondent rejected this proposal and indicated that it wished to commence its induction of approximately 60 employees in the week commencing 3 May 2010 with a view to the Wellington Street station commencing operations on 12 May 2010; and

WHEREAS the Commission is of the view that the matter before it is an industrial matter as it relates to a number of significant issues pertaining to the employment relationship between the applicant's members and the respondent, and the rights of an organisation; and

WHEREAS having heard from the applicant and the respondent and having weighed up the varying contentions of the parties and when taking into account equity and fairness, the public interest and the interest of the parties directly involved as well as the need to prevent a deterioration of industrial relations in respect of the issues in dispute the Commission has formed the view that the following recommendations should issue;

1. Traffic Management

THAT a review of traffic management and other related procedures be completed and a trial of the traffic management plan (number 10 and 11 in the Wellington Street station induction manual) is to be undertaken by the respondent and relevant Occupational Health and Safety Representatives within three months of the Wellington Street station being operational. The results of this review and trial are to be referred back to the Commission at the end of this three month period for further conciliation and/or arbitration if there is any disagreement between the parties on these issues.

2. Basins and Showers in the Tunic Room

THAT the parties meet within one week to review the applicant's proposal for showers to be installed in the Tunic Room at the Wellington Street station. A report back on this issue will be held in the Commission in two weeks time for further conciliation and/or arbitration if no agreement is reached between the parties on this issue. In making this recommendation I note that the issue of the number of basins in the Tunic Room is no longer in dispute.

3. Configuration of Dormitories and Other Occupational Health and Safety Issues Relevant to the Use of Dormitories

THAT the parties review the use of dormitories and any relevant occupational health and safety issues over a four week period. The results of this review are to be reported back to the Commission at the end of this period for further conciliation and/or arbitration if no agreement is reached between the parties on the issues in dispute.

4. Locker Rooms

THAT as the respondent has agreed to trial the use of sliding doors on Locker Rooms the parties are to report back to the Commission with respect to this issue in four weeks time for further conciliation and/or arbitration if no agreement is reached between the parties with respect to this issue.

5. Engine Room

THAT a review of the practices and procedures operating at the Wellington Street station with respect to the use and maintenance of the four appliances being stationed at the Wellington Street station take place over six weeks and a report back on this issue is to be held in the Commission in eight weeks time. If the parties cannot agree on the terms of reference and conduct of the review the Commissions will arbitrate any disagreement. The results of this review and trial are to be referred back to the Commission at the end of eight weeks for further conciliation and/or arbitration if no agreement is reached between the parties on the issues in dispute.

(Sgd.) J L HARRISON,
Commissioner.

[L.S.]

2010 WAIRC 00248

DISPUTE RE OUTSTANDING ISSUES TO BE FINALISED

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

UNITED FIREFIGHTERS UNION OF AUSTRALIA WEST AUSTRALIAN BRANCH

APPLICANT

-v-

CHIEF OPERATIONS OFFICER - FIRE & EMERGENCY SERVICES AUTHORITY

RESPONDENT

CORAM COMMISSIONER J L HARRISON

DATE MONDAY, 3 MAY 2010

FILE NO/S C 16 OF 2010

CITATION NO. 2010 WAIRC 00248

Result Order issued

Representation

Applicant Ms L Anderson and Mr G Geer

Respondent Ms M Kinsella

Order

WHEREAS this application was lodged pursuant to s 44 of the *Industrial Relations Act, 1979* ("the Act") on 22 April 2010 whereby the United Firefighters Union of Australia, West Australian Branch ("the applicant") sought the Commission's assistance with respect to negotiations with the Fire and Emergency Services Authority ("the respondent") about issues arising out of firefighters using a new fire station on Wellington Street, East Perth; and

WHEREAS on 27 April 2010 the Commission convened a conference for the purpose of conciliating between the parties; and

WHEREAS at this conference the applicant advised the Commission that the parties were in dispute about a range of occupational health and safety issues and the applicant was seeking a commitment from the respondent that it remove all directions and orders with respect to staff relocating to the proposed Wellington Street station until all issues in dispute are resolved between the parties; and

WHEREAS at the conference the applicant maintained that the following five occupational health and safety issues were in dispute between the parties:

1. the proposed configuration of the Engine Room using four appliances and two small appliances made it unsafe for firefighters;
2. sleeping quarters did not comply with relevant building codes;
3. a traffic management trial needed to be undertaken prior to occupation;
4. four basins, not three, were required in the Tunic Room; and
5. the Locker Room doors should be removed and replaced with alternative doors; and

WHEREAS the respondent maintained that problems surrounding these issues had been dealt with and it was of the view that there were no occupational health and safety impediments preventing the relocation of fire fighting services to the Wellington Street station; and

WHEREAS at the conclusion of the conference the parties were required to meet on 28 April 2010 with a view to reaching agreement on the above five issues in dispute and advise the Commission of the outcome of the discussions; and

WHEREAS on 28 April 2010 the applicant advised the Commission that following this meeting no agreement had been reached between the parties on the issues in dispute; and

WHEREAS on 29 April 2010 the Commission conducted site inspections at the Wellington Street station in East Perth; and

WHEREAS on 30 April 2010 the Commission received minutes of the meeting held between the parties on 28 April 2010 along with relevant documentation; and

WHEREAS on 30 April 2010 the Commission convened a further conference; and

WHEREAS at this conference and immediately thereafter the parties referred the Commission to the documentation each party relied on in support of its contentions with respect to the five issues in dispute; and

FURTHER the Commission was also advised that the applicant wanted to discuss the installation of showers in the Tunic Room with the respondent; and

FURTHER the Commission was informed that the respondent had agreed to install four basins in the Tunic Room and the respondent had agreed to trial the use of sliding doors subsequent to the removal of doors to the Locker Rooms; and

WHEREAS the respondent confirmed that light tankers and the Ziegler pump would not be stationed at the Wellington Street station; and

WHEREAS the applicant stated that as a compromise position it would accept the issues in dispute being trialled over a period of six weeks after the occupation of the Wellington Street station using two appliances; and

WHEREAS the respondent rejected this proposal and indicated that it wished to commence its induction of approximately 60 employees in the week commencing 3 May 2010 with a view to the Wellington Street station commencing operations on 12 May 2010; and

WHEREAS following this conference the Commission issued the following recommendations on 30 April 2010:

“1. Traffic Management

THAT a review of traffic management and other related procedures be completed and a trial of the traffic management plan (number 10 and 11 in the Wellington Street station induction manual) is to be undertaken by the respondent and relevant Occupational Health and Safety Representatives within three months of the Wellington Street station being operational. The results of this review and trial are to be referred back to the Commission at the end of this three month period for further conciliation and/or arbitration if there is any disagreement between the parties on these issues.

2. Basins and Showers in the Tunic Room

THAT the parties meet within one week to review the applicant's proposal for showers to be installed in the Tunic Room at the Wellington Street station. A report back on this issue will be held in the Commission in two weeks time for further conciliation and/or arbitration if no agreement is reached between the parties on this issue. In making this recommendation I note that the issue of the number of basins in the Tunic Room is no longer in dispute.

3. Configuration of Dormitories and Other Occupational Health and Safety Issues Relevant to the Use of Dormitories

THAT the parties review the use of dormitories and any relevant occupational health and safety issues over a four week period. The results of this review are to be reported back to the Commission at the end of this period for further conciliation and/or arbitration if no agreement is reached between the parties on the issues in dispute.

4. Locker Rooms

THAT as the respondent has agreed to trial the use of sliding doors on Locker Rooms the parties are to report back to the Commission with respect to this issue in four weeks time for further conciliation and/or arbitration if no agreement is reached between the parties with respect to this issue.

5. Engine Room

THAT a review of the practices and procedures operating at the Wellington Street station with respect to the use and maintenance of the four appliances being stationed at the Wellington Street station take place over six weeks and a report back on this issue is to be held in the Commission in eight weeks time. If the parties cannot agree on the terms of reference and conduct of the review the Commissions will arbitrate any disagreement. The results of this review and trial are to be referred back to the Commission at the end of eight weeks for further conciliation and/or arbitration if no agreement is reached between the parties on the issues in dispute.”; and

WHEREAS on 3 May 2010 the applicant advised the Commission that after consultation with members affected by the recommendations and discussions with occupational health and safety representatives the applicant could not accept the recommendations made by the Commission on 30 April 2010; and

WHEREAS on 3 May 2020 the respondent advised the Commission that on the basis that the Commission orders the lifting of the applicant's ban on firefighters relocating to the Wellington Street station it accepts an amended recommendation one, recommendations three, four and five but it rejects recommendation two; and

WHEREAS on 3 May 2020 the Commission convened a further conference at short notice for the purpose of determining whether orders should issue in the terms of the recommendations that issued on 30 April 2010; and

WHEREAS the applicant submitted that if the recommendations were to issue as orders it wanted agreed terms of reference and methodologies for each review and it wanted the move to the Wellington Street station to be delayed for 10 days for a proper review of the induction manual for the Wellington Street station to take place; and

WHEREAS the applicant was concerned that the health and safety of its members could be compromised with respect to its member working at the Wellington Street station during the review periods; and

WHEREAS the respondent argued that it wanted reviews of the five areas to be conducted expeditiously and it accepted that the terms of reference and methodology be agreed between the parties; and

WHEREAS the respondent agreed to hold discussions with the applicant with respect to recommendation two; and

WHEREAS the Commission is of the view that the matter before it is an industrial matter as it relates to a number of significant issues pertaining to the employment relationship between the applicant's members and the respondent, and the rights of an organisation; and

WHEREAS the Commission is of the view that it has jurisdiction to issue orders pursuant to s 44 of the Act which enables the Commission to issue orders with respect to an industrial matter; and

WHEREAS having heard from the applicant and the respondent and after considering the submissions made by both parties and when taking into account equity and fairness and the substantial merits of this case, relevant objects of the Act and in particular s 44(6)(ba)(i) and (ii) and s 44(6)(bb)(i) of the Act the Commission has formed the view that orders with respect to this application should issue; and

WHEREAS the Commission is of the view that the following orders should issue on the basis that the proposed reviews and discussions will assist the parties to ensure that the Wellington Street station operates effectively and within proper occupational health and safety requirements; and

WHEREAS employees working at the Wellington Street station as well as the respondent at law must ensure that the health and safety of each employee working at the Wellington Street station is not compromised at any time, notwithstanding that a number of procedures and issues are being reviewed under the terms of the following orders; and

WHEREAS the Commission is available to assist the parties at short notice if a dispute arises as to the terms of reference and methodology of the issues to be reviewed; and

WHEREAS the Commission is of the view that any issues with respect to the content of the induction manual can be discussed and negotiated between the parties during the induction process with respect to the Wellington Street station, which has already commenced;

NOW THEREFORE having heard Ms L Anderson and Mr G Geer on behalf of the applicant and Ms M Kinsella on behalf of the respondent, the Commission having regard for the interests of the parties directly involved, the public interest and to prevent the further deterioration of industrial relations, and pursuant to the powers vested in it by the Act, and in particular s44(6)(ba)(ii) and s44(6)(bb)(i), hereby orders:

1. THAT a review of traffic management and other related procedures be completed and a trial of the traffic management plan contained in the Wellington Street station induction manual is to be undertaken within three months of the Wellington Street station becoming operational. The results of this review and trial are to be referred back to the Commission at the end of this three month period for further conciliation and/or arbitration if there is any disagreement between the parties on these issues.
2. THAT the parties meet within one week of the date of these orders to review the applicant's proposal for showers to be installed in the Tunic Room at the Wellington Street station. A report back on this issue will be held in the Commission in two weeks for further conciliation and/or arbitration if no agreement is reached between the parties on this issue.
3. THAT the parties review the use of dormitories and any relevant occupational health and safety issues over a four week period commencing from the date of occupation of the Wellington Street station. The parties are to report back to the Commission with respect to the results of this review at the end of this period for further conciliation and/or arbitration if no agreement is reached between the parties on the issues in dispute.
4. THAT as the respondent has agreed to trial the use of sliding doors on Locker Rooms the parties are to report back to the Commission with respect to this issue four weeks from the date of these orders for further conciliation and/or arbitration if no agreement is reached between the parties with respect to this issue.
5. THAT a review of the practices and procedures operating at the Wellington Street station with respect to the use and maintenance of the four appliances being stationed at the Wellington Street station take place over six weeks from the date of these orders and a report back on this issue is to be held in the Commission in eight weeks.
6. THAT if the parties cannot agree on the terms of reference and conduct for each of the above reviews the Commission will conciliate and/or arbitrate any disagreement between the parties.

7. THAT the applicant by its officers, agents and employees and the applicant's members are not to undertake any industrial action in any form or impose any bans in relation to firefighters commencing and undertaking work at the Wellington Street station whilst these orders remain in place.
8. THAT the applicant, by its officers, agents and employees are to take reasonable steps to immediately inform its members about the terms of these orders and direct its members to comply with these orders.
9. THAT this order is to remain in force until revoked or varied by the Commission.
10. THAT both parties have liberty to apply to vary this order.

(Sgd.) J L HARRISON,
Commissioner.

[L.S.]

2010 WAIRC 00246

DISPUTE RE CLASSIFICATION FOR INSTRUCTORS

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

UNITED FIREFIGHTERS UNION OF AUSTRALIA - WEST AUSTRALIAN BRANCH

APPLICANT

-v-

CHIEF OPERATIONS OFFICER - FIRE & EMERGENCY SERVICES AUTHORITY

RESPONDENT

CORAM COMMISSIONER J L HARRISON

DATE FRIDAY, 30 APRIL 2010

FILE NO. C 17 OF 2010

CITATION NO. 2010 WAIRC 00246

Result Recommendation Issued

Representation

Applicant Ms L Anderson and Mr G Geer

Respondent Mr D Matthews (of counsel)

Recommendation

WHEREAS this application was lodged pursuant to s 44 of the *Industrial Relations Act, 1979* ("the Act") on 28 April 2010 whereby the United Firefighters Union of Australia - West Australian Branch ("the applicant") sought the Commission's assistance with respect to a dispute with the Chief Operations Officer - Fire & Emergency Services Authority ("the respondent") about the appropriate remuneration to be paid to senior firefighters and station officers working as instructors at Recruit Schools and the removal of directions issued by the respondent to six of the applicant's members to work at the Recruit School from 3 May 2010 onwards; and

WHEREAS on 29 April 2010 the Commission convened a conference for the purpose of conciliating between the parties; and

WHEREAS at the conference the applicant maintained that:

- the respondent had no legal basis for issuing a directive to its members to conduct recruit training;
- the respondent was in breach of Clause 16 of the *Western Australian Fire Service Enterprise Bargaining Agreement 2008* ("the Agreement") by directing its members to conduct recruit training;
- historically recruit trainers had been paid a District Officer rate and in recent years the minimum rate of pay paid to recruit trainers was at Area Officer rank;
- the employees who had been directed to conduct recruit training were unqualified for this work and/or had family and other responsibilities which would create difficulties if they were to undertake recruit training;
- its ban on members undertaking General Instructor duties at the Recruit School would remain in place whilst General Instructors were paid at a rate of pay at less than that of a District Officer; and

WHEREAS the respondent maintained the following:

- employees who had been directed to conduct recruit training were qualified and if individual employees had issues with respect to undertaking the recruit training the respondent would liaise with them about their concerns;

- the respondent has the legal authority to direct employees to undertake this role and this direction is not inconsistent with any Regulations or industrial instruments;
- the correct rate of pay for employees who conduct recruit training is that which is contained in Clause 53(5)(g) of the *Western Australian Fire Service Enterprise Bargaining Agreement 2008* ("the Agreement"); and

WHEREAS at the conclusion of the conference the respondent was required to obtain instructions about whether or not it would agree to paying General Instructors an allowance equivalent to the remuneration of an Area Officer on the basis of accepting that the applicant would make a work value case in the Commission in support of General Instructors being classified and paid at the District Officer rate and this rate would apply retrospectively to General Instructors instructing at the next Recruit School from 3 May 2010 onwards if the applicant was successful in making out its claim; and

WHEREAS on 29 April 2010 the respondent wrote to the Commission to advise that it did not agree to this proposal and stated the following:

- the respondent will pay General Instructors in accordance with Clause 53 of the Agreement;
- the respondent has already made significant concessions in offering to consider payment at District Officer rates for instructor roles on other training courses and has already agreed to include payment of trainer allowances as part of the next enterprise bargaining agreement negotiations due to commence shortly;
- the respondent has agreed to a work value case for General Instructors being submitted by the applicant that General Instructors be classified as a District Officer and agrees that in the event that the work value case is successful the higher rate of pay for General Instructors will apply retrospectively to General Instructors at the Recruit School commencing 3 May 2010; and

FURTHER the respondent requested that the applicant's bans relating to the remuneration of General Instructors be lifted and if this occurs the respondent would consider substituting employees directed to undertake General Instructors duties with officers who have expressed interest in undertaking this role; and

WHEREAS the applicant rejected the respondent's position on the basis that its members would be financially disadvantaged if they undertook the role of General Instructor; and

WHEREAS the Commission is of the view that the matter before it is an industrial matter as it relates to a number of significant issues pertaining to the employment relationship between the applicant's members and the respondent and the rights of an organisation; and

WHEREAS having heard from the applicant and the respondent and having weighed up the varying contentions of the parties and when taking into account equity and fairness and the interests of the parties directly involved, and the public interest, and in order to prevent the deterioration of industrial relations between the parties the Commission has formed the view that the following recommendation should issue;

THAT the applicant accept the respondent's proposal that if the applicant's work value application, which will argue that a General Instructor be classified as a District Officer is successful, the rate of pay with respect to this classification will apply retrospectively to employees instructing at the Recruit School commencing on 3 May 2010 and that the General Instructors for this course are to be chosen from a pool of employees wishing to undertake this role

(Sgd.) J L HARRISON,
Commissioner.

[L.S.]

2010 WAIRC 00247

DISPUTE RE CLASSIFICATION FOR INSTRUCTORS

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

UNITED FIREFIGHTERS UNION OF AUSTRALIA - WEST AUSTRALIAN BRANCH

APPLICANT

-v-

CHIEF OPERATIONS OFFICER - FIRE & EMERGENCY SERVICES AUTHORITY

RESPONDENT

CORAM

COMMISSIONER J L HARRISON

DATE

MONDAY, 3 MAY 2010

FILE NO.

C 17 OF 2010

CITATION NO.

2010 WAIRC 00247

Result	Order Issued
Representation	
Applicant	Ms L Anderson and Mr G Geer
Respondent	Mr D Matthews (of counsel) and later Ms M Kinsella

Order

WHEREAS this application was lodged pursuant to s 44 of the *Industrial Relations Act, 1979* (“the Act”) on 28 April 2010 whereby the United Firefighters Union of Australia - West Australian Branch (“the applicant”) sought the Commission’s assistance with respect to a dispute with the Chief Operations Officer - Fire & Emergency Services Authority (“the respondent”) about the appropriate remuneration to be paid to senior firefighters and station officers working as instructors at Recruit Schools and the removal of directions issued by the respondent to six of the applicant’s members to work at the Recruit School from 3 May 2010 onwards; and

WHEREAS on 29 April 2010 the Commission convened a conference for the purpose of conciliating between the parties; and

WHEREAS at the conference the applicant maintained that:

- the respondent had no legal basis for issuing a directive to its members to conduct recruit training;
- the respondent was in breach of Clause 16 of the *Western Australian Fire Service Enterprise Bargaining Agreement 2008* (“the Agreement”) by directing its members to conduct recruit training;
- historically recruit trainers had been paid a District Officer rate and in recent years the minimum rate of pay paid to recruit trainers was at Area Officer rank;
- the employees who had been directed to conduct recruit training were unqualified for this work and/or had family and other responsibilities which would create difficulties if they were to undertake recruit training;
- its ban on members undertaking General Instructor duties at the Recruit School would remain in place whilst General Instructors were paid at a rate of pay at less than that of a District Officer; and

WHEREAS the respondent maintained the following:

- employees who had been directed to conduct recruit training were qualified and if individual employees had issues with respect to undertaking the recruit training the respondent would liaise with them about their concerns;
- the respondent has the legal authority to direct employees to undertake this role and this direction is not inconsistent with any Regulations or industrial instruments;
- the correct rate of pay for employees who conduct recruit training is that which is contained in Clause 53(5)(g) of the *Western Australian Fire Service Enterprise Bargaining Agreement 2008* (“the Agreement”); and

WHEREAS at the conclusion of the conference the respondent was required to obtain instructions about whether or not it would agree to paying General Instructors an allowance equivalent to the remuneration of an Area Officer on the basis of accepting that the applicant would make a work value case in the Commission in support of General Instructors being classified and paid at the District Officer rate and this rate would apply retrospectively to General Instructors instructing at the next Recruit School from 3 May 2010 onwards if the applicant was successful in making out its claim; and

WHEREAS on 29 April 2010 the respondent wrote to the Commission to advise that it did not agree to this proposal and stated the following:

- the respondent will pay General Instructors in accordance with Clause 53 of the Agreement;
- the respondent has already made significant concessions in offering to consider payment at District Officer rates for instructor roles on other training courses and has already agreed to include payment of trainer allowances as part of the next enterprise bargaining agreement negotiations due to commence shortly;
- the respondent has agreed to a work value case for General Instructors being submitted by the applicant that General Instructors be classified as a District Officer and agrees that in the event that the work value case is successful the higher rate of pay for General Instructors will apply retrospectively to General Instructors at the Recruit School commencing 3 May 2010; and

FURTHER the respondent requested that the applicant’s bans relating to the remuneration of General Instructors be lifted and if this occurs the respondent would consider substituting employees directed to undertake General Instructors duties with employees who had expressed interest in undertaking this role; and

WHEREAS the applicant rejected the respondent’s position on the basis that its members would be financially disadvantaged if they undertook the role of General Instructor; and

WHEREAS on 30 April 2010 the Commission issued the following recommendation:

“THAT the applicant accept the respondent’s proposal that if the applicant’s work value application, which will argue that a General Instructor be classified as a District Officer is successful, the rate of pay with respect to this classification will apply retrospectively to employees instructing at the Recruit School commencing on 3 May 2010 and that the General Instructors for this course are to be chosen from a pool of employees wishing to undertake this role.”; and

WHEREAS on 3 May 2010 the applicant advised the Commission that it did not accept the recommendation made on 30 April 2010; and

WHEREAS on 3 May 2010 the respondent advised the Commission that on the basis that the Commission make an order for the applicant to lift all bans relating to instructors it accepted the recommendation; and

WHEREAS on 3 May 2010 the Commission convened a further conference at short notice for the purpose of determining whether an order should issue in the terms of the recommendation that issued on 30 April 2010; and

WHEREAS at this conference the applicant again stated that it rejected the recommendation due to the financial disadvantage to its members but if an order was to issue it argued that the employees who conduct Recruit Training should be suitably qualified and hold relevant public safety competencies or equivalent; and

WHEREAS the respondent argued in support of an order issuing in the terms of the recommendation and also sought an order that the applicant lift all bans in relation to firefighters and station officers working as instructors; and

FURTHER the respondent accepted the reference to an employee being suitably qualified being incorporated into any order but rejected the inclusion of an employee holding relevant public safety competencies or equivalent as the parties were in dispute with respect to this issue; and

WHEREAS the Commission is of the view that the matter before it is an industrial matter as it relates to a number of significant issues pertaining to the employment relationship between the applicant’s members and the respondent and the rights of an organisation; and

WHEREAS the Commission is of the view that it has jurisdiction to issue the orders being contemplated pursuant to s 44 of the Act which enables the Commission to issue orders with respect to an industrial matter; and

WHEREAS having heard from the applicant and the respondent and after considering the submissions made by both parties and when taking into account equity and fairness and the substantial merits of this case, relevant objects of the Act; and in particular s 44(6)(ba)(i) and (ii) and s 44(6)(bb)(i) of the Act the Commission has formed the view that orders with respect to this application should issue; and

WHEREAS the Commission is of the view that orders should issue with respect to this issue on the basis that the applicant will lodge a work value application arguing that a General Instructor be classified as a District Officer and the respondent undertakes that if this application is successful, the rate of pay with respect to this classification will apply retrospectively to employees instructing at the Recruit School commencing on 10 May 2010 and the respondent agrees that General Instructors who undertake training at this Recruit School are to be chosen from a suitably qualified pool of employees wishing to undertake this role; and

WHEREAS the Commission will only make orders with respect to General Instructors working at the Recruit School commencing on 10 May 2010 as this application was confined to matters relevant to this issue;

NOW THEREFORE having heard Ms L Anderson and Mr G Geer on behalf of the applicant and Ms M Kinsella on behalf of the respondent, the Commission having regard for the interests of the parties directly involved, the public interest and to prevent the further deterioration of industrial relations, and pursuant to the powers vested in it by the Act, and in particular s44(6)(ba)(ii) and s44(6)(bb)(i), hereby orders:

1. THAT the applicant by its officers, agents and employees and the applicant’s members are to lift bans in place in relation to the applicant’s members applying to undertake General Instructor duties at the Recruit School commencing 10 May 2010 and no further industrial action in any form is to be taken by the applicant in relation to the applicant’s members undertaking General Instructor duties at the Recruit School commencing 10 May 2010.
2. THAT the applicant, by its officers, agents and employees are to take reasonable steps to immediately inform its members about the terms of this order and direct its members to comply with this order.
3. THAT the directives issued by the respondent to six of its employees to undertake General Instructor duties at the Recruit School commencing 10 May 2010 be revoked by the respondent forthwith.
4. THAT this order is to remain in force until revoked or varied by the Commission.
5. THAT both parties have liberty to apply to vary this order.

[L.S.]

(Sgd.) J L HARRISON,
Commissioner.

2010 WAIRC 00264

DISPUTE RE CLASSIFICATION FOR INSTRUCTORS

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

UNITED FIREFIGHTERS UNION OF AUSTRALIA - WEST AUSTRALIAN BRANCH

APPLICANT

-v-

CHIEF OPERATIONS OFFICER - FIRE & EMERGENCY SERVICES AUTHORITY

RESPONDENT**CORAM** COMMISSIONER J L HARRISON**DATE** WEDNESDAY, 12 MAY 2010**FILE NO/S** C 17 OF 2010**CITATION NO.** 2010 WAIRC 00264

Result	Order issued
Representation	
Applicant	Ms L Anderson and Mr G Geer
Respondent	Mr D Matthews (of counsel)

Order

WHEREAS this application was lodged pursuant to s 44 of the *Industrial Relations Act 1979* ("the Act") on 28 April 2010 by the United Firefighters Union of Australia - West Australian Branch ("the applicant") whereby the applicant was seeking the Commission's assistance with respect to a dispute with the Chief Operations Officer - Fire & Emergency Services Authority ("the respondent") about the appropriate remuneration to be paid to senior firefighters and station officers working as instructors at Recruit Schools and the removal of directions issued by the respondent to six of the applicant's members to work at the Recruit School from 3 May 2010 onwards; and

WHEREAS on 29 April 2010 the Commission convened a conference for the purpose of conciliating between the parties; and

WHEREAS on 3 May 2010 the Commission convened a further conference and after hearing from the parties the Commission issued the following orders:

- "1. THAT the applicant by its officers, agents and employees and the applicant's members are to lift bans in place in relation to the applicant's members applying to undertake General Instructor duties at the Recruit School commencing 10 May 2010 and no further industrial action in any form is to be taken by the applicant in relation to the applicant's members undertaking General Instructor duties at the Recruit School commencing 10 May 2010.
2. THAT the applicant, by its officers, agents and employees are to take reasonable steps to immediately inform its members about the terms of this order and direct its members to comply with this order.
3. THAT the directives issued by the respondent to six of its employees to undertake General Instructor duties at the Recruit School commencing 10 May 2010 be revoked by the respondent forthwith.
4. THAT this order is to remain in force until revoked or varied by the Commission.
5. THAT both parties have liberty to apply to vary this order."; and

WHEREAS on 10 May 2010 the respondent wrote to the Commission by way of e-mail requesting that it urgently convene a conference on the basis that four General Instructors who had volunteered to instruct at the Recruit School commencing 12 May 2010 had withdrawn their availability to instruct at the Recruit School effective from 5.00 pm on 12 May 2010; and

WHEREAS on 11 May 2010 the Commission convened a conference for the purpose of dealing with the issues raised by the respondent; and

WHEREAS at the conference the respondent maintained that:

- four General Instructors who had volunteered to undertake training at the Recruit School which commenced on 10 May 2010 had indicated that they were no longer willing to be instructors for this Recruit School;
- the respondent may have no option but to direct these four employees to continue working as General Instructors to ensure the continuance of the Recruit School;
- the respondent has documentation demonstrating that the four General Instructors are appropriately trained and qualified to conduct recruit training; and

WHEREAS at the conference the applicant maintained that:

- the four employees who had commenced undertaking the role of General Instructor at the Recruit School had concerns about whether or not their qualifications and competencies were sufficient to undertake instructing duties at the Recruit School;
- the four employees were concerned that continuing in the role of General Instructor could have industrial ramifications for them personally;
- six District Officers are qualified and competent to undertake the role of General Instructor at the Recruit School;
- if General Instructors are not appropriately qualified and competent then recruits will not be appropriately qualified and this raises health and safety issues for its members; and

WHEREAS the Commission is of the view that the matter before it is an industrial matter as it relates to issues pertaining to the employment relationship between the applicant's members and the respondent; and

WHEREAS the Commission is of the view that it has jurisdiction to issue the orders being contemplated pursuant to s 44 of the Act which enables the Commission to issue orders with respect to an industrial matter; and

WHEREAS having heard from the applicant and the respondent and after considering the submissions made by both parties and when taking into account equity and fairness and the substantial merits of this case, relevant objects of the Act and in particular s 44(6)(ba)(i) and (ii) and s 44(6)(bb)(i) of the Act the Commission has formed the view that orders with respect to this application should issue;

NOW THEREFORE having heard Ms L Anderson and Mr G Geer on behalf of the applicant and Mr D Matthews of counsel on behalf of the respondent, the Commission having regard for the interests of the parties directly involved, the public interest and to prevent the further deterioration of industrial relations, and pursuant to the powers vested in it by the Act, and in particular s44(6)(ba)(ii) and s44(6)(bb)(i), hereby orders:

1. THAT Shaun Menner, Claire Finucane, Paul Hughes and Craig Goodhill return to Forrestfield Training Centre forthwith and complete all duties as General Instructors for Recruit School 67.
2. THAT no action is to be taken by the applicant by its officers, agents and employees or by the applicant's members which may prevent or obstruct the respondent from using specialist instructors who are suitably qualified and/or competent from instructing at Recruit School 67 as required.
3. THAT the parties are to meet within one week of the date of this order to agree on an agenda and timeframe to attempt to resolve matters relating to what constitutes a suitably qualified and/or competent instructor and the parties are to report back to the Commission in writing on the outcomes of this meeting.
4. THAT the parties are to attend a report back conference in the Commission in four weeks from the date of this order with respect to the progress of discussions between the parties on the issues in dispute.
5. THAT this order is to remain in force until revoked or varied by the Commission.
6. THAT both parties have liberty to apply to vary these orders.

(Sgd.) J L HARRISON,
Commissioner.

[L.S.]

2010 WAIRC 00269

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

CHARLES HENRY ROSENTHAL

APPLICANT

-v-

JOHN PALERMO

RESPONDENT

CORAM

ACTING SENIOR COMMISSIONER P E SCOTT

DATE

THURSDAY, 13 MAY 2010

FILE NO/S

U 10 OF 2009, B 101 OF 2009

CITATION NO.

2010 WAIRC 00269

Result

Order dated the 21st day of January 2010 to be amended

Order

WHEREAS on Thursday the 21st day of January 2010, the Commission issued orders pursuant to s 27(1)(ha) of the *Industrial Relations Act 1979* determining the periods reasonably necessary for the fair and adequate presentation of the parties' respective cases and requiring that the cases be presented within those periods; and

WHEREAS on Wednesday the 5th day of May 2010, the hearing of the applications reconvened and at the commencement of proceedings on that day the respondent advised the Commission that he and his agent were required to attend the Supreme Court of Western Australia at 9.45 am on Friday the 7th day of May 2010 and applied that the hearing of these applications, scheduled to continue on Friday the 7th day of May 2010 at 10.30 am not commence until 2.00 pm on that day; and

WHEREAS the Commission considered the parties' submissions and on Thursday the 6th day of May 2010 granted the respondent's application in so far as the hearing on Friday the 7th day of May 2010 would commence at 12 noon on that day; and

WHEREAS on Wednesday the 5th day of May 2010, at around 2.30 pm, the respondent sought to amend his grounds for the dismissal of the applicant from his employment to include allegations of theft; and

WHEREAS at approximately 3.00 pm on Wednesday the 5th day of May 2010, the Commission adjourned the hearing to enable it to consider the respondent's application to amend the grounds for dismissal and to consider the respondent's agent's conduct; and

WHEREAS on Thursday the 6th day of May 2010, the Commission:

1. Refused the respondent's application to amend the grounds of dismissal to include allegations of theft; and
2. Directed the respondent that should the respondent's agent again conduct himself in a manner which the Commission considered inappropriate for an agent appearing before the Commission, then the hearing would be adjourned for five minutes on each such occasion to allow the situation to settle, and that any such time would be deducted from the period allocated to the respondent for the conduct of his case, and further that if appropriate circumstances arose the Commission may consider not hearing further from the respondent; and

WHEREAS on Thursday the 6th day of May 2010, notwithstanding the Order of the 21st of January 2010 which allowed the respondent a further day to cross-examine the applicant, the respondent sought an additional day for such cross-examination; and

WHEREAS during submissions in which he sought further time to cross-examine the applicant, the respondent's agent advised the Commission that he believed that if the additional time for cross-examination of the applicant were granted, the hearing would nonetheless conclude within the time allocated, and he identified that he would not call witnesses previously identified including Mr John Palermo, the respondent; Mr Noel Nancarrow who would be unavailable, and would call only one of four witnesses previously notified, being Mr Todd Nancarrow, Mr Bob Nancarrow, Mr Michael Venn and Mr Tim Venn, and that the agent himself, Mr Tony Palermo, may not give evidence; and

WHEREAS the Commission, having heard from the parties, and taking account of the advice of the respondent as to the evidence to be called in his case, agreed to amend the Order of the 21st of January 2010 to allow the respondent two hours in addition to the further day already allowed for such cross-examination; and

WHEREAS when the hearing reconvened on Friday the 7th day of May 2010, as scheduled at 12 noon, the respondent attended but his agent did not and the respondent requested a 10 minute adjournment as his agent was in the process of finalising the conference before the Supreme Court of Western Australia; and

WHEREAS such adjournment was granted and the hearing reconvened at 12.10 pm; and

WHEREAS at the commencement of proceedings on Friday the 7th of May 2010, the Commission noted that given the time allocated for the examination and cross-examination of witnesses and for the parties to each have one hour for closing submissions, as set out in the Order of the 21st January 2010, that there would be insufficient time to enable the completion of the hearing during the time allocated, until the conclusion of the hearing on Friday the 14th day of May 2010 and proposed that the hearing times be extended on that afternoon, Friday the 7th day of May 2010, on Thursday the 13th day of May and Friday the 14th day of May 2010 and on this basis there would be adequate time for the examination, cross-examination and re-examination of witnesses and for the closing submissions of the parties. Having heard from the parties the Commission directed that the hearing be conducted accordingly; and

WHEREAS the applicant's evidence concluded at approximately 12.45 pm on Friday the 7th day of May 2010; and

WHEREAS the Commission invited the respondent to commence his case and he indicated that he did not intend to make an opening address and would continue with the evidence of Victor John Matthews which had been interposed in the evidence of the applicant previously, at the reconvening of the hearing that afternoon; and

WHEREAS the Commission adjourned the hearing at approximately 12.50 pm for the luncheon adjournment; and

WHEREAS when the hearing reconvened at 1.45 pm on Friday the 7th day of May 2010, the respondent indicated that his witness, Mr Victor John Matthews, was not available due to incapacity, that a medical certificate would be provided to confirm this, and he sought that the hearing be adjourned for the afternoon, reiterating that he believed that notwithstanding the loss of the afternoon's hearing time that the hearing would in fact conclude within the time allotted; and

WHEREAS the Commission asked the respondent whether he would call one of his other witnesses and the respondent's agent declined to do so saying that that the respondent would conduct its case as it saw fit; and

WHEREAS the Commission adjourned the proceedings on the basis that the time lost from the hearing for that afternoon, being 2.5 hours, would be deducted from the time allocated to the respondent for the conduct of his case.

NOW THEREFORE the Commission, according to the powers provided in the *Industrial Relations Act 1979*, hereby orders that:

1. The Order of the Commission dated Thursday the 21st of January 2010 in this matter (2010) WAIRC 00023 be amended:
 - (a) in paragraph 2(a) to provide:
 - “(a) completion of the cross-examination of the applicant, Charles Henry Rosenthal – a further day plus two hours.”
 - (b) to delete provision for the evidence of John Palermo in paragraph 2(d);
 - (c) to delete provision for the evidence of Noel Nancarrow in paragraph 2(e);
 - (d) to delete paragraph (2)(f) and insert in lieu thereof:
 - “(f) evidence of Fiona Logan;
 - (i) examination in chief – 30 minutes;
 - (ii) cross-examination – by application, provided that it shall be no more than 30 minutes.”
2. At the commencement of proceedings on Thursday the 13th day of May 2010, the respondent is to advise the Commission of the times which he says ought to be deducted from each of his remaining witnesses’ examination in chief and/or from the time allowed for his closing submissions, being one hour, for the purpose of deducting the 2.5 hours lost from Friday, the 7th day of May 2010 due to the early adjournment of the proceedings that afternoon.

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

[L.S.]

INDUSTRIAL AGREEMENTS—Notation of—

Agreement Name/Number	Date of Registration	Parties		Commissioner	Result
Tranby College (Enterprise Bargaining) Agreement 2009 AG 4/2010	30/04/2010	The Independent Education Union of Western Australia, Union of Employees, Tranby College, Liquor, Hospitality and Miscellaneous Union, WA Branch, The Australian Nursing Federation, Industrial Union of	(Not applicable)	Commissioner J L Harrison	Registered

NOTICES—Appointments—

2010 WAIRC 00250

APPOINTMENT

ADDITIONAL PUBLIC SERVICE ARBITRATOR

I, the undersigned Chief Commissioner of the Western Australian Industrial Relations Commission, acting pursuant to the provisions of section 80D(2) of the *Industrial Relations Act 1979*, hereby appoint, subject to the provisions of the Act, Commissioner JL Harrison to be an additional Public Service Arbitrator for a period of one year from the 2nd day of May, 2010.

Dated the 20th day of April, 2010.



CHIEF COMMISSIONER A.R. BEECH

PUBLIC SERVICE APPEAL BOARD—

2010 WAIRC 00221

**APPEAL AGAINST THE DECISION MADE ON 12 AUGUST 2009 RELATING TO A CHARGE OF AN ALLEGED
BREACH OF DISCIPLINE**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

GUISEPPE DI PIETRO

APPELLANT

-v-

UNDER TREASURER, DEPARTMENT OF TREASURY AND FINANCE

RESPONDENT**CORAM**

PUBLIC SERVICE APPEAL BOARD

ACTING SENIOR COMMISSIONER P E SCOTT - CHAIRMAN

MS L MCKAY - BOARD MEMBER

MS K WATSON - BOARD MEMBER

DATE

THURSDAY, 22 APRIL 2010

FILE NO

PSAB 10 OF 2009

CITATION NO.

2010 WAIRC 00221

Result Application for discovery of documents granted**Representation****Applicant** Ms J O'Keefe and with her Ms D Larson**Respondent** Mr R Andretich, of counsel*Order*

HAVING heard Ms J O'Keefe and with her Ms D Larson on behalf of the appellant and Mr R Andretich (of counsel) on behalf of the respondent, the Public Service Appeal Board, pursuant to the powers conferred under the *Industrial Relations Act 1979*, hereby orders:

1. THAT the application for an order under s 27(1)(o) of the *Industrial Relations Act 1979* for the discovery of documents filed on 29 March 2010 be amended in accordance with paragraph 14 of the statement of Warwick Claydon dated the 22nd day of April 2010.
2. THAT no later than the 6th day of May 2010 the respondent will provide to the appellant discovery of the documents as set out in points 1 to 5 of the amended application.
3. THAT leave be granted to the appellant to apply in regard to point 6 of the amended application.

(Sgd.) P E SCOTT,
Acting Senior Commissioner,
On behalf of the Public Service Appeal Board.

[L.S.]

NOTICES—Union Matters—

2010 WAIRC 00278

NOTICE

FBM 3 of 2010

Notice is given of an application by "The Electrical and Communications Association of Western Australia (Union of Employers)" to the Full Bench of the Western Australian Industrial Relations Commission for the alteration to Rule 3 – Qualification for Membership, and Rule 4 - Election of Members.

Existing Rule 3**3 - QUALIFICATION FOR MEMBERSHIP**

Membership shall be open to any person who is either an Electrical Contractor or a Communications Contractor and whose is substantially engaged in the work usually performed by either an Electrical Contractor or a Communications Contractor.

For the purposes of this clause:

- a) Electrical Contractor means a person who holds an Electrical Contractors Licence and who either is, or who employs at least one person who is, a person who holds an Electrical Worker's Licence issued under the provisions of the Electricity (Licensing) Regulations 1991 (WA); and
- b) Communications Contractor means a person is either performs, or who employs a person or persons who perform, work which is regulated by the Australian Communications Authority under the provisions of the Telecommunications Act 1997 (Cth).

Proposed new Rule 3

3 - QUALIFICATION FOR MEMBERSHIP

Membership shall be open to any person who is either an Electrical Contractor or a Communications Contractor and whose is substantially engaged in the work usually performed by either an Electrical Contractor or a Communications Contractor.

For the purposes of this clause:

- a) Electrical Contractor means a person who holds an Electrical Contractors Licence and who ~~either is, or who~~ employs at least one person **(which may include themselves)** who is, a person who holds an Electrical Worker's Licence issued under the provisions of the Electricity (Licensing) Regulations 1991 (WA); and
- b) Communications Contractor means a person ~~is either performs, or~~ who employs a person **(which may include themselves)** or persons who perform, work which is regulated by the Australian Communications **& Media** Authority under the provisions of the Telecommunications Act 1997 (Cth).

Existing Rule 4

4 - ELECTION OF MEMBERS

- (a) Any person, firm or company eligible for membership as aforesaid who desires to become a member of the Association, must be nominated by two members of the Association on the form provided by the Secretary and shall be balloted for at the next meeting of the Management Committee. Election to membership shall be by simple majority. The completed nomination form shall be accompanied by the required subscription under the provision of Rule 5.
- b) The Management Committee shall have the power to receive and accept nominations for membership from those who are unable to provide members' signatures on their application forms. The election of those nominated must be by a two third majority of the Management Committee members present.
- c)
 - i) The Management Committee shall have the power to admit to provisional membership for the Association, for a period not exceeding one calendar year, companies licensed as Electrical Contractors within one year of such license being granted by the Electrical Contractors Licensing Board or its successor.
 - ii) Provisional members shall be exempt from the provisions of Rule 5 – Subscriptions.
 - iii) Provisional members shall not be empowered to vote at any meeting of the Association held pursuant to Rule 20 – General Meetings of the Association and shall not be eligible to hold any Office or position.
- d)
 - i) The Management Committee may at its absolute discretion accept an application for Associate membership.
 - ii) Associate members shall be bound by Rule- 5 Subscriptions. iii) Associate members shall not be empowered to vote at any meeting of the Association held pursuant to Rule 20 – General Meetings of the Association and shall not be eligible to hold any Office or position.

Proposed new Rule 4

4 - ELECTION OF MEMBERS

- (a) Any person, firm or company eligible for membership as aforesaid who desires to become a member of the Association, must be nominated by two members of the Association on the form provided by the Secretary and shall be balloted for at the next meeting of the Management Committee. Election to membership shall be by simple majority. The completed nomination form shall be accompanied by the required subscription under the provision of Rule 5.
- b) The Management Committee shall have the power to receive and accept nominations for membership from those who are unable to provide members' signatures on their application forms. The election of those nominated must be by a two third majority of the Management Committee members present.
- c)
 - i) The Management Committee shall have the power to admit to provisional membership for the Association, for a period not exceeding one calendar year, companies licensed as Electrical Contractors within one year of such license being granted by the Electrical Contractors Licensing Board or its successor.
 - ii) Provisional members shall be exempt from the provisions of Rule 5 – Subscriptions.
 - iii) Provisional members shall not be empowered to vote at any meeting of the Association held pursuant to Rule 20 – General Meetings of the Association and shall not be eligible to hold any Office or position.
- d)
 - i) The ~~Management Committee~~ **Association** ~~may at its absolute discretion accept an application for Associate membership.~~ **members in the following circumstances:**
 - A) **The organisation is one which performs a similar role to the Association in a similar or different industry grouping or:**
 - B) **Approval of the President has been given.**
 - ii) Associate members shall be bound by Rule- 5 Subscriptions.

- iii) Associate members shall not be empowered to vote at any meeting of the Association held pursuant to Rule 20 – General Meetings of the Association and shall not be eligible to hold any Office or position.

The matter has been listed before the Full Bench at 10.30 am on Monday, 28 June 2010 in Court No. 3 (Floor 18). A copy of the Rules of the organisation and the proposed rule alterations may be inspected on the 16th Floor, 111 St Georges Terrace, Perth.

Any organisation/association registered under the *Industrial Relations Act 1979*, or any person who satisfies the Full Bench that he/she has a sufficient interest or desires to object to the application may do so by filing a notice of objection (Form 13) in accordance with the *Industrial Relations Commission Regulations 2005*.

S. HUTCHINSON

DEPUTY REGISTRAR

11 MAY 2010

2010 WAIRC 00254

NOTICE

FBM 2 of 2010

NOTICE is given of an application by the “Western Australian Railway Officers' Union” and the “Australian Municipal, Administrative, Clerical and Services Union of Employees, W.A. Clerical and Administrative Branch” for the amalgamation of those organisations to form a new organisation to be known as the “Western Australian Municipal, Administrative, Clerical and Services Union of Employees”.

The application is made pursuant to Section 72 of the *Industrial Relations Act 1979*.

The rules of the proposed new organisation relating to the qualification of persons for membership including any rule by which that area of the State within which the organisation operates, or intends to operate is limited, are set out below:

“5 ELIGIBILITY FOR MEMBERSHIP

The following persons and classes of persons shall be eligible for membership of the Union, namely:

- a. persons engaged in the services of the Western Australian Government Railways in receipt of an annual salary or, in the case of temporary clerks, paid on wages sheets, also Union Head Office staff.
- b. persons employed at an annual salary rate in the rail transport industry by:
 - (i) any statutory body representing W.A.G.R. in any such right as aforesaid; or
 - (ii) any instrumentality or authority whether corporate or unincorporated acting under the control of or for or on behalf of or in the interest of W.A.G.R. in any such right as aforesaid; or,
 - (iii) any Company or Corporation in which at least fifty per centum of the issued shares are held by or for or on behalf of or in the interest of W.A.G.R. in any such right as aforesaid.
 - (iv) persons employed at an annual salary rate in the Western Australian Railways Institute.

The Union shall also consist of:

- a. persons, male or female, engaged in any clerical capacity, including telephonists, or in the occupation of shorthand writing or typing or calculating, billing or other machines designed to perform, or assist in performing any clerical work whatsoever within the State of Western Australia, but excepting that portion of the State within the 20th and 26th parallels of latitude and the 125th and the 129th meridians of longitude.
- b. provided that no person shall be a member who is not an employee within the meaning of the "Industrial Relations Act, 1979".

The matter has been listed before the Full Bench at 10:30 am on Friday 2 July 2010 in Court 3 (Floor 18). A copy of the rules of the proposed new organisation may be inspected on the 16th Floor, 111 St Georges Terrace, Perth.

Any organisation registered under the *Industrial Relations Act 1979*, or any person who objects to the registration of the organisation and who satisfies the Full Bench that he/she has sufficient interest in the matter, may appear and be heard in objection to the application.

Notice of the objection (Form 13) should be filed in accordance with the *Industrial Relations Commission Regulations 2005*.

S. HUTCHINSON

DEPUTY REGISTRAR

4 May 2010

OCCUPATIONAL SAFETY AND HEALTH ACT—Matters Dealt With—

2010 WAIRC 00252

REFERRAL OF DISPUTE RE REVIEW OF IMPROVEMENT NOTICE 303884

THE OCCUPATIONAL SAFETY AND HEALTH TRIBUNAL

PARTIES

MORTON SEED AND GRAIN PTY LTD

APPLICANT

-v-

WORKSAFE WESTERN AUSTRALIA COMMISSIONER

RESPONDENT**CORAM** COMMISSIONER S M MAYMAN**DATE** TUESDAY, 4 MAY 2010**FILE NO/S** OSHT 30 OF 2009**CITATION NO.** 2010 WAIRC 00252**Result** Order issued**Representation****Applicant** Mr A Koroveshi (of counsel)**Respondent** Mr K. Burgoyne (of counsel)*Order*

WHEREAS the Occupational Safety and Health Tribunal (the Tribunal) issued an order in this matter on 15 February 2010 pursuant to s 51A of the *Occupational Safety and Health Act 1984* (the Act) granting an extension of time following a further review of Improvement Notice 303884;

AND WHEREAS on 28 April 2010 the applicant in these proceedings advised a further amendment was sought regarding the plant, the subject of Improvement Notice 303884;

AND WHEREAS the matter was listed for hearing on 4 May 2010 and the parties consented to an amendment to the time limit for compliance;

NOW THEREFORE having regard to s 51A(5)(b) I the undersigned, pursuant to the powers conferred on me under the Act hereby order:

1. The decision of the WorkSafe Western Australia Commissioner dated 4 December 2009, in respect of Morton Seed and Grain Pty Ltd, be re-affirmed with a further modification.
2. The further modification extend the time limit for compliance with Improvement Notice 303884 from 4.00pm Friday, 30 April 2010 until no later than 4.00pm Friday, 25 June 2010.
3. Until such time as the order referred to in 2. is complied with the boiler that is the subject of the Improvement Notice referred to may only be used for testing and commissioning in order to comply with the Improvement Notice.
4. That the applicant advise the Tribunal immediately following submission of the appropriate registration forms to WorkSafe regarding the boiler (the subject of the Improvement Notice).
5. The application is otherwise adjourned sine die.

(Sgd.) S M MAYMAN,
Commissioner.

[L.S.]

ROAD FREIGHT TRANSPORT INDUSTRY TRIBUNAL—Matters Dealt With—

2010 WAIRC 00128

THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
SITTING AS

THE ROAD FREIGHT TRANSPORT INDUSTRY TRIBUNAL

PARTIES	TRANSPORT WORKERS' UNION OF AUSTRALIA, INDUSTRIAL UNION OF WORKERS, WESTERN AUSTRALIAN BRANCH	APPLICANT
	-v-	
	AUSTRALIA POST MAIL CONTRACTS UNIT	RESPONDENT
CORAM	COMMISSIONER S J KENNER	
DATE	WEDNESDAY, 24 MARCH	
FILE NO/S	RFT 2 OF 2010	
CITATION NO.	2010 WAIRC 00128	

Result	Application discontinued by leave
Representation	
Applicant	Mr Daniel Cain
Respondent	Ms Gina Dobson

Order

WHEREAS the applicant sought and was granted leave to discontinue the application, the Commission, sitting as the Road Freight Transport Industry Tribunal, pursuant to the powers conferred on it under the Owner-Drivers (Contracts and Disputes) Act, 2007 hereby orders –

THAT the application be and is hereby discontinued by leave.

[L.S.]

(Sgd.) S J KENNER,
Commissioner.

2010 WAIRC 00037

IN THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
SITTING AS

THE ROAD FREIGHT TRANSPORT INDUSTRY TRIBUNAL

PARTIES	TRANSPORT WORKERS' UNION OF AUSTRALIA, INDUSTRIAL UNION OF WORKERS, WESTERN AUSTRALIAN BRANCH	APPLICANT
	-v-	
	INGHAMS ENTERPRISES PTY LTD	RESPONDENT
CORAM	COMMISSIONER S J KENNER	
DATE	WEDNESDAY, 3 FEBRUARY 2010	
FILE NO/S	RFT 21 OF 2009	
CITATION NO.	2010 WAIRC 00037	

Result	Application discontinued by leave
Representation	
Applicant	Mr Neville Hodgson
Respondent	Mr Greig Smith

Order

WHEREAS the applicant sought and was granted leave to discontinue the application, the Commission, sitting as the Road Freight Transport Industry Tribunal, pursuant to the powers conferred on it under the Owner-Drivers (Contracts and Disputes) Act, 2007 hereby orders –

THAT the application be and is hereby discontinued by leave.

[L.S.]

(Sgd.) S J KENNER,
Commissioner.

2010 WAIRC 00150

THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
SITTING AS

THE ROAD FREIGHT TRANSPORT INDUSTRY TRIBUNAL

PARTIES

TRANSPORT WORKERS' UNION OF AUSTRALIA, INDUSTRIAL UNION OF WORKERS,
WESTERN AUSTRALIAN BRANCH

APPLICANT

-v-

NOTCH PTY LTD T/A FOXNET TAXI TRUCKS

RESPONDENT

CORAM COMMISSIONER S J KENNER

DATE TUESDAY, 30 MARCH 2010

FILE NO/S RFT 3 OF 2010

CITATION NO. 2010 WAIRC 00150

Result Application discontinued by leave

Representation

Applicant Mr Daniel Cain

Respondent Mr Jeffrey Uphill, as agent

Order

WHEREAS the applicant sought and was granted leave to discontinue the application, the Commission, sitting as the Road Freight Transport Industry Tribunal, pursuant to the powers conferred on it under the Owner-Drivers (Contracts and Disputes) Act, 2007 hereby orders –

THAT the application be and is hereby discontinued by leave.

[L.S.]

(Sgd.) S J KENNER,
Commissioner.

ROAD FREIGHT TRANSPORT INDUSTRY TRIBUNAL—Notation of—

The following were matters before the Commission sitting as the Road Freight Transport Industry Tribunal pursuant to s 38 of the *Owner-Drivers (Contracts and Disputes) Act 2007* that settled prior to an order issuing.

Parties		Commissioner	Application Number	Dates	Matter	Result
Transport Workers' Union of Australia, Industrial Union of Workers, Western Australian Branch	Concord Park Pty Ltd	Beech CC	RFT 9/2009	3/06/2009 19/06/2009	Referral of dispute re payment of a claim	Discontinued



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CUMULATIVE CONTENTS AND DIGEST APPEAR AT THE END OF THIS PUBLICATION

FULL BENCH—Appeals against decision of Commission—

2010 WAIRC 00262

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

FULL BENCH

CITATION : 2010 WAIRC 00262
CORAM : THE HONOURABLE J H SMITH, ACTING PRESIDENT
 COMMISSIONER S J KENNER
 COMMISSIONER J L HARRISON
HEARD : WEDNESDAY, 24 FEBRUARY 2010
DELIVERED : WEDNESDAY, 12 MAY 2010
FILE NO. : FBA 8 OF 2009
BETWEEN : NICHOLAS READ
 Appellant
 AND
 ROBERT BRODIE-HALL; LEATHER-LIFE
 Respondent

ON APPEAL FROM:

Jurisdiction : Western Australian Industrial Relations Commission
Coram : Commissioner S Wood
Citation : [2009] WAIRC 01300; (2009) 89 WAIG 2463
File Nos : U 161 of 2009; B 161 of 2009

CatchWords : Industrial Law (WA) - Appeal against orders made by the Commission dismissing claim of alleged harsh, oppressive and unfair dismissal and claim for contractual benefits - whether Commission erred - turns on own facts - principles of intention to create legal relations and requirement for consideration considered - appeal dismissed - *Industrial Relations Act 1979* (WA) s 23A, s 29(1)(b)(i), s 29(1)(b)(ii), s 49; *Industrial Relations Commission Regulations 2005* (WA) reg 102(2), reg 102(3); *Mental Health Act 1996* (WA) s 4.

Result : Appeal dismissed

Representation:

Appellant : In person
Respondent : Mr D Jones and with him Mr M Haylett (as agents)

*Reasons for Decision***THE FULL BENCH:****The Appeal**

- 1 This is an appeal instituted under s 49 of the *Industrial Relations Act 1979* (WA) (the Act). The appeal is against orders dismissing applications U 161 of 2009 and B 161 of 2009. These orders were made by the Commission on 8 December 2009.
- 2 In application U 161 of 2009 the appellant applied to the Commission under s 29(1)(b)(i) of the Act for an order of reinstatement under s 23A of the Act in respect of an alleged claim of harsh, oppressive or unfair dismissal (herein after referred to as the claim for unfair dismissal).
- 3 In application B 161 of 2009 the application was referred under s 29(1)(b)(ii) of the Act. In this application the appellant claims that he had not been allowed by the respondent a benefit, not being a benefit under an award or an order, to which he was entitled under his contract of employment. The benefit claimed is a recommendation by the respondent that Robert Brodie-Hall be employed with the Corruption and Crime Commission of Western Australia and other employers.
- 4 The appellant was employed by the respondent as a factory hand engaged in the manufacture of ugg boots from 16 July 2008 until 20 August 2009. The appellant's appointment was terminated by the respondent on the latter date. The respondent submitted in the hearing at first instance that the appellant's employment was terminated because of serious misconduct in the workplace.

The Grounds of Appeal

- 5 The appellant was unrepresented at first instance and in the appeal before the Full Bench. His grounds of appeal are lengthy and are in the nature of a submission. The grounds also appear to substantially follow the grounds which were set out in a statement of claim which was attached to applications U 161 of 2009 and B 161 of 2009. The grounds of appeal do not, to any extent, comply with the requirements of reg 102(2) and reg 102(3) of the *Industrial Relations Commission Regulations 2005* (WA) which require an appellant to set out clearly and concisely the grounds of appeal and to identify with particularity, how it is that the decision under appeal is against the evidence or the weight of the evidence or is wrong in law.
- 6 Part of the appellant's grounds of appeal addressed reasons why the appellant says it is important that, in the public interest, an appeal should lie. In the hearing of the appeal members of the Full Bench explained to the appellant that it was not necessary for him to address any issues of public interest as he is able to institute an appeal as of right against a decision to dismiss as each decision is a final decision and not a decision in the nature of a finding made by the Commission.
- 7 The appellant's grounds of appeal are set out in three parts. Part A of the appellant's grounds of appeal addresses 15 points which he says supports a contention that the respondent, Robert Brodie-Hall, treated him differently to other employees and thus discriminated against him. It is on this basis that the appellant contends that his dismissal was unfair.
- 8 Part A of the appellant's grounds states as follows:

The company, Leather-Life, Shop/Factory – 2/1291 Albany Hwy, Cannington, 6107, WA. Via employer/proprietor, Robert Brodie-Hall has bullied myself, Nicholas Steven Read for my full term of employment, being some year and one month. This is not in relation to the Industrial Relations Act, but is in relation to the Mental Health Act as per meaning of 'mental illness' as in my opinion my employer has a detrimental state of mind as Robert Brodie-Hall has:-

A disturbance of thought

Suffers from volition

And therefore, for this reason it is important that in the public's interest an appeal should lie:

See attachment No 1 (Mental Health Act 1996 4 meaning of 'mental illness'. The evidence for the above is as follows:-

My employer, Robert Brodie-Hall treats me differently from other employees, when I am bullied by other employees I have a right to defend myself.

1. Other employees – all, work less than 38 hrs a week, but get paid for the full 38 hrs a week. Some (Chris, Marcus may only work 25 hrs a week). I, Nicholas Steven Read, work for 38 hrs/week, get paid 38 hrs/week, at full production rate, and not making any mistakes.
2. Other employees (I think many, eg Chris & Marcus, do work with their own businesses, at Leather-Life Factory/Shop in the same time period as they should be doing work making ugg boots or they are doing other things i.e. not at work at all.

Note:- Time cards may lie as another individual may record false times.

3. Other employees are allowed to bully me:-

Eg: - Chris tells me to 'FUCK OFF'.

This is inappropriate behaviour, my employer disciplines him, but has not been given a letter of written warning of inappropriate behavior (sic) and his employment has not been terminated.

4. I design my own ugg boots. I call them F117's (after the American bomber, Stealth). The company made 5 pairs and others at a cost to me of \$150 a pair, except my own pair, I got a company discount of \$75.00.

I am of the opinion that I am of benefit to the company. My employer thinks differently. I do not know why.

5. Some employees do not provide medical certificates on the first day when they see a doctor. On the few occasions when I see a doctor, on the first, for one day, my employer asks me for a medical certificate. I supplied him with a medical certificate when I was assaulted by Paula Brodie-Hall, of Leather-Life.
6. My employer holds back my superannuation from the fund I selected. He tells me this is a mistake or error.
7. I am told to wear safety boots, I do so all the time, other employees (all) do not wear safety boots. There is a notice on the factory floor for all employees to wear safety boots.
8. Other employees are allowed to use mobil (sic) telephones during working hrs. I am told I am not allowed to do this. There is a notice on the factory floor for all employees not to use mobil (sic) phones during working hrs.
9. I discovered toward the end of my employment that some employees get paid more than \$17.00 hr, when I do more work, varied jobs for making ugg boots and a higher quality job for the same period of work per week, but the period of work (time in a week) of 38 hrs is not done by other employees.
10. I only take 15 minutes for morning tea and 30 minutes for lunch. Other employees take longer. This is acknowledged by my employer and is justified in his mind. The employees who do this are:-
Bianca, Kate, Chris, Marcus.
11. I am told everyone is my boss at work by Robert Brodie-Hall. I acknowledge this. I do not tell anyone else what to do.
12. I was assaulted by Paula Brodie-Hall at 10.02am on 19/08/09. It is acknowledged by Robert Brodie-Hall that she may do this. I have not assaulted anyone.
13. I was purchasing a property, my employer says he made an error in putting a date of 29/8/09 on a letter of employment to a bank. This date is after my termination of employment, dated 20/8/09. He would not do this with other employees. This is the same excuse as with my superannuation.
14. My employer takes \$5.00 which I have given Rose (employee of Leather-Life). She was pregnant. He gave \$5.00 back to me via post. He did not do this with other employees. (This is against the law)
15. My employer says I have a threatening attitude towards employer (himself) and work colleagues, with no evidence, whereas other employees, eg Chris are allowed to tell me to fuck-off. See No. 3.

For the points 1 to 15 above as evidence as per transcript, my employer, Robert Brodie-Hall makes me, Nicholas Steven Read carry more weight for the company and I am discriminated against. His will or volition to do this is characterised by a disturbance of thought (as mental illness definition) puts me in a defensive position. The defence I have made are not a breach of law, being; the particulars relied on, (inappropriate behaviour) & non breach of contract. The evidence is against the above.

An Australian company, in a capitalist environment (as Australia is) should not commit points 1 to 15 above to an employee, being myself Nicholas Steven Read.

The best should be rewarded or the company should not exist. This is basic intelligence for all companies. At the same time there is a social network, within companies, to protect other employees, sometime this may be myself, this is what mateship is all about. Australia has won wars this way.

My employment should not have been terminated.

- 9 In Part B of the appellant's grounds of appeal, the appellant sets out particulars of inappropriate behaviour which was alleged to have been committed by him at the workplace which he says have been not made out and are against the evidence and weight of evidence given in the proceedings before the Commission at first instance. The particulars of this ground are as follows:

Inappropriate behaviour (see Attachment *C – U & B 161 files)

* and Attachment A – U & B 161 files

* and letter to police woman Jo ? of Cannington Police Station

Copy to:-

Copy to:- Leather Life, Shop 2/1291 Albany Hwy, Cannington 6107, WA,

From: - Myself, Nicholas Read.

Dated:- 14/4/09 at 1948 hrs.

Attached (exhibit R)

* and letter to Commissioner Wood from me – Assault (exhibit X) from Paula.

The particulars relied on, being inappropriate behavior (sic), is against the evidence and the weight of evidence and the specific reasons why inappropriate behaviour is wrong in law are:-

- A) That the evidence is irrelevant

- B) I, Nicholas Steven Read was in defence, as I was bullied
- C) And as a result I have been harshly, oppressively or unfairly dismissed from my employment. I.R.A 1979 29(1)(b)(i).

I ask you to hear tape (Attachment B for U & B 161 files) I refer to (Attachment C) U & B 161 file. My employer talks about event on 15th July, during lunch break. My employer found me guilty, even though I did not have the chance to explain that I was in defence.

I refer to points 1 to 5 in letter 17 July (Attachment C) U & B 161 files.

No 1 This is simple;

Some months prior to the 15 July, Kate, employee of Leather-Life came up to me, during working hrs/as she usually does and started telling me her husband, Trevor, did police/asked for police clearances for employees he employs. I said I had a job and asked her why she was telling this? She walked off.

She then further states that she said this to all employees.

It is a fact that I felt intimidated by this as I had a job and all employees had a job, so why would she tell me this and publicly tell all other employees this. She told me during working hrs, when I should of (sic) been concentrating (sic) on my work, as my employer wanted me to do.

After this, Kate was of the knowledge that a woman said to me that I had the right to have sex with a sixteen year old girl.

Kate was asking me questions about events that happened outside of work. I told Kate my black eye did not hurt.

Kate knew that the police were involved (see Attachment E) U & B 161 file issued me with move on notice.

As a consequence of this I told Kate outside of working hrs (lunch) that I wanted nothing to do with her husband who she says did police/asked for police clearances.

The police issued me with the move on notice on false grounds. The Corruption and Crime Commission of WA are doing an investigation about this (see Attachment E) – U & B 161 files.

Whilst I was telling Kate I wanted nothing to do with her husband, Bianca butted in 3 times. I told her 3 times to stop butting in.

Kate did not tell me to go away.

I did not follow Kate outside to show room.

I did see Kate in show room 1 minute later to tell again that I wanted nothing to do with her husband, as Bianca butted in.

I was not aggressive or threatening or abusive toward Kate Howley, but I was direct as I was in defence as I was bullied by Kate Howley.

I did tell Bianca to fuck off you fat, ugly, bitch as she kept butting in to the conversation I was having with Kate Howley. I was in defence they ganged up. I only said this once.

It is common for other employees to swear at me. I put up with this. When other employees swear at me they do not get a written warning of inappropriate behaviour and their employment is not terminated. eg:- Employee Chris:-

No 2 My employer says I have engaged in conversation or correspondence of a suggestive or sexual nature. I have not engaged in conversation of a sexual nature there is no evidence, therefore this is irrelevant. I have not made correspondence of a suggestive or sexual nature. Therefore this is irrelevant.

My employer refers to letter to Jo police woman, Cannington Police Station (exhibit R) attached.

I have no complaints from police about the matter.

The penalties my employer refers to have no grounds. Therefore they are irrelevant.

No 3 Any issues I have with the way my employer runs his business should be addressed to him, my employer says. He says he will decide whether or not to deal with them, my employer says.

I acknowledge that it is not my business. There is no evidence to support the above, therefore this is irrelevant.

No 4 Do not concern myself with anyones (sic) time card my employer says, my employer says they are none of my business. I disagree with my employers (sic) statement. I refer to Grounds Part A being 1 & 2 & 10 in relation to my employers (sic) strategy to get the job done.

I was/am in defence of my good work as far as capacity is concerned. Other employees capacity is detrimental to the company (being Leather-Life), but this is excepted (sic) by Robert Brodie-Hall.

No 5 I did make one note on my time card that I arrived about 1 hour late to work, on one day. The note said I was tired and did not get up in time. I did not get paid for this. It is a fact that other employees do get paid for not doing the full 38 hrs/week. See Grounds Part A No 1.

By negotiation I am allowed to ask for a pay rise.

The above is irrelevant.

My employer says I should consider these points over the weekend before deciding how to respond. He made me sign the letter or I would not have a job. This is duress. He told me this when the tape, Attachment B, stopped. On the tape Robert Brodie-Hall states:

- A) My future employment was at risk.
- B) I could not have an opinion.

See Tape:- Attachment 'B' on U & B 161 files.

I now refer to Attachment: – A – U & B 161 files being notice of termination of employment. I will inform the Bench now that what actually terminated my employment was the fact that Paula Brodie-Hall assaulted me on 19/8/09 at 10.02. See Doctor Report & Medical Certificate enclosed. Attached – exhibit XX & XXX.

It is not up to Commissioner Wood to decide whether I was assaulted or not, by a definition in the dictionary. Assault is assault. The decision is made by doctor and police and backed up by witnesses. Commissioner Wood has no right to comment on Paula Brodie-Halls defence? See letter to Commissioner Wood from me. – Assault from Paula. Attached (exhibit X).

On the morning of 19/8/09 I ask Paula Brodie-Hall & Robert Brodie-Hall two questions:-

- 1 Are other employees paid more than \$17.00/hr? – The answer was yes.
- 2 Are other employees paid more superannuation?

I did ask on the factory floor:- 'Who is this person(s) who get paid more than \$17.00 hr', as it was a secret. There was a conversation I had with Robert Brodie-Hall about the man from Snowy River.

At 10.01 (not during working hrs) I had a private conversation with a person from Rifos Cafe, in Maylands on the phone. I simply said my name and ask:- 'How much was the pizza without the slut'. This is when Paula Brodie-Hall assaulted me and I went directly to police, Cannington Police Station to report and make charges of assault. It was a private conversation which had nothing to do with her.

As per the letter (Attachment A) there is no view/evidence that constitutes a threat to all employees. – U & B 161 files. He/Robert Brodie-Hall talks about a duty of care he owes to all employees.) Take note:-

I, Nicholas Steven Read have a duty of care to myself, being:-

I.R.A. 1979 (s29(1)(b)(i) & (ii).

The above, my employer refers to in notice of termination of employment as far as evidence is concerned is irrelevant to inappropriate behaviour.

I now refer to letter to policewoman Jo Cannington Police Station. 14/4/09 at 1948 hrs (exhibit R) two pages.

As people in my life like to use police to my detriment eg: - Kate Howley telling me about police clearances in relation to her husband, I asked the question:- during lunch – outside of working hrs:- 'Who thinks a policeman is better than me?' Bill, employee of Leather-Life said 'I think a policeman is better than you.'

I did not like this, so I went to the Cannington Police Station and challenged the station to a sprint race. No one turned up. So I won by forfeit. I organised this outside of working hrs.

I wrote a letter to Jo ...? policewoman Cannington Police Station. As a man in competition for resources I am allowed to do this. This is what men do. I have had no complaint from police about this. We respect each other. However if an employee (Bill) wants to say a policeman is better than me, Nicholas Read, then I will prove Bill, other men, women, wrong. There is no sexual content in the letter see (exhibit R) nor is it sexual harassment. The letter and events with it can not be related to inappropriate behaviour therefore the evidence irrelevant (sic) as I was in defence of the false statement that Bill said a policeman/person was better than me, Nicholas Read.

Finally, Mr Robert Brodie-Hall has a problem that I put glue on the boots (ugg) that I designed (F117's) and paid for. I did this outside of working hrs.

It is none of his business what I do to my property. My boots are the best, that's why I put glue on them. It happens in society all the time:-

- Eg * The best red dress get ripped.
- * Far Lap carried the most weight.
- * Solar cars/vehicles get damaged.
- * My employment gets terminated.

(My capacity is very good) (Robert Brodie-Hall would never admit this, in relation to other employees in the company).

The girls who I gave my boots to, loved them, they are Russian. They felt save (sic) in them. They are white which means they represent the truth and they have a pen (red) on the side. Not the girls, but the boots. Robert would never understand the above. Robert Brodie-Halls' reasoning for inappropriate behaviour by me putting glue on my boots is irrelevant to law.

It is important that in the public's (sic) interest an appeal should lie:- in relation to Grounds Part B. As I work in a company where my capacity is very good but the alleged evidence is either irrelevant or there is a fact that I was in defence.

Also in relation to letter to Jo ...? policewoman (attached exhibit R) I say I take my prize:- read entire letter.

It is beneficial to society and beneficial to her and myself if I take her, if she wants me to, so prostitution does not exist. This is in the public's (sic) interest. It would stop drugs, crime, married men having sex with a girl who would want to be with me. I dare you to challenge my thoughts.

I have had no communications from police about the matter.

Note:- Attachment 'B' – the speed of the tape is fine. I checked it myself. It is the equipment it is played on. You can use my machine. Attachment 'B' on U & B 161 files.

- 10 In respect of application B 161 of 2009, the appellant's grounds of appeal are that he had capacity to enter into a verbal contract with his employer and did do so. He says his employer (the respondent) agreed to recommend to the Corruption and Crime Commission of Western Australia and to any other employer to whom he makes application for employment that he be employed. The grounds of the appellant's appeal which go to B 161 of 2009 are set out in Part C of the grounds of appeal and are as follows:

Non contractual benefit.

Please be informed I have been denied a contractual benefit being that:- I be recommended to another employer being:-

- A) The Corruption and Crime Commission of WA
- B) Any employer who I make application to.

This is verbal contract law:- See tape Attachment 'B' - U & B 161 files & Attachment 'G' - U & B 161 files.

The particulars relied on being non contractual benefit, is against the evidence and the weight of the evidence because my employer (sic) has said, verbally that he would recommend me to the Corruption and Crime Commission of WA and to any employer I make application to, but he has not done so. The specific reason why this is wrong in law is because when an employer says he or she will do something, they should do it – verbal contract law. I.R.A. 29(1)(b)(ii).

Also see counter proposal – my employer states:- The respondent does not dispute that where requested to do so, the respondent would be prepared to provide an employment related reference, should this be sought from the respondent by a prospective employer (Attached) (exhibit XXXX) two pages.

So it can be seen that in one hand my employer would recommend me to another employer and in another he wants to terminate my employment. This is evidence that my employment should not of (sic) been terminated in the first place and this is why it is in the interests of the public that an appeal lie.

The contract can be evidenced by other tangible evidence, other than in writing. It is on tape 'Attachment B' – U & B 161 files.

My employer's only way out is:-

* Insane persons and intoxicated persons - general rule:- contract with a mentally disturbed or drunken person is valid, but voidable at the option of the incapacitated (sic) person (or their legal representative) if:-

- A) Person was so incapacitated at the time that could not understand the nature of the contract, and;
- B) The other party to the contract was aware (or ought to have been aware) of the extent of the disability, and
- C) The person (or their legal representative) repudiates the contract within a reasonable amount of time

See Grounds Part A.

The Alternative Decisions are:-

Orders to Make

That I, Nicholas Steven Read be reinstated.

That my employer, Robert Brodie-Hall recommend me, Nicholas Steven Read, to the Corruption & Crime Commission of WA or/and any employer I make application to, for employment.

Please read:-

My Summary of Events/Statements being: Transcript pages 133 – 138.

The Reasons of the Commissioner

- 11 The Commissioner's reasons for decision set out and considered the facts in some detail which led him to conclude that the applications by the appellant should be dismissed.
- 12 It is important to note that neither party took issue with the summary of facts as set out in the Commissioner's reasons for decision.
- 13 The Commissioner records in his reasons for decision that the respondent based his reason for dismissing the appellant on three incidents which occurred in April, July and August 2009. In April 2009, the appellant challenged police officers at the Cannington Police Station to a sprint race. When no police officer took up the challenge the appellant claimed he had won the

race by default and he wrote a letter to a woman named Jo who was a police officer at the Cannington Police Station. The appellant delivered the letter to the Cannington Police Station and also handed a copy of the letter to a fellow employee, Ms Paula Brodie-Hall, who is also the daughter of the respondent. The letter stated in part:

I take my prize. This is what I want, one young, curvy, beautiful, redhead – female (no children). She may be a member of the public or a prostitute. If she is contemplating being a prostitute I could take her now (before). If she is a prostitute I would only be interested in her if she has been in the industry for a short period of time.

- 14 The appellant was not counselled about the first incident. In July 2009, a second incident occurred. The Commissioner summarised the evidence of the appellant in relation to the events of 15 July 2009 in his reasons for decision as follows [10] – [12]:

[T]he evidence of Mr Read is that, prior to that date, Mrs Howley came up to him and harassed him by stating that her husband did Police clearances. The evidence of Mrs Howley and Ms Andrews is that Mrs Howley mentioned to a group of employees that her husband, as a building supervisor, had to obtain a Police clearance to do a job on a particular Government site. His fellow employees similarly had to obtain Police clearances. Mr Read seems to connect this discussion to the earlier discussion with Mrs Howley about his black eye and an incident out of work where he was challenged to a sprint race which he won, was then told he could have sex with a sixteen year old girl as his prize and then received a black eye. Mr Read says that after Mrs Howley's comment as to Police clearances she taunted him by asking about his black eye. He says that he told her to go away and put his finger up in defence.

Mr Read says:

'Kate asked me the previous day how I got my black eye and she asked me if it hurt. I gave her the answer in that lunch break, which was a couple of days after. She asked me if it hurt. I said, a couple of days later, 'My eye does not hurt.' (T30)

He goes on to say:

'I told her, 'No, my eye does not hurt.' And then the tea break finished, and then I went back to work. I did not follow her or did not pursue her or anything. We started the shift working again.' (T30)

Mr Read later says that, on 15 July 2009, he did not tell Mrs Howley to tell her husband to stay away from him. He said this on a different day. On that day Mrs Howley did go outside for a smoke and he, 'did go outside there as well'. He says that she did not tell him to leave her alone. He says Ms Andrews 'was in the vicinity'. He says that he did not yell at Mrs Howley and that the incident happened in a break and not during working hours. He denies that Ms Andrews ever told him to leave Mrs Howley alone. He says that Ms Andrews butted in three times and he said to her something like, 'you fucking fat ugly bitch, mind your own fucking business'.

- 15 The Commissioner summarised the evidence of Mrs Howley and Ms Andrews as follows [24] - [27]:

Mrs Howley gave evidence that she asked Mr Read how he had got a black eye and he said that he would tell her later. Then at morning tea she asked again and he told her that he was challenged to a foot race by a girl, he won, and then she hit him followed by a man who hit him also. He did not know why she had hit him. Then on 15 July 2009 she asked him how his eye was and he replied, 'It's fine now'. Later at lunch break Mr Read unsolicited and in a raised voice said, 'Yeah, Kate, my eye's fine'. Mrs Howley says that they then had the following exchange:

And I just said to him ... everyone just stopped and I said, "Well, what do you mean," and he just said, "Well, you know how you asked me how my eye was and it's fine, especially since I found out you can have sex with a 16-year-old and not get into trouble," and I just assumed he was talking about the girl in the foot race and I just said, "Was she only 16?" And he'd sort of got really ... you know, shouted at me, "Did I say she was 16?" And I just immediately ... I said, "Nick, end of conversation. I don't want to speak to you," and I walked back into the factory and commenced working and Bianca followed me in and sat with me that day and she just ... I was shaking a little bit and Bianca just said, "Now, calm down. This is what Nick is like all the time," and probably a minute or so later he came into the factory and he called my name. He said, "Kate," and I said, "Nick, I don't want to talk to you. Please leave," and he says, "No; no, no. I want to speak to you," and Bianca said to him, "Nicholas, she doesn't want to talk to you. Please leave," and he says, "No, I just want to ask her a question." And we both just ignored him and he kept talking.

What did he ask you?---And he said, "Do you know when you were saying the other week that your husband does police checks," and I was sort of ... I've never said that, you know, I was ... and then he said, "Yeah; yeah, yeah, at morning tea you said your husband does police checks." I said, "No, Nicholas. I said my husband had to have a police clearance because he's on a government site and they've requested for all the workers to get a police clearance and he also had ... because he's the supervisor, he had to ensure that all his men, all the staff, had police clearances," and I explained that to Nicholas. I said, "That's what my husband's doing, not ... I said he's got no authority to do police clearances on anybody and Nick said, "No, no, you said that." I said, "Nicholas, I didn't say that. I said my husband has to have a police clearance himself," and he just turned at me, pointed his finger at me - - -

What was his state at that time?---He just ... and he just was ... kept going on and on about ... and I tried to reassure him my husband doesn't do police checks, he had to have a police clearance and I said, "No, Nicholas, you've got it wrong." I said it two or three times, "He had to have a police clearance. He does not do police checks. He hasn't got the authority to do that," and I suppose - - -

What did Nick do?---Well, he just turned around, pointed his finger at me and said, "You tell your fucking husband to stay away from me," and I just ... and walked out." (T92,93)

Mrs Howley says she was shaking and she went outside for a cigarette. Ms Andrews followed her and Mr Read came after them two or three minutes later and stood over Ms Andrews, pointed his finger and said, "You shut your fucking fat ugly mouth, you bitch". She later said he used the word "slut". Mrs Howley asked Mr Read to go away but instead he followed her to the motorbike store next door. She says that Ms Andrews and her burst into tears after Mr Read returned to the showroom. They told Ms Brodie-Hall and later Mr Brodie-Hall what had happened. Mrs Howley says that she told Mr Brodie-Hall that if Mr Read continued to work there, she could not, as she was getting too scared of him.

...

Ms Andrews gave evidence and says of the incident on 15 July 2009 as follows:

Me and Kate were in the lunch room, and Robert and Paula weren't there obviously, and I was looking after the shop so I was just in and out, and Nick come up to Kate and said, "My eyes are fine," and Kate kind of just went, "What do you mean by that?" and he said, "You know how you asked me if my eyes are okay?" He goes, "It's okay now that I've found out if I can sex with a 16-year-old girl," and Kate went, "Is she 16?" and he went, "No, I didn't say that." Like really aggressively and Kate said, "Well, you're being too aggressive, Nick. I'm not talking to you any more." So he walked out of the lunch room and Kate doesn't have a lunch break, so I just sat down with her while she was working and - - -

And what happened?---Nick came in not long after that and sat down. It was strange. He was talking about Kate's husband, Trevor, getting police ... like a police check on him and Kate didn't really know what he was talking about at first, and then he said, "You know how your husband had to do police checks," and it was ... sorry.

Had you ever been present in the company of your fellow work colleagues where Kate had discussed her husband doing police clearance checks?---Yeah. She said one day when we were at morning tea that her husband had to get ... all his workers had to get a police clearance for working on the site that he was working on.

...

What was his demeanour when he was talking to - - -?---He was getting really aggressive so we ... and then he ended up getting up and walking away.

...

Did he go away?---At first, yes, and then me and Kate ended up walking out where our showroom is, and Kate went outside for a cigarette and I just stayed in ... where the door is and we were just chatting about it.

What state was Kate in when she went out for a cigarette?---She was frightened, shaking, really ... she was a bit upset about the way he was talking to her, involving her husband.

...

What happened after a short while whilst you were standing there talking with Kate?---Nick came back in and he started going on about Kate's husband doing police checks on him again and Kate was saying, "Nick, go away," and he wouldn't go away, and I said, "Nick, go back to work," and he just wouldn't and he stood about two centimetres away from my face and called me a fat, ugly bitch and told me to shut my mouth.

And what did he do after he had told you that?---He started following Kate outside and kept going on about the police checks and Kate's telling him to go away, and he followed her to our next-door business which is a motorbike shop.

...

He said, "Tell your husband to fuck off and stay away from me." (ts 106 - 108)

- 16 Mrs Howley and Ms Andrews maintained that the appellant acted towards them in an aggressive, threatening and abusive manner. The employer adopted the view put by both women and disciplined the appellant. The appellant says the owner, Mr Robert Brodie-Hall, did not give him a chance to explain the situation and that this exchange is captured on a tape recording of their conversation. The tape recording was made by the appellant.
- 17 The Commissioner noted that the tape recording was in part difficult to follow, not because of audibility but because the tape had been recorded at too fast a speed and the conversation rambled through many issues.
- 18 The relevant part of tape of conversation between Mr Brodie-Hall and the appellant about the incident on 15 July 2009 is as follows:

Mr Brodie-Hall - Now I just wanted you to understand that the sort of confrontation that occurred on Wednesday is under any circumstances not acceptable. It's inappropriate to talk to women like that and it's inappropriate to pursue someone after they have clearly stated that they don't want to carry on the conversation. In lots of examples when someone says Nick I don't want to talk about that, that means drop it. Don't go on with it. Now I don't know what the circumstances were.

Mr Read - I see Robert you don't know what the circumstances were.

Mr Brodie-Hall - I don't need to know.

- Mr Read - Oh you don't need to know.
- Mr Brodie-Hall - I don't need to know. Whatever, whatever happens your response was inappropriate.
- Mr Read - My response was inappropriate and you don't know what happened.
- Mr Brodie-Hall - Don't yell.
- Mr Read - Ok Robert.
- Mr Brodie-Hall - Don't yell at me, right. This is this is important for your future employment here.
- Mr Read - Robert I'm not yelling at you, I'm just talking at the same volume you're talking to me.
- Mr Brodie-Hall - No, so.
- Mr Read - Yes.
- ...
- Mr Brodie-Hall - But no the problem the problem's not with the problems not with you and me the problem is the way you react with other people now what give me the justification for the way you reacted to Kate.
- Mr Read - Well you're talking about going back to the beginning of the tape you're talking about the example of what happened on Wednesday, you can't even tell me specifically what actually happened on Wednesday, dates, times, events...
- Mr Brodie-Hall - I don't need to.
- Mr Read - You don't need to? So you're addressing me and you don't know what actually happened.
- Mr Brodie-Hall - I know what happened.
- Mr Read - What happened then you tell me what happened.
- Mr Brodie-Hall - During the lunch break you initiated a conversation with Kate that turned into a verbal abuse.
- Mr Read - Now Robert my question is, what happened prior to that conversation, do you know, yes or no?
- Mr Brodie-Hall - I don't know. I don't need to know.
- Mr Read - You don't know.....you hadn't even listened to what I was going to say, have you?
- Mr Brodie-Hall - Go on then tell me what you were going to say, don't go, don't worry about going back to the beginning of the tape tell me what tell me what happened on Wednesday.
- Mr Read - Well it was outside.
- Mr Brodie-Hall - I'm not interested in that.
- Mr Read - It was outside of working hours.....all respect it's got nothing to do with you anyway but I will tell you anyway because you're my employer.
- (TALKING OVER EACH OTHER – THE CONVERSATION CANNOT BE DECIPHERED READILY)
- Mr Brodie-Hall - Immediately you have got me off side.
- Mr Read - You asked me to speak, I'm explaining.
- Mr Brodie-Hall - No you're not, you're bullshitting.
- Mr Read - I'm not bullshitting.
- Mr Brodie-Hall - You are bullshitting, all this business about what I was going to say was during my lunch break which is my time, when you're here in my premises you obey my rules
- Mr Read - I understand that and I conform and I give you one hundred per cent during working hours.
- Mr Brodie-Hall - Right, so go on tell me - we are getting - we are fast approaching the place - the stage where you are taking my options away from me, right but go on tell me what tell me what you say. I think you are being unreasonable and unrealistic and one of the things with unreasonable people is you can not reason with an unreasonable person, so go on you tell me what the story was with Kate.
- Mr Read - Ok we will start again and this is my turn to tell you what was saying and I'll for respect may I not be interrupted. What actually happened and previous to this was I had a black eye and you yourself asked me why I had a black eye and I gave you the reason for it not the full reason but roughly the reasons the reasons I gave you not the full story but the reason was I was challenged for the race and I won the race in Perth from William Street to McDonalds. I won the race and this girl who challenged me with the race told me I had the right to have sex with a sixteen year old girl. She didn't like this and she hit me a number of times, I did not hit her at all and this other man came in and just started hitting me as well then I threw one punch at him then both left and that was the reasoning because you asked me what happened and I told you what had happened, during working hours you asked me about my black eye and I told you this. Further more on lunch time outside of working hours Kate asked me the same question. I told her the full story I told her the full story and ah about the sixteen year old girl. About the fact that this woman told

me I had the right to have sex with a sixteen year old girl. Kate did not like this either and she thought to herself that, that I was not allowed to do this. She thought that I did not have the right to do this. And then furthermore another time I asked, no it's my turn to speak, I came here in this lunch room and I told Kate that it did not hurt, of course it did not hurt my black eye did not hurt because this woman told me that I had the right to have sex with a sixteen year old girl of course that did not hurt when she hit me if I have the right if someone tells me I have the right to do that its not gonna hurt is it. So then furthermore came up to Kate and I said to her about cause Kate did not like what I what my right was she was offended by this I asked her about cause I knew knowledge of what Kate told me before about her husband going to Police and asking for ah you know peoples what peoples supposed to have done and didn't do so I told Kate I did not want her husband to come round near me. Meanwhile while I was speaking to Kate about this, Bianca and this was in morning tea outside of working hours

Mr Brodie-Hall - Morning tea, morning tea is not outside of working hours.

Mr Read - Bianca, Bianca, morning tea is my break.

Mr Brodie-Hall - You get paid for your breaks so that's.....

Mr Read - I can do what I want right, Bianca continually butted in three times, I had to tell her three times to butt in right this was outside of working hours in morning tea. I don't care what she does during working hours she can do whatever she wants toyou can do what ever you want during working hours I don't particularly care right. Bianca continually butted in three times I told her three times to butt out cause I was having a conversation with Kate right, about this about her husband about Kate's husband. Now ah I then told Bianca during, during ah morning tea which is outside working hours to shut her mouth and to keep out of my business and to stop interrupting all the time right, and to be polite right, and she just walked off and I told Kate for her husband to keep out of my business and that's the end of the story and that is what actually happened Robert.

- 19 At the end of this conversation the appellant was provided with a letter of warning. The letter of warning in exhibit A1 reads as follows:

WRITTEN WARNING OF INAPPROPRIATE BEHAVIOUR [Exhibit A1]

"I am aware that on Wednesday, July 15 during lunch break, you initiated a verbal confrontation with 2 employees which, at best, was inappropriate and at worst, was aggressive and abusive by language, tone and gesture.

Even though I was not present to witness the incident, I have no reason to doubt that the incident as reported, did occur and posed a real threat to the personal safety of those concerned and represented a serious breach of the "duty of care" I owe to all employees, which I will not condone. You need to think very carefully before you react spontaneously to any inferences you may draw from otherwise normal conversation.

If you have issues with other employees, especially the women, or for that matter with the way I conduct this business, you should reconsider your suitability to continue working in this environment. I will not tolerate situations which intimidate or threaten the personal safety or well being of myself, Paula or any other member of my staff.

I will give you some directives to consider which may influence your decision to continue in this employment.

You should not engage in conversation that by language, tone or gesture, deteriorates into confrontation or argument, (no swearing, no shouting, no offensive gestures). Just walk away.

Do not engage in conversation or correspondence of a suggestive or sexual nature. There are enforceable penalties for sexual harassment in the work place for which I am responsible.

Any issues you have with the way I run my business should be addressed to me. I will decide whether or not to deal with them.

Do not concern yourself with anyone else's time card. They are none of you business.

Do not make notes on your time card or in any way suggest what you should be paid.

You should consider these points over the weekend before deciding how to respond. I regard this incident as a serious disruption to the operation of the business and this letter will be retained as a reference should another or similar incident occur in the future."

- 20 After Mr Brodie-Hall handed the appellant the official warning for unacceptable, inappropriate behaviour he told the appellant, 'In there are several points that I want you to – I want you to read over the weekend. I want you to consider them – I want you to come on – I want you to decide for yourself whether you want to come back here and work under those conditions.' Mr Brodie-Hall says the appellant responded, 'Yes I've already said Robert I will come to work and I will work under these conditions.' (see [32] of the Commissioner's reasons for decision).
- 21 The appellant maintained that this incident was not during work. He took the view that during his breaks and at lunch time and after work he was entitled to do whatever he wanted to do irrespective of whether he was at the employer's premises or not. He also claimed that his behaviour was not inappropriate and he merely acted in his defence. The Commissioner observed the attitude of the appellant was as follows [13] - [14]:

Mr Read says that he did not pursue Mrs Howley; instead he walked away and if Mrs Howley had told him that she did not want to talk to him he would have left her alone as he does what he is told at work. He accuses Mrs Howley of threatening him about her husband and Police clearances. Mr Read says that he does not know what his employer is talking about when, in the letter of warning, he was instructed not to engage in "conversation or correspondence of a suggestive or sexual nature". He says that he has not sexually harassed anyone, that he is allowed to use reasonable force and to act in self defence. He says that he has done nothing of detriment to other employees in the past. He says that his behaviour has not been inappropriate.

As for the issue of time cards, Mr Read says that he was late one day and did note the reason on his time card. He says that was a mistake and he apologised for that. As for his interest in the time cards of other employees, he says that he was allowed to ask the question as he worked and was paid for 38 hours a week, but others did less than this and were paid for 38 hours a week.

- 22 In relation to the events that occurred on 19 August 2009, the Commissioner made the following observations about the evidence:

Ms Paula Brodie-Hall's evidence is that she was pretty disturbed about the letter which Mr Read handed her in April 2009 [exhibit R1]. She says that Mrs Howley and Ms Andrews came to see her on 15 July 2009 and were visibly upset. They reported that they had had a conversation with Mr Read which had turned into harassment, with shouting and explicit language. Mrs Howley reported that she had asked Mr Read to stop but he kept going and followed her out of the office and into the car park. [22]

On 19 August 2009, early in the morning, Mr Read confronted her about his rate of pay and asked who got paid more than him. She says that he was yelling at the time. Ms Brodie-Hall sent him back to his workstation. He came back later and said that it did not matter as Marcus got the same pay as him. He then asked about superannuation and she explained this to him. He later made a telephone call when he asked four or five times for a pizza without the slut on the side. The telephone was in the factory. At that time Ms Brodie-Hall says that Mrs Howley was in the factory and Ms Andrews was in the office (she was not with Ms Brodie-Hall). Ms Brodie-Hall says that she was two or three metres away from Mr Read and he was calm but progressively his conversation got louder. She says that she felt terribly uncomfortable and yelled at him three or four times to put the telephone down and not use that language. She attempted to take the telephone off him and she says she probably touched him. She says that it was definitely not harder than a touch. She touched him on his right arm and the telephone was in his right hand and remained so after she had touched him. Mr Read said to the person on the other end of the telephone that he had been assaulted and must leave. Ms Brodie-Hall says that she was left shaken and crying. Through redial she spoke to the manager of the café which Mr Read had telephoned. She apologised for Mr Read's call and discovered that the employee who had taken Mr Read's call was left crying and upset. Ms Brodie-Hall spoke to her father and they decided to dismiss Mr Read. They paid two weeks' notice in lieu and Mr Read's accrued annual leave into his bank account. [23]

On 19 August 2009 Mrs Howley heard Ms Brodie-Hall tell Mr Read four or five times to put down the telephone. She says that Ms Brodie-Hall, "grabbed him on the ...touched him on the arm". She later says that Ms Brodie-Hall, "put a bit of pressure on it and pushed it away", meaning Mr Read's arm. Ms Brodie-Hall burst into tears. [26]

- 23 Of the incident on 19 August 2009, Ms Andrews' evidence is that she was about two metres away from Mr Read and Mrs Howley and Ms Brodie-Hall were also in the immediate vicinity. She says that Ms Brodie-Hall told him to stop using that language and to get off the phone. When asked whether she could recall approximately how many times Paula told him to stop using that language and get off the phone, she said, 'Probably about five, maybe more.' (ts 109).

- 24 Mr Read says that Ms Brodie-Hall assaulted him on 19 August 2009. He says:

"She hit me on the right forearm." "With force to bruise my right forearm."

"Enough force to bruise my right forearm and force enough to displace my forearm in a space from one position to another position."

"And you deny that she told you four or five times before to put the phone down and stop speaking the way you were?"---
"Yes" (ts 37, ts 38).

- 25 The Commissioner summarised Mr Brodie-Hall's evidence about this event as follows [20] - [21]:

Mr Brodie-Hall says that on 19 August 2009 he had intended to write a letter concerning Mr Read to the CCC. He went to the CCC website and found that there were no positions advertised so he reconsidered as to why he would write to the CCC if there were no positions available. He says that when he had earlier spoken to Mr Read about the CCC it had been on the basis that if someone contacted him from the CCC he would recommend Mr Read for employment. On that morning he heard Mr Read say the word, "slut", he then saw his daughter come into the office. She was crying and she said that she had just hit Mr Read. Mr Brodie-Hall went to see Mr Read but he had left the premises. Mr Brodie-Hall says he expected that Mr Read would not come back to work. He wrote the letter of dismissal and posted it.

On 20 August 2009 Mr Read came to work through the front door which was unusual. He proceeded to clock on but Mr Brodie-Hall followed him and told him not to bother clocking on as his employment had been terminated. Mr Read said that he could not do that and that he had to be given two weeks' written notice. Mr Read refused to leave the factory, sat in the middle of the factory and refused to take the letter of termination. So Mr Brodie-Hall called the police. The police arrived and asked Mr Read to leave and he did so.

- 26 The appellant summonsed Mr Brodie-Hall as a witness. During the hearing they had the following exchange:

"Do you remember an incidence where Chris told me to ... came up to me and told me to fuck off. Do you remember that incidence?---No, I don't.

You don't remember that? Actually, what happened on my rekindled new memory because I made a complaint to yourself and you came back to me saying, 'Yes, I've discussed it with Chris and I've told him off because he told me to fuck off.' Does that rekindle your memory?---

I do remember you raising something with me that resulted from some interaction between you and Chris around your workstation, and I went to Chris and I said to him, 'Just make sure that you don't stir Nick up.' Right, so I don't recall the actual language that was used or the context in which it was used.' (ts 46).

- 27 The Commissioner also noted that the appellant asked Mr Brodie-Hall a number of questions that went to his treatment compared to others in the workplace concerning pay, working time, safety boots, superannuation, time taken at morning tea breaks, loans of money and concluded that in essence, Mr Brodie-Hall perceived that the appellant is a different individual to others in the workplace but says he was not treated differently in relation to his terms and conditions of employment.
- 28 After the Commissioner had regard to the evidence about the appellant's conduct in the workplace, the Commissioner observed that the quality of the appellant's work was not in contention, that he was said to be a diligent worker, but it was his conversation and behaviour that his employer questioned and specifically his conduct in the three incidents in April, July and August of 2009. The Commissioner then had regard to what was said by both speakers in the recorded conversation. He said it was apparent that there was considerable argument during the conversation and that Mr Brodie-Hall had expressed considerable frustration with the way the appellant raised, in Mr Brodie-Hall's view, irrelevant, sexual and inappropriate matters in conversations at work, and the way the appellant treated breaks as being completely separate from work and thought he could do as he liked.
- 29 In relation to the incident in April 2009, the Commissioner found that it is not clear why the appellant gave Ms Brodie-Hall a copy of the letter addressed to the police officer named Jo. He observed the contents of the letter had no connection to his work other than the whole event started with some exchanges at work. The Commissioner observed that there was some conflicting evidence as to what had transpired earlier that day and also observed that the appellant said it arose from him asking questions as to whether police officers are better people. The respondent had made a submission that the issue arose because the appellant appeared concerned about his pay and had discovered that police officers appeared to be getting a pay rise. The Commissioner found it was not relevant which version was correct as the uncontested fact was that the appellant left his workplace without notice and attended at the police station. His employer did not complain about that misconduct at the time and did not rely on this in the hearing before the Commission, but the respondent's objection was that the appellant's letter to the police was inappropriate, offensive and the sexual content of the correspondence upset Ms Brodie-Hall. The Commissioner also noted that the respondent complained that the content of the letter formed a pattern of unpredictable or irrational behaviour on the part of the appellant, as the appellant could see nothing wrong with what he had written.
- 30 In relation to the events that occurred on 15 July 2009, the Commissioner observed that the appellant complained that Mr Brodie-Hall did not have the correct impression of what had actually occurred on 15 July 2009, that Mr Brodie-Hall simply believed what Mrs Howley and Ms Andrews had said and did not give him a chance to present his case. The Commissioner observed that whilst it is true that Mr Brodie-Hall did believe Mrs Howley and Ms Andrews, and the conversation between the appellant and the respondent started as a warning to or counselling of the appellant, not an investigation, the Commissioner found that the appellant was given an opportunity to present his case. The Commissioner also found that if one listens to the taped conversation as a whole, Mr Brodie-Hall had other complaints about the way the appellant conducted himself and the conversations he (the appellant) had in the workplace. The Commissioner also found that Mr Brodie-Hall tried hard to get the appellant to understand his concerns.
- 31 The Commissioner made a finding that having heard all of the evidence he was of the view that Mr Brodie-Hall should have believed Mrs Howley and Ms Andrews over the appellant. The Commissioner said that he unreservedly accepted the evidence of Mrs Howley and Ms Andrews over that of the appellant. He also made a finding that on the appellant's evidence alone, the appellant abused Ms Andrews in a very demeaning way. Whilst the appellant simply said that he was acting in defence because she tried three times to 'butt' into his conversation with Mrs Howley, the Commissioner found that this was no excuse for calling a fellow employee, "You fucking, fat, ugly bitch." Importantly, the Commissioner found that the appellant at the hearing could see no problem with the term he used and sought to justify it by attempting to cross-examine Ms Andrews as to whether she in fact fitted this description. The Commission found that this questioning did the appellant no credit and the Commissioner stopped this line of questioning. The Commissioner then found that given the abuse of two employees by a fellow employee, Mr Brodie-Hall had a duty to act and the warning he gave to the appellant was fairly measured in its content. Consequently, the Commissioner found that on 15 July 2009 the appellant acted towards Mrs Howley and Ms Andrews in an abusive and threatening manner which left them shaken and in tears and in doing so the appellant put his employment in jeopardy by his actions on 15 July 2009.
- 32 The Commissioner also made findings that the evidence of Mrs Howley and Ms Andrews was consistent and plausible and he questioned why Ms Andrews thought it necessary to intervene on Mrs Howley's behalf three times if the appellant had not been unwelcomely pursuing Mrs Howley.
- 33 In relation to the events that occurred in April 2009 when the appellant handed Ms Brodie-Hall a letter, the Commissioner found he did not put great weight on those events. This appeared to be because the employer took no corrective action or counselling at that point in time. The Commissioner, however, found that he could understand why Ms Brodie-Hall was offended and unsettled by the content of the letter which claimed some sort of sexual encounter as a prize for an illusionary sprint race. This clearly was inappropriate behaviour. The Commissioner also found that to then introduce this into the workplace was both wrong and understandably disturbing and the problem was that the appellant simply did not comprehend this for two reasons.

- 34 The Commissioner again referred to the claim made by the appellant at his workplace and at the hearing that anything he did during his breaks was his own business and was not work related. The Commissioner importantly observed that it was the appellant who introduced these elements to his workplace and so made them part of the work environment and exchanges at work with his work colleagues. He brought the letter in April 2009 to Ms Brodie-Hall and he responded to questions from his colleagues about his black eye with a story of how a girl had said he could have sex with a 16-year-old girl as a prize for winning a sprint race. Also he spoke loudly over the telephone at work and close to fellow employees about the price of a pizza without the slut.
- 35 The Commissioner also found most importantly that each of these acts was not disputed by the appellant. He could see nothing wrong with them and clearly could not understand how they could offend his fellow employees, yet understandably they did. The Commissioner noted that there was no sense on the appellant's part that his behaviour was inappropriate and that discussions of such a sexual nature in the workplace may not be welcome. The Commissioner also found that if the appellant had truly listened to Mr Brodie-Hall during the conversation that was taped he should have been fully aware that Mr Brodie-Hall found his actions and conversation about sexual matters to be completely inappropriate.
- 36 In relation to the event that occurred on 19 August 2009, the Commissioner noted that there were minor inconsistencies in the evidence for the respondent. These included whether Ms Andrews was in the vicinity to hear the appellant's telephone call and what contact Ms Brodie-Hall made with Mr Read's forearm. The Commissioner, however, found that these inconsistencies were not material to whether the appellant should have been dismissed as the appellant's own evidence substantiated that he acted inappropriately on that day. The Commissioner also said it would be wrong to view the telephone conversation in isolation from earlier events and diminish its relevance. He found that the appellant had been put on notice about one month earlier not to use such language in the workplace and that the appellant knew his employment was at stake but did not seem to comprehend the effect such a conversation has on fellow employees. The Commissioner then found the appellant was clearly told by Mr Brodie-Hall that he should not engage in such behaviour in the workplace yet the appellant randomly chose to make the telephone call and act inappropriately in front of two or three of his work colleagues. The Commissioner found the appellant continued to do so even after he was told to stop. The Commissioner observed that the appellant did not accept this last point but the Commissioner accepted the evidence of Ms Brodie-Hall over that of the appellant.
- 37 As to the alleged assault by Ms Brodie-Hall, the Commissioner found that this did not change his view as to whether the appellant's dismissal was justified. He found it was clear that Ms Brodie-Hall tried to get the telephone from Mr Read's grasp and in doing so she made contact with his arm, but not with such force as to dislodge the telephone from his hand. The Commissioner observed that Mr Brodie-Hall testified that his daughter reported that she had hit Mr Read but that Ms Brodie-Hall and Mrs Howley gave evidence that the contact was less severe. The Commissioner had regard to a medical certificate tendered by the appellant which stated that:
- Nicholas Read presented to the Emergency Department at Royal Perth Hospital on the 19 Aug 2009 at 18:16. The presenting problem was pain in his right forearm post blunt trauma this AM. No features suggestive of fracture. Elbow and wrist joint NAD. Neurovascular status of RUL normal. The diagnosis was – Injury – Bruise/contusion – upper limb – forearm. Diagnosis – bruising of Right Forearm.
- 38 After having regard to the contents of the medical certificate, the Commissioner found that the medical certificate supported the view that contact of some force was made to Mr Read's forearm. The Commissioner found that Ms Brodie-Hall should not have touched the appellant, even though he refused to obey a lawful direction. The Commissioner then found that having weighed all the evidence he did not consider it a reasonable description to say that Ms Brodie-Hall assaulted Mr Read. The Commissioner reached this conclusion on the basis of the Concise Oxford Dictionary defining an assault as "a violent physical or verbal attack".
- 39 The Commissioner then had regard to the observations of Brinsden J in *Undercliffe Nursing Home v Federated Miscellaneous Workers' Union of Australia, Hospital, Service and Miscellaneous, WA Branch* (1985) 65 WAIG 385, 386 where his Honour discussed the concept of a fair go all around and pointed out "the question to be investigated is not a question as to the respective legal rights of the employer and the employee but a question whether the legal right of the employer has been exercised so harshly or oppressively against the employee as to amount to an abuse of that right". The Commissioner found after having regard to this principle, that in circumstances where the appellant was warned, and correctly so about his behaviour, and where he again displayed inappropriate behaviour about one month later in disregard of the warning, that the appellant had received a fair go and that he breached the trust his employer held in him.
- 40 The Commissioner also had a regard to the fact that Mr Brodie-Hall chose on 19 August 2009 to send a letter of termination to Mr Read rather than dismiss him in person. The Commissioner said that a telephone call to Mr Read would have been more preferable if the termination could not have been done in person, but nevertheless, it did not matter as the appellant did not receive the letter before he turned up for work the next day. At that time Mr Brodie-Hall spoke with him directly and informed him that he had been dismissed. The Commissioner found that the appellant had acted poorly by refusing to leave the workplace until such time as the police were called. Finally, the Commissioner found the dismissal of the appellant to be wholly justifiable.
- 41 In respect of the applicant's claim for contractual benefits in B 161 of 2009, the Commissioner had regard to the part of the telephone conversation recorded by the appellant which was relevant to the denied contractual benefit claim. The appellant says that during that conversation Mr Brodie-Hall promised him that he would write to the Corruption and Crime Commission and recommend him (the appellant) for employment by that Commission. The appellant maintains that this promise then became a condition of his contract of employment. The respondent says that he agreed to give a reference for the appellant to any prospective employer who may contact him and the Corruption and Crime Commission was mentioned in that context.

Mr Brodie-Hall gave evidence that he had never been contacted by any prospective employer about Mr Read. In any event the respondent submitted at first instance and on appeal that the promise did not amount to a legally enforceable term of the appellant's contract of employment.

42 The Commissioner set out the part of the tape recording relevant to the denied contractual benefits claims as follows:

- Mr Read – To wrap up the whole thing Robert um I will do like the company and I will conform to what you are saying you know whatever you're sayingor to be someone else which I'm not trained to be and I will do this exactly what you're saying now but and I will be happy in doing it and I will get an income to do it but in the same token will you recommend me to Corruption and Crime Commission for a job there or for another employer for a higher income cause that's what I want.
- Mr Brodie-Hall - Yes, but look I am probably on speaking terms with you know of regular social speaking terms with may be three other employers.
- Mr Read - Right ok.
- Mr Brodie-Hall - two of them are in the same industry
- Mr Read - Yep
- Mr Brodie-Hall - so I know they are not looking for people
- Mr Read - ok but my strategy is to get a higher income. A much higher income than \$17.00 an hour.
- Mr Brodie-Hall - so what do you want me to do ring up the government and say I've got a bloke working for me who wants more money have you got a job for him.
- Mr Read - yes the Corruption and Crime Commission cause I have already put the application in.
- Mr Brodie-Hall - Now righto well when the application gets to the person who reads them and says oh and they read the application this Nic Read sounds like a interesting fellow. He is currently working at Leather-Life and his employer will act as a referee I'll give the bloke a ring and he rings me up and then he says what do you know about Nic and I say he has worked here for about 12 months he is a reliable fella if you want someone who you know has a good work ethic and he's punctual and reliable efficient and listens to instructions and carries out the duties he's your man.
- Mr Read - Yep
- Mr Brodie-Hall - But you know it a bit like the Jehovah's knocking on the door if I just pick up the phone and ring the Corruption and Crime Commission and say I got recommendation from or I want to make a recommendation for someone who has applied for a job. You know I mean I can do that but I can also tell you fairly confidently that it won't go anywhere.
- Mr Read - well its up to you Robert.
- Mr Brodie-Hall - I can do it
- Mr Read - see the Corruption and Crime Commission might know what sort of a man I am you see.
- Mr Brodie-Hall - well they could if they read your
- Mr Read - well that's right they know me, and their staff know me and you could recommend me to them and that's all I ask you to do
- Mr Brodie-Hall - but see you know this is
- Mr Read - or other employers, other employers seeking higher income
- Mr Brodie-Hall - I mean if another employer came to me and said I'm looking to I'm looking to pinch some of your staff have you got anyone there that you think would be good for me um yeah I'd say yeah I'd say yeah I got a bloke down the back whose been working for me for 12 months and look like another opportunity I'd do that without any trouble at all. I'm not gonna get on the phone or get the yellow pages out and start ringing up every person
- Mr Read - yeah alright no worries, rightyo
- Mr Brodie-Hall - and you know offer them your services
- Mr Read - Good deal
- Mr Brodie-Hall - I mean I said that before
- Mr Read - yep ok
- Mr Brodie-Hall - and I will do that
- Mr Read - all right

43 The appellant informed the Full Bench that he agreed that the conversation had been correctly transcribed by the Commission in the reasons for decision. However, the appellant maintains that the record of that conversation establishes a contractual term which is enforceable.

- 44 The Commissioner concluded that the exchange in the conversation could not be construed as varying the contract of employment or adding a legally enforceable condition to the terms and conditions of employment of the appellant. He found that Mr Brodie-Hall was responding to the appellant's desire to obtain a higher paid job and so offered to provide a reference, which specified certain attributes of the appellant as a worker, if he was contacted by that prospective employer. The prospective employer mentioned specifically was the Corruption and Crime Commission. Relevantly the Commissioner found that there was no evidence that the Corruption and Crime Commission had contacted Mr Brodie-Hall about the appellant. The Commissioner also found the conversation had nothing to do with the appellant's employment at Leather-Life. It concerned only Mr Brodie-Hall agreeing to assist the appellant obtain a higher paid job elsewhere.
- 45 The Commissioner then had regard to the Full Bench decision in *Hotcopper Australia Ltd v Saab* (2001) 81 WAIG 2704 where Sharkey P at 2707 set out a number of principles which are limitations and/or conditions precedent to the exercise of jurisdiction under s 29(1)(b)(ii) of the Act. After having regard to the principles set out by Sharkey P, the Commissioner found that the appellant's claim failed the criterion that the benefit claimed must be a contractual benefit, that is, the claimant must be entitled to the claim under his contract of service. He also found that the condition that the benefit must have been denied by the employer was not satisfied in that no employer had contacted Mr Brodie-Hall on the appellant's behalf. The Commissioner also found that Mr Brodie-Hall did consider writing to the Corruption and Crime Commission but decided against it as he checked and no positions had been advertised.
- 46 Consequently, in light of these findings, the Commissioner made orders to dismiss the appellant's claim for unfair dismissal and the claim for a denied contractual benefit.

The Appellant's Submissions

- 47 The first point the appellant makes is that the Commissioner wrongly accepted the evidence of Mr Brodie-Hall, whose evidence was against the weight of the evidence of inappropriate behaviour and breach of contract. The appellant says at page 54 of the transcript of the hearing at first instance that Mr Brodie-Hall firstly admitted that he (the appellant) had been a good employee but then changed his mind and said that he had not done a good job with regards to conduct in the workplace over the entire period of employment. The appellant also says that Mr Brodie-Hall's evidence should not have been accepted because if Mr Brodie-Hall did not regard him as being a good employee over the entire period of employment why would he recommend him to another employer if he (the appellant) had engaged in inappropriate behaviour.
- 48 The appellant then made a submission that his employer has a detrimental state of mind within the meaning of the definition of 'mental illness' in s 4 of the *Mental Health Act 1996* (WA). Section 4 of the *Mental Health Act* defines 'mental illness' as:
- (1) For the purposes of this Act a person has a mental illness if the person suffers from a disturbance of thought, mood, volition, perception, orientation or memory that impairs judgment or behaviour to a significant extent.
 - (2) However a person does not have a mental illness by reason only of one or more of the following, that is, that the person —
 - (a) holds, or refuses to hold, a particular religious, philosophical, or political belief or opinion;
 - (b) is sexually promiscuous, or has a particular sexual preference;
 - (c) engages in immoral or indecent conduct;
 - (d) has an intellectual disability;
 - (e) takes drugs or alcohol;
 - (f) demonstrates anti-social behaviour.
- 49 In particular, the appellant says that Mr Brodie-Hall suffers from a disturbance of thought and suffers from volition and the evidence which proves this is the evidence that the appellant refers in points 1 – 15 of the particulars to Part A of his grounds of appeal. The appellant also says that points 1 – 15 of the particulars provide evidence that he, the appellant, was bullied by his employer over the period of his entire employment. It appears to be inherent in the appellant's argument that the appellant puts forward a view that points 1 – 15 are matters that Commissioner Wood should have taken into account when making his decision as to whether the appellant was unfairly dismissed.
- 50 The appellant's second ground of appeal is contained in Part B of his grounds of appeal in which he says that he was unfairly dismissed because the conduct which the respondent relied upon in justifying his dismissal was irrelevant and he was 'in defence' because he was bullied.
- 51 In respect of the incident that occurred in July 2009, the appellant made a submission that Mrs Howley did not tell him to go away while he was telling her that he wanted nothing to do with her husband. He also said that Ms Andrews butted in three times and he told her three times to stop butting in. He says that he was not aggressive or threatening or abusive towards Mrs Howley but he was direct as he was 'in defence' as he was bullied by Mrs Howley. He concedes that he did tell Ms Andrews to 'fuck off, you fat, ugly, bitch' as she kept butting in to the conversation that he was having with Mrs Howley. He said he was 'in defence' as they 'ganged up' and he only said this once. He also made the submission that it was common for other employees to swear at him and he put up with this and that when other employees swore at him they did not get a written warning of inappropriate behaviour and their employment was not terminated. The appellant also said that he had not engaged in any conversation of a sexual or suggestive nature. He said his letter to Jo the policewoman at Cannington Police Station (exhibit R) which is the letter that the appellant provided to Ms Brodie-Hall in April 2009, was not suggestive or of a sexual nature and was therefore irrelevant. The appellant also claims that when he had the conversation with Mr Brodie-Hall about the incident in July 2009 that after the tape stopped Mr Brodie-Hall made him sign the letter or he would not have a job and that was duress. The appellant also says the tape of the conversation records that Mr Brodie-Hall stated that his future employment was at risk.

- 52 In relation to the incident that occurred on 19 August 2009, the appellant submits that Ms Brodie-Hall did assault him and that it was not up to the Commissioner to decide whether he was assaulted or not by a definition in a dictionary. The appellant says that the decision as to whether he was assaulted should be made by a doctor and police and backed up by witnesses. He said when Ms Brodie-Hall assaulted him he went directly to the Cannington Police Station to report and make charges of assault. He also said when he had the conversation with a person from Rifo's Café in Maylands on the phone, he simply said his name and asked, "How much is the pizza without the slut?" He claims this was a private conversation which had nothing to do with Ms Brodie-Hall as it was a conversation outside of working hours. Consequently he says it follows that the conversation had nothing to do with the employer. He also said that he should not lose his job for asking 'how much is the pizza without the slut' when Chris tells him to 'fuck off' and his employer allowed him (Chris) to say that.
- 53 When making his submissions to the Full Bench, the appellant explained about the incident in July 2009 as follows:
- Exhibit R. That's correct, one, right at the end. As people in my life like to use police to my detriment, eg, Kate Howley, telling me about police clearances in relation to her husband, I asked the question during lunch outside of working hours. I asked the question, "Who thinks a policeman is better than me?" question mark. Bill, employee of Leather Life said, "I think a policeman is better than you." I did not like this so I went to the Cannington police station and challenged the police station to a sprint race. No-one turned up, so I won by forfeit. I organised this outside ... outside of working hours. So that wasn't on the premises. I wrote a letter to Jo, policewoman, Cannington police station, as a man in competition for resources and am allowed to do this. This is what men do. I've had no complaint from police about this. We respect each other. However, if an employee, Bill, wants to say a policeman is better than me, Nicholas Read, then I will prove Bill, other men, women, wrong. There is no sexual content in the letter, see exhibit R, nor is it sexual harassment (ts 15).
- 54 When asked by the Full Bench to explain why he thought the letter to the policewoman did not contain any suggestions of a suggestive or sexual nature he said:
- It is beneficial to society and beneficial to her and myself if I take her, if she wants me to, so prostitution does not exist. It is in the public's interest. It would stop drugs, crime, married men having sex with a girl who would want to be with me. I dare you to challenge my thoughts (ts 17).
- 55 In relation to the appellant's claim that he had been denied a contractual benefit, the appellant said that he had a conversation with his employer about the fact that he would recommend him to another employer because the employer knew he (the appellant) wanted a higher rate of pay than he was currently receiving which was \$17.00 an hour. The appellant also says he had a verbal agreement that the employer would recommend him (the appellant) to the Corruption and Crime Commission of Western Australia and to any employer he made application to, but he has not done so.
- 56 The appellant then made a submission that the only way in which the employer could avoid his contractual obligation was under the insane persons and intoxicated persons - general rule, that is, a contract with a mentally disturbed or drunken person is valid, but voidable at the option of the incapacitated person (or their legal representative).

The Respondent's Submissions

- 57 In relation to the appellant's appeal insofar as it relates to his claim for a contractual benefit the respondent points out that the contractual benefit asserted by the appellant is said to arise out of a conversation he had with the respondent. The respondent says that the Commissioner accurately transcribed the conversation but the content of the conversation does not reveal any intention upon the part of the employer to create a new contractual right that is legally enforceable. Nor is there any evidence of any intention by the employer to be bound by any discussion in passing. The respondent simply indicated to the appellant that if he wanted to make application to other persons for employment to obtain a higher hourly rate of pay that he (the respondent) would give him a recommendation because the respondent was not dissatisfied with the appellant's performance of his duties and the quality of the work.
- 58 In relation to the claim for unfair dismissal and the appeal against the Commissioner's decision, the respondent points out that this part of the appeal is an appeal against a discretionary decision: *Norbis v Norbis* (1985) 161 CLR 513. An appellant who appeals against a decision of the Commission must establish that there has been a miscarriage of the Commissioner's discretion in accordance with established principles: *House v The King* (1936) 55 CLR 499. If the principles are not satisfied by the appellant, there is no warrant for the Full Bench to substitute its own exercise of discretion of the Commissioner: *Bone Densitometry Australia Pty Ltd v Perth Bone Densitometry v Lenny* (2005) 85 WAIG 2981, 2985.
- 59 The respondent also says that s 49 of the Act requires the Full Bench to exercise its statutory function by way of the rehearing of the evidence provided to the Commission at the hearing. However, it must not set aside findings of fact made at first instance, unless it is satisfied that an error has been shown to manifest itself in the Commissioner's decision: *Fox v Percy* (2003) 214 CLR 118, 126; or that important evidence has been overlooked or that insufficient weight has been given to that evidence: *Skinner v Broadbent* [2006] WASCA 2 [37].
- 60 The respondent contends that all relevant evidence was considered by the Commissioner at first instance and is accurately reproduced in his decision and the conclusions drawn from that evidence are set out by the Commissioner in reaching the decision to reject the appellant's claim.
- 61 The respondent says that critically, the Commissioner makes important findings of credibility in favour of the respondent's witnesses in respect of events that resulted in the appellant being given a written warning. The respondent points out that having been put on notice as to his unacceptable behaviour in July 2009, the appellant repeated his poor behaviour on 19 August 2009 and the resulting termination was found by the Commissioner to be wholly justifiable in accordance with accepted principles.
- 62 The respondent says the appellant cannot point to any critical evidence, overlooked by the Commissioner, that may have altered the Commissioner's finding. Consequently, the respondent says the appeal should be dismissed.

- 63 In relation to the first of the three incidents, the respondent says it shows a pattern of irrational behaviour on behalf of the appellant during the employment period. The respondent says the letter to the Cannington Police Station in April 2009 related to conduct that occurred outside of work when the appellant on his own evidence challenged the Cannington police to a sprint race. It appears on the evidence that no-one turned up and the appellant wrote a letter to the police claiming certain things and he gave a copy of that letter to Ms Brodie-Hall. Her evidence demonstrates that she was shocked about the contents of that letter. The employer did not discipline in any way the appellant over that incident, but in July 2009 and August 2009 other incidents took place which enlightened the respondent as to the harm or possible harm that the appellant could inflict upon the workforce in his absence. The respondent says that Mr Brodie-Hall often was away from the business premises in Cannington and would leave his daughter and other employees at the business premises, most of whom were women.
- 64 The respondent points out that the Commissioner made an important finding of credibility about the evidence given in respect to the events that occurred in the July 2009 incident and unreservedly accepted the evidence of Mrs Howley and Ms Andrews over the appellant. The respondent says the evidence of these two witnesses demonstrated unequivocally that the appellant was the aggressor and caused the two ladies to break down in a tearful response. The respondent contends that the evidence demonstrates that Ms Andrews tried to intervene to protect Mrs Howley who was retreating outside the premises for a cigarette, and on three occasions she tried to tell the appellant to stop annoying Mrs Howley but the appellant said in coarse language on a number of occasions to Ms Andrews, "You fucking, fat, ugly bitch." The respondent says the appellant conducted himself in the same ugly, non-professional manner in the hearing before the Commission by trying to question the witness in the witness box as to whether she was truly a 'fat, ugly bitch'. However, the Commissioner stopped that questioning. The incident in July 2009 led Mr Brodie-Hall to accept the versions put forward by Mrs Howley and Ms Andrews over that of the appellant and led to the letter of warning which was given to the appellant.
- 65 The respondent says the Commissioner properly observed that when you are present at a workplace you cannot conduct yourself in a debased way in talking to fellow colleagues and consequently the written warning given by the respondent to the appellant was properly given on 17 July 2009. The respondent says that Mr Brodie-Hall as an employer had a duty of care to his employees in accordance with occupational health and safety laws, and the letter of warning was clearly a warning to the appellant that his behaviour was not acceptable and if there were any other incidences of such behaviour his employment would be terminated.
- 66 The respondent points out that when the letter of warning is read the respondent cannot be criticised in any way. It is a well thought out letter written by a small businessman who has consideration for his staff and who addressed the issues in a professional way.
- 67 The third incident was the incident that occurred on 19 August 2009. The respondent points out that the transcript of the hearing at first instance reveals that that incident occurred during a break which was not a lunch break, but a break in work, where employees could access an internal telephone to make external calls. The telephone location is in the hearing of a number of employees and that was demonstrated by the evidence. During this conversation, the appellant was overheard to be speaking to some party unknown at the time about ordering a pizza or inquiring about a pizza order 'without the slut'. When the appellant refused to put down the phone Ms Brodie-Hall intervened and she either touched or struck the appellant in such a way that resulted in some contusion or other injury. The respondent contends the issue is that he (the appellant) was making an inappropriate and insulting telephone call from a business telephone to an outside location and he was told on a number of occasions to cease making that call, yet he refused to do so. Consequently, the respondent says as an employer he had a duty and a right to intervene in that conversation.
- 68 It is submitted on behalf of the respondent that the three incidents caused Mr Brodie-Hall to decide to terminate the appellant's employment. The appellant left the workplace after Ms Brodie-Hall had purportedly struck him and told him to put the phone down. He did not return to work that day. In the interval Mr Brodie-Hall wrote the letter of termination and posted the letter to the appellant because he did not expect him to return. However, when the appellant reported to work the following day Mr Brodie-Hall told him he had been dismissed and that a letter had been sent to him. However, the appellant refused to leave the building, placed himself in a chair, put his feet up on the table, and notwithstanding further requests for him to leave the premises, he refused. This caused Mr Brodie-Hall to telephone the police. When the police arrived the appellant left the premises quietly.
- 69 The respondent points out the issue is whether the employer's right to terminate the appellant's employment was exercised unfairly. The respondent says that the Commissioner correctly applied the test enunciated by Brinsden J in *Undercliffe* and in all the circumstances on the basis of the evidence before the Commission, the termination of the employment of the appellant was not unfair.
- 70 The respondent also contends that the appellant is unable to demonstrate an error in the exercise of discretion of the Commission at first instance and that when regard is had to the authorities referred to by the respondent, the Full Bench should dismiss the appeal.
- 71 The respondent says that there is no merit in the submission that the employer had a detrimental state of mind or a disturbance of thought and this led to inappropriate treatment of the appellant by the employer. When regard is had to the letters that were provided to the appellant, the tone of the letters demonstrate a person of above average intelligence who was thoughtful in the words he used, and that when one listens to the tape of conversation it is apparent that during the conversation Mr Brodie-Hall was a very considerate man who is a conservative employer of a small business. The respondent says the appellant was treated no differently from anyone else in the workplace. He was given warnings when they were required. Whilst the appellant referred to another employee using offensive language towards him the respondent submits the evidence demonstrates that the employer told the employee not to "rev up" or upset the appellant. The respondent says that that was an appropriate response

to the appellant's complaint. However, the complaints Mr Brodie-Hall received about the conduct of the appellant were much more serious and were dealt with appropriately by Mr Brodie-Hall. Further, the respondent says that Mr Brodie-Hall's conduct at all times demonstrated a conservative man who conducted himself appropriately in the circumstances.

U 161 of 2009 – Claim for Unfair Dismissal – Legal Principles

- 72 This is a matter where the Commissioner had a discretionary decision to make. In an appeal against a discretionary decision it is for the appellant to establish that the Commissioner erred at first instance in the exercise of discretion and that the exercise of discretion miscarried: *House v The King*.
- 73 The Full Bench as an appeal court will rarely interfere with findings of facts which have been made in a hearing at first instance which are found on an assessment of the credibility of witnesses. Relevant principles of appellate review and the circumstances where an appellate court has considered it appropriate to intervene and decide for itself what factual findings should be made were recently summarised by Owen JA (with whom Martin CJ and Miller JA agreed) in *Brett v Rees* [2009] WASCA 159 where his Honour observed:

There has long been two somewhat different descriptions of the appellate approach. One approach (that has come to be called 'the traditional view') emphasises the duty of the appellate court to decide for itself on the proper inference to be drawn from facts which are undisputed or which, having been disputed, are established by the findings of the trial judge: see, for example, *Paterson v Paterson* [1953] HCA 74; (1953) 89 CLR 212, 218 – 224. The other view placed restraints on appellate intervention, certainly where the findings were based on witness credibility or demeanour, but generally if the findings made by the trial judge were reasonably open on the evidence: see, for example, *Edwards v Noble* [1971] HCA 54; (1971) 125 CLR 296, 307. The plot thickened as the traditional view came to be associated with an approach that seemed to derogate from the previously perceived wisdom that a trial judge was in an advantageous position when it came to making findings on disputed facts based on credibility assessments. Some of the cases have been interpreted as suggesting that this applies even where the finding is based wholly or in part on credibility: see, for example, *Voulis v Kozary* [1975] HCA 44; (1975) 180 CLR 177, 196.

By the time *Warren v Coombes* [1979] HCA 9; (1979) 142 CLR 531 came to be decided the traditional view was firmly in the ascendancy; see 542 – 543. But there was a movement back towards the view emphasising the advantages enjoyed by the trial judge: see, for example, *Devries v Australian National Railways Commission* [1993] HCA 78; (1993) 177 CLR 472; (1993) 112 ALR 641, 479. This divergence of authority was examined in detail by Kirby J in *State Rail Authority (NSW) v Earthline Constructions Pty Ltd (in liq)* [1999] HCA 3; (1999) 160 ALR 588 [81] – [86]. His Honour's conclusion seems to have tended more towards the traditional view: [86].

The High Court returned to this question in two cases decided in 2003: *Fox v Percy* and *Suvaal v Cessnock City Council* [2003] HCA 41; (2003) 200 ALR 1; (2003) 77 ALJR 1449. In *Fox v Percy* Gleeson CJ, Gummow and Kirby JJ observed [23] (footnotes omitted):

[The appellate court] must, of necessity, observe the 'natural limitations' that exist in the case of any appellate court proceeding wholly or substantially on the record. These limitations include the disadvantage that the appellate court has when compared with the trial judge in respect of the evaluation of witnesses' credibility and of the 'feeling' of a case which an appellate court, reading the transcript, cannot always fully share. Furthermore, the appellate court does not typically get taken to, or read, all of the evidence taken at the trial. Commonly, the trial judge therefore has advantages that derive from the obligation at trial to receive and consider the entirety of the evidence and the opportunity, normally over a longer interval, to reflect upon that evidence and to draw conclusions from it, viewed as a whole.

Despite these limitations however, the appellate judges may still draw their own inferences and conclusions. The mere fact that a trial judge necessarily reached a conclusion favouring the witnesses of one party over those of another does not, and cannot, prevent the performance by a court of appeal of the functions imposed on it by statute: *Fox v Percy* [28]. In the joint judgment their Honours also observed at [25] (footnotes omitted):

Within the constraints marked out by the nature of the appellate process, the appellate court is obliged to conduct a real review of the trial and, in cases where the trial was conducted before a judge sitting alone, of that judge's reasons. Appellate courts are not excused from the task of 'weighing conflicting evidence and drawing [their] own inferences and conclusions, though [they] should always bear in mind that [they have] neither seen nor heard the witnesses, and should make due allowance in this respect'.

It can be seen, therefore, that the weight of authority embraces elements of both the traditional view and the more restrained approach. As McHugh and Kirby JJ said in *Suvaal* [73]:

It is probably true to say that at different times in legal history, the weight given to credibility assessment and the impediment it presents to the exercise of an appellate rehearing have changed, influenced by the quality of the record available for scrutiny; the growing knowledge of psychology and the consciousness of the imperfections of credibility assessment; and a heightened appreciation of the benefits of appellate correction of error, including factual error. But these considerations have not eliminated the appellate obligation to respect the advantages which the primary decision-maker has that are denied to the appellate court. As a matter of logic, experience and legal authority, it cannot be otherwise.

It would, in my view, be wrong to limit 'the advantages which the primary decision-maker has' to demeanour as a guide to credibility assessment and to ignore the "feeling of a case" that usually emerges from running a trial. The primary decision-maker is able to assess testimony against the entirety of the evidence and in a situation in which she or he has an appreciation of the way the trial was run. There may, for example, be subtleties in the way questions were asked (or avoided) that are apparent in the heat of battle but which are not quite as clear in a more clinical examination of a

transcript. Similarly, the effect of evidentiary rulings or rulings about the pleadings made at one stage of a trial may have a greater impact at another point in the proceedings than will be apparent from the record. In carrying out its duty to decide for itself on the proper inference to be drawn from facts an appellate court must be alive to the entire context in which findings were made [64] – [69].

- 74 As pointed out by the Commissioner in his reasons at [43] the question to be determined by the Commission is whether the respondent has exercised its legal right to dismiss the applicant in such a way that the right has been exercised harshly or oppressively against the employee so as to amount to an abuse of that right: *Undercliffe* at 386. However as Beech CC observed in *Saybolt Australasia Pty Ltd v Mall* (2006) 87 WAIG 87 [52]:

A proper consideration of whether a particular dismissal is harsh, oppressive or unfair should include a consideration of all of the relevant circumstances. As E M Heenan J observed in *Garbett v Midland Brick Company Pty Ltd* [2003] WASCA 36; (2003) 83 WAIG 893 at [72]:-

'Because there is such a wide variety of factors which may affect any individual case, no universal or exhaustive list of the circumstances which may constitute harsh, oppressive or unfair dismissal can be given. Often, however, the issue in a particular case will require a consideration of the length or quality of the employee's service, the culture of the workplace, the prospects for other employment of the individual employee, and the employer's treatment of past incidents and of other employees.'

- 75 It follows, therefore, that as it is the duty of a decision maker to consider all of the evidence, where important and critical evidence is not referred to, an appellate court may infer that the evidence has been overlooked or that the decision maker at first instance has failed to give consideration to it: *North Sydney Council v Ligon 302 Pty Ltd* (1995) 87 LGERA 435 (442); *Beale v Government Insurance Office of New South Wales* (1997) 48 NSWLR 430 (443); applied by Steytler J in *Skinner v Broadbent* at [37]. Consequently, a decision maker should refer to relevant evidence but there is no need to refer to the relevant evidence in detail, especially in circumstances where it is clear that the evidence has been considered. However, a decision maker at first instance is not obliged to refer in his reasons to all of the evidence or submissions or to make express findings on all disputed items of evidence: *Beale* (443).

- 76 In this matter the appellant was summarily dismissed after he used objectionable and degrading language in the workplace.

- 77 The general principles of the valid exercise of the remedy of summary dismissal were considered by Lord Evershed MR in *Laws v London Chronicle (Indicator Newspapers) Ltd* [1959] 2 All ER 285 where he observed at 287 and 289:

[S]ince a contract of service is but an example of contracts in general, so that the general law of contract will be applicable, it follows that, if summary dismissal is claimed to be justifiable, the question must be whether the conduct complained of is such as to show the servant to have disregarded the essential conditions of the contract of service (287).

...

I ... think ... that one act of disobedience or misconduct can justify dismissal only if it is of a nature which goes to show (in effect) that the servant is repudiating the contract, or one of its essential conditions; and ... therefore ... the disobedience must at least have the quality that it is 'wilful': it does (in other words) connote a deliberate flouting of the essential contractual conditions (287).

- 78 All employees are required to comply with a lawful order of their employer. Wilful disobedience of a lawful order may constitute grounds for summary dismissal: *Adami v Maison De Luxe Ltd* (1924) 35 CLR 143. To do so the disobedience must strike at the essence of the contract of employment, that is, it must be inconsistent with the continuing relationship of employer/employee.

The Unfair Dismissal Application – Conclusion

- 79 The appellant argues in Part A of his grounds of appeal that the Commissioner ignored a number of matters which when considered rendered the termination of his employment unfair.

- 80 The first matter raised by the appellant is a contention that the employer, Mr Brodie-Hall, was suffering from a detrimental state of mind as he has a disturbance of thought and suffers from volition. Having read the letters written by Mr Brodie-Hall and all other documents in the appeal book, the transcript of evidence and listened to an hour long tape recording conversation between the appellant and Mr Brodie-Hall on 17 July 2009, it is clear that such a contention is groundless. To the contrary, it is clear that Mr Brodie-Hall's actions when dealing with the appellant were that of a patient, rational, considerate and measured employer who made a considerable effort to attempt to explain to the appellant that his conduct at work towards women was inappropriate, lacking in mutual respect and was unacceptable.

- 81 The second matter raised by the appellant is that Mr Brodie-Hall treated the appellant differently from other employees and that when he (the appellant) was bullied by other employees he (the appellant) had the right to defend himself. In support of this contention the appellant referred to 15 particular matters. We will deal with each of these in the order set out in the grounds of appeal:

- 1 The appellant contends that other employees all work less than 38 hours a week and get paid for 38 hours a week when he (the appellant) works 38 hours a week and does not make mistakes. Whilst it was recognised by the respondent that the quality of the appellant's production work and effort could not be faulted, no reliable evidence was adduced in the hearing that other employees were paid for unworked hours of work. However, even if such a fact was found, such a fact could not be said to be material to the grounds of dismissal.

- 2 Whilst it was conceded by Mr Brodie-Hall and Ms Brodie-Hall that other employees do work for their own business during working hours whilst being paid by the respondent, it does not follow that the appellant was discriminated against by the employer because of this fact, or that the Commission erred in not having regard to this fact.
- 3 The appellant contends that other employees were allowed to bully him. However, the appellant himself gave no evidence about this issue. The only occasion the issue was raised was when the appellant examined Mr Brodie-Hall.
- This evidence of Mr Brodie-Hall establishes at its highest that on one occasion the appellant complained to Mr Brodie-Hall that another employee, Chris, had sworn at him. Mr Brodie-Hall properly took action to counsel the employee and there is no evidence that Chris or any other employee swore at the appellant again. Consequently, it cannot be established that there was any evidence of the appellant being bullied or that the Commissioner erred in failing to have regard to this one incident.
- 4 The fact that the appellant designed his own ugg boots does not support a contention of discrimination and is not a matter that was material to the decision of the respondent to dismiss the appellant.
- 5 The fact that the appellant always provided the employer with a medical certificate when he saw a doctor and other employees did not, is not evidence of discrimination in the absence of any evidence that the employer required the appellant to provide a medical certificate on each occasion he was absent from work on account of ill health. In any event, the appellant did not give evidence about this matter. He adduced evidence from Mr Brodie-Hall who said that employees are allowed two single day absences without medical certificates and on the third occasion they must provide a medical certificate if they wish to be paid for the absence. Mr Brodie-Hall also said that he does not always insist that employees provide a certificate.
- 6 The uncontradicted evidence of Ms Brodie-Hall was that she made an online authorisation error which resulted in superannuation not being credited to the appellant's superannuation fund. She corrected the error on 2 June, and then sent an interim statement to the appellant to show that the error had been rectified. She also apologised to the appellant for the error. This error did not only affect the payment of superannuation to the appellant's superannuation fund but affected the payment of superannuation to the superannuation funds of all employees. Consequently, this issue cannot be said to be anything other than an error that was not discriminatory or material in any way to the circumstances that led to the dismissal of the appellant.
- 7 The appellant contends he was told to wear safety boots, there was a sign in the factory notifying all employees that they were required to wear safety boots, and that he always wore safety boots but other employees did not. However, the evidence given in the hearing before the Commissioner does not support this contention. The appellant gave no evidence about the issue. The evidence that he adduced from Mr Brodie-Hall was that employees in the factory were required to wear closed in shoes but were not required to wear safety boots and the sign in the factory indicates that covered footwear is to be worn. Consequently, no issue of discrimination in relation to this issue could have been said to arise.
- 8 The appellant led evidence from Mr Brodie-Hall that he (Mr Brodie-Hall) informed the appellant at an interview that he would not like the appellant to use a mobile phone during working hours yet other employees used mobile telephones during working hours. No explanation as to why this was the case, or the frequency of such use was elicited from Mr Brodie-Hall when he gave evidence. However, although this fact can be said to have been established it is difficult to see how the fact that other employees used mobile telephones during working hours is relevant to the issue whether the appellant was unfairly dismissed. In any event, the evidence about this issue is too vague to draw any credible inference of discrimination.
- 9 The appellant contends that other employees were paid more than him. The appellant gave evidence that when he was employed by the respondent he asked his employer whether any one was being paid more than \$17 an hour and was told yes. The employer did not identify who this person was so the appellant asked other employees who was being paid more than \$17 an hour. The appellant was paid \$17 an hour. It is common ground that Mr Brodie-Hall was aware that the appellant was dissatisfied with the rate of pay of \$17 an hour and that is a reason why Mr Brodie-Hall agreed to make a recommendation to any prospective employer the appellant sought employment from. Yet the bare fact that the respondent paid another employee or other employees more than \$17 an hour does not of itself raise any issue of discrimination. It is well known that in most workplaces that employees are paid different rates of pay. Reasons vary. In low paid occupations commonly some employees are paid more than others because of the duties they perform and others are paid more merely because of their length of service.
- 10 The appellant contends that four other employees took longer breaks and longer lunch hours than he did. Whilst there is no evidence to support this alleged fact, even if it were the case it is not in dispute that whilst the appellant was performing his duties on the factory floor his performance could not be faulted. Nor was his punctuality wanting.
- 11 The appellant says in this particular that everyone in the factory told him what to do and he acknowledged this. This too is a matter which shows that when performing his work in the factory the appellant was a good employee but is not evidence of discriminatory conduct.

- 12 The appellant says that he was assaulted by Ms Brodie-Hall. It is common ground that Ms Brodie-Hall attempted to remove the handset of the employer's telephone from the appellant whilst he was making a telephone call to a café in Maylands. Whilst we agree that Ms Brodie-Hall's action at law constituted an assault, as an assault is simply defined in the *Criminal Code* (WA) in s 222 to mean 'to strike or touch or otherwise apply force to' a person without their consent, in the circumstances the assault was trivial and not a matter that mitigates the misconduct of the appellant which was far more serious than the act of Ms Brodie-Hall of making contact with the appellant's arm to attempt to remove the telephone from his hand (see [86] - [87] of these reasons). Although Mr Brodie-Hall testified that Ms Brodie-Hall came to him in tears and told him that she had hit the appellant as the Commissioner correctly observed at [42] of his reasons for decision, the contact she made with the appellant's arm was not with such force as to dislodge the telephone from his hand.
- 13 Sometime prior to the termination of his employment, the appellant sought to purchase a property. Mr Brodie-Hall provided him with a note which stated the appellant had been employed full time since July 2008. The note was dated 29 August 2009 (attachment H to the application) but was provided to the appellant some time prior to 19 August 2009. When Mr Brodie-Hall was asked in examination-in-chief why was the letter post-dated, he could not explain other than to say that he thought it was a typographical error. The appellant complains that this error was discriminatory as the employer would not do this to other employees. However there is no evidence that the error was deliberate, mischievous, caused any difficulty for the appellant or was discriminatory. Such a matter was clearly irrelevant to the question whether the appellant was unfairly dismissed.
- 14 When Rose an employee became pregnant, employees in the factory collected money to buy a gift for Rose. The appellant contributed \$5. Mr Brodie-Hall testified that as the gift was given to Rose after the appellant's employment was terminated, he (Mr Brodie-Hall) returned \$5 to the appellant. The appellant says this was discriminatory as he did not return money to any other employee. He also says this action was unlawful as the \$5 was the property of Rose. This evidence is plainly immaterial and irrelevant to the issue whether the appellant was unfairly dismissed. Nor does this action constitute discrimination. Further we are not satisfied on the basis of this evidence that the action of the respondent was unlawful.
- 15 The appellant contends that the employer's allegation that he (the appellant) had a threatening attitude towards him (Mr Brodie-Hall) and work colleagues is not supported by any evidence. The appellant also raises the contention raised in particular 3 of Part A of the grounds of appeal. This submission is misconceived as firstly there was no allegation raised in the proceedings before the Commissioner, or in the documents provided to the Commission that the respondent alleged the appellant had a threatening attitude towards Mr Brodie-Hall. It is, however, the case that Mrs Howley and Ms Andrews gave evidence that the appellant acted towards them in an aggressive, threatening and abusive manner. Secondly, this submission cannot be maintained as the evidence accepted by the Commissioner was that the employer did act on evidence provided to him by Mrs Howley and Ms Andrews. When enquiring about misconduct by an employee, an employer is not required to have the skills of police investigators or lawyers: *Schaale v Hoechst Australia Ltd* (1993) 47 IR 249 (252) (Heerey J); *Amin v Burswood Resort Casino* (1998) 78 WAIG 2441 (2442) (Fielding SC). Thirdly, the appellant does not dispute that he said to Ms Andrews, 'You fucking, fat, ugly bitch.' Such a statement by a male employee to a female employee is by the nature of the words used, a threatening expression and unwarranted. The employer informed the appellant orally and in writing that such conduct was unacceptable and that such objectionable and degrading language should not be used and if repeated his continued employment was at risk.
- 82 For these reasons we are of the opinion that the appellant has not shown that any critical or material evidence was overlooked by the Commissioner. Consequently, we would dismiss Part A of the appellant's grounds of appeal.
- 83 In Part B of the appellant's grounds of appeal, the appellant contends that the evidence relied upon for a finding that his behaviour was inappropriate was irrelevant and in any event his actions were in 'defence' as he was bullied. Part B of the grounds of appeal does not identify any error on behalf of the Commissioner. The appellant appears in this ground to simply seek that the Full Bench decide the matter afresh. Such a course is not available under s 49 of the Act as Ritter AP observed in *Michael v Director General, Department of Education and Training* [2009] WAIRC 01180; (2009) 89 WAIG 2266:

As there stated, an appeal against a discretionary decision cannot be allowed simply because the appellate court would not have made the same decision. The reason why this is so was explained in the joint reasons of Gleeson CJ, Gaudron and Hayne JJ in *Coal and Allied Operations Pty Limited v Australian Industrial Relations Commission* (2000) 203 CLR 194 at [19] - [21]. At [19] their Honours explained by reference to the reasons of Gaudron J in *Jago v District Court (NSW)* (1989) 168 CLR 23 at 76, that a discretionary decision results from a 'decision-making process in which "no one [consideration] and no combination of [considerations] is necessarily determinative of the result"'. Instead 'the decision-maker is allowed some latitude as to the choice of the decision to be made'. At [21] their Honours said that because 'a decision-maker charged with the making of a discretionary decision has some latitude as to the decision to be made, the correctness of the decision can only be challenged by showing error in the decision-making process'. Their Honours then quoted part of the passage of *House v King* which I have quoted above.

Similarly, Kirby J in *Coal and Allied* at [72] said that in considering appeals against discretionary decisions, the appellate body is to proceed with 'caution and restraint'. His Honour said this is 'because of the primary assignment of decision-making to a specific repository of the power and the fact that minds can so readily differ over most discretionary or similar questions. It is rare that there will only be one admissible point of view'. (See also *Norbis v Norbis* (1986) 161 CLR 513 per Mason and Deane JJ at 518 and Wilson and Dawson JJ at 535).

These principles of appellate restraint have particular significance when it is argued, as here, that a court at first instance placed insufficient weight on a particular consideration or particular evidence. This was considered by Stephen J in *Gronow v Gronow* (1979) 144 CLR 513 at 519. There, his Honour explained that although 'error in the proper weight to be given to particular matters may justify reversal on appeal, ... disagreement only on matters of weight by no means necessarily justifies a reversal of the trial judge'. This is because, in considering an appeal against a discretionary decision it is 'well established that it is never enough that an appellate court, left to itself, would have arrived at a different conclusion', and that when 'no error of law or mistake of fact is present, to arrive at a different conclusion which does not of itself justify reversal can be due to little else but a difference of view as to weight'. (See also Aickin J at 534 and 537 and *Monteleone v The Owners of the Old Soap Factory* [2007] WASCA 79 at [36] [141] – [143].

- 84 In any event even if it was open for a Full Bench to consider the matter a fresh we are not persuaded the Commissioner erred in making the decision to dismiss the appellant's unfair dismissal claim.
- 85 Firstly, for the reasons set out above in [81] of these reasons we do not accept there was sufficient evidence before the Commissioner on which a finding could be properly made that the appellant was bullied. Nor do we accept on any occasion that he was acting in 'defence'. Having listened to the tape of the conversation and read the extracts of the tape set out in [30] and [31] of the Commissioner's reasons for decision it is clear that the employer did provide the appellant with an opportunity to explain. In respect of particular point 1 which relates to the incident on 15 July 2009 and the letter of warning there was no credible evidence before the Commissioner at first instance that Mrs Howley bullied the appellant. Further the particulars relied upon by the appellant do not disclose any facts on which a finding could be made that Mrs Howley bullied the appellant.
- 86 As to particular point 2, the appellant's own evidence and submissions objectively establish that he engaged in correspondence and conversations of a suggestive or sexual nature that can constitute sexual harassment. Sexual harassment is unsolicited, unwanted and unwelcome behaviour of a sexual nature which causes a person to feel offended, humiliated or intimidated: Sappideen C, O'Grady P and Warburton G, *Macken's Law of Employment* (6th ed, 2009) [16.240]. It is plain that the following comments and action could constitute sexual harassment:
- (a) informing colleagues of how a girl had said he could have sex with a 16-year-old girl was a prize for winning a sprint race;
 - (b) handing Ms Brodie-Hall a copy of a letter to the Police in which the appellant says:

I take my prize. This is what I want. One young curvy, beautiful, red head – female (no children).
She may be a member of the public or a prostitute. If she is contemplating being a prostitute I could take her now. (Before) if she is a prostitute I would only be interested in her if she has been in the industry for a short period of time. Of course she only be for me and me for her and this can only take place if we like each other.

As a proposal it would be beneficial to the system if she was with me, if she liked me and if she did not want to be a prostitute. If it was related to money, which it is, she would make more money with me.

So, in simple words, please go through the system, police, and find a girl that wants to get out and be with me. Police can not have them all. I won the challenge. Only if she likes me. Please get back to me in one months time. Thankyou. I am Snow White, not the witch. As I do not use prostitutes.
 - (c) saying to a female employee, 'You fucking, fat, ugly bitch';
 - (d) saying in a telephone conversation on 19 August 2009 with a third party within the hearing of female employees, 'How much is the pizza without the slut?'
- 87 The Commissioner properly found at [41] of his reasons for decision that the appellant was put on notice in July 2009 not to use such language in the workplace. The appellant knew his employment was at stake, yet on 19 August 2009 he made inappropriate comments of a sexual nature during a telephone call whilst at work, in the hearing of female employees and when using the employer's telephone.
- 88 Particulars 3, 4 and part of particular 5 raise issues about the running of the employer's business which are immaterial to the reason for termination of the appellant's employment.
- 89 In relation to the allegation of duress in particular 5, although the appellant contends that he signed the letter of warning under duress, at page 39 of the transcript the appellant gave evidence that: 'he [Mr Brodie-Hall] told me to sign it or I won't have my job ... it's duress so I signed it and gave it to him the following day'. However, during the conversation that took place prior to the appellant being handed the letter, the tape of the conversation reveals the appellant said during the conversation that he would conform with the employer's rules during working hours. In any event even if he felt under duress to sign the letter, such a response to the letter would not be in my view material as the directions given in the written letter of warning were not only lawful but reasonable. Further, in the circumstances, it was appropriate and prudent for Mr Brodie-Hall to inform the appellant in writing that his continued employment was in jeopardy if the conduct complained of continued.
- 90 For the reasons we have set out above, Part B of the appellant's grounds of appeal are not sustained, as no error in the exercise of discretion by the Commissioner can be demonstrated. Accordingly, we are of the opinion that this ground should be dismissed.

The Contractual Benefits Claim – Conclusion

- 91 To form a contract the elements required before an agreement will be enforceable are, an intention to create contractual or legal relations; acceptance of an offer; and consideration.
- 92 The test of intention is generally objective and is not concerned with the real intentions of the parties. As Le Miere J observed (with whom Wheeler and Pullin JJA agreed) in *Ireland v Johnson* [2009] WASCA 162; (2009) 89 WAIG 2255 [47]:
- There is no legally enforceable contract unless the parties intended to create contractual relations. In *Ermogenous v Greek Orthodox Community* Gaudron, McHugh, Hayne and Callinan JJ explained:
- Although the word 'intention' is used in this context, it is used in the same sense as it is used in other contractual contexts. It describes what it is that would objectively be conveyed by what was said or done, having regard to the circumstances in which those statements and actions happened. It is not a search for the uncommunicated subjective motives or intentions of the parties [25].
- The enquiry whether the parties intended to create contractual relations may take account of the subject matter of the arrangement, the status of the parties to it, their relationship to one another and other surrounding circumstances. The search for the 'intention to create contractual relations' requires an objective assessment of the state of affairs between the parties: *Ermogenous v Greek Orthodox Community*; Gaudron, McHugh, Hayne and Callinan JJ [25].
- 93 In this matter whilst the appellant may have intended to create a legally enforceable agreement when what was said by the appellant and the respondent in the conversation that was recorded by the appellant is examined objectively, an intention to form contractual legal relations cannot be inferred. The principle of objectivity was explained by the High Court in *Toll (FGCT) Pty Ltd v Alphapharm Pty Ltd* [2004] HCA 52; (2004) 219 CLR 165 [40]:
- This Court, in *Pacific Carriers Ltd v BNP Paribas* ((2004) 218 CLR 451), has recently reaffirmed the principle of objectivity by which the rights and liabilities of the parties to a contract are determined. It is not the subjective beliefs or understandings of the parties about their rights and liabilities that govern their contractual relations. What matters is what each party by words and conduct would have led a reasonable person in the position of the other party to believe. References to the common intention of the parties to a contract are to be understood as referring to what a reasonable person would understand by the language in which the parties have expressed their agreement. The meaning of the terms of a contractual document is to be determined by what a reasonable person would have understood them to mean. That, normally, requires consideration not only of the text, but also of the surrounding circumstances known to the parties, and the purpose and object of the transaction (*Pacific Carriers Ltd* at 461 - 462 [22]).
- 94 Whilst the appellant and the respondent had a relationship of employer and employee what was sought by the appellant was employment with another employer, which is a matter that could not constitute a variation of the existing employment relationship as the appellant was seeking the assistance of the respondent to create a new and separate contract of employment. It is immaterial that if the appellant found other employment following a recommendation by the respondent that his employment with the respondent would have terminated by the resignation of the appellant.
- 95 All the respondent agreed to do was to act as a referee to a prospective employer and make favourable comments about the appellant's work ethic, his punctuality, efficiency, ability to listen to instructions and to carry out duties. However, it is difficult to contemplate that any agreement to act as a referee in such circumstances or in any circumstances could give rise to a legally enforceable agreement. The very nature of the task of being a referee is that a referee is generally relied upon by persons who seek information about a prospective employee to provide an honest and candid opinion. The public interest demands that referees express frankly any reservations to a prospective employer that they may have about a person. If between agreeing to act as a referee for a party and giving a reference, factual information becomes available or known to the party who agrees to act as a referee that causes that person to doubt whether he or she can speak favourably about the other party, the party who agreed to act as a referee could not as a matter of public policy be legally bound to provide a favourable reference if that party doubts the truth of such a reference.
- 96 Even if it could be said that the intention of the parties was to create a legally enforceable contract, without consideration the terms of the contract are unenforceable. To satisfy the requirement of consideration, the appellant must have provided something valuable in return. Valuable consideration may consist of either in some right, interest, profit, or benefit accruing to one party, or some forbearance, detriment, loss or responsibility given, suffered, or undertaken by the other in respect of the promise: *Currie v Misa* (1875) LR 10 Ex 153 (162); *Macken's Law of Employment* (6th ed, 2009) [4.65]. In this matter the appellant provided no consideration. He did not promise to do anything in return. Consequently, his claim must at law fail.
- 97 In any event even if the appellant and the respondent entered into an agreement that was legally binding, the Commissioner correctly found that the appellant had not been denied a benefit by the respondent as no prospective employer had contacted Mr Brodie-Hall for a reference.
- 98 For these reasons we have concluded that there is no merit in the grounds of appeal and we would dismiss the appeal.
-

2010 WAIRC 00282

**IN THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
FULL BENCH**

BETWEEN: NICHOLAS READ
Appellant
AND
ROBERT BRODIE-HALL; LEATHER-LIFE
Respondent

CORAM: THE HONOURABLE J H SMITH, ACTING PRESIDENT
COMMISSIONER S J KENNER
COMMISSIONER J L HARRISON

DATE: 12 MAY 2010 (CORRIGENDUM – TUESDAY, 18 MAY 2010)

FILE NO: FBA 8 OF 2009

CITATION NO: 2010 WAIRC 00282

PLACE: **PERTH**

CORRIGENDUM

1. In the third sentence of [3] of the Reasons for Decision of 12 May 2010 delete the words "Robert Brodie-Hall" and insert the words "Nicholas Read" in lieu thereof.

[L.S.]

By the Full Bench
(Sgd.) J H SMITH,
Acting President.

Dated: Tuesday, 18 May 2010

2010 WAIRC 00263

PARTIES WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
NICHOLAS READ
APPELLANT

-and-

ROBERT BRODIE-HALL; LEATHER-LIFE
RESPONDENT

CORAM FULL BENCH
THE HONOURABLE J H SMITH, ACTING PRESIDENT
COMMISSIONER S J KENNER
COMMISSIONER J L HARRISON

DATE WEDNESDAY, 12 MAY 2010

FILE NO/S FBA 8 OF 2009

CITATION NO. 2010 WAIRC 00263

Result Appeal dismissed

Appearances

Appellant In person

Respondent Mr D Jones and with him Mr M Haylett (as agents)

Order

This appeal having come on for hearing before the Full Bench on Wednesday, 24 February 2010, and having heard the appellant in person and Messrs Jones and Haylett, as agents on behalf of the respondent, and reasons for decision having been delivered on Wednesday, 12 May 2010, the Full Bench, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders —

THAT the appeal be and is hereby dismissed.

[L.S.]

By the Full Bench
(Sgd.) J H SMITH,
Acting President.

FULL BENCH—Proceedings for Enforcement of Act—

2010 WAIRC 00327

PARTIES	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION THE REGISTRAR OF THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION	APPLICANT
	-and-	
	LIQUOR, HOSPITALITY AND MISCELLANEOUS UNION, WESTERN AUSTRALIAN BRANCH	RESPONDENT
CORAM	FULL BENCH THE HONOURABLE J H SMITH, ACTING PRESIDENT CHIEF COMMISSIONER A R BEECH COMMISSIONER S J KENNER	
DATE	FRIDAY, 4 JUNE 2010	
FILE NO	FBM 4 OF 2010	
CITATION NO.	2010 WAIRC 00327	

Result	Order made
Appearances	
Applicant	Mr J Spurling
Respondent	Ms N MacCarron (of counsel) and with her Mr D Kelly

Order

Having come on for hearing before the Full Bench on 4 June 2010, and having heard Mr J Spurling, on behalf of the applicant, and Ms N MacCarron (of counsel), and with her Mr D Kelly, on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders—

THAT this application be adjourned sine die.

[L.S.]

By the Full Bench
(Sgd.) J H SMITH,
Acting President.

FULL BENCH—Procedural Directions and Orders—

2010 WAIRC 00319

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

JOHAN MARITZ WILLERS;
 AUBREY BIRKELBACH;
 PETER BRASH;
 D'ARCY KEVIN SPIVEY;
 JUDITH WICKHAM;
 FRANIA SHARP;
 WENDY MARGARET POWLES;
 SHANE MELVILLE;
 SUSAN WARING;
 DAVE MARTYN WHITFORD-HARVEY

APPELLANTS**-and-**

WORKCOVER, WESTERN AUSTRALIAN AUTHORITY;
 WORKCOVER WA;
 WORKCOVER WA;
 WORKCOVER WA;
 WORKCOVER WA;
 WORKCOVER W.A.;
 WORKCOVER WA;
 WORKCOVER WESTERN AUSTRALIAN AUTHORITY;
 WORKCOVER WESTERN AUSTRALIA AUTHORITY;
 WORKCOVER WA

RESPONDENTS**CORAM**

FULL BENCH
 THE HONOURABLE J H SMITH, ACTING PRESIDENT
 COMMISSIONER S J KENNER
 COMMISSIONER J L HARRISON

DATE

WEDNESDAY, 2 JUNE 2010

FILE NO/S

FBA 3 OF 2010, FBA 4 OF 2010, FBA 5 OF 2010, FBA 6 OF 2010, FBA 7 OF 2010, FBA 8 OF 2010, FBA 9 OF 2010, FBA 10 OF 2010, FBA 11 OF 2010, FBA 12 OF 2010

CITATION NO.

2010 WAIRC 00319

Result

Order issued to join appeals, one set of appeal books and submissions and an extension of time to 3/6/2010 to file appeal books

Appearances**Appellants**

Mr S Melville (as agent)

Respondent

Mr B Underwood

Order

These appeals having come before the Full Bench, and having heard Mr S Melville, as agent on behalf of the appellants, and Mr B Underwood on behalf of the respondents, the Full Bench, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders that —

1. Appeals FBA 3 of 2010 to FBA 12 of 2010 be joined into a single proceeding to be known as joined appeals FBA 3 - 12 of 2010, *Johan Maritz Willers and Others* (appellants) v *WorkCover Western Australia Authority* (respondent).
2. There be a single set of appeal books and submissions; and
3. An extension of time be granted to 3 June 2010 for the lodging of appeal books to enable the hearing and determination of these appeals.

By the Full Bench
 (Sgd.) J H SMITH,
 Acting President.

[L.S.]

PRESIDENT—Unions—Matters dealt with under Section 66—

2010 WAIRC 00320

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION**PRESIDENT**

CITATION : 2010 WAIRC 00320
CORAM : THE HONOURABLE J H SMITH, ACTING PRESIDENT
HEARD : THURSDAY, 29 APRIL 2010
DELIVERED : WEDNESDAY, 2 JUNE 2010
FILE NO. : PRES 2 OF 2010
BETWEEN : MR REVELI KEITH AFFLECK

Applicant
AND
THE AUTOMOTIVE, FOOD, METALS, ENGINEERING, PRINTING & KINDRED
INDUSTRIES UNION OF WORKERS - WESTERN AUSTRALIAN BRANCH
Respondent

CatchWords : Industrial law (WA) - application pursuant to s 66 of the *Industrial Relations Act 1979* (WA) - construction of the rules of an organisation - interpretation of eligibility rule of the Union - whether the applicant is eligible to join the organisation pursuant to r 2(4) of the rules of The Automotive, Food, Metals, Engineering, Printing & Kindred Industries Union of Workers - Western Australian Branch - - meaning of printing industry and principles of major and substantial employment considered – *Associations Incorporation Act 1987* (WA) s 39C; *Australian Constitution* s 51, s 109; *Constitution Act 1889* (WA) s 2; *Fair Work (Registered Organisations) Act 2009* (Cth) s 166; *Industrial Relations Act 1979* (WA) s 6(e), s 55, s 58(1), s 62, s 66, s 96B; *Industrial Relations Commission Regulations 2005* (WA) reg 78; *Judiciary Act 1903* (Cth) s 78B; *Workplace Relations Act 1996* (Cth) s 4.

Result : Application dismissed

Representation:

Applicant : In person
Respondent : Mr V J Pelligra (of counsel)

*Reasons for Decision***Background**

- 1 This is an application by Mr Reveli Keith Affleck (the applicant) made pursuant to s 66 of the *Industrial Relations Act 1979* (WA) (the Act). The applicant seeks a declaration of the true interpretation of r 2(4) of the rules of The Automotive, Food, Metals, Engineering, Printing & Kindred Industries Union of Workers – Western Australian Branch (the Union). The applicant argues that when the true interpretation of r 2(4) of the rules of the Union is applied to his circumstances it follows that he is eligible to join and maintain membership of the Union.
- 2 The applicant joined the Union on 27 January 2010 and obtained membership number 6151926. The Union subsequently cancelled or suspended the applicant's membership. The applicant says that in doing so it acted in an improper and illegal manner. The applicant claims that he is a printer and in that capacity and as Secretary of the Australian Multicultural Union Incorporated (the Association) he has a right to maintain his membership of the Union. The Association is incorporated under the *Associations Incorporation Act 1987* (WA). The applicant seeks orders that his membership of the Union be reinstated and that the Union apologise for any inconvenience caused by the suspension.
- 3 Rule 2(4) of the rules of the Union provides:

The Union shall also consist of all persons (excepting journalists) who are employees or whose usual occupation is that of an employee in or in connection with the Printing Industry as hereinafter described, together with such other persons, whether employees in the industry or not, as have been (at the date of registration of this Union) appointed officers of the Printing & Kindred Industries Union, Western Australian Branch, Industrial Union of Workers and admitted as members thereof. The industry in connection with which the Union is registered is and includes any business, trade, manufacture, undertaking, calling, service, employment, handicraft or industrial occupation or avocation on land or water in the industry of printing and/or any kindred industries and/or in any group or branch of such industry or industries, including (without limiting the generality or ordinary meaning of the foregoing description) composing, reading, electrotyping, stereotyping, letterpress machining, lithographic machining, lithographing, machining, printing of all classes, slug-casting or type-casting machine attending and adjusting and/or repairing, type-founding, engraving, process engraving and/or photo engraving, commercial and/or lithographic designing, writing and/or drawing, publishing, despatching,

bookbinding, binding, paper ruling, paper cutting, paper making, paper working, calico and/or paper bag making, envelope making, stationery making, paper products working, embossing, cardboard box making, carton making (including the making of any kind of boxes and/or containers of paper and/or cardboard used alone or in combination with any other material or materials), plastics manufacturing or any of the processes of or incidental to the manufacturing of plastics, or of goods manufactured therefrom, or substitutes therefor.

- 4 On 6 February 2010, the applicant sent various officers of the Union and others an email in which he made vague allegations of alleged corruption against the Union. On 15 February 2010, the Union's State Secretary, Mr Steven McCartney, sent a letter to the applicant in which he stated among other matters:
- (a) it was not clear to him that the Australian Multicultural Union was part of the printing industry;
 - (b) that the applicant should provide further evidence to demonstrate he was eligible to be a member of the Union;
 - (c) he would not process the application membership until he received evidence showing that the applicant was eligible to be a member; and
 - (d) if he did not hear from the applicant within 14 days, he would recommend to the State Council that the application for membership be rejected.
- 5 The Union says it took this action pursuant to r 16(2) of the rules of the Union which requires the State Secretary to ascertain that an applicant [for membership] 'is engaged in an occupation covered by the union and is also suitable and qualified to be a member'.
- 6 The Union points out that the issue to be determined in this matter is whether the applicant is engaged in an occupation covered by the eligibility rule, r 2(4) of the rules of the Union, and is suitable and qualified to be a member.

The Evidence

- 7 The applicant gave sworn evidence in support of his claim. Although he gave his evidence orally, he referred to and read from four documents which are headed 'Submissions' and contained in Parts 1, 2, 3 and 4 which were tendered as exhibits 1, 2, 3 and 4. Part of exhibits 1, 2, 3 and 4 contain submissions which I will deal with later in these reasons.
- 8 In the applicant's résumé he lists under the heading 'Skills Profile' (exhibit 7):
- Demonstrated ability to work independently and unsupervised.
 - Excellent interpersonal skills.
 - Ability to negotiate and liaise with others.
 - Cultural development.
 - Infrastructural Development, Operations and Management.
 - Financial planning.
 - Computer skills.
 - Telecommunication skills.
 - Report writing and correspondence skills.
 - Demonstrated administrative skills. Including composing, printing.
 - Social and Economic Research.
 - Excellent planning and organisational skills.
 - Excellent communication skills.
 - Public Speaking.
 - Labour relations (Dispute resolution).
 - Analysis and Development.
- 9 Under the heading 'Work Experience' in his résumé the applicant lists his work experience as follows:
- | | |
|------|--|
| 2006 | MOZART'S PATISSERIE INGLEWOOD |
| | Position: <i>Delivery Driver</i> |
| | Duties: • Deliver patisseries to retail and whlesale (sic) outlets. Hours 4.30am to 10.00am
Mon, Tues, Wed. Receive monies from retail customers. |
| 2006 | PERTH SUBI CITY MILK SUPPLY |
| | Position: <i>Delivery Driver</i> |
| | Duties: • Duties • Deliver Milk to City Outlets • Liaise with Customers • Receive Payment from Customers. |

- 2004 **EDUCATION DEPARTMENT**
 Position: *Cleaner*
 Duties: • Vacuum classrooms and computer rooms • Clean toilets and empty rubbish bins
- 2001 **DEPARTMENT OF LAND ADMINISTRATION**
 Position: *Clerk – Human Resources Special Projects Occupational Health and Safety*
 Duties: • Advocacy • Research and report writing
- 1997 - 2001 **ROYAL PERTH HOSPITAL, INNER CITY MENTAL HEALTH CLINIC**
 Position: *Consumer Representative*
 Duties: • Represent consumers of Health Services in general and in particular Mental Health Services while taking into account the needs and aspirations of health personnel. • Advocacy
- 1985 - Present **AUSTRALIAN MULTICULTURAL UNION INC.**
 Position: *Secretary*
 Duties: • Organising. • Correspondence on behalf of members and associates • Advocacy for members • Legal research (human rights) • Printing
- 1984 - 1985 **DARLOT GROUP**
 Position: *Native Title Worker*
 Duties: • Interviewing Aboriginal population re: cultural beliefs and connections with the land • Liaise with Seaman Inquiry • Comprehensive submission to Inquiry addressing all terms of reference. • Composing and Printing submission.
- 1981 - 1984 **STATE ENERGY COMMISSION**
 Position: *Engine Driver*
 Duties: • Attend to boiler and turbines • Responsible for condition of all plant, adequate supply of water
- 1980 **ENSIGN LAUNDRY SERVICES**
 Position: *Boiler Attendant / Mechanic*
 Duties: • Start up and operation of package boilers • Maintenance of vehicles for laundry • Training for Second Class Engine Drivers Certificate
- 1979 **JM & CR AFFLECK MECHANICS**
 Position: *Mechanic*
 Duties: • Customer service • Diagnosis of mechanical faults • Quotes • Ordering parts • Carrying out repairs to a high standard
- 1979 **PUBLIC WORKS DEPARTMENT (GERALDTON)**
 Position: *Waterside Worker*
 Duties: • Docking Ships and Stand by Labour
- 1978 **WUNDOWIE IRON AND STEEL**
 Position: *Laboratory Assistant*
 Duties: • Analysis of slag from furnace by atomic absorption • Analysis of core pig iron samples • Training trainees in laboratory work
- 1976 **TELECOM AUSTRALIA**
 Position: *Linesman*
 Duties: • Installation of telephone conduits • Driving / upkeep of work vehicle for all workers • Regular maintenance of work vehicle/tools

- 1975 **PUBLIC WORKS DEPARTMENT BROOME**
 Position: *Waterside Worker*
 Duties: • Loading Frozen meats
- 1974 - 75 **PIONEER BOOKSHOP 75 BULWER ST, PERTH**
 Position: *Bookshop Worker Including Offset Printing, Composing, Despatching*
 Duties: • Printing Literature and Booklets
- 1973 - 1975 **VARIOUS BUILDING COMPANIES**
 Position: *Builders Labourer*
 Duties: • General labouring duties on work sites • Concrete piers and form work
 • Digging in footings for housing construction
- 1973 **MT NEWMAN MINING**
 Position: *Trades Assistant*
 Duties: • Assist tradesman with repairs and routine maintenance of ship loading equipment and conveyor belts • Represent employees in negotiations with management as shop steward with the AWU • Providing transport to day workers at the port site
- 1972 **ACTU (FEDERATED ENGINE DRIVERS UNION OFFICE) TRADES HALL PERTH**
 Position: *ACTU Youth Week Organizer*
 Duties: • Organizing • Writing • Printing
- 1971 - 1973 **DEPARTMENT OF ABORIGINAL AFFAIRS PLANNING AUTHORITY**
 Position: *Clerk – Economic Development*
 Duties: • Correspondence with remote communities on matters related to employment projects, apprenticeships etc. • Statistical analysis of social security statistics for remote communities • Overseeing the wellbeing of Aboriginal Art Centre

- 10 On 29 January 1998, the applicant obtained a certificate from Northsyde Skillshare, a nationally recognised training organisation, that stated he had completed the following computer training programs (exhibit 1, document 1):
- (a) C6 Computer Awareness;
 - (b) C7 Computer Applications (Word Processing 1);
 - (c) C8 Computer Applications (Word Processing 2); and
 - (d) C9 Computer Applications (Spreadsheets).
- 11 The applicant says these qualifications together with his 39 years' experience in various occupations equip him with an ability to utilise a printer which is used by the Association in its 'printing business'. The printer he uses to carry out printing work is a Pixma iP1900 (the printer). In the Association's Statement of Assets and Liabilities as at 27 April 2010, the printer is listed as an asset and valued at \$80 (exhibit 1, document 6). The applicant purchased the printer in 2009 and donated it to the Association.
- 12 The applicant is currently in receipt of a disability pension. He gave evidence that he works as a printer for the Association for one hour a week and is paid \$20.05 an hour. The applicant stated that he started work as a casual printer on 27 January 2010. This was the same day he made an application to join the Union. However, when cross-examined he said he started work two days prior to making the application. It appears from the Yearly Time & Pay Book produced by him that he has been paid for one hour of work on each Monday of each week between the hours of 8:00 am and 9:00 am from 25 January 2010 which is two days prior to making the application to join the Union (exhibit 1, document 2). The applicant declares his income to Centrelink. This evidence is supported by a document he received from Centrelink dated 14 April 2010 which lists regular fortnightly earnings of \$40.10 (exhibit 1, document 3).
- 13 The applicant came to be employed by the Association when the Council of the Association agreed that he should be employed as a printer. The Council at the time the decision was made was composed of three people and he was one of those three. When the applicant gave evidence he was reluctant to provide the names of the other members of Council. He said he was prohibited from doing so pursuant to s 39C of the *Associations Incorporation Act*. He also said that members of the Association have asked him to keep their names confidential.
- 14 The applicant ascertained the proper rate of pay for a casual printer by obtaining information from the Department of Commerce's Wageline 'the other day' (ts 45). The Wageline service provided him with a copy of the summary of the Printing Award (the Award). The applicant explained that after he had regard to the classifications in the Award he determined he should be paid as a level 4 employee which has a casual rate of \$19.45 an hour. Level 4 provides the following duties for a level 4 employee (exhibit 1, document 4):

- Keyboard operator
 - Proof Reader (sic)
 - Artist/Designer
 - Small Offset Machinist
 - Non Impact Printing Machinist (inc. Electronic & Laser Printing Machine Operator)
- 15 The applicant contends that the work he does includes work:
- (a) operating a keyboard associated with the computer and the printer. The computer he uses is an Arrow computer which is listed in the Association's Statement of Assets and Liabilities and is valued at \$250 (exhibit 1, document 6). He also says the computer can be described as an electrotyping machine within the meaning of r 2(4) of the rules of the Union;
 - (b) as a proofreader for which he says there is no course to gain qualifications but he has gained knowledge and skills in proofreading through his education and training in the form of a degree in economics at Murdoch University and in a graduate diploma of Educational Studies;
 - (c) as an artist designer in relation to which he has 39 years' experience in printing and leaflet design. He says his experience in this work is principally associated with his involvement in the labour movement and unpaid work as a volunteer when he operated a small offset printer at the Pioneer Bookshop in 1974-1975 and in 1972 when he operated a gestetner for the Federated Engine Drivers' Union;
 - (d) as a non-impact printing machinist for which he holds relevant computer competencies.
- 16 The registered address of the Association is the personal home of the applicant. In the preamble of the Constitution the aims of the Association are stated as follows:
- Recognising that at the present juncture there is a dire need for a progressive political force in Australian Politics it is resolved to form The Australian Multicultural Union. Rejecting authoritarianism and antagonistic resolution of disputation the Australian Multicultural Union resolves to work toward the development of a socially cohesive network of people who will through political, social, cultural and economic means endeavour to bring about a positive progressive and harmonious consciousness in society and to contribute in whatever manner possible to the development of harmonious relations in the community. We furthermore undertake to oppose oppression or exploitation of the people in whatever form this may take, to expose those responsible for oppression or exploitation and to work toward the enlightenment of the people as to the true nature of the social and material relations of society and their development.
- 17 Pursuant to the Objects clause, it is an object of the Association to 'conduct such business on the internet or in the community as may be expeditious in raising funds for the purpose of pursuing the objects of the union'. The applicant says pursuant to this object, the Association commenced a printing business. Also provided in the objects is a statement that:
- The income of the Union shall be applied solely toward the promotion of the organization. No portion of the income or property shall be paid, transferred or distributed indirectly to the members of the Union. Provided that nothing shall prevent payment in good faith of remuneration to any officer or employee of the Union or to any other person other than a member, in return for services rendered.
- 18 Pursuant to clause 4 of the Constitution, membership is open to all people, however, special attention is to be given to enrolling unemployed people, students, pensioners, self-employed persons, farmers and employees in particular low income earners. Affiliate membership is \$1 per annum per member or a price decided by the Management Committee and individual membership is \$10 per annum per member or a price decided by the Management Committee. Associate membership is free. The Association has approximately 100 members.
- 19 The applicant has been the Secretary of the Association since 1985. Originally they were called the Unemployed Workers' Movement. The organisation split from a Fremantle group and became the Australian People's Movement and later became the Australian Multicultural Union Incorporated. All of these bodies have been organisations of low income earners. They also cover pensioners and unemployed people but their primary attention is directed to Centrelink recipients.
- 20 As the Secretary of the Association the applicant deals with correspondence, maintains the web page of the Association, communicates with members of the Association and members of Parliament. His main activity is to maintain contact with membership and he does that through a chat site on the web. When giving evidence the applicant was unable to estimate how many hours a week that he works as the Secretary. He said that they are a national body and that he chats to people on person.com and the time he spends talking to people varies although he is available to his members 24 hours a day, 7 days a week.
- 21 On the internet site of the Association there is a page that directs the viewers of the site to another page containing the following information about the printing service (exhibit 8):

PRINTING:

UNDER OBJECT 9 of Constitution and Rules of the Australian Multicultural Union Inc: To conduct such business on the Internet or in the Community as may be expeditious in raising funds for the purposes of pursuing the the (sic) objects of the Union. Accordingly we have Registered a Printing Business

DOCEP Registered No. A0821481V ABN : Australian Business Number 34 460 520 396

THE AUSTRALIAN MULTICULTURAL UNION OFFERS FIRST CLASS PRINTING OF BUSINESS CARDS. HOW TO VOTE CARDS. LETTERHEADS. AND LEAFLETS. A4 ALL COLOURS

PHONE (08) 93718763.

- 22 The telephone number referred to on the webpage is the home telephone number of the applicant. When cross-examined about the creation of this page on the website, the applicant denied that he had created the webpage advertising printing services to bolster this application.
- 23 The Statement of Assets and Liabilities of the Association as at 27 April 2010 provides as follows (exhibit 1, document 6):

Assets. (sic)	Item	Value
	Cash on Hand	\$25.00
	Receivables	\$00.00
	Computer Arrow Computer: //	\$250.00
	Pixma Printer iP 1900	\$80.00
	Web page www.australianmulticulturalunion.org	\$140.00
	Paper	\$8.00
	Ink	\$25.00
	Coreflute Board	\$62.00
	Copies of Constitution AMU Incorporated.	\$10.00
	Total	\$600.00
Liabilities		0

- 24 The applicant says in Part 2 of his written submissions that he uses the printer to print 'in-house materials'. He also testified that he prints cards, leaflets, information, correspondence, letterheads and election material when one of their members stands for elections as he did in October 2009 when he stood as a Councillor in the Bayswater City Council Elections. He said that when he stood for election he did the printing work and paid the Association \$100 for materials. He did not, however, issue a receipt. At that time he was not employed by the Association but was receiving a 'welfare payment' from the Association.
- 25 When asked in cross-examination what printing work he carries out for the Association, the applicant said he prints the correspondence. He also said that he prints 'stuff' for the business. When asked further by the Commission what he prints he produced a 'poster' and a business card for himself (exhibit 5 and exhibit 6). The 'poster' is a simple image of a dove with a branch in its mouth which can be described as a peace symbol. The image is in colour and heavily pixilated. The applicant explained that he prints the posters on sheets of A4 white paper. This paper appears to be paper used commonly in most businesses and by users of home computers to print letters and other documents and can be described as standard A4 paper. The image is printed in colour. He makes each poster by gluing an image to a piece of plastic with 'Clag' glue. The plastic is composed of material known as 'coreflute' which he purchases in large sheets and cuts to size with a knife. He says each poster sells for \$1. The applicant's business card is also very simple in construction and unsophisticated. It appears the applicant uses his computer to create the format and simply prints the information onto standard A4 paper and roughly cuts each sheet to the size of a business card.
- 26 When asked whether he had designed the dove depicted in the 'poster' the applicant said he sourced the graphic from free material on the internet. He did not design it. When it was put to him it was not a commercial image, he said it was, that people were very impressed by it and to him it was very similar to a work of Picasso (ts 75).
- 27 Members of the Association can print copies of the Association's Constitution from the website and this is made known to them. However, he often prints the document for them or he arranges for a local member of Parliament to print copies because many members are unemployed or pensioners and are not able to print copies because of financial reasons or because they do not have a printer. The applicant also contends that he is responsible for carrying out electrotyping necessary for proofreading and publication. In making this statement it is my understanding that the applicant is referring to work carried out on the computer. He says that electrotyping is a skill that qualifies him for membership of the Union.
- 28 In support of the argument that he is employed as a printer within the meaning of r 2(4) of the Union's rules, the applicant produced in his evidence a letter signed by the President of the Association, Mr Jason Clancy, who states in a letter addressed 'To whom it may concern' (exhibit 2, document 10):

This is to verify Mr. Reveli Affleck is a part time paid employee of the Australian Multicultural Union Inc.

- And that his work for the Union includes that of a composer, reader, publishing, despatching, paper ruling, paper cutting, stationary making, paper products working, and of a printer.
- 29 Mr Clancy is located in Darwin in the Northern Territory. When questioned about exhibit 2, document 10, the applicant said Mr Clancy is an indigenous person who is unemployed, unable to travel and does not have access to a printer so the applicant drafted the letter for Mr Clancy to sign. The applicant concedes that Mr Clancy has not observed him carrying out printing work in 2010.
- 30 When asked who supervises the printing business, the applicant said that he does and he manages the work. When asked whether he takes orders, he said they had not received any orders but they have had sales. He also said that they had not received any orders from customers but they have sold some things for cash and some of his pay comes from that cash. He also said they have a business plan to produce advertising materials for delicatessens. It appears, however, from the applicant's evidence that that plan is yet to be implemented. When asked from what source of funds is he paid, he said he withdraws the money from the bank or he is paid in cash from dues, donations or subscriptions. He also said that sometimes he pays money into the bank and he pays the bills and his wages from those funds. When he was asked how could he pay his wages next week when the funds of the Association are so low, the applicant said that he would be paid by 'people who will contribute to the payment of his wages'.
- 31 The applicant stated that the 'in-house printing' they do is to facilitate the efficient operation of the Association and it is an essential component of the Association's work. He also said that it enables the Association to carry out essential administrative work and to maintain democratic operation in their growth and development, yet the applicant also said that he does not do any printing work in his capacity of Secretary of the Association. As the Association grows and develops the applicant hopes that in the future the Association may become a registered organisation under the Act or under the *Fair Work (Registered Organisations) Act 2009* (Cth). He also says that the 'in-house work' has enabled the Association to sign up more members and therefore to increase their influence in Australian society. The applicant made a claim that in the past two years the Association has achieved pay rises of \$23,400 million to Centrelink recipients at approximately \$100 per fortnight for pensioners, including disability support pensioners, and \$25 per fortnight for Newstart and Widows' Allowance recipients. The applicant also expressed the opinion that the Association is providing a service to the Australian society by increasing the amount of benefits Centrelink recipients receive and therefore relieving the social and economic stress that the poorer sections of Australian society are suffering.
- 32 When the applicant made an application to join the Union he filled out a membership application form and was issued with a financial membership card which bears the logo of the AMWU (exhibit 3, document 12). The applicant also completed a direct debit request to have union dues deducted from his bank account. When the applicant completed the application form he spoke to a woman called Bianca at the office of the Union. The applicant says that he tried to register his occupation as 'printer' on the database but was told by Bianca there was no printer classification. She then successfully registered him as a print worker. Whilst she was processing his application he noted that the office staff of the Union operate printing equipment, in particular they operate a machine that prints the plastic and paper Union cards and an electronic photocopier. When he spoke to Bianca about this she told him that the office staff are not permitted to join the Union.
- 33 On 6 February 2010, the applicant sent a very lengthy email to the Union's State Secretary, Mr McCartney. In the email the applicant referred to the fact that he was a member of the Union and referred to his membership number. He stated that he was concerned that the rules of the Union are abided by and the laws of the Commonwealth and the State Government are abided by. He informed Mr McCartney that on 4 February 2010 he had obtained a copy of the Union's latest annual return that the Union submitted to this Commission. The applicant claimed the return had not been submitted within the time presented by reg 78 of the *Industrial Relations Commission Regulations 2005* (WA) and that the return was not in order. He also raised other issues in relation to state conference delegates and organisers and asked a number of questions about elections of particular officers of the Union including the President, Honorary State Secretaries and some of the delegates to state conference. The applicant made a claim in the email that he had formed the view that 38.09% of state conference delegates had not been elected in accordance with the rules of the Union. In the email the applicant also made some very vague allegations of corruption against the Union and the Australian Labor Party (the ALP).
- 34 Following receipt of the email, Mr McCartney sent the following letter to the applicant on 15 February 2010 (exhibit B, document 8):
- I write in reference to your recent application to join the Union in which you have stated that you are engaged in an occupation which renders you eligible to be a member of the Printing Division of the AMWU.
- I advise that the Union is only able to enrol as members, applicants who are working for an employer - or in an occupation - which clearly falls within its constitutional coverage as defined in the Rules.
- It is my understanding that you have claimed that you are eligible for membership of the Union by virtue of activities undertaken by you in your capacity as Secretary of the Australian Multicultural Union Inc.
- It appears clear to me that the Australian Multicultural Union Inc is not a part of the printing industry in any way.
- It follows therefore that your claim to be eligible for AMWU membership rests upon your occupation and the work undertaken by you for the Australian Multicultural Union Inc. I note such occupation must be undertaken as part of paid employment and not in a voluntary capacity as an honorary office holder of a not-for-profit organisation.
- Consistent with the Union's Rules, I therefore request that you produce satisfactory evidence as to how you are eligible to be a member of the Union.

Should such evidence not be provided in writing to me within 14 days, I will recommend to the State Council that your application for membership be rejected.

I further advise that your application for membership will not be further processed until such evidence has been provided. Until such time as your application for membership has been determined, I can advise that the Union will not be deducting funds from your account. Further, I enclose a cheque for the amount already paid by you as part of your application to join.

- 35 The applicant says he arranged to meet with Mr McCartney to discuss the matters raised in the letter but prior to attending the meeting he received a phone call to inform him that the meeting had been cancelled. On 2 March 2010, the applicant wrote to the State Secretary of the Union. In the letter he stated (exhibit B, document 10):

Dear Sir, I am in receipt of correspondence from you dated 15 February, 2010. You have said in your correspondence.

'It appears to me that the Australian Multicultural Union Inc. Is (sic) not part of the printing industry in any way.'

This is not a true statement and I enclose for your information showing the legal status of The Australian Multicultural Union Inc. in respect of its printing business.

Enclosed are :

1. Photocopy of Department of Consumer and Employment Protection Certificate of Incorporation.
2. Photocopy of Australian Business Number Notification of Registration.
3. Photocopy of Abstract from Constitution of the Australian Multicultural Union Inc. detailing provisions by which The (sic) Australian Multicultural Union Inc. may engage in business Object 9.

'To conduct such business on the internet or in the community as may be expeditious in raising funds for the purpose of pursuing the objects of the union.'

4. Photocopy of Print out from Web site of The Australian Multicultural Union Inc www.australianmulticulturalunion.org showing Print Business advertising.
5. Photocopy of letter from the President of our union confirming the nature of my work

Also please find attached a Notice of Application Form 1 of the Western Australian Industrial Relations Commission.

Hoping this may clarify these issues.

- 36 On 1 April 2010, the applicant was requested by the solicitor acting for the Union to produce a number of documents including (exhibit B, document 13):

- 1 the Australian Multicultural Union's financial records;
- 2 invoices, quotations and receipts for the Australian Multicultural Union's printing business; and
- 3 documents which Australian Multicultural Union has printed.

- 37 The Union says that the order made by the Commission on 31 March 2010 required the applicant to discover the records pursuant to the order requiring the applicant to provide evidence of his employer's business activities. The applicant, however, did not provide discovery of any documents answering the description of the categories of documents referred to in the letter dated 1 April 2010 prior to the hearing. The only documents that the applicant provided that answer this description are the Association's Statement of Assets and Liabilities and an invoice from Austin Computers, Osborne Park for an amount of \$25 being an invoice for a Canon black ink cartridge (exhibit 1, document 6 and exhibit 10 respectively). The applicant claimed when giving evidence that he regarded the request for discovery to be oppressive and said in any event he had recently moved house and had misplaced all of the Association's financial records so he was unable to produce any other documents including bank statements. The applicant, however, conceded when cross-examined that he has access to internet banking and could, if he chose to do so, download and print copies of relevant bank statements from the internet. He also conceded that he had no evidence to show that the Association receives money for printing work. The only documents the applicant has produced which he says the Association has printed are what he describes to be the posters and his business card.

- 38 The applicant says that he was refused his right to renew his membership at the ALP in 1994 for reasons not yet given. He says this is relevant because the Union is an affiliate to the ALP and he is now being denied the right to join the trade union. The applicant gave evidence that for most of his working life he has always joined the appropriate union. The first union he joined was the Civil Service Association when he was an employee of the Department of Native Welfare. He has been a shop steward for the AWU, a union delegate to the State Executive of the ALP for the FEDFU and workplace delegate for the ALHMWU.

The Applicant's Submissions

- 39 The applicant says that because he sent the email to Mr McCartney and a copy to a number of other people he was suspended from the Union.
- 40 The applicant argues that whilst the context of the Association is to assist members of Centrelink, that pursuant to the Constitution and rules of the Association, the Association can establish a business. The applicant made a lengthy submission that his usual occupation is not that of a printer and concedes he has never been employed as a printer but says he learnt printing as a volunteer. He, however, contends that if you are working in an industry covered by a union you should be a member of that union and he has a right at law to join the appropriate union.

- 41 The applicant says that he does do work as an electronic printer. He also says that in his work he is involved in the manufacture of plastics because when he makes up posters, he glues A4 images of the peace dove onto pieces of plastic.
- 42 The applicant concedes he is not a tradesman but says he has qualifications in proofreading, publishing and operating a computer and he is suitable to be a member of the Union.
- 43 In Part 1 of the applicant's written submissions, the applicant makes a submission about the operation of s 166 of the *Fair Work (Registered Organisations) Act* and s 109 of the *Australian Constitution*. He contends the operation of s 109 of the *Australian Constitution* and the effect of s 166 of the *Fair Work (Registered Organisations) Act* is to override inconsistent rules of an organisation made under the Act. In Part 4 of the applicant's submissions the applicant makes a submission that *Freedom of Association and Protection of the Right to Organize Convention, 1948 (No 87)* supports his claim. In particular the applicant says that the Commonwealth of Australia as a signatory to that Convention means that the right to join a trade union is a constitutional right which should not be denied to anyone. Article 2 of the Convention states that: 'Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.' The applicant also points out the *International Covenant on Civil and Political Rights* also makes mention of the right to join a trade union and the objective of peace. In particular, Article 22 provides: 'Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.' The applicant says that this is a constitutional right by virtue of s 51 of the *Australian Constitution* and s 2 of the *Constitution Act 1889 (WA)* which empowers the Parliaments of the Commonwealth and the State of Western Australia to make powers for peace, order and good government.
- 44 The applicant was informed during the hearing that if he wished to pursue an argument about the effect of any provisions of the *Australian Constitution* he would have to serve the Attorneys-General of each State and the Attorney-General of the Commonwealth with a notice pursuant to s 78B of the *Judiciary Act 1903 (Cth)*. The applicant was also informed that the terms of the provisions of the *Fair Work (Registered Organisations) Act* did not apply to organisations registered under the law of the State. After that advice was given the applicant did not seek to press these arguments.
- 45 In determining the meaning of the usual occupation of an employee in or in connection with the printing industry within the meaning of r 2(4) of the Union's rules, the applicant says the printing industry also includes a kindred industry as that word is included in the name of the Union and is used in r 2(4) to define the industry covered by r 2(4). The applicant contends that in construing the meaning of 'kindred' the Commission should have regard to the definition of 'kindred' in *The Australian Oxford Paperback Dictionary* (2nd ed, 1996) which defines 'kindred' as:
1. a person's relatives. 2. Blood relationship. 3. Resemblance (sic) in character. 1. related. 2. of similar chemistry and kindred subjects. Kindred spirit a person who's tastes are similar to one's own.

The Union's Submissions

- 46 The Union led no evidence in this matter. It argues that there are three elements that need to be satisfied by the applicant before an order could be made in the terms sought by him. The first is whether the applicant is an employee. The second is whether the evidence establishes that his usual occupation is a printer. The third element is whether it has been established that the applicant carries out work in an industry that is a genuine printing industry as described in r 2(4) of the rules of the Union. It is contended by the Union that the applicant has not proved any of these elements and that he has attempted to construct evidence to enable him to join the Union by any possible means.
- 47 The Union is a body corporate and registered as an industrial organisation pursuant to the Act and its rules are registered pursuant to s 58(1) of the Act. Pursuant to r 16(2) of the Union's rules, the State Secretary is required to ascertain 'that the applicant is engaged in an occupation covered by the union and is also suitable and qualified to be a member'. Accordingly, the Union says the onus is on the applicant to establish he is eligible to become a member of the Union. The Union also contends that the rules do not require the Union to engage in an independent investigation to determine the applicant's eligibility for enrolment as a member.
- 48 The Union says that the applicant was afforded an opportunity by Mr McCartney to satisfy the Union that he was eligible, suitable and qualified for membership. The Union contends that the applicant did not take up that opportunity and lodged this application before providing further documents to the Union
- 49 Rule 2(4) of the Union's rules provides: 'The Union shall also consist of all persons (excepting journalists) who are employees or whose usual occupation is that of an employee in or in connection with the Printing Industry as hereinafter described'. In construing the term 'usual occupation' it is argued that the Commission should have regard to a decision of Senior Deputy President Williams in the matter of *ACT Visiting Medical Officers Association* (2004) PR 946319 who said in relation to the term 'usual occupation' in s 4 of the *Workplace Relations Act 1996 (Cth)* that:

Section 4 of the Act defines an 'employee' as including 'any person whose usual occupation is that of employee, but does not include a person who is undertaking a vocational placement'. The reference in that definition to 'usual occupation' may suggest that, where a person is engaged in different activities or activities of a different character, it is necessary to examine that person's normal or predominant occupation in order to determine whether or not the person is an 'employee'. The definition is, however, an inclusive one. I do not accept, therefore, that the 'usual occupation' of the person in question is to be regarded as the necessary attribute of a person who is to be treated as an employee within the meaning of, or for the purposes of, the Act. Resort must, therefore, be had to the common law [16].

- 50 The Union contends that the applicant has not disclosed sufficient evidence that he is 'an employee or whose usual occupation is that of an employee in or in connection with the Printing Industry' and the boundaries of his employment relationship are vague. The evidence discloses that the applicant's predominant occupation is Secretary of the Association and he was employed on a casual basis for one hour per week. However, the website and business card refers to him as the Secretary. He is not described or referred to on the website in connection with printing activities. The only examples of printing work that have been produced by the applicant are very unsophisticated. He has provided no catalogues or books of samples of printing work and he has no training or qualifications in printing work. The only positive evidence of printing work is the advertisement on the website. However, it is an unusual and artificial advertisement in that it refers to the Constitution and rules of the Association.
- 51 The Union also says that it is not clear if one hour's work per week on a casual basis is sufficient to qualify as the applicant's normal or predominant occupation or includes time where the applicant also acts as Secretary of the Association. The Union also points out that the applicant has not disclosed invoices, bank statements or quotes generated in the course of running a printing business, nor has he provided any payslips establishing he is remunerated for printing work or copies of accounts showing income generated by printing work. In particular there is no objective evidence that he is being paid money for his work.
- 52 As to the letter written by Mr Clancy (exhibit 2, document 10), the Union points out that that letter does not specify what actual printing work is done by the applicant or whether the work is done in his capacity as Secretary or in some other capacity. Further, the evidence established that the letter was drafted by the applicant which makes that evidence unreliable as Mr Clancy has not seen the applicant perform any printing work since he was allegedly engaged as a printer. It also casts doubt on the credibility of the applicant as he has purported to create a document in the name of another person about matters they have not seen.
- 53 The only other evidence before the Commission that the applicant is engaged in the printing industry is the applicant uses the printer and home computer to generate his business cards and the 'posters'. The Union says without anything more the applicant is unable to substantiate he is engaged in a business or a commercial activity that can be characterised as part of the printing industry as there is no objective evidence of industrial or commercial activity.
- 54 The Union also says in its written contentions and facts that insofar as r 16(2) of the rules of the Union confers on the State Secretary a discretion to ensure a prospective member is 'also suitable and qualified to be a member', the State Secretary could have regard to the fact that the applicant has on the website of the Association alleged corruption in the Union and, in his email of 6 February 2010, accused the Union of corruption. The Union says these accusations of corruption are baseless, scandalous and embarrassing and are a factor the State Secretary is entitled to consider in determining if the applicant is 'suitable and qualified' to be a member pursuant to r 16(2) of the rules of the Union.

Legal Principles

- 55 Whether the applicant is an employee of the Association turns solely on whether he has established as a matter of fact that he is genuinely engaged as an employee by the Association. If a finding can be made that at the time he sought to join the Union he was employed by the Association and continues to be so employed, the issue that falls to be determined is whether as an employee of the Association, the applicant's 'work' was covered by the eligibility rule of the Union. This issue turns upon whether or not the applicant is an employee or whose 'usual occupation is that of an employee in or in connection with the printing industry' within the meaning of r 2(4) of the rules of the Union. This phrase was considered by a Full Bench of the Australian Industrial Relations Commission in *Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union v Art of Advertising Pty Ltd* (1996) 40 AILR 3-321. In that matter, three employers including Art of Advertising Pty Ltd (AOA) carried out the business of advertising services, including designing and preparing for printing graphics and text for publicity and advertising purposes. AOA performed work for Federal Capital Press of Australia Ltd (FCP) which published 'The Canberra Times'. The issue was whether employees of AOA were covered by the eligibility rules of the Media, Entertainment and Arts Alliance (MEAA) or the Printing and Kindred Industries Union (PKIU). The rules of the MEAA precluded enrolment of persons who were employees in or in connection with the printing industry. The key part of the PKIU's eligibility rule was that it was entitled to enrol 'persons ... who are employed or whose usual occupation is that of an employee in or in connection with ... the printing industry'. After considering the facts, the Full Bench found that the employees of AOA were employed in connection with the printing industry as they were directly engaged in printing work for FCP. They reached this conclusion in the following analysis:

The first step is our view that employees of AOA are employed in connection with the industry of FCP. In reaching this view, we have had regard to various decisions which indicate that the words 'in connection with' have a wide connotation and, where used in a union eligibility rule, considerably widen the scope of the rule; see for example, *R v Moore*; *Ex parte Federated Miscellaneous Workers' Union of Australia* (1978) 140 CLR 470, *R v Coldham*; *Ex parte The Australian Workers' Union* (1983) 153 CLR 415 and *R v Isaac*; *Ex parte Transport Workers' Union of Australia* (1985) 159 CLR 323. See also (in a context unrelated to union eligibility rules) the decision of Wilcox J in *Our Town FM Pty Ltd and Australian Broadcasting Tribunal* (1987) 16 FCR 465 at 479 - 480.

The question whether employees of AOA are employed in connection with the industry of FCP 'is one of fact and depends on all the circumstances of the case' (per Gibbs CJ in *Isaac* at p.333). The work performed by employees of AOA has been described earlier in this decision. Almost all this work is, in our view, so closely related to the industry carried on by FCP that the employees of AOA can properly be described as employed in connection with the industry of FCP.

The second step in reaching our conclusion that employees of AOA are employed in connection with the printing industry is that, in our view, FCP is in the printing industry. FCP, as previously stated, publishes 'The Canberra Times', a daily newspaper, and other newspapers. We have considered whether FCP is in the publishing (or newspaper publishing) industry rather than in the printing industry. We have, however, come to the conclusion that, while FCP is in the publishing (or newspaper publishing) industry, it is also in the printing industry.

Material before us which leads us to conclude that FCP is in the printing industry includes:

- (1) The definition of 'printing' in The Macquarie Dictionary, Second Revision which gives, as its first definition of the word, 'the art, process, or business of producing books, newspapers, etc., by impression from movable types, plates, etc.; typography'. (The definition in the latest edition of The Macquarie Dictionary is the same.);
- (2) The publication called 'Australian and New Zealand Standard Industrial Classification' 1993 Edition (Australian Bureau of Statistics and Department of Statistics, New Zealand). Group 241 in this publication is 'Printing and Services to Printing'. Class 2412 within this group is 'Printing' which 'consists of units mainly engaged in commercial or job printing'. Group 242 is 'Publishing'. Class 2421 is 'Newspaper Printing or Publishing' which 'consists of units mainly engaged in printing or publishing newspapers'. This latter class indicates to us that the printing or publishing of newspapers is within the industry of newspaper printing (as well as newspaper publishing);
- (3) The National Printing Industry Training Council publication called 'Technical Change and Skill Formation in the Printing Industry'. This publication, for instance, shows 'printing and publishing' within a schematic description of the printing industry (p 13), refers to the 'newspapers section' (p 13), outlines the development of the newspaper printing process (p 14), and includes publishing as one of the broad processes and technologies in the printing industry;
- (4) The National Printing Industry Training Council publication called 'The Challenge of Change'. This publication outlines various industry sectors. One is 'Printing and Publishing', the description of which includes the comment that 'large companies (mainly newspapers) are found in all States'; and
- (5) Australian Printing Industry Yearbook 1994. This contains a glossary of printers' terms. The definition of 'Printing Industry' in the glossary commences 'in Australia in its scope includes Publishing, Printing and Publishing...' (This yearbook appears to be put out by the PKIU and its editor is Mr John Cahill, the then federal secretary of the PKIU. On the assumption that it is in the interest of the PKIU to define printing industry as widely as possible, we do not rely, to any substantial degree, on this yearbook).

It appears to us from a consideration of the abovementioned material, that the publishing of newspapers falls within the printing industry as well as within the publishing (or newspaper publishing) industry. We are, accordingly, of the view that FCP is in the printing industry.

The third step in reaching our conclusion that employees of AOA are employed in connection with the printing industry follows from the first two. Having determined that employees of AOA are employed in connection with the industry of FCP, and having determined that FCP is in the printing industry, it follows that employees of AOA are employed in connection with the printing industry.

- 56 Whether employees are engaged in or in connection with the printing industry was also considered by McLeay C in *National Union of Workers, NSW Branch v Daypak Pty Ltd* (Unreported, NSWIRC, IRC 5910 of 1998, 4 June 1999). In that matter the National Union of Workers (NUW) advised the New South Wales Industrial Relations Commission of a dispute with Daypak Pty Ltd about the payment of wages pursuant to the Storemen and Packers General (State) Award. The employer, Daypak, claimed the employees in question were covered by a printing industry award. The employees were engaged in packing and collation of Bounty bags and similar packs which entailed collating information leaflets and magazines into bags, sealing the bags, packing them into boxes and labelling the boxes. The employer argued the main content of the bags was printed material and that the work was that of a mailing house operation and a finishing operation of the end process of the printing industry. Thus the employer contended the work was carried out in connection with the printing industry and outsourced from the printing industry. McLeay C firstly found that any work outsourced from the printing industry is not sufficient to make a finding that a company that undertakes the work is part of the printing industry: *R v Moore and Others; Ex parte Australian Workers' Union* (1976) 11 ALR 449. McLeay C then applied the principle of 'major and substantial employment' to determine whether the work carried out by the employees of Daypak was part of the printing industry. This test requires an analysis of the substantial character of the industrial enterprise in which an employer or employee is engaged. In particular whether the work 'is in or in connection with the printing industry' turns on an analysis of the major and substantial work of the employees and/or the substantial character of the enterprise (19). When McLeay C reviewed the evidence he came to the view that whilst some of the work may fit descriptions of a mailing house or finishing process, that the work was incidental to the work of the employer. He also found that there was insufficient evidence to conclude that the work of the employees was in or in connection with the printing industry.
- 57 The principle of major and substantial employment was explained and applied by the Industrial Appeal Court in *The Federal Clerks' Union of Australia Industrial Union of Workers, WA Branch v Cary* (1977) 57 WAIG 585. In the appeal before the Industrial Appeal Court the central question for consideration by the Court was whether a particular employee named in a complaint before the Industrial Magistrate was or was not a 'clerk'. In determining the issue the Court had regard to the substantial nature of the work, the substance of it and the purpose to be achieved by it. The facts found by the Magistrate were that the employee was employed in connection with the renting of real estate and 'her principal duties were to negotiate

tenancy agreements, supervise performance by tenants of those agreements, to advise landlords as to the termination of tenancies, and to act on instructions relating thereto' (587). It was argued by the appellant that her work was essentially that of a clerical nature. This argument was rejected by the Court. Burt CJ with whom Wickham J agreed held that the clerical work the employee performed was to enable her to effectively discharge her duties and the substance of her work was not that of a clerk. Chief Justice Burt explained how he made that finding in the following passage (586):

The word 'clerk' like so many English words of common and ancient usage lacks definition. Its meaning is very much controlled by context. One dictionary meaning – the Shorter Oxford Dictionary – is 'a subordinate employed to make written entries, keep accounts, etc.' and the appellant in very general terms accepts this to be the meaning of the word for the purposes of this award. The submission made to us by the appellant's counsel was that the dictionary definition which I have set out 'is the proper definition of a clerk' and 'that the common thread which runs through the function of "clerk" is the recording of information'. Having taken that position he freely conceded that 'at some stage in the hierarchy of either business or government administration the function of the worker ceases to be that of clerk and he graduates into the realm of something else'.

If that is right, and I see no reason for supposing that it is wrong, then one judges the question as it may arise in any particular case simply by finding as a fact what it is that the worker was employed to do and then deciding whether upon the facts so found he was employed to 'make written entries, keep accounts' and other work of that character. Of course one has regard to the substantial nature of the employment in terms of the purpose to be achieved by it, the question being, I think, very much controlled by the difference, which is not always accepted by philosophers but which serves the purposes of practical men, between ends and means. If in substance the worker's job is to write and the job is done when the writing has been done he is a clerk, but if in substance the writing done by the worker is but a step taken in the doing by him of something extending beyond it then he is not. The 'substance' of the work identifies the question as being one of degree and it indicates the answer to it will be, or may be, very much the product of a value judgment.

Credibility of the Evidence

- 58 Having heard and carefully observed the applicant give evidence I generally did not find him to be a reliable and credible witness. He made exaggerated claims about some matters and gave vague and unconvincing evidence about other matters. For example his claim that he is an 'artist/designer' and the very simple graphic image of the dove was very similar to the work of Picasso is plainly exaggerated and unsustainable.
- 59 The production of a memorandum signed by Mr Clancy is unhelpful, self-serving and cannot be relied upon. It is a document prepared by the applicant and purports to state matters of fact that have not been observed by Mr Clancy.
- 60 The claim on the Association's webpage that the Association 'offers first class printing of business cards' is also exaggerated. It is plain that such a claim is not maintainable. When the standard of the business card produced by the applicant as exhibit 5 as an example of the 'printing work' produced by him is examined, it is plain that such a claim cannot be maintained as the 'card' is amateurish and could be produced by anyone who has a very basic knowledge of word processing and no training in the skill or occupation of professional printing.
- 61 The applicant has not produced any documentary material that is not created by him to support his oral evidence that his employment with the Association as a printer is genuine. Further his evidence about the source of funds from which he draws his wages is vague and unsatisfactory. If the Association only has 100 members and if the majority of those members pay \$10 a year in membership fees, in the absence of any evidence of other funds or income it is clear that the Association has insufficient funds to employ the applicant. This is evident from the Statement of Assets and Liabilities of the Association (exhibit 1, document 6). In addition to the applicant's evidence that he will be paid by people who will contribute to his wages is not evidence of anything that can be relied upon to support his evidence that he is employed by the Association.
- 62 Although the applicant is passionate about what he perceives is his right to join the Union as a member it seems that he has attempted to achieve that aim by attempting to 'construct' a printing business through the activities of the Association.

Conclusion

- 63 Pursuant to r 16(2) of the rules of the Union, on receiving an application to join to the Union, the State Secretary is required to consider whether the person who applies is:
- (a) engaged in an occupation covered by the Union; and
 - (b) also suitable and qualified to be a member.

However, the applicant made this application under s 66 of the Act prior to the State Secretary making a decision under r 16(2) of the rules of the Union. Consequently, there is no decision under this rule that can be reviewed. Therefore it is not necessary to consider the meaning, scope and operation of r 16(2) in this matter.

- 64 Although I have reservations about the reliability of the applicant's evidence, even if I was to accept his evidence and make a finding that he is employed by the Association, I am not satisfied that the applicant is an 'employee or whose usual occupation is that of an employee in or in connection with the Printing Industry' within the meaning of r 2(4) of the rules of the Union.
- 65 A person can be employed in or in connection with the printing industry if the business in which they are employed is in or in connection with the printing industry or if the occupation or calling of the person is in connection with the printing industry. Rule 2(4) describes the printing industry to include any 'business, trade, manufacture, undertaking, calling, service, employment, handicraft or industrial occupation or avocation on land or water in the industry of printing and/or any kindred industries'. Rule 2(4) then goes on to describe specific printing occupations and printing work which comprises the printing industry. The applicant contends that he carries out the following printing work: electrotyping, keyboard operator, proofreader, artist/designer and non-impact printing machinist.

- 66 Although I accept the applicant operates a keyboard of a home computer it appears he primarily does so in the capacity of Secretary, to maintain the Association's website and to 'chat' with members of the Association. When regard is had to this evidence it would be difficult to make a finding that his major and substantial work is that of printing. The principal work (albeit largely unpaid work) that the applicant carries out is as the Secretary of the Association. Any work that he carries out during the one hour each week that he is paid as a 'printer' that is for the members, such as printing copies of correspondence and the Constitution is printing work that is carried out to discharge his duties as the Secretary. In substance that work is not that of a 'printer' in the printing industry within the meaning of r 2(4) of the rules of the Union but is incidental to and part of his work as the Secretary of the Association.
- 67 In any event I do not agree a computer used for word processing can be described or characterised as an electrotyping machine. The Macquarie Dictionary Online defines 'electrotype' as:
- noun **1.** a facsimile, for use in printing, of a block of type, an engraving, or the like, consisting of a thin shell of metal (copper or nickel), deposited by electrolytic action in a wax, lead, or plastic mould of the original and backed with lead alloy.
- verb (t) (**electrotyped, electrotyping**) **2.** to make an electrotype or electrotypes of.
- electrotyper**, noun.
- 68 It is well known that a home computer does not reproduce images by facsimile, a block of type or by engraving. Whilst the applicant may proofread material that he generates for the Association's website, insufficient evidence has been adduced in this matter on which a finding could be made that the applicant is employed by the Association to carry out proofreading. In any event the processes described by him in operating the home computer, maintaining the website and printing documents for the Association and its members are commonly incidents of work of clerical based occupations that are not engaged in the printing industry and is work engaged in by him to discharge his duties as the Secretary.
- 69 I do not accept that the applicant is employed by the Association as an artist/designer. Such a finding is not open on the evidence as the only evidence given by the applicant about the creation of artistic work is that he accessed a free image from the internet to create the 'posters'.
- 70 I also do not accept that the applicant's work in creating the posters by gluing paper to cut sheets of plastic coreflute can be described as work in 'plastics manufacturing or any of the processes of or incidental to manufacturing of plastics, or goods manufactured therefrom' within the meaning of r 2(4) of the Union's rules, as the words 'manufacturing of plastics' contemplate the making of plastic. The applicant does not make the sheets of coreflute. Whilst it may be argued that he makes posters from plastic sheets of coreflute, I am of the opinion that the industry referred to in r 2(4) of the Union's rules as the 'manufacture of goods from plastic' only contemplates the manufacture of goods that are part of a commercial endeavour or are goods of a commercial character, that is, goods that are saleable in a competitive market. The posters created by the applicant cannot be said to be of such quality to be such goods of this character. Whilst I accept that it is not material that the applicant carries out what he says is 'printing' work for only one hour a week, I am of the opinion that for a finding to be made that the applicant is genuinely engaged in printing work within the meaning of r 2(4) of the Union's rules there must be an element of commercial endeavour or of a commercial character in the applicant's work. In this matter the applicant has not shown that his work is part of a commercial endeavour. The quality of work of the 'posters' and 'business cards' are such that they could not be seriously marketed as part of a business venture.
- 71 Leaving aside printing of the 'posters' and 'business cards', during the hour each week the applicant carries out 'printing work' he prints documents and correspondence for the Association. Such work of a clerical nature cannot be characterised as 'printing' work contemplated by r 2(4) of the Union's rules or indeed be characterised as clerical work if the work is engaged in to discharge his duties as Secretary. To find otherwise would have the effect that the Union would have constitutional coverage of all clerical workers, which would constitute an industry under r 2(4) of the rules of the Union as a calling or occupation of printing of all classes. This evidence also casts doubt on whether a finding could be made that the major and substantial work of the applicant is printing. The use of the word 'printing of all classes' in the context of r 2(4) of the rules of the Union must mean more than the printing of documents as part and parcel of the duties of the Secretary of the Association. As set out above it is my opinion that these words mean carrying out printing that has a commercial element.
- 72 When the hearing of this matter commenced the applicant informed the Commission that he intended to rely upon s 96B of the Act in support of his case. Section 96B provides:
- (1) An award, industrial agreement or order under this Act, or any arrangement between persons relating to employment must not —
- (a) require a person —
- (i) to become or remain a member of an organisation;
- (ii) to cease to be a member of an organisation;
- (iii) not to become a member of an organisation; or
- (iv) to treat another person less favourably or more favourably according to whether or not that other person is, or will become or cease to be, a member of an organisation;
- or
- (b) confer on any person by reason of that person's membership or non-membership of an organisation any right to preferential employment or to be given preference in any aspect of employment.

- (2) The prohibition in subsection (1) extends to awards, industrial agreements, orders and arrangements that are in force at the commencement of section 28 of the *Industrial Relations Amendment Act 1993*.
- (3) A requirement that is contrary to this section is of no effect.

73 The right to freedom of association enshrined by s 96B has no application to persons who are not eligible to be a member of an organisation registered under the Act. Consequently this provision does not assist the applicant's case. The meaning and effect of s 96B cannot be construed in isolation from the legislative scheme of the Act, in particular Division 4 of Part II of the Act which provides for the registration of industrial organisations and associations and among other matters variation of rules. I recently observed in *Liquor, Hospitality and Miscellaneous Union, Western Australian Branch v Director General, Department of Education and Training* (2010) 90 WAIG 127 the modern approach to statutory construction requires courts and tribunals when construing legislation to have regard to the legislative scheme. In particular I said:

As Ritter AP observed in *Kenji Auto Parts Pty Ltd t/as SSS Auto Parts (WA) v Fisk* (2007) 87 WAIG 328 [38] statutory construction involves a consideration and analysis of the meaning of the words used in a section in the context of the legislation and legislative scheme as a whole, to try to discern the intention of the legislature: *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355 (381) (McHugh, Gummow, Kirby and Hayne JJ); and *Wilson v Anderson* [2002] HCA 29; (2002) 213 CLR 401 [8] (Gleeson CJ). Courts must seek to ascertain the statutory purpose and legislative intention from the words used in the statute (and can use other aids as are legitimately available). Where the will of Parliament is clear, a court or tribunal must give effect to that clearly expressed will [16].

- 74 Section 55, s 62 and the objects set out in s 6(e) of the Act provide for a legislative scheme of the registration and alteration of rules of an organisation that provide for eligibility rules for membership. Inherent in that legislative scheme is different organisations and associations registered under the Act will cover different occupations, callings, employment or vocations of employees. The provisions of s 96B must be interpreted in light of this principle. If pursuant to the rules of a registered organisation or association a person is not entitled to be enrolled as a member then no right to freedom of association arises and the prohibitions in s 96B are not invoked.
- 75 For these reasons I am of the opinion that the applicant has not provided any credible evidence that the work he carries out for the Association is in the printing industry within the meaning of r 2(4) of the rules of the Union and I will make an order dismissing the application.

2010 WAIRC 00321

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
PRESIDENT

PARTIES	MR REVELI KEITH AFFLECK	APPLICANT
	-and-	
	THE AUTOMOTIVE, FOOD, METALS, ENGINEERING, PRINTING & KINDRED INDUSTRIES UNION OF WORKERS - WESTERN AUSTRALIAN BRANCH	RESPONDENT
CORAM	THE HONOURABLE J H SMITH, ACTING PRESIDENT	
DATE	WEDNESDAY, 2 JUNE 2010	
FILE NO.	PRES 2 OF 2010	
CITATION NO.	2010 WAIRC 00321	

Result	Application dismissed
Appearances	
Applicant	In person
Respondent	Mr V J Pelligra (of counsel)

Order

This matter having come on for hearing before me on Thursday, 29 April 2010, and having heard the applicant in person and Mr Pelligra (of counsel) on behalf of the respondent, and reasons for decision having been delivered on Wednesday, 2 June 2010, pursuant to the powers conferred on the President by the *Industrial Relations Act 1979* hereby orders —

THAT the application be and is hereby dismissed.

[L.S.]

(Sgd.) J H SMITH,
Acting President.

2010 WAIRC 00255

	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION	
PARTIES	MR REVELI KEITH AFFLECK	APPLICANT
	-and-	
	AUSTRALIAN MANUFACTURING WORKERS UNION	RESPONDENT
CORAM	THE HONOURABLE J H SMITH, ACTING PRESIDENT	
DATE	THURSDAY, 6 MAY 2010	
FILE NO/S	PRES 2 OF 2010	
CITATION NO.	2010 WAIRC 00255	

Result	Order issued to amend the name of the respondent
Appearances	
Applicant	In person
Respondent	Mr V J Pelligra (of counsel)

Order

This matter having come on for hearing before me on 29 April 2010, and having heard Mr R K Affleck on his own behalf as applicant and Mr V J Pelligra, of counsel, on behalf of the respondent, the Acting President, pursuant to the powers conferred under the *Industrial Relations Act 1979*, hereby orders —

THAT the name of the respondent be deleted and that be substituted therefor the name, The Automotive, Food, Metals, Engineering, Printing & Kindred Industries Union of Workers - Western Australian Branch.

(Sgd.) J H SMITH,
Acting President.

[L.S.]

AWARDS/AGREEMENTS—Variation of—

2010 WAIRC 00331

	FAST FOOD OUTLETS AWARD 1990	
	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION	
PARTIES	THE SHOP, DISTRIBUTIVE AND ALLIED EMPLOYEES' ASSOCIATION OF WESTERN AUSTRALIA	APPLICANT
	-v-	
	AUSTRALIAN FAST FOODS PTY LTD AND OTHERS	RESPONDENTS
CORAM	COMMISSIONER S M MAYMAN	
DATE	9 JUNE 2010	
FILE NO	APPL 3 OF 2010	
CITATION NO.	2010 WAIRC 00331	

Result	Award varied
Representation	
Applicant	Mr T J Pope
Respondent	No appearance

Order

HAVING HEARD Mr T J Pope on behalf of the applicant and there being no appearance on behalf of the respondents, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT the Fast Food Outlets Award 1990 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after 9 June 2010.

(Sgd.) S M MAYMAN,
Commissioner.

[L.S.]

SCHEDULE

1. Clause 13. – Meal Money: Delete this clause and insert the following in lieu thereof:13. - MEAL MONEY

Any employee who is required to work overtime for more than two hours on any day, without being notified on the previous day or earlier, that he or she will be required to work such overtime, will either be supplied with a meal by the employer or be paid \$11.90 meal money.

The meal money amount prescribed in this Clause was established by way of nexus with the Shop and Warehouse (Wholesale and Retail Establishments) State Award 1971 in application 1928 of 2002.

2. Clause 20. – Wages: Delete subclause (2) of this clause and insert the following in lieu thereof:

(2) Leading Hands -

An employee who is appointed and placed in charge of other employees by the employer shall be paid the following rates in addition to the employee's normal wage per week -

	\$
(a) If placed in charge of less than 6 employees	8.35
(b) If placed in charge of 6 to 10 employees	11.40
(c) If placed in charge of 11 to 20 employees	13.45
(d) If placed in charge of more than 20 employees	22.25

3. Clause 24. – Uniforms and Laundering: Delete this clause and insert the following in lieu thereof:

Where uniforms are required by the employer to be worn they shall be supplied, laundered and/or dry cleaned by the employer and remain the property of the employer, provided that in lieu of the employer laundering and/or dry cleaning same, the employee shall be paid the following laundry allowance per week -

Class of Employee	Allowance per Week \$
Employees employed on a casual basis	1.60
Employees employed on a part time basis	2.00
Employees employed on a full time basis	2.55

Provided that any employee employed as a full time Cook shall be paid \$3.05 per week for laundry and/or dry cleaning. Provided further that the provisions of this clause may be altered by written agreement between the union and the employer.

2010 WAIRC 00271

FOOD INDUSTRY (FOOD MANUFACTURING OR PROCESSING) AWARD

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

THE FOOD PRESERVERS' UNION OF WESTERN AUSTRALIA, UNION OF WORKERS

APPLICANT

-v-

ANCHOR PRODUCTS PTY LTD AND OTHERS

RESPONDENTS

CORAM

COMMISSIONER J L HARRISON

DATE

FRIDAY, 14 MAY 2010

FILE NO/S

APPL 4 OF 2010

CITATION NO.

2010 WAIRC 00271

Result	Award varied
Representation	
Applicant	Mr T Pope
Respondents	No appearances

Order

HAVING heard Mr T Pope on behalf of the applicant and there being no appearances on behalf of the respondents, the Commission, pursuant to the powers conferred under the *Industrial Relations Act 1979*, hereby orders:

THAT the *Food Industry (Food Manufacturing or Processing) Award* be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after 14 May 2010.

(Sgd.) J L HARRISON,
Commissioner.

[L.S.]

SCHEDULE

1. Clause 19. - Meal Allowance: Delete this clause and insert the following in lieu thereof:

Where an employee required to work overtime for more than two hours, without being notified on the previous day or earlier that he/she will be so required to work, shall be supplied with a meal by the employer or paid \$10.10 for a meal. If owing to the amount of overtime a second or subsequent meal is required the employee shall be supplied with each such meal by the employer or be paid \$6.85 for each meal so required.

If an employee in consequence of receiving such notice has provided himself/herself with a meal or meals and is not required to work overtime or is required to work less overtime than notified, he/she shall be paid the amounts prescribed above in respect of the meals not then required.

2. Clause 31. - Wages: Delete subclause (3) of this clause and insert the following in lieu thereof:

(3) Leading Hands

Per Week Extra
\$

A Leading Hand In-Charge of:

(a)	Less than three other employees	14.65
(b)	Not less than three and not more than ten other employees	28.85
(c)	More than ten other employees	42.40

2010 WAIRC 00270

HAIRDRESSERS AWARD 1989

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

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

APPLICANT

-v-

THE MASTER LADIES' HAIRDRESSERS INDUSTRIAL UNION OF EMPLOYERS OF WESTERN AUSTRALIA AND OTHERS

RESPONDENTS

CORAM	COMMISSIONER J L HARRISON
DATE	FRIDAY, 14 MAY 2010
FILE NO/S	APPL 5 OF 2010
CITATION NO.	2010 WAIRC 00270

Result	Award varied
Representation	
Applicant	Mr T Pope
Respondents	Mr O Moon as agent on behalf of the Master Ladies' Hairdressers Industrial Union of Employers of Western Australia

Order

HAVING heard Mr T Pope on behalf of the applicant and Mr O Moon as agent on behalf of the Master Ladies' Hairdressers Industrial Union of Employers of Western Australia, the Commission, pursuant to the powers conferred under the *Industrial Relations Act 1979*, hereby orders:

THAT the *Hairdressers Award 1989* be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after 14 May 2010.

(Sgd.) J L HARRISON,
Commissioner.

[L.S.]

SCHEDULE

1. Clause 16. - Meal Money: Delete subclause (1) of this clause and insert the following in lieu thereof:

(1) The meal money required to be paid to all employees pursuant to this clause shall be \$11.70.

2. Clause 22. – Tools of Trade: Delete subclause (4) of this clause and insert the following in lieu thereof:

(4) Tool Allowance

In addition to the weekly wage a tool allowance of \$7.60 per week shall be payable to full time Seniors, part time Seniors, indentured apprentices, and probationary apprentices.

3. Clause 32. – First Aid Allowance: Delete this clause and insert the following in lieu thereof:

An employee holding either a Red Cross or St. John Senior First Aid Certificate of at least 'A' level who is appointed by the employer to perform first aid duties shall be paid \$9.20 per week in addition to the employee's ordinary rate.

2010 WAIRC 00274

LICENSED ESTABLISHMENTS (RETAIL AND WHOLESALE) AWARD 1979

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

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

APPLICANT

-v-

COMO LIQUOR STORE AND OTHERS

RESPONDENT

CORAM COMMISSIONER J L HARRISON

DATE FRIDAY, 14 MAY 2010

FILE NO/S APPL 6 OF 2010

CITATION NO. 2010 WAIRC 00274

Result Application divided

Representation

Applicant Mr T Pope

Respondent No appearances

Order

WHEREAS on 28 January 2010 the applicant applied to vary the *Licensed Establishments (Retail and Wholesale) Award 1979*; and WHEREAS the matter was set down for hearing on 14 May 2010; and

WHEREAS at the hearing the Commission formed the view that the application should be divided and the applicant consented to this occurring;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under s 27(1)(s) of the *Industrial Relations Act 1979*, hereby orders -

1. THAT Application 6 of 2010 be divided into two parts to be numbered Application A 6 of 2010 and Application B 6 of 2010 respectively.
2. THAT Application A 6 of 2010 be that part of Application 6 of 2010 that seeks to vary Clause 10. – Meal Times and Meal Allowance and Clause 21. – Wages.
3. THAT Application B 6 of 2010 be that part of Application 6 of 2010 which seeks to vary Clause 22. - Motor Vehicle Allowance.

(Sgd.) J L HARRISON,
Commissioner.

[L.S.]

2010 WAIRC 00275

LICENSED ESTABLISHMENTS (RETAIL AND WHOLESALE) AWARD 1979

PARTIES	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION	
	THE SHOP, DISTRIBUTIVE AND ALLIED EMPLOYEES' ASSOCIATION OF WESTERN AUSTRALIA	APPLICANT
	-v-	
	COMO LIQUOR STORE AND OTHERS	RESPONDENT
CORAM	COMMISSIONER J L HARRISON	
DATE	FRIDAY, 14 MAY 2010	
FILE NO/S	APPLA 6 OF 2010	
CITATION NO.	2010 WAIRC 00275	

Result	Award Varied
Representation	
Applicant	Mr T Pope
Respondent	No Appearances

Order

HAVING heard Mr T Pope on behalf of the applicant and there being no appearances on behalf of the respondents, the Commission, pursuant to the powers conferred under the *Industrial Relations Act 1979*, hereby orders:

THAT the *Licensed Establishments (Retail and Wholesale) Award 1979* be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after 14 May 2010.

(Sgd.) J L HARRISON,
Commissioner.

[L.S.]

SCHEDULE

1. Clause 10. – Meal Times and Meal Allowance:**A. Delete subclause (2) of Part I of this clause and insert the following in lieu thereof:**

- (2) When an employee is required to continue working after the usual finishing time for more than one hour he/she shall be paid \$11.90 for the purchase of any meal required.

B. Delete subclause (3) of Part II of this clause and insert the following in lieu thereof:

- (3) When an employee is required to continue working after the usual finishing time for more than one hour he/she shall be paid \$11.90 for the purchase of any meal required.

2. Clause 21. – Wages: Delete Part IV of this clause and insert the following in lieu thereof:

In addition to the rates prescribed elsewhere in this clause the following allowances and rates shall be paid to a worker where applicable.

- (1) (a) An employee required to operate a ride-on power operated tow motor, a ride-on power operated pallet truck or a walk beside power operated high lift stacker in the performance of his/her duties shall be paid an additional 55 cents per hour whilst so engaged.
- (b) An employee required to operate a ride-on operated fork lift, high lift stacker or high lift stock picker or a power operated overhead traversing hoist in the performance of his/her duties shall be paid an additional 76 cents per hour whilst so engaged.
- (c) The allowances prescribed by this subclause shall not be payable to an employee engaged, and paid, as a "Storeman Operator Grade I" or a "Storeman Operator Grade II".
- (2) (a) A worker shall receive an additional payment for every hour of which he spends 20 minutes or more in a cold chamber in accordance with the following:
- In a cold chamber in which the temperature is:
- (i) Below 0 degrees Celsius to -20 degrees Celsius - 82 cents per hour.
- (ii) Below -20 degrees Celsius to -25 degrees Celsius - 95 cents per hour.
- (iii) Below -25 degrees Celsius - \$1.09 per hour.
- (b) Employees required to work in temperatures less than -18.9 degrees Celsius shall be medically examined at the employer's expense.

CANCELLATION OF—Awards/Agreements/Respondents—

2010 WAIRC 00289

VARIOUS AWARDS

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	ON THE COMMISSION'S OWN MOTION
CORAM	CHIEF COMMISSIONER A R BEECH
HEARD	WEDNESDAY, 5 MAY 2010
DELIVERED	TUESDAY, 18 MAY 2010
FILE NO.	APPL 12-14, 16-18, 20-32, 34-47, 49-78, 80-94, 97-107 AND 109-112 OF 2010
CITATION NO.	2010 WAIRC 00289

CatchWords	Award – Awards applying to constitutional corporations – Effect of “Work Choices” and Fair Work Act 2009 on awards - Whether there is an employee to whom the awards apply – Awards cancelled – Industrial Relations Act 1979 (WA) s 47(1); Workplace Relations Act, 1996 Schedule 8 - Part 3 - Division 1 - Subdivision A s 31; Fair Work Act 2009 (Cth); Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 (Cth) Schedule 3 - Part 1 s 2(2)
Result	67 Awards cancelled; 26 applications adjourned
Representation	Ms S McGurk, on behalf of the Trades and Labor Council of Western Australia Mr D Ellis, on behalf of the Health Services Union of Western Australia (Union of Workers) Mr S Banovich, of counsel, for The Australian Workers' Union, West Australian Branch, Industrial Union of Workers Mr A Cameron, on behalf of Kalgoorlie Consolidated Gold Mines Pty Ltd Ms K Scott, on behalf of IWD Pty Ltd (by written submission)

Reasons for Decision

- 1 These are applications pursuant to s 47(1) of the *Industrial Relations Act, 1979* (“the Act”) on the Commission’s own motion to cancel 93 awards on the basis that there is no employee to whom the awards apply given the operation of the *Fair Work Act, 2009* (Cth) (“FW Act”). The Hon. Minister for Commerce (“Minister”), Trades and Labor Council of WA (“TLC”), Chamber of Commerce and Industry of WA (“CCIWA”) and the Australian Mines and Metals Association, (Inc) (“AMMA”) were notified on 1 February 2010 of the Commission’s intention to cancel these awards. Also, the necessary applications were created and served upon the named parties together with a Notice of Hearing listing the applications. Notice of the intention of the Commission to make the order was given in the WA Industrial Gazette on 24 March 2010 ((2010) 90 WAIG 199) and on the Commission’s website. Notices pursuant to s 78B of the *Judiciary Act 1903* (Cth) were sent to the Attorneys General by the Registrar on 15 March 2010. No party to an award was obliged to appear at the hearing unless the party objected to the cancellation of the award.
- 2 The background to these applications can be found in the application to cancel the *Jenny Craig Employees Award, 1995*. The history and conclusion of that application is set out in the decision of the Commission in Court Session of 12 April 2010 ((2010) 90 WAIG 272; [2010] WAIRC 00200). The award was cancelled after it was found that, by the operation of the FW Act, there was no employee to whom the award applied and that the merits of the matter warranted its cancellation. In particular, the Commission in Court Session stated:
 - 27 ...We are unable to see any detriment arising from its cancellation. Moreover, there is a definite advantage accruing from the removal of an award which is clearly redundant: while it remains, there is likely to be a presumption of validity and to be attempts to vary it to ensure its currency; these are to be avoided and will be avoided by its cancellation.
- 3 The essential purpose of these applications is to consider whether these 93 awards, out of the 336 awards in the Commission, should now be cancelled in the light of the issues raised and dealt with in that decision. In each case, the award is specific to a company or incorporated body or a number of them, or lists companies as the named parties.
- 4 The TLC raised no objection to the cancellation of an award which is clearly enterprise-specific. However, it cautioned that where an award is common rule there might be an employer either now or in the future which is not a constitutional corporation, and the cancellation of the award would leave the employees concerned award-free. There was no submission from, nor an appearance on behalf of, the Minister, CCIWA or AMMA. I now consider matters raised with the Commission concerning individual awards.
- 5 In relation to:
 - *The Brewery Laboratory Employees Award 1983*

- *Brewing Industry Award 1993*
- *Malting Industry Award 1993*, and
- *Matilda Bay Brewing Company Limited Enterprise Award 1994*,

the Breweries and Bottleyards Employees' Industrial Union of Workers of Western Australia made a written request for more time to consider its position. Given the sometimes limited financial or legal resources of some unions and the finality of the cancellation of an award, the request will be granted and those applications will be re-listed.

6 In relation to the:

- *Hospital Employees' (Brightwater) Consolidated Award 1981*
- *Hospital Salaried Officers (Australian Red Cross Blood Service, Western Australia) Award, 1978*, and
- *Hospital Salaried Officers (WorkPower) Award of 1996*,

the Health Services Union of Western Australia (Union of Workers) ("HSU") attended and objected to their cancellation on the basis that in the first two awards it is not clear that the employer named as a party is a constitutional corporation. In relation to the second award, the HSU undertook to provide a further submission after its attention was drawn to the decision in *E v. Australian Red Cross Society* (1991) 27 FCR 310; 99 ALR 601. In relation to the third award the HSU undertook to provide to the Commission a copy of a federal enterprise agreement which it says expressly incorporates that award as it is varied from time to time as providing perhaps some of the conditions of employment of employees covered by the federal enterprise agreement. (Subsequent to the hearing the HSU advised that its submission should have referred to a State industrial agreement, not to a federal enterprise agreement.)

7 In respect of the following awards:

- *Cargill Australia Limited - Salt Production and Processing Award 1988*
- *Cockburn Cement Limited Award 1991*
- *Fibre Cement Workers Award*
- *Gold Mining Consolidated Award, 1980*
- *Mineral Earths Employees' Award*
- *Mineral Sands Industry Award 1991*
- *Mineral Sands Mining and Processing Industry Award, 1981*
- *Nickel Mining and Processing Award, 1975*, and
- *Tin and Associated Minerals Mining and Processing Industry Award No. 14 of 1971*,

the Australian Workers' Union, West Australian Branch, Industrial Union of Workers ("AWU") objected to the cancellations because it believes it has members on statutory individual contracts which refer to, or incorporate, one of those awards in the contract. The union is concerned that cancelling those awards would affect those members to their detriment. The AWU undertook to provide further written submissions within 21 days of the hearing.

8 The Construction, Forestry, Mining and Energy Union of Workers objected to the following awards being cancelled on the basis that they are common rule awards:

- *Building and Engineering Trades (Nickel Mining and Processing) Award, 1968*
- *Engine Drivers' (Gold Mining) Consolidated Award, 1979*
- *Engine Drivers' (Nickel Mining) Award 1968*
- *Engine Drivers' Minerals Production (Salt) Industry Award, 1970*
- *Iron and Steel Industry Workers' (Australian Iron and Steel Pty. Ltd.) Production Bonus Scheme Award*
- *The Iron Ore Production & Processing (Locomotive Drivers) Award 2006*
- *Iron Ore Production & Processing (Locomotive Drivers Rio Tinto Railway) Award 2006*
- *Mineral Sands Industry Award 1991*
- *Mineral Sands Mining and Processing (Engineering and Building Trades) Award, 1977*
- *Particle Board Employees' Award, 1964*
- *Particle Board Industry Award No. 10 of 1978*.

9 In each of the above awards where an objection has been made to its cancellation, the applications to cancel the awards will be adjourned to enable me to give further consideration to whether the cancellation should proceed and I anticipate that the Registrar will be asked by me to further investigate some of the objections. I consider the point raised by the TLC to be valid, however in each case an assessment will need to be made whether the award has or is likely to have an employer which is not a constitutional corporation.

- 10 None of the named parties to the remaining awards object to their cancellation. In the case of the *Storemen IWD Pty Ltd Award 1982* that company provided documentary evidence together with a thorough and helpful submission supporting the cancellation of that award. I consider each of the remaining awards is in the same position as the *Jenny Craig Award*: the area and scope of the awards and the named parties show that the awards apply to companies which are unarguably constitutional corporations, and for the reasons given by the Commission in Court Session in relation to that award, there is no employee for the purposes of the Act to whom the awards apply. I adopt the reasons set out by the Commission in Court Session to conclude that these awards should now be cancelled. I am satisfied too that the requirements of s 47 have been complied with.
- 11 It appears from some of the responses received, from both employers as well as from unions, that there may be some confusion about the effect of the "Work Choices" amendments upon State awards as they applied to a constitutional corporation, and it may be helpful to set out what I understand is the position. On 27 March 2006 schedule 8 - Part 3 - Division 1 - Subdivision A s 31 of the "Work Choices" amendments to the *Workplace Relations Act, 1996* created an instrument called a Notional Agreement Preserving State Awards (NAPSA) in the terms of the original State award, and with the same name as the State award, as it was on 27 March 2006.
- 12 The "Work Choices" amendments did not, and constitutionally could not, cancel the State award. The creation of the NAPSA under Commonwealth legislation had no effect upon the State award itself but overrode the State award as it applied to a constitutional corporation. The NAPSA thus created existed in its own right independently of the State award. Any employees of a constitutional corporation who were employed under the State award prior to 27 March 2006 have not been employed since then under the State award but under that separate Commonwealth instrument which has the same name as the original State award. Provision for the NAPSA to be varied or otherwise amended was made in the "Work Choices" amendments; any amendments made by the Commission to the State award after 27 March 2006 did not, and could not, amend or vary the NAPSA.
- 13 Accordingly, although the creation of the NAPSA could not, and did not, itself cancel or otherwise remove the original State award, it follows that the State award can have no application to a constitutional corporation and its employees. A NAPSA is continued in existence as a "transitional instrument" under the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth) Schedule 3 - Part 1 s 2(2). The transitional instrument continues to cover the same employees and employers that it covered when it was a NAPSA. It is the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* which provides for the variation and termination of a transitional instrument (in Part 3). The cancellation of a State award can have no effect upon a transitional instrument. There is no practical purpose in maintaining the State award in existence and moreover there may be the perception that while it exists, it does have some practical relevance or application when such is not the case.
- 14 For all of the above reasons, I will now consolidate the applications to cancel the remaining awards and make an order which cancels them.

2010 WAIRC 00287

VARIOUS AWARDS

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES ON THE COMMISSION'S OWN MOTION
CORAM CHIEF COMMISSIONER A R BEECH
DATE TUESDAY, 18 MAY 2010
FILE NO/S APPL 12, 14, 16-17, 22-24, 26, 28-32, 37, 39-47, 49-55, 57, 59-67, 69-77, 80-81, 83, 88, 90-91, 94, 100-106 AND 109-112 OF 2010
CITATION NO. 2010 WAIRC 00287

Result Applications consolidated; Awards cancelled

Order

HAVING HEARD Ms S McGurk, on behalf of the Trades and Labor Council of Western Australia; Mr D Ellis, on behalf of the Health Services Union of Western Australia (Union of Workers); Mr S Banovich, of counsel, for The Australian Workers' Union, West Australian Branch, Industrial Union of Workers; Mr A Cameron, on behalf of Kalgoorlie Consolidated Gold Mines Pty Ltd; and Ms K Scott, on behalf of IWD Pty Ltd (by written submission),

NOW THEREFORE I, pursuant to the powers conferred by s 27(1)(s) and s 47(1) of the *Industrial Relations Act 1979*, do hereby order:

1. THAT applications 12, 14, 16-17, 22-24, 26, 28-32, 37, 39-47, 49-55, 57, 59-67, 69-77, 80-81, 83, 88, 90-91, 94, 100-106 and 109-112 of 2010 be consolidated.

2. THAT the following awards be cancelled:
- Plastic Manufacturing Award 1977
 - CSBP & Farmers Award 1990
 - Dampier Salt Award 2004
 - Electrical, Engineering and Building Trades (West Australian Newspapers Limited) Award, 1988
 - Engineering and Engine Drivers' (Nickel Smelting) Award, 1973
 - Engineering Trades and Engine Drivers (Nickel Refining) Award, 1971
 - Porcelain Workers Award, 1970
 - Foodland Associated Limited (Western Australia) Warehouse Award 1982
 - Gold Mining Engineering and Maintenance Award
 - Government Water Supply, Sewerage and Drainage Employees Award 1981
 - Government Water Supply, Sewerage and Drainage Foremen's Award 1984
 - Grain Handling Maintenance Workers Award
 - Grain Handling Salaried Officers' Consolidated Award 1989
 - Industrial Catering Workers' Award, 1977
 - Iron Ore Production and Processing (Hamersley Iron Pty Limited) Award 1987
 - Printing (Community Newspaper Group) Award, No. A 21 of 1989
 - Aerospace Engineering Services Pty Ltd Enterprise Award 2005
 - The Printing (Newspaper) Award 1979
 - Printing (The Sunday Times Guaranteed Employment and Voluntary Retirement) Award, 1983
 - Printing (West Australian Newspapers Limited, Guaranteed Employment and Voluntary Retirement) Award
 - RAC Road, Mechanical and Fleet Services Award 1999
 - Ambulance Service Communication Centre Employees' Award 1991
 - Salaried Staff Curtin University of Technology Award 1985
 - Security Officers and Cleaners (West Australian Newspapers) Award, 1992
 - Shark Bay Salt and Gypsum (Production and Processing) Useless Loop Award 1989
 - Argyle Diamonds Production Award 1996
 - State Energy Commission of Western Australia Wages and Conditions Award, 1988
 - BHP-Utah Minerals International Cadjebut Production Award 1989, No. A 11 of 1989
 - Storemen IWD Pty Ltd Award 1982
 - Iron Ore Production & Processing (BHP Billiton Iron Ore Pty Ltd) Award 2002
 - Storemen's Rapid Metal Developments (Aust.) Pty. Ltd. Award 1982
 - The John Lysaght (Australia) Limited Award
 - Journalists' (Suburban and Free Newspapers) Award, 1984
 - Kalgoorlie Consolidated Gold Mines Award 2002
 - Laboratory and Technical Employees (Peters (W.A.) Limited) Award of 1981
 - Bibra Lake Fabrication Workshop Award
 - Supermarkets and Chain Stores (Western Australia) Warehouse Award
 - BP Fremantle Ltd Oil Bunkering Award 1992, No. A 20 of 1981
 - Telfer Gold Mine Fly In/Fly Out Award
 - BP Refinery (Kwinana) (Security Officers') Award, 1978
 - BRADKEN Bassendean (WA) Way Forward Enterprise Award 2003
 - Titanium Oxide Manufacturing Award 1975
 - Transport Workers (Burswood Island Resort) Award 1987
 - Transport Workers' (Eastern Goldfields Transport Board) Award 1976
 - Water Corporation (Staff) Award 2003
 - Western Australian Mint Security Officers' Award, 1988
 - Western Australian Mint Award 2005

Wire Manufacturing (Australian Wire Industries Pty. Ltd.) Award No. 24 of 1970
 Wundowie Foundry Award 1986
 Masters and Deckhands Total Harbour Services Pty Ltd Award
 Masters Dairy Award 1994
 Metals and Engineering Rapid Metal Developments (Aust) Pty Ltd Award 1993
 Minerals Production (Salt) Industry Award 1969
 Nickel Refining Award, 1971
 Nickel Smelting (WMC Resources Ltd) Award 2003
 Permanent Building Societies (Administrative and Clerical Officers) Award, 1975
 Building Materials Manufacture (CSR Limited - Welshpool Works) Award, 1982
 Burswood Catering and Entertainment Pty Ltd Employees Award 2001
 Burswood Hotel (Maintenance Employees') Award, 1990
 Burswood International Resort Casino Employees' Award 2002
 Burswood Island Resort (Maintenance Employees') Award No. A 22 of 1986
 Burswood Resort Casino (Theatrical Employees) Award No. A 10 of 1991
 Can Manufacturing (Production and Maintenance - Amalgamated Industries Pty. Ltd.) Award 1985
 Cement Workers' Award, 1975
 Clerks (Commercial Radio and Television Broadcasters) Award of 1970
 Clerks' (R.A.C. Control Room Officers) Award of 1988
 Clerks' (Swan Brewery Co. Ltd.) Award 1986

(Sgd.) A R BEECH,
 Chief Commissioner.

[L.S.]

UNFAIR DISMISSAL/CONTRACTUAL ENTITLEMENTS—

2010 WAIRC 00306

PARTIES	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION CAROL ALLEN	APPLICANT
	-v-	
	SHIRE OF ASHBURTON	RESPONDENT
CORAM	COMMISSIONER J L HARRISON	
DATE	MONDAY, 31 MAY 2010	
FILE NO/S	U 217 OF 2009	
CITATION NO.	2010 WAIRC 00306	
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Result	Discontinued	
Representation		
Applicant	Ms J Walker (as agent)	
Respondent	Ms F McDonald and later Mr A Quahe (of Counsel)	
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Order

WHEREAS this is an application pursuant to s 29(1)(b)(i) of the *Industrial Relations Act 1979*; and
 WHEREAS on 22 December 2009 the Commission convened a teleconference for the purpose of dealing with scheduling issues with respect to the application being lodged out of time; and
 WHEREAS the application was set down for hearing on 4 and 5 March 2010; and
 WHEREAS on 3 March 2010 the parties advised the Commission that an agreement had been reached to settle the matter; and
 WHEREAS on 3 March 2010 the hearing was vacated; and
 WHEREAS on 3 March 2010 the applicant filed a Notice of Withdrawal or Discontinuance in respect of the application; and
 WHEREAS on 8 March 2010 the respondent consented to the matter being discontinued;
 NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby discontinued.

[L.S.]

(Sgd.) J L HARRISON,
 Commissioner.

2010 WAIRC 00329

	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION	
PARTIES	MR DAVID WILLIAM BEDNALL	APPLICANT
	-v-	
	THE DEPARTMENT OF EDUCATION AND TRAINING	RESPONDENT
CORAM	COMMISSIONER J L HARRISON	
DATE	TUESDAY, 8 JUNE 2010	
FILE NO/S	U 153 OF 2009	
CITATION NO.	2010 WAIRC 00329	

Result	Discontinued
Representation	
Applicant	Mr S Millman (of counsel)
Respondent	Mr J Misso (of counsel)

Order

WHEREAS this is an application pursuant to s 29(1)(b)(i) of the *Industrial Relations Act 1979*; and
 WHEREAS on 12 October 2009 the Commission convened a conference for the purpose of conciliating between the parties; and
 WHEREAS at the conclusion of that conference the parties were given time to discuss a settlement offer; and
 WHEREAS on 24 November 2009 the Commission convened a further conference; and
 WHEREAS at the conclusion of that conference the parties finalised the terms of settlement; and
 WHEREAS on 22 February 2010 the Commission contacted the applicant about the status of the matter and the applicant's representative responded on 26 February 2010 advising that he was awaiting a copy of the Deed of Settlement; and
 WHEREAS on 1 April 2010 the applicant filed a Notice of Withdrawal or Discontinuance form in respect of the application; and
 WHEREAS on 8 April 2010 the respondent consented to the matter being discontinued;
 NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby discontinued.

[L.S.]

(Sgd.) J L HARRISON,
 Commissioner.

2010 WAIRC 00328

PARTIES	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION ADRIAN BYRNE	APPLICANT
	-v-	
	THE SHIRE OF MOUNT MAGNET	RESPONDENT
CORAM	COMMISSIONER J L HARRISON	
DATE	TUESDAY, 8 JUNE 2010	
FILE NO/S	U 271 OF 2009	
CITATION NO.	2010 WAIRC 00328	

Result	Discontinued
Representation	
Applicant	Mr P King (as agent)
Respondent	Mr S Kemp (of Counsel)

Order

WHEREAS this is an application pursuant to s 29(1)(b)(i) of the *Industrial Relations Act 1979*; and

WHEREAS on 18 February 2010 the Commission convened a conference for the purpose of conciliating between the parties however, no agreement was reached; and

WHEREAS at the conclusion of the conference the parties were to write to the Commission about the location of the hearing; and

WHEREAS on 3 March 2010 the respondent's representative wrote to the Commission to advise that the respondent's view was that the hearing should be in Mount Magnet; and

WHEREAS on 4 March 2010 applicant's representative wrote to the Commission to advise that it was the applicant's view that the hearing should be in Perth; and

FURTHER that the applicant had been declared unfit to travel; and

WHEREAS on 5 March 2010 the Commission advised the parties that the matter would be set down for hearing in Mount Magnet once the applicant has a medical certificate clearing him to travel; and

FURTHER the matter would be adjourned to 29 March 2010 at which time the applicant's representative was to inform the Commission of the status of the applicant's health; and

WHEREAS on 17 March 2010 the applicant advised the Commission that the parties had reached an in principle agreement to settle the matter; and

WHEREAS on 20 April 2010 the applicant filed a Notice of Withdrawal or Discontinuance in respect of the application; and

WHEREAS on 21 April 2010 the respondent consented to the matter being discontinued;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby discontinued.

[L.S.]

(Sgd.) J L HARRISON,
Commissioner.

2010 WAIRC 00277

PARTIES WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
GORAN DIMOVSKI **APPLICANT**

-v-
ADP - BELMONT
ANTONY AND LENS CRRADOCK **RESPONDENT**

CORAM COMMISSIONER S M MAYMAN
DATE MONDAY, 17 MAY 2010
FILE NO B 18 OF 2010
CITATION NO. 2010 WAIRC 00277

Result Application discontinued
Representation
Applicant Mr G Dimovski
Respondent Mr L Craddock

Order

WHEREAS this is an application pursuant to section 29(1)(b)(ii) of the *Industrial Relations Act 1979*;
AND WHEREAS on 16 April 2010 the Commission convened a conference for the purpose of conciliating between the parties;
AND WHEREAS at the conclusion of the conference agreement was reached between the parties;
AND WHEREAS on 22 April 2010 the applicant filed a Notice of Discontinuance in respect of the application;
NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby discontinued.

[L.S.]

(Sgd.) S M MAYMAN,
Commissioner.

2010 WAIRC 00083

PARTIES WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
KEVIN HIGGINS **APPLICANT**

-v-
GATEWAY PRINTING **RESPONDENT**

CORAM COMMISSIONER J L HARRISON
WRITTEN SUBMISSIONS THURSDAY, 10 DECEMBER 2009, WEDNESDAY, 24 DECEMBER 2009, THURSDAY, 7 JANUARY 2010
DELIVERED TUESDAY, 23 FEBRUARY 2010
FILE NO. U 184 OF 2009, B 184 OF 2009
CITATION NO. 2010 WAIRC 00083

Catchwords	Industrial Law (WA) - Termination of employment - Harsh, oppressive and unfair dismissal - Contractual benefits claim - Claim for payment of Notice - Claim for payment of Holiday pay and Wages at correct rate and Superannuation - Whether Commission has jurisdiction - Reasons for Decision issued - Further information and evidence required - <i>Industrial Relations Act 1979</i> (WA) s 29(1)(b)(i), s 29(1)(b)(ii); <i>Fair Work Act 2009</i> s 12, s 13, s 14, s 26; <i>Commonwealth of Australia Constitution Act</i> s 51(xx), s 109
Result	Reasons for Decision issued
Representation	
Applicant	Mr K Higgins on his own behalf, by way of written submissions
Respondent	Ms J Kruger (as agent), by way of written submissions

Reasons for Decision

- 1 On 29 September 2009 Kevin Higgins (“the applicant”) lodged applications pursuant to s 29(1)(b)(i) and (ii) of the *Industrial Relations Act 1979* (“the Act”) claiming he was unfairly dismissed on 1 September 2009 and that he was owed benefits under his contract of employment by Gateway Printing (“the respondent”). The respondent denies the applicant’s claims that he was unfairly terminated and is owed benefits under his contract of employment and maintains that as the respondent (Gateway Printing) is a trustee company and is a national system employer it is covered by the *Fair Work Act 2009* (“the FW Act”) and these applications are therefore outside of the Commission’s jurisdiction.

Submissions

- 2 The parties were required to file written submissions with respect to the issue of the Commission’s jurisdiction to deal with these applications and any evidence in support of their contentions was to be provided by way of Statutory Declaration. The respondent did not provide any evidence by way of Statutory Declaration and advised the Commission that it did not wish to cross-examine the evidence given by the applicant.

Respondent

- 3 The respondent submits that Gateway Printing Pty Ltd (ABN 78 097 192 464), which is located at 37 Forsyth Street, O’Connor, Western Australia, is in the business of printing books, business stationery and promotional materials and it employs 11 employees in production, sales and other administrative related areas.
- 4 The respondent submits that Gateway Printing Pty Ltd is the applicant’s employer and therefore the respondent with respect to these proceedings. The respondent claims that Gateway Printing Pty Ltd is the sole trustee for the R & M Wood Family Trust (ABN 91 510 375 957) trading as Gateway Printing and as a result of this corporate structure, Gateway Printing Pty Ltd is the applicant’s employer and the legal entity, by way of the R & M Wood Family Trust, which employs its employees. This arrangement is reflected by the Australian Business Number (“ABN”) contained on the applicant’s Group Certificate (see Annexure A attached to the respondent’s written submissions dated 10 December 2009).
- 5 The respondent submits that pursuant to s 14 of the FW Act, Gateway Printing Pty Ltd is a national system employer and therefore falls within the jurisdiction of Fair Work Australia and the FW Act to the exclusion of the Commission and the applicant is therefore a national system employee pursuant to s 13 of the FW Act. As a result the applicant’s employment is subject to the terms of the FW Act and Fair Work Australia’s jurisdiction in relation to any claim for unfair dismissal. Furthermore, s 26 of the FW Act excludes the rights of a party to access any State industrial laws and any related jurisdiction created by those laws, including the Act.
- 6 The respondent therefore argues that the Commission has no jurisdiction to deal with these applications and they should be dismissed.

Applicant

- 7 The applicant disputes that he was employed by Gateway Printing Pty Ltd. The applicant made the following submissions by way of statutory declaration in support of his claim that he was employed by Gateway Printing (ABN 91 510 375 957) which is not an employer for the purposes of the FW Act.
- 8 The applicant argues that the original offer of employment made to him dated 17 December 2008, indicates that Gateway Printing (ABN 91 510 375 957) is his employer and all payslips given to the applicant state that Gateway Printing was the applicant’s employer (see Annexures A and B attached to the applicant’s Statutory Declaration dated 24 December 2009). The applicant’s Group Certificate points to Gateway Printing as being the applicant’s employer and the final payment made to the applicant by cheque issued by RL & M Wood atft R & M Wood Family Trust trading as Gateway Printing also indicates that Gateway Printing was the applicant’s employer (see Annexures C and D attached to the applicant’s Statutory Declaration dated 24 December 2009).
- 9 The applicant submits that all correspondence received by the applicant from Gateway Printing refers to the applicant being employed by Gateway Printing and is on Gateway Printing letterhead and includes the ABN 91 510 375 957 (see Annexures E, F and G attached to the applicant’s Statutory Declaration dated 24 December 2009). The applicant submits that there is no mention in any of this correspondence of a trustee company, Pty Ltd company or an entity with an alternative ABN.

- 10 The applicant maintains that an extract from the Australian Securities & Investment Commission National Names Index states that Gateway Printing falls under the jurisdiction of the Department of Commerce of Western Australia and Wageline confirmed to him that Gateway Printing falls under the jurisdiction of the Commission (see Annexure H attached to the applicant's Statutory Declaration dated 24 December 2009).
- 11 The applicant maintains that as Gateway Printing was his employer the Commission has jurisdiction to deal with these applications.

Findings and conclusions

- 12 Section 14(1)(a) of the FW Act defines a "national system employer" as "a constitutional corporation, so far as it employs, or usually employs, an individual" and s 13 of the FW Act defines a "national system employee" as an individual employed by a national system employer. Section 12 of the FW Act defines a "constitutional corporation" as a corporation to which s 51(xx) of the Commonwealth Constitution applies and s 51(xx) of the Commonwealth Constitution provides that a corporation among others is "trading or financial corporations formed within the limits of the Commonwealth".
- 13 Section 26 of the FW Act reads as follows:

"26 Act excludes State or Territory industrial laws

- (1) This Act is intended to apply to the exclusion of all State or Territory industrial laws so far as they would otherwise apply in relation to a national system employee or a national system employer.
- (2) A *State or Territory industrial law* is:
- (a) a general State industrial law; or
 - (b) an Act of a State or Territory that applies to employment generally and has one or more of the following as its main purpose or one or more of its main purposes:
 - (i) regulating workplace relations (including industrial matters, industrial activity, collective bargaining, industrial disputes and industrial action);
 - (ii) providing for the establishment or enforcement of terms and conditions of employment;
 - (iii) providing for the making and enforcement of agreements (including individual agreements and collective agreements), and other industrial instruments or orders, determining terms and conditions of employment;
 - (iv) prohibiting conduct relating to a person's membership or non-membership of an industrial association;
 - (v) providing for rights and remedies connected with the termination of employment;
 - (vi) providing for rights and remedies connected with conduct that adversely affects an employee in his or her employment; or
 - (c) a law of a State or Territory that applies to employment generally and deals with leave (other than long service leave or leave for victims of crime); or
 - (d) a law of a State or Territory providing for a court or tribunal constituted by a law of the State or Territory to make an order in relation to equal remuneration for work of equal or comparable value; or
 - (e) a law of a State or Territory providing for the variation or setting aside of rights and obligations arising under a contract of employment, or another arrangement for employment, that a court or tribunal finds is unfair; or
 - (f) a law of a State or Territory that entitles a representative of a trade union to enter premises; or
 - (g) an instrument made under a law described in paragraph (a), (b), (c), (d), (e) or (f), so far as the instrument is of a legislative character; or
 - (h) either of the following:
 - (i) a law that is a law of a State or Territory;
 - (ii) an instrument of a legislative character made under such a law;
 that is prescribed by the regulations.
- (3) Each of the following is a *general State industrial law*:
- (a) the *Industrial Relations Act 1996* of New South Wales;
 - (b) the *Industrial Relations Act 1999* of Queensland;
 - (c) the *Industrial Relations Act 1979* of Western Australia;
 - (d) the *Fair Work Act 1994* of South Australia;
 - (e) the *Industrial Relations Act 1984* of Tasmania.
- (4) A law or an Act of a State or Territory *applies to employment generally* if it applies (subject to constitutional limitations) to:

- (a) all employers and employees in the State or Territory; or
- (b) all employers and employees in the State or Territory except those identified (by reference to a class or otherwise) by a law of the State or Territory.

For this purpose, it does not matter whether or not the law also applies to other persons, or whether or not an exercise of a power under the law affects all the persons to whom the law applies.”

14 If the respondent is a trading corporation, by virtue of ss 12, 13 and 14 of the FW Act, the jurisdiction of the Commission to deal with the applicant's claim for unfair dismissal is excluded by s 26 of the FW Act and s 109 of the Commonwealth Constitution.

15 Whether a corporation is a trading corporation is ultimately a question of fact and degree (see *R v Judges of the Federal Court of Australia and Another; ex parte The Western Australian National Football League (Inc) and Another* (1979) 143 CLR 190 per Mason J at 234. The relevant principles were also summarised by Steytler P in *Aboriginal Legal Service of Western Australia (Inc) v Lawrence* (No 2) (2008) 252 ALR 136 at paragraph 68 as follows:

“The more relevant (for present purposes) principles that might be drawn from these and other cases are as follows:

- (1) A corporation may be a trading corporation even though trading is not its predominant activity: *Adamson* at CLR 239; ALR 473; *State Superannuation Board* at CLR 303–4; ALR 14–15; *Tasmanian Dam case* (at CLR 156, 240, 293; ALR 625, 789, 833); *Quickenden* at [49]–[51], [101]; *Hardeman* at [18].
- (2) However, trading must be a substantial and not merely a peripheral activity: *Adamson* at CLR 208, 234, 239; ALR 473, 478, 542–3; *State Superannuation Board* at CLR 303–4; ALR 14–15; *Hughes v Western Australian Cricket Assn Inc* (1986) 19 FCR 10 at 20; 69 ALR 660 at 671 (*Hughes*); *Fencott* at CLR 622; ALR 49; *Tasmanian Dam case* at CLR 156, 240, 293; ALR 625, 789, 833; *Mid Density* at FCR 584; *Hardeman* at [22].
- (3) In this context, “trading” is not given a narrow construction. It extends beyond buying and selling to business activities carried on with a view to earning revenue and includes trade in services: *Ku-ring-gai* at ALR 624, 644; FLR 139, 159–60; *Adamson* at CLR 235; ALR 474; *Actors and Announcers Equity Assn of Australia v Fontana Films Pty Ltd* (1982) 150 CLR 169 at 184–5 and 203; 40 ALR 609 at 618 and 635; *Bevanere Pty Ltd v Lubidineuse* (1985) 7 FCR 325 at 330; 59 ALR 334 at 339; 4 IPR 467 at 472; *Quickenden* at [101].
- (4) The making of a profit is not an essential prerequisite to trade, but it is a usual concomitant: *St George County Council* at CLR 539, 563, 569; ALR 372, 375, 379; *Ku-ring-gai* at ALR 625, 645; FLR 140, 167; *Adamson* at CLR 219; ALR 461; *E* at FCR 343, 345; ALR 633, 635; *Pellow* at [28].
- (5) The ends which a corporation seeks to serve by trading are irrelevant to its description: *St George County Council* at CLR 543; ALR 377; *Ku-ring-gai* at ALR 643; FLR 160; *State Superannuation Board* at CLR 304–6; ALR 15; *E* at FCR 343; ALR 633. Consequently, the fact that the trading activities are conducted in the public interest or for a public purpose will not necessarily exclude the categorisation of those activities as “trade”: *St George County Council* at CLR 543; ALR 377 per Barwick CJ; *Tasmanian Dam case* at CLR 156; ALR 625 per Mason J.
- (6) Whether the trading activities of an incorporated body are sufficient to justify its categorisations as a “trading corporation” is a question of fact and degree: *Adamson* at CLR 234; ALR 473 per Mason J; *State Superannuation Board* at CLR 304; ALR 15; *Fencott* at CLR 589; ALR 52; *Quickenden* at [52], [101]; *Mid Density* at FCR 584.
- (7) The current activities of the corporation, while an important criterion for determining its characterisation, are not the only criterion. Regard must also be had to the intended purpose of the corporation, although a corporation that carries on trading activities can be found to be a trading corporation even if it was not originally established to trade: *State Superannuation Board* at CLR 294–5, 304; ALR 7, 15; *Fencott* at CLR 588–9, 602, 611, 622–4; ALR 52, 70, 74, 80; *Hughes* at FCR 20; ALR 671; *Quickenden* at [101]; *E* at FCR 344; ALR 636; *Hardeman* at [18].
- (8) The commercial nature of an activity is an element in deciding whether the activity is in trade or trading: *Adamson* at CLR 209, 211; ALR 453, 455; *Ku-ring-gai* at ALR 624, 627–8, 643, 648; FLR 139, 142, 160, 67; *Bevanere* at FCR 330; ALR 339; IPR 472; *Hughes* at FCR 19–20; ALR 671; *E* at FCR 343; ALR 633; *Fowler*; *Hardeman* at [26].”

16 The relevant authorities confirm that the issue to be determined when deciding if the respondent is a trading corporation is the character of the activities carried out by the respondent at the relevant time and whether or not the respondent engaged in significant and substantial trading activities of a commercial nature at this time such that it can be described as a trading corporation.

17 The applicant has two applications before the Commission. U 184 of 2009 is a claim that the applicant has been unfairly dismissed and B 184 of 2009 is a claim that the applicant is owed one week's pay in lieu of notice, the balance of 70 hours of accrued annual leave entitlements which was paid to the applicant at termination at the incorrect rate, the balance of 15.20 hours of wages which was paid to the applicant at termination at the incorrect rate and superannuation entitlements on these amounts and these claims arise as at 1 September 2009 which is the date upon which the applicant was terminated.

- 18 It is clear that s 26 of the FW Act, which came into operation on 1 July 2009, excludes the jurisdiction of the Commission with respect to claims of unfair termination involving employees employed by a national system employer which is a trading or financial corporation. However, s 27 of the FW Act may exclude claims for the enforcement of the terms of an employee's contract of employment for a range of employees who may be employed by a national system employee. Additionally, it is also relevant to note that ten National Employment Standards apply to employees employed by a national system employer to which the FW Act applies and these standards are minimum standards of employment and include, amongst other things, an annual entitlement to four weeks paid annual leave per year and minimum notice periods.

Correct name of the employer

- 19 Apart from assertions in its submissions no evidence was tendered by the respondent confirming that Gateway Printing Pty Ltd (ABN 78 097 192 464) is the sole trustee for the R & M Wood Family Trust (ABN 91 510 375 957) trading as Gateway Printing. In contrast, all of the annexures supplied by the applicant confirm that the applicant was employed by Gateway Printing (ABN 91 510 375 957) which is an unincorporated entity. In the circumstances, I am unable to conclude that the applicant's employer was Gateway Printing Pty Ltd.
- 20 Even if Gateway Printing Pty Ltd was the applicant's employer I am also unable to conclude that it is a trading corporation for the purposes of s 12 of the FW Act given the limited information before me with respect to the respondent's activities.
- 21 In the circumstances I will give the respondent a further opportunity to provide certified documentation to the Commission confirming that Gateway Printing Pty Ltd is the sole trustee for the R & M Wood Family Trust trading as Gateway Printing and any further information by way of statutory declaration about the respondent's activities by Tuesday 9 March 2010. The respondent is also required to make submissions about the Commission's jurisdiction to deal with the denied contractual benefits being claimed by the applicant in application B 184 of 2009 given s 27 of the FW Act and the existence of the National Employment Standards. After the respondent provides further information and any evidence it wishes to do so the applicant will then be given 14 days within which to respond. I will then decide the issue of the true name of the applicant's employer and the Commission's jurisdiction to deal with each application.

2010 WAIRC 00296

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

KEVIN HIGGINS

APPLICANT

-v-

GATEWAY PRINTING

RESPONDENT

CORAM

COMMISSIONER J L HARRISON

WRITTEN

SUBMISSIONS

TUESDAY, 9 MARCH 2010, TUESDAY, 23 MARCH 2010

DELIVERED

FRIDAY, 21 MAY 2010

FILE NO.

U 184 OF 2009, B 184 OF 2009

CITATION NO.

2010 WAIRC 00296

Catchwords

Industrial Law (WA) - Supplementary Reasons for Decision - Further information and evidence provided - Termination of employment - Harsh, oppressive or unfair dismissal - Commission satisfied respondent is a trading corporation - Claim alleging unfair dismissal beyond Commission's jurisdiction - Application alleging unfair dismissal dismissed - Contractual benefits claim - Whether jurisdiction to deal with claim for a national system employee - Impact of National Employment Standards - Claims arise before application date of National Employment Standards - Commission has jurisdiction to deal with a claim for denied contractual benefits against a national system employer - Declaration issued - *Industrial Relations Act 1979* s 7, s 27(1)(m) and s 29(1)(b)(ii); *Fair Work Act 2009* s 12, s 13, s 14(1)(a), s 26, s 26(1), s 26(2), s 26(2)(e), s 26(3), s 27, s 27(1A), s 27(1)(c), s 27(2) and s 27(2)(o); *Commonwealth of Australia Constitution Act* s 109

Result

Application alleging unfair dismissal dismissed; Contractual benefits claim jurisdiction found

Representation

Applicant

Mr K Higgins on his own behalf by way of written submissions

Respondent

Ms J Kruger (as agent) by way of written submissions

Supplementary Reasons for Decision

1 On 23 February 2010 the Commission issued Reasons for Decision in relation to this matter. The Commission was unable to conclude at the time whether the respondent was a trading corporation for the purposes of the *Fair Work Act 2009* ("FW Act") on the information and evidence submitted by the parties and a further opportunity was given to the respondent to provide certified documentation confirming its contention that Gateway Printing Pty Ltd is the trustee for the R & M Wood Family Trust trading as Gateway Printing and information about the respondent's trading activities by way of Statutory Declaration. The Commission also requested that the respondent make submissions about the Commission's jurisdiction to deal with the denied contractual benefits being claimed by the applicant in application B 184 of 2009 given the terms of s 27 of the FW Act as well as the potential impact of the existence of the National Employment Standards ("the Standards") on the applicant's denied contractual benefit claims if the applicant was employed by a national system employer as defined in the FW Act. After the respondent provided its further submissions and evidence the applicant made a further brief submission in response.

Respondent's further submissions

2 In its further submissions the respondent reiterated its claim that Gateway Printing Pty Ltd is the trustee of the R & M Wood Family Trust trading as Gateway Printing and this entity was the applicant's employer. The respondent provided evidence by way of a Statutory Declaration declared by Rodney Leonard Wood on 5 March 2010 that the R & M Wood Family Trust (ABN 91 510 375 957) ("the Trust") was created pursuant to a Deed of Settlement ("the Deed") dated 1 July 1994 and a copy of the Deed was annexed to this Statutory Declaration. Documentation tendered by the respondent confirms that the initial trustees of the Trust were Rodney Leonard Wood and Mandy Wood (see Clause 1.4 of the Deed) and the Deed was varied on 22 June 2001 whereby Rodney Leonard Wood and Mandy Wood were removed as the trustees of the Trust and replaced by Gateway Printing Pty Ltd as the sole trustee of the Trust pursuant to the terms of a Deed of Variation (see Annexure D to the Statutory Declaration of Rodney Leonard Wood). Mr Wood also declared that Gateway Printing is registered with the Western Australian Department of Consumer and Employment Protection and Attachment E to his Statutory Declaration is an extract for the trading name "Gateway Printing" recording that the Trust trades as Gateway Printing. Mr Wood also declared that the Australian Business Number ("ABN") on the applicant's group certificate, 91 510 375 957, is the ABN for the trading name Gateway Printing which is owned and operated by Gateway Printing Pty Ltd as trustee for the R & M Wood Family Trust. The respondent submits that on this basis, the applicant's employer is Gateway Printing Pty Ltd as trustee for the R & M Wood Family Trust which trades as Gateway Printing.

3 The respondent also submits that Gateway Printing Pty Ltd as trustee for the Trust, which trades as Gateway Printing is a trading corporation as its sole purpose is engaging in the production of printed related material to generate profit. On this basis the respondent is a constitutional corporation and as a result, a national system employer and its employees, including the applicant, are regulated by the provisions of the FW Act. The Commission therefore does not have jurisdiction to determine the applicant's claim of unfair dismissal.

4 The respondent submits that the applicant's denied contractual benefits claims fall outside the Commission's jurisdiction as s 26(2) of the FW Act identifies the *Industrial Relations Act 1979* ("the IR Act") as a general State industrial law which is excluded by virtue of s 26(1) of the FW Act and the applicant's claims do not fall within the definition of a non-excluded matter as provided in s 27(2)(o) of the FW Act because they do not arise under one of the named Acts specified in s 27(1A) of the FW Act.

Applicant's further submissions

5 The applicant maintains that the respondent's further submissions fail to provide any evidence that Gateway Printing Pty Ltd as trustee for the Trust, which trades as Gateway Printing was his employer and he stated that he had nothing further to add to his previous submissions.

Findings and conclusions

6 I am satisfied and I find on the basis of the documentation submitted by the respondent by way of the Statutory Declaration made by Mr Wood on 5 March 2010 and the annexures contained therein that Gateway Printing Pty Ltd is the trustee of the R & M Wood Family Trust which trades as Gateway Printing and that Gateway Printing Pty Ltd as trustee for the R & M Wood Family Trust trading as Gateway Printing is therefore the correct name of the applicant's employer.

7 Pursuant to the Commission's powers under s 27(1)(m) of the IR Act, which allows the Commission to correct, amend or waive any error, defect or irregularity whether in substance or in form, I will amend the name of the respondent in the Notices of Application with respect to both applications to reflect the correct name of the respondent and I will issue orders that Gateway Printing be deleted as the named respondent in both applications and be substituted with Gateway Printing Pty Ltd as trustee for the R & M Wood Family Trust trading as Gateway Printing (see *Rai v Dogrin Pty Ltd* [2000] 80 WAIG 1375 and *Bridge Shipping Pty Ltd v Grand Shipping SA and Anor* [1991] 173 CLR 231).

8 Even though the respondent has not provided detailed evidence about the respondent's trading activities, on the undisputed information before me I find that the respondent's main purpose is to trade. I accept that the respondent engages in the production of printed related material to generate a profit arising out of the activity of commercial printing whereby the respondent employs approximately 11 employees in production, sales and other administrative related areas.

9 When taking into account the terms of s 12, s 13 and s 14(1)(a) of the FW Act I find that the respondent is a trading corporation and the applicant is therefore an employee of a national system employer pursuant to the FW Act and the Commission's jurisdiction to deal with the applicant's claim for unfair dismissal is excluded by the terms of s 26 of the FW Act and s 109 of the Commonwealth Constitution. An order will therefore issue dismissing the applicant's unfair dismissal application for want of jurisdiction.

Denied contractual benefits

10 The applicant is seeking the following benefits under his contract of employment with the respondent as at 1 September 2009, which was the date the applicant was terminated: one week's pay in lieu of notice, the balance of 70 hours of accrued annual leave entitlements which was paid to the applicant at termination at the incorrect rate, the balance of 15.20 hours of wages which was paid to the applicant at termination at the incorrect rate and superannuation entitlements with respect to the amounts he is claiming.

11 Section 27 of the FW Act reads as follows:

“27 State and Territory laws that are not excluded by section 26

(1A) Section 26 does not apply to any of the following laws:

- (a) the *Anti-Discrimination Act 1977* of New South Wales;
- (b) the *Equal Opportunity Act 1995* of Victoria;
- (c) the *Anti-Discrimination Act 1991* of Queensland;
- (d) the *Equal Opportunity Act 1984* of Western Australia;
- (e) the *Equal Opportunity Act 1984* of South Australia;
- (f) the *Anti-Discrimination Act 1998* of Tasmania;
- (g) the *Discrimination Act 1991* of the Australian Capital Territory;
- (h) the *Anti-Discrimination Act* of the Northern Territory.

(1) Section 26 does not apply to a law of a State or Territory so far as:

- (b) the law is prescribed by the regulations as a law to which section 26 does not apply; or
- (c) the law deals with any non-excluded matters; or
- (d) the law deals with rights or remedies incidental to:
 - (i) any law referred to in subsection (1A); or
 - (ii) any matter dealt with by a law to which paragraph (b) applies; or
 - (iii) any non-excluded matters.

Note: Examples of incidental matters covered by paragraph (d) are entry to premises for a purpose connected with workers compensation, occupational health and safety or outworkers.

(2) The *non-excluded matters* are as follows:

- (a) superannuation;
 - (b) workers compensation;
 - (c) occupational health and safety;
 - (d) matters relating to outworkers (within the ordinary meaning of the term);
 - (e) child labour;
 - (f) training arrangements, except in relation to terms and conditions of employment to the extent that those terms and conditions are provided for by the National Employment Standards or may be included in a modern award;
 - (g) long service leave, except in relation to an employee who is entitled under Division 9 of Part 2-2 to long service leave;
 - (h) leave for victims of crime;
 - (i) attendance for service on a jury, or for emergency service duties;
- Note: See also section 112 for employee entitlements in relation to engaging in eligible community service activities.
- (j) declaration, prescription or substitution of public holidays, except in relation to the rights and obligations of an employee or employer in relation to public holidays;
 - (k) the following matters relating to provision of essential services or to situations of emergency:
 - (i) directions to perform work (including to perform work at a particular time or place, or in a particular way);
 - (ii) directions not to perform work (including not to perform work at a particular time or place, or in a particular way);
 - (l) regulation of any of the following:
 - (i) employee associations;
 - (ii) employer associations;

- (iii) members of employee associations or of employer associations;
- (m) workplace surveillance;
- (n) business trading hours;
- (o) claims for enforcement of contracts of employment, except so far as the law in question provides for a matter to which paragraph 26(2)(e) applies;
- (p) any other matters prescribed by the regulations.”

- 12 I reject the respondent’s submission that the applicant’s claims for denied contractual benefits do not fall within the definition of a non-excluded matter as provided in s 27(2)(o) of the FW Act on the basis that the claims do not fall within one of the Acts contained in s 27(1A) of the FW Act. It is my view that on a proper reading of s 27 of the FW Act, non-excluded matters set out in s 27(2) are not restricted to the enforcement of a claim under the Acts contained in s 27(1A) as claimed by the respondent.
- 13 Section 26 of the FW Act sets out a number of State or Territory industrial laws which are excluded by the operation of the FW Act, including at s 26(3) the IR Act which at s 29(1)(b)(ii) allows an employee to lodge an application in the Commission with respect to a claim for denied contractual benefits.
- 14 Section 27 of the FW Act, which is headed State and Territory laws that are not excluded by s 26, sets out a number of laws and matters that are not excluded by the terms of s 26 of the FW Act. Section 27(1A) includes eight pieces of legislation relating to equal opportunity and anti discrimination laws in each State and Territory within Australia. Section 27(1) refers to s 26 of the FW Act not applying to a law of a State or Territory so far as the law deals with any non-excluded matters and s 27(2) describes non-excluded matters, including at s 27(2)(o) claims for enforcement of contracts of employment except for a matter to which s 26(2)(e) of the FW Act applies, which relates to varying or setting aside rights and obligations arising out of a contract of employment that a court or tribunal finds unfair.
- 15 In my opinion on a proper reading of s 27 of the FW Act as a whole it does not require non-excluded matters to only relate to entitlements relevant to the eight Acts contained in s 27(1A). Section 26 of the FW Act sets out State laws which do not apply to a national system employer and employee and s 27(1)(c) of the FW Act provides that s 26 does not apply to a law of a State or Territory so far as the law deals with any non-excluded matters and these matters are set out in s 27(2). I find that given the terms of s 27(1)(c) of the FW Act, combined with s 27(2)(o), and as the Commission is empowered to deal with an employees claim of a denied contractual benefit pursuant to s 29(1)(b)(ii) of the IR Act, that the Commission has jurisdiction to deal with a national system employee’s claim for denied contractual benefits against a national system employer if what is being sought is a claim for enforcement of a contract of employment which does not relate to varying or setting aside rights and obligations arising out of a contract of employment that a court or tribunal finds unfair.
- 16 For an applicant to be successful in a denied contractual benefit claim in the Commission a number of elements must be established. The claim must relate to an industrial matter pursuant to s 7 of the IR Act and the claimant must be an employee; the claimed benefit must be a contractual benefit that being a benefit to which there is an entitlement under the applicant’s contract of service; the relevant contract must be a contract of service; the benefit claimed must not arise under an award or order of this Commission; and the benefit must have been denied by the employer: *Hotcopper Australia Ltd v David Saab* (2001) 81 WAIG 2704; *Ahern v Australian Federation of Totally and Permanently Incapacitated Ex-Service Men and Women (WA Branch Inc)* (1999) 79 WAIG 1867. The meaning of “benefit” has been interpreted widely in this jurisdiction: *Balfour v Travel Strength Ltd* (1980) 60 WAIG 1015; *Perth Finishing College Pty Ltd v Watts* (1989) 69 WAIG 2307.
- 17 I find that the Commission is not precluded from dealing with all of the entitlements being claimed by the applicant. There is no issue in this matter and I find that at all material times the applicant was an employee of the respondent and was employed under a contract of service. I find that these claims are also industrial matters for the purposes of s 7 of the IR Act as they relate to payments the applicant claims are due to him arising out of his employment with the respondent. On the information currently before me I am unable to conclude that the benefits the applicant is claiming arise under an award or order of this Commission.
- 18 As the Standards were operative from 1 January 2010 and the applicant’s denied contractual benefits arose as at 1 September 2009 their existence does not preclude the Commission from dealing with the applicant’s claims.
- 19 I will therefore issue a declaration that the Commission has jurisdiction to deal with the applicant’s claims for denied contractual benefits.
-

2010 WAIRC 00295

PARTIES WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
KEVIN HIGGINS **APPLICANT**

-v-
GATEWAY PRINTING PTY LTD AS TRUSTEE FOR THE R & M WOOD FAMILY TRUST
TRADING AS GATEWAY PRINTING **RESPONDENT**

CORAM COMMISSIONER J L HARRISON
DATE FRIDAY, 21 MAY 2010
FILE NO/S U 184 OF 2009
CITATION NO. 2010 WAIRC 00295

Result Dismissed
Representation
Applicant Mr K Higgins on his own behalf by way of written submissions
Respondent Ms J Kruger (as agent) by way of written submissions

Order

Having heard Mr K Higgins on his own behalf and Ms J Kruger as agent on behalf of the respondent, the Commission pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

1. THAT the name of the respondent be deleted and that Gateway Printing Pty Ltd as trustee for the R & M Wood Family Trust trading as Gateway Printing be substituted in lieu thereof.
2. THAT the application be and is hereby otherwise dismissed.

[L.S.]

(Sgd.) J L HARRISON,
Commissioner.

2010 WAIRC 00294

PARTIES WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
KEVIN HIGGINS **APPLICANT**

-v-
GATEWAY PRINTING PTY LTD AS TRUSTEE FOR THE R & M WOOD FAMILY TRUST
TRADING AS GATEWAY PRINTING **RESPONDENT**

CORAM COMMISSIONER J L HARRISON
DATE FRIDAY, 21 MAY 2010
FILE NO/S B 184 OF 2009
CITATION NO. 2010 WAIRC 00294

Result Jurisdiction found
Representation
Applicant Mr K Higgins on his own behalf by way of written submissions
Respondent Ms J Kruger (as agent) by way of written submissions

Order

Having heard Mr K Higgins on his own behalf and Ms J Kruger as agent on behalf of the respondent, the Commission pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby:

1. ORDERS that the name of the respondent be deleted and that Gateway Printing Pty Ltd as trustee for the R & M Wood Family Trust trading as Gateway Printing be substituted in lieu thereof.
2. DECLARES that the Commission has jurisdiction to deal with the applicant's claim for denied contractual benefits.

(Sgd.) J L HARRISON,
Commissioner.

[L.S.]

2010 WAIRC 00276

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
MARGARET MEARNES

PARTIES

APPLICANT

-v-

SHIRE OF LAVERTON

RESPONDENT

CORAM COMMISSIONER S M MAYMAN
DATE MONDAY, 17 MAY 2010
FILE NO/S U 263 OF 2009
CITATION NO. 2010 WAIRC 00276

Result Application dismissed
Representation
Applicant No appearance
Respondent No appearance

Order

WHEREAS this is an application pursuant to Section 29(1)(b)(i) of the *Industrial Relations Act 1979*;
AND WHEREAS this matter was listed for hearing on 26 March 2010 for the applicant to show cause why her application should not be dismissed;
AND WHEREAS the applicant failed to contact the Commission or attend the hearing;
AND WHEREAS having no appearance by the applicant the Commission formed the view the application should be dismissed;
NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders -

THAT this application be, and is hereby, dismissed.

(Sgd.) S M MAYMAN,
Commissioner.

[L.S.]

2010 WAIRC 00307

PARTIES	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION MR CHRISTOPHER JOHN EVANS	APPLICANT
	-v- SWAN TAFE	RESPONDENT
CORAM	COMMISSIONER J L HARRISON	
DATE	MONDAY, 31 MAY 2010	
FILE NO/S	U 135 OF 2009	
CITATION NO.	2010 WAIRC 00307	
Result	Discontinued	
Representation		
Applicant	Mr S Millman (of Counsel)	
Respondent	Mr M Taylor	

Order

WHEREAS this is an application pursuant to s 29(1)(b)(i) of the *Industrial Relations Act 1979*; and
 WHEREAS on 29 September 2009 the Commission convened a conference for the purpose of conciliating between the parties; and
 WHEREAS at the conclusion of that conference the parties were given time for further discussions; and
 WHEREAS on 13 October 2009 the applicant's representative advised the Commission that the parties had reached an agreement to settle the matter; and
 WHEREAS the Commission contacted the applicant on a number of occasions about the status of the matter; and
 WHEREAS on 5 March 2010 the applicant filed a Notice of Withdrawal or Discontinuance in respect of the application; and
 WHEREAS on 18 March 2010 the respondent consented to the matter being discontinued;
 NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby discontinued.

[L.S.]

(Sgd.) J L HARRISON,
Commissioner.

2010 WAIRC 00316

PARTIES	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION RICHARD PAUL OSWICK	APPLICANT
	-v- CITY OF COCKBURN	RESPONDENT
CORAM	COMMISSIONER J L HARRISON	
DATE	WEDNESDAY, 2 JUNE 2010	
FILE NO/S	U 88 OF 2009	
CITATION NO.	2010 WAIRC 00316	
Result	Discontinued	
Representation		
Applicant	Mr K Trainer (as agent)	
Respondent	Mr S White (as agent)	

Order

WHEREAS this is an application pursuant to s 29(1)(b)(i) of the *Industrial Relations Act 1979*; and
 WHEREAS on 25 May 2009 the Commission, constituted by Smith SC (as she was then), convened a conference for the purpose of conciliating between the parties; and
 WHEREAS at the conclusion of that conference the parties were given time for further discussions however, no agreement was reached; and
 WHEREAS the application was set down for hearing and determination on 30 September 2009 with respect to two preliminary issues; and
 WHEREAS on 16 September 2009 the respondent's representative requested an adjournment of the hearing pending the outcome of an appeal to the Full Bench in another matter; and
 WHEREAS the applicant did not object to the hearing being adjourned; and
 WHEREAS on 18 September 2009 the Commission adjourned the hearing sine die; and
 WHEREAS on 10 November 2009 the applicant requested that the matter be relisted for hearing; and
 WHEREAS on 25 November 2009, and before the matter had been listed for hearing, the applicant advised the Commission that an agreement had been reached to settle the matter; and
 WHEREAS the Commission contacted the applicant on a number of occasions about the status of the matter; and
 WHEREAS on 22 March 2010 the applicant filed a Notice of Withdrawal or Discontinuance in respect of the application; and
 WHEREAS on 24 March 2010 the respondent consented to the matter being discontinued;
 NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby discontinued.

[L.S.]

(Sgd.) J L HARRISON,
Commissioner.

2010 WAIRC 00292

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
GLENN JAMES ROSS

PARTIES

APPLICANT

-v-

CORRUPTION AND CRIME COMMISSION

RESPONDENT

CORAM ACTING SENIOR COMMISSIONER P E SCOTT
DATE THURSDAY, 20 MAY 2010
FILE NO/S B 6 OF 2007
CITATION NO. 2010 WAIRC 00292

Result Application dismissed

Order

WHEREAS this is an application pursuant to Section 29(1)(b)(ii) of the *Industrial Relations Act 1979*; and
 WHEREAS on the 19th day of March 2007, the 18th day of April 2007, the 30th day of April 2007, the 22nd day of May 2007 and the 2nd day of June 2009 the Commission convened conferences for the purpose of conciliating between the parties; and
 WHEREAS following the last such conference the parties awaited the determination of a related application and engaged in further discussions; and
 WHEREAS on the 27th day of April 2010 the applicant filed a Notice of Discontinuance in respect of the application;
 NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby dismissed.

[L.S.]

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

2010 WAIRC 00293

PARTIES	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION GLENN ROSS	APPLICANT
	-v-	
	CORRUPTION AND CRIME COMMISSION	RESPONDENT
CORAM	ACTING SENIOR COMMISSIONER P E SCOTT	
DATE	THURSDAY, 20 MAY 2010	
FILE NO/S	B 28 OF 2007	
CITATION NO.	2010 WAIRC 00293	

Result	Application dismissed
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Order

WHEREAS this is an application pursuant to Section 29(1)(b)(ii) of the *Industrial Relations Act 1979*; and
 WHEREAS on the 19th day of March 2007, the 18th day of April 2007, the 30th day of April 2007, the 22nd day of May 2007 and the 2nd day of June 2009 the Commission convened conferences for the purpose of conciliating between the parties; and
 WHEREAS following the last such conference the parties awaited the determination of a related application and engaged in further discussions; and
 WHEREAS on the 27th day of April 2010 the applicant filed a Notice of Discontinuance in respect of the application;
 NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby dismissed.

[L.S.]

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

2010 WAIRC 00315

PARTIES	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION LORIN SOLE	APPLICANT
	-v-	
	AUSTRALIAN RENEWABLE FUELS LIMITED	RESPONDENT
CORAM	COMMISSIONER J L HARRISON	
DATE	WEDNESDAY, 2 JUNE 2010	
FILE NO/S	B 224 OF 2009	
CITATION NO.	2010 WAIRC 00315	

Result	Discontinued
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Order

WHEREAS this is an application pursuant to s 29(1)(b)(ii) of the *Industrial Relations Act 1979*; and
 WHEREAS the Commission set down a scheduling conference on 2 February 2010 in relation to an issue of jurisdiction raised by the respondent; and
 WHEREAS on 28 January 2010 the conference was vacated at the request of the applicant's representative; and
 WHEREAS on 22 February 2010 and 15 March 2010 the Commission wrote to the applicant's representative about setting a further scheduling conference; and
 WHEREAS on 17 March 2010 the applicant filed a Notice of Withdrawal or Discontinuance in respect of the application; and
 WHEREAS on 19 March 2010 the respondent consented to the matter being discontinued;
 NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby discontinued.

(Sgd.) J L HARRISON,
 Commissioner.

[L.S.]

2010 WAIRC 00304

	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION	
PARTIES	KLARA MARGARETTE STYLIANOU	APPLICANT
	-v-	
	ANN MARTIN	RESPONDENT
CORAM	ACTING SENIOR COMMISSIONER P E SCOTT	
DATE	WEDNESDAY, 26 MAY 2010	
FILE NO/S	B 158 OF 2009	
CITATION NO.	2010 WAIRC 00304	

Result	Application dismissed
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Order

WHEREAS this is an application pursuant to Section 29(1)(b)(ii) of the *Industrial Relations Act 1979*; and
 WHEREAS on the 27th day of November 2009 the Commission convened a conference for the purpose of conciliating between the parties; and
 WHEREAS at the conclusion of that conference the parties could not reach agreement; and
 WHEREAS the application was set down for hearing and determination on the 28th day of April 2010; and
 WHEREAS during an adjournment in that hearing the parties reached an agreement in principle in relation to the application; and
 WHEREAS on the 21st day of May 2010 the applicant filed a Notice of Discontinuance in respect of the application;
 NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders:

THAT this application be, and is hereby dismissed.

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

[L.S.]

SECTION 29(1)(b)—Notation of—

Parties		Number	Commissioner	Result
Cindy Michelle Woolcott	Mandurah Offshore Fishing and Sailing Club Inc	U 16/2010	Commissioner J L Harrison	Order issued
Gregory James Pearce	City of Armadale	U 29/2010	Commissioner J L Harrison	Consent order issued
Julie Francis Grigo	Just Pizza Company	U 27/2010	Commissioner J L Harrison	Consent order issued
Juliet Simonis	Gabrielle Cronan (Dance & Music Central)	U 33/2010	Commissioner J L Harrison	Consent order issued
Krissie Dawson; Krissie Dawson	Hills Community Support Group; Hills Community Support Group	U 169/2009	Commissioner J L Harrison	Consent order issued
Meigan Waayers	Kimberley Land Council Aboriginal Corporation	U 272/2009	Commissioner J L Harrison	Order issued
Peter James Willesee	The Salvation Army Australia Southern Territory	U 23/2010	Commissioner J L Harrison	Consent order issued
Stephen Robert Lawrence; Stephen Robert Lawrence	Stanley International College Pty Ltd; stanley international college pty ltd	U 270/2009	Commissioner J L Harrison	Consent order issued

CONFERENCES—Notation of—

Parties		Commissioner	Conference Number	Dates	Matter	Result
The Western Australian Municipal, Road Boards, Parks and Racecourse Employees' Union of Workers, Perth	The Chief Executive Officer of the City of Melville	Harrison C	C 5/2010	24/03/2010 26/03/2010	Dispute in relation to refusal of approved purchased annual leave of union member	Concluded

CORRECTIONS—

2010 WAIRC 00333

APPEAL AGAINST A DECISION OF THE COMMISSIONER OF POLICE TO TAKE REMOVAL ACTION

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

AM

APPELLANT

-v-

COMMISSIONER OF POLICE

RESPONDENT**CORAM**

CHIEF COMMISSIONER A R BEECH

COMMISSIONER J L HARRISON

COMMISSIONER S M MAYMAN

DATE

10 JUNE 2010 (CORRIGENDUM THURSDAY, 11 FEBRUARY 2010)

FILE NO/S

APPL 8 OF 2008

CITATION NO.

2010 WAIRC 00333

CORRIGENDUM

1. In the Representation section of the Further Reasons for Decision of 11 February 2010 ((2010) 90 WAIG 283; [2010] WAIRC 00061),
- (a) after the word "Appellant", delete the words "Ms D Scaddan (of counsel) by written submission" and insert the words "Ms KA Vernon (of counsel) by written submission"; and
- (b) after the word "Respondent", delete the words "Ms KA Vernon (of counsel) by written submission" and insert the words "Ms D Scaddan (of counsel) by written submission"

(Sgd.) A R BEECH,
Chief Commissioner,

[L.S.] On Behalf of the Western Australian Industrial Relations Commission.

Dated: Thursday, 10 June 2010

PROCEDURAL DIRECTIONS AND ORDERS—

2010 WAIRC 00291

APPEAL AGAINST THE DECISION MADE ON 12 AUGUST 2009 RELATING TO A CHARGE OF AN ALLEGED BREACH OF DISCIPLINE

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
GUISEPPE DI PIETRO

PARTIES

APPELLANT

-v-

UNDER TREASURER, DEPARTMENT OF TREASURY AND FINANCE

RESPONDENT

CORAM

PUBLIC SERVICE APPEAL BOARD
ACTING SENIOR COMMISSIONER P E SCOTT - CHAIRMAN
MS L McKAY - BOARD MEMBER
MS K WATSON - BOARD MEMBER

DATE

THURSDAY, 20 MAY 2010

FILE NO

PSAB 10 OF 2009

CITATION NO.

2010 WAIRC 00291

Result Extension of time in which to appeal granted

Order

WHEREAS this is an appeal pursuant to the *Industrial Relations Act 1979* filed beyond the 21 days allowed by the Act; and
WHEREAS on the 11th day of May 2010 the respondent advised that it did not object to the granting of the application for an extension of time in which to appeal;

NOW THEREFORE, the Public Service Appeal Board, pursuant to the powers conferred under the *Industrial Relations Act 1979*, and by consent, hereby orders:

THAT the application for an extension of time in which to appeal be granted.

[L.S.]

(Sgd.) P E SCOTT,
Acting Senior Commissioner,
On behalf of the Public Service Appeal Board.

2010 WAIRC 00285

APPEAL AGAINST THE DECISION MADE ON 1 SEPTEMBER 2009 RELATING TO TERMINATION OF EMPLOYMENT

PARTIES	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION CATHERINE SMIT	APPELLANT
	-v-	
	SAFETY BAY SENIOR HIGH SCHOOL	RESPONDENT
CORAM	PUBLIC SERVICE APPEAL BOARD ACTING SENIOR COMMISSIONER P E SCOTT - CHAIRMAN MR K TRENT - BOARD MEMBER MR J ROSSI - BOARD MEMBER	
DATE	TUESDAY, 18 MAY 2010	
FILE NO	PSAB 26 OF 2009	
CITATION NO.	2010 WAIRC 00285	

Result	Name of respondent amended
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Order

WHEREAS this is an appeal pursuant to Section 80I of the *Industrial Relations Act 1979*; and

WHEREAS on the 12th day of May 2010 the Public Service Appeal Board convened a hearing for the purpose of the issue of jurisdiction; and

WHEREAS at the hearing the parties agreed that the name of the respondent be amended to "Department of Education";

NOW THEREFORE, the Public Service Appeal Board, pursuant to the powers conferred under the *Industrial Relations Act 1979*, and by consent, hereby orders:

THAT the name of the respondent in the appeal be amended to "Department of Education".

[L.S.]

(Sgd.) P E SCOTT,
Acting Senior Commissioner,
On behalf of the Public Service Appeal Board.

PUBLIC SERVICE APPEAL BOARD—

2010 WAIRC 00280

APPEAL AGAINST DECISION MADE BY RESPONDENT RE STATUS OF EMPLOYMENT

PARTIES	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION FRANIA SHARP SUSAN WARING WENDY POWLES JUDITH MARGARET WICKHAM SHANE MELVILLE JOHAN WILLERS	APPELLANTS
	-v-	
	WORKCOVER WA	RESPONDENT
CORAM	PUBLIC SERVICE APPEAL BOARD ACTING SENIOR COMMISSIONER P E SCOTT - CHAIRMAN MS B CONWAY - BOARD MEMBER MR A PITTOCK - BOARD MEMBER	
DATE	TUESDAY, 18 MAY 2010	
FILE NO	PSAB 30 OF 2009, PSAB 31 OF 2009, PSAB 32 OF 2009, PSAB 33 OF 2009, PSAB 34 OF 2009, PSAB 35 OF 2009	
CITATION NO.	2010 WAIRC 00280	

Result	Directions issued
Representation	
Appellants	Mr J Willers and Mr S Melville
Respondent	Mr R Andretich of counsel

Directions

HAVING heard Mr J Willers on his own behalf and on behalf of appellants Ms F Sharp, Ms S Waring, Ms W Powles and Ms J Wickham, and Mr S Melville on his own behalf and Mr R Andretich (of counsel) on behalf of the respondent, the Public Service Appeal Board, pursuant to the powers conferred under the *Industrial Relations Act 1979*, hereby directs:

1. THAT in respect of proposed Direction 1 the decision of the Public Service Appeal Board is reserved and the parties will be advised in due course.
2. THAT the respondent within fourteen (14) days file and serve a list of discoverable documents relevant to the issues between the parties including, but not limited to the following classes of documents:
 - (a) All advertisements placed by or on behalf of the respondent for the position of Arbitrator filled by the appellants;
 - (b) The contracts by which the appellants were employed by the respondent;
 - (c) The contracts by which four Arbitrators were employed on a permanent basis by the respondent at the same time that the respondent employed the appellants;
 - (d) All job description forms applying for the position of Arbitrator;
 - (e) All government approved procedures and all government/WorkCover WA approved policies applicable to the appellants' appointment and/or the conversation of same to permanent officers;
 - (f) All documents relevant to the decision to appoint the appellants as fixed term officers having regard to the criteria set out in Clause 8(5) of the Public Service Award 1992 and in Approved Procedure 4; including all file notes, memoranda, correspondence and email bearing on whether the appellants were engaged for the purpose of:
 - (i) covering one-off periods of relief;
 - (ii) working on a project with a finite life;
 - (iii) work that is seasonal in nature;
 - (iv) acquiring an officer with specific skills not readily available in the public sector for a finite period;
 - (v) working in any other situation as agreed by the respondent and The Community & Public Sector Union/The Civil Service Association of WA.
3. THAT the time for compliance by the parties with Direction 2 made on 25 March 2010 be extended to fourteen (14) days after point 1 hereof.
4. THAT the listing for the hearing of these appeals on 27 May 2010 be vacated and that these appeals be listed for simultaneous hearing at a time to be fixed.

(Sgd.) P E SCOTT,
Acting Senior Commissioner,
On behalf of the Public Service Appeal Board.

[L.S.]

2010 WAIRC 00299

APPEAL AGAINST DECISION MADE BY RESPONDENT RE STATUS OF EMPLOYMENT

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

FRANIA SHARP
 SUSAN WARING
 WENDY POWLES
 JUDITH MARGARET WICKHAM
 SHANE MELVILLE
 JOHAN WILLERS

APPELLANTS

-v-

WORKCOVER WA

RESPONDENT

CORAM

PUBLIC SERVICE APPEAL BOARD
 ACTING SENIOR COMMISSIONER P E SCOTT - CHAIRMAN
 MS B CONWAY - BOARD MEMBER
 MR A PITTOCK - BOARD MEMBER

HEARD

TUESDAY, 11 MAY 2010

DELIVERED

TUESDAY, 25 MAY 2010

FILE NO.

PSAB 30 OF 2009, PSAB 31 OF 2009, PSAB 32 OF 2009, PSAB 33 OF 2009, PSAB 34 OF 2009, PSAB 35 OF 2009

CITATION NO.

2010 WAIRC 00299

CatchWords

Public Service Appeal Board – *Public Sector Management Act 1994* s 64(1)(b) – Permanent officer – Full and Complete Particulars of Answer – *Public Service Award 1992* – Approved Procedure 4 – Fixed term employee – Validity of appointment

Result

Direction issued

Representation

Applicants

Mr J Willers and Mr S Melville

Respondent

Mr R Andretich of counsel

*Reasons for Decision**Application for Full and Complete Particulars of Answer*

- 1 These are the unanimous Reasons of the Public Service Appeal Board (the Board).
- 2 These appeals are to be heard and determined together. By Notices of Appeal to the Board filed on 21 December 2009, the appellants appeal against the respondent's decision in relation to an interpretation of the *Public Sector Management Act 1994* (*PSM Act*), in not recognising them as permanent officers in accordance with s 64(1)(a) of the *PSM Act*. The respondent filed a Notice of Answer on 31 March 2010.
- 3 The appellants have filed an application for Full and Complete Particulars of the Respondent's Answer in respect of two issues being:
 - "1. With regards to paragraphs 8 and 9 of the Answer, precisely what condition or conditions referred to in Approved Procedure 4 or in the Public Sector Award is it alleged applied in relation to the Appellants' appointments and, in relation to each such condition, why is it alleged such condition applied.
 2. With regards to paragraph 12 of the Answer, if the Appellants' appointments did not meet the conditions required by section 64 for appointments made under subsection (1)(b), is it or is it not alleged the appointments are invalid at law."

We will deal with these questions separately.

Question 1

- 4 Paragraphs 8 and 9 of the respondent's Answer referred to in question 1 of the appellants' application for Full and Complete Particulars are as follows:

- “8. Paragraphs 5 and 6 of the Applications are admitted only insofar as they refer to the instruments as relating to employment in the Public Service and their content.
9. The Respondent does not admit that none of the circumstances referred to in the Approved Procedure 4 or the Public Service Award applied in relation to the Applicants’ appointments.”
- 5 Paragraph 8 of the respondent’s Answer refers to paragraphs 5 and 6 of the schedule to the Notice of Appeal. Those paragraphs are as follows:
- “5. The PSMA is expressed to be subject to approved procedures and any binding award, order or industrial agreement under the Industrial Relations Act 1979.
6. The Public Service Award 1992 (the Award), which award is made under the Industrial Relations Act 1979, governs my terms and conditions of employment. Per clause 8(5) of the Award, an employer may only employ a person as a fixed term contract officer in the circumstances provided in that clause. None of the circumstances provided in the clause apply in relation to my appointment as an Arbitrator, hence my appointment as a purported ‘fixed term employee’ is in breach of that Award. Further, the government approved procedures and policies for the employment of public service officers on fixed term contracts reflect the Award provisions.”
- 6 By question 1 the appellants seek to know what condition or conditions in Approved Procedure 4 or in the Public Service Award the respondent alleges applied in relation to their appointments and why each such condition applied. This is said to rely upon paragraphs 8 and 9 of the Answer. Paragraph 8 of the Answer does not allege that any particular conditions of either Approved Procedure 4 or the Public Service Award applied to the appellants. It does no more than admit that the *Public Service Award 1992* and other instruments, ‘relate to (e)mloyment in the Public Service and their content’.
- 7 Paragraph 9, containing a double negative, in effect, neither admits nor denies and puts the appellants to proof, that any of the circumstances referred to in Approved Procedure 4 or the Public Service Award apply to the appellants’ employment. The request for particulars at paragraph 1 assumes more than paragraphs 8 and 9 of the respondent’s Answer provide, and in doing so, asks a question which does not follow as a consequence of those paragraphs and requires further admissions and answers.
- 8 Whilst it is appropriate for public policy purposes and for fairness in the process of a hearing that the appellants should not be ambushed and that they should know what the respondent says, it is not for the Board to rephrase the questions asked within the Request for Full and Complete Particulars so as to enable questions the appellants want to ask to be asked, and for answers to be obtained when the questions asked rely upon an erroneous assumption or conclusion as to the terms of the respondent’s answer.
- 9 Accordingly the application in respect of question 1 will be dismissed. There is no impediment to the appellants filing a further application properly relying upon the respondent’s Answer.
- Question 2
- 10 Paragraph 12 of the respondent’s Answer referred to in question 2 of the appellants’ application is as follows:
- “12. If, which is not admitted, the appointments did not meet the conditions required by section 64 for appointments made under subsection (1)(b) they may be invalid as purported appointments made under that subsection, not valid appointments by default made under subsection (1)(a) as permanent officers.”
- 11 During the course of the conference convened on Tuesday 11 May 2010, the respondent’s answer to this was classified as meaning that the respondent says two things:
1. If the appointments were not properly made under s 64(1)(b) then they may be invalid; and
 2. The fact of the appointments having been invalidly made (if that is the case) does not have the consequence of the appointments being permanent appointments.
- 12 If that is so, there is no reason why the respondent ought not respond to this question, and is directed to do so within seven days.
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2010 WAIRC 00298

APPEAL AGAINST DECISION MADE BY RESPONDENT RE STATUS OF EMPLOYMENT

	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION	
PARTIES	FRANIA SHARP SUSAN WARING WENDY POWLES JUDITH MARGARET WICKHAM SHANE MELVILLE JOHAN WILLERS	APPELLANTS
	-v- WORKCOVER WA	RESPONDENT
CORAM	ACTING SENIOR COMMISSIONER P E SCOTT MR A PITTOCK – BOARD MEMBER MS B CONWAY – BOARD MEMBER	
DATE	TUESDAY, 25 MAY 2010	
FILE NO.	PSAB 30 OF 2009, PSAB 31 OF 2009, PSAB 32 OF 2009, PSAB 33 OF 2009, PSAB 34 OF 2009, PSAB 35 OF 2009	
CITATION NO.	2010 WAIRC 00298	

Result	Direction Issued
Representation	
Applicants	Mr J Willers and Mr S Melville
Respondent	Mr R Andretich of counsel

Direction

HAVING heard from Mr J Willers on his own behalf and as agent on behalf of the appellants in Appeals No. 30 – 33 of 2009, Mr S Melville on his own behalf, and Mr R Andretich of counsel on behalf of the respondent, the Public Service Appeal Board, pursuant to the powers conferred under the *Industrial Relations Act 1979*, hereby directs:

THAT in respect of the Request for Full and Complete Particulars of Respondent's Answer of 20 April 2010:

1. In respect of question 1, the application is dismissed.
2. In respect of question 2, the respondent is hereby directed to respond within seven days of the date of this Direction.

[L.S.]

(Sgd.) P E SCOTT,
Acting Senior Commissioner,
On behalf of the Public Service Appeal Board.

OCCUPATIONAL SAFETY AND HEALTH ACT—Matters Dealt With—

2010 WAIRC 00324

REFERRAL OF DISPUTE RE ENTITLEMENTS TO PAY AND OTHER BENEFITS

THE OCCUPATIONAL SAFETY AND HEALTH TRIBUNAL

PARTIES

ADRIAN YOUNG

APPLICANT

-v-

SAFE & SOUND LABOUR HIRE

RESPONDENT**CORAM**

COMMISSIONER S M MAYMAN

DATE

THURSDAY, 3 JUNE 2010

FILE NO

OSHT 108 OF 2010

CITATION NO.

2010 WAIRC 00324

Result

Application discontinued

Representation**Applicant**

Mr S Millman

Respondent

Mr J Blackburn and Ms L Gibbs (both of counsel)

Order

WHEREAS this is an application pursuant to s 28(2) of the *Occupational Safety and Health Act 1984*;

AND WHEREAS on 18 March 2010 the applicant filed a Notice of Discontinuance in respect of the application;

NOW THEREFORE, I the undersigned, pursuant to the powers conferred under the *Occupational Safety and Health Act 1984*, hereby order –

THAT this application be, and is hereby discontinued.

(Sgd.) S M MAYMAN,
Commissioner.

[L.S.]

ROAD FREIGHT TRANSPORT INDUSTRY TRIBUNAL—Matters Dealt With—

2010 WAIRC 00301

REFERRAL OF DISPUTE RE PAYMENT OF CLAIM

IN THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

SITTING AS

THE ROAD FREIGHT TRANSPORT INDUSTRY TRIBUNAL

PARTIESTRANSPORT WORKERS' UNION OF AUSTRALIA, INDUSTRIAL UNION OF WORKERS,
WESTERN AUSTRALIAN BRANCH**APPLICANT**

-v-

KINGS TRANSPORT SERVICES PTY LTD

RESPONDENT**CORAM**

COMMISSIONER J L HARRISON

DATE

WEDNESDAY, 26 MAY 2010

FILE NO/S

RFT 27 OF 2009

CITATION NO.

2010 WAIRC 00301

Result	Discontinued
Representation	
Applicant	Mr D Cain and Mr T Dawson
Respondent	Mr D Spink

Order

WHEREAS the applicant filed a referral to the Road Freight Transport Industry Tribunal ("the Tribunal") under s 40 of the *Owner-Drivers (Contracts and Disputes) Act 2007* on 11 December 2009; and

WHEREAS on 14 January 2010 the Tribunal convened a conciliation conference in respect of the matter; and

WHEREAS at the conclusion of the conference the parties were given time for further discussions; and

WHEREAS on 21 January 2010 the applicant advised the Tribunal that it wished to progress the matter to arbitration; and

WHEREAS the matter was set down for hearing and determination on 15 March 2010; and

WHEREAS on 15 March 2010, and prior to the hearing commencing, the applicant advised the Tribunal that it was not proceeding with the matter and lodged a Notice of Withdrawal or Discontinuance in respect of the application and the hearing was vacated; and

WHEREAS on 15 March 2010 the respondent advised that it had no objection to the matter being discontinued;

NOW THEREFORE, the Commission, sitting as the Road Freight Transport Industry Tribunal, pursuant to the powers conferred on it under the *Owner-Drivers (Contracts and Disputes) Act 2007* hereby orders –

THAT the application be and is hereby discontinued.

(Sgd.) J L HARRISON,
Commissioner.

[L.S.]

ROAD FREIGHT TRANSPORT INDUSTRY TRIBUNAL—Notation of—

The following were matters before the Commission sitting as the Road Freight Transport Industry Tribunal pursuant to s 38 of the *Owner-Drivers (Contracts and Disputes) Act 2007* that settled prior to an order issuing.

Parties		Commissioner	Application Number	Dates	Matter	Result
Ken Mills	Peter Oldenhuis trading as Westline Contracting	Harrison C	RFT 28/2009	27/01/2010 16/02/2010 4/05/2010	Referral of Dispute re payment of claim	Consent order issued

CUMULATIVE CONTENTS HEADINGS

* Denotes New Heading

- Agreements—Industrial—Retirements from
 Awards/Agreements—Application for
 Awards/Agreements—Consolidation by Registrar
 Awards/Agreements—Consolidation of
 Awards/Agreements—Variation of (see also Public Service Arbitrator and Coal Industry Tribunal)
 Awards/Agreements and Orders—Application for variation of—No variation resulting
 Awards/Agreements and Orders—Interpretation of
 Boards of Reference—Decisions of
 Cancellation of Awards/Agreements/Respondents
 Cancellation of Orders
 Ceremonial Addresses
 Commission in Court Session—Appeals against decisions of Boards of Reference
 Commission in Court Session—Matters dealt with
 Conciliation Orders (Section 32 Matters)
 Conferences—Matters arising out of (refers to matters agreement between parties is reached)
 Conferences—Matters referred (refers to arbitrated matters)
 Conferences—Notation of (table of all Conference applications)
 Corrections
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APPENDIX 1 COMPLAINTS / CLAIMS

The Industrial Magistrate, during the six months ending **June 30, 2010**, dealt with the under mentioned complaints/claims for breaches of Awards or Industrial Agreements or breach of the Industrial Relations Act 1979, Minimum Conditions of Employment Act 1993 and the Workplace Relations Act 1996 or the Regulations made there under. The decision of the Magistrate is briefly noted, but those cases involving points of particular interest or importance are more fully reported.

No. of Complaint	Complainant	Defendant	Nature of Breach	Decision	Penalty	Costs	Wages
CP 2/2010	CHRISTOPHER DAVID BELL, DEPARTMENT OF CONSUMER AND EMPLOYMENT PROTECTION	DINE OUT PTY LTD T/A PIZZA HUT JOONDALUP ACN: 059 228 330	Breach of s. 190(1) Children and Community Services Act 2004	Discontinued			
No. of Claim	Claimant	Respondent	Nature of Breach	Decision	Penalty	Costs	Wages
M 31/2009	LIQUOR HOSPITALITY AND MISCELLANEOUS UNION, WESTERN AUSTRALIAN BRANCH	MINISTER FOR EDUCATION	Industrial Relations Act 1979 - Alleged breach of Cleaners and Caretakers (Government) Award 1975	Discontinued			
M 33/2009	DANIEL MITCHELL	KLEMAP PTY LTD, TRADING AS SPICES CATERING	Workplace Relations Act 1996 - Alleged breach of the General Redundancy Order 2005	Discontinued			
M 34/2009	GEORGE JANDI	MOD HOLDINGS PTY LTD	Workplace Relations Act 1996 - Alleged breach of section 235 (2)	Discontinued			
M 42/2009	JEFFREY LOEL TOWNEND, DEPARTMENT OF COMMERCE	GRANDIOSE PTY LTD AS TRUSTEE FOR THE WESTAWAY FAMILY TRUST	Long Service Leave Act 1958 - alleged breach of Act	Claim admitted		889.48	6,223.30
M 43/2009	DYLAN MICHAEL ADEY	FRESH MEAT MARKETS PTY LTD TRADING AS TOMS MEAT MARKETS	Work Place Relations Act 1996 - Alleged breach	Discontinued			
M 44/2009	DR WILLIAM PATTERSON	THE MINISTER FOR HEALTH IN HIS INCORPORATED CAPACITY UNDER S.7 OF THE HOSPITALS AND HEALTH SERVICES ACT 1927 (WA) AS THE HOSPITALS FALLING WITHIN THE WA COUNTRY HEALTH SERVICES	Industrial Relations Act 1979 - Alleged breach of Department of Health and Medical Practitioners (Director General) AMA Industrial Agreement 2007 PSAAG 7 of 2008	Discontinued			
M 45/2009	PROFESSOR LEONARD ARNOLDA	THE MINISTER FOR HEALTH IN HIS INCORPORATED CAPACITY UNDER S.7 OF THE HOSPITALS AND HEALTH SERVICES ACT 1927 (WA) AS THE HOSPITALS FALLING WITHIN THE WA COUNTRY HEALTH SERVICES	Minimum Conditions of Employment Act 1993 - Alleged breach of s.24(2) of the Minimum Conditions of Employment Act 1993	Discontinued			
M 46/2009	DR SIVA BALARATNASINGAM	THE MINISTER FOR HEALTH IN HIS INCORPORATED CAPACITY UNDER S.7 OF THE HOSPITALS AND HEALTH SERVICES ACT 1927 (WA) AS THE HOSPITALS FALLING WITHIN THE WA COUNTRY HEALTH SERVICES	Industrial Relations Act 1979 - Alleged breach of the Department of Health and Medical Practitioners (WA Country Health Service) AMA Industrial Agreement 2007 PSA AG 13 of 2008	Discontinued			

WESTERN AUSTRALIAN INDUSTRIAL GAZETTE

COMPLAINTS / CLAIMS—*continued*

No. of Claim	Claimant	Respondent	Nature of Breach	Decision	Penalty	Costs	Wages
M 47/2009	JEFFREY LOEL TOWNEND, DEPARTMENT OF COMMERCE	MARTIN JOHN NANKIVILLE AND KATHRYN ELIZABETH NANKIVILLE TRADING AS BRUMBY'S RIVERTON	Industrial Relations Act 1979 - Alleged breach of Act	Memorandum of Consent			
M 129/2009	PHILLIP LUKE	HELEN BOLINDUNCAN BOLIN	Industrial Relations Act 1979 - Alleged breach of the Building Trades (Construction) Award 1987	Discontinued			
M 132/2009	PARMINDER SINGH	JAGUAR SECURITY SERVICES PTY LTD	The Workplace Relations Act 1996 - Alleged breach of Act	Claim Proven		40.00	1756.00
M 134/2009	ADOLF PETER LOMBARDI	SUPREME KITCHENS AND DESIGN PTY LTD	Fair Work Act 2009 - Alleged breach of Furniture Trades Industry Award	Discontinued			
M 136/2009	SANDY O'CONNOR	CAROL & BILL WARNER – CARPET COURT BELMONT	Industrial Relations Act 1979 - Alleged Breach of Act	Discontinued			
M 137/2009	EMILY LOUISE NEGUS, DEPARTMENT OF COMMERCE	SEAN PHILLIP PRIMMER TRADING AS PRIMMER'S TROLLEY COLLECTION SERVICES	Industrial Relations Act 1979 - Alleged Breach of Act	Judgement by Default		967.68	1,438.48
M 138/2009	EMILY LOUISE NEGUS, DEPARTMENT OF COMMERCE	SEAN PHILLIP PRIMMER TRADING AS PRIMMER'S TROLLEY COLLECTION SERVICES	Industrial Relations Act 1979 - Alleged Breach of Act	Judgement by Default		1,744.20	3,623.93
M 139/2009	GARRY COLLINS	NGAANYATJARRA HEALTH SERVICES	The Fair Work Act 2009 - Alleged breach of Act	Discontinued			
M 140/2009	HEALTH SERVICES UNION OF WESTERN AUSTRALIA (UNION OF WORKERS)	DIRECTOR GENERAL OF HEALTH AS DELEGATE OF THE MINISTER FOR HEALTH IN HIS INCORPORATED CAPACITY UNDER SECTION 7 OF THE HOSPITALS AND HEALTH SERVICES ACT 1972 FOR THE HOSPITALS FORMERLY COMPRISING THE METROPOLITAN HEALTH SERVICES BOARD	Industrial Relations Act 1979 - alleged breaches of WA Health - HSU Award 2004 and WA Health - HSU Award 2006	Dismissed			
M 1/2010	AUSTRALIAN SERVICES UNION	CITY OF FREMANTLE	Fair Work Act 2009 - Alleged breaches of the Fremantle Officers Award 2002 and City of Fremantle Enterprise Agreement 2004	Discontinued			
M 2/2010	TRANSPORT WORKERS' UNION OF AUSTRALIA	K&S FREIGHTERS PTY LTD	Fair Work Act - Alleged breach of the K&S Freighters Transport Employees' Union Collective Agreement 2008-2010	Discontinued			
M 6/2010	TRANSPORT WORKERS' UNION OF AUSTRALIA, INDUSTRIAL UNION OF WORKERS, WESTERN AUSTRALIAN BRANCH	MCLAUGHLIN FAMILY TRUST T/A CARMICH TRANSPORT BEECHBORO	Industrial Relations Act 1979 & Minimum Conditions of Employment Act 1993 - Alleged breaches	Discontinued			
M 8/2010	MRS BRONWYN GAYLE TYLER	CIONCI, JOHN DAVID TRADING AS VIDEO EZY-NORANDA (ABN: 17 057 232 633)	Alleged breach of the Long Service Leave Act 1958	Discontinued			
M 13/2010	SIMONE RILEY	MARMOTTE PTY LTD	Workplace Relations Act 1996 - Alleged Breach of the Childrens' Services (Private) Award 2006	Discontinued			

WESTERN AUSTRALIAN INDUSTRIAL GAZETTE

COMPLAINTS / CLAIMS—*continued*

No. of Claim	Claimant	Respondent	Nature of Breach	Decision	Penalty	Costs	Wages
M 17/2010	TRANSPORT WORKERS' UNION OF AUSTRALIA	TARAMORE PTY LTD T/A ONTRAQ HAULAGE	Fair Work Act 2009 - Alleged Breach of Road Transport (Long Distance Operations) Award 2010	Discontinued			
M 22/2010	LUKE OFARRELL	KRM PTY LTD TRADING AS KITEC ELECTRICAL	Fair Work Act 2009 - Alleged Breach of Electrical, Electronic and Communications Contracting Award 2010	Discontinued			

APPENDIX II
MINIMUM WAGE—AUSTRALIA

MINIMUM WEEKLY WAGE RATES UNDER AWARDS OF THE AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

- Editor's Note (a) Rates operative from beginning of first pay-period commencing on or after the date shown.
 (b) Rate operative from the beginning of the pay-period in which 30 September occurs.
 (c) Rate operative from the beginning of the pay-period in which 30 June occurs.
 (d) Amendment to operate from date of variation to award.
 (e) The National Wage case of December 1986 Print G64000 contained no increase in the minimum wage. The Full Bench of the Australian Commission decided that the special needs of lower paid workers should be addressed through supplementary payments.

Date of Operation (a)	Amount (\$)	Date of Operation	Amount (\$)
Adult males—		Adult females—	
1966— 11 July.....	36.55	1974— 23 May	57.90
1967— 1 July.....	37.55	30 September (b).....	61.30
1968— 25 October	38.90	1975— 1 January.....	68.50
1969— 19 December.....	42.40	15 May	72.10
1971— 1 January.....	46.40	30 June (c).....	80.10
1972— 19 May	51.50	18 September	82.90
1973— 29 May	60.10		
1974— 23 May	68.10		
1975— 1 January.....	76.10		
15 May.....	80.10		
18 September.....	82.90		

Adult Males and Females—

(Note: As of 15 February 1976 the Adult Minimum Wage rate applied equally to both males and females).

Date of Operation (a)	Amount (\$)
1976— 15 February.....	88.20
1 April.....	93.20
15 May.....	96.00
15 August	98.50
22 November	100.70
1977— 31 March	106.40
24 May	108.40
22 August	110.60
12 December.....	112.30
1978— 28 February	114.00
7 June.....	115.50
12 December.....	120.10
1979— 27 June	123.90
1980— 4 January.....	129.50
14 July	134.90
1981— 9 January.....	139.90
7 May.....	144.90
1983— 6 October	151.10
1984— 6 April.....	157.30
1985— 6 April.....	161.38
1985— 4 November	167.50
1986—23 July (e).....	171.37
1997— 22 April (d)	359.40
1998— 29 April (d)	373.40
1999— 29 April (d)	385.40
2000— 1 May (d)	400.40
2001— 2 May (d)	413.40
2002— 9 May (d)	431.40
2003— 6 May (d)	448.40
2004— 5 May (d)	467.40
2005— 7 June (d)	484.40

Federal Minimum Wage set by The Australian Fair Pay Commission under S. 20 of The *Workplace Relations Act 1996*, as amended by The *Workplace Relations Amendment (Work Choices) Act 2005 (WR Act)* (wef: 1/12/2006).

Date of Operation	Amount of Increase Per Week (\$)	Hourly Rate (\$) (Rounded to nearest cent)	Amount (\$)
2006 – 1 December.....	27.36	13.47	511.76
2007 – 1 October.....	10.26	13.74	522.02
2008 – 1 October.....	21.66	14.31	543.78

2009: There was no adjustment to the Minimum Wage

Federal Minimum Wage set by The Australian Fair Pay Commission under *The Fair Work Act 2009* and *The Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

2010 – 1 July.....	26.22	15.00	569.90
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APPENDIX III
MINIMUM WAGE - WESTERN AUSTRALIA

WEEKLY RATES FOR ADULT WORKERS UNDER APPROPRIATE AWARDS AND INDUSTRIAL AGREEMENTS OF THE WESTERN AUSTRALIAN INDUSTRIAL COMMISSION.

- Table 1 = Minimum Weekly Rates of Pay for adult workers under appropriate Awards and Industrial Agreements.
Table 2 = Minimum Weekly Rates of Pay for all state adult employees under the *Minimum Conditions of Employment Act 1993*.

TABLE 1

Date of Operation	Amount of Increase \$	Males \$	Amount of Increase	Females \$	W.A.I.G. Reference	
					Vol	Page
26th October, 1970	—	49.00	—	—	50	825
26th October, 1971	2.50	51.50	—	—	51	1029
26th June, 1972	2.00	53.50	—	—	52	445
8th June, 1973	3.50	57.00	—	—	53	595
17th September, 1973	4.50	61.50	—	—	53	1081
31st May, 1974	7.50	69.00	—	57.90	54	411
1st May, 1975	13.50	82.50	14.20	72.10	55	535
30th June, 1975	—	82.50	8.00	80.10	55	535
15th May, 1976	11.70	94.20	10.40	91.50	56	788
15th August, 1976 (a)	3.20	97.40	3.10	94.60	56	1131
15th November, 1976 (a)	2.40	99.80	2.40	97.00	56	1789
15th February, 1977 (a)	6.60	106.40	6.60	103.60	57	7
15th May, 1977 (a)	2.40	108.80	2.40	106.00	57	7
15th August, 1977 (a)	2.60	111.40	2.60	108.60	57	7
29th December, 1977	2.70	114.10	2.60	111.20	58	111
28th February, 1978	2.80	116.90	2.80	114.00	58	471
7th June, 1978	1.40	118.30	1.50	115.50	58	927
12th December, 1978	4.70	123.00	4.60	120.10	59	7
27th June, 1979	3.90	126.90	3.80	123.90	59	1009
4th January, 1980	5.70	132.60	5.60	129.50	60	281
14th July, 1980	5.60	138.20	5.40	134.90	60	1327
9th January, 1981	5.10	143.30	5.00	139.90	61	153
7th May, 1981	5.20	148.50	5.00	144.90	61	847

Note: The Commission in Court Session announced that one minimum wage for adult employees regardless of sex should apply from 16th November 1981.

16th November, 1981	2.70	151.20	6.30	151.20	61	1894
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Date of Operation	Amount of Increase \$	Adult Males & Females \$	W.A.I.G. Reference	
			Vol.	Page
7th February, 1983	18.60	169.80	63	379
6th October, 1983	12.60	182.40	63	2207
6th April, 1984	7.50	189.90	64	847
6th April, 1985	4.90	194.80	65	657
4th November, 1985	7.40	202.20	66	4, 136
1st July, 1986	4.70	206.90	66	1139
10th March, 1987	10.00	216.90	67	435
5th February, 1988	6.00	222.90	68	949
9th September, 1988	6.70	229.60	68	2412
1st October, 1989	19.20	248.80	69	2913
24th September, 1991	20.00	268.80	71	2748
30th November, 1992	6.70	275.50	73	4
14th November, 1997	83.90	359.40	77	3177
12th June, 1998 (b)	14.00	373.40	78	2579
1st August 1999	12.00	385.40	79	1847
1st August 2000	15.00	400.40	80	3379
1st August 2001	13.00	413.40	81	1721
1st August 2002	18.00	431.40	82	1369
5th June 2003	17.00	448.40	83	1899
4th June 2004	19.00	467.40	84	1521
7th July 2005	17.00	484.40	85	2083
7th July 2006	20.00	504.40	86	1631

- Editor's Notes: (a) Declaration by Commission - No General Order issued. Amendments to be made on application by parties.
(b) Statement of Principles - Amendment to be made on application of Parties

MINIMUM WAGE—WESTERN AUSTRALIA—*continued*TABLE 1—*continued*

Date of Operation	Amount of Increase \$	Adult Males & Females \$	W.A.I.G. Reference	
			Vol.	Page
1st July 2007	24.00	528.40	87	1487
1st July 2008	29.00	557.40	88	773
1st October 2009	12.30	569.70	89	735

TABLE 2

MINIMUM WEEKLY RATES OF PAY FOR ALL STATE ADULT EMPLOYEES UNDER
THE *MINIMUM CONDITIONS OF EMPLOYMENT ACT 1993*.

Note: As of 1st December 1993 the setting of the Minimum Weekly Rates of Pay became the responsibility of the Minister for Labour Relations under the *Minimum Conditions of Employment Act 1993* as reported by order published in the Western Australian Government Gazette and applies to all employees in the State.

	Amount of Increase \$	Adult Males & Females \$	G.G. Reference	
			Date	Page
3rd December, 1993	—	275.50	3/12/93	6464
29th August, 1994	25.60	301.10	29/8/94	4465
29th September, 1995	16.00	317.10	29/9/95	4697
29th October, 1996	14.90	332.00	29/10/96	5753
10th November, 1997	3.00	335.00	10/11/97	6203
7th December, 1998	11.70	346.70	7/12/98	6545
1999: There was no adjustment to the Minimum Wage				
1st March, 2000	21.30	368.00	1/3/00	1007
22nd March, 2001	32.40	400.40	22/3/01	1475
29th April 2002	13.40	413.40	29/4/02	2181

Note: As of 1st August 2002 the setting of the Minimum Weekly Rates of Pay under the *Minimum Conditions of Employment Act, 1993* became the responsibility of the Commission in Court Session by virtue of the *Labour Relations Reform Act 2002 No. 20 of 2002*.

Date of Operation	Amount of Increase \$	Adult Males & Females \$	W.A.I.G. Reference	
			Vol.	Page
1st August, 2002	18.00	431.40	82	1369
5th June 2003	17.00	448.40	83	1899
4th June 2004	19.00	467.40	84	1521
7th July 2005	17.00	484.40	85	2083
1st September 2006	20.00	504.40	86	2683
1st July 2007	24.00	528.40	87	1487
1st July 2008	29.00	557.40	88	773
1st October 2009	12.30	569.70	89	735

APPENDIX IV
GENERAL ORDERS OF THE COMMISSION†

1975-79 Industrial Arbitration Act 1912-1973 Section 94A

1979 Industrial Relations Act 1979 Part II Division 3

Editors Note: For information as to Awards and Agreements varied by each General Order refer to relevant Schedules.

Date Delivered	Description/ Commentary	Increase	Date of Operation	Order Number	Reference	
					Vol.	Page
1/7/75*	Applications by various unions to amend awards to provide for Wage Indexation or for related matters. Total wage rates to be increased in accordance with the CPI for the June, September & December quarters 1975	3.6%	15/5/75		55	803
3.5%		15/8/75				
6.4%		15/2/76				
14/5/76	General Order S.94A—Wage Indexation Interim Order	3%	15/5/76	62/76	56	679
29/4/76	Judgment			-	56	787
20/8/76	Wage Indexation—Principles & Operation of			-	56	1131
30/8/76	General Order S.94A - Wage Indexation – Final Order -	\$2.50 up to \$166.00	15/8/76	62/76	56	1255
		1.5% above \$166.00				
	Agreements—Industrial - Amendments or variation of Awards - Amendment of			62(123)/76	56	1259
				62(70)/76	56	1264
7/12/76	Wage Indexation—Principles & Operation of			-	56	1789
7/12/76	General Order S.94A—Wage Indexation.	2.2% ordinary rates	15/11/76	488/76	57	7
		2.2% extended for all purposes	6/12/76	488/76	57	7
	Total wage rates increased by the amount of increase of the state minimum wage for adult males in a/c with the CPI.	\$6.60	15/2/77			
		\$2.40	15/5/77			
		\$2.60	15/8/77			
29/12/77	General Order S.94A—Wage Indexation Order	\$2.10 or 1.5% whichever is the greater				
		(Junior 1.5% only)	29/12/77	821/77	58	111
27/1/78	General Order S.94A—Long Service Leave Order (Long Service Leave Conditions set out in schedule at 58 WAIG 1) <i>(Note: Repealed by the Long Service Leave Act 1958 (WA) with effect from 14/7/2006. Refer to Notice published in the WAIG at Vol. 87—Part 1, Subpart 1 at page 1).</i>		1/1/78	8/78	58	116
16/3/78	General Order S.94A—Wage Indexation of \$2.60	1.5% up to max 1.5% to max 20c p/h 1.5% shift	28/2/78	37/78	58	471
15/6/78	General Order S.94A—Wage Indexation	1.3% flat	7/6/78	203/78	58	927
22/12/78	General Order S.94A—Wage Indexation	4%	12/12/78	486 & 585/78	59	7
6/6/79	General order S.94A—Wage Indexation	3.2%	27/7/79	44 & 131/79	59	1009
10/1/80	General Order S.94A—Wage Indexation	4.5%	4/1/80	381 & 434/79	60	281
15/6/80	General Order—S.50 District & Location Allowances	-	26/7/80	294/77 319-321/77 529/79	60	1141
21/7/80	General Order under Section 51(2) of the 1A Act, 1979 relating to wage indexation	4.2%	14/7/80	419/80	60	1327
15/1/81	General Order S.51 (2)—Wage Indexation	3.7%	9/1/81	19/81	61	153
4/5/81	General Order S.51 (2)—Wage Indexation Interim Order	3.6%	7/6/81	286/81	61	847
3/7/81	Final Order				61	1039
18/8/81	General Order S.50—Location Allowances		1/7/81	452/81	61	1661

† Includes variations pursuant to Industrial Relations Legislation Amendment and Repeal Act 1995 and the Labour Relations Legislation Amendment Act 1997.

* While this is effectively the first general wage indexation order, the Industrial Arbitration Act was not amended to include General Orders until November 1975. (Act amended by No. 81 of 1975)

WESTERN AUSTRALIAN INDUSTRIAL GAZETTE

GENERAL ORDERS OF THE COMMISSION—continued

Date Delivered	Description/ Commentary	Increase	Date of Operation	Order Number	Reference	
					Vol.	Page
8/12/81	General Order S.50 (2)—Wage Indexation (Junior wages proportionate)	\$6.30	16/11/81	612/81	61	1894
14/12/81	General Order S.50 (2)—"Government Employees Service and Supplementary Payments Order"		28/9/81 and 16/11/81	715/81	62	131
30/4/82	General Order—Variation of Order No. 715/81 "Govt Employees Service & Supplementary Payments Order"		8/1/82	269/82	62	904
4/8/82	General Order S.50—Interim Order - Location Allowances		1/7/82	437/82	62	2359
15/11/82	General Order S.50(2)—"Govt Employees Service and Supplementary Payments Order" amended & consolidated		28/9/81 and 16/11/81	764/82	62	2924
26/1/83	General Order—Part II - Division 3 - Restraint on Remuneration		26/1/83 (to 30/6/83) (& thereafter until varied or rescinded)	1/83	63	257
4/2/83	General Order S.50(2)—Minimum wage due to salaries and wages freeze Act 1982 - No Application to Public Sector Employees		7/2/83	534/82	63	379
1/11/83	State Review of National Wage Decision, 1983 Minimum Wage-Interim. Order. (Note: Order contains cancellation of Order 1 of 83- Restraint on Increases in Remuneration)	4.3%	6/10/83	461/83	63	2207
28/12/83	Correction to Order			461/83	63	2496
2/3/84	Final Order			461/83	64	407
9/12/83	General Order S.50—Location Allowances in Private Awards		5/12/83	291/83	64	5
13/4/84	General Order S.51—State Review of National Wage Decision, April 1984 Minimum Wage	4.1%	6/4/84	104/84	64	847
29/2/84	General Order S.50(2)—Closure of Business on April 24, 1984		24/4/84	141/84	64	261
6/7/84	General Order S.50—Location Allowances in Private Sector Awards		1/7/84	477/84	64	1235
26/11/84	General Order Closure of Business on 24th & 31st December, 1984		24/12/84 31/12/84	1008/84	64	2123
10/4/85	General Order State Review of National Wage Decision 1985 Minimum Wage	2.6%	6/4/85	104/85	65	657
26/6/85	General Order S.50—Location Allowances in Private Sec. Awards		1/7/85	397/85	65	1349
4/7/85	General Order S.50—Junior Employees and Apprentices Order Re: Reduction of Rates of Pay in Private Industry Awards		4/7/85	69/85	65	1331
27/11/85	Interim Order (Tin Mining Ind Adj Sine Die) 461/83. State Review of National Wage Dec.1985 Minimum Wage	3.8%	4/11/85	821/85	66	4
20/12/85	Order to Vary By Adding Tin Mining Award 14/71 to Schedule		4/11/85	821/85	66	135
16/12/85	General Order—Part II Division 3 - State Government Wages Employees - Long Service Leave Conditions		1/1/86	763/82	66	319
23/7/86	State Review of National Wage Decision 1986— Minimum Wage, (incorporating Superannuation by individual application)	2.3%	1/7/86	261/86	66	1139
19/6/86	General Order S.50—Location Allowances in Private Sector Awards		1/7/86	409/86	66	1149
18/3/87	State Review of National Wage Decision—Claim re Exclusion from Schedule	1/7/86	261/86	67	762	
25/3/87	State Review of National Wage Decision 1986— Minimum Wage Second Tier	\$10 plus 4%	10/3/87	1195/86	67	435
3/4/87	General Order Varying Awards Affected by State Review of National Wage Decision—Standardisation of Rents.		15/4/87	549, 555, 557, 559, 561, 587 T5 and PSA 40/86	67	776
17/6/87	General Order S.50—Location Allowances in Private Sector Awards		1/7/87	603/87	67	1094

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GENERAL ORDERS OF THE COMMISSION—continued

Date Delivered	Description/ Commentary	Increase	Date of Operation	Order Number	Reference	
					Vol.	Page
24/3/88	State Review of National Wage Decision 1988—Minimum Wage	6.00	5/2/88	1406/87	68	949
31/12/87	General Order S.50—Location Allowances in Private Sector Awards.		1/12/88	1353/87	68	996
16/12/87	General Order S.50—Cancellation of General Order No. 69 of 1985.		16/12/87	1333/87	68	385
16/6/88	General Order S.50—Location Allowance in Government Awards		1/1/88	1258/87 & C176/88	68	1681
24/6/88	General Order S.50—Location Allowance in Private Awards		1/7/88	517/88	68	1686
8/9/88	General Order S.50—Variation of Order No. 764/82 "Government Employees Service & Supplementary Payments Order"		4/12/87	180/88	68	2411
9/9/88	State Review of National Wage Decision 1988 - Minimum Wage	3% and \$10.00 (structural efficiency)	14/9/88	730/88	68	2412
17/1/89	General Order S.50—Variation of General Order 730 of 1988 - Increase in minimum weekly rate for trainees under Australian Traineeship System	To \$104.60 and \$3.75 per week	17/1/89 and 17/7/89	1703/88	69	985
3/2/89	General Order S.50—Western Australian Government Employees Redeployment, Retraining & Redundancy General Order		17/1/89	1329/88	69	517 1383
29/5/89	General Order S.50—Variation of Location Allowances in Government Awards to account for Consumer Price Index increase	7.74%	1/1/89	278/89	69	2297
5/9/89	Correction to Order No. 278/89—Location Allowances		1/1/89	278/89	69	2840
8/9/89	State Review of National Wage Decision - Minimum Wage	\$10.00, \$12.50 and \$15.00 or 3% depending on skill level	1/10/89 (Minimum Wage)	1940/89	69	2913
14/8/89	General Order S.50—Variation of Order No. 517/88 Location Allowances in Private Awards		1/7/89	834/89	69	3217
1/11/89	General Order S.50—Minimum Conditions for Annual Leave for Non-Award or Agreement covered employees		7/11/89	398/88	69	3487
31/7/90	General Order S.50—Location Allowances in Private Awards		1/7/90	778/1990 & 1065/90	70	2995
3/8/90	General Order S.50—Variation and consolidation of Order No. 398/88—Minimum Conditions for Annual Leave for Non-Award or Agreement covered employees—Conditions for real estate sales representatives		3/8/90	450/90	70	2998
16/4/91	General Order S.50—District Allowances in Government Awards	7.78%	1/1/90	241/91	71	2007
16/4/91	General Order S.50—District Allowances in Government Awards	7.42%	1/1/91	280/91	71	2007
17/6/91	State Review of National Wage Decision	2.5%	-	704/91	71	1723
24/9/91	State Review of National Wage Decision—Variation to General Order 704/91—Minimum Wage	\$20	24/9/91 (Minimum Wage)	1309 & 1310/91	71	2748
8/10/91	S.50 General Order—Variation to General Order 1065/1990—Location Allowances in Private Awards	-	1/7/91	1049/91	71	2753
31/1/92	State Review of National Wage Decision - Variation to General Order 1309 & 1310/91 and insertion of clause, "State Wage Principles", into all awards and agreements		31/1/92	1752/91	72	191
30/10/92	General Order S.50—Location Allowances in Private Sector Awards—General Order No. 1041/91 rescinded		1/7/92 except the Building Trades (Construction) Award - 26/10/92	851/92	72	2498
30/11/92	General Order S.50—Adult Minimum Wage - Paragraph (2) of General Order No. 1309 & 1310/91 rescinded	2.5%	30/11/92	415A/92	73	4

WESTERN AUSTRALIAN INDUSTRIAL GAZETTE

GENERAL ORDERS OF THE COMMISSION—*continued*

Date Delivered	Description/ Commentary	Increase	Date of Operation	Order Number	Reference	
					Vol.	Page
11/1/93	General Order S.50—Variation and Consolidation of Order No. 1329/88 - Western Australian Government Employees Redeployment, Retraining and Redundancy General Order		11/1/93	1465/92	73	215
14/7/93	General Order S.50—Location Allowances in Private Awards - General Order No. 851/92 rescinded	1%	1/7/93	943/93	73	1989
26/10/93	General Order S.50—Variation to Western Australian Government Employees Redeployment, Retraining and Redundancy General Order No. 1329/88 to include Printing (Government) Award, 1990		26/10/93	820/1993	73	3307
14/12/93	General Order S.50—Order No. 764/1982 "Government Employees Service and Supplementary Payments Order" rescinded		7/12/93	1325/1993	74	1
24/12/93	State Review of National Wage Decision—State Wage Principles December 1993—Insertion of clause into all Awards and Industrial Agreements	\$8.00	24/12/93	1457/1993	74	198
12/11/93	General Order S.50—Variation and Consolidation of Order No. 1329/88—Western Australian Government Employees Redeployment, Retraining and Redundancy General Order		12/11/93	1059/1993	74	552
5/7/94	General Order S.50—Location Allowances in Private Awards—General Order No. 943/93 rescinded		5/7/94	714/1994	74	1869
30/12/94	State Review of National Wage Decision—Variation to General Order No. 1457/1993 - Statement of Principles December 1994 - Insertion of clause into all Awards and Industrial Agreements	\$8.00	30/12/94	985/94	75	23
3/7/95	General Order S.50—Location Allowances in Private Awards—General Order No. 714/1994 rescinded		3/7/95	641/95	75	2125
14/3/96	State Review of National Wage Decision—Variation to General Order No. 985/1994—Statement of Principles March 1996—Insertion of clause into all Awards and Industrial Agreements covering more than one enterprise	\$8.00	14/3/96	1164/95	76	911
15/7/96	Review and Variations of Awards, Industrial Agreements and Orders - Industrial Relations Legislation Amendment and Repeal Act 1995—Resolution of Disputes Requirement		16/8/96	693/96	76	2768
15/7/96	Review and Variation of Awards, Industrial Agreements and Orders - Industrial Relations Legislation Amendment and Repeal Act 1995—Inspection of Records Requirements		16/7/96	694/96	76	2789
7/8/96	State Review of National Wage Decision - Variation to General Order No. 1164/1995—Statement of Principles August 1996 - Insertion of clause into all Awards and Industrial Agreements covering more than one enterprise	\$8.00	7/8/96	915/96	76	3368
9/8/96	General Order S.50—Location Allowances in Private Awards—General Order No. 641/1995 rescinded		1/7/96	911/96	76	3365
18/9/97	General Order S.50—Location Allowances in Private Awards—General Order No. 911/1996 rescinded		1/7/97	1400/97	77	2547
20/10/97	State Review of National Wage Decision—Variation to General Order No. 915/1996—Statement of Principles November 1997, Adult Minimum Wage, Insertion of clause into all Awards and Industrial Agreements covering more than one enterprise	\$10.00	14/11/97	940/97	77	3177
22/11/97	Review and Variation of Awards, Industrial Agreements and Orders—S.32, Labour Relations Legislation Amendment Act 1997 - Resolution of Disputes Requirements.		22/11/97	2053/97	77	3079
22/11/97	Review and Variation of Awards, Industrial Agreements and Orders—S.32 (2) & (3), Labour Relations Legislation Amendment Act 1997—Right of Entry		22/11/97	2053/97	77	3138
16/4/98	Review and Variation of Awards, Industrial Agreements and Orders—S.34, Labour Relations Legislation Amendment Act 1997—Inspection of Records Requirements		16/4/98	491/98	77	1471
16/4/98	Correction - Review and Variations of Awards, Industrial Agreements and—S.32, Labour Relations Legislation Amendment Act 1997—Resolution of Disputes Requirements.		16/4/98	2053/97	78	1563

WESTERN AUSTRALIAN INDUSTRIAL GAZETTE

GENERAL ORDERS OF THE COMMISSION—continued

Date Delivered	Description/ Commentary	Increase	Date of Operation	Order Number	Reference	
					Vol.	Page
12/6/98	State Review of National Wage Decision - Cancellation of General Order No. 940/97—Statement of Principles-June 1998—Cancellation and insertion of clause into all awards and industrial agreements covering more than one enterprise -Adult Minimum Wage.	\$10.00, \$12.00 or \$14.00 depending on award rate.	12/6/98	757/98	78	2579
26/6/98	Review and Variation of Awards, Industrial Agreements and Orders—S.13 (6), Industrial Relations Legislation Amendment and Repeal Act 1995 - Superannuation Requirements		26/6/98	599/98	78	2559
17/7/98	General Order S.50—Location Allowances in Private Awards—General Order No. 1400/1997 rescinded		1/7/98	975/98	78	2999
28/6/99	General Order S.50—Location Allowances in Private Awards—General Order No. 975/1998 replaced & rescinded		1/7/99	690/99	79	1843
6/7/99	General Order S.51—State Review of National Wage Decision—Cancellation of General Order No. 757/98 (dated 12/6/98)—1A - Statement of Principles June (Deleted)—Arrangement Clause and 1B—Minimum Adult Award Wage or Minimum Adult Wage Clause/provision varied—"rates of pay provisions" varied by Arbitrated Safety Net Adjustment	\$10.00 or \$12.00 depending on award rate.	1/8/99	609/99	79	1847
17/7/00	General Order S.51—State Review of National Wage Decision—Cancellation of General Order No. 609/99 (dated 6/7/99)—1B - Minimum Adult Award Wage or Minimum Adult Wage Clause/Provision (Varied), "rates of pay provisions" varied by Arbitrated Safety Net Adjustment, Previous ASNA Provisions incorporated into the Awards be varied	\$15.00	1/8/00	654/00	80	3379
1/8/00	General Order S.50—Location Allowances in Private Awards—General Order No. 690/1999 replaced & rescinded		1/8/00	1050/00	80	3153
25/6/01	General Order S.50—Location Allowances in Private Awards—General Order No. 1050/2000 replaced & rescinded		1/7/01	718/01	81	1559
25/7/01	General Order S.51—State Review of National Wage Decision—Cancels General Order No. 654/2000 (dated 11/5/00), Statement of Principles (replaced), "rates of pay" varied by Arbitrated Safety Net Adjustment, Minimum Adult Wage (varied))	\$13.00, \$15.00 or \$17.00 depending on award rate.	1/8/01	752/01	81	1721
21/6/02	General Order S.50—Location Allowances in Private Awards—General Order No. 718/2001 replaced & rescinded		1/7/02	686/02	82	1185
22/7/02	General Order S.51—State Review of National Wage Decision—Cancels General Order No. 752/2001 (dated 25/7/01), Statement of Principles (replaced), "rates of pay" varied by Arbitrated Safety Net Adjustment, 1B—Minimum Adult Award Wage or Minimum Adult Wage Clause/Provision (varied), or text relating to the Minimum Adult Award Wage which are not identical to that in the awards with Clause 1B—Minimum Adult Award Wage (varied) to establish the Minimum Adult Award Wage for full-time employees	\$18.00	1/8/02	797/02	82	1369
05/06/03	General Order Section 51—State Wage Decision—Cancels General Order No. 797/2002, Statement of Principles (replaced), "rates of pay" varied by Arbitrated Safety Net Adjustment, 1B - Minimum Adult Award Wage (varied), Provision for Minimum Weekly Wage for Adult Employees deleted and replaced with text for the Adult Minimum Award Wage	\$15.00 \$17.00 depending on award rate.	05/06/03	569/03	83	1899
30/06/03	General Order S.50—Location Allowances in Private Awards -General Order No. 686/2002 replaced and rescinded		01/07/03	570/03	83	1657
28/10/03	General Order S.50(2) - Varied General Order No. 569/2003 insofar as it relates to setting a minimum weekly wage rate in Awards for apprentices 21 years of age or over, by deleting the new sub-clause (9) in Clause 1B - Minimum Adult Award Wage (or another clause containing text identical to that said clause) and inserting in lieu thereof sub-clause (9) Adult Apprentices	\$285.00 \$315.00 \$406.70	1/11/03 31/01/04 30/04/04	1197/03	83	3537

GENERAL ORDERS OF THE COMMISSION—*continued*

Date Delivered	Description/ Commentary	Increase	Date of Operation	Order Number	Reference Vol.	Page
03/06/04	General Order No. 570/2004 (Section 51 – State Review of National Wage Decision—Rescinded General Order No. 569/2003 (dated 5/6/03), Statement of Principles (replaced), “rates of pay” varied by Arbitrated Safety Net Adjustment, Minimum Adult Award Wage Clause/Provision (varied), Statutory Minimum Wage for employees 21 years of age or over who are not apprentices or trainees and Minimum Weekly Rates of Pay for apprentices and trainees under the Minimum Conditions of Employment Act, 1993	\$19.00	04/06/04	570/04	84	1521
30/06/04	General Order S.50—Location Allowances in Private Awards –General Order No. 570/2003 replaced and rescinded		01/07/04	696/04	84	2145
01/06/05	General Order S.50(2)—Termination of Employment, Introduction of Change and Redundancy		01/08/05	784/2004	85	1667
24/06/05	General Order S.50—Location Allowances in Private Awards –General Order No. 696/2004 replaced and rescinded		01/07/05	458/2005	85	1893
04/07/05	General Order —Section 51 – State Review of National Wage Decision—Rescinded General Order No. 570/2004 dated 3/6/04, Arbitrated Safety Net Adjustment – Minimum Adult Award Wage and Statement of Principles – June 2005 – Statutory Minimum Wage and Minimum Weekly Wage Rates for Apprentices and Trainees under the Minimum Conditions of Employment Act, 1993	\$17.00	07/07/05	576/2005	85	2083
4/7/06	General Order — Section 51 – State Review of National Wage Decision – Rescinded General Order No. 576/2005 dated 4/7/05, Statement of Principles (replaced), “rates of pay” varied by Arbitrated Safety Net Adjustment, Minimum Adult Award Wage Clause or Provision (varied))	\$20.00	07/07/06	957/2005	86	1631
6/7/06	General Order S.50—Location Allowances in Private Awards –General Order No. 696/2004 replaced and rescinded		01/07/06	59/2006	86	1471
24/08/06	General Order—State Wage Order—Section 50A(1A) of the Act (Other Than For Adult Apprentice Rates) under the Minimum Conditions of Employment Act, 1993—Rescinded General Order No. 576/2005 dated 4/7/05)	\$20.00	01/09/06	AppIA 66/2006	86	2683
17/10/06	General Order—State Wage Order—Section 50A(1A) of the Act (For Adult Apprentice Minimum Wage Only) under the Minimum Conditions of Employment Act, 1993—Rescinded General Order No. 576/2005 dated 4/7/05)	\$300.00 \$350.00 \$400.00 \$448.65	01/11/06 01/02/07 01/05/07 01/07/07	AppIB 66/2006	86	3129
18/04/07	General Order S.50(2)—Wages Structures for School-based and part-time apprentices		18/04/07	158/2006	87	733
20/06/07	General Order - Section 50A – State Wage Order – rescinded General Orders Appl 957/2005, AppIA & AppIB 66/2006, Statement of Principles – July 2006 (replaced), “rates of pay” varied by Arbitrated Safety Net Adjustment, Minimum Adult Award Wage Clause or Provision (varied))	\$24.00	1/7/07	1/2007	87	1487
26/07/07	General Order S.50—Location Allowances in Private Awards – General Order No. 59/2006 replaced and rescinded		01/07/07	53/2007	87	2435
27/05/08	Section 50(3) and (4) - General Order re Minimum Award Wages in some Awards		27/05/08	16/2008	88	513
17/06/08	2008 State Wage Order pursuant to Section 50A of the Act– Rescinded General Order No. APPL 1/2007 ((2007) 87 WAIG 1504)	\$29.00	01/07/08	115/2007	88	773
08/07/08	General Order S.50—Location Allowances in Private Awards –General Order No. 53/2007 replaced and rescinded		01/07/08	9/2008	88	689
23/06/09	2009 State Wage Order pursuant to Section 50A of the Act– Rescinded General Order No. APPL 115/2007 ((2008) 88 WAIG 782)	\$12.30	01/10/09	1/2009	89	735
29/06/09	General Order S.50—Location Allowances in Private Awards –General Order No. 9/2008 replaced and rescinded		01/07/09	24/2009	89	729

APPENDIX V

INDUSTRIAL ARBITRATION ACT - AWARDS IN FORCE
INDUSTRIAL RELATIONS ACT (as from 1/3/85)

The following table contains a list of Awards currently in force, showing the area governed by each Award, the date during which it operates, registered number of Award, date of delivery and a reference to "Industrial Gazette" where reported therein.

- EDITOR'S NOTE
- (1) Awards of the Western Australian Coal Industry Tribunal are shown in Appendix XI
 - (2) Awards of the Railway Classification Board are shown in Appendix XIII.
 - (3) Awards of the Public Service Arbitration Act, 1912, section 93 provided: Notwithstanding the expiry of the term of an award, the award shall, subject to any variation made under this Act, continue in force until a new award in substitution for that award has been made. (See s.37(4) I.A. Act 1979) and I.R. Act 1979)
 - (4) For Awards affected by orders made under Sections 23 and 44 (I.R. Act 1979) see Appendix IX.
 - (5) Consent awards are marked by an asterisk.
 - (6) On 1 March, 1985 the Industrial Relations Act 1979 was proclaimed.
 - (7) For all amendments, references to cancelled or replaced awards prior to Vol. 90, see Appendix V, Vol. 89, Part 2.
 - (8) All current registered Awards are published on the W.A.I.R.C. Internet site (www.wairc.wa.gov.au).

Title	Area Governed	Date of Operation	No. of Award	Date Delivered	Reference Vol.	Page
Aboriginal Medical Services Employees' Award	Whole of State (For previous amendments, see Vol. 89, Part 2)	8 February 1988	A26/1987	8/2/88	68	387
ACTIV Foundation (Salaried Officers) Award. (Was previously called Slow Learning Children's Group (Salaried Officers) Award)	Whole of State (For previous amendments, see Vol. 89, Part 2)	1 Jan., 1981 to 31 Dec., 1981	13/1977	4/5/81	61	647
Aerated Water and Cordial Manufacturing Award	Whole of State (For previous amendments, see Vol. 89, Part 2)	2 May, 1975 to 1 May, 1976	10/1975	2/5/75	55	548
Aerospace Engineering Services Pty Ltd Enterprise Award 2005 No. A6/2003 (Award cancelled by Order dated 18/05/2010, [Citation No. 2010 WAIRC 00287] published at 90WAIG518) (For previous details, see Vol. 89, Part 2)						
Aged and Disabled Persons Hostels Award, 1987 (Replaced Hostel Workers (Aged and Disabled Persons Hostels) Award No. R5/1976)	Whole of State (For previous amendments, see Vol. 89, Part 2)	20 Nov., 1987 to 19 Nov., 1988	A6/1987	23/10/87	67	2243
Air Conditioning and Refrigeration Construction and Servicing Award	Whole of State (For previous amendments, see Vol. 89, Part 2)	25 July, 1979 to 24 Jan., 1980	R10/1979	25/7/79	59	1015
		Amended - Order No. 57/2009 (Overtime, Special Rates and Provisions, Wages) .....	...	21/01/10	90	92
Alcoa Long Service Leave Conditions Award. (For previous Amendments, see Vol. 89, Part 2)	Workers employed by Alcoa of Australia (Ltd.) Alcoa (Bunbury) Pty. Ltd.	18 Aug., 1980	12/1980	18/8/80	60	1342
Ambulance Service Communication Centre Employees' Award 1991 No. 50/1968 (Award cancelled by Order dated 18/05/2010, [Citation No. 2010 WAIRC 00287] published at 90WAIG518) (For previous details, see Vol. 89, Part 2)						
Ambulance Service Employees' Award, 1969 (For previous amendments, see Vol. 89, Part 2)	Whole of State	13 March, 1969 to 12 March, 1971	50/1968	13/3/69	49	171
Animal Welfare Industry Award (For previous amendments, see Vol. 89, Part 2)	Whole of State	19 Nov., 1968 to 18 Nov., 1969	8/1968	19/11/68	48	665

Note:- For details of the 2009 indexed wage rates, see Vol. 89 Part 2 Sub-parts 4 - 6 at pages 1207 - 2062.

WESTERN AUSTRALIAN INDUSTRIAL GAZETTE

INDUSTRIAL ARBITRATION ACT—AWARDS IN FORCE—*continued*

Title	Area Governed	Date of Operation	No. of Award	Date Delivered	Reference Vol.	Page
Argyle Diamonds Production Award 1996 No. A7/1996 (Award cancelled by Order dated 18/05/2010, [Citation No. 2010 WAIRC 00287] published at 90WAIG518) (For previous details, see Vol. 89, Part 2)						
Artworkers Award (For previous amendments, see Vol. 89, Part 2)	State of W.A.	9 May, 1990 to 8 May, 1991	A30/1987	23/5/90	70	1696
Australian Workers Union Road Maintenance, Marking and Traffic Management Award 2002 – The	State of W.A. (For previous amendments, see Vol. 89, Part 2)	6 Dec, 2004 to 5 June 2005	A4/2004	6/12/04	85	177
AWU Gold (Mining and Processing) Award 1993 (For previous amendments, see Vol. 89, Part 2)	Whole of State	20 Aug., 1993 - 19 Aug., 1995	A1/1992	27/10/93	73	2941
A.W.U. National Training Wage (Agriculture) Award 1994	Whole of State (For previous amendments, see Vol. 89, Part 2)	25 Oct., 1995 - 24 Oct., 1996	A1/1995	16/11/95	75	3181
Bag, Sack and Textile Workers Award (For previous amendments, see Vol. 89, Part 2)	Radius of 15 miles from G.P.O., Perth	4 Nov., 1960 to 3 Nov., 1963	3/1960	4/11/60	40	638
Bakers' (Country) Award (For previous amendments, see Vol. 89, Part 2)	Area outside a radius of 45 kms from G.P.O., Perth	26 June, 1978 to 20 June, 1980.	R18/1977	21/6/78	58	807
Bakers' (Metropolitan) Award. (For previous amendments, see Vol. 89, Part 2)	All Employers and Employees of the Classifications	Date of effect of the Bread Amendment Act 1987 for a period of	A13/1987	18/5/88	68	1206
Bespoke Bootmakers and Repairers Award (For previous amendments, see Vol. 89, Part 2)	Radius of 15 miles from G.P.O., Perth	25 June, 1948 to 24 June, 1951	4/1946	25/6/48	28	107
BHP-Utah Minerals International Cadjebut Production Award 1989 No. A11/1989 (Award cancelled by Order dated 18/05/2010, [Citation No. 2010 WAIRC 00287] published at 90WAIG518) (For previous details, see Vol. 89, Part 2)						
Bibra Lake Fabrication Workshop Award No. A1/2002 (Award cancelled by Order dated 18/05/2010, [Citation No. 2010 WAIRC 00287] published at 90WAIG518) (For previous details, see Vol. 89, Part 2)						
BP Fremantle Ltd Oil Bunkering Award 1992 No. A20/1981 (Award cancelled by Order dated 18/05/2010, [Citation No. 2010 WAIRC 00287] published at 90WAIG518) (For previous details, see Vol. 89, Part 2)						
B.P. Refinery (Kwinana) (Security Officers) Award No. R56/1978. (Award cancelled by Order dated 18/05/2010, [Citation No. 2010 WAIRC 00287] published at 90WAIG518) (For previous details, see Vol. 89, Part 2)						

Note:- For details of the 2009 indexed wage rates, see Vol. 89 Part 2 Sub-parts 4 - 6 at pages 1207 - 2062.

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INDUSTRIAL ARBITRATION ACT—AWARDS IN FORCE—*continued*

Title	Area Governed	Date of Operation	No. of Award	Date Delivered	Reference Vol.	Page
BRADKEN Bassendean (WA) Way Forward Enterprise Award 2001 No. A9/2003. (Award cancelled by Order dated 18/05/2010, [Citation No. 2010 WAIRC 00287] published at 90WAIG518) (For previous details, see Vol. 89, Part 2)						
Breadcarters (Country) Award 1976. (For previous amendments, see Vol. 89, Part 2)	Radius of 28 miles from G.P.O., Perth	22 Sept., 1976 to 21 Sept., 1979	17/1975	22/9/76	56	1793
Breadcarters (Metropolitan). (See also the Breadcarters (Country) Award 17/1975) (For previous amendments, see Vol. 89, Part 2)	Radius of 45 kilometres from G.P.O., Perth	24 Jan., 1964 to 23 Jan., 1967	35/1963	24/1/64	43	1229
*Brewery Laboratory Employees Award 1983 (For previous amendments, see Vol. 89, Part 2)	Employees of Swan Brewery Co. Ltd.	19th Mar., 1984	A8/1983	19/3/84	64	427
Brewing Industry Award 1993. (For previous amendments, see Vol. 89, Part 2)	Whole of State	19 Aug., 1993	A5/1993	27/8/93	73	2375
Brick Manufacturing Award 1979 (For previous amendments, see Vol. 89, Part 2)	Whole of State	17 Oct., 1979 to 16 Oct., 1981	R19/1979	17/10/79	59	1503
Brushmakers Award (For previous amendments, see Vol. 89, Part 2)	Radius of 15 miles from G.P.O., Perth	5 Sept., 1960 to 14 Sept., 1963	30/1959	15/9/60	40	659
Building and Engineering Trades (Nickel Mining and Processing) Award 1968. (For previous amendments, see Vol. 89, Part 2)	Yilgarn, Coolgardie, Broad Arrow, Dundas, Phillips River, East Coolgardie, North-Coolgardie, North-East Coolgardie, Mount Magnet, East Murchinson, Murchinson, Yalgoo, Peak Hill and Gascoyne Goldfields and the area comprised within the 14th to 26th parallels of latitude	19 July, 1968 to July, 1969	20/1968	19/7/68	48	361
*Building Materials Manufacture (C.S.R. Limited - Welshpool Award, 1982 No. A10/1982 (Award cancelled by Order dated 18/05/2010, [Citation No. 2010 WAIRC 00287] published at 90WAIG518) (For previous details, see Vol. 89, Part 2)						
Building Trades Award 1968. (Replaced by Agreement No. 1/1978 insofar as it applies to the University of W.A.)	Whole of State (For previous amendments, see Vol. 89, Part 2)	16 Jan. 1969 to 15 Jan. 1972	31/1966	19/12/68	48	999
Building Trades (Construction) Award 1987 (See also Appendix IX)	Whole of State (For previous amendments, see Vol. 89, Part 2)	9 April, 1979 to 8 April, 1981	R14/1978	12/4/79	59	500
Building Trades (Gold-mining Industry) Award (Replaced by Telfer Gold Mine (Production and Maintenance Employees) Award 1987 No. A9/1987 as it applies to employees employed at Telfer	Whole of State (For previous amendments, see Vol. 89, Part 2)	2 Dec., 1966 to 1 Dec., 1969	29, 32/1965	2/12/66	46	1253

Note:- For details of the 2009 indexed wage rates, see Vol. 89 Part 2 Sub-parts 4 - 6 at pages 1207 - 2062.

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INDUSTRIAL ARBITRATION ACT—AWARDS IN FORCE—*continued*

Title	Area Governed	Date of Operation	No. of Award	Date Delivered	Reference Vol.	Page
Building Trades (Government) Award, 1968 viz., Works, Agriculture, Health, Lands, Trading Concerns, North-West, Education, Industrial Development, Main Roads, Rottnest Island Board, State Housing Commission, Royal Perth Hospital, Princess Margaret Hospital)	Whole of State (For previous amendments, see Vol. 89, Part 2)	16 Jan., 1969 to 15 Jan., 1972.....	31A/1966	19/12/66	48	999
Burswood Catering and Entertainment Pty Ltd Employees Award 2001 No. A4/2001 (Award cancelled by Order dated 18/05/2010, [Citation No. 2010 WAIRC 00287] published at 90WAIG518) (For previous details, see Vol. 89, Part 2)						
Burswood Hotel (Maintenance Employees) Award 1990. (Supersedes any Awards of Respondent Unions that applied to employees covered by this award)	Burswood Hotel (For previous amendments, see Vol. 89, Part 2)	9 Feb., 1990 - 8 Feb., 1992.....	A6/1989(R)	9/2/90	70	3109
		Amended - Order No. 67/2009 (Overtime, Wage Rates).....	...	15/12/10	90	14
		Order Nos. 12, 14, 16-17, 22-24, 26, 28-32, 37, 39-47, 49-55, 57, 59-67, 69-77, 80-81, 83, 88, 90-91, 94, 100-106 and 109-112 of 2010 [Citation No. 2010 WAIRC 00287] - Cancellation of Award).....	...	18/5/10	90	518
Burswood International Resort Casino Employees Award 2002 No. A4/2002. (Award cancelled by Order dated 18/05/2010, [Citation No. 2010 WAIRC 00287] published at 90WAIG518) (For previous details, see Vol. 89, Part 2)						
Burswood Island Resort Resort (Maintenance Employees) Award (For previous amendments, see Vol. 89, Part 2)	Area occupied by the Burswood Island Resort	1 Mar., 1987 to 28 Feb., 1989.....	A22/1986	29/5/87	67	1537
		Amended - Order No. 66/2009 (Overtime, Wage Rates).....	...	15/12/10	90	16
		Order Nos. 12, 14, 16-17, 22-24, 26, 28-32, 37, 39-47, 49-55, 57, 59-67, 69-77, 80-81, 83, 88, 90-91, 94, 100-106 and 109-112 of 2010 [Citation No. 2010 WAIRC 00287] - Cancellation of Award).....	...	18/5/10	90	518
Burswood Resort Casino (Theatrical Employees) Award No. A10/1991 (Award cancelled by Order dated 18/05/2010, [Citation No. 2010 WAIRC 00287] published at 90WAIG518) (For previous details, see Vol. 89, Part 2)						
Can Manufacturing (Production and Maintenance - Amalgamated Industries Pty Ltd) Award 1985 No. A4/1985 (Award cancelled by Order dated 18/05/2010, [Citation No. 2010 WAIRC 00287] published at 90WAIG518) (For previous details, see Vol. 89, Part 2)						
Cargill Australia Limited - Salt Production and Processing Award 1988. (Replaces Leslie Salt Company Award - 1982 No. A31/1982. See 69 WAIG 1402)	Area of State between 18th and 26th parallels of south latitude (For previous amendments, see Vol. 89, Part 2)	16 July 1988 to 15 July 1990.....	A34/1988	3/3/89	69	1402
Case and Boxmakers Award, 1952 (For previous amendments, see Vol. 89, Part 2)	Radius of 14 miles from G.P.O., Perth, excepting premises occupied by Government and Midland Railways	18 June, 1952 to 17 June, 1953	48/1951	18/6/52	32	161
Catering Employees and Tea Attendants (Government) Award 1982 No. A 34 of 1981	Whole of State (For previous amendments, see Vol. 89, Part 2)	19 Nov., 1982 to 18 Nov., 1983	A34/1981	16/12/82	63	24
Catering Employees' (North West Shelf Project) Long Service Leave Conditions State Award 1991	State of W.A.	3 October 1991.....	A5/1991	4/10/91	71	2511

Note:- For details of the 2009 indexed wage rates, see Vol. 89 Part 2 Sub-parts 4 - 6 at pages 1207 - 2062.

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INDUSTRIAL ARBITRATION ACT—AWARDS IN FORCE—*continued*

Title	Area Governed	Date of Operation	No. of Award	Date Delivered	Reference Vol.	Page
Catering Workers' (North Rankin A) Long Service Leave Conditions Award	North Rankin A Platform	5 May, 1989	A40/1987	5/5/89	69	1401
Cement Tile Manufacturing Award. (For previous amendments, see Vol. 89, Part 2)	South-West Land Division	10 Feb., 1967 to 9 Feb., 1970	3/1966	10/2/67	47	66
Cement Workers' Award, 1975 No. 10/1967 (Award cancelled by Order dated 18/05/2010, [Citation No. 2010 WAIRC 00287] published at 90WAIG518) (For previous details, see Vol. 89, Part 2)						
Cereal Processing Extracting and Manufacturing Award. (For previous amendments, see Vol. 89, Part 2)	Whole of State	16 April, 1971 to 15 April, 1972.....	26/1970	16/4/71	51	420
Child Care (Lady Gowrie Child Centre) Award (For previous amendments, see Vol. 89, Part 2)	Premises controlled and operated by Lady Gowrie Child Centre. (WA) Inc	16 Aug., 1983 to 15 Aug., 1985.....	A3/1984	20/6/84	64	1096
Child Care (Out of School Care – Play-leaders) Award (For previous amendments, see Vol. 89, Part 2)	Employers and Employees providing Centre-based care for school aged children outside ordinary school hours and holidays	1 Jan, 1985	A13/1984	7/2/85	65	665
Child Care (Subsidised Centres) Award (For previous amendments, see Vol. 89, Part 2)	Whole of State except Ngala – Mothercraft Home and Training Centre (Inc) Jarrah Road South Perth	27 Feb., 1986.....	A26/1985	27/2/86	66	501
*Children's Services Consent Award, 1984 (For previous amendments, see Vol. 89, Part 2)	Workers employed by Victoria Park Community Child Care Centre, Coolbellup Day Care Centre and the Duncraig Day Care Centre	1st February 1985 for a 3 year period only.....	A1/1985	19/2/85	65	396
Children's Services (Private) Award 2006 (For previous amendments, see Vol. 89, Part 2)	Whole of State	6 Sept., 1990 to 5 March, 1991	A10/1990	6/9/90	70	3591
Cleaners and Caretakers Award, 1969 (Replaces Award No. 17/1948 as amended.)	Whole of State (For previous amendments, see Vol. 89, Part 2)	7 Nov., 1969 to 6 Nov., 1972.....	12/1969	7/11/69	49	948
Cleaners and Caretakers (Car and Caravan Parks) Award 1975	Whole of State (For previous amendments, see Vol. 89, Part 2)	1 July, 1975 to 30 June, 1977	5/1975	30/12/75	56	57
Cleaners and Caretakers (Government) Award, 1975. (For previous amendments, see Vol. 89, Part 2)	Whole of State	5 Aug., 1977 to 4 Aug., 1978.....	32/1975	5/8/77	57	1184
Clerks' (Accountants' Employees) Award 1984 (For previous amendments, see Vol. 89, Part 2)	Whole of State excepting that portion of the state within the 20th and 26th parallel of latitude and the 125th and 129th meridian of longitude	20 Mar., 1984	A8/1982	20/3/84	64	439
Clerks (Bailiffs' Employees) Award 1978 (For previous amendments, See Vol. 89, Part 2)	Whole of State	23 Jan., 1978 to Jan., 1979	R19/1976	13/2/78	58	229

Note:- For details of the 2009 indexed wage rates, see Vol. 89 Part 2 Sub-parts 4 - 6 at pages 1207 - 2062.

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INDUSTRIAL ARBITRATION ACT—AWARDS IN FORCE—*continued*

Title	Area Governed	Date of Operation	No. of Award	Date Delivered	Reference Vol.	Page
Clerks (Commercial Radio and Television Broadcasters) Award 1970 No. 14C/1968. (Award cancelled by Order dated 18/05/2010, [Citation No. 2010 WAIRC 00287] published at 90WAIG518) (For previous details, see Vol. 89, Part 2)						
Clerks (Commercial, Social and Professional Services) Award (For previous amendments, see Vol. 89, Part 2)	State of Western Australia, excluding that portion within the 26th parallel of latitude and the 125th and 129th meridian of longitude	15 Dec., 1972 to 14 Dec., 1975	14/1972	15/12/72	52	1186
Clerks' (Control Room Operators) Award 1984 (For previous amendments, see Vol. 89, Part 2)	Whole of State excepting that portion within the 20th and 26th parallels of latitude, and 125th and 129th meridian of longitude	18 May, 1984 to 18 May, 1986.....	A14/1981	9/5/84	64	882
Clerks' (Credit and Finance Establishments) Award (For previous amendments, see Vol. 89, Part 2)	Whole of State excepting that portion within the 20th and 26th parallels of latitude, and 125th and 129th meridian of longitude.	1 Jan., 1954 to 31 Dec., 1956	16/1952	30/11/53	33	547
Clerks' (Customs and/or Shipping and/or Forwarding Agents) Award. (For previous amendments, see Vol. 89, Part 2)	Whole of State excepting that portion within the 20th and 26th parallels of latitude, and 125th and 129th meridian of longitude	23 Dec., 1948 to 22 Dec., 1951	47/1948	23/12/48	28	210
Clerks' (Grain Handling) Award, 1977. (For previous amendments, see Vol. 89, Part 2)	Whole of State	5 Dec., 1978 to 4 Dec., 1980	R34/1977	5/12/78	59	15
Clerks' (Hotels, Motels and Clubs) Award 1979 (For previous amendments, see Vol. 89, Part 2)	Whole of State excepting area within 20th and 26th parallels of latitude and 125th and 129th meridian longitude	23 April, 1979 to 22 April, 1981	R7/1977	23/4/79	59	523
Clerks' (R.A.C. Control Room Officers) Award No. A42/1987 (Award cancelled by Order dated 18/05/2010, [Citation No. 2010 WAIRC 00287] published at 90WAIG518) (For previous details, see Vol. 89, Part 2)						
Clerks' (Racing Industry - Betting) Award 1978 (For previous amendments, see Vol. 89, Part 2)	That part of the State not occupied by Automatic Totalisators Ltd subject of Award 34/1976	16 Jan., 1978 to 15 July, 1979	R22/1977	16/3/78	58	329
Clerks' (Swan Brewery Co. Ltd.) Award 1986 No. A5/1986 (Award cancelled by Order dated 18/05/2010, [Citation No. 2010 WAIRC 00287] published at 90WAIG518) (For previous details, see Vol. 89, Part 2)						
Clerks' (Taxi Services) Award. (For previous amendments, see Vol. 89, Part 2)	Employees in Clerical capacity in Taxi Service Industry	9 April, 1970 to 8 Oct., 1970.....	14B/1968	9/4/70	50	225
Clerks (Timber) Award No. 61/1947 (For previous amendments, see Vol. 89, Part 2)	Whole of State but excluding those portions within 20th and 26th parallels of latitude and the 125th and 129th degrees of longitude	22 July, 1948, to 21 July, 1951	61/1947	22/7/48	28	206
Clerks (Unions and Labor Movement) Award 2004 (For previous amendments, see Vol. 89, Part 2)	State of WA	25 Jan., 2005 to 22 Jan., 2008.....	A10/1996	25/01/05	85	643

Note:- For details of the 2009 indexed wage rates, see Vol. 89 Part 2 Sub-parts 4 - 6 at pages 1207 - 2062.

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Clerks' (Wholesale and Retail Establishments) Award. (For previous amendments, see Vol. 89, Part 2)	Whole of State excluding portions within 20th and 26th parallel of latitude and the 125th and 129th meridian of longitude	3 June, 1948 to 2 June, 1951	38/1947	3/6/48	38	197
Clothing Trades Award 1973. (For previous amendments, see Vol. 89, Part 2)	Radius of 30 miles from G.P.O., Perth	15 June, 1973, to 14 June, 1974.....	16/1972	15/6/73	53	602
Club Workers Award (See also Appendix IX)	Whole of State (For previous amendments, see Vol. 89, Part 2)	7 May, 1976 to 6 May, 1977.....	12/1976	7/5/76	56	684
Cockburn Cement Limited Award 1991 (Amended November 1995) (Replaces the Cockburn Cement Ltd. Laboratory Employees Award -The, No. CR175/80. 72WAIG1057)	Cockburn Cement Limited Main Works In Russell Road and Woodman's Point (For previous amendments, see Vol. 89, Part 2)	30 Oct., 1991 - 29 Oct., 1992.....	A14/1991	13/4/92	72	1054
Commercial Travellers and Sales Representatives' Award 1978	Whole of State (For previous amendments, see Vol. 89, Part 2)	2 April, 1979 to 1 April, 1981.....	R43/1978	9/5/79	59	740
Community Colleges Award, 1990 (For previous amendments, see Vol. 89, Part 2)	Respondent Colleges in State of WA	5 Feb., 1990 to 4 March, 1990.....	A19/	5/2/90	70	1209
Community Welfare Department Hostels Award 1983	Whole of State (For previous amendments, see Vol. 89, Part 2)	14 Nov., 1983 to 14 Nov., 1984.....	A27/1981	14/11/83	63	2417
Contract Cleaners Award, 1986. (For previous amendments, see Vol. 89, Part 2)	Throughout State of W.A.	5 Dec., 1988 to 4 Dec., 1989.....	A6/1985	5/12/88	69	1441
Contract Cleaners' (Ministry of Education Award 1990)	Whole of State (For previous amendments, see Vol. 89, Part 2)	1 March, 1990 to 28 Feb., 1991.....	A5/1981	22/2/90	70	1339
Contract Cleaning (FMWU) Superannuation Award 1988	Whole of State (For previous amendments, see Vol. 89, Part 2)	31 March, 1989 to 30 March, 1991.....	A3/1988	12/4/89 5/5/89	69 69	1450, 1756
Country High School Hostels Award, 1979 (For previous amendments, see Vol. 89, Part 2)	Whole of State	1 Feb., 1980 to 31 Jan., 1982	R 7A/1979	18/12/79	60	188
CSBP and Farmers Award 1990 No. A19/1989 (Award cancelled by Order dated 18/05/2010, [Citation No. 2010 WAIRC 00287] published at 90WAIG518) (For previous details, see Vol. 89, Part 2)						
Cultural Centre Award 1987. (For previous amendments, see Vol. 89, Part 2)	Whole of State	23 May, 1989 to 23 May, 1990.....	A28/1988	4/8/89	69	2691
*Dairy Factory Workers Award, 1982 (Replaced by Masters Dairy Award 1994 No. A2/1994 insofar as it applies to employees of Masters Dairy Ltd)	Whole of State (For previous amendments, see Vol. 89, Part 2)	25 June, 1982 to 24 June, 1983.....	A15/1982	30/7/82	62	1847
Dampier Salt Award 2004 No. 1568/2001. (Award cancelled by Order dated 18/05/2010, [Citation No. 2010 WAIRC 00287] published at 90WAIG518) (For previous details, see Vol. 89, Part 2)						

Note:- For details of the 2009 indexed wage rates, see Vol. 89 Part 2 Sub-parts 4 - 6 at pages 1207 - 2062.

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Engine Drivers (Gold Mining) Consolidated Award 1979. (For previous amendments, see Vol. 89, Part 2)	Yilgarn, Coolgardie, Broad Arrow, Dundas, Phillips River, East Coolgardie, North Coolgardie, North-East Coolgardie, Mt. Margaret, East Murchison, Murchison, Yalgoo, Peak Hill and Gascoyne Goldfields and the area outside those Goldfields in W.A. comprised within the 14th and 26th parallels/latitude	24 Dec., 1947 to 23 Dec., 1948.....	37/1947	24/12/47	27	576
Engine Drivers Minerals Production (Salt) Industry Award (For previous amendments, see Vol. 89, Part 2)	Whole of State except area operated by Dampier Salt	1 May, 1970 to 30 April, 1973.....	43/1968	1/5/70	50	297
Engine Drivers (Nickel Mining) Award 1988 (For previous amendments, see Vol. 89, Part 2)	Yilgarn, Coolgardie, Broad Arrow, Dundas, Phillips River, East Coolgardie, North Coolgardie, North-East Coolgardie, Mt. Margaret, East Murchison, Murchison, Yalgoo, Peak Hill and Gascoyne Goldfields and the area outside those Goldfields in W.A. comprised within the 14th and 26th parallels/latitude	26 Sept., 1968 to 25 Sept., 1969.....	37/1968	26/9/68	48	620
Engineering and Engine Drivers (Nickel Smelting) Award, 1973 No. 4/1973 (Award cancelled by Order dated 18/05/2010, [Citation No. 2010 WAIRC 00287] published at 90WAIG518) (For previous details, see Vol. 89, Part 2)						
Engineering Trades and Engine Drivers (Nickel Refining) Award, 1971 10/1971. (See also Appendix IX) (Award cancelled by Order dated 18/05/2010, [Citation No. 2010 WAIRC 00287] published at 90WAIG518) (For previous details, see Vol. 89, Part 2)						
Engineering Trades (Government) Award, 1967 (Excluding Work covered under Water Supply Award)	Whole of State (For previous amendments, see Vol. 89, Part 2)	25 Oct., 1967 to 24 Oct., 1970.....	29, 30, 31/1961 & 3/1962	25/10/67	47	925
		Amended - Order No. 61/2009 (Overtime, Special Rates and Provisions, Car Allowance, District Allowances, First Schedule – Wages, Fifth Schedule – Building Management Authority Wages and Conditions.....	...	15/12/10	90	24
Enrolled Nurses and Nursing Assistants (Government) Award	Whole of State (For previous amendments, see Vol. 89, Part 2)	26 April, 1979 to 25 April, 1981.....	R7/1978	24/12/80	61	304
Enrolled Nurses and Nursing Assistants (Private) Award	Whole of State (For previous amendments, see Vol. 89, Part 2)	8 June, 1981 to 7 June, 1983.....	8/1978	8/6/81	61	1069
Family Day Care Co-ordinators' and Assistants' Award, 1985	Whole of State (For previous amendments, see Vol. 89, Part 2)	5 May, 1986 to 5 May, 1987.....	A16/1985	5/5/86	66	857
Farm Employees Award, 1985. (For previous amendments, see Vol. 89, Part 2)	Whole of State	20 Mar., 1985 to 19 Mar., 1986.....	A19/1984	20/3/85	65	672
Fast Food Outlets Award 1990. (For previous amendments, see Vol. 89, Part 2)	Whole of State	22 Aug., 1990 to 21 Aug., 1991.....	A14/1990	22/8/90	70	3602
		Order No. 3/2010 (Meal Money, Wages, Uniforms and Laundering) .....	...	9/6/10	90	513

Note:- For details of the 2009 indexed wage rates, see Vol. 89 Part 2 Sub-parts 4 - 6 at pages 1207 - 2062.

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Fibre-Cement Workers Award. (For previous amendments, see Vol. 89, Part 2)	Radius/15 miles from G.P.O., Perth	24 July, 1961 to 23 July, 1964.....	23/1960	24/7/61	41	551
Fire Brigade Employees Award, 1990. (For previous amendments, see Vol. 89, Part 2)	State of W.A.	31 Aug. 1990 to 30 Aug., 1991.....	A28/1989	1/9/90	70	3987
Fire Brigade Employees (Workshops) Award 1983. (For previous amendments, see Vol. 89, Part 2)	W.A. Fire Brigades Board	3 March, 1983 to 2 March, 1984.....	A6/1981	3/3/83	63	392
Food Industry (Food Manufacturing or Processing) Award (Replaces Confectionery Manufacturing Award 1968 No. 19/196)	State of W.A. (For previous amendments, see Vol. 89, Part 2)	1 March, 1991 to 31 Aug., 1992..... Order No. 4/2010 (Meal Allowance, Wages).....	A20/1990 ...	16/3/91 14/5/10	71 90	1191 514
*Foodland Associated Ltd (W.A.) Warehouse Award 1982 No. A27/1982 (Award cancelled by Order dated 18/05/2010, [Citation No. 2010 WAIRC 00287] published at 90WAIG518) (For previous details, see Vol. 89, Part 2)						
Foremen (Building Trades) Award 1991 (For previous amendments, see Vol. 89, Part 2)	Whole of State	22 February, 1992.....	A5/1987	30/1/92	72	216, 1302
Fruit and Produce Market Employees Award (For previous amendments, see Vol. 89, Part 2)	Radius/15 miles from G.P.O. Perth	11 June, 1956 to 10 June, 1958.....	50/1955	11/6/56	36	166
Fruit Growing and Fruit Packing Industry Award - The. (For previous amendments, see Vol. 89, Part 2)	Whole of State	11 Dec., 1979 to 10 Dec., 1980.....	R17/1979	11/12/79	60	26
Funeral Directors' Assistants' Award (For previous amendments, see Vol. 89, Part 2)	Whole of State South/the 26th parallel/south latitude	11 June, 1964 to 10 June, 1967.....	18/1962	11/6/64	44	253
Furniture Trades Industry Award. (For previous amendments, see Vol. 89, Part 2)	Whole of State excluding premises occupied by or Worked in conjunction with Western Australian Government Railways Commission	14 Nov., 1984 to 13 Nov., 1985.....	A6/1984	1/2/85	65	403
Gardeners (Government) 1986 Award. (For previous amendments, see Vol. 89, Part 2)	Whole of State	14 May, 1986 to 31 Dec., 1986.....	A16/1983	23/6/86	66	1163
Gate, Fence and Frames Manufacturing Award (For previous amendments, see Vol. 89, Part 2)	Whole of State	26 Nov., 1971 to 25 Nov., 1974.....	24/1971	26/11/71	51	1134
Gold Mining Consolidated Award, 1990 (Replaced by Telfer Gold Mine (Production and Maintenance Employees) Award 1987 No. A9/1987, as it applies to employees employed at Telfer (For previous amendments, see Vol. 89, Part 2)	Yilgarn, Coolgardie, Broad Arrow, Dundas, Phillips River, East Coolgardie, North-East Coolgardie, Mt Margaret, East Murchison, Murchison, Yalgoo, Peak Hill and Gascoyne Goldfields, and the area comprised within the 14th and 26th parallels/latitude	6 Nov. 1967 to 5 Nov., 1970.....	21/1967	6/11/67	47	96

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Gold Mining Engineering and Maintenance Award No. 26/1947 (Formerly Engineers (Gold Mining) Award (Award cancelled by Order dated 18/05/2010, [Citation No. 2010 WAIRC 00287] published at 90WAIG518) (For previous details, see Vol. 89, Part 2)						
Golf Link and Bowling Green Employees' Award 1993	Whole of State (For previous amendments, see Vol. 89, Part 2)	22 Dec., 1967 to 21 Dec., 1970.....	16/1967	22/12/67	47	1124
Government Water Supply, Sewerage and Drainage Employees Award 1981 No. 2/1980 (Award cancelled by Order dated 18/05/2010, [Citation No. 2010 WAIRC 00287] published at 90WAIG518) (For previous details, see Vol. 89, Part 2)						
*Government Water, Supply Sewerage and Drainage Foremen's Award 1984 No. A10/1983 (Award cancelled by Order dated 18/05/2010, [Citation No. 2010 WAIRC 00287] published at 90WAIG518) (For previous details, see Vol. 89, Part 2)						
Grain Handling Maintenance Workers Award No. C477/1979 (Award cancelled by Order dated 18/05/2010, [Citation No. 2010 WAIRC 00287] published at 90WAIG518) (For previous details, see Vol. 89, Part 2)						
Grain Handling Salaried Officers Consolidated Award 1989 No. 37/1965 (Award cancelled by Order dated 18/05/2010, [Citation No. 2010 WAIRC 00287] published at 90WAIG518) (For previous details, see Vol. 89, Part 2)						
Hairdressers Award 1989 (For previous amendments, see Vol. 89, Part 2)	State of W.A.	9 May, 1989 to 8 May, 1992..... Order No. 5/2010 (Meal Money, Tools of Trade, First Aid Allowance)	A32/1988 ...	9/6/89 14/5/10	69 90	2324 515
Health Attendants Award 1979. (For previous amendments, see Vol. 89, Part 2)	Whole of State	16 Sept., 1980 to 15 Sept., 1981	A49/1978	16/9/80	60	1498
Health Care Industry (Private) Superannuation Award 1987 (For amendments, see Vol. 87, Part 2)	Whole of State	1 July, 1988	A8/1988	16/6/88	68	1438
Health Workers - Community and Child Health Services, Award 1980	Whole of State (For previous amendments, see Vol. 89, Part 2)	14 April, 1980 to 13 April, 1982.....	R21/1979	21/10/80	60	2420
Heat Containment Industries (Refractory Specialities) Award. (Previously called Refractory Workers (Kaiser Refractories Award	Area Covering operations at Kwinana (For previous amendments, see Vol. 89, Part 2)	3 April, 1981 to 2 April, 1982.....	A3/1981	3/4/81	61	646
Horticultural (Nursery) Industry Award (For previous amendments, see Vol. 89, Part 2)	Whole of State	4 May, 1983 to 3 May, 1985.....	A30/1980	4/5/83	63	1409
Hospital Employees (Brightwater) Consolidated Award 1981	Area occupied by the Home/Peace (For previous amendments, see Vol. 89, Part 2)	31 Jan., 1961 to 30 Jan., 1964.....	26/1960	3/11/61	41	68

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Hospital Employees' (Perth Dental Hospital) Award 1971	Whole of State (For previous amendments, see Vol. 89, Part 2)	25 May, 1971 to 24 May, 1974.....	4/1970	25/5/71	51	559
Hospital Salaried Officers (Australian Red Cross Blood Service, Western Australia) Award, 1978 (Previously known as Hospital Salaried Officers (Red Cross Blood Transfusion Service) Award 1978)	Whole of State (For previous amendments, see Vol. 89, Part 2)	12 Dec., 1978 to 11 Dec., 1981	R17/1974	21/12/78	59	22
Hospital Salaried Officers (Cerebral Palsy) Award 1978	Whole of State (For previous amendments, see Vol. 89, Part 2)	24 Aug., 1978 to 23 Aug., 1981	R37/1976	14/6/78	58	1075
Hospital Salaried Officers (Dental Therapists) Award, 1980	Whole of State (For previous amendments, see Vol. 89, Part 2)	17 Oct., 1980 to 16 Oct., 1981.....	R27/1977	17/10/80	60	2444
Hospital Salaried Officers (Good Samaritan Industries) Award 1990	State of W.A. (For previous amendments, see Vol. 89, Part 2)	25 Sept. 1990	A8/1989	25/9/90	70	3997
Hospital Salaried Officers (Joondalup Health Campus) Award, 1996	Whole of State (For previous amendments, see Vol. 89, Part 2)	1 June, 1996 - 30 Nov., 1998.....	A1/1996	21/1/97	77	363
Hospital Salaried Officers (Nursing Homes) Award 1976. (For previous amendments, see Vol. 89, Part 2)	Workers employed by respondents in callings described	22 Nov., 1976 to 21 Nov., 1979	R18 &	26/11/76	57	150
Hospital Salaried Officers (Private Hospitals) Award, 1980	Whole of State (For previous amendments, see Vol. 89, Part 2)	18 Nov., 1980 to 17 Nov., 1981	R28/1977	3/12/80	60	2449
Hospital Salaried Officers (Silver Chain) Award, 1980	Whole of State (For previous amendments, see Vol. 89, Part 2)	24 Oct., 1980 to 23 Oct., 1981.....	R38/1978	5/11/80	60	2145
Hospital Salaried Officers (Workpower) Award of 1996	Whole of State (For previous amendments, see Vol. 89, Part 2)	6 Dec., 1996 5 Dec., 1998	A8/1996	17/12/96	77	54
Hospital Workers (Cleaning Contractors - Private Hospitals) Award 1978	Whole of State (For previous amendments, see Vol. 89, Part 2)	1 April, 1978 to 31 March, 1979	R2/1977	3/3/78	58	339
Hospital Workers (Government) Award	Whole of State (For previous amendments, see Vol. 89, Part 2)	21 Dec., 1966 to 20 Dec., 1969	21/1966	21/12/66	46	1319
Hospital Workers (N-gala) Award. (For previous amendments, see Vol. 89, Part 2)	Area occupied and controlled by N-gala Centre	26 Nov., 1959 to 25 Nov., 1962	6A/1958	26/11/59	39	30
Hotel and Tavern Workers Award, 1978. (For previous amendments, see Vol. 89, Part 2)	Whole of State	1 Jan., 1978 to 31 Dec., 1978	R31/1977	11/1/78	58	125
Independent Schools Administrative and Technical Officers Award 1993	Whole of State (For previous amendments, see Vol. 89, Part 2)	29 March, 1993	A15/1991	7/4/93	73	1017
Independent Schools (Boarding House) Supervisory Staff Award	Whole of State (For previous amendments, see Vol. 89, Part 2)	26 March, 1991	A9/1990	9/4/91	71	1202
Independent Schools' Psychologists and Social Workers Award	Whole of State (For previous amendments, see Vol. 89, Part 2)	14 July, 2000 to 13 July, 2001	A3/1996	14/7/00	80	3198
Independent Schools' Teachers Award 1976 (For previous amendments, see Vol. 89, Part 2)	Whole of State	1 Jan., 1977 to 31 Dec., 1977	R27/1976	7/12/76	57	13

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Industrial Catering Workers Award, 1977 No. 29A/1974. (Award cancelled by Order dated 18/05/2010, [Citation No. 2010 WAIRC 00287] published at 90WAIG518) (For previous details, see Vol. 89, Part 2)						
Industrial Spraypainting and Sandblasting Award 1991	Whole of State (For previous amendments, see Vol. 89, Part 2)	27 Nov., 1991 to 26 Nov., 1992.....	A33/1987	27/1/91	72	65
Iron Ore Production and Processing (BHP Billiton Iron Ore Pty Ltd) Award 2002 No. A2/2001. (Award cancelled by Order dated 18/05/2010, [Citation No. 2010 WAIRC 00287] published at 90WAIG518) (For previous details, see Vol. 89, Part 2)						
Iron Ore Production and Processing (Hamersley Iron Pty Ltd) Award 1987 No. A20/1987 (Award cancelled by Order dated 18/05/2010, [Citation No. 2010 WAIRC 00287] published at 90WAIG518) (For previous details, see Vol. 89, Part 2)						
Iron Ore Production and Processing (Locomotive Drivers) Award 2006	BHP Billiton Iron Ore Pty Ltd (For previous amendments, see Vol. 89, Part 2)	26 Sept., 2006 – 26 Sept., 2007	A3/2005	26/09/06	86	2962
Iron Ore Production & Processing (Locomotive Drivers Rio Tinto Railway) Award 2006 (Cancels Iron Ore Production and Processing (Engine Drivers – Skilled Rail Services) Interim Award 2006 No. A5/2005, dated 17/3/06 (86WAIG1279).	Dampier, Pannawonica, Tom Price, Paraburdoo, Marandoo and associated places (For previous amendments, see Vol. 89, Part 2)	Not stated in the award.....	A5/2005	25/9/06	86	2979
Jenny Craig Employees Award, 1995 No. A1/1994. (Cancelled by Order No. 50/2007 dated 12/4/2010 (90WAIG272). For previous amendments, see Vol. 89, Part 2)						
John Lysaght (Australia) Limited Award No. 27/1967 (Award cancelled by Order dated 18/05/2010, [Citation No. 2010 WAIRC 00287] published at 90WAIG518) (For previous details, see Vol. 89, Part 2)						
Journalists' (Suburban and Free Newspapers) Award, 1984 No. A1/1981 (Award cancelled by Order dated 18/05/2010, [Citation No. 2010 WAIRC 00287] published at 90WAIG518) (For previous details, see Vol. 89, Part 2)						
Kalgoorlie Consolidated Gold Mines Award 2002 No. A5/2002 (Award cancelled by Order dated 18/05/2010, [Citation No. 2010 WAIRC 00287] published at 90WAIG518) (For previous details, see Vol. 89, Part 2)						

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Laboratory and Technical Employees' (Peters [W.A.] Limited) Award No. 12/1981 (Award cancelled by Order dated 18/05/2010, [Citation No. 2010 WAIRC 00287] published at 90WAIG518) (For previous details, see Vol. 89, Part 2)						
Landscape Gardening Industry Award (For previous amendments, see Vol. 89, Part 2)	Whole of State	30 Oct. 1978 to 29 Oct., 1980.....	R18/1978	30/10/78	58	1488
Laundry Workers' Award, 1981. (For previous amendments, see Vol. 89, Part 2)	South-West Land Division	25 Nov., 1981 to 24 Nov., 1982	A29/1981	25/11/81	62	38
Licensed Establishments (Retail and Wholesale) Award 1979	Whole of State (For previous amendments, see Vol. 89, Part 2)	6 April, 1979 to 5 April, 1980	R23/1977	6/4/79	59	573
		Order No. 6/2010 (Meal Times and Meal Allowance, Wages).....	...	14/5/10	90	517
Lift Industry (Electrical and Metal Trades) Award 1973	Whole of State (For previous amendments, see Vol. 89, Part 2)	16 July, 1973 to 15 July, 1974.....	9/1973	16/7/73	53	778
		Amended - Order No. 63/2009 (Overtime, Special Rates and Provisions, Lift Industry Allowance, First Schedule - Wages).....	...	15/12/10	90	30
Malting Industry Award 1993 (See also Appendix IX)	Whole of State (For previous amendments, see Vol. 89, Part 2)	20 Aug., 1993.....	A6/1993	27/8/93	73	2387
Manufacturing Chemists Award, 1976 (For previous amendments, see Vol. 89, Part 2)	Whole of State	12 March 1976 to 11 March 1978	R3/1976	12/3/76	56	325
Marine Stores Award (For previous amendments, see Vol. 89, Part 2)	Radius 15 miles from G.P.O. Perth	22 Dec. 1958 to 21 Dec., 1961	13/1958	22/12/58	38	632
Masters and Deckhands Total Harbour Services Pty Ltd Award No. A7/1993 (Award cancelled by Order dated 18/05/2010, [Citation No. 2010 WAIRC 00287] published at 90WAIG518) (For previous details, see Vol. 89, Part 2)						
Masters Dairy Award 1994 No. A2/1994. (Award cancelled by Order dated 18/05/2010, [Citation No. 2010 WAIRC 00287] published at 90WAIG518) (For previous details, see Vol. 89, Part 2)						
Masters, Mates and Engineers Passenger Ferries Award (Previously known as Masters, Mates and Engineers Passenger Ferries (Interim) Award)	Whole of State (For previous amendments, see Vol. 89, Part 2)	13 Aug., 1997 - 12 Mar., 1999	A9/1996	27/8/97	77	3349
Materials Testing Employees' Award, 1984. (For previous amendments, see Vol. 89, Part 2)	Whole of State	1 Oct. 1984 to 30 Sept. 1986	A5/1982	30/8/84	64	1509
Matilda Bay Brewing Company Limited Enterprise Award 1994 (For previous amendments, see Vol. 89, Part 2)	Matilda Bay Brewing Company Limited	8 July, 1994 - 31 July, 1995.....	A22/1990	14/7/94	74	1908
Meat Industry (State) Award, 2003 (For previous amendments, see Vol. 89, Part 2)	Whole of State	11 Sept., 1980 to 10 Sept., 1983.....	R9/1979	11/9/80	60	1502
Mechanical and Electrical Contractors (Northwest Shelf Project Platform) Award 1984 (For previous amendments, see Vol. 89, Part 2)	Offshore work on Hydrocarbons Installations operated by Woodside Offshore Petroleum Pty Ltd	1 July 1984 to 1 July 1986.....	A10/1984	18/7/84	64	1516

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Mental Health Nurses Consolidated Award 1981. (For previous amendments, see Vol. 89, Part 2)	All Mental Health Nurses and Enrolled Nurses employed in Government Hospital, for mental cases in W.A. under control of Health Services, but excluding Industrial Training Centre Sheltered Workshops	23 Dec. 1947 to 22 Dec., 1948..... Amended -	13/1947	23/12/4	27	448
Metals and Engineering Rapid Metal Developments (Aust) Pty Ltd No. A4/1993 (Award cancelled by Order dated 18/05/2010, [Citation No. 2010 WAIRC 00287] published at 90WAIG518) (For previous details, see Vol. 89, Part 2)						
Metal Trades (General) Award 1966. (Replaced By Award No. 6/1977 insofar as it applies to the Mineral Sands Industry). (Replaced by Greenbushes Mine Maintenance (Enterprise Bargaining) Industrial Agreement 1993 insofar as it applies to maintenance employees working at Greenbushes Mine of Gwalia Consolidated Ltd, 74WAIG83) (Replaced by Masters Dairy Award 1994 No. 2/1994 insofar as it applies to employees /Masters Dairy Ltd) (See also Appendix IX)	Whole of State excepting area occupied by U.S. (For previous amendments, see Vol. 89, Part 2)	21 June 1966 - 21 June 1969..... Amended - Order No. 68/2009 (Overtime, Wages and Supplementary Payments, Special Rates and Facilities, Part 2 – Construction Work: Wages, Special Allowances and Provisions, Allowances and Provisions).....	13/1965 ...	21/6/66 15/12/10	46 90	707 31
Mineral Earths Employees Award (For previous amendments, see Vol. 89, Part 2)	South-West Land Division	28 May, 1975 to 31 Aug., 1975	9/1975	26/5/75	55	650
Mineral Sands Industry Award 1991. (For previous amendments, see Vol. 89, Part 2)	State of W.A.	14 June, 1991 to 13 June, 1993.....	A3/1991	28/6/91	71	1814
Mineral Sands Mining and Processing (Engineering and Building Trades) Award, 1977 (This Award has been replaced by the Mineral Sands Industry Award No. A3/1991 save as it applies to Tiwest Pty Ltd)	Whole of State (For previous amendments, see Vol. 89, Part 2)	12 May 1977 to 11 June 1977.....	6/1977	12/5/77	57	633
Mineral Sands Mining and Processing Industry Award 1981. (Replaced by the Mineral Sands Industry Award No. A3/1991 save as it applies to Tiwest Pty Ltd)	Whole of State (For previous amendments, see Vol. 89, Part 2)	9 June 1982 to 8 June 1984.....	A38/1981	25/6/82	62	1517
Minerals Production (Salt) Industry Award No. 36/1968 (Award cancelled by Order dated 18/05/2010, [Citation No. 2010 WAIRC 00287] published at 90WAIG518) (For previous details, see Vol. 89, Part 2)						
Miscellaneous Workers' (Activ Foundation) Award. (For previous amendments, see Vol. 89, Part 2)	Whole of State	7 March, 1984.....	A20/1980	7/3/84	64	661
Miscellaneous Workers' (Security Industry) Superannuation Award	Whole of State (For previous amendments, see Vol. 89, Part 2)	30 Apr., 1988 to 30 Apr., 1990.....	A34/1987	30/3/88	68	1031

Note:- For details of the 2009 indexed wage rates, see Vol. 89 Part 2 Sub-parts 4 - 6 at pages 1207 - 2062.

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Monumental Masonry Industry Award (For previous amendments, see Vol. 89, Part 2)	Whole of State	12 Dec. 1989 to 11 Dec. 1992	A36/1987	1/3/90	70	1357
*Mooring Services (Cape Cuvier) Award (For previous amendments, see Vol. 89, Part 2)	Employees employed by Kwinana Towage Services in or about the Port/Carnarvon	14 Aug. 1981 to 13 Aug., 1983	13/1981	17/11/82	62	2948
Motel, Hostel, Service Flats and Boarding House Workers Award (Replaced by Award No. 1/84 insofar as it applies to approved Private Psychiatric Hostels)	Whole of State (For previous amendments, see Vol. 89, Part 2)	17 Aug., 1976 to 16 Aug., 1977	29/1974	17/8/76	56	1502
Motor Vehicle (Service Station, Sales Establishments, Rust Prevention and Paint Protection) Industry Award	Whole of State (For previous amendments, see Vol. 89, Part 2)	21 May 1982 to 20 May 1984	A29/1980	21/5/82	62	1206
Musicians' General (State) Award 1985 (For previous amendments, see Vol. 89, Part 2)	Employers employed in the Whole State in the Musical and Industries	7 Oct., 1985 to 7 Oct., 1986.....	A5/1985	7/10/85	65	2054
Ngala Superannuation Award. (For previous amendments, see Vol. 89, Part 2)	Whole of State	1 Jan. 1989 to 31 Dec. 1991	A17/1989	5/4/90	70	1371
Nickel Mining and Processing Award, 1975 (For previous amendments, see Vol. 89, Part 2)	Yilgarn, Coolgardie, Broad Arrow, Dundas, Phillips River, East Coolgardie, North-East Coolgardie, Mt Margaret, East Murchison, Murchison, Yalgoo, Peak Hill and Gascoyne Goldfields, and the area comprised within the 14th and 26th parallels/latitude	11 Sept. 1975 to 10 Sept., 1976.....	18/1975	11/9/75	55	1365
Nickel Refining Award, 1971 No. 6/1971 (Award cancelled by Order dated 18/05/2010, [Citation No. 2010 WAIRC 00287] published at 90WAI518) (For previous details, see Vol. 89, Part 2)						
Nickel Smelting (WMC Resources Ltd) Award, 2003 No. 18/1972 (Award cancelled by Order dated 18/05/2010, [Citation No. 2010 WAIRC 00287] published at 90WAI518) (For previous details, see Vol. 89, Part 2)						
Nurses' (Aboriginal Medical Services) Award	Whole of State (For previous amendments, see Vol. 89, Part 2)	23 June, 1988 to 23 June, 1989	A23/1987	23/6/88	68	2424
*Nurses' (ANF/RFDS Western Operations Award. (Formerly known as Nurses (Royal Flying Doctor Service) Award)	Whole of State (For previous amendments, see Vol. 89, Part 2)	1 July, 1982 to 30 June, 1985	A18/1982	15/7/82	62	1855
Nurses (Child Care Centres) Award, 1984 (For previous amendments, see Vol. 89, Part 2)	Whole of State except Ngala	21 April, 1986 to 20 Oct., 1986.....	A23/1984	16/4/86	66	863
Nurses (Day Care Centres) Award (For previous amendments, see Vol. 89, Part 2)	Whole of State	5 Nov., 1976 to 4 Nov., 1978	R11/1976	5/11/76	56	1798

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Nurses (Dentists Surgeries) Award 1977 (For previous amendments, see Vol. 89, Part 2)	Whole of State	18 July, 1977 to 17 July, 1979	44A/1976	5/7/77	57	1004
Nurses (Doctors' Surgeries) Award 1977. (For previous amendments, see Vol. 89, Part 2)	Whole of State	18 July, 1977 to 17 July, 1979	44/1976	5/7/77	57	1004
Nurses (Independent Schools) Award (For previous amendments, see Vol. 89, Part 2)	South-West Land Divisions	Nov. 1963 to 12 Nov., 1966.....	21B/1962	13/11/63	43	1273
Nurses (Private Hospitals) Award. (For previous amendments, see Vol. 89, Part 2)	Whole of State, but excluding N-gala and Home/Peace	22 July, 1966 to 21 July, 1969	1/1966	22/7/66	46	878
Optical Mechanics' Award, 1971. (For previous amendments, see Vol. 89, Part 2)	South-West Land Division and within an area/5 miles from P.O., Kalgoorlie	7 May, 1971 to 6 May, 1972.....	9/1970	7/5/71	51	562
Paint and Varnish Makers Award. (For previous amendments, see Vol. 89, Part 2)	Radius/15 miles G.P.O., Perth from	11 June, 1958 to 10 June, 1961	22/1957	11/6/58	38	251
Parliamentary Employees Award 1989 (For previous amendments, see Vol. 89, Part 2)	Whole of State	27 Sept. 1989 to 26 Sept. 1990	A15/1987, A4/1988, A7/1988 & A7/1989	27/10/89	70	742
Particle Board Employees' Award, 1964 (For previous amendments, see Vol. 89, Part 2)	Radius of 14 miles from G.P.O., Perth	18 Feb., 1965 to 17 Feb., 1966	22/1964	18/2/65	45	24
Particle Board Industry Award. (For previous amendments, see Vol. 89, Part 2)	S.W. Land Division except area within a radius of 54 kms	10 May, 1978 to 9 May, 1979.....	R10/1978	10/5/78	58	639
Pastrycooks' Award (For previous amendments, see Vol. 89, Part 2)	Whole of State	12 Nov., 1982 to 11 Nov., 1984.....	A24/1981	12/11/82	62	2951
Performers' Live Award (WA) 1993. (For previous amendments, see Vol. 89, Part 2)	Whole of State	14 Sept., 1993.....	A18/1989	4/6/93	73	2391
Permanent Building Societies (Administrative and Clerical Officers) Award 1975 No. 26/1975 (Award cancelled by Order dated 18/05/2010, [Citation No. 2010 WAIRC 00287] published at 90WAIG518) (For previous details, see Vol. 89, Part 2)						
*Pest Control Industry Award. (For previous amendments, see Vol. 89, Part 2)	Whole of State	19 April, 1982 to 18 April, 1984.....	A9/1982	19/4/82	62	846
Photographic Industry Award, 1980 (For previous amendments, see Vol. 89, Part 2)	Whole of State	11 July, 1980 to 10 July, 1981	A9/1980	11/7/80	60	1195
Pipe, Tile and Pottery Manufacturing Industry Award	Whole of State (For previous amendments, see Vol. 89, Part 2)	23 April, 1979 to 22 April, 1981.....	R34/1978	23/4/79	59	568
Plaster, Plasterglass and Cement Workers Award No. A29/1989 (Replaces Plaster Mill Workers Award No. 6/1952 and Fibrous Plaster and Workers Award Cement No. 11/1969)	Whole of State (For previous amendments, see Vol. 89, Part 2)	24 April, 1990 to 23 April, 1993.....	A29/1989	20/6/90	70	2336

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Plastic Manufacturing Award 1977 No. 5/1977. (Replaced by Award No. 11/1980, insofar as it applies to Polymain Pty. Ltd). (Award cancelled by Order dated 18/05/2010, [Citation No. 2010 WAIRC 00287] published at 90WAIG518). (For previous details, see Vol. 89, Part 2)						
Plywood and Veneer Workers Award, 1952 (For previous amendments, see Vol. 89, Part 2)	Radius of 14 miles from G.P.O, Perth	19 Nov., 1952 to 18 Nov., 1953	24/1952	19/11/52	32	469
*Plywood and Veneer Workers' Award (For previous amendments, see Vol. 89, Part 2)	South-West Land Division excluding area within a radius of 45 km of the G.P.O., Perth	6 Oct., 1981 to 5 Oct., 1982.....	A28/1981	6/10/81	61	1538
Porcelain Workers' Award 1970 No. 1/1970 (Award cancelled by Order dated 18/05/2010, [Citation No. 2010 WAIRC 00287] published at 90WAIG518) (For previous details, see Vol. 89, Part 2)						
Poultry Breeding Farm and Hatchery Workers Award 1976	Whole of State (For previous amendments, see Vol. 89, Part 2)	18 Oct., 1976 to 17 Oct., 1977.....	R20/1976	18/10/76	56	1652
Printing Award (Previously known as Printing (Country) Award	Whole of State (For previous amendments, see Vol. 89, Part 2)	30 Mar., 1972 to 29 Mar., 1975.....	9/1969	30/3/72	52	260
Printing (Community Newspaper Group) Award No. A2/1989 (Award cancelled by Order dated 18/05/2010, [Citation No. 2010 WAIRC 00287] published at 90WAIG518) (For previous details, see Vol. 89, Part 2)						
Printing (Government) Award, 1990. (For previous amendments, see Vol. 89, Part 2)	Whole of State	4 July, 1990 to 3 July, 1991.....	A8/1990	4/7/90	70	3120
Printing Industry Superannuation Award 1991	Whole of State (For previous amendments, see Vol. 87, Part 2)	24 June, 1991 - 23 June, 1993	A6/1991	17/9/91	71	2535
Printing (Newspaper) Award 1979 No. R23/1979, The (Award cancelled by Order dated 18/05/2010, [Citation No. 2010 WAIRC 00287] published at 90WAIG518) (For previous details, see Vol. 89, Part 2)						
*Printing (The Sunday Times Guaranteed Employment and Voluntary Retirement) Award, 1983 No. A55/1983 (Award cancelled by Order dated 18/05/2010, [Citation No. 2010 WAIRC 00287] published at 90WAIG518) (For previous details, see Vol. 89, Part 2)						
*Printing (W.A. Newspapers Ltd., Guaranteed Employment and Voluntary Retirement) Award No. A21/1982 (Award cancelled by Order dated 18/05/2010, [Citation No. 2010 WAIRC 00287] published at 90WAIG518) (For previous details, see Vol. 89, Part 2)						
Prison Officers' Award (Previously known as Gaol Officers' Award 1998)	Whole of State (For previous amendments, see Vol. 89, Part 2)	11 April, 1968 to 10 April, 1971	12/1968	11/4/68	48	11
		Amended - Order No. 33/2009 (Out of Hours Work) .....	...	15/01/10	90	105
		Correction Order 33/2009 (Out of Hours Work).....	...	18/01/10	90	106

Note:- For details of the 2009 indexed wage rates, see Vol. 89 Part 2 Sub-parts 4 - 6 at pages 1207 - 2062.

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Private Hospital Employees Award, 1972	Whole of State (For previous amendments, see Vol. 89, Part 2)	1 Jan., 1973 to 31 Dec., 1975.....	27/1971	1/1/73	52	1194
Prospector and Avon-Link on Train Customer Service Officers Award (For previous amendments, see Vol. 89, Part 2)	Prospector Rail Service and AvonLink Service	26 Oct., 2005 to 24 Oct., 2007.....	A10/2003	14/08/05	85	3470
Psychiatric Nurses' (Public Hospitals) Award 1973 (For previous amendments, see Vol. 89, Part 2)	Sir Charles Gairdner Hospital and Royal Perth Hospital	15 Aug., 1973 to 14 Aug., 1974.....	14/1973	15/8/73	53	1125
Public Transport Authority Rail Car Drivers (Transperth Train Operations) Award 2006	Public Transport Authority Metropolitan Rail Network (For previous amendments, see Vol. 89, Part 2)	24 Feb., 2006 – 24 Feb., 2008.....	A1/2006	7/3/06	86	457
Public Transport Authority (Transwa) Award 2006 (For previous amendments, see Vol. 89, Part 2)	Public Transport Authority - Transwa	24 Mar., 2006 – 24 Mar., 2008	A2/2006	24/3/06	86	671
Quadriplegic Centre Award. (For previous amendments, see Vol. 89, Part 2)	Whole of State	8 June, 1993 - 7 June, 1994.....	A1/1993	8/6/93	73	1508
Quarry Workers Award, 1969. (For previous amendments, see Vol. 89, Part 2)	Whole of State	13 Feb., 1969 to 13 Feb., 1972	13/1968	13/2/69	49	123
RAC Road Mechanical and Fleet Services Award 1999 No. A14 & 1235/1988 (Award cancelled by Order dated 18/05/2010, [Citation No. 2010 WAIRC 00287] published at 90WAIG518) (For previous details, see Vol. 89, Part 2)						
Radio and Television Employees' Award (For previous amendments, see Vol. 89, Part 2)	Whole of State	7 Nov., 1980 to 6 Nov., 1981..... Amended - Order No. 64/2009 (Overtime, Wages).....	R3/1980 ...	17/11/80 15/12/10	60 90	2460 35
Railway Employees' Award No. 18 of 1969 (For previous amendments, see Vol. 89, Part 2)	Area controlled by the Commissioner of Railways	25 July, 1969 to 24 Aug., 1969.....	18/1969	25/7/69	49	631
Rangers (National Parks) Consolidated Award, 2000. (For previous amendments, see Vol. 89, Part 2)	Employees employed by National Parks Authority throughout the State of W.A	26 Oct., 1982 to 25 Oct., 1983.....	A17/1981	29/10/82	62	2732
Recreation Camps (Department for Sport and Recreation) Award	Whole of State (For previous amendments, see Vol. 89, Part 2)	6 December 1988	A28/1985	6/12/88	69	197
Restaurant, Tearoom and Catering Workers Award, 1979	Whole of State (For previous amendments, see Vol. 89, Part 2)	12 Nov., 1979 to 11 Nov., 1980.....	R48/1978	12/11/79	59	1671
Retail Pharmacists' Award 2004. (Replaces and Supersedes Retail Pharmacists' Award 1966 No. 23/1965.	Whole of State (For previous amendments, see Vol. 89, Part 2)	21 Feb., 2005 to 20 Feb., 2006	A8/2004	21/02/04	85	811
Robe River Iron Associates Employee Representatives and Grievance Procedure Award	Pilbara	27 Sep., 1989 to 26 Mar., 1990.....	A4 (1)/87	27/9/89	69	3000
Rock Lobster and Prawn Processing Award 1978 (For previous amendments, see Vol. 89, Part 2)	Whole of State	2 May, 1978 to 1 May, 1980.....	R24/1977	4/5/78	58	633

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Rope and Twine Workers Award. (For previous amendments, see Vol. 89, Part 2)	Radius/15 miles from G.P.O., Perth	9 July, 1964 to 8 July, 1967	11/1963	9/7/64	44	509
Saddlers and Leather-Workers Award (For previous amendments, see Vol. 89, Part 2)	South-West Land Division	29 Aug., 1962 to 28 Aug., 1965	7/1962	29/8/62	42	558
Salaried Officers (Association for the Blind of Western Australia) Award 1995	Whole of State (For previous amendments, see Vol. 89, Part 2)	21 May 1996 to 21 May 1999	A5/1995	27/6/96	76	2358
Salaried Officers (Paraplegic-Quadriplegic Association) Award 1988. (For previous amendments, see Vol. 89, Part 2)	Employees of the Paraplegic-Quadriplegic Association of WA (Inc.) engaged in clerical, technical, supervisory, administrative or professional capacities	5 Aug., 1988 to 5 Aug., 1989	A17/1986	5/8/88	68	2041
Saw Servicing Establishments Award. (For previous amendments, see Vol. 89, Part 2)	Whole of State outside Metro and Premises of W.A.G.R.C	17 Nov., 1977 to 16 Nov., 1978	17/1977	17/11/77	57	1720
School Employees (Independent Day and Boarding Schools) Award, 1980	Whole of State (For previous amendments, see Vol. 89, Part 2)	10 April, 1980 to 9 April, 1982	R7/1979	12/5/80	60	855
SCM Chemicals Ltd Titanium Dioxide Manufacturing Award		Decision Only	A15/1990	26/4/91	71	2266
*Security Officers' Award (See also Appendix IX) (For previous amendments, see Vol. 89, Part 2)	Whole of State	1 Sept., 1982 to 31 Aug., 1983	A25/1981	1/9/82	62	2504
Security Officers and Cleaners (West Australian Newspapers) Award, 1992No. A11/1991 (Award cancelled by Order dated 18/05/2010, [Citation No. 2010 WAIRC 00287] published at 90WAI518) (For previous details, see Vol. 89, Part 2)						
Shark Bay Salt and Gypsum Joint (Production and Processing) Useless Loop Award A15/1988 (Award cancelled by Order dated 18/05/2010, [Citation No. 2010 WAIRC 00287] published at 90WAI518) (For previous details, see Vol. 89, Part 2)						
Shearing Contractors' Award of Western Australia 2003	Whole of State (For previous amendments, see Vol. 89, Part 2)	11 May, 2004 – 11 Oct., 2003	A2/2003	11/5/04	84	1350
Sheet Metal Workers Award. (Replaced by Award No. A4/1985, insofar as it applies to Amalgamated Industries Pty Ltd employees Canning Vale WA)	Whole of State (For previous amendments, see Vol. 89, Part 2)	13 July, 1973 to 12 Oct., 1973	10/1973	13/7/73	53	791
Ship Painters and Dockers Award (For previous amendments, see Vol. 89, Part 2)	Port of Fremantle and Port of Perth and on or about all slipways and shipyards contiguous thereto	26 Sept., 1961 to 25 Sept., 1964	29/1960	26/9/61	41	684
Shop and Warehouse (Wholesale and Retail Establishments) State Award 1977, The	Whole of State (For previous amendments, see Vol. 89, Part 2)	15 Aug., 1977 to 14 Aug., 1978	R32/1976	2/9/77	57	1324
Show Grounds Maintenance Workers Award (For previous amendments, see Vol. 89, Part 2)	Radius of 25 miles from G.P.O., Perth	16 Dec., 1968 to 15 Dec., 1971	55/1968	16/12/68	48	963

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Sir Charles Gairdner Hospital Engineering and Building Services Workshops Award 1998	Whole of State	16 April, 1998 – 15 April, 2001.....	A2/1997	13/5/98	78	2382
Soap and Allied Products Manufacturing Award (For previous amendments, see Vol. 89, Part 2)	Radius 15 miles from G.P.O., Perth	17 Nov., 1961 to 16 Nov., 1964.....	25/1960	17/11/61	41	703
Social Trainers and Assistant Supervisors (Activ Foundation) Award. (Was previously called Social Trainers and Training Assistants (Slow Learning Children's Group) Award)	Employees of Slow Learning Children's Group Inc (For previous amendments, see Vol. 89, Part 2)	18 December, 1984.....	A15/1984	18/12/84	65	287
Social Trainers (Nulsen Haven) Award (For previous amendments, see Vol. 89, Part 2)	Employees employed in the classifications prescribed in this Award employed by Nulsen Haven Association (Inc.) at its premises in Redcliffe	1 July, 1985 to 1 July, 1987.....	A11/1985	11/7/85	65	1662
Soft Furnishings Award (For previous amendments, see Vol. 89, Part 2)	Whole of State	11 Aug., 1982 to 10 Aug., 1984.....	A23/1982	11/8/82	62	2118
State Energy Commission of Western Australia Wages and Conditions Award 1988 No. A1/1989 (Award cancelled by Order dated 18/05/2010, [Citation No. 2010 WAIRC 00287] published at 90WAIG518) (For previous details, see Vol. 89, Part 2)						
State Research Stations Agricultural Schools and College Workers Award 1971	Governmental Research Stations Agricultural Schools and Colleges (For previous amendments, see Vol. 89, Part 2)	19 Oct., 1971 to 18 Oct., 1973.....	23/1971	19/10/71	57	1042
Storemen (Government) Consolidated Award 1979. (For previous amendments, see Vol. 89, Part 2)	Whole of State	28 Aug., 1970 to 27 Aug., 1971.....	20/1969	28/8/70	50	627
Storemen IWD Pty Ltd Award 1982 No. A36/1982. Previously known as Storemen Independent Wooldumpers Pty Ltd Award 1982 (Award cancelled by Order dated 18/05/2010, [Citation No. 2010 WAIRC 00287] published at 90WAIG518) (For previous details, see Vol. 89, Part 2)						
Storemen's Rapid Metal Developments (Aust) Pty. Ltd. Award 1982 No. A44/1982 (Award cancelled by Order dated 18/05/2010, [Citation No. 2010 WAIRC 00287] published at 90WAIG518) (For previous details, see Vol. 89, Part 2)						
Supermarkets and Chain Stores (W.A.) Warehouse Award 1982 No. A26/1982 (Award cancelled by Order dated 18/05/2010, [Citation No. 2010 WAIRC 00287] published at 90WAIG518) (For previous details, see Vol. 89, Part 2)						
Supported Employees Industry Award (For previous amendments, see Vol. 89, Part 2)	Whole of State	22 March, 1988 to 22 March, 1989.....	A1/1988	22/3/89	68	1034

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Swan Brewery Company Limited (Superannuation) Award 1987	Throughout the State of W.A. (For previous amendments, see Vol. 89, Part 2)	1 May, 1987 to 30 April, 1988	A774/1986	28/4/87	67	522
Teachers Aides Award, 1979. (For previous amendments, see Vol. 89, Part 2)	Whole of State	5 Oct., 1979 to 4 Oct., 1980.....	R4/1979	5/10/79	59	1363
Teachers' Aides (Independent Schools) Award 1988. (For previous amendments, see Vol. 89, Part 2)	Whole of State	1 Feb., 1988 to 1 Aug., 1988	A27/1987	26/2/88	68	1040
Teachers (Public Sector Primary and Secondary Education) Award 1993 (Supersedes and Replaces Government School Teachers' Salaries Award 1981; Government School Teachers' General Conditions Award 1986; The Government School Teachers' Travelling, Transfer, Relieving and Removal Allowances Award 1984 and Government School Teachers' (Education Department) Locality Allowances Award 1984 so far as they apply to employees and the Employer now covered by this Award)	Whole of State (For previous amendments, see Vol. 89, Part 2)	25 Feb., 1993 - 24 Feb., 1994.....	TA1/1992	25/2/93	73	895
Teachers (Public Sector, Technical and Further Education) Award 1993	Whole of State (For previous amendments, see Vol. 89, Part 2)	25 Feb., 1993 - 24 Feb., 1994.....	TA1/1/92	25/2/93	73	895
Telfer Gold Mine Fly In/ Fly Out Award 1987 No. A9/1987 (Award cancelled by Order dated 18/05/2010, [Citation No. 2010 WAIRC 00287] published at 90WAIG518) (For previous details, see Vol. 89, Part 2)						
Theatrical Employees Entertainment Sporting and Amusement Facilities (Western Australian (Government) Award 1987	Whole of State (For previous amendments, see Vol. 89, Part 2)	14 March, 1988.....	A28/1987	30/6/88	68	1753
*Theatrical Employees (Perth Theatre Trust) (For previous amendments, see Vol. 89, Part 2)	Employees of the Perth Theatre Trust	19 May, 1983 to 19 May, 1985.....	A9/1983	4/4/84	64	676
Thermal Insulation Contracting Industry Award	Whole of State (For previous amendments, see Vol. 89, Part 2)	24 Jan., 1978 to 23 April, 1978	1/1978	23/3/78	58	344
Timber Workers Award (For previous amendments, see Vol. 89, Part 2)	South-West Land Division of W.A. excluding area comprised within a radius of 45km from G.P.O., Perth	21 Dec., 1951 to 20 Dec., 1952	36/1950	21/12/51	31	653
Timber Yard Workers Award. (For previous amendments, see Vol. 89, Part 2)	Radius 14 miles from G.P.O., Perth excepting premises occupied by Government and Midland Railways	21 Dec., 1951 to 20 Dec., 1952.....	11/1951	21/12/51	31	664
Tin and Associated Minerals Mining and Processing Industry Award	Whole of State (For previous amendments, see Vol. 89, Part 2)	28 April, 1972 to 27 April, 1975	14/1971	28/4/72	52	351

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Titanium Oxide Manufacturing Award 1975 No. 8/1975 (Award cancelled by Order dated 18/05/2010, [Citation No. 2010 WAIRC 00287] published at 90WAIG518) (For previous details, see Vol. 89, Part 2)						
Training Assistants' and Community Support Staff (Cerebral Palsy Association) Award 1987 (Previously known as Training Assistants' and Community Support Staff (Spastic Welfare) Award 1987)	Throughout the State of W.A. (For previous amendments, see Vol. 89, Part 2)	1 Jan, 1987 to 31 Dec, 1987.....	A16/1986	12/3/87	67	840
Transport Workers' (Burswood Island Resort) Award 1987 No. A2/1987 (Award cancelled by Order dated 18/05/2010, [Citation No. 2010 WAIRC 00287] published at 90WAIG518) (For previous details, see Vol. 89, Part 2)						
Transport Workers (Eastern Goldfields Transport Board) Award 1976 No. 23/1976. (Award cancelled by Order dated 18/05/2010, [Citation No. 2010 WAIRC 00287] published at 90WAIG518) (For previous details, see Vol. 89, Part 2)						
Transport Workers (General) Award Replaced by Masters Dairy Award 1994 No. A2/1994 insofar as it applies to employees of Masters Dairy Ltd (For previous amendments, see Vol. 89, Part 2)	Whole of State (Excluding Breadcarters, workers engaged in the timber industry within the South West Land Division, workers whose duties involve them in delivering goods or materials solely beyond the West Australian State border)	11 Feb., 1963 to 10 Feb., 1966	10/1961	11/2/63	43	98
Transport Workers (Government) Award, 1952 (For S.E.C. Workers, see Award No. 40/1965)	Whole of State (For previous amendments, see Vol. 89, Part 2)	12 May, 1942 to 11 May, 1953.....	2A/1952	12/5/52	32	167
Transport Workers (Mobile Food Vendors) Award 1987. (Previously known as Transport Workers (Mobile Food Vendors - Flash Foods Canteen) Award)	Throughout the State of W.A. (For previous amendments, see Vol. 89, Part 2)	29 Jan., 1987	A3/1986	29/1/87	67	350
Transport Workers (North West Passenger Vehicles) Award, 1988	North of 26th parallel of South Latitude (For previous amendments, see Vol. 89, Part 2)	11 May, 1988 to 11 May, 1990.....	A19/1987	9/6/88	68	1439
Transport Workers (Passenger Vehicles) Award. (Replaced by Transport Workers (Northwest Passenger Vehicles) Award for employees above 26th parallel of latitude)	Whole of State (For previous amendments, see Vol. 89, Part 2)	18 April, 1980 to 17 April, 1981.....	R47/1978	20/5/80	60	870
University, Colleges and Swanleigh, 1980 (Formerly School Employees (University Colleges and Swanleigh) Award)	Whole of State (For previous amendments, see Vol. 89, Part 2)	10 April, 1980 to 9 April, 1982.....	R 7B/1979	12/5/80	60	855
Vehicle Builders' Award (See also Appendix IX) (For previous amendments, see Vol. 89, Part 2)	Whole of State	5 Nov., 1971 to 4 Nov., 1974.....	9/1971	5/11/71	51	1048

Note:- For details of the 2009 indexed wage rates, see Vol. 89 Part 2 Sub-parts 4 - 6 at pages 1207 - 2062.

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INDUSTRIAL ARBITRATION ACT—AWARDS IN FORCE—*continued*

Title	Area Governed	Date of Operation	No. of Award	Date Delivered	Reference Vol.	Page
WA Government Health Services Engineering and Building Services Award 2004. (Replaces the Building Trades (Government) Award 1968 No. 31A/1966; Engineering Trades (Government) Award 1967 Nos. 29, 30 & 31/1961 & 3 of 1962; Engine Drivers (Government) Award 1983 No. A5/1983; Metropolitan Health Service Engineering and Building Services Award 1999 No. A1/1999, only insofar as they apply to the WA Government Health Services)	Whole of State (For previous amendments, see Vol. 89, Part 2)	26 Mar., 2004 – 26 Sept., 2004.....	A2/2004	26/03/04	84	749
		Amended - Order No. 65/2009 (Leading Hand Allowance, Special Rates and Provisions, Overtime, Appendix A – Salaries) .....	...	15/12/10	90	36
Ward Assistants (Mental Health Services) Award, 1966	Whole of State (For previous amendments, see Vol. 89, Part 2)	21 Dec., 1966 to 20 Dec., 1969	35/1966	21/12/66	46	1328
Watchmakers and Jewellers Award 1970	Whole of State (For previous amendments, see Vol. 89, Part 2)	15 Sept., 1970 to 14 Sept., 1971	10/1970	15/9/70	50	706
West Australian Petroleum Pty Ltd Long Service Leave Conditions Award 1991	Whole of State	25 November, 1991	A12/1991	4/12/91	71	3181
Western Australian Mint Award 2005 No. A11/2004 (Award cancelled by Order dated 18/05/2010, [Citation No. 2010 WAIRC 00287] published at 90WAI518) (For previous details, see Vol. 89, Part 2)						
Western Australian Mint Security Officers Award 1988 A5/1988. (Award cancelled by Order dated 18/05/2010, [Citation No. 2010 WAIRC 00287] published at 90WAI518) (For previous details, see Vol. 89, Part 2)						
Western Australian Professional Engineers (General Industries) Award 2004, The	Whole of State (For previous amendments, see Vol. 89, Part 2)	2 Mar., 2005 – 2 Mar., 2007	A3/2004	16/02/05	85	833
Western Australian Surveying (Private Practice) Industry Award, 2003, The	Throughout the State of W.A. (For previous amendments, see Vol. 89, Part 2)	10 Sept., 1990 to 9 Sept., 1990.....	A2/1988	27/9/90	70	3617
		Corrigendum: (Variation Schedule with respect to the General Order No. 115/2007: Salaries, Minimum Adult Award Wage).....	...	29/9/09	90	72
Wine Industry (WA) Award 2005. (Formerly known as Wineries Award 1969)	South-West Land Division (For previous amendments, see Vol. 89, Part 2)	23 Dec., 1969 to 22 Dec., 1970	31/1969	23/12/69	49	1095
Wire Manufacturing (Australian Wire Industries Pty Ltd.) Award No. 24/1970 (Award cancelled by Order dated 18/05/2010, [Citation No. 2010 WAIRC 00287] published at 90WAI518) (For previous details, see Vol. 89, Part 2)						
*Woodside Offshore Petroleum Pty Ltd Long Service Leave Conditions Award, 1984 (For previous amendments, see Vol. 89, Part 2)	Employees covered by Hydrocarbons and Gas (Production and Processing Employees) Award Part II and the Hydrocarbons and Gas Maintenance Employees Award 1982	15 Oct., 1984.....	A17/1984	15/10/84	64	1949

Note:- For details of the 2009 indexed wage rates, see Vol. 89 Part 2 Sub-parts 4 - 6 at pages 1207 - 2062.

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Title	Area Governed	Date of Operation	No. of Award	Date Delivered	Reference Vol.	Page
Wool, Hide and Skin Store Employees Award (For previous amendments, see Vol. 89, Part 2)	Whole of State	12 Aug., 1966 to 11 Aug., 1968.....	8/1966	12/8/66	46	937
Wool Scouring and Fellmongery Industry Award. (For previous amendments, see Vol. 89, Part 2)	Radius of 30 miles from G.P.O., Perth	12 Feb., 1960 to 11 Feb., 1963	32/1959	12/2/60	40	89
Worsley Alumina Pty Ltd Long Service Leave Conditions Award, 1984	Worsley Alumina Pty Ltd	17 March, 1986	A27/1985	17/3/86	66	509
Wundowie Foundry Award 1986 No. A8/1986 (Award cancelled by Order dated 18/05/2010, [Citation No. 2010 WAIRC 00287] published at 90WAIG518) (For previous details, see Vol. 89, Part 2)						
Zoological Gardens Employees Award 1969. (Replaced by Gardeners' (Government) Award insofar as it relates to Gardening and Ground Employees	Whole of State (For previous amendments, see Vol. 89, Part 2)	5 Dec., 1969 to 4 Dec., 1972.....	29/1969	5/12/69	49	997

Note:- For details of the 2009 indexed wage rates, see Vol. 89 Part 2 Sub-parts 4 - 6 at pages 1207 - 2062.

APPENDIX VI

INDUSTRIAL RELATIONS ACT—AGREEMENTS IN FORCE

The following table contains a list of Agreements in force, showing the area governed by each agreement, the date during which it operates, registered number of agreement, date of delivery and a reference at "Industrial Gazette" where reported therein.

- Editor's Notes: (1) As of 1st March, 1980, Agreements were deemed to be Consent Awards under Section 117(f) of the Industrial Arbitration Act, 1979.
 (2) Agreements registered by the Public Service Arbitrator are shown in Appendix VIII.
 (3) For Agreements affected by orders made under Section 1081 (I.A. Act 1912-1979) and Section 44 (I.A. Act 1979 and I.R. Act 1979) see Appendix X.
 (4) For amendments, references to cancelled or replaced agreements prior to Vol. 90, see Appendix VI, Vol. 89, Part 2.
 (5) NFP = Not for publication in the W.A.I.G.

Title	Area Governed	Date of Operation	No. of Agreement	Date Delivered	Reference Vol..	Page
A & M Fencing Con/BLPPU and the CMETU Collective Agreement 2000	Whole of State	20 Oct., 2000 - 1 Nov., 2002	AG255/00	24/11/00	80	5364
A & R Rigging/BLPPU Collective Agreement 2001	Whole of State	12 Mar., 2002 - 1 Nov., 2002.....	AG42/02	11/4/02		Unpublished
A.B. Tilbury Pty Ltd Enterprise Bargaining Agreement 2004 - 2005	Whole of State	01 Oct., 2004 - 31 Oct., 2005.....	AG261/04	7/12/04		Unpublished
ABB ALSTOM POWER LTD - Power Plant Maintenance (W.A.) Agreement	Whole of State	26 June, 2000 - 30 June, 2001	AG114/00	26/6/00	80	2857
ABB Australia Pty Limited, (ATCS) Component Service, Automation Technology Division, WA Enterprise Agreement, 2003-2006	ABB Australia Pty Limited 109 Bannister Road, Canning Vale WA	1 Apr., 2003 - 31 Mar., 2006.....	AG125/03	26/5/03		Unpublished
ABB-EPT Construction Pty Ltd (Alcoa Kwinana B-30 Project) Enterprise Bargaining Agreement	ABB-EPT Construction Pty Ltd at Alcoa Kwinana B-30 Project Construction Site	10 Oct., 1995 - Completion.....	AG58/95	18/4/95	75	1527
ABB-EPT Construction Pty Ltd Western Region (Kwinana) Enterprise Bargaining Agreement 1994	Kwinana Workshop	1 Sept., 1994 - 31 Dec., 1995.....	AG124/94	18/11/94	75	3179
ABB-EPT Construction Pty Ltd Western Region (Paraburdoo Fines Further Processing Project) Enterprise Bargaining Industrial Agreement	Paraburdoo	1 Feb., 1995 - 31 Aug., 1995	AG19/95	1/2/95	75	383
ABB Engineering Construction Pty Ltd Western Australia (Alcoa Kwinana Refinery Maintenance) Enterprise Bargaining Agreement	Alcoa Kwinana Refinery	3 Feb., 1996 - 1 March, 1998.....	AG190/96	12/8/96	76	3813
ABB Engineering Construction Pty Ltd Western Australia (Alcoa Pinjarra Maintenance) Enterprise Bargaining Agreement	Alcoa Pinjarra Refinery Maintenance Operations of ABB Engineering Construction Pty Ltd	3 Feb., 1996 - 1 March, 1998.....	AG191/96	12/8/96	76	3817
ABB Engineering Construction Pty Ltd Western Australia (Alcoa Wagerup Refinery Maintenance) Enterprise Bargaining Agreement	Alcoa Wagerup Refinery Maintenance Operations of ABB Engineering Construction Pty Ltd	3 Feb., 1996 - 1 March, 1998.....	AG189/96	12/8/96	76	3821
ABB Engineering Construction Pty Ltd, Western Australia (Kwinana Factory) Enterprise Bargaining Agreement	Kwinana	1 Mar., 1998 - 4 July, 1999.....	AG252/98	2/2/99	79	370
ABB Engineering Construction Pty Ltd, Western Australia (Kwinana Workshop) Enterprise Bargaining Agreement (Replaces AG58/93)	Kwinana Workshop of ABB Engineering Construction Pty Western Region, Kwinana	7 Aug., 1996 - 31 Jan., 1998.....	AG187/96	12/8/96	76	3824
ABB Installation and Service Pty Limited Railway Pedestrian Crossings Installation Project Agreement 1995	Employees of ABB Installation and Service Pty Ltd engaged on Perth Metropolitan Railway Pedestrian Crossings Installation Project	Commencement - Completion	AG134/95	27/9/95	75	2724
ABB Installation and Service Pty Ltd (Western Region) Enterprise Bargaining Agreement (Replaces ABB James Watt Pty Ltd ... Agreement No. AG180/1994 (75WAI78). For prior details, see Vol.77, Part 2)	ABB Installation and Service Pty Ltd (Western Region) (ABBIS)	1 Jan., 1996 - 30 Dec., 1997	AG129/96	31/5/96	76	1708
ABB James Watt Pty Ltd Nelson Point Development Project (Enterprise Bargaining Agreement)	Nelson Point Development Project, Port Hedland	27 April, 1993 - Completion.....	AG21/93	1/6/93		Unpublished
ABB Power Transmission, Distribution Transformer Division, Osborne Park Location (Enterprise Bargaining Agreement) 1993	429 Scarborough Beach Road, Osborne Park Site	10 Sept., 1993 - 9 Sept., 1994.....	AG47/93	21/9/93	73	2679
ABB Power Transmission, Distribution Transformer Division, Osborne Park Location (Enterprise Bargaining Agreement 1994)	ABB Power Transmission Pty Limited, (Osborne Park)	1 Feb., 1995 - 9 Mar., 1996.....	AG176/94	1/2/95	75	3180

*Note:- As of 1st August, 2002, the I.R. Act, 1979 (as amended) does not require publication of the contents of agreements. All current registered Agreements are available for viewing in Registry.

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Title	Area Governed	Date of Operation	No. of Agreement	Date Delivered	Reference Vol..	Page
ABB Transmission and Distribution Limited, Distribution Transformers Division, WA Operation (Enterprise Bargaining Agreement 1996)	ABB Transmission and Distribution Limited, Osborne Park	9 May, 1996 - 10 Mar., 1998	AG122/96	13/5/96	76	1712
Abenra Constructions/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	3 Oct., 2003 – 31 Oct., 2005	AG260/03	6/9/04	Unpublished	
Absolute Stone/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	19 Mar., 2003 – 31 Oct., 2005	AG46/04	6/9/04	Unpublished	
Ace Tilt/BLPPU and the CMETU Collective Agreement 2000	Whole of State	10 Nov., 2000 - 1 Nov., 2002.....	AG263/00	24/11/00	80	5369
Accent Nominees Pty Ltd Industrial Agreement	Whole of State	8 Dec., 1997.....	AG369/97	26/2/98	78	955
Acclaim Constructions WA Pty Ltd/CFMEUW Industrial Agreement 2002 – 2005 (Cancels Acclaim Constructions/ BLPPU ... Agreement No. AG43/01, 83WAI4058. For prior details, see Vol. 83, Part 1)	Whole of State	4 Dec., 2002 - 31 Oct., 2005	AG241/02	7/5/03	Unpublished	
Accredited Fire Services Industrial Agreement	Whole of State	4 Apr., 1997 - 31 July, 1999.....	AG98/97	20/5/97	77	1395
Acecrew Pty Ltd/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	25 Oct., 2004 – 30 June, 2007.....	AG231/04	13/12/04	Unpublished	
Acerange Holdings/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	8 Oct., 2004 – 30 June, 2007.....	AG254/04	13/12/04	Unpublished	
ACI Glass Packaging - Perth, Maintenance Trades (Enterprise Bargaining) Agreement 2001 (The terms of previous ACI Glass ... Agreements No. AG78/97 & No. AG165/99 has been incorporated into this Agreement. For prior details on the previous agreements, see Vol. 81, Part 2)	ACI Glass Packaging Canning Vale, Perth	1 July, 2001 - 30 June, 2003	AG181/01	11/10/01	Unpublished	
ACI Glass Packaging - Perth, Maintenance Trades (Enterprise Bargaining) Agreement 2003	ACI Glass Packaging, Baile Road, Canning Vale, Perth	1 July, 2003 - 30 June, 2006	AG208/03	28/10/03	Unpublished	
ACI Plastics Bentley Enterprise Bargaining Agreement 1993	ACI Plastics Packaging, 37 Ewing Street, Bentley	22 July, 1993 - 21 July, 1994	AG32/93	2/8/93	73	2038
ACI Plastics Packaging Bentley Enterprise Agreement 2004. (Replaces previous ACI Plastics ... Agreement 2002 No. AG19/03. For prior details, see Vol. 84, Part 2)	ACI Plastics Packaging 37 Ewing Street, Bentley	15 Nov., 2004 - 12 Nov., 2006.....	AG272/04	17/01/05	Unpublished	
ACI Plastics Packaging Welshpool Enterprise Agreement 2002. (Replaces previous ACI Packaging ... Agreement 1999 No. AG12/99. For prior details, see Vol. 82, Part 1)	ACI Plastics Packaging, Welshpool	21 May 2002 - 18 May 2005.....	AG115/02	25/9/02	Unpublished	
Action Ceilings Industrial Agreement	Action Ceilings Pty Ltd	12 Sept., 1995 - 31 July, 1997.....	AG224/95	22/11/95	76	64
Action Tile & Maintenance/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	25 Oct., 2004 – 30 June, 2007.....	AG243/04	10/12/04	Unpublished	
Activ Foundation Inc. (Enterprise Agreement) 1993	Whole of State	6 April, 1993 - 6 Oct., 1993	AG5/93	19/4/93	73	1244
Activ Foundation Inc (Enterprise Agreement) 1994	Whole of State	6 Oct., 1993 - 6 Apr., 1994.....	AG67/93	22/11/93	73	3386
Activ Foundation Supported Employees Wages Agreement 2004. (Replaces previous Activ Foundation ... Agreement 2003 No. AG104/03. For prior details, see Vol. 84, Part 1)	Whole of State	21 July, 2004 – 18 July, 2007	AG121/04	21/7/04	Unpublished	
Adap Installations Pty Ltd/BLPPU and the CMETU Collective Agreement 1999 (Replaces previous Adap Installations ... Agreements No. AG166/96 & No. AG148/97. For prior details, see Vol. 79, Part 2)	Whole of State	1 Nov., 1999 - 1 Nov., 2002.....	AG213/99	24/03/00	80	1011
ADAP Installations Pty Ltd/CFMEUW Industrial Agreement 2002-2005	Western Australia	14 Apr., 2003 – 31 Oct., 2005.....	AG122/03	7/5/03	Unpublished	
Advance Ceilings Industrial Agreement	Redcroft Pty Ltd t/a Advance Ceilings	24 Nov., 1995 - 31 July, 1997.....	AG306/95	10/1/96	76	340
Advance Drilling and Sawing/CFMEUW Industrial Agreement 2002-2005 (Replaces Advanced Drilling & Sawing/CFMEUW Industrial Agreement 2002-2005 No. AG60/03. For prior details, see Vol.85, Part 1)	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	13 June, 2005 – 31 Oct., 2005..... Amended - No. AG87/2005 (Correction Order).	AG87/2005 ...	16/08/05 11/10/05	Unpublished 85	3602
Advance Glass Industrial Agreement	Advance Glass	15 Sept., 1995 - 31 Jan., 1997.....	AG184/95	10/10/95	75	2955

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Title	Area Governed	Date of Operation	No. of Agreement	Date Delivered	Reference Vol.	Page
Advert Bricklaying Contractors Industrial Agreement	Advert Bricklaying Contractors	10 July, 1996 - 31 July, 1997.....	AG180/96	6/9/96	76	3836
Advert Bricklaying Pty Ltd Industrial Agreement	Advert Bricklaying Pty Ltd	1 Aug., 1995 - 31 July, 1997.....	AG59/95	18/5/95	75	1842
Advert Bricklaying Industrial Agreement	Whole of State	16 Dec., 1997 - 31 Oct., 1999.....	AG368/97	26/2/98	78	955
Advocare Enterprise Agreement 2007	Advocare Incorporated	15 Nov., 2007 – 30 June, 2010	AG60/07	15/11/07		Unpublished
AES (Aust) Pty Ltd/CFMEUW Industrial Agreement 2002 – 2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	19 May, 2004 - 31 Oct., 2005	AG92/04	30/6/04		Unpublished
A. Goninan & Co Limited Bassendean Enterprise Agreement 2003 (Replaces and Cancels previous A. Goninan ... Agreement No. AG46/2001. For prior details, see Vol. 82, Part 2)	A. Goninan & Co Limited Bassendean or other locations in the Perth Metropolitan Area	21 Feb., 2003 - 18 Feb., 2006	AG87/03	10/3/03		Unpublished
Agora Tiling Services/CFMEUW Industrial Agreement 2002-2005. (Cancels Agora Tiling/CFMEUW ... Agreement No. AG119/2002, Order No. AG49/03, 84WAIG49)	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	22 Jan., 2003 – 31 Oct., 2005	AG49/03	7/5/03		Unpublished
AGP Door Systems/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	1 July, 2003 – 31 Oct., 2005	AG170/03	6/9/04		Unpublished
Air Drill Enterprise Agreement 2000 (Cancels previous Air Drill ... Agreements No. AG199/1994, No. AG22/97 & No. AG22/98. For prior details, see Vol. 79, Part 2)	Norncott Pty Ltd (Bayswater)	1 Jan., 2000 - 31 Dec., 2000	AG20/2000	29/3/00	80	1386
Airductor/CFMEUW Industrial Agreement 2005-2008. (Replaces previous Airductor/CFMEUW ... Agreement 2002-2005 No. AG94/03. For prior details, see Vol. 85, Part 2)	Whole of State	1 Nov., 2005 – 31 Oct., 2008.....	AG129/05	12/12/05		Unpublished
Airductor Industrial Agreement	Whole of State	19 Dec., 1997 - 31 Oct., 1999.....	AG301/97	21/1/98	78	590
Airmain Pty Ltd/CFMEUW Industrial Agreement 2005-2008. (Replaces previous Airmain Pty Ltd ... Agreement 2002-2005 No. AG271/04. For prior details, see Vol. 85, Part 1)	Whole of State	1 Nov., 2005 – 31 Oct., 2008.....	AG155/05	11/11/05		Unpublished
AKA Stage & Seating Industrial Agreement	Whole of State	19 Nov., 1997 - 18 Nov., 1998	AG325/97	10/2/98	78	821
Alan Croll Roofing Industrial Agreement	Climaze Holdings Pty Ltd t/a Alan Croll Roofing	24 Nov., 1995 - 31 July, 1995.....	AG304/95	10/01/96	76	341
Alan Tidey/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	27 July, 2004 – 31 Oct., 2005.....	AG134/04	27/8/04		Unpublished
Alby's Roofing/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	25 Oct., 2004 – 30 June, 2007	AG244/04	10/12/04		Unpublished
Alco/BLPPU and the CMETU Collective Agreement 2000	State of WA	29 June, 2000 - 1 Nov., 2002.....	AG159/00	25/7/00	80	3180
Allbend Engineering/BLPPU and the CMETU Collective Agreement 2000	Whole of State	1 Nov., 1999 - 1 Nov., 2002	AG96/00	19/5/00	80	2465
Allcon Steel Construction/ BLPPU and the CMETU Collective Agreement 1999 (Cancels previous Allcon Steel ... Agreements No. AG181/1995 & No. AG242/97. For prior details, see Vol. 79 Part 2)	Whole of State	1 Nov., 1999 - 1 Nov., 2002	AG226/99	29/3/00	80	1021
Allcon Steel /CFMEUW Industrial Agreement 2005-2008 (Replaces previous Allcon Steel Construction ... Agreement 2002-2005 No. AG121/03. For prior details, see Vol. 85, Part 1)	Whole of State	1 Nov., 2005 – 31 Oct., 2008.....	AG165/05	8/11/05		Unpublished
Allcon Steel Construction Industrial Agreement	Whole of State	1 Aug., 1997 - 31 July, 1999.....	AG141/97	21/8/97	77	2210
All Cover Roofing/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	25 Oct., 2004 – 30 June, 2007	AG249/04	10/12/04		Unpublished
Allfect Services (Bentley WA) Enterprise Agreement 2005. (Replaces previous Allfect Services ... Agreement 2001 No. AG 11/02. For prior details, see Vol. 85, Part 2)	Allfect Services (Shift Roster) at National Foods Operations, Bentley WA	1 July, 2005 - 30 June, 2008	AG13/06	15/2/06		Unpublished
All Fix Roofing/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	25 Oct., 2004 – 30 June, 2007	AG209/04	9/12/04		Unpublished
All Personnel - TWU Enterprise Bargaining Agreement 2001	Whole of State	31 Jan., 2001 – 31 Dec., 2003.....	AG241/01	22/2/02		Unpublished

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Title	Area Governed	Date of Operation	No. of Agreement	Date Delivered	Reference Vol..	Page
All Ports Terminal and Zone Maintenance Enterprise Agreement 2004	Albany, Esperance or Geraldton Districts including The Terminal	18 Feb., 2005 – 15 Feb., 2008.....	AG263/04	18/02/05	Unpublished	
Allstate Concrete/BLPPU and the CMETU Collective Agreement 2000 (Cancels previous Allstate Concrete ... Agreement No. AG93/99. For prior details, see Vol. 79, Part 2)	Whole of State	10 Feb., 2000 - 1 Nov., 2002.....	AG24/00	18/4/00	80	1761
Allstate Landscape Contractors PL Industrial Agreement	Whole of State	23 Feb., 1998 - 31 Oct., 1999.....	AG28/98	30/4/98	78	1615
All Suburbs Glass and Glazing/CFMEUW Industrial Agreement 2002 – 2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	3 June, 2004 - 31 Oct., 2005	AG105/04	2/7/04	Unpublished	
Allwest Ceilings/CFMEUW Industrial Agreement 2005-2008 (Replaces previous Allwest Ceilings ... Agreement 2002-2005 No. AG 4/04. For prior details, see Vol. 85, Part 2)	Whole of State	1 Nov., 2005 – 31 Oct., 2008	AG145/05	12/12/05	Unpublished	
Allwest Ceilings/BLPPU Collective Agreement	Whole of State	26 May, 2000 - 1 Nov., 2002	AG216/00	19/02/01	Unpublished	
Altone Continental and SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Whole of State	6 Nov., 2002 – 30 June, 2005.....	AG157/02	18/11/02	Unpublished	
Aluminium Fabrication Industry Traineeship Agreement	Throughout W.A.	1 Feb., 1988 - 31 Jan., 1989	AG21/88	15/12/88	69	1395
Aluminium Finishing Traineeship Agreement	Whole of State	1 Aug., 1988 - 31 July, 1989	AG13/88	8/8/90	70	2171
Aluminium Partitioning Supplies / CFMEUW Industrial Agreement 2002 – 2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	16 Sept., 2004 – 31 Oct., 2005.....	AG165/04	11/10/04	Unpublished	
Amaroo Cottages for Senior Citizens (Inc), Hospital Salaried Officers Association (Union of Workers) Enterprise Agreement 2003	Whole of State	12 Dec., 2003 – 30 June, 2006.....	AG294/03	15/12/03	Unpublished	
Amatek Ltd Enterprise Agreement 1996	Amatek Ltd Employees, at Rocla Pipeline Products, Kewdale	24 Apr., 1996 - 21 May, 1998.....	AG277/96	4/11/96	76	4489
Amatek Limited Quarries, Kewdale (Enterprise Bargaining) Agreement 1997	Whole of State	19 Jan., 1998 - 1 Oct., 1999	AG344/97	3/3/98	78	823
Amatek Ltd Kewdale (Enterprise Bargaining) Agreement 1994	Kewdale Site	30 Sept., 1994 - 21 Feb., 1996	AG101/94	7/10/94	74	2330
Amber Consulting and the CFMEUW and Construction Industry Collective Agreement 2005-2008	Whole of State	2 Aug., 2006 - 31 Oct., 2008.....	AG67/06	16/11/06	Unpublished	
AMC Rooftiling/CFMEUW Industrial Agreement 2004-2007	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	20 Dec., 2004 – 30 June, 2007.....	AG284/04	1/04/05	Unpublished	
AMCOR Beverage Cans, Canningvale Operations, Enterprise Bargaining Agreement 2003 to 2006. (Replaces previous AMCOR Beverage ... Agreement 2001/2003 No. AG 154/2001)	Canning Vale	1 July, 2003 - 28 June, 2006	AG176/03	13/08/03	Unpublished	
AMEC Australia Pty Ltd Enterprise Agreement 1996. (Replaces Matthew Hall (Western Region) a division of Amec ... Agreement No. AG21/95)	AMEC Australia Pty Ltd (AMEC)	1 Jan., 1996 - 31 Dec., 1997.....	AG199/96	8/8/96	76	3838
Amec Services Pty Ltd Alcoa Projects Enterprise Bargaining Agreement 2000	Amec Services Pty Ltd at Alcoa of Australia WA sites only	19 Feb., 2001 - 30 June, 2001	AG18/01	19/02/01	Unpublished	
Amec Services Pty Ltd Alcoa Projects Enterprise Bargaining Agreement 2001 - 2003	Amec Services Pty Ltd at Alcoa of Australia WA sites only	1 July, 2001 - 30 June, 2003	AG17/01	19/02/01	Unpublished	
AMM Steel Fabricators/BLPPU and the CMETU Collective Agreement 1999 (Replaces Agreement No. AG177/1977)	Whole of State	1 Nov., 1999 - 1 Nov., 2002.....	AG214/99	24/3/00	80	1027
Anderson Formrite Pty Ltd/CFMEUW Collective Agreement 2001	Whole of State	22 Oct., 2001 - 1 Nov., 2003.....	AG213/01	20/11/01	Unpublished	
Anglican Schools Commission (Enterprise Bargaining) Agreement 2008 (Replaces previous Anglican Schools ... Agreement 2005 No. AG274/05. For prior details, see Vol. 89, Part 1)	Whole of State	7 July, 2009 – 4 July, 2012.....	AG33/09	7/7/09	Unpublished	
ANI Bradken Perth Enterprise Agreement 1996	Whole of State	18 Apr., 1996 - 21 Apr., 1998.....	AG146/97	24/6/96	77	868
ANI Products (Hoskins Division) Enterprise Bargaining Agreement - Internal Agreement No. 1 of 9 May 1994	ANI Products WA (Hoskins Division), Bassendean	18 May, 1994 - 1 Sept., 1996.....	AG45/94	5/9/94	74	2093
ANI Products (Service Division) Enterprise Bargaining Agreement 1992	170 Railway Parade Bassendean	8 Mar., 1993 - 7 Mar., 1994.....	AG27/92	21/4/93	Unpublished	

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Title	Area Governed	Date of Operation	No. of Agreement	Date Delivered	Reference Vol.	Page
ANI Products (WA) Division Enterprise Bargaining Consent Agreement 1993	Whole of State	12 July, 1993 - 26 June, 1994	AG34/93	5/8/93	73	2039
ANI Wear Resistant Products Division Enterprise Bargaining Consent Agreement 1998. (Replaces AG219/96)	Bassendean Operations	17 Aug., 1998 - 16 Aug., 2000	AG236/98	13/11/98	78	4562
Answer Engineering/CFMEUW Industrial Agreement 2005-2008. (Replaces previous Answer Engineering ... Agreement 2002 - 2005 No. AG61/03. For prior details, see Vol. 85, Part 2)	Whole of State	1 Nov., 2005 - 31 Oct., 2008	AG160/05	12/12/05	Unpublished	
Apollo Trading Co/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	25 Oct., 2004 - 30 June, 2007	AG246/04	10/12/04	Unpublished	
Apprentices Fitting and Turning - Minister for Agriculture	Apprentices employed by Minister for Agriculture	5 May, 1976 - 4 May, 1977	AG27/76	17/5/76	56	627
Aquila Earthmoving/BLPPU and the CMETU Collective Agreement 1999 (Replaces previous Aquila ... Agreement No. AG73/99. For prior details, see Vol. 79, Part 2)	Whole of State	1 Nov., 1999 - 1 Nov., 2002	AG215/99	24/3/00	80	1032
Aquila Earthmoving/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	27 July, 2004 - 31 Oct., 2005	AG135/04	27/8/04	Unpublished	
Arca Pty Ltd/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	17 Aug., 2004 - 31 Oct., 2005	AG148/04	14/9/04	Unpublished	
Arcus Australia Pty Ltd/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	5 Feb., 2003 - 31 Oct., 2005	AG77/03	7/5/03	Unpublished	
Argyle Diamond Enterprise Agreement 1996, The. (Replaces No. AG73/94. For prior details, see Vol. 76, Part 2)	Activity of Argyle Diamonds Mines Pty Ltd sites north of 19th Parallel	1 May, 1996 - 30 Apr., 1997	AG244/96	8/10/96	76	4155
Argyle Diamonds Enterprise Agreement 1997	Whole of State	1 May, 1997 - 30 Apr., 1997	AG210/97	17/9/97	77	2562
Argyle Diamond Mine, Fluor Daniel Power & Maintenance Services, Maintenance Agreement, 1996	Argyle Area - All work associated with Argyle Diamond Mine	17 Jan., 1997 - 16 Dec., 1998	AG342/66	17/1/97	77	326
Argyle Diamond Mine, Fluor Daniel Power & Maintenance Services, Maintenance Agreement 1998	Whole of State	17 Jan., 1998 - 16 Jan., 1999	AG59/98	1/7/98	78	2630
Arlow Insulation Industrial Agreement	Whole of State	22 Feb., 1996 - 31 July, 1997	AG48/96	11/12/96	77	27
Arlow Insulation Industrial Agreement	Whole of State	1 Aug., 1997 - 31 Oct., 1999	AG161/97	17/9/97	77	2566
Armani Aluminium Windows / CFMEUW Industrial Agreement 2002 - 2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	16 Sept., 2004 - 31 Oct., 2005	AG166/04	19/10/04	Unpublished	
Arnott's Biscuits S.D.A. - TWU Agreement 2003 (Replaces previous Arnott's Biscuits... Agreement 2001 No. AG40/02. For prior details, see Vol. 83, Part 1)	Whole of State	17 Sept., 2003 - 30 June, 2006	AG211/03	18/09/03	Unpublished	
Arrow Holdings Industrial Agreement	Whole of State	1 June, 1999 - 31 Oct., 1999	AG101/99	2/8/99	79	2121
Arrow Holdings Kenwick Factory Industrial Agreement	Whole of State	1 July, 1999 - 1 July, 2001	AG105/99	31/8/99	79	2332
Arrow Roof Tiling Services/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	25 Oct., 2004 - 30 June, 2007	AG245/04	10/12/04	Unpublished	
Art-Ceil/BLPPU Collective Agreement 2000	Whole of State	19 May, 2000 - 1 Nov., 2002	AG97/00	19/5/00	80	2471
Arthur Yates and Co Limited Canning Vale Western Australia Site Agreement	Arthur Yates and Co Limited, Canning Vale Site	13 Sept., 1994 - 12 Sept., 1995	AG86/94	20/9/94	74	2334
Association for the Blind of Western Australia Enterprise Agreement 1996	Association of Blind of Western Australia Inc	8 Aug., 1996 - 7 Aug., 1998	AG186/96	8/8/96	76	3850
Association for the Blind of Western Australia Salaried Officers' Enterprise Agreement 2003 (Replaces previous Association for the Blind ... Agreement 2001 AG152/01. For prior details, see Vol. 83, Part 1)	Whole of State	9 Dec., 2003 - 30 June, 2006	AG268/03	17/12/03	Unpublished	
Association for Christian Education Inc (Enterprise Bargaining) Agreement 2001 (Replaces previous Association for Christian ... Agreement No. AG265/98. For prior details, see Vol. 81, Part 2)	Whole of State	1 July, 2000 - 31 Dec., 2002	AG23/02	22/3/02	Unpublished	

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Association of Independent Schools of Western Australia Clerical Officers (Enterprise Bargaining) Agreement 1998.	Osborne Park	1 July, 1998 - 30 June 1999	AG105/98	30/9/98	78	3651
Associated Corrosion Control Industrial	Whole of State	12 Mar., 1998 - 31 Oct., 1999	AG375/97	7/4/98	78	1619
ASA Windows Pty Ltd Industrial Agreement	Whole of State	26 Nov., 1997 - 31 Oct., 1999	AG365/97	26/2/97	78	955
A S Built Construction Industrial Agreement	A S Built Constructions Pty Ltd	19 Sept., 1995 - 31 July, 1997	AG228/95	22/11/95	76	71
Atkins Carlyle Ltd (Belmont Warehouses) Enterprise Agreement 1995	Atkins Carlyle Ltd Warehouses, Belmont excluding trade sales counter staff	22 June, 1995 - 30 June, 1996	AG89/95	4/7/95	75	2128
Atlas Copco Australia Pty Limited Perth WA Enterprise Agreement 1999	Welshpool WA	1 July, 1999 - 30 June 2001	AG166/91	26/11/99	79	3582
Aurora Marble & Granite/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	16 Jan., 2004 – 31 Oct., 2005	AG5/2005	6/9/04		Unpublished
Aurora Stone P/L / CFMEUW Industrial Agreement 2005-2008	Whole of State	1 Nov., 2005 – 31 Oct., 2008	AG245/05	20/3/06		Unpublished
Ausform Constructions/BLPPU and the CMETU Collective Agreement 2001	Whole of State	16 Feb., 2001 - 1 Nov., 2002	AG20/01	27/03/01		Unpublished
Ausform Construction/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	26 May, 2003 – 31 Oct., 2005	AG139/03	14/01/05		Unpublished
Ausform Construction Industrial Agreement	Whole of State	8 June, 1999 - 31 Oct., 1999	AG103/99	31/8/99	79	2334
Aussie Flooring Pty Ltd Industrial Agreement	Whole of State	2 Mar., 1999 - 31 Oct., 1999	AG27/99	31/3/99	79	985
Austotel Management Clerical Employees (TASK) Agreement 1994	Whole of State	18 Apr., 1994 - 31 Dec., 1994	AG73/93	18/4/94	74	1248
Austral Insulation/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	14 Jan., 2003 – 31 Oct., 2005	AG62/03	7/5/03		Unpublished
Australasian Piling Company/CFMEUW Industrial Agreement 2002-2005 (Cancels Australasian Piling Company/BLPPU and the CMETU Collective Agreement 2000 AG147/00, 84WAIG51. For prior details, see Vol. 83, Part 1)	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	24 Jan., 2003 – 31 Oct., 2005	AG50/03	7/5/03		Unpublished
Australasian Piling Company/CFMEUW Collective Agreement 2001	Whole of State	15 Nov., 2001 - 1 Nov., 2004	AG235/01	7/12/01		Unpublished
Australian Fire Doors Company/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	1 July, 2003 – 31 Oct., 2005	AG171/03	6/9/04		Unpublished
Australian Glass Manufacturers Co. Perth, Maintenance Trades (Enterprise Bargaining) Agreement 1993	Establishment of Australian Glass Manufacturers Company - Perth	8 April, 1993 - 8 Oct., 1994	AG10/93	19/4/93	73	1245
Australian Glass Manufacturers Co. Perth, Maintenance Trades (Enterprise Bargaining) Agreement 1994	Australian Glass Manufacturers Co. Perth	1 Nov., 1994 - 30 Oct., 1996	C470/94	8/12/94	75	162
Australian Labor Party (WA Branch) Enterprise Bargaining Agreement 2004 (Cancels previous Australian Labor ... Agreement No. AG101/00. For prior details, see Vol. 84, Part 1)	Australian Labor Party (WA Branch) and Perth Trade Hall (Inc)	1 July, 2003 – 1 July, 2006	AG107/04	13/10/04		Unpublished
Australian Labor Party (WA Branch) Enterprise Bargaining Agreement 2006	Australian Labor Party (WA Branch), Perth Trade Hall (Inc) and Magenta Linas Pty Ltd	1 Jan., 2006 – 29 Dec., 2009	AG57/06	20/9/06		Unpublished
Australian Municipal, Administrative, Clerical and Services Union of Employees – Western Australian Clerical and Administrative Branch and Bakewell Foods Pty Ltd Supported Wages System Agreement 2002	7 – 9 Merchant Way, Morley, WA	20 May, 2002 – 20 May, 2003	AG120/02	25/9/02		Unpublished
Australian Poultry Limited (Osborne Park) Enterprise Bargaining Agreement 1994	Australian Poultry Limited, Osborne Park	4 July, 1994 - 3 July, 1995	AG70/94	12/8/94	74	2104
Australian Red Cross Blood Service Western Australia, AMA Medical Practitioners Industrial Agreement 2004 (Replaces previous Australian Red Cross ... Agreement No. AG153/01. For prior details, see Vol. 84, Part 1)	ARCBS WA except those who are members of the National Executive	7 Dec., 2004 - 31 Mar., 2007	AG260/04	8/12/04		Unpublished
Australian Red Cross Blood Service - Western Australia (ASU) Enterprise Agreement 2004 (Replaces previous Australian Red Cross ... Agreement 2001 No. AG124/01. For prior details, see Vol. 85, Part 1)	Whole of State	16 June, 2005 - 1 Sept., 2006	AG82/05	17/6/05		Unpublished

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Australian Red Cross Blood Service - Western Australia (ARCBS-WA), Health Services Union, Western Australia (HSU-WA) Enterprise Agreement 2004 (Replaces previous Australian Red Cross ... Agreement No. AG125/01. For prior details, see Vol. 84, Part 2)	Australian Red Cross Blood Service - Western Australia (ARCBS-WA)	6 May, 2005 – 1 Sept., 2006	AG70/05	6/05/05	Unpublished	
Australian Red Cross (Western Australian Division) Headquarters Enterprise Agreement 1996	Australian Red Cross (Western Australian Division) East Perth, 110 Goderich St East Perth	18 Nov., 1996 - 17 Nov., 1998	AG83/97	12/6/97	77	1665
Australian Wool Handlers (Albany) Enterprise Agreement 2000. (Cancels previous Albany Wool stores ... Agreement No. AG263/1996)	1 Woolstores Place, Albany	1 July, 1998 - 30 June 2001	AG240/00	10/11/00	80	5374
Australian Wool Handlers (Spearwood) Enterprise Agreement, 1998. (Replaces the following Agreements:- Wesfarmers Wool ... No. AG6/94; No. AG136/96; & No. AG245/96, Elders Limited (Spearwood ...) No. AG122/94; No. AG235/95; & No. AG332/96 and Wooldumpers Australia ... No. AG297/95 & No. AG57/97)	Whole of State	1 July, 1998 - 30 June 2001	AG145/00	15/6/00	80	2875
Australian Workers Union and Department of Environment and Conservation Visitor Centres Industrial Agreement 2007. (Cancels previous Australian Workers Union ... Agreement 2004 No. AG 23/05. For prior details, see Vol. 87, Part 1)	Whole of State	1 Jan., 2007 – 31 Dec., 2009.....	AG50/07	26/10/07	Unpublished	
Australian Workers' Union (Western Australian Public Sector) General Agreement 2007. (This agreement substitutes and replaces the followings: Australian Workers Union (Western Australian Public Sector) Agriculture ... Agreement 2004 No. AG11/05; Australian Workers Union (Western Australian Public Sector) Department ... Agreement 2004 No. AG22/05; Australian Workers Union (Western Australian Public Sector) Forest ... Agreement 2004 No. AG48/05 and Australian Workers' Union (Western Australian Public Sector) Water ... Agreement 2004 No. AG2/05	Whole of State	2 Oct., 2007 - 31 Dec., 2009.....	AG45/07	2/10/07	Unpublished	
Austwest Construction Services/CFMEUW Industrial Agreement 2002-2005 (Cancels Auswest Constructions/BLPPU and the CMETU Collective Agreement 2001 AG197/01. For prior details, see Vol. 83, Part 1)	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	3 Dec., 2002 – 31 Oct., 2005	AG248/02	7/5/03	Unpublished	
Autism Association of WA (Inc) – LHMU (State) Residential Support Workers Agreement 2005. (This substitutes previous Autism Association ... Agreement 2002 No. AG103/02)	Whole of State	13 Dec., 2005 – 13 Dec., 2008.....	AG262/05	13/12/05	Unpublished	
Automotive Dismantler Youth Traineeship Agreement	Whole of State	7 June, 1990 - 6 June, 1991.....	AG3/90	7/6/90	70	2173
AVP Constructions/CFMEUW Collective Agreement 2001	Whole of State	7 Mar., 2002 - 1 Nov., 2002.....	AG37/02	5/4/02	Unpublished	
AW Bricklaying/BLPPU and the CMETU Collective Agreement. (Replaces previous AW Bricklaying ... Agreements No. AG60/95 and No. AG192/97. For prior details, see Vol. 81, Part 2)	Whole of State	19 July, 2001 - 1 Nov., 2002.....	AG155/01	9/8/01	Unpublished	
AWU Jobskills "K" Newgrowth Agreement 1995	"K" Newgrowth Employees Under Jobskills Programme	4 Jan., 1995 - 3 Jan., 1997.....	AG2/95	27/6/95	75	2133
AWU Jobskills Perth ITEC Pty Ltd and Centre Care Skillshare Agreement 1994	Trainees at ITEC Pty Ltd and Centrecare Skills Training Centre	25 Aug., 1994 - 24 Aug., 1996	AG54/94	1/12/94	74	2939
AWU Jobskills Trainee Agreement 1995	Jobskill Trainees of the Royal Western Australian Bowling Association Inc	9 Nov., 1995 - 8 Nov., 1997	AG256/95	30/11/95	75	3180
AWU Jobskills Trainee Albany Employment Development Committee Inc Agreement 1994	Albany Development Committee Inc Employees Under Jobskills Programme	25 Aug., 1994 - 24 Aug., 1996	AG76/94	13/12/94	75	78
AWU Jobskills Trainee Group Training South West (Inc) Agreement 1994	Trainees at Group Training South West (Inc)	18 Nov., 1994 - 17 Nov., 1996	AG56/94	2/12/94	74	2940
AWU Jobskills Trainee Life Be In It Agreement 1994	Jobskills Trainees of Life Be In It	25 Aug., 1994 - 24 Aug., 1996	AG49/94	21/9/94	74	2342
AVP CONSTRUCTIONS/CFMEUW Collective Agreement 2001	Whole of State	7 Mar., 2002 - 1 Nov., 2002.....	AG37/02	5/4/02	Unpublished	
Avro Holdings/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	25 Oct., 2004 – 30 June, 2007	AG251/04	13/12/04	Unpublished	

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B & I Maintenance & Carpentry Services/CFMEUW Industrial Agreement 2005-2008 (Replaces previous B & I Maintenance ... Agreement 2002-2005 No. AG243/02. For prior details, see Vol. 85, Part 2)	Whole of State	1 Nov., 2005 – 31 Oct., 2008	AG144/05	20/01/06	Unpublished	
B & L Formwork Industrial Agreement	Bertolini & Ladner Pty Ltd t/a B & L Formwork	6 Dec., 1995 - 31 July, 1997	AG 316/95	10/01/96	76	343
B & N Uptons Roof Plumbing & Maintenance/CFMEUW Industrial Agreement 2002-2005 (Cancels B & N Upton/BLPPU and the CMETU Collective Agreement 2000. AG211/00, 84WAIG51. For prior details, see Vol. 83, Part 1)	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	22 Jan., 2003 – 31 Oct., 2005.....	AG51/03	7/5/03	Unpublished	
B & R Paving Industrial Agreement	Carbone B & E and Serafino S & R t/a B & R Paving	6 June, 1996 - 31 July, 1997	AG126/96	10/6/96	76	1718
B & S Concrete Cutting Service / CFMEUW Industrial Agreement 2002 – 2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	26 Aug., 2004 – 31 Oct., 2005	AG156/04	15/09/04	Unpublished	
Baguleys Container Yard Rouse Head WA Certified Agreement 2004	State of Western Australia	25 July, 2005 - 1 July, 2006.....	AG83/05	25/7/05	Unpublished	
Bains Harding Industries Asbestos Eradication Industrial Agreement	Bains Harding Industry Pty Ltd	11 Nov., 1994 - 10 Nov., 1996.....	AG137/94	11/11/94	74	2941
Bains Harding Industries (Manufacturing Division) Enterprise Bargaining Agreement. (Replaces AG89/97)	Manufacturing Division Bains Harding	18 Aug., 1999 - 17 Aug., 2001.....	AG113/99	18/8/99	79	2338
Bains Harding Industries (South West Division) Enterprise Bargaining Agreement	South West Division Section of Bains Harding Industries Pty Ltd	5 Dec., 1994 - 4 Dec., 1995.....	AG67/95	8/5/95	75	1845
Bains Harding Industries (South West Division) Enterprise Bargaining Agreement	South West Division Section of Bains Harding	9 May, 1996 - 8 May, 1998.....	AG201/96	16/8/96	76	3851
Bains Harding Industries (Alcoa Kwinana) Enterprise Bargaining Agreement 1998	Kwinana Alumina Refinery	9 May, 1998 - 9 March, 2000.....	AG169/98	15/10/98	78	3979
Bains Harding Industries (Alcoa Wagerup) Enterprise Bargaining Agreement 1998	Wagerup Refinery Site	9 May, 1998 - 9 March, 2000.....	AG167/98	15/10/98	78	3981
Bains Harding Industries (Wesfarmers CSBP) Enterprise Bargaining Agreement 1998	Kwinana Site	9 May, 1998 - 9 March, 2000.....	AG168/98	15/10/98	78	3983
Bains Harding Industries (Western Power - Kwinana) Enterprise Bargaining Agreement 1998	Kwinana Site	9 May, 1998 - 9 March, 2000.....	AG170/98	15/10/98	78	3986
Bains Harding Industries (Western Power-Muja) Enterprise Bargaining Agreement 1998	Muja Site	9 May, 1998 - 9 March, 2000.....	AG166/98	15/10/98	78	3988
Bains Harding Industries (Worsley Alumina) Enterprise Bargaining Agreement 1998	Worsley Alumina Refinery Site	9 May, 1998 - 9 March, 2000.....	AG165/98	15/10/98	78	3990
Bakers Bun Hot Bread Kitchens Agreement	Area occupied by Bakers Bun Hot Bread Kitchens	24 Feb., 1976 - 23 Feb., 1977	AG19/76	9/4/76	56	574
Bakewell Morley Casual Employees Agreement 1997	Whole of State	1 July, 1997 - 30 June, 1998	AG184/97	11/12/97	78	339
Balfern Holdings/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	25 Oct., 2004 – 30 June, 2007.....	AG235/04	10/12/04	Unpublished	
Ballymount/CFMEUW Collective Agreement 2002	Whole of State	10 Oct., 2002 – 1 Nov., 2002	AG220/02	29/11/02	Unpublished	
Ballymount Enterprises/CFMEUW Industrial Agreement 2005-2008. (Replaces previous Ballymount Enterprises ... Agreement 2002-2005 No. AG244/02. For prior details, see Vol. 85, Part 2)	Whole of State	1 Nov., 2005 – 31 Oct., 2008	AG163/05	20/01/06	Unpublished	
<i>Ballymount Enterprises Pty Ltd</i> New Metro Rail Southern Suburbs Rail Project, Structural Project Agreement 2005	New Metro Rail Project Southern Suburbs Rail Project	21 June, 2005 - 1 July, 2006	AG236/05	21/06/05	Unpublished	
Barney Mac Plastering/BLPPU and the CMETU Collective Agreement 2000 (Replaces and Cancels previous Barney Mac... Agreement No. AG90/1999. For prior details, see Vol. 80, Part 1)	Whole of State	1 Nov., 1999 - 1 Nov., 2002.....	AG208/00	11/9/00	80	4649
Bartter Enterprises Pty Ltd (Maintenance Division) Certified Agreement 2000	Bartter Enterprises Pty Ltd, WA	1 July, 2000 - 30 Oct., 2001	AG35/01	27/3/01	Unpublished	
Bartter Enterprises Pty Ltd (Maintenance Division) Certified Agreement 2004 (Cancels previous Bartter Enterprises ... Agreement 2002 No. AG75/02. For prior details, see Vol. 85, Part 1)	Bartter Enterprises Pty Ltd WA, Osborne Park	1 Nov., 2004 - 30 Nov., 2007.....	AG122/05	16/8/05	Unpublished	
Bayley's Electrical Services Industrial Agreement	Bayley's Electrical Services	11 Nov., 1994 - 31 July, 1995.....	AG136/94	11/11/94	74	2943

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Beaufort College Enterprise Bargaining Agreement 1998	Whole of State	28 Jan., 1998 - 31 Dec., 1999	AG58/98	22/4/98	78	1622
Bedrock Limestone Co. Industrial Agreement	Bedrock Limestone Co.	31 Aug., 1996 - 31 July, 1997.....	AG152/96	16/9/96	76	3854
Bedrock Limestone Industrial Agreement	Whole of State	15 Sept., 1997 - 31 Oct., 1999	AG193/97	1/10/97	77	2573
Beehive Montessori School (Enterprise Bargaining) Agreement 2007 (Replaces previous Beehive Montessori ... Agreement 2004 No. AG26/05. For prior details, see Vol. 87, Part 1)	Whole of State	1 Jan., 2007 - 31 Jan., 2009.....	AG61/07	1/11/07	Unpublished	
Bells Thermalag & Industrial Services Asbestos Eradication Industrial Agreement	Bells Thermalag & Industrial Services Pty Ltd	8 Dec., 1995 - 8 Dec., 1997	AG324/95	24/6/96	76	2159
Belpile Western Australia Pty Ltd/CFMEUW Industrial Agreement 2002 – 2005 (Replaces Belpile ... Agreements No.AG182/94 and No. AG253/01. For prior details, see Vol. 84, Part 1)	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	11 Feb., 2004 - 31 Oct., 2005	AG24/04	2/7/04	Unpublished	
Beltreco Limited (North West) Enterprise Bargaining Agreement 1997	Whole of State	8 Oct., 1997 - 30 June, 1999	AG270/97	5/11/97	77	2877
Beltreco North West Operations Enterprise Bargaining Agreement 2000	Whole of State	28 Feb., 2001 - 30 June, 2003.....	AG270/00	28/02/01	Unpublished	
Beltreco Ltd (WA) Malaga Operations Enterprise Agreement 1999	Malaga	1 Oct., 1999 - 30 Sept., 2001	AG178/99	17/12/99	80	39
Benchmark Recruitment (WA) Pty Ltd CBH Kwinana) Maintenance Agreement 2002	Co-operative Bulk Handling - Kwinana	2 Sept., 2002 – 1 July, 2005.....	AG151/02	25/10/02	Unpublished	
Bentley Crane Hire/BLPPU & CMETU Collective Agreement 2001	Whole of State	25 Oct., 2001 - 1 July, 2003.....	AG209/01	20/11/01	Unpublished	
Berkley Challenge Industrial Agreement	Berkley Challenge Pty Ltd	19 Oct., 1994 - 21 July, 1995.....	AG127/94	4/11/94	74	2648
Berri Ltd (Balcatta Plant) Enterprise Agreement 2002. (Replaces previous Berri Ltd ... Agreement No. AG188/00. For prior details, see Vol. 82, Part 1)	Berri Ltd 7 Ledger Road, Balcatta	1 Aug., 2002 - 31 July, 2004.....	AG114/02	25/09/02	Unpublished	
Berri Ltd (Balcatta Plant) Enterprise Agreement 2004	Berri Ltd 7 Ledger Road, Balcatta	1 Aug., 2004 - 31 Jan., 2007.....	AG177/04	11/11/04	Unpublished	
Berrivale Orchards Ltd Enterprise Agreement 1997	Ledger Road, Balcatta WA	2 June, 1997 - 1 June, 1998.....	AG274/97	13/1/98	78	599
Best Yet Builders Cleans Industrial Agreement	Whole of State	28 Oct., 1998 - 31 Oct 1999.....	AG241/98	17/12/98	79	113
Bethesda Hospital (HSU) Administrative Staff Enterprise Agreement 2005. (Replaces previous Bethesda Hospital ... Agreement 2003 No. AG25/03. For prior details, see Vol. 85, Part 2)	Whole of State	19 Dec., 2005 - 31 Dec., 2008	AG279/05	19/01/05	Unpublished	
Beton Contractors Industrial Agreement	Beton Contractors Pty Ltd	23 Aug., 1995 - 31 July, 1997.....	AG153/95	10/10/95	75	2960
Beverly Four Square Supermarket and SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Whole of State	6 Nov., 2002 – 30 June, 2005	AG167/02	18/11/02	Unpublished	
BHP Building Products – Myaree Performance Payments Scheme Agreement 1995 (Superseded by AG84/97)	Whole of State	1 Jan., 1995 - 28 Feb 1997.....	AG3/96	14/2/96	77	874
BHP Building Products Myaree Enterprise Agreement 2000/2001. (Replaces and Cancels previous BHP Building ... Agreement No. AG129/99. For prior details, see Vol. 80, Part 1)	BHP Building Products, Myaree	1 Jan., 2000 - 31 Aug., 2001	AG140/00	3/7/00	80	2889
BHP Building Products Osborne Park Enterprise Agreement 2000/2001 (Cancels previous BHP Building ... Agreement No.AG114/99. For prior details, see Vol. 79, Part 2)	BHP Building Products 14 Howe Street, Osborne Park	1 Jan., 2000 - 31 Aug., 2001	AG111/00	23/5/00	80	2490
BHP Cadjebut Enterprise Bargaining Agreement 1993	Cadjebut in the Kimberly Region of W.A.	19 Aug., 1993 - 19 Feb., 1996	AG36/93	24/8/93	73	2375
BHP Steel-Rod & Bar Products - Kwinana Works - Steel Industry Enterprise Bargaining Agreement 1993	BHP Rod and Bar Products Division Kwinana Works	25 Nov., 1993 - 24 Nov., 1995	AG45/93	25/11/93	73	3388
BHP Steel Transport & Logistics, Kwinana Logistics Terminal Enterprise Agreement 2003	BHP Steel Transport & Logistics, Kwinana Logistics Terminal	4 July, 2003 – 30 June, 2004.....	AG158/2003	4/7/03	Unpublished	
B.H.P. Transport-Kwinana Enterprise Bargaining Agreement, 1993	Bulk Handling and Rail Terminal Operations of BHP Transport Kwinana	23 Sept., 1993 - 21 April, 1995.....	AG55/93	29/9/93	73	2680

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BHP Transport Pty Ltd Kwinana Bulk Materials Handling Enterprise Bargaining Agreement 1998	BHP Transport Pty Ltd Kwinana	16 Feb., 1998 - 16 Aug 1999.....	AG83/98	15/2/99	79	724
BHP Transport Pty Ltd Kwinana Logistics Enterprise Agreement 1998	BHP Transport Pty Ltd Kwinana Logistics	16 Feb., 1998 - 16 Aug, 2000.....	AG25/98	19/3/99	79	1001
Bibra Lake Fabrication Workshop Enterprise Agreement 2003. (Replaces previous Bibra Lake ... Agreement 2001 No. AG29/02. For prior details, see Vol. 83, Part 2)	Bulkwest Engineering Pty Ltd, Bibra Lake Workshop	1 Nov., 2003 - 30 Oct., 2006.....	AG17/04	26/03/04	Unpublished	
Bill Stevens Applied Applicators Industrial Agreement	Bill Stevens Applied Applicators Pty Ltd	8 Sept., 1995 - 31 July, 1997.....	AG158/95	10/10/95	75	2962
Bill Stevens Plasterworld Industrial Agreement	Whole of State	1 Aug., 1997 - 31 Oct., 1999.....	AG10/98	25/3/98	78	1144
Bill Stevens Plasterers/CFMEUW Industrial Agreement 2002 - 2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	27 May, 2004 - 31 Oct., 2005	AG97/04	30/6/04	Unpublished	
Binder (WA) Enterprise Bargaining Agreement 1998	Whole of State	4 Dec., 1997 - 3 Dec., 1998.....	AG12/98	5/3/98	78	825
Binder (WA) Enterprise Bargaining Agreement 1999	Whole of State	1 June, 1999 - 31 May, 2001	AG115/99	30/8/99	79	2345
Bindoon General Store and SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Whole of State	6 Nov., 2002 - 30 June, 2005.....	AG177/02	18/11/02	Unpublished	
Bindoon Tiling Industrial Agreement	Garry Dunk t/a Bindoon Tiling	7 Sept., 1995 - 31 July, 1997.....	AG215/95	7/12/95	76	79
Biokovo Painting/BLPPU and the CMETU Collective Agreement 2001	Whole of State	11 Dec., 2001 - 1 Nov., 2002	AG255/01	09/01/02	Unpublished	
Biokovo Paving/CFMEUW Industrial Agreement 2002	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	25 Oct., 2004 - 31 Oct., 2005	AG183/04	29/11/04	Unpublished	
Bisschops Industries/CFMEUW Industrial Agreement 2002-2005. (Cancels Bisschops Industries Industrial Agreement No. AG339/97, 84WAIG52. For prior details, see Vol. 83, Part 1)	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	17 Feb., 2003 - 31 Oct., 2005	AG78/03	7/5/03	Unpublished	
B Kernaghan & Co Domestic and Minor Industrial Agreement	Whole of State	7 Feb., 1996 - 31 July, 1997.....	AG54/96	11/12/96	77	29
B Kernaghan & Co Industrial Agreement	Whole of State	4 Apr., 1995 - 31 July, 1996.....	AG52/95	19/4/95	75	1527
B Kernaghan & Co Industrial Agreement	Whole of State	13 Sept., 1995 - 31 July, 1997.....	AG220/95	22/11/95	76	80
B Kernaghan & Co Industrial Agreement	Whole of State	12 Dec., 1996 - 31 July, 1997	AG27/96	6/12/96	76	4901
B Kernaghan & Co Subiaco Grandstand Construction Project Agreement 1994	Subiaco Grandstand Construction Project	Commencement - Completion	AG53/95	16/5/95	75	1845
BKM Construction Tilt - Up Industrial Agreement	Brendan Maine t/a BKM Construction and Employees engaged in the Manufacturing and construction of tilt up panels	21 Dec., 1994 - 31 July, 1995	AG196/94	29/12/94	75	81
Blackbeard and Co Industrial Agreement	Whole of State	27 Nov., 1996 - 31 July, 1997.....	AG298/96	27/11/96	77	337
Blackadder Construction Services (Australia) A.C.N. 075 296 883 Scaffolding Industrial Agreement	Whole of State	20 Nov., 1996 - 19 Nov., 1998.....	AG281/96	20/11/96	77	334
Blackadder Formwork/BLPPU and the CMETU Collective Agreement 1999. (Cancels previous Blackadder ... Agreement No. AG37/99. For prior details, see Vol. 79, Part 2)	Whole of State	1 Nov., 1999 - 1 Nov., 2002.....	AG191/99	21/2/00	80	468
Blackadder Scaffolding Services/BLPPU Collective Agreement 1999 AG204/99. (Replaces previous Blackadder Scaffolding ... Agreement No. AG232/98. For prior details, see Vol. 79, Part 2)	Whole of State	1 Nov., 1999 - 1 Nov., 2002.....	AG204/99	24/3/00	80	1038
Blackadder Scaffolding Services/CFMEUW Industrial Agreement 2005-2008 (Replaces previous Blackadder Scaffolding ... Agreement 2002-2005 No AG 225/02. For prior details, see Vol. 85, Part 2)	Whole of State	1 Nov., 2005 - 31 Oct., 2008	AG137/05	16/2/06	Unpublished	
Blackadder scaffolding Services/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	10 Feb., 2003 - 31 Oct., 2005	AG63/03	7/5/03	Unpublished	

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Blackadder Scaffolding Services (Traffic)/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	27 July, 2004 – 31 Oct., 2005	AG136/04	27/8/04	Unpublished	
Blowflex Moulding Pty Ltd and Liquor, Hospitality and Miscellaneous Union, Western Australian State Industrial Agreement 2004	Blowflex Moulding Pty Ltd (WA)	15 June, 2004 – 14 June, 2007	AG1/06	28/02/06	Unpublished	
Blowflex Moulding PTY. LTD, Western Australian Enterprise Bargaining Agreement 2001. (Cancels previous Blowflex Moulding ... Agreement No. AG160/00. For prior details, see Vol. 81, Part 2)	Blowflex Moulding	15 June, 2001 - 15 June, 2004	AG249/01	12/3/02	Unpublished	
Blue Brook/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	25 Oct., 2004 – 30 June, 2007	AG184/04	29/11/04	Unpublished	
BlueScope Lysaght Forresterfield Enterprise Bargaining Agreement 2005 (Replaces BHP Steel Lysaght Enterprise Agreement 2002 No. AG74/02)	11 Carolyn Way, Forresterfield WA	17 Feb., 2006 - 17 Feb., 2009	AG11/06	17/2/06	Unpublished	
BlueScope Steel Myaree Service Centre Closure Agreement 2004/2007 (Replaces BHP Western Australian Service Centre Enterprise Bargaining Agreement 2002/2004 AG70/02)	BlueScope Steel Limited, Myaree	1 June, 2004 – 1 June, 2007	AG273/04	16/12/04	Unpublished	
Blue Steel/BLPPU and the CMETU Collective Agreement 2001	Whole of State	21 Aug., 2001 - 1 Nov., 2001	AG176/01	17/09/01	Unpublished	
Bluestream Commercial Industrial Agreement	Whole of State	19 May, 1999 - 31 Oct., 1999	AG88/99	22/7/99	79	2133
BMB Scaffold Industrial Agreement	Ben Cant t/a BMB Scaffold	26 Oct., 1995 - 31 July, 1997	AG276/95	7/12/95	76	82
Bob Edward's & Co Industrial Agreement	Bob Edward's & Co	1 Aug., 1995 - 31 July, 1997	AG61/95	18/5/95	75	1848
Bobrik Constructions/CFMEUW Industrial Agreement 2005-2008. (Replaces previous Bobrik Construction ... Agreement 2005-2008 No. AG140/05)	Whole of State	1 Nov., 2005 – 31 Oct., 2008	AG14/06	7/3/06	Unpublished	
Bobrik Constructions/CFMEUW Industrial Agreement 2005-2008. Replaces previous Bobrik Construction ... Agreement 2002 -2005 No. AG226/02. For prior details, see Vol. 85, Part 2)	Whole of State	1 Nov., 2005 – 31 Oct., 2008	AG140/05	12/12/05	Unpublished	
Bobrick Constructions Bricklaying Industrial Agreement	Bobrick Constructions Pty Ltd	1 Aug., 1995 - 31 July, 1997	AG127/95	7/9/95	75	2725
BOC Limited Perth Operations Centre (Canning Vale) Agreement (2004). (Replaces BOC Gases Australia ... Agreement 2002 No. AG69/02. For prior details, see Vol. 84, Part 2)	BOC Gases Australia Limited	1 July, 2004 – 30 June, 2006	AG179/04	15/12/04	Unpublished	
Boddington Pine Operations Agreement	Bunnings Boddington Pine Operations	16 Sept., 1991 - 15 Sept., 1993	AG2/91	17/9/91	71	2510
BOLDLINE BRICKLAYING/CFMEUW Collective Agreement 2001	Whole of State	19 Mar., 2002 - 1 Nov., 2002	AG49/02	11/4/02	Unpublished	
Boldline Holdings Pty Ltd/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	6 Dec., 2002 – 31 Oct., 2005	AG274/02	7/5/03	Unpublished	
Boodarie Iron – Port Hedland Operations Industrial Agreement 2003	Boodarie Iron - Port Hedland operation, WA	01 Sept., 2003 – 31 Aug 2006	AG270/03	31/10/03	Unpublished	
Boral Building Services Industrial Agreement	Boral Building Services Pty Ltd	15 Dec., 1995 - 31 July, 1995	AG200/94	30/1/95	75	562
Boral Castings Pty Ltd – Perth Works - Enterprise Agreement 1993	Establishment of Boral Castings Pty Ltd, Adams Drive, Welshpool	8 April, 1993 - 8 Oct., 1993	AG17/93	19/4/93	73	1249
Boral Formwork & Scaffolding Western Australian Yard In Agreement	Boral Formwork & Scaffolding Pty Ltd	1 May, 2000 - 1 May, 2003	AG91/01	25/06/01	Unpublished	
Boral Formwork & Scaffolding - Yard/CFMEUW Industrial Agreement 2002 – 2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	28 June, 2004 - 31 Aug, 2005	AG124/04	13/8/04	Unpublished	
		Correcting Order No. AG124/2004 (Bargaining Agents Fee) .....	...	20/08/04	84	3005
Boral Formwork & Scaffolding Pty Ltd/CFMEUW Industrial Agreement 2005-2008	Inner City "Ellement" site 996 Hay St, Perth	31 Aug., 2005 - 31 Dec., 2007	AG246/05	17/2/06	Unpublished	
Boral Quarries (Enterprise Bargaining) Consent Agreement, 1994	Boral Quarries, Orange Grove	21 Nov., 1994 - 20 Nov., 1996	AG139/94	21/11/94	75	83
Boral Resources (WA) Ltd (Trading As Boral Quarries) Enterprise Bargaining Agreement, 1997 (Cancels No. AG271/97)	Whole of State	4 Nov., 1999 - 17 Feb., 2001	AG94/99	4/11/99	79	3207

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Boral Transport Mechanics Enterprise Bargaining Agreement 1998	Whole of State	27 Aug, 1998 - 27 Feb., 2001	AG262/98	18/1/99	79	404
Bosich Concrete/CFMEUW Collective Agreement 2002	Whole of State	20 June, 2002 – 1 Nov., 2002.....	AG90/02	09/07/02	Unpublished	
Boskovski Brick and Wall Paving Pty Ltd Industrial Agreement	Whole of State	8 Mar., 1996 - 31 July, 1997	AG53/96	8/3/96	77	41
Boskovski Bricklaying/BLPPU and the CMETU Collective Agreement 2001 (Replaces previous Boskovski ... Agreement No. AG212/91. For prior details, see Vol. 81, Part 2)	Whole of State	23 Mar., 2001 - 1 Nov., 2002.....	AG56/01	3/03/01	Unpublished	
Bosnafx/BLPPU and the CMETU Collective Agreement 2001	Whole of State	28 Feb., 2001 - 1 Nov., 2002.....	AG41/01	26/3/01	Unpublished	
Botanic Gardens and Parks Authority (Operations) General Agreement 2007 (Replaces Botanic Gardens and Parks Authority General Agreement 2004 No. AG266/04. For prior details, see Vol. 87, Part 1)	Whole of State	24 July, 2007 – 31 Dec., 2009.....	AG49/07	24/7/07	Unpublished	
Bovis Industrial Agreement	Whole of State	4 May, 1999 - 31 Oct., 1999	AG80/99	17/6/99	79	1913
Bovis Lend Lease/CFMEUW Industrial Agreement 2002-2005. (Cancels Bovis Lend Lease Pty Ltd Industrial Agreement No. AG55/01, 84WAIG52. For prior details, see Vol. 83, Part 1)	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	10 Feb., 2003 – 31 Oct., 2005	AG64/03	7/5/03	Unpublished	
BP Refinery Kwinana CMETU Employees Agreement 1996	BP Oil Kwinana	1 Jan., 1996 - 31 Dec., 1996.....	AG85/96	24/5/96	76	1720
BP Refinery Kwinana Pty Ltd Site Agreement 1994	Members of Union engaged by BP Oil Kwinana in its Operations Area, Kwinana	16 Jan., 1994 - 31 Dec., 1995.....	AG7/95	10/3/95	75	1529
BP Refinery - Kwinana VDU 2 Stage 1 Upgrade - Project Agreement 1998	Kwinana BP Refinery	24 Nov., 1998 - Practical completion of the project.....	AG117/98	24/11/98	78	4566
Brad Brick Bricklaying Industrial Agreement	Delkey Holdings Pty Ltd t/a Brad Brick	15 Sept., 1995 - 31 July, 1997.....	AG182/95	10/10/95	75	2963
Bradken Perth, Western Australian (Enterprise Bargaining) Agreement 1995	Bradken Perth	12 Dec., 1995 - 10 Mar., 1996	AG330/95	31/1/96	77	1136
Bradken Perth Western Australian Machine-Shop (Enterprise Bargaining) Agreement 1993	Establishment of Bradken Perth Machinshop	8 April, 1993 - 8 Oct., 1993	AG16/93	19/4/93	73	1252
Bradken Perth, Western Australia Machine-Shop (Enterprise Bargaining) Agreement	Bradken Perth Machinshop	16 Nov., 1993 - 8 Apr., 1994	AG69/93	10/12/93	74	70
BRADKEN RESOURCES PTY LTD – Western Australia – Welshpool Enterprise Bargaining Agreement 2006 (Replaces previous Bradken Resources ... Agreement 2002 No. AG224/02. For prior details, see Vol. 85, Part 2)	Bradken Resources Pty Ltd, 24 Tomlinson Road, Welshpool, Western Australia, 6106	15 Mar., 2006 – 14 Mar 2009	AG42/06	24/03/06	Unpublished	
Brady's Building Products (Enterprise) Bargaining Agreement 1999	Whole of State	10 Mar., 2000 - 31 Oct., 2002.....	AG181/99	10/3/00	80	1387
Brady's Building Products Industrial Agreement	Whole of State	19 June, 1997 - 31 Dec., 1997.....	AG94/97	8/7/97	77	1901
Brady's Building Products Industrial Agreement	Whole of State	13 Aug., 1998 - 31 Dec., 2000	AG161/98	12/10/98	78	3993
Brambles Western Australia – Placer (Granny Smith) Operation Gold Mining and Processing Agreement 1996	Placer (Granny Smith) Operation of Brambles Western Australia	6 Dec., 1996 - 5 Dec., 1998.....	AG330/96	6/3/97	77	629
Breadcarters (Metropolitan and Collie) Supplementary Agreement (See Award 35/1963)	Radius of 28 miles from G.P.O. Perth and radius of 5 miles from G.P.O. Collie	10 Jan., 1967 - 9 Feb., 1967	AG1/67	13/1/67	46	1353
Bregma Industrial Agreement	Bregma Pty Ltd	11 Nov., 1994 - 31 July, 1995.....	AG135/94	11/11/94	74	2944
Bregma Industrial Agreement	Bregma Pty Ltd	8 Sept., 1995 - 31 July, 1997.....	AG147/95	10/10/95	75	2964
Bregma Formwork Industrial Agreement	Whole of State	30 Sept., 1998 - 31 Oct., 1999.....	AG226/98	24/11/98	78	4568
Brewery Craftsmen Agreement, 1979	Whole of State	7 Oct., 1979 - 7 Oct., 1980.....	C368A/79	27/9/79	59	1432
Brewery Engine Drivers and Firemen Agreement 1979	Workers engaged in the Canning Vale Brewery	7 Oct., 1979 - 6 Oct., 1980.....	C368B/79	7/10/79	59	1438
Brick Work Pty Ltd Industrial Agreement	Brick Work Pty Ltd	1 Aug., 1995 - 31 July, 1997.....	AG95/95	6/7/95	75	2134
Brick Work Industrial Agreement	Brick Work Pty Ltd	20 Mar., 1996 - 31 July, 1997	AG302/95	20/3/96	76	946

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Bridge House - Salvation Army Agreement 2002. (Replaces & Cancels previous Bridge House ... Agreement No. AG242/00. For prior details, see Vol. 81, Part 2)	Bridge House Salvation Army	29 May, 2002 - 28 May, 2003	AG64/02	29/5/02	Unpublished	
Bridgetown Mini Mart and SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Whole of State	6 Nov., 2002 – 30 June, 2005	AG184/02	18/11/02	Unpublished	
Brightwater Care Group Incorporated Hospital Salaried Officers Enterprise Agreement 2004 (Replaces and Cancels previous Brightwater Care ... Agreement No. AG96/02. For prior details, see Vol. 83, Part 2)	Employees employed by Brightwater Care Group Inc eligible to be members of the HSOA	11 Mar., 2004 – 30 June, 2006	AG26/04	11/3/04	Unpublished	
Brinkworth Drainage Contractors Industrial Agreement	Brinkworth Drainage Contractors	28 Mar., 1996 - 31 Aug., 1997.....	AG98/96	8/5/96	76	1733
Bristile Clay Tiles Enterprise Agreement 1995	Bristile Ltd as Manager for Bristile Clay Tiles Caversham	22 Oct., 1995 - 22 Oct., 1997.....	AG287/95	24/6/96	76	2161
Bristile Clay Tiles Maintenance Enterprise Agreement 1994	Establishment of Bristile Clay Tiles, Harper Street, Caversham	23 Sept., 1994 - 22 Sept., 1995	AG102/94	23/9/94	74	2343
Bristile Clay Tiles Production Enterprise Agreement 1994	Bristile Clay Tiles Caversham	15 Nov., 1994 - 14 Nov., 1995	AG130/94	15/11/94	74	2945
Britt Bricklaying Industrial Agreement	Britt Bricklaying	1 Aug., 1995 - 31 July, 1997.....	AG62/95	18/5/95	75	1849
Broad Construction Services Pty Ltd/BLPPU and the CMETU Collective Agreement (Replaces previous Broad Construction ... Agreement No. AG195/94. For prior details, see Vol. 81, Part 2)	Whole of State	1 Nov., 1999 - 1 Nov., 2002	AG74/01	31/05/01	Unpublished	
Broadwater Mini Mart and SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Whole of State	12 Feb., 2003 – 30 June, 2005	AG214/02	21/2/03	Unpublished	
Broadway Fresh and SDA Agreement 2003 (For previous amendments, see Vol. 89, Part 2)	Whole of State	20 Feb., 2004 – 30 June, 2005	AG230/03	20/02/04	Unpublished	
Brownbuilt Metalux Enterprise Bargaining Agreement	Brownbuilt Metalux	18 May, 1994 - 30 June, 1995	AG34/94	18/5/94	74	1510
Brownbuilt Pty Ltd, Welshpool, WA Agreement 2006. (Replaces previous Brownbuilt Pty Ltd, ... Agreement 2003 No. AG108/03. For prior details, see Vol. 85, Part 2)	Brownbuilt Metalux Industries	24 Mar., 2006 – 23 Mar., 2008	AG39/06	24/3/06	Unpublished	
Brownbuilt Metalux Industries Redundancy Agreement 1998-99	Whole of State	30 June, 1998 - 30 June, 1999	AG225/98	20/11/98	78	4572
Brownes Dairy North Perth Clerical (Enterprise Bargaining) Agreement 1994	Brownes Dairy, North Perth	11 Nov., 1994 - 11 Nov., 1996	AG193/94	23/2/95	75	564
Brown Dairy North Perth (Enterprise Bargaining) Agreement 1996	Whole of State	15 Dec., 1996 - 15 Dec., 1998	AG65/95	18/4/97	77	1139
BT Tritech Electrical Enterprise Bargaining Agreement 2005	Whole of State	1 Jan., 2005 – 31 Mar., 2006	AG227/05	4/11/05	Unpublished	
Budget Cabinets & Maintenance Industrial Agreement	Howland Holdings Pty Ltd t/a Budget Cabinets & Maintenance	7 May, 1996 - 31 July, 1997.....	AG144/96	20/6/96	76	2165
Budget Brick Hoists/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	13 Dec., 2002 – 31 Oct., 2005	AG293/02	7/5/03	Unpublished	
Budget Hoists/BLPPU and the CMETU Collective Agreement 1999 (Cancels previous Budget Hoists ... Agreement No. AG98/99. For prior details, see Vol. 79, Part 2)	Whole of State	1 Nov., 1999 - 1 Nov., 2002	AG245/99	8/3/00	80	1042
Building Security Management Services Enterprise Bargain Agreement 2005	State of WA	1 Jan., 2005 – 31 Oct., 2005	AG67/05	5/05/05	Unpublished	
Building Trades (Government) General Agreement 2007. (Replaces previous Building Trades ... Agreement 2004 No. AG146/04. For prior details, see Vol. 87, Part 1)	Whole of State	13 July, 2007 – 31 Dec., 2009	AG51/07	13/7/07	Unpublished	
Building Trades (University of W.A.) Agreement	Area Controlled by the University of W.A.	1 Nov., 1977 - 30 Oct., 1980	AG1/78	4/1/78	58	75
Bulong Nickel Project Construction Agreement 1997-1998 (AFMEPKIU/CEPU)	Bulong Nickel Construction Project Site	6 Oct., 1997 - Completion of commissioning of the Plant.....	AG53/98	18/5/98	78	1996
Bulong Nickel Project Construction Agreement 1997-1998 (CMETU/WABLPPU)	Bulong Nickel Construction Project Site	6 Oct., 1997 - Completion of commissioning of the Plant.....	AG52/98	18/5/98	78	1999

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Bunbury Cathedral Grammar School Inc (Enterprise Bargaining Agreement) 2008 (Replaces previous Bunbury Cathedral Grammar ... Agreement) 2006 No. AG276/05. For prior details, see Vol. 88, Part 1)	Whole of State	1 Jan., 2008 - 31 Dec., 2009.....	AG12/08	13/08/08	Unpublished	
Bunbury Cathedral Grammar School (Non Teaching Staff Enterprise Bargaining) Agreement 1998	Whole of State	1 July, 1998 - 31 Dec., 1999	AG116/98	9/9/98	78	3656
Bunbury Cathedral Grammar School (Non-Teaching Staff Enterprise Bargaining) Agreement 2004 (Replaces previous Bunbury Cathedral ... Agreement No. AG5/02. For prior details, see Vol. 84, Part 2)	Whole of State	1 Jan., 2004 - 31 Dec., 2006.....	AG10/05	10/03/05	Unpublished	
Bunbury Suspended Ceilings/BLPPU Collective Agreement 2001	Whole of State	2 Nov., 2001 - 1 Nov., 2002.....	AG216/01	27/11/01	Unpublished	
Bunnings Forest Products Pty Ltd (Enterprise Bargaining) Agreement 1998	Manjimup Engineering Workshop	1 Jan., 1999 - 1 Jan 2001	AG11/99	26/2/99	79	731
Bunnings Forrest Products Pty Ltd Storepersons (Enterprise Bargaining) Agreement 1996	Bunnings Forrest Products Pty Ltd	1 July, 1996 - 30 June, 1998	AG300/96	12/12/97	77	43
Bunnings Forest Products Pty Ltd Storepersons Enterprise Agreement 1998	Whole of State	7 Jan., 1999 - 30 June 2000.....	AG277/98	13/1/99	79	415
Bunnings (Non Warehouse Stores)/SDA Agreement 2002. (Replaces Bunnings Building Supplies (Non Warehouse Stores)/SDA Agreement 1998 No. AG274/98. For prior details, see Vol. 82, Part 2)	Whole of State	19 Feb., 2003 – 30 June, 2004	AG10/03	20/2/03	Unpublished	
Burswood International Resort Casino Employee's Industrial Agreement 2001 (Replaces and Supersedes the Burswood Island Resort Employees Award No. A23/85 & A25/85; Burswood Resort ... Agreement 1993 No. AG85/93; Burswood Resort Casino ... Agreement 1993 Amendment Agreement 1995 No. AG132/95 Burswood International ... Agreements No. AG164/97 & No. AG243/99 and Hotel and Tavern Workers Award 1978 No. R31/77 insofar as concerns the area of land occupied by Burswood Island Resort in State of WA). (Replaced and Superseded by Burswood International Resort Casino Employees Award 2002 No. A4/2002 insofar as the area of land occupied by the Burswood International Resort Casino in the State of WA. See (83WAIG57))	Whole of State	24 Aug., 2001 - 30 June, 2002	AG169/01	24/8/01	Unpublished	
Burswood International Resort Casino Employees' Industrial Agreement 2000	Burswood	20 Dec., 1999 - 21 June, 2000.....	AG243/99	30/12/99	80	49
Burswood Resort Casino Employees' Industrial Agreement 1993	Burswood Resort Management Limited	8 Dec., 1993 - 7 Dec., 1994.....	AG85/93	21/12/93	74	72
Burswood Resort Casino (Electronic Service-persons) Enterprise Agreement	Area Occupied by Burswood Resort Casino	9 Mar., 1993 - 8 Mar., 1994.....	AG1/93	19/4/93	73	1254
Burswood Resort Casino Employees' Industrial Agreement 1993 Amendment Agreement 1995	Whole of State	4 Sept., 1995 - 1 Dec., 1996.....	AG132/95	4/9/95 8/10/96	75 76	2522, 4171
Burswood Resort Casino (Maintenance Employees) Enterprise Agreement	Area Occupied by Burswood Resort Casino	9 Mar., 1993 - 8 Mar., 1994.....	AG2/93	19/4/93	73	1257
Bushwest Pty Ltd/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	25 Oct., 2004 – 30 June, 2007.....	AG210/04	9/12/04	Unpublished	
Buttercup Bakers (WA) Enterprise Agreement 1997	Buttercup Bakeries, Malaga	27 Feb., 1997 - 26 Feb., 1998	AG40/97	22/2/97	77	633
Buttercup Bakeries Malaga (WA) Breadroom, Distribution and Maintenance Enterprise Agreement 2005. (Replaces previous Buttercup Bakeries ... Agreement 2005 No. AG120/05. For prior details, see Vol. 85, Part 2)	Breadroom Distribution and Maintenance functions at the Malaga Bakery	22 Feb., 2005 - 21 Feb., 2008	AG16/06	15/3/06	Unpublished	
Butynol Fixers/CFMEUW Industrial Agreement 2002-2005. (Cancels Butynol Fixers/BLPPU Collective Agreement 1999 No. AG232/99. For prior details, see Vol. 83, Part 1)	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	11 Dec., 2002 – 31 Oct., 2005.....	AG282/02	7/5/03	Unpublished	

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C & J Rigging Industrial Agreement	Whole of State	15 Sept., 1997 - 31 Oct., 1999	AG186/97	1/10/97	77	2577
C & L Ceilings/BLPPU Collective Agreement 2000	Whole of State	25 Nov., 1999 - 1 Nov., 2002	AG122/00	2/06/00	80	2543
C & L Ceilings P/L / CFMEUW Industrial Agreement 2005-2008. (Replaces previous C & L Ceilings ... Agreement 2002-2005 No. AG273/02. For prior details, see Vol. 85, Part 1)	Western Australia	1 Nov., 2005 – 31 Oct., 2008	AG218/05	28/11/05	Unpublished	
C Hill Roofing/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	25 Oct., 2004 – 30 June, 2007	AG241/04	10/12/04	Unpublished	
C & L Ceilings Wall and Ceilings Industrial Agreement 1996	C & L Ceilings Pty Ltd	7 June, 1996 - 31 July, 1997	AG74/96	10/7/96	76	2528
C&S Perrot Industrial Agreement	C. Perrot t/a C&S Perrot	12 Sept., 1995 - 31 July, 1997	AG225/95	22/11/95	76	85
Cabinet Line/BLPPU and the CMETU Collective Agreement 2001	Whole of State	26 July, 2001 - 1 Nov., 2002	AG160/01	9/8/01	Unpublished	
Cabsteel Industries Industrial Agreement	Whole of State	Commencement - Completion	AG333/96	3/2/97	77	346
Cadoux Traders and SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Whole of State	12 Feb., 2003 – 30 June, 2005	AG211/02	21/02/03	Unpublished	
Caesar Stone/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	2 May, 2005 – 31 Oct., 2005	AG80/05	9/6/05	Unpublished	
Calibra On Site/CFMEUW Industrial Agreement 2005-2008	Whole of State	1 Nov., 2005 – 31 Oct., 2008	AG240/05	17/2/06	Unpublished	
Cambridge Private Hospital HSOA Enterprise Agreement 2003. (Replaces previous Cambridge ... Agreement 2001 No. AG234/01)	Cambridge Private Hospital	22 Dec., 2003 – 31 Dec., 2004	AG297/03	24/12/03	Unpublished	
Camotech/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	22 Sept., 2003 – 31 Oct., 2005	AG256/03	6/9/04	Unpublished	
CAN LAH/BLPPU and the CMETU Collective Agreement 2000	Whole of State	8 Jan., 2001 - 1 Nov., 2002	AG6/01	28/2/01	Unpublished	
Canterbury Painting Services Domestic and Minor Industrial Agreement	Whole of State	2 Feb., 1996 - 31 July, 1997	AG37/96	6/12/96	76	4903
Capel Dairy Company Enterprise Agreement 1994	Capel Dairy Company	19 Apr., 1995 - 1 Nov., 1996	AG177/94	25/5/95	75	1850
Cape Modern Joint Venture/BLPPU and the CMETU Collective Agreement 2001 (Replaces previous Cape Modern ... Agreement 1999 No. AG246/99. For prior details, see Vol. 79, Part 2)	Whole of State	1 Nov., 1999 - 1 Nov., 2002	AG174/01	17/9/01	Unpublished	
Cape Modern Pty Ltd/CFMEUW Industrial Agreement 2002 - 2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	13 Dec., 2002 – 1 Dec., 2005	AG294/02	17/5/03	Unpublished	
Cape Modern Workshop Employees' Agreement (Replaces Cape Modern Workshop Employees' Agreement AG254/98. For prior details, see Vol. 83, Part 1)	Cape Modern Workshop Malaga WA	1 Dec., 2002 – 1 Dec., 2005	AG257/03	11/12/03	Unpublished	
Cape Property Maintenance Pty Ltd/CFMEUW Industrial Agreement 2002-2005 (Cancels Cape Property Maintenance/BLPPU Collective Agreement 2001 AG54/01. For prior details, see Vol. 83, Part 1)	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	3 Dec., 2002 – 31 Oct., 2005	AG245/02	7/5/03	Unpublished	
Capricorn Concrete Pty Ltd Industrial Agreement 1996	Capricorn Concrete Pty Ltd	18 July, 1996 - 31 July, 1997	AG16/96	18/7/96	76	2532
Capricorn Conc Pty/BLPPU and the CMETU Collective Agreement 2000. (Replaces and Cancels Capricorn Concrete Industrial Agreement No. AG216/1997. For prior details, see Vol. 80, Part 1)	Whole of State	1 Nov., 1999 - 1 Nov., 2002	AG206/00	11/9/00	80	4661
Caprigg Industrial Agreement 1996	Caprigg	2 Aug., 1996 - 31 July, 1997	AG188/96	6/9/96	76	3856
Career Start Traineeships (Esperance Group Training) Agreement	Esperance Group Trainees under Career Start Traineeships	29 Mar., 1995 - 31 Dec., 1996	AG194/94	29/3/95	75	898
Carey Baptist College Inc. (Enterprise Bargaining) Agreement 2004 (Replaces previous Carey Baptist College ... Agreement 2002 No. AG305/02. For prior details, see Vol. 85, Part 1)	Whole of State	1 Jan., 2005 – 31 Dec., 2007	AG179/05	6/9/05	Unpublished	
Cargill Australia Limited Enterprise Bargaining Agreement 1993 (Replaces No. AG3/1992)	Cargill Salt Operations Port Hedland	1 July, 1993 - 30 June, 1994	C260/93	11/6/93	73	2495

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Cargill Australia Limited Enterprise Bargaining Agreement 1993	Cargill Salt Operations Port Hedland	30 June, 1994 - 30 Dec., 1994.....	C285/94	3/8/94	75	1671
Cargill Salt (A Department of Cargill Australia Limited) Enterprise Bargaining Agreement 1999 (Replaces & Cancels previous Cargill Salt ... Agreement No. AG138/1987. For prior details, see Vol.79 Part 2)	Cargill Salt - Port Hedland	31 May, 1999 - 31 May, 2001.....	AG169/99	10/12/99	80	61
Carlino Concreting Industrial Agreement	Whole of State	8 Dec., 1998 - 31 Oct., 1999.....	AG352/97	10/2/98	78	837
Carrier-Apac Manufacturing (WA) Enterprise Bargaining Agreement 2003. (Replaces previous Carrier-apac ... Agreement 2001 No. AG108/01. For prior details, see Vol. 83, Part 1)	Carrier-APAC at Ivy Street, Redcliffe WA	1 Apr., 2003 - 31 Mar., 2006..... Correction Order No. AG269/2003 (Preamble).....	AG269/03 ...	06/11/03 10/11/03	Unpublished 83	3811
Carringtons Traffic Services/CFMEUW Industrial Agreement 2002 - 2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	14 June, 2004 - 31 Oct., 2005.....	AG115/04	13/7/04	Unpublished	
<i>Carrington's (WA) Pty Ltd trading as Carringtons Traffic Service</i> New Metro Rail Southern Suburbs Rail Project, Structural Project Agreement 2005	New Metro Rail Project Southern Suburbs Rail Project	16 June, 2005 - 1 July, 2006.....	AG93/05	23/9/05	Unpublished	
Car Radio Installer (Car Radio Installation Industry, Australian Traineeships) Industrial Agreement	Whole of State Any Car Radio installer trainee employed by employers in Schedule A.	7 July, 1987 - 6 Jan., 1988.....	AG13/87	7/7/87	67	1957
CASC Constructions/CFMEUW Industrial Agreement 2005-2008. (Replaces previous CASC Construction ... Agreement 2005-2008 No. AG167/05. For prior details, see Vol. 85, Part 2)	Whole of State	1 Nov., 2005 - 31 Oct., 2008.....	AG23/06	7/3/06	Unpublished	
CASC Formwork Industrial Agreement	Whole of State	1 Aug., 1997 - 31 Oct., 1999.....	AG232/97	2/6/98	78	2015
Cascade Services Pty Ltd Industrial Agreement	Cascade Services Pty Ltd	13 Nov., 1995 - 31 July, 1997.....	AG292/95	21/12/95	76	86
Cat Reformer III Project Construction Agreement 1994	Site Construction Activities managed by Davy John Brown Pty Ltd at BP Refinery Kwinana	Commencement - Completion.....	AG78/94	14/9/94	74	2345
Catalano & Kurth/BLPPU and the CMETU Collective Agreement 2000	Acacia Prison Project, Woorooloo	1 Nov., 1999 - 1 Nov., 2002.....	AG87/00	27/4/00	80	1799
Catalano & Kurth/BLPPU and the CMETU Collective Agreement 2000	Ocean Keys Shopping Centre	5 Dec., 2000 - 1 Nov., 2002.....	AG284/00	17/1/01	81	420
Catalano & Kurth/BLPPU and the CMETU Collective Agreement 2001. (Replaces previous Catalano ... Agreement No. AG 350/97. For prior details, see Vol. 81, Part 2)	Whole of State	10 Apr., 2001 - 1 Nov., 2002.....	AG61/01	11/5/01	Unpublished	
Catering Workers (Apprentice Cook - W.A.I.T.) Agreement	Apprentices employed by Director W.A.I.T.	7 May, 1976 - 6 May, 1980.....	AG28/76	17/5/76	56	575
Catering Workers' (Fast Food Operations, Catering & Restaurant) Agreement 1979	Whole of State	7 Nov., 1979 - 6 Nov., 1982.....	AG23/79	3/12/79	59	1707
Caterlink/CFMEUW Industrial Agreement 2005-2008. (Replaces previous Caterlink ... Agreement 2002-2005 No. AG 154/03. For prior details, see Vol. 85, Part 2)	Whole of State	1 Nov., 2005 - 31 Oct., 2008.....	AG5/06	17/2/06	Unpublished	
Caversham Store and SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Whole of State	6 Nov., 2002 - 30 June, 2005.....	AG161/02	18/11/02	Unpublished	
Cavlec Electrical Engineering Services Pty Ltd Enterprise Bargaining Agreement. (Replaces No. AG23/95)	Cavlec Electrical Engineering Services Pty Ltd (ACN 009229 735)	1 Jan., 1996 - 31 Dec., 1997.....	AG75/97	28/4/97	77	1152
Cawse Nickel Project Construction Agreement 1997 -1998	Cawse Nickel Construction Project	30 July, 1997 - 30 July 1998.....	AG345/97	19/2/98	78	854
CBD Civil Contractors/ CFMEUW Industrial Agreement 2002 - 2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	5 May, 2004 - 31 Oct., 2005.....	AG93/04	30/6/04	Unpublished	
CBH Coatings/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	20 Oct., 2003 - 31 Oct., 2005.....	AG274/03	6/9/04	Unpublished	
CBH North Fremantle Maintenance Employees Partnership (Enterprise Bargaining) Agreement 1996	Co-operative Bulk Handling Limited	30 Sept., 1996 - Completion.....	AG324/96	10/1/97	77	348
CBI Constructors Pty Ltd - Kwinana (Enterprise) Industrial Agreement 1994	CBI Constructors Pty Ltd, Old Thomas Road, Kwinana	28 July, 1994 - 27 July, 1996.....	AG52/94	1/8/94	74	1891

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CBI Constructors Pty Ltd - Kwinana (Enterprise) Industrial Agreement 1996	CBI Constructors Pty Ltd, Operations Old Thomas Road, Kwinana	4 Oct., 1996 - 28 July, 1998.....	AG232/96	4/10/96	76	4183
CC Cabling Pty Ltd Enterprise Bargaining Agreement 2004	Whole of State	1 Mar., 2004 - 30 Sep., 2005	AG68/04	20/8/04		Unpublished
CDI Ceramics/CFMEUW Industrial Agreement 2005-2008. (Replaces previous CDI Ceramics ... Agreement 2002-2005 No. AG39/03. For prior details, see Vol. 85, Part 2)	Whole of State	1 Nov., 2005 - 31 Oct., 2008.....	AG161/05	12/12/05		Unpublished
C.D.J Carpentry and Ceiling Contractors/CFMEUW Industrial Agreement 2005-2008 (Replaces previous C.D.J Carpentry and Ceiling ... Agreement 2002-2005 No. AG168/03. For prior details, see Vol. 85, Part 1)	Whole of State	1 Nov., 2005 - 31 Oct., 2008.....	AG198/05	8/11/05		Unpublished
CDR Contracting P/L/CFMEUW Industrial Agreement 2005-2008. (Replaces previous CDR Contracting ... Agreement 2002-2005 No. AG255/03. For prior details, see Vol. 85, Part 2)	Whole of State	1 Nov., 2005 - 31 Oct., 2008	AG254/05	17/2/06		Unpublished
Ceilclad Linings Walls and Ceiling Industrial Agreement 1996	Meco Holdings Pty Ltd t/a Ceilclad Linings	10 July, 1996 - 31 July, 1997.....	AG88/96	10/7/96	76	2533
Ceilcon Corporation/CFMEUW Industrial Agreement 2005-2008. (Replaces previous Ceilcon/CFMEUW ... Agreement 2002-2005. For prior details, see Vol. 85, Part 2)	Whole of State	1 Nov., 2005 - 31 Oct., 2008.....	AG146/05	12/12/05		Unpublished
Ceilcorp/BLPPU Collective Agreement 2000	Whole of State	25 Nov., 1999 - 1 Nov., 2002	AG126/00	2/06/00	80	2531
Ceilcorp Construction/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	6 Dec., 2002 - 31 Oct., 2005	AG270/03	7/5/03		Unpublished
Ceiling and Wall Contractors Pty Ltd/BLPPU Collective Agreement 2000	Whole of State	28 Nov., 2000 - 1 Nov., 2002	AG272/00	18/12/00	81	44
Ceiling & Wall Contractors/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	6 Dec., 2002 - 31 Oct., 2005	AG269/03	7/5/03		Unpublished
Ceiling and Wall Contractors Pty Ltd (Westfield Shopping-town Carousel WA Construction Project) Industrial Agreement	Westfield Shoppingtown Carousel, Western Australia Construction Project	30 Mar., 1999 - 31 Oct., 1999.....	AG69/99	18/5/99	79	1568
Celtic Scaffolding/BLPPU Collective Agreement 2000	Whole of State	6 May, 2000 - 5 May, 2002.....	AG123/00	2/06/00	80	2536
Central Metropolitan College Miscellaneous Workers Agreement 1997	Central Metropolitan College	17 Oct., 1997 - 16 Oct., 1999.....	AG280/97	17/10/97	77	3229
Central Reo/BLPPU and the CMETU Collective Agreement 2001	Whole of State	21 Aug., 2001 - 1 Nov., 2002	AG178/01	17/9/01		Unpublished
Central Reo/CFMEUW Industrial Agreement 2005-2008. (Replaces previous Central Reo ... Agreement 2002-2005 No. AG 242/02. For prior details, see Vol. 85, Part 2)	Whole of State	1 Nov., 2005 - 31 Oct., 2008.....	AG134/05	16/2/06		Unpublished
Central Systems/CFMEUW Industrial Agreement 2002 - 2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	14 Apr., 2003 - 31 Oct., 2005	AG123/03	7/5/03		Unpublished
Centre Ceilings/BLPPU Collective Agreement 1999	Whole of State	25 Nov., 1999 - 1 Nov., 2002	AG201/99	21/03/00	80	1064
Centre Ceilings/CFMEUW Industrial Agreement 2005-2008 (Replaces previous Centre Ceilings ... Agreement 2002-2005 No. AG268/02. For prior details, see Vol. 85, Part 2)	Whole of State	1 Nov., 2005 - 31 Oct., 2008.....	AG135/05	20/01/06		Unpublished
Cerebral Palsy Association of Western Australia Ltd Salaried Staff Enterprise Agreement 2004. (Replaces previous Cerebral Palsy ... Agreement No.. AG196/02 For prior details, see Vol. 84, Part 2)	Whole of State	15 Dec., 2004 - 30 Sept., 2006.....	AG265/04	16/12/04		Unpublished
Cerebral Palsy Association of Western Australia Ltd Supported Employees Industrial Agreement 2004 (Replaces Cerebral Palsy Association of Western Australia Ltd Employees Wage Agreement No. AG10/97. For prior details, see Vol. 83, Part 2)	Whole of State	22 Apr., 2004 - 19 Apr., 2007.....	AG44/04	23/04/04		Unpublished
Certificate II Composites (Traineeship) Agreement 1997	Trainees working at Plastics Industry	14 Apr., 1997 - 1 July, 1998	AG211/97	20/11/97	77	3235
Certificate II Composites (Traineeship) Agreement	Whole of State	1 Feb., 1998 - 1 Feb., 1999	AG86A/98	13/8/98	78	3422

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Certificate II Composites (Traineeship) Agreement	Whole of State	1 Feb., 1998 - 1 Feb., 1999.....	AG86D/98	13/8/98	78	3427
Certificate II Composites (Traineeship) Agreement	Whole of State	1 Feb., 1998 - 1 Feb., 1999.....	AG86E/98	13/8/98	78	3429
Certificate II Composites (Traineeship) Agreement	Whole of State	1 Feb., 1998 - 1 Feb., 1999.....	AG86F/98	13/8/98	78	3432
Certificate II Composites (Traineeship) Agreement	Whole of State	1 Feb., 1998 - 1 Feb., 1999.....	AG86B/98	13/8/98	79	1005
Cervantes Electrics Pty Ltd Enterprise Bargaining Agreement	Whole of State	1 Jan., 1996 - 1 Jan., 1998.....	AG123A/97	9/10/97	77	2880
Cervantes Electrics Pty Ltd (Maintenance Operations) Enterprise Bargaining Agreement 1997	Nelson Point and Finucane Island	Nov., 1996 - 31 Oct., 1998.....	AG123B/97	9/10/97	77	2884
CGO Painting Contractors Domestic and Minor Industrial Agreement	Collopy P., Glasson P. and Owens M. t/a CGO Painting Contractors	April, 1996 - 31 July, 1997	AG114/96	10/6/96	76	1736
CGO Painting Contractors Industrial Agreement	Collopy P., Glasson P., and Owens M. t/a CGO Painting Contractors	April, 1996 - 31 July, 1997	AG113/96	10/6/96	76	1738
Challenge Cabinets/BLPPU and the CMETU Collective Agreement 2001	Whole of State	12 Nov., 2001 - 1 Nov., 2002.....	AG222/01	7/12/01		Unpublished
Character Roofing/BLPPU and the CMETU Collective Agreement 2000	Whole of State	1 Nov., 1999 - 1 Nov., 2002.....	AG212/00	11/9/00	80	4666
Character Roofing/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	6 Dec., 2002 - 31 Oct., 2005.....	AG267/02	7/5/03		Unpublished
Character Roofing Industrial Agreement	Whole of State	1 Aug., 1997 - 31 Oct., 1999.....	AG265/97	6/2/98	78	2019
Charter Plumbing & Gas Industrial Agreement	Whole of State	4 Sept., 1996 - 31 July, 1997.....	AG258/96	18/11/96	76	4905
Chemical Workers (Wundowie) Agreement	Employees in Refinery Section of Wood Distillation, Charcoal Iron and Steel Industry, Wundowie	24 Sept., 1973 - 23 Sept., 1974	AG20/73	10/10/73	53	1483
Cherries Fine Food Super Mart and SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Whole of State	6 Nov., 2002 - 30 June, 2005.....	AG162/02	18/11/02		Unpublished
Chicken Treat Dunsborough SDA Agreement 2001 (Replaces The Shop and Warehouse (Wholesale and Retail Establishments) State Award 1977 No. R32/76 and the Fast Food Outlets Award 1990 in respect to the Parties to this Agreement) (For previous amendments, see Vol. 89, Part 2)	Chicken Treat, Dunsborough	24 Aug., 2001 - 31 Dec., 2003.....	AG117/01	24/8/01		Unpublished
Chicken Treat Katanning SDA Agreement 2001 (Replaces The Shop and Warehouse (Wholesale and Retail Establishments) State Award 1977 No. R32/76 in respect to the Parties to this Agreement). (For previous amendments, see Vol. 89, Part 2)	Chicken Treat Katanning	24 Aug., 2001 - 31 Dec., 2003	AG118/01	24/8/01		Unpublished
Chicken Treat Narrogin SDA Agreement 2001 (This Agreement replaces The Shop and Warehouse (Wholesale and Retail Establishments) State Award 1977 No. R32/76 in respect to the Parties to this Agreement) (For previous amendments, see Vol. 89, Part 2)	Chicken Treat Federal Street, Narrogin	24 Aug., 2001 - 31 Dec., 2003	AG116/01	24/8/01		Unpublished
Chicken Treat Padbury SDA Agreement 2001 (Replaces The Shop and Warehouse (Wholesale and Retail Establishments) State Award 1977 No. R32/76 in respect to the Parties to this Agreement). (For previous amendments, see Vol. 89, Part 2)	Chicken Treat Padbury	24 Aug., 2001 - 31 Dec., 2003	AG115/01	24/8/01		Unpublished
Chicken Treat Rockingham SDA Agreement 2001 (Cancels previous Chicken Treat ... Agreement No. AG245/98. (Replaces The Shop and Warehouse (Wholesale and Retail Establishments) State Award 1977 No. R32/76 in respect to the Parties to this Agreement) (For previous amendments, see Vol. 89, Part 2)	Chicken Treat Rockingham	24 Aug., 2001 - 31 Dec., 2003	AG119/01	24/8/01		Unpublished
Chidlow Growers Mart and SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Whole of State	6 Nov., 2002 - 30 June, 2005.....	AG175/02	18/11/02		Unpublished

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Children's Hospital Child Care Centre Association Inc Enterprise Bargaining Agreement 2004, The	The Children's Hospital Child Care Centre Association Inc	3 Aug., 2005 - 2 Aug., 2006	AG84/05	4/8/05	Unpublished	
Children's Services Government General Agreement 2004 No. AG282/04. (Cancelled and Replaced by Government Services (Miscellaneous) General Agreement 2007 No. AG39/2007. For prior details, see Vol. 86, Part 2)						
Chiquita Mushrooms Pty Ltd Western Australian Mushroom Production Agreement 2004 (Replaces & Cancels previous Chiquita Mushrooms ... Agreements No. AG148/99 and No. AG48/02. For prior details, see Vol. 84, Part 1)	45 Orton Road, Casuarina, WA	5 Oct., 2004 - 1 June, 2006	AG127/04	5/10/04	Unpublished	
Choice Pools (WA) Pty Ltd/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	17 Feb., 2003 - 31 Oct., 2005	AG79/03	7/5/03	Unpublished	
Christ Church Grammar School Inc (Enterprise Bargaining) Agreement 2009. (Replaces previous Christ Church ... Agreement 2006 No. AG65/06. For prior details, see Vol. 89, Part 1)	Whole of State	1 Jan., 2009 - 31 Dec., 2011	AG39/09	31/8/09	Unpublished	
Christ Church Grammar School Inc (Support (Staff Enterprise Bargaining) Agreement 2006 (Replaces Christ Church ... Agreement 2003 No AG289/03. For prior details, see Vol. 86, Part 1)	Whole of State	1 Jan., 2006 - 31 Dec., 2008	AG66/06	4/9/06	Unpublished	
Churches of Christ Homes and Community Services Incorporated (HSU) Enterprise Agreement 2004. (Replaces previous Churches of Christ ... Agreement No. AG 87/02. For prior details, see Vol. 84, Part 2)	Employees of the Churches of Christ Homes and Community Services Incorporated who are eligible for membership of the HSOA	13 Dec., 2004 - 31 Oct., 2006	AG196/04	13/12/04	Unpublished	
Cityfleet Employees Industrial Agreement Number Three (3). Replaces City of Mandurah City Industrial Agreement 1998 No. AG41/99 and City of Mandurah City fleet Employees Certified Enterprise Bargaining Agreement Number Two No. AG184/01. For prior details, see Vol. 85, Part 2)	City of Mandurah	13 May, 2005 - 13 May, 2008	AG25/05	13/05/05	Unpublished	
City Gems and SDA Agreement 2003 (For previous amendments, see Vol. 89, Part 2)	Whole of State	20 Feb., 2004 - 30 June, 2005	AG229/03	20/02/04	Unpublished	
City of Armadale Building Employees Enterprise Bargaining Agreement 1998	City of Armadale	1 July, 1998 - 31 July 2000	AG39/99	13/9/99	79	2742
City of Bunbury (State) Enterprise Agreement No. 2. (Replaces No. AG121/95)	Whole of State	12 Mar., 1998 - 11 Mar., 2001	AG1/98	12/3/98	78	1170
City of Canning 1995 and Engineering Workshop Employees Enterprise Bargaining Agreement 1996, The	Whole of State	9 Dec., 1996 - 8 Dec., 1998	AG312/96	9/12/96	76	4907
City of Cockburn (Building & Engineering) Enterprise Agreement 1997	City of Cockburn maintenance employees	7 May, 1997 - 6 May, 1999	AG322/97	25/11/97	77	3239
City of Geraldton Workshop Staff Enterprise Agreement 1997	Whole of State	15 Dec., 1997	AG379/97	6/3/98	78	840
City of Melville Mechanical Workshops Enterprise Agreement 1997	City of Melville	1 Sept., 1997 - 1 Sept., 1999	AG260/97	5/11/97	77	2885
City of Perth (Outside Workforce) Agreement 2005. (Replaces previous City of Perth ... Agreements 2002 No. AG117/02. For prior details, see Vol. 85, Part 2)	Whole of State	10 Mar., 2006 - 9 Mar., 2009	AG18/06	10/3/06	Unpublished	
City of Perth Combined Trades Area Enterprise Agreement	City of Perth Trade Workshop, Osborne Park depot, Roberts Road	3 June, 1994 - 2 June, 1995	AG44/94	3/6/94	74	1512
City of Stirling (Building Maintenance Section) Enterprise Agreement 2004/2005 (Cancels previous City of Stirling ... Agreements Nos. AG118/00 & AG267/01. For prior details, see Vol. 85, Part 1)	City of Stirling (Council) Building Maintenance Section	16 June, 2005 - 13 June, 2008	AG96/05	25/11/05	Unpublished	
City of Stirling Mechanical Staff Enterprise Bargaining Agreement March 2006 - Agreement (Replaces City of Stirling Mechanical ... Agreement 2003 No. AG112/03. For prior details, see Vol. 85, Part 2)	City of Stirling	23 Mar., 2006 - 20 Mar., 2009	AG56/06	5/4/06	Unpublished	
City of Stirling Transport Sections Consent Agreement 1994	City of Stirling	22 Nov., 1994 - 21 Nov., 1996	AG141/94	22/11/94	Unpublished	

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City of Swan (Trades) Enterprise Bargaining Agreement. (Cancels the Shire of Swan (Trades) Enterprise Bargaining Agreement No. AG64/98)	Employer's Depot, Corner of Great Northern Highway and Bishop Road, Middle Swan	23 May, 2005 – 20 May, 2008	AG55/05	23/05/05	Unpublished	
City of Wanneroo, Fleet Maintenance Services Enterprise Bargaining Agreement 2001-2004	City of Wanneroo Fleet Maintenance Sub-unit	13 July, 2001 - 12 July, 2004	AG65/01	13/7/01	Unpublished	
City of Wanneroo Fleet Maintenance Unit Consent Agreement 1996	The City of Wanneroo	1 Nov., 1996 - 31 Oct., 1998.....	AG90/97	1/5/97	77	1158
City Wide Roof Tiling/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	20 Dec., 2004 – 30 June, 2007	AG58/05	19/5/05	Unpublished	
		Correcting Order No. AG58/2005 (Title) .....	...	3/6/05	85	1841
CIVENCO/CFMEUW Collective Agreement 2002	Whole of State	27 Mar., 2002 - 1 Nov., 2002.....	AG59/02	1/5/02	Unpublished	
Civenco Pty Ltd/CFMEUW Industrial Agreement 2005-2008. (Replaces previous Civenco Pty Ltd ... Agreement 2002-2005 No. AG281/02. For prior details, see Vol. 85, Part 1)	Western Australia	1 Nov., 2005 – 31 Oct., 2008	AG136/05	1/12/05	Unpublished	
Cleanaway Technical Services Brookdale Enterprise Bargaining Agreement 2000 - The	Cleanaway Technical Services Waste Treatment Plant, in Waterworks Road, Brookdale	7 Aug., 2000 - 6 Aug., 2003.....	AG185/00	7/8/00	80	3185
Cleanaway Technical Services Forrestdale Enterprise Bargaining Agreement 1994 - The	Cleanaway Technical Services Waste Treatment Plant, Forrestdale	13 May, 1994.....	AG32/94	18/5/94	74	1512
Cleanaway Technical Services Forrestdale Enterprise Bargaining Agreement 1997 (Replaces No. AG85/1995)	Cleanaway Technical Services Waste Treatment Plant, Forrestdale	10 July, 1997 - 9 July, 2000	AG134/97	10/7/97	77	1905
Cleaners and Caretakers (Metropolitan Market Trust) Agreement 1967	Metropolitan Market Trust	9 Feb., 1967 - 8 Feb., 1970.....	AG9/67	13/3/67	47	288
Clear Cut Chasing Pty Ltd/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	10 Feb., 2003 – 31 Oct., 2005	AG65/03	7/5/03	Unpublished	
Clerks (Accountants Office Australian Traineeships) Industrial Agreement	Whole of State	6 Apr., 1987 - 15 Oct., 1987	AG8/87	14/8/87	67	1757
Clerks (Accountants Office Australian Traineeships) Industrial Agreement	Whole of State	3 July, 1987 - 3 Jan., 1988.....	AG24/87	11/12/84	68	396
Clerks (Accounting – Assistant Australian Traineeships) Industrial Agreement	Whole of State	3 Sept., 1987 - 3 Sept., 1988	AG27/87	24/12/87	68	1021
Clerks (Commercial Industries Australian Traineeships) Industrial Agreement	Whole of State	1 Mar., 1987 - 1 Sept., 1987.....	AG3/87	19/6/87	67	1139
Clerks (Commercial Industries Australian Traineeships) Industrial Agreement	Whole of State	16 Mar., 1987 - 15 Sept., 1987.....	AG9/87	14/8/87	67	1759
Clerks (Commercial Industries Australian Traineeships) Industrial Agreement	Whole of State	22 June, 1987 - 22 Dec., 1987.....	AG18/87	11/12/87	68	397
Clerks (Commercial Industries Australian Traineeships) Industrial Agreement	Whole of State	21 May, 1987 - 21 Nov., 1987	AG19/87	11/12/87	68	400
Clerks (Commercial Industries Australian Traineeships) Industrial Agreement	Whole of State	13 July, 1987 - 13 Jan., 1988	AG20/87	11/12/87	68	402
Clerks (Commercial Radio and Television Broadcasters Traineeship) Industrial Agreement	Whole of State	21 Aug., 1987 - 21 Feb., 1988.....	AG35/87	24/12/87	68	693
Clerks (Commercial, Retail, Wholesale, Hotels and Motels Clerical Industrial Traineeships) Agreement	Whole of State	17 Jan., 1988 - 17 Jan., 1989.....	AG7/88	13/5/88	68	1715
Clerks (Commercial, Retail, Wholesale, Hotels and Motels Clerical Industrial Traineeships) Agreement	Whole of State	20 Nov., 1987 - 20 Nov., 1988.....	AG8/88	13/5/88	68	1430
Clerks (Commercial, Retail, Wholesale, Hotels and Motels Clerical Industrial Traineeships) Agreement	Whole of State	3 Dec., 1987 - 3 Dec., 1988.....	AG10/88	13/5/88	68	1433
Clerks (Commercial, Retail, Wholesale, Hotels and Motels Clerical Industrial Traineeships) Agreement	Whole of State	17 Jan., 1988 - 16 Jan., 1989.....	AG18/88	23/8/89	69	2677
Clerks (Commercial, Retail, Wholesale, Hotels and Motels Clerical Industrial Traineeships) Agreement	Whole of State	17 Jan., 1988 - 16 Jan., 1989.....	AG19/88	23/8/89	69	2680
Clerks (Commercial, Retail, Wholesale, Hotels and Motels Clerical Industrial Traineeships) Agreement	Whole of State	17 Jan., 1988 - 16 Jan., 1989.....	AG20/88	23/8/89	69	2684
Clerks (Commercial, Retail, Wholesale, Hotels and Motels Clerical Industrial Traineeships) Agreement	Whole of State	17 Jan., 1988 - 16 Jan., 1989.....	AG22/88	23/8/89	69	2688
Clerks (Commercial, Social and Professional Services) Award Industrial Agreement	Whole of State	23 Mar., 1987 - 23 Sept., 1987.....	AG25/87	11/12/87	68	403

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Clerks (Commercial, Social and Professional Services) Award Industrial Agreement	Whole of State	20 Aug., 1987 - 20 Feb., 1987	AG28/87	24/12/87	68	1023
Clerks (Commercial, Social and Professional Services) Award Industrial Agreement	Whole of State	1 Oct., 1987 - 1 April, 1988	AG30/87	24/12/87	68	1025
Clerks, (Commercial, Social and Professional Services) Award Industrial Agreement	Whole of State	17 Nov., 1987 - 17 May, 1988	AG4/88	12/5/88	68	1718
Clerks (Customs, Shipping and Forwarding Agents Traineeship) Industrial Agreement	Whole of State	5 Jan., 1988 - 5 July, 1988	AG9/88	13/5/88	68	1436
Clerks (Grain Handling Australian Traineeships) Industrial Agreement	The Operations of Co-operative Bulk Handling Limited	12 Feb., 1987 - 12 Aug., 1987	AG1/87	10/4/87	67	512
Clerks Grain Handling Enterprise Agreement 1996	Clerical Employees of Co-operative Bulk Handling Limited	24 Jan., 1997 - 23 Aug., 1998	AG279/96	28/1/97	77	353
Clerks (Hotels, Motels and Clubs) Award Industrial Agreement	Whole of State	16 Apr., 1987 - 15 Oct., 1988	AG7/87	14/8/87	67	1761
Clerks (Hotels, Motels and Clubs) Award Industrial Agreement	Whole of State	6 May, 1987 - 6 Nov., 1987	AG23/87	11/12/87	68	405
Clerks (Hotels, Motels and Clubs) Award Industrial Agreement	Whole of State	25 Aug., 1987 - 25 Feb., 1988	AG34/87	24/12/87	68	1028
Clerks (Manufacturing Industries Australian Traineeships) Industrial Agreement	Whole of State	1 Mar., 1987 - 1 Sept., 1987	AG4/87	17/6/87	67	1141
Clerks (Manufacturing Industry Australian Traineeships) Industrial Agreement	Whole of State	1 May, 1987 - 31 Oct., 1987	AG26/87	11/12/87	68	407
Clerks (Medical Secretary/Receptionist Australian Traineeships) Industrial Agreement	Whole of State	14 May, 1987 - 13 Nov., 1987	AG11/87	14/8/87	67	1763
Clerks (National Permanent Management Services) (WA) Saturdays Agreement	Whole of State	29 Mar., 1989 - 29 Mar., 1994	AG15/88	30/5/89	69	1957
Clerks (Permanent Building Societies Australian Traineeships) Industrial Agreement	Whole of State	18 Sept., 1986 - 17 Mar., 1987	AG5/86	18/9/86	66	1628
Clerks' (Sunday Times) Special Casual Employees Agreement	Sunday Times Operations	27 Aug., 1990 to 26 Aug., 1995	AG4/90	27/8/90	70	3600
Clerks (Timber Industry Australian Traineeships) Industrial Agreement	Whole of State	1 Nov., 1987 to 1 Nov., 1988	AG5/88	12/5/88	68	1721
Clerks (Travel Industry Australian Traineeships) Industrial Agreement	Whole of State	4 Nov., 1986 to 3 May, 1987	AG8/86	4/11/86	66	1926
Clerks (Western Australian) Special Casual Employees Agreement	Western Australian Newspapers	8 Mar., 1990 to 8 Mar., 1995	AG15/89	8/3/90	70	1024
Clerks (Wholesale and Retail Establishments) Award Industrial Agreement	Whole of State	23 Mar., 1987 to 22 June, 1987	AG10/87	14/8/87	67	1765
Clerks (Wholesale and Retail Establishments) Award Industrial Agreement	Whole of State	13 July, 1987 to 13 Jan., 1988	AG17/87	11/12/87	68	409
Clerks (Wholesale and Retail Establishments) Award Industrial Agreement	Whole of State	15 June, 1987 to 15 Dec., 1987	AG21/87	11/12/87	68	411
Clerks (Wholesale and Retail Establishments) Award Industrial Agreement	Whole of State	23 Mar., 1987 to 23 Sept., 1987	AG22/87	11/12/87	68	413
Clerks (Wholesale and Retail Establishments) Award Industrial Agreement	Whole of State	22 Sept., 1987 to 22 Mar., 1988	AG29/87	24/12/87	68	695
Clerks (Wholesale and Retail Establishments) Award Industrial Agreement	Whole of State	20 Aug., 1987 to 20 Feb., 1988	AG31/87	24/12/87	68	697
Clerks (Wholesale and Retail Establishments) Award Industrial Agreement	Whole of State	15 July, 1987 to 15 Jan., 1988	AG32/87	24/12/87	68	1029
Clerks (Wholesale and Retail Establishments) Award Industrial Agreement	Whole of State	22 July, 1987 to 22 Jan., 1988	AG33/87	24/12/87	68	699
Clerks (Wholesale and Retail Establishments) Award Industrial Agreement	Whole of State	12 Nov., 1988 to 12 May, 1989	AG6/88	13/5/88	68	1723
Clough WA (Kewdale) Enterprise Bargaining Agreement No AG111/97	Clough (WA) Facilities Kewdale	1 Jan., 1997 - 31 Dec., 1998	AG111/97	23/5/97	77	1398
Clough WA (Kewdale) Enterprise Bargaining Agreement	Whole of State	1 Jan., 1999 - 31 Dec., 2000	AG282/98	15/1/99	79	422
Clover Meats and Clover Smallgoods Enterprise Agreement 1996	Wynne's Pty Ltd t/a Clover Meats and Clover Smallgoods	5/7/96 (Wages), 12/7/96 (all other conditions)	AG257/96	24/10/96	76	4506
CMI Industrial Agreement 2005	Western Australia	21 Nov., 2005 - 21 Nov., 2008	AG233/05	21/11/05		Unpublished
CMI Industrial Agreement November 2008	Western Australia	13 July, 2009 - 9 Nov., 2010	AG3/09	13/7/09		Unpublished

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CMW Design & Construction Industrial Agreement	Whole of State	28 July, 1999 - 31 Oct., 1999	AG132/99	6/10/99	79	3227
Coates Hire Enterprise Bargaining Agreement 1992	Whole of State	1 Dec., 1992 - 30 Nov., 1993	AG18/1992	1/12/92	73	78
Coates Hire Enterprise Bargaining Agreement 2000 (Replaces previous Coates Hire ... Agreement No. AG94/1998. For prior details, see Vol. 80, Part 2)	Whole of State	14 Dec., 2000 - 30 June, 2001	AG217/00	14/12/00	81	49
Coastwide Ceilings/CFMEUW Collective Agreement 2002	Whole of State	11 Apr., 2002 - 1 Nov., 2002	AG63/02	1/5/02	Unpublished	
Coastwide Ceilings Pty Ltd/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	9 Jan., 2003 - 31 Oct., 2005	AG36/03	7/5/03	Unpublished	
Coca-Cola Bottlers, Perth (Performance Improvement) Enterprise Bargaining Agreement 1992	Whole of State	3 Mar., 1993 - 2 Mar., 1995	AG3/93	16/3/93	73	2039
Cochrane's Contracting Services Pty Ltd/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	8 May, 2003 - 31 Oct., 2005	AG129/03	6/9/04	Unpublished	
Cockburn Cement Limited Enterprise Bargaining Agreement 1998	Russell Road & Woodmans Point	4 Nov., 1998 - 31 Oct., 2000	AG32/99	9/4/99	79	1007
Cockburn Cement Limited Agreement 1993	Cockburn Cement Limited main works in Russell Road & Woodman Point	2 Dec., 1993 - 30 Oct., 1995	AG72/93	2/12/93	73	3388
Cockburn Cement Limited (Enterprise Bargaining) Agreement (November) 2004 (Replaces previous Cockburn Cement ... Agreement No. AG13/02. For prior details, see Vol. 84, Part 2)	Russell Road, Woodman Point and Kwinana	1 Nov., 2004 - 31 Oct., 2007	AG20/05	18/03/05	Unpublished	
Cockburn Hire Engineering Enterprise Agreement	Cockburn Corporation Limited t/a Cockburn Hire (not Pilbara and Goldfield Region)	9 May, 1996 - 9 May, 1998	AG96/96	13/5/96	76	1740
Cockburn Hire Transport Enterprise Agreement	Cockburn Corporation Ltd t/a Cockburn Hire	15 Mar., 1995 - 14 Mar., 1997	AG79/95	14/7/95	75	2354
Coflexip Stena Offshore Asia Pacific Pty Ltd Industrial Agreement 1997. (Replaces AG46/94)	Whole of State	1 Sept., 1997 - 31 Dec., 1999	AG240/97	14/11/97	77	3250
Co-Generation Power Station Project Agreement 1995	Clough WA - a division of Clough Ltd.	20 Dec., 1995 - Completion	AG311/95	20/12/95	76	344
Co-Generation Power Station Project Agreement 1995	Clough WA - a division of Clough Limited	29 Apr., 1996 - Completion	AG86/96	29/4/96	76	1309
Colchester Carpet Company/BLPPU and the CMETU Collective Agreement 1999 (Cancels previous Colchester Carpet ... Agreement No. AG151/97. For prior details, see Vol. 79, Part 2)	Whole of State	1 Nov., 1999 - 1 Nov., 2002	AG195/99	25/2/2000	80	514
Coles Distribution Centre Enterprise Agreement 1994 (For previous amendments, see Vol. 89, Part 2)	Coles Supermarkets Australia Pty Ltd - Distribution Centres	11 Apr., 1995 - 31 May, 1995	AG38/95	11/4/95	75	1556
Coles Myer Logistics Pty Ltd Myer Distribution Centre Carousel Road, Cannington Site Agreement 1999. (Replaces Myer Stores Limited ... Agreement 1996 No. AG49/98)	Myer Cannington Distribution-Centre, Carousel Road, Cannington 6017	1 Feb., 1999 - 1 Feb., 2002	AG63/99	14/5/99	79	1578
Coles Variety City Store Rostering Agreement 1993	Coles Variety Stores, Perth City Store, 712 Hay Street Mall, Perth	15 Nov., 1993 - 14 Nov., 1994	AG68/93	19/11/93	73	3391
ColourPress Electrical and Engineering Employees (Enterprise Bargaining) Agreement 2003 (Replaces the following Agreements: Colour Press ... Agreement No. AG12/96; Colour Press ... Agreement No. AG200/97 & ColourPress ... Agreement No. AG226/00. For prior details, see Vol. 83, Part 1)	ColourPress Pty Ltd	1 Apr., 2003 - 31 Mar., 2006	AG286/03	23/12/03	Unpublished	
Cooling Bros Commercial Glazing Pty Ltd/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos(Keeling) Islands Groups only	31 Mar., 2003 - 31 Oct., 2005	AG109/03	7/5/03	Unpublished	
Combined Metal Industries and Transport Workers' Union Enterprise Agreement 2008	State of Western Australia	13 July, 2009 - 9 Nov., 2010	AG23/08	13/7/09	Unpublished	
Combined Roofing Industries/CFMEUW Industrial Agreement 2002-2005 (Cancels Combines Roofing ... Agreements No. AG149/96 & No. AG 151/00, 84WAIG54. For prior details, see Vol. 83, Part 1)	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	22 Jan., 2003 - 31 Oct., 2005	AG53/03	7/5/03	Unpublished	

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Com Al Windows/BLPPU and the CMETU Collective Agreement 2000 (Cancels previous Com Al Windows ... Agreements No. AG261/96 & No. AG348/97. For prior details, see Vol. 79, Part 2)	Whole of State	1 Nov., 1999 - 1 Nov., 2002	AG88/00	27/04/00	80	1805
Com Al Windows Pty Ltd Agreement 1999. (Replaces AG261/96)	Maddington, WA	1 Sept., 1999 - 31 Aug., 2001	AG175/99	2/12/99	79	3590
Com-Al Windows/CFMEUW Industrial Agreement 2005-2008 (Replaces previous Com-Al Windows ... Agreement 2002-2005 No. AG40/03. For prior details, see Vol. 85, Part 2)	Whole of State	1 Nov., 2005 – 31 Oct., 2008.....	AG24/06	24/3/06	Unpublished	
Commentary Pty Ltd/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	25 Oct., 2004 – 30 June, 2007	AG226/04	9/12/04	Unpublished	
Commercial Blasting Industrial Agreement	Commercial Blasting Pty Ltd	21 Oct., 1994 - 31 July, 1995.....	AG131/94	4/11/94	74	2649
Commercial Plasterers Pty Ltd Industrial Agreement	Whole of State	8 July, 1998 - 31 Oct., 1999.....	AG126/98	14/9/98	78	4001
Commercial Plastering Industrial Agreement	Whole of State	14 Mar., 1997 - 31 July, 1999.....	AG81/97	4/6/97	77	1401
Commercial Plasterworld Pty Ltd/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	11 Mar., 2003 – 31 Oct., 2005.....	A100/03	7/5/03	Unpublished	
Commercial Plumbing Industrial Agreement	Whole of State	4 Nov., 1996 - 31 July, 1997.....	AG291/96	26/3/97	77	877
Commercial Tile Contractors/BLPPU and the CMETU Collective Agreement 1999	Whole of State	1 Nov., 1999 - 1 Nov., 2002	AG227/99	29/3/00	80	1070
Commercial Tile Contractors/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	13 Dec., 2002 – 31 Oct., 2005	AG295/02	7/5/03	Unpublished	
Community Newspaper Group Ltd Editorial Enterprise Agreement 1999	Whole of State	9 Feb., 2000 - 1 May, 2002.....	AG15/00	9/02/00	80	519
Community Newspaper Group Ltd Editorial Enterprise Agreement 2004	Radius/50kms from Perth G.P.O.	1 May, 2004 – 30 April, 2007.....	AG266/05	10/9/06	Unpublished	
Community Welfare Department Hostels General Agreement 2002 (Replaces Family and Children's Services Enterprise Bargaining Agreement 2002 No. PSGAG2/2000)	Whole of State	15 July, 2002 – 31 Dec., 2003	AG93/02	26/07/02	Unpublished	
Compact Brickpaving & Designer Landscaping Industrial Agreement	D. Warburton and J. Warburton t/a Compact Brickpaving & Designer Landscaping	15 Sept., 1995 - 31 July, 1997	AG167/95	10/10/95	75	2968
(Company) New Metro Rail Southern Suburbs Rail Project, Structural Project Agreement 2005	New Metro Rail Project Southern Suburbs Rail Project	10 Jan., 2006 – 1 July, 2006	AG2/2006	20/03/06	Unpublished	
Compile Australia/CFMEUW Industrial Agreement 2002-2005	John Holland Kenwick Tunnel Site on Albany Highway, Kenwick	9 June, 2003 – 31 Oct., 2005	AG151/03	6/9/04	Unpublished	
Complete Design Interiors/CFMEUW Collective Agreement 2002	Whole of State	15 Feb., 2002 - 1 Nov., 2002	AG25/02	13/3/02	Unpublished	
Complete Waterproofing/CFMEUW Industrial Agreement 2005-2008	Whole of State	1 Nov., 2005 - 31 Oct., 2008	AG188/05	20/01/06	Unpublished	
Complex Ceilings/CFMEUW Collective Agreement 2002	Whole of State	17 Oct., 2002 – 1 Nov., 2002.....	AG198/02	4/11/02	Unpublished	
Compressed Contracting/BLPPU and the CMETU Collective Agreement 1999 (Replaces previous Compressed Contracting ... Agreement No. AG266/97. For prior details, see Vol. 79, Part 2)	Whole of State	1 Nov., 1999 - 1 Nov., 2002	AG207/99	24/03/00	80	1075
Concrete Boys Industrial Agreement	Whole of State	29 Nov., 1996 - 31 July, 1997.....	AG326/96	3/2/97	77	355
Concrete Waterproofing (WA)/CFMEUW Industrial Agreement 2005-2008	Whole of State	1 Nov., 2005 - 31 Oct., 2008	AG247/05	17/2/06	Unpublished	
Conduct Electrical Pty Ltd Enterprise Bargaining Agreement 2004	Whole of State	1 Aug., 2004 - 31 Oct., 2005	AG144/04	1/9/04	Unpublished	
Congregation of The Missionary Oblates of the Most Holy and Immaculate Virgin Mary / LHMU Non-Teaching Staff Enterprise Bargaining Agreement, 2009 - The	Western Australia	6 April, 2009 – 31 Dec., 2009.....	AG11/09	11/8/09	Unpublished	

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Congregation of The Missionary Oblates of the Most Holy and Immaculate Virgin Mary Teachers Enterprise Bargaining 2009 - The (This agreement substitutes and replaces the Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 4 of 2006 No. AG4/07)	Whole of State	17 Dec., 2009 – 7 July, 2011.....	AG68/09	17/12/09	Unpublished	
Congregation of The Missionary Oblates of the Most Holy and Immaculate Virgin Mary Non-Teaching Staff Enterprise Bargaining Agreement, 2009 - The. (Cancels and Replaces previous Congregation of The Missionary ... Agreement, 2006 –The, No. AG27/07. For prior details, see Vol. 89, Part 2)	Western Australia	Date of agreement of all parties - 31 Dec., 2009	AG63/09	4/2/10	Unpublished	
Congregation of the Presentation Sisters / LHMU Non-Teaching Staff Enterprise Bargaining Agreement, 2009 - The	Western Australia	6 April, 2009 – 31 Dec., 2009.....	AG25/09	11/8/09	Unpublished	
Congregation of The Presentation Sisters WA Teachers Enterprise Bargaining Agreement 2009 – The. (This agreement substitutes and replaces Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 11 of 2006 No. AG11/07)	Whole of State	17 Dec., 2009 – 7 July, 2011.....	AG64/09	17/12/09	Unpublished	
Congregation of The Presentation Sisters of WA Non-Teaching Staff Enterprise Bargaining Agreement, 2009 - The. (Cancels and Replaces previous Congregation of The Presentation ... Agreement, 2006 - The, No. AG21/07. For prior details, see Vol. 89, Part 2)	Western Australia	Date of agreement by all parties - 31 Dec., 2009	AG45/09	4/2/10	Unpublished	
Conital Engineering/BLPPU and the CMETU Collective Agreement 2000	Whole of State	6 Sept., 2000 - 1 Nov., 2002.....	AG222/00	31/10/00	80	5015
Conservation and Land Management Field Trainees. Agreement No. 1	Any person undertaking field traineeships as part of the Australian Traineeship System at the Department of Conservation and Land Management	13 Jan., 1986 to 13 Jan., 1987.....	AG6/86	24/12/86	67	232
Consolidated Construction East Perth Holiday Inn Agreement 1995	Consolidated Constructions Pty Ltd	Commencement - Completion.....	AG214/95	22/11/95	76	97
Conspect Constructions/CFMEUW Industrial Agreement 2002-2006	Western Australia	1 July, 2003 – 31 Mar., 2006.....	AG166/03	6/9/04	Unpublished	
Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia (W.A. Branch)/Chep (Kewdale, WA) Enterprise Bargaining Agreement 1992	Chep Australia Depot 12 Ballantyne Road, Kewdale	24 May, 1993 - 23 May, 1995.....	AG24/93	3/6/93	73	1486
Construction Sales & Hire Pty Ltd/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	22 Sept., 2003 – 31 Aug., 2006.....	AG249/03	6/9/04	Unpublished	
Construction Worker Level 1 (Civil Operations) Aboriginal & Torres Strait Islander Group Training Association Traineeship Agreement 1997	Trainees of Aboriginal & Torres Strait Islander Group Training Association	26 May, 1997 - 25 May, 1998.....	AG128/97	31/7/97	77	1911
Construction Worker Level 2 (General Construction) Cheeditha Aboriginal Corporation Traineeship Agreement 1997	Whole of State	20 Apr., 1998 - 19 Apr., 1999.....	AG269/97	21/5/98	78	2031
Construction Worker Level 2 (General Construction) Cullarcarbardee Aboriginal Corporation Traineeship Agreement 1998	Cullarcarbardee Aboriginal Corporation	24 Apr, 1999 - 23 Apr, 2000.....	AG43/99	23/4/99	79	1350
Construction Worker Level 2 (General Construction) Mungullah Community Aboriginal Corporation Traineeship Agreement 1999	Mungullah Community	5 Nov., 1999 - 4 Nov., 2000.....	AG170/99	16/11/99	79	3593
Construction Worker Level 2 (General Construction) Manguri Corporation Inc Traineeship Agreement 1999	Manguri Corporation Inc	12 Jan., 1999 - 12 Jan., 2000.....	AG8/99	29/3/99	79	1011
Construction Worker Level 2 General Construction) Bindi Bindi Community Aboriginal Corporation Agreement 1998	Whole of State	1 Apr., 1998 - 3 May, 1999.....	AG57/98	2/6/98	78	2028
Construction Worker Level 1 Structure & Fit Out and Finish Midwest Training Group Traineeship Agreement 1996	Midwest Training Group Inc	20 June, 1996 - 20 June, 1997.....	AG141/96	20/6/96	76	2167
Construction Worker Level 1 (Fit Out and Finish) Cheeditha Aboriginal Group Traineeship Agreement 1996	Whole of State	6 Mar., 1997 - 5 Mar., 1998.....	AG5/97	6/3/97	77	635
Construction Worker Level 2 (General Construction) Cheeditha Aboriginal Corporation Traineeship Agreement 1997	Whole of State	20 Apr. 1998 - 19 Apr. 1999.....	AG269/97	21/5/98	78	2031

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Construction Worker Level 1 (Fit Out and Finish) Mallingbar Aboriginal Corporation Traineeship Agreement 1996	Whole of State	6 Mar., 1997 - 5 Mar., 1998.....	AG4/97	5/3/97	77	637
Construction Worker Level 1 (Fit Out and Finish) Mirima Aboriginal Corporation Traineeship Agreement 1996	Whole of State	6 Mar., 1997 - 5 Mar., 1998.....	AG2/97	5/3/97	77	640
Construction Worker Level 1 (Fit Out and Finish) Ngurra Constructions Traineeship Agreement 1996	Whole of State	6 Mar., 1997 - 5 Mar., 1998.....	AG3/97	5/3/97	77	643
Construction Worker Level 1 (Structure/ Fit Out and Finish) Manguri Corporation Traineeship Agreement 1997	Trainees at The Manguri Corporation Inc	20 May, 1997 - 20 May, 1998	AG99/97	20/5/97	77	1406
Construction Worker Level 1 (Structures/ Fit Out and Finish) Western Australia Aboriginal Torres Strait Islander Training Company Inc	Western Australia Aboriginal Torres Strait Islander Group Training Company Inc	19 June, 1997 - 18 June, 1998	AG117/97	8/7/97	77	1914
Construction Worker Level 1 (Structures) Swan Valley Nyungah Community Traineeship Agreement 1996	Swan Valley Nyungah Community Aboriginal Corporation	18 Apr., 1996 - 17 Apr., 1997.....	AG65/96	3/4/96	76	949
Construction Worker Level 1 (Structures) Swan Valley Nyungah Community Traineeship Agreement 1997	Whole of State	17 Sept., 1997 - 16 Sept., 1998	AG154/97	17/9/97	77	2585
Construction Workers Level 2 (General Construction) Swan Valley Nyungah Community Traineeship Agreement 1997	Whole of State	30 July, 1997 - 29 July, 1998.....	AG144/97	21/8/97	77	2240
Construction Worker Level (Structures) Cullacarbardee Aboriginal Corporation Traineeship Agreement 1997	Whole of State	21 July, 1997 - 20 July, 1998.....	AG143/97	21/8/97	77	2237
Coolroom Building Systems/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	27 June, 2003 – 31 Oct 2005	AG165/03	6/9/04		Unpublished
Co-operative Bulk Handling Limited District Maintenance Employees Enterprise Partnership Agreement 2003	Whole of State	28 March, 2003 – 27 March, 2006...	AG224/03	27/10/03		Unpublished
Co-operative Bulk Handling Limited Roving Crew Maintenance Enterprise Partnership Agreement 2003	Metro Grain Centre	22 March, 2003 – 21 March, 2006...	AG126/03	5/08/03		Unpublished
Construction Worker Level 1 (Structures) Wongatha Wonganarra Aboriginal Corporation Traineeship Agreement 1998	Whole of State	6 Oct., 1998 - 5 Oct., 1999.....	AG96/98	30/10/98	78	4005
Cooktown Constructions Industrial Agreement	Cooktown Constructions Pty Ltd	26 Sept., 1995 - 31 July, 1997	AG243/95	22/11/95	76	100
Coriander Pty Ltd/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	25 Oct., 2004 – 30 June, 2007	AG242/04	10/12/04		Unpublished
Cornerstone Cartage Pty Ltd and Transport Workers Union Enterprise Agreement 2004	Whole of State	1 Nov., 2004 – 31 Aug, 2005.....	AG280/04	28/4/05		Unpublished
Cottage Carpentry/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	16 Jan., 2004 – 31 Oct., 2005	AG6/04	6/9/04		Unpublished
Courtesy Builders Cleaners/BLPPU and the CMETU Collective Agreement 2001	Whole of State	1 May, 2001 - 1 Nov., 2002.....	AG85/01	31/5/01		Unpublished
Coventry Group Ltd trading as Hot Mix or Bitumen Emulsions Cannington (Enterprise Bargaining) Agreement 2002 (Replaces previous Coventry Group ... Agreement No. AG155/00 For prior details, see Vol. 83, Part 2)	Cannington Operation Bickley Road	19 Feb., 2004 - 31 Dec., 2005.....	AG91/03	19/2/04		Unpublished
Coventrys - Transport Division Enterprise Bargaining Agreement 2002 (Replaces and Cancels previous Coventrys – Transport ... Agreement 1999 No. AG174/99. For prior details, see Vol. 82, Part 2)	Whole of State	28 Feb., 2003 – 30 Sept., 2005	AG307/03	28/02/03		Unpublished
CPS Painting Contractors Industrial Agreement	Whole of State	19 Dec., 1997 - 31 Oct., 1999.....	AG297/97	21/1/98	78	608
Craig & Taylor Formwork Industrial Agreement	Whole of State	14 Jan., 1998 - 31 Oct., 1999	AG14/98	7/4/98	78	1632
Craig & Taylor Formwork (1981) Industrial Agreement	Cartledge Holdings Pty Ltd t/a Craig & Taylor Formwork (1981)	21 Sept., 1995 - 31 July, 1997	AG241/95	22/11/95	76	102
Craig & Taylor Formwork/CFMEUW Collective Agreement 2002	Whole of State	1 Feb., 2000 - 1 Nov., 2002	AG62/02	1/5/02		Unpublished
Cranberries and SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Whole of State	6 Nov., 2002 – 30 June, 2005	AG166/02	18/11/02		Unpublished

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Crane Aluminium Systems Balcatta Enterprises Agreement 2000	Crane Enfield Pty Ltd T/A Crane Aluminium Systems at 12 Cressall Road, Balcatta WA 6021	1 Nov., 2000 - 30 April, 2002	AG3/01	29/01/01	81	464
Crane Rental Pty Ltd/CFMEUW Industrial Agreement 2002 – 2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	19 May, 2004 - 31 Oct., 2005.....	AG89/04	30/6/04	Unpublished	
Cranewest/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	20 Dec., 2004 – 31 Oct. 2005.....	AG285/04	1/04/05	Unpublished	
Creative and Therapy Activities Disabled Group Inc Enterprise Bargaining Agreement 2000 (Replaces previous Creative and Therapy ... Agreement No. AG185/99. For prior details, see Vol. 81 Part 2)	Whole of State	30 Mar., 2001 - 29 Mar., 2003	AG252/00	2/4/01	Unpublished	
Creative Roofing/CFMEUW Industrial Agreement 2002-2005. (Cancels Creative Roofing ... Agreements No. AG242/98 & No. AG203/99, 84WAIG55. For prior details, see Vol. 83, Part 1)	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	14 Apr., 2003 – 31 Oct., 2005.....	AG114/03	7/5/03	Unpublished	
Crisp's Corner Store & Newsagency and SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Whole of State	21 Feb., 2003 – 30 June, 2005	AG213/02	21/02/03	Unpublished	
Crown Construction Services/CFMEUW Industrial Agreement 2005-2008 (Replaces previous Crown Construction ... Agreement 2002-2005 No. AG171/04. For prior details, see Vol. 85, Part 1)	Western Australia	1 Nov., 2005 – 31 Oct., 2008	AG172/05	28/11/05	Unpublished	
Crown Roofing/CFMEUW Industrial Agreement 2002-2005. (Cancels the following:- Crown Roofing Industrial Agreement AG227/95; Crown Roofing Industrial Agreement No. AG276/98 & Crown Roofing/BLPPU and the CMETU Collective Agreement 2000 No. AG210/00. For prior details, see Vol. 83, Part 1)	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	11 Dec., 2002 – 31 Oct., 2005.....	AG280/02	7/5/03	Unpublished	
Cryeng Pty Limited Industrial Agreement 2003	Common User Facility, Henderson	1 Sept., 2003 – 30 June, 2004	AG280/03	11/12/03	Unpublished	
CSBP & Farmers Ltd Agreement 1991	Whole of State	27 Nov., 1991 - 26 Nov., 1992.....	AG1/1992	27/11/91	72	1047
CSR Building Materials (WA) Enterprise Agreement 2001. (Cancels previous CSR Building ... Agreement 1999 No. AG154/99. For Prior details, see Vol. 83, Part 1)	21 Sheffield Road, Welshpool, WA	23 Oct., 2001 - 23 Oct., 2003	AG248/01	14/2/02	Unpublished	
CSR Gyprock Bradford Ltd (WA) Enterprise Agreement, 1995 Winning With Teams	CSR Gyprock Bradford Ltd (WA)	10 Apr., 1995 - 10 Apr., 1997	AG92/95	6/9/95	75	2730
CSR Humes Welshpool Enterprise Agreement November 1994/1995. (Replaces No. AG39/93)	CSR Limited t/a CSR Humes Pty Ltd	21 Nov., 1994 - 20 Nov., 1995.....	AG24/95	9/3/95	75	899
CSR Ltd Gyprock Bradford Welshpool Enterprise Bargaining Agreement 1993 (Replaces No. AG23/92)	CSR Ltd Gyprock Bradford Operations, 21 Sheffield Road, Welshpool	17 Jan., 1994 - 16 Jan., 1995.....	AG77/93	17/1/94	74	224
CTC Electrical & Security Enterprise Bargaining Agreement 2004	Whole of State	1 Mar., 2004 – 30 Sep., 2005	AG69/04	20/8/04	Unpublished	
CTS Mechanical and Electrical Enterprise Bargaining Agreement 2002	CTS Mechanical and Electrical	1 Apr., 2002 – 30 June, 2003	AG65/02	10/07/02	Unpublished	
Culunga Aboriginal Community School (Enterprise Bargaining) Agreement 2004 (Replaces previous Culunga Aboriginal Community ... Agreement No. AG72/2002. For prior details, see Vol. 84, Part 1)	Whole of State	19 Oct., 2004 – 16 Oct., 2007	AG152/04	19/10/04	Unpublished	
CW Stevens Industrial Agreement	Whole of State	4 May, 1999 - 31 Oct., 1999	AG76/99	17/6/99	79	1925
D & G Hoist Crane Hire Pty Ltd/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	11 Dec., 2002 – 31 Oct., 2005.....	AG279/02	7/5/03	Unpublished	
D & G Hoist Hire Industrial Agreements	Whole of State	19 May, 1999 - 31 Oct., 1999	AG97/99	6/10/99	79	3231
D&G Projects Asbestos Eradication Industrial Agreement	D&G Projects Pty Ltd	8 Dec., 1994 - 7 Dec., 1996.....	AG154/94	8/12/94	75	89
D & L Access/BLPPU Collective Agreement 2001	Whole of State	20 Apr., 2001 - 1 Nov., 2002	AG76/01	31/5/01	Unpublished	
Dalshore Pty Ltd/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	25 Oct., 2004 – 30 June, 2007.....	AG218/04	9/12/04	Unpublished	

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Danica Carpentry/CFMEUW Industrial Agreement 2005-2008. (Replaces previous Danica Carpentry ... Agreement 2002-2005 No. AG98/03. For prior details, see Vol. 85, Part 2)	Whole of State	1 Nov., 2005 – 31 Oct., 2008.....	AG216/05	17/2/06	Unpublished	
Data Cabling Systems WA Pty Ltd Construction Division Enterprise Bargaining Agreement 2004 - 2005	Whole of State	1 Jan., 2004 – 31 Oct., 2005	AG50/04	20/8/04	Unpublished	
Davro Commercial Furniture BLPPU and the CMETU Collective Agreement 2001	Whole of State	19 Apr., 2001 - 1 Nov., 2002	AG71/01	14/5/01	Unpublished	
Dawesville Rooftiling & Maintenance Services/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	15 Nov., 2004 – 30 June, 2007	AG270/04	17/01/05	Unpublished	
Dawson AOC- Water Services Pty Ltd Mechanical and Electrical Maintenance Enterprise Bargaining Agreement 1996	Whole of State	19 Sept., 1996 - 18 Sept., 2001	AG115/96	9/10/96	76	4520
Dawson AOC Water Services Pty Ltd Mechanical and Electrical Maintenance Enterprise Bargaining Agreement 1996 Amended Agreement 1998	Whole of State	1 July, 1998 - 1 Jan., 1999	AG100/98	31/8/98	78	3666
Dawson AOC Water Services Pty Ltd Mechanical and Electrical Maintenance Enterprise Bargaining Agreement 1996 Amended Agreement 1999	Whole of State	18 April, 2000 - 1 Jan., 2000	AG10/00	18/4/00	80	1821
Dawson AOC Water Services Pty Ltd Mechanical and Electrical Maintenance Enterprise Bargaining Agreement 1996 Amended Agreement 2001	Whole of State	Subclause (1) of Clause 15 Wages, . 1 Jan., 2001 and Subclause (2), 1 July, 2001 - 1 Jan., 2002	AG34/01	14/3/01	Unpublished	
Dawson AOC Water Services Pty Ltd Mechanical and Electrical Maintenance Enterprise Bargaining Agreement 1996 Amended Agreement 2001(A)	Whole of State	7 December 2001	AG243/01	7/12/01	Unpublished	
Deckhands (Port Hedland) Agreement 1978	Port of Port Hedland	30 Oct., 1978 to 29 Oct., 1980.....	AG27/78	28/11/78	58	1578
De Francesch Builders/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	22 Sept., 2003 – 31 Oct., 2005.....	AG250/03	6/9/04	Unpublished	
DEEP GREEN / CFMEUW Industrial Agreement 2005-2008 (Replaces Deep Green Landscaping/CFMEUW Industrial Agreement 2002-2005 No. AG77/05. For prior details, see Vol. 85, Part 1)	Whole of State	1 Nov., 2005 – 31 Oct., 2008.....	AG139/05	8/11/05	Unpublished	
Delkey Holdings Pty Ltd/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	7 Aug., 2003 – 31 Oct., 2005.....	AG204/03	6/9/04	Unpublished	
Delta Corporation Industrial Agreement	Delta Corporation Ltd	24 Oct., 1994 - 31 July, 1995.....	AG133/94	10/11/94	74	2946
Delta Corporation Ltd, Herne Hill Enterprise Bargaining Agreement 1995	Delta Corporation Ltd	29 Apr., 1996 - 31 Aug., 1997	AG91/96	9/5/96	76	1744
Delta Corporation Ltd, Enterprise Bargaining Agreement 1996	218 Campersic Road Herne Hill WA	28 Oct., 1996 - 28 Feb., 1998	AG289/96	2/5/96	77	1409
Deluxe Earthmoving/BLPPU and the CMETU Collective Agreement 2000	State of WA	22 Sept., 2000 - 1 Nov., 2002	AG239/00	27/10/00	80	5021
Deluxe Earthmoving Pty Ltd Industrial Agreement	Deluxe Earthmoving Pty Ltd	21 May, 1996 - 31 July, 1997	AG143/96	20/6/96	76	2170
Department of Conservation and Land Management - Australian Manufacturing Workers Union Enterprise Agreement 1996	Department of Conservation and Land Management (CALM)	1 April, 1996 - 30 June, 1997	AG101/96	11/6/96	76	1764
Department of Corrective Services – Registered Nurses (ANF) Industrial Agreement 2008	State of Western Australia	16 Sept. 2008 – 30 June, 2010.....	AG16/08	16/9/08	Unpublished	
Department of Corrective Services Prison Officers' Enterprise Agreement 2007. (Cancels the Department of Justice Prison Officers Enterprise Agreement 2005 No. AG183/05. For prior details, see Vol. 87, Part 1)	Whole of State	14 Sept., 2007 - 10 June 2010.....	AG58/07	14/9/07	Unpublished	
Department of Culture and the Arts Retail Staff Agreement 2007	Employees who are members of or eligible to be members of the union and employed in the classifications defined in Clause 3 – Definitions	31 Aug., 2007 – 31 Dec., 2009	AG47/07	31/8/07	Unpublished	

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Department of Transport (Marine and Harbours) Construction and Maintenance Enterprise Agreement 1994	Location of Construction and Maintenance Branch of Department of Transport (Marine and Harbours) at Hillarys Boat Harbour	1 Feb., 1994 - 1 Feb., 1995.....	AG91/93	22/2/94	74	586
Dependable Roofing/BLPPU and the CMETU Collective Agreement 2001. (Replaces previous Dependable ... Agreement No. AG106/98. For prior details, see Vol. 81, Part 2)	Whole of State	20 July, 2001 - 1 Nov., 2002.....	AG156/01	9/8/01	Unpublished	
Derek Rowland/CFMEUW Industrial Agreement 2005-2008. (Replaces previous Derek Rowland ... Agreements No. AG116/03. For prior details, see Vol. 85, Part 1)	Western Australia	1 Nov., 2005 – 31 Oct., 2008	AG214/05	28/11/05	Unpublished	
DESAIR & AMWU, Malaga, Sheet Metal Enterprise Bargaining Agreement 2006 (Replaces Direct Engineering Services, Malaga, Sheet Metal Enterprise Bargaining Agreement 2003 No. AG12/04)	DESAIR, Malaga Sheet Metal Workshop	8 Feb., 2006 – 7 Feb., 2008.....	AG33/06	24/03/06	Unpublished	
Design Ceilings/BLPPU Collective Agreement 1999. (Cancels previous Design Ceilings ... Agreements No. AG9/1994; No. AG68/96 & No. AG337/97. For prior details, see Vol. 79, Part 2)	Whole of State	25 Nov., 1999 - 1 Nov., 2002.....	AG200/99	21/3/00	80	1087
Design Commercial Interiors/BLPPU Collective Agreement 2001	Whole of State	2 May, 2001 - 1 Nov., 2002	AG77/01	31/5/01	Unpublished	
Design Commercial Interiors/CFMEUW Industrial Agreement 2005-2008 (Replaces previous Design Commercial ... Agreement 2002-2005 No. AG266/02. For prior details, see Vol. 85, Part 1)	Whole of State	1 Nov., 2005 – 31 Oct., 2008	AG169/05	8/11/05	Unpublished	
Devine Star Pty Ltd/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	25 Oct., 2004 – 30 June, 2007.....	AG204/04	9/12/04	Unpublished	
Dewsons Cooloongup and SDA Agreement 2004	Whole of State	9 Aug., 2004 - 30 June, 2005	AG103/04	9/8/04	Unpublished	
Diamond Blade Sawing/BLPPU Collective Agreement 1999	Whole of State	1 Nov., 1999 - 1 Nov., 2002.....	AG233/99	8/3/00	80	1093
Diamond Cut Concrete Sawing/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	26 May, 2003 – 31 Oct., 2005.....	AG140/03	6/9/04	Unpublished	
Diamond Clean Pty Ltd/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	6 Dec., 2002 – 31 Oct., 2005.....	AG265/02	7/5/03	Unpublished	
Distinct Carpentry/CFMEUW Industrial Agreement 2005-2008 (Replaces previous Distinct Carpentry ... Agreement 2002-2005 No. AG79/05. For prior details, see Vol. 85, Part 1)	Whole of State	1 Nov., 2005 – 31 Oct., 2008	AG156/05	11/11/05	Unpublished	
Distribution Technology Systems Pty Ltd Enterprise Bargaining Agreement 2004 - 2005	Whole of State	1 Mar., 2004 – 31 Oct., 2005	AG65/04	20/8/04	Unpublished	
District Allowance (Government Wages Employees) General Agreement 2005	Employees of Respondents list in Schedule A	6 Jan., 2006 – 30 June 2007	AG273/05	6/01/06	Unpublished	
Djooraminda Cottage Carers' Industrial Agreement 2004. (Replaces Djooraminda Direct Care ... Agreement 1998 No. AG279/98. For prior details see Vol. 84, Part 2)	Djooraminda	15 Apr., 2005 – 12 Apr., 2008	AG53/05	18/04/05	Unpublished	
DMD Pty Ltd/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	14 Apr., 2003 – 31 Oct., 2005.....	AG115/03	7/5/03	Unpublished	
DMR Plastering Contractors Industrial Agreement	Rezan Pty Ltd t/a DMR Plastering Contractors	17 Nov., 1994 - 31 July, 1995.....	AG155/94	6/12/94	75	91
Doira Engineering & Construction Pty Ltd/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	7 Aug., 2003 – 31 Oct., 2005	AG200/03	6/9/04	Unpublished	
Dongara Cockburn Cement Enterprise Bargaining Agreement 2004	Cockburn Cement Dongara	1 July, 2004 - 30 June, 2006	AG188/04	20/11/04	Unpublished	
Dongara Demolition Industrial Agreement	John Williams t/a Dongara Demolition	21 July, 1995 - 20 July, 1997	AG104/95	21/7/95	75	2357
Doric Constructions Pty Ltd Industrial Agreement	Whole of State	1 Aug., 1997 - 31 Oct., 1999.....	AG241/97	30/4/98	78	1640
Dorma Auto Door Systems Enterprise Bargaining Agreement 2005	Whole of State	1 July, 2005 – 30 June 2006.....	AG263/05	28/12/05	Unpublished	

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Doug Buckley's Carpet Court/CFMEUW Industrial Agreement 2002 - 2005	Whole of State Christmas and Cocos (Keeling) Islands Groups only	14 June, 2004 - 31 Oct., 2005	AG116/04	13/7/04	Unpublished	
Dowthwaite Holdings/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	8 Oct., 2004 – 30 June, 2007	AG253/04	13/12/04	Unpublished	
D.P. Mckenna Pty Ltd Construction Division Enterprise Bargaining Agreement 2004 – 2005	Whole of State	1 Mar., 2004 - 31 Oct., 2005	AG102/04	18/8/04	Unpublished	
DR & J Building Industrial Agreement	Dean Blackwell and Julie Blackwell t/a DR & J Building	13 Oct., 1995 - 31 July, 1997	AG269/95	7/12/95	76	105
Dredging - Cockburn Cement (Merchant Service Guild) (See Appendix X)	Cockburn Sound	15 Nov., 1972 to 14 Nov., 1973.....	AG29/72	30/11/72	52	1146
Drill Con/BLPPU Collective Agreement 2000	Whole of State	1 Nov., 1999 - 1 Nov., 2002	AG98/00	19/5/00	80	2548
Drilling & Grouting Services/CFMEUW Industrial Agreement 2005-2008 (Replaces Drilling & Grouting Services ... Agreement 2002-2005 No. AG43/03. For prior details, see Vol. 85, Part 1)	Whole of State	1 Nov., 2005 – 31 Oct., 2008.....	AG130/05	8/11/05	Unpublished	
DSS Contractors Industrial Agreement	Whole of State	22 April, 1999 - 31 Oct., 1999.....	AG74/99	17/6/99	79	1934
D.T. Construction Cleaning Services/CFMEUW Industrial Agreement 2002 – 2005	Whole of State Christmas and Cocos (Keeling) Islands Groups only	5 Mar., 2004 - 31 Oct., 2005.....	AG33/04	2/7/04	Unpublished	
Duct fixing Service/CFMEUW Industrial Agreement 2002-2005. (Cancels Duct Fixing Services/CFMEUW Collective Agreement 2002, AG219/02, 84WAIG57.	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	9 Jan., 2003 – 31 Oct., 2005	AG35/03	7/5/03	Unpublished	
Ducourt Aluminium/BLPPU and the CMETU Collective Agreement 2001	Whole of State	20 Sept., 2001 - 1 Nov., 2002	AG192/01	11/10/01	Unpublished	
Dudley Agreement (Industrial Agreement) 1995	Dudley Pty Ltd	1 May, 1995 - 30 Apr., 1997.....	AG78/95	21/7/95	75	2359
Du Feu Metal Enterprise Bargaining Agreement 1995	Du Feu Metal, Osborne Park	1 Sept., 1995 - 31 Aug., 1996	AG174/95	21/9/95	75	2737
Dunmar Airconditioning & Sheetmetal/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	19 Aug., 2003 – 31 Oct., 2005.....	AG220/03	6/9/04	Unpublished	
Duraseal / CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	30 Sept., 2004 – 31 Oct., 2005.....	AG172/04	3/11/04	Unpublished	
DVR Roofing/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	25 Oct., 2004 – 30 June, 2007	AG240/04	10/12/04	Unpublished	
DYNASTY STONE/CFMEUW Collective Agreement 2001	Whole of State	21 Jan., 2002 - 1 Nov., 2002.....	AG10/02	1/2/02	Unpublished	
Dynasty Stone Pty Ltd/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	11 Dec., 2002 – 31 Oct., 2005	AG278/02	7/5/03	Unpublished	
Dyno Industries (WA) Pty Ltd (DIWA) Enterprise Bargaining Agreement 1999	Whole of State	1 June, 2000 - 30 Sept., 2001	AG85/00	1/6/00	80	2554
Dyno Industries (WA) Pty Ltd (DIWA) Enterprise Bargaining Agreement 1999	Whole of State	1 June, 2000 - 30 Sept., 2001	AG85/00	1/6/00	80	2554
Dyno Industries (WA) Pty Ltd (DIWA) Enterprise Bargaining Agreement 2001	Whole of State	5 April, 2002 - 30 Sept., 2003.....	AG26/02	5/4/02	Unpublished	
Dyson's Packaging Pty Ltd Enterprise Agreement 1995	Dyson's Packaging Pty Ltd	8 Nov., 1995 - 7 Nov., 1997	AG212/95	8/11/95	75	3192
Eagle Force Services Pty Ltd/CFMEUW Industrial Agreement 2002 – 2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	28 June, 2004 - 31 Oct., 2005	AG125/04	13/8/04	Unpublished	
Earthcare (Australia) Pty Ltd/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	7 Aug., 2003 – 31 Oct., 2005	AG205/03	6/9/04	Unpublished	
Eastmont Industrial Agreement	Whole of State	7 Nov., 1997 - 31 Oct., 1999	AG336/97	10/2/98	78	858
Eastport Painting/BLPPU and the CMETU Collective Agreement 2001	Whole of State	31 Oct., 2001 - 1 Nov., 2002	AG212/01	20/11/01	Unpublished	
East Spar Project (Varanus Island) Agreement 1996	60 employees of Clough Engineering Limited on Varanus Island	29 Apr., 1996 - Completion	AG78/96	9/5/96	76	1794
Easpave Pty Ltd Industrial Agreement	Easpave Pty Ltd	8 Sept., 1995 - 31 July, 1997	AG162/95	10/10/95	75	2971
Employment Law Centre of WA (Inc.) Enterprise Bargaining Agreement 2008	Employment Law Centre of WA	15 Sept., 2008 – 30 June, 2009	AG18/08	18/11/08	Unpublished	

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Edgell-Birds Eye Manjimup Production Centre (Enterprise Bargaining Agreement 1992	Whole of State	21 Sept., 1992 - 30 Sept., 1993	AG19/1992	31/12/92	73	81
Edge Systems (WA) Pty Ltd/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	23 July, 2003 – 31 Oct., 2005	AG190/03	6/9/04	Unpublished	
Edmund Rice Education Australia Teachers Enterprise Bargaining Agreement 2009 - The. (This agreement substitutes and replaces the Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 15 of 2006, No. AG15/07)	Whole of State	17 Dec., 2009 – 7 July 2011.....	AG48/09	17/12/09	Unpublished	
Edmund Rice Education Australia Non-Teaching Staff Enterprise Bargaining Agreement, 2009 – The. (Cancels and Replaces The Trustees of the Christian Brothers in WA Non-Teaching Staff Enterprise Bargaining Agreement, 2006 – The, No. AG27/07)	Western Australia	Date of agreement by all parties..... 31 Dec., 2009	AG62/09	4/2/10	Unpublished	
Edmund Rice Education Australia / LHMU Non-Teaching Staff enterprise Bargaining Agreement, 2009, The	Western Australia	6 April, 2009 – 31 Dec., 2009.....	AG 15/09	11/8/09	Unpublished	
E.D. Oates Pty Ltd Brushware Manufacturing Enterprise Agreement 2005 (Replaces previous E.D. Oates ... Agreement No. AG124/05. For prior details, see Vol. 85, Part 1)	Lionel Street, Naval Base	1 July, 2005 - 30 June, 2008	AG124/05	4/8/05	Unpublished	
Education Assistants General Agreement 2007 (Cancels and Replaces previous Education Assistants ... Agreement 2004 No. AG108/04. For prior details, see Vol. 86, Part 2)	All employees as defined in Clause 3(1)(c) of the Agreement	18 May, 2007 – 31 Dec., 2009.....	AG38/07	18/5/07	Unpublished	
Education Department of Western Australia (Education Assistants ALHMWU) Enterprise Bargaining Agreement 1998. (Varied and Consolidated). (Replaces previous Agreement 1996, at 77 WAIG 529. See Vol. 79, Part 2 for prior details)	Education Assistants employed by the Minister for Education	26 Nov., 1998 - 31 March, 2000.....	AG296/96	03/12/98	78	4868
Edward McKrill/CFMEUW Industrial Agreement 2004-2007	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	8 Nov., 2004 – 30 June, 2007..... Correcting Order No. AG59/2005 (Title).....	AG59/05 ...	19/5/05 3/6/05	85	1842
Electro Acoustic Construction Division Enterprise Bargaining Agreement 2004	Whole of State	July, 2003 - 31 Oct., 2005	AG66/04	20/8/04	Unpublished	
Electrolux Home Products - Spare Parts and Service Belmont W.A. Enterprise Agreement 2001 - 2004	1 Frederick Street Belmont, W.A.	1 July, 2001 - 30 June, 2003	AG202/01	2/11/01	Unpublished	
Electrolux Home Products - Spare Parts and Service Belmont W.A. Enterprise Agreement 2003 - 2006	1 Frederick Street Belmont, W.A.	1 July, 2003 - 30 June, 2006	AG236/03	27/10/03	Unpublished	
Elements Formwork P/L/CFMEUW Industrial Agreement 2005-2008	Inner City "Ellement" site 996 Hay St, Perth	30 June, 2005 - 31 Dec., 2007.....	AG249/05	17/2/06	Unpublished	
Elete Clean & Seal/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	13 June, 2005 – 31 Oct., 2005.....	AG88/05	16/08/05	Unpublished	
Elevatech/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	22 July, 2003 – 31 Oct., 2005	AG189/03	6/9/04	Unpublished	
Elevator Technologies Australia Pty Ltd Enterprise Agreement 2001	Whole of State	1 July, 2001 - 31 Dec., 2003	AG183/01	15/2/02	Unpublished	
Elders Limited (Spearwood Wool Store) Interim Enterprise Agreement 1994	Employees at Elders Limited Spearwood Store, Spearwood W.A.	25 Oct., 1994 - 30 June, 1995	AG122/94	25/10/94	74	2949
Elders Limited (Spearwood Wool Store) Enterprise Agreement 1994	Spearwood Wool Store, Spearwood	2 Nov., 1995 - 15 Sept., 1996	AG235/95	2/11/95	75	3194
Elders Limited (Spearwood Wool Store) Enterprise Agreement 1996	Spearwood Wool Store, Spearwood	9 Jan., 1997 - 8 Jan., 1999.....	AG332/96	31/1/97	77	357
Electrical Construction and Maintenance Australia Pty Ltd Enterprise Bargaining Agreement. (Replaces No. AG295/94. For prior details, see Vol. 78, Part 1)	Whole of State	1 July, 1996 - 31 Dec., 1997	AG295/96	22/11/96	76	4909
Elite Waterproofing Industrial Agreement	Dieter Stenglein t/a Elite Waterproofing	8 Sept., 1995 - 31 July, 1997.....	AG163/95	10/10/95	75	2973
Eltin Boddington Gold Mine, Agreement 1993	Boddington Gold Mine	4 Jan., 1993 - 31 Dec., 1996.....	C287/93	5/7/93	73	2488

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Eltin Hedges Gold Mine, Agreement 1993	Hedges Gold Mine	31 Mar., 1993 - 31 Dec., 1996	C286/93	5/7/93	73	2487
Eltin Hedges Gold Mine Agreement 1997. (Supersedes C40/94 Schedule B)	Hedges Gold Mine Open Pit Operations	18 Apr., 1997 - 30 June, 1998.....	AG73/97	22/4/97	77	1167
Eltin Limited Hedges Gold Mine Maintenance Agreement	Eltin Limited at Hedges Gold Mine	11 May, 1995 - 10 May, 1997	AG49/95	17/5/95	75	1857
Eltin Surface Mining Pty Ltd Boddington Gold Mine Maintenance Agreement 1996	Eltin Surface Mining Pty Ltd	19 Aug., 1996 - 18 Feb., 1998	AG206/96	27/8/96	76	3886
Elmont/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	6 Dec., 2002 – 31 Oct., 2005	AG252/02	7/5/03		Unpublished
Eltech Services Pty Ltd Enterprise Bargaining Agreement 2005 - 2006	Whole of State	1 Jan., 2005 – 31 Dec., 2005.....	AG226/05	7/11/05		Unpublished
Email Limited (Major Appliance Consumer Service Division WA) Enterprise Agreement 1992	Area occupied by Email Limited (Major Appliance Consumer Service Division WA) Osborne Park	22 Oct., 1992 - 30 June, 1993.....	AG9/92	11/12/92	73	84
Email Major Appliances – Belmont Service Clerical and Shop Assistants Enterprise Agreement 2000. (Replaces & Cancels previous Emails Limited Major ... Agreements No. AG148/1996 & No. AG60/1998. For prior details, see Vol. 80, Part 2)	Email Limited Major Appliances, 1 Frederick Street, Belmont	4 Jan., 2001 - 30 Sept., 2001	AG286/00	4/1/01	81	479
Email Limited Major Appliance Division Consumer Service Division (WA) Redundancy Agreement 1998	State of WA	24 Nov., 1998 - 1 Sept., 2001	AG223/98	10/12/98	79	164
Email Major Appliances – Belmont Service Technicians Enterprise Agreement 2000	Whole of State	1 Oct., 1999 - 30 June, 2001	AG137/00	16/6/00	80	2925
Email Major Appliance Group – Osborne Park Service Technicians Enterprise Agreement 1997	Osborne Park	28 Oct., 1997 - 27 Oct., 1999.....	AG258/97	28/10/97	77	2896
Empire Construction/CFMEUW Industrial Agreement 2005-2008	Whole of State	1 Nov., 2005 – 31 Oct., 2008.....	AG4/06	7/3/06		Unpublished
Engine Drivers (Government) General Agreement 2002	Whole of State	24 June, 2002 – 31 Dec., 2003.....	AG304/02	24/6/02		Unpublished
Engine Drivers (Quarries, Sand Pits & Limestone Quarries) Agreement	State of WA	21 Aug., 1991 to 21 Aug., 1992.....	AG8/91	23/8/91	71	2525
Engine Drivers (Wundowie) Iron and Steel Industry Agreement 1976	Employees of Wundowie Iron and Steel	21 May, 1976 to 20 May, 1977.....	AG46/76	6/10/76	56	1731
Engineering Trades (Government) General Agreement 2007. (Cancels and Replaces previous Engineering Trades ... Agreement 2004 AG131/04. For prior details, see Vol. 87, Part 1)	All employees who are members of or eligible to be members of the union	10 Aug., 2007 – 31 Dec., 2009	AG52/07	10/8/07		Unpublished
Ensign Customer Service Representative Enterprise Agreement 2004-2006 (Replaces SSL Spotless Linen ... Agreement 2002 -2004 No. AG110/02)	Ensign, Murdoch, State of Western Australia	22 Apr., 2005 – 1 Sept., 2006	AG276/04	22/4/05		Unpublished
Entact Clough/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	11 Mar., 2003 – 31 Oct., 2005	AG177/03	6/9/04		Unpublished
E.P.T. Pty Ltd Nelson Point Development Project (Enterprise Bargaining) Agreement	Nelson Point Development Project, Port Hedland	4 Jan., 1993 - Completion.....	AG18/93	19/4/93	73	1261
Eric Hood Pty Ltd Industrial Agreement	Whole of State	14 Oct., 1996 - 14 Oct., 1997.....	AG249/96	18/11/96	76	4913
Essentials Supermarket of South Perth and SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Whole of State	6 Nov., 2002 – 30 June, 2005	AG185/02	18/11/02		Unpublished
Esslemont Geo & Son/BLPPU and CMETU Industrial Agreement	Whole of State	1 May, 2001 - 1 Nov., 2002.....	AG69/01	14/05/01		Unpublished
Ethnic Child Care Resource Unit (ECCRU) Enterprise Bargaining Agreement 2004	Whole of State	1 July, 2004 – 1 July 2006	AG92/05	17/08/05		Unpublished
Eureka Rigging & Scaffolding (Rigging)/CFMEUW Collective Agreement 2002	Whole of State	6 Feb., 2002 - 1Nov., 2002	AG17/02	15/3/02		Unpublished
Eureka Scaffolding and Rigging Service/BLPPU Collective Agreement 2001	Whole of State	6 Feb., 2002 - 1Nov., 2002	AG16/02	15/3/02		Unpublished
Euro Contracting Pty Ltd/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	17 Feb., 2003 – 31 Oct., 2005.....	AG80/03	7/5/03		Unpublished
European Ceramics Industrial Agreement	Whole of State	13 Dec., 1996 - 31 July, 1997.....	AG339/96	3/2/97	77	361

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Euro Tiling/CFMEUW Collective Agreement 2002	Whole of State	7 March, 2002 - 1 Nov., 2002	AG36/02	5/4/02	Unpublished	
Evans Enterprises/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	16 July, 2003 - 31 Oct., 2005	AG183/03	6/9/04	Unpublished	
Everett - Smith & Co. Enterprise Bargaining Agreement. (Replaces AG133/1995)	Everett - Smith & Co	1 Jan., 1996 - 31 Dec., 1997.....	AG6/97	21/2/97	77	653
Executive Paving Industrial Agreement	Stephen and Elizabeth Young & Stephen and Oayle Holmes t/a Executive Paving	17 Nov., 1995 - 31 July, 1997.....	AG295/95	10/1/96	76	353
Exhaust Services Industry Youth Traineeship Agreement	Whole of State	12 Sept., 1989 to 11 Sept., 1990	AG14/88	12/9/89	69	2977
Fab's Cabinets/BLPPU and the CMETU Collective Agreement 2001	Whole of State	15 June, 2001 - 1 Nov., 2002	AG111/01	13/7/01	Unpublished	
FAL and SDA Enterprise Agreement 1994. (Replaces No. AG40/93)	Foodland Associated Limited	1 May, 1994 - 1 May, 1996.....	AG178/94	20/12/94	75	94
Faulding Healthcare (Western Australia) Clerical and Administrative Agreement 1999 (Replaces Clerks' (Wholesale and Retail Establishments) Award No. 38/1947 in respect of employees Covered by it and employed by the employer)	Premises at Abernethy Road, Kewdale and 5 Palmer Street, Bunbury	12 May 1999 - 31 Mar., 2000	AG77/99	12/5/99	79	1589
Fazform/BLPPU and the CMETU Collective Agreement 2001	Whole of State	26 July, 2001 - 1 Nov., 2002.....	AG161/01	9/8/01	Unpublished	
FE & LE Contractors/BLPPU and the CMETU Collective Agreement 1999 (Cancels previous FE & LE Contractors Agreements No. AG327/1995 & No. AG194/97. For prior details, see Vol. 79, Part 2)	Whole of State	1 Nov., 1999 - 1 Nov., 2002.....	AG231/99	29/2/00	80	529
FCL Construction P/L/CFMEUW Industrial Agreement 2005-2008	Whole of State	1 Nov., 2005 - 31 Oct., 2008	AG54/06	5/5/06	Unpublished	
Feeding Frenzy Perth and SDA Agreement 2003 (For previous amendments, see Vol. 89, Part 2)	State of Western Australia	20 Feb., 2004 - 30 June, 2005	AG231/03	20/02/04	Unpublished	
Ferries Agreement 2003	Whole of State	16 Aug., 2004 - 16 Aug., 2007	AG132/04	16/8/04	Unpublished	
Festive Poultry Limited Enterprise Bargaining Agreement 1996	Steggles Ltd t/a Festive Poultry Limited	1 Mar., 1996 - 28 Feb., 1998.....	AG139/96	16/9/96	76	3888
Fill-Crete WA/BLPPU and the CMETU Collective Agreement 2000	Whole of State	1 Nov., 1999 - 1 Nov., 2002.....	AG200/00	7/9/00	80	4092
Fieldway Enterprises Pty Ltd/BLPPU and the CMETU Collective Agreement 2001	Whole of State	6 July, 2001 - 1 Nov., 2002.....	AG106/01	28/6/01	Unpublished	
FIELDWAY ENTERPRISES/CFMEUW Bricklaying Collective Agreement 2002	Whole of State	12 March, 2002 - 1 Nov., 2002	AG44/02	11/4/02	Unpublished	
FIELDWAY ENTERPRISES/CFMEUW Collective Wall & Ceiling Fixing Agreement 2002	Whole of State	13 March, 2002 - 1 Nov., 2002	AG46/02	11/4/02	Unpublished	
Fieldway Enterprises Wall and Ceiling/BLPPU Collective Agreement 2001	Whole of State	21 June, 2001 - 1 Nov., 2002	AG121/01	13/07/01	Unpublished	
Fill-Crete WA/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	29 Aug., 2003 - 31 Oct., 2005	AG234/03	6/9/04	Unpublished	
Fintern Pty Ltd Enterprise Agreement	Whole of State	4 Oct., 1994 - 3 Oct., 1995	AG115/94	26/10/94	74	2659
Fintern Pty Ltd Industrial Agreement	Fintern Pty Ltd	1 Aug., 1995 - 31 July, 1997.....	AG64/95	18/5/95	75	1859
Fintern Bricklaying Industrial Agreement	Fintern Pty Ltd	8 Sept., 1995 - 31 July, 1997.....	AG135/95	10/10/95	75	2974
Fintern/BLPPU and the CMETU Collective Agreement 2000. (Replaces previous Fintern Nominees ... Agreement No. AG213/1997. For prior details, see Vol. 80, Part 2)	Whole of State	24 Nov., 2000 - 1 Nov., 2002.....	AG267/00	18/12/00	81	97
Fire and Emergency Services Authority of Western Australia (FESA) Technical Services Branch (Fleet Maintenance) and Breathing Apparatus/Hazchem Sections) Enterprise Bargaining Agreement 1999	State of W.A.	1 Oct., 1999 - 30 Sept., 2001.....	AG151/99	1/10/99	79	2826
Fire and Rescue Service of Western Australia Technical Services Enterprise Agreement	O'Connor Depot	1 May, 1997 - 30 April, 1998.....	AG100/97	11/6/97	77	1668
Firemain Co Contracting Commercial Building Sector Enterprise Agreement 2003	Whole of State	1 July, 2003 - 30 June, 2006.....	AG18/05	08/03/05	Unpublished	

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Firemain Electrical Service enterprise Agreement – Perth	Fire Alarm Service Department	8 March, 2005 – 30 June, 2006.....	AG17/05	08/03/05	Unpublished	
Fire Rated Systems/BLPPU and the CMETU Collective Agreement 2000 (Cancels previous Fire Rated ... Agreements No. AG176/1995 No. AG228/97. For prior details, see Vol. 79, Part 2)	Whole of State	1 Nov., 1999 - 1 Nov., 2002	AG100/00	19/5/00	80	2558
Fire Systems WA Pty Ltd/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	7 Aug., 2003 – 31 Oct., 2005	AG199/03	6/9/04	Unpublished	
Fish Feast Caning Vale SDA Agreement 2003 (For previous amendments, see Vol. 89, Part 2)	Whole of State	15 June, 2004 – 31 Oct., 2005	AG57/04	15/6/04	Unpublished	
Fish Feast Gosnells SDA Agreement 2002, The	Shalom Financial Services Pty Ltd (Phil and Ruby Wong) t/a Fish Feast	26 June, 2003 – 31 Oct., 2005	AG14/03	3/07/03	Unpublished	
Fish Feast Greenmount SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Joenzo Pty Ltd (Joe and Rae Saccoccia) t/a Fish Feast	26 June, 2003 – 31 Oct., 2005	AG12/03	3/07/03	Unpublished	
Fish Feast Halls Head SDA Agreement 2003 (For previous amendments, see Vol. 89, Part 2)	Whole of State	15 June, 2004 – 31 Oct., 2005	AG51/04	15/6/04	Unpublished	
Fish Feast Joondalup SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Remy Feast Pty Ltd (Mike and Eve St. Guillaume) t/a Fish Feast	26 June, 2003 – 31 Oct., 2005	AG13/03	3/07/03	Unpublished	
Fish Feast Kardinya SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Lam Pty Ltd (Mal and Ryan Magill) t/a Fish Feast	26 June, 2003 – 31 Oct., 2005	AG11/03	3/07/03	Unpublished	
Fish Feast Kelmscott SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Doubtless Bay Pty Ltd (Nigel and Sarah Blackmore) t/a Fish Feast	26 June, 2003 – 31 Oct., 2005	AG17/03	3/07/03	Unpublished	
Fish Feast Lathlain SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Mario and Frank Galati t/a Fish Feast	26 June, 2003 – 31 Oct., 2005	AG15/03	3/07/03	Unpublished	
Fish Feast Malaga SDA Agreement 2003 (For previous amendments, see Vol. 89, Part 2)	Whole of State	15 June, 2004 – 31 Oct., 2005	AG56/04	15/6/04	Unpublished	
Fish Feast Maylands SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Truaustr Enterprises Pty Ltd (June Lim) t/a Fish Feast	26 June, 2003 – 31 Oct., 2005	AG16/03	3/07/03	Unpublished	
Five Star Ceramics Industrial Agreement	Whole of State	28 Aug., 1996 - 31 July, 1997.....	AG238/96	21/10/96	76	4538
FJ & G Contractors Industrial Agreement	FJ & G Contractors Pty Ltd	14 Sept., 1995 - 31 July, 1997	AG223/95	22/11/95	76	106
FJ & G Contractors Industrial Agreement	Whole of State	1 Aug., 1997 - 31 Oct., 1999	AG195/97	7/10/97	77	2902
Fleet and Equipment Services Enterprise Bargaining Agreement 2007 (This agreement substitutes the Fire and Emergency Services Authority of Western Australia (FESA) Technical Services Branch (Fleet Maintenance) and Breathing Apparatus/Hazchem Sections) Enterprise Bargaining Agreement 1999 No. AG67/04)	Employees of FESA in the Fleet Services Branch who is eligible to be a member of the union	1 Jan., 2007 - 31 Dec., 2009	AG82/06	28/12/06	Unpublished	
Fleet Maintenance Services Certified Agreement 2004	Fleet Maintenance Services Sub-unit of the City of Wanneroo	20 Dec., 2004 – 17 Dec., 2007.....	AG190/04	20/12/04	Unpublished	
Flooring Solutions/CFMEUW Collective Agreement 2002-2005 (Cancels Flooring Solutions ... Agreement 2002 No. AG105/2002, 84WAIG57. For prior details, see Vol. 83, Part 2)	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	10 Feb., 2003 – 31 Oct., 20025.....	AG66/03	7/5/03	Unpublished	
Fluffs Concreting/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	19 Aug., 2003 – 31 Oct., 2005.....	AG221/03	6/9/04	Unpublished	
Fluor Global Services Power Plant Maintenance Enterprise Agreement 2000 - 2003 (Replaces previous Fluor Daniel ... Agreement No. AG156/1999. For prior details, see Vol. 80, Part 2)	Fluor Global Services	14 Dec., 2000 - 30 June, 2003	AG204/00	14/12/00	81	101
Fluor Daniel Plant Services Argyle Diamond Mine Maintenance Agreement 1999	Whole of State	5 Mar., 1999 - 5 Mar., 2001.....	AG64/99	23/4/99	79	1353
Fluor Daniel Power & Maintenance Services Power Plant Maintenance Enterprise Agreement 1998. (Cancels No. AG115/97)	Kwinana and Muja Power Station	5 April, 1998 - 4 July, 1999	AG101/98	29/7/98	78	3045
FM Tiling/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	25 Oct., 2004 – 30 June, 2007	AG220/04	9/12/04	Unpublished	

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Focus Shopfitters Pty Ltd/BLPPU and the CMETU Collective Agreement 2000 (Replaces previous Focus Shopfitters ... Agreement No. AG92/1999. For prior details, see Vol. 80, Part 1)	Focus Shopfitters Pty Ltd 139 Winton Road Joondalup, WA 6027	26 July, 2000 - 1 Nov., 2002.....	AG190/00	28/8/00	80	4098
Foodland Amelia Heights and SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Whole of State	12 Sept., 2002 – 30 June, 2005	AG138/02	20/09/02	Unpublished	
Foodland Associated Limited Cold Store Maintenance Employees Enterprise Bargaining Agreement 1995, No. AG138/1995	Foodland Associated Limited, Kewdale	1 July, 1995 - 1 July, 1997	AG138/95	8/9/95	75	2739
Foodland Bayswater (Beechboro Road) and SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Whole of State	12 Sept., 2002 – 30 June, 2005	AG123/02	20/09/02	Unpublished	
Foodland Bayswater (Whatley Crescent) and SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Whole of State	12 Sept., 2002 – 30 June, 2005	AG132/02	20/09/02	Unpublished	
Foodland Bindoon and SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Whole of State	12 Sept., 2002 – 30 June, 2005	AG127/02	20/09/02	Unpublished	
Foodland Boddington and SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Whole of State	12 Sept., 2002 – 30 June, 2005	AG122/02	20/09/02	Unpublished	
Foodland Dowerin and SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Whole of State	12 Sept., 2002 – 30 June, 2005	AG136/02	20/09/02	Unpublished	
Foodland Lesmurdie and SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Whole of State	12 Sept., 2002 – 30 June, 2005	AG129/02	20/09/02	Unpublished	
Foodland Manning and SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Whole of State	20 Sept., 2002 – 30 June, 2005	AG126/02	20/09/02	Unpublished	
Foodland Merredin and SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Whole of State	12 Sept., 2002 – 30 June, 2005	AG141/02	20/09/02	Unpublished	
Foodland Mukinbudin and SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Whole of State	12 Sept., 2002 – 30 June, 2005	AG128/02	20/09/02	Unpublished	
Foodland Ravensthorp and SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Whole of State	6 Nov., 2002 – 30 June, 2005.....	AG164/02	18/11/02	Unpublished	
Foodland Tarcoola and SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Whole of State	12 Sept., 2002 – 30 June, 2005	AG130/02	20/09/02	Unpublished	
Foodland Toodyay and SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Whole of State	12 Sept., 2002 – 30 June, 2005	AG140/02	20/09/02	Unpublished	
Foodland Wagin and SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Whole of State	12 Sept., 2002 – 30 June, 2005	AG134/02	20/09/02	Unpublished	
Foodys Express and SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Whole of State	12 Feb., 2003 – 30 June, 2005	AG216/02	21/2/03	Unpublished	
Forbes Jolly/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	25 Oct., 2004 – 30 June, 2007.....	AG207/04	9/12/04	Unpublished	
Formfast Constructions Industrial Agreement	Whole of State	12 Feb., 1999 - 31 Oct., 1999.....	AG22/99	18/5/99	79	1598
Formstruct Industrial Agreement	Accent Nominees Pty Ltd t/a Formstruct	23 Nov., 1994 - 31 July, 1995.....	AG9/95	9/2/95	75	582
Formstruct Industrial Agreement	Accent Nominees Pty Ltd t/a Formstruct	23 Nov., 1994 - 31 July, 1995.....	AG9/95	9/2/95	76	680
Forrestfield CBH Grain Silo Construction Project Agreement 1996	Transfield Construction Pty Ltd, CBH Silos at Forrestfield	Commencement - Completion	AG328/96	12/2/97	77	658
Forward Engineers Agriculture Workshop Enterprise Agreement 1999. (Replaces No. AG62/98)	Welshpool, WA	14 Apr., 1999 - 13 Oct., 1999	AG116/99	3/8/99	79	2156
Foster's Australia North Fremantle Agreement 2006 (Replaces CUB North Fremantle Agreement 2004 No. AG47/05)	Matilda Bay Brewing Company Limited	22 Feb., 2006 – 20 Feb., 2009.....	AG32/06	24/3/06	Unpublished	
Fowcon Duct Installation Services Pty Ltd/BLPPU and the CMETU Collective Agreement 2000	Whole of State	1 Nov., 1999 - 1 Nov., 2002.....	AG139/00	19/6/00	80	2943
The FPU and Peters (WA) Ltd Balcatta Production Employees' Traineeship Agreement	Peters (WA) Ltd, Balcatta Operations	18 Nov., 1996 - 18 Nov., 1998.....	AG262/96	23/12/96	77	48
Framerite Installations/CFMEUW Industrial Agreement 2005-2008	Whole of State	1 Nov., 2005 - 31 Oct., 2008.....	AG217/05	20/01/06	Unpublished	
Frankipile Australia Pty Ltd/CFMEUW Industrial Agreement 2002 – 2005 (Replaces Frankipile/BLPPU and the CMETU Collective Agreement 2000 No. AG228/00. For prior details, see Vol. 84, Part 1)	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	24 Feb., 2004 - 31 Oct., 2005.....	AG28/04	2/7/04	Unpublished	

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Frank Peter Longshaw Industrial Agreement	Frank Peter Longshaw	15 Sept., 1995 - 31 July, 1997	AG183/95	10/10/95	75	2977
Fred Mason Contract Bricklayer/CFMEUW Industrial Agreement 2002-2005 (Cancels the FCL Constructions/BLPPU ... Agreement 1999 No. AG216/99. For prior details, see Vol. 83, Part 1)	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	3 Dec., 2002 - 31 Oct., 2005	AG240/02	7/5/03	Unpublished	
Fremantle Foundry & Engineering Co. Pty Ltd Enterprise Bargaining Agreement 1999 (Replaces AG301/96)	Fremantle, WA	15 April, 1999 - 14 April, 2001	AG163/99	2/12/99	79	3613
Fremantle Hospital Patient Care Assistants Agreement 1994	Board of Fremantle Hospital (Fremantle Hospital) and employees working as Patient Care Assistant	30 Dec., 1994 - 29 Dec., 1995	AG1/95	6/2/95	75	384
Fremantle Port Authority Administrative Agreement 1993	Clerical, Technical and Administrative Employees in Fremantle Port Authority	3 Dec., 1993	AG78/93	25/1/94	74	227
Fremantle Prison - LHMU - Industrial Agreement 2005	Whole of State	2 Mar., 2005 - 31 Dec., 2006	AG16/05	2/3/05	Unpublished	
Fremantle Steel Fabrication/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	22 Oct., 2003 - 31 Oct., 2005	AG275/03	6/9/04	Unpublished	
Freo Machinery (Concrete Cutting Division)/CFMEUW Industrial Agreement 2002-2005	Perth Metropolitan employees	27 July, 2004 - 31 Oct., 2005	AG137/04	27/8/04	Unpublished	
Fresh Food Corner Supermarket and SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Whole of State	6 Nov., 2002 - 30 June, 2005	AG174/02	18/11/02	Unpublished	
Frimley Nominees Industrial Agreement	Frimley Nominees Pty Ltd	23 Aug., 1996 - 31 July, 1997	AG203/96	16/9/96	76	3889
Fusion Recruitment Group Pty Ltd - TWU Enterprise Bargaining Agreement 2006	Whole of State	9 Mar., 2006 - 31 Dec., 2007	AG40/06	24/3/06	Unpublished	
Future Tech/BLPPU and the CMETU Collective Agreement 2001	Whole of State	30 Mar., 2001 - 1 Nov., 2002	AG58/01	3/5/01	Unpublished	
F.W.G./CFMEUW Industrial Agreement 2002 - 2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	4 May, 2004 - 31 Oct., 2005	AG80/04	23/6/04	Unpublished	
G & A Carpet Choice/CFMEUW Industrial Agreement 2005-2008 (Replaces G & A Floorcoverings/CFMEUW Industrial Agreement 2002-2005 No. AG286/04)	Whole of State	1 Nov., 2005 - 31 Oct., 2008	AG21/06	24/03/06	Unpublished	
G & N Conform/CFMEUW Industrial Agreement 2005-2008 (Replaces G & N Con-Form ... Agreement 2002-2005 No. AG227/02. For prior details, see Vol. 85, Part 1)	Western Australia	1 Nov., 2005 - 31 Oct., 2008	AG141/05	1/12/05	Unpublished	
G & N Formwork Pty Ltd/CFMEUW Industrial Agreement 2005-2008 (Replaces previous G & N Formwork ... Agreement 2002-2005 No. AG296/02. For prior details, see Vol. 85, Part 1)	Western Australia	1 Nov., 2005 - 31 Oct., 2008	AG142/05	1/12/05	Unpublished	
G & P Tagni Concrete Pumping Industrial Agreement	Whole of State	19 June, 1997 - 31 July, 1999	AG114/97	8/7/97	77	1917
G & P Tagni Concrete Pumping/BLPPU Collective Agreement 1999 (Cancels previous G & P Tagni ... Agreement No. AG114/97. For prior details, see Vol. 79, Part 2)	Whole of State	1 Nov., 1999 - 1 Nov., 2002	AG252/99	8/3/00	80	1110
Gadsden Rheem (W.A.) Enterprise Bargaining Agreement	Whole of State	8 Dec., 1992 - 30 June, 1993	AG17/1992	24/12/92	73	2042
Gadsden Rheem (W.A.) Enterprise Agreement	Whole of State	1 Jan., 1994 - 31 Mar., 1995	AG14/94	9/3/94	74	594
Gaol Officers' Industrial Agreement	Whole of State	1 July, 1994 - 31 Dec., 1997	AG64/94	10/8/94	74	1895
Garland Ellas Taylor Pty Ltd Enterprise Bargaining Agreement	Whole of State	1 Jan., 1997 - 31 Dec., 1997	AG116/97	4/7/97	77	1673
Gascoyne Trading Workshop Enterprise Bargaining Agreement 1994	Gascoyne Trading Pty Ltd Workshop Operation	4 Jan., 1994 - 3 Jan., 1995	AG89/94	21/1/94	74	228
Gauche Holdings/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	25 Oct., 2004 - 30 June, 2007	AG222/04	9/12/04	Unpublished	
G Construction Engineering Industrial Agreement	Paddison Pty Ltd t/a G Construction Engineering	20 Oct., 1995 - 31 July, 1997	AG270/95	7/12/95	76	108
GEC Avery Australia Limited Enterprise Bargaining Agreement 1995	GEC Avery	1 Aug., 1995 - 31 July, 1997	AG118/95	8/8/95	75	2532

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Gemini Formwork Industrial Agreement	Apollo Holdings Pty Ltd t/a Gemini Formwork	8 Sept., 1995 - 31 July, 1997.....	AG144/95	10/10/95	75	2978
Gemini Formwork/BLPPU and the CMETU Collective Agreement 2000 (Replaces previous Gemini Formwork ... Agreement No. AG5/98. For prior details, see Vol. 80, Part 1)	Whole of State	16 Oct., 2000 - 1 Nov., 2002.....	AG247/00	8/11/00	80	5036
Gemstate/CFMEUW Industrial Agreement 2005-2008	Whole of State	1 Nov., 2005 - 31 Oct., 2008.....	AG252/05	17/2/06	Unpublished	
Gemstate Scaffolding/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	16 July, 2003 – 31 Oct., 2005	AG178/03	6/9/04	Unpublished	
Geo A. Esslemont & Son Industrial Agreement	C.H. Day & Co Pty Ltd t/a Geo A. Esslemont & Son	18 Oct., 1995 - 31 July, 1997	AG277/95	7/12/95	76	109
Geo A. Esslemont & Son Industrial Agreement	Whole of State	25 Nov., 1997 - 31 Oct., 1999.....	AG376/97	16/6/98	78	2696
Geraldton Brickworks Pty Ltd Enterprise Agreement 2000. (Replaces previous Geraldton Brickworks ... Agreement No. AG99/98. For prior details, see Vol. 80, Part 1)	Geraldton Brickworks Pty Ltd at Bootenal	24 May, 2000 - 30 June, 2002.....	AG158/00	25/7/00	80	3195
Geraldton Building Company Holiday Village - Newman Industrial Agreement	Geraldton Building Company	30 Apr., 1996 - 31 July, 1997.....	AG127/96	10/6/96	76	1825
Geraldton Building Company Lawson Apartments Industrial Agreement	Geraldton Building Company	30 Apr., 1996 - 31 July, 1997.....	AG123/96	10/6/96	76	1825
Geraldton Building Co Pty Ltd Construction Site Agreement	Whole of State	16 Mar., 1998 - 1 Apr., 1998.....	AG13/98	30/4/98	78	1645
Geraldton Meat Export Pty Ltd. AMIEU Processing Agreement (2005) (Cancels previous Geraldton Meat Export ... Agreement (2002) No. AG143/02. For prior details, see Vol. 85, Part 1)	Geraldton Plant	13 July, 2005 – 30 June, 2006.....	AG208/05	23/09/05	Unpublished	
GFS/BLPPU and the CMETU Collective Agreement 2001	Whole of State	16 Feb., 2001 - 1 Nov., 2002.....	AG28/01	27/3/01	Unpublished	
Gilbarco Aust. Ltd (Perth) Enterprise Agreement 1996. (Replaces AG134/1974)	Gilbarco Aust. Ltd, Belmont	14 Aug., 1996 - 13 Aug., 1998.....	AG179/96	14/8/96	76	3893
Gilbarco Aust. Ltd. (Western Australian Branch) Registered Agreement 1998	Whole of State	15 Aug, 1998 - 14 Aug, 2000.....	AG15/99	28/5/99	79	1602
Gilchris/BLPPU and the CMETU Collective Agreement 1999 (Cancels previous Gilchris Industrial Agreement No. AG7/98. For prior details, see Vol. 79, Part 2)	Whole of State	1 Nov., 1999 - 1 Nov., 2002.....	AG248/99	8/3/98	80	1115
Gilchris Pty Ltd/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	6 Dec., 2002 – 31 Oct., 2005.....	AG264/02	7/5/03	Unpublished	
Glassmasta Systems Pty Ltd/BLPPU and the CMETU Collective Agreement 2001	Whole of State	7 May, 2001 - 1 Nov., 2002	AG83/01	31/5/01	Unpublished	
Glassmasta Systems Pty Ltd/BLPPU Collective Agreement 2001	Whole of State	1 May, 2001 - 1 Nov., 2002	AG84/01	31/5/01	Unpublished	
Glass Power/BLPPU and the CMETU Collective Agreement 2001	Whole of State	19 Apr., 2001 - 1 Nov., 2002	AG68/01	14/5/01	Unpublished	
Glass Works (WA) P/L/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	22 Oct., 2003 – 31 Oct., 2005	AG276/03	6/9/04	Unpublished	
Glazewell/CFMEUW Industrial Agreement 2005-2008 (Replaces previous Glazewell Pty Ltd/ ... Agreement 2002-2005 No. AG54/03. For prior details, see Vol. 85, Part 1)	Whole of State	1 Nov., 2005 – 31 Oct., 2008	AG203/05	8/11/05	Unpublished	
Glen Forrest Supermarket and SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Whole of State	6 Nov., 2002 – 30 June, 2005.....	AG171/02	18/11/02	Unpublished	
Glen Ross Bricklaying Industrial Agreement	Glen Ross Bricklaying	1 Aug., 1995 - 31 July, 1997.....	AG65/95	18/5/95	75	1874
Glen Ross Bricklaying Industrial Agreement	Glen Ross, Rick Bate and Paul Anderson t/a Glen Ross Bricklaying	29 Nov., 1995 - 31 July, 1997.....	AG305/95	10/1/96	76	354
Glen Ross Bricklaying Industrial Agreement	Whole of State	15 Sept., 1997 - 31 Oct., 1999.....	AG187/97	1/10/97	77	2592

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Title	Area Governed	Date of Operation	No. of Agreement	Date Delivered	Reference Vol.	Page
Global Electrotech Constructions Pty Ltd Commercial Enterprise Bargaining Agreement 2003. (Replaces Global Electrotech Pty Ltd ... Agreement 2003 AG20/03. For prior details, see Vol. 83, Part 2)	State of WA	1 Nov., 2003 – 30 Oct., 2005	AG293/03	29/03/04	Unpublished	
Global Installations Pty Ltd Industrial Agreement	Whole of State	18 Dec., 1997 - 31 Oct., 1999	AG349/97	25/2/98	78	876
Globe Meats Bellevue Enterprise Agreement 2001	Whole of State	13 July, 2001 - 1 Jan., 2004	AG53/01	13/7/01	Unpublished	
Globe Meats Bellevue Enterprise Agreement 1997	Whole of State	Commencement - Completion	AG129/97	14/07/97	77	1919
GMF Contractors Industrial Agreement	GMF Contractors PTY Ltd	27 Feb., 1996 - 31 July, 1997	AG62/96	17/4/96	76	1313
GMF Contractors/CFMEUW Industrial Agreement 2005-2008 (Replaces previous GMF Contractors ... Agreement 2002-2005 No. AG164/03. For prior details, see Vol. 85, Part 2)	Whole of State	1 Nov., 2005 - 31 Oct., 2008	AG251/05	17/2/06	Unpublished	
Golden Egg Farms' (Food Preservers) Agreement 2005 -The (Cancels previous Golden Egg Farms ... Agreement 2004 - The, No. AG25/04. For prior details, see Vol. 84, Part 2)	West Coast Eggs Limited t/as Golden Egg Farm (GEF)	Date of transition from old company to new company – 1 Aug., 2006	AG19/05	5/5/05	Unpublished	
Goninan WA Division Bassendean Enterprise Bargaining Agreement	Establishment of A. Goninan and Co. Limited (WA Division) operations, Bassendean	1 Sept., 1993 - 28 Feb., 1995	AG48/93	1/9/93	73	2386
Goodman Fielder Consumer Foods Ltd (Western Australia) Enterprise Agreement 2004. (Replaces previous Goodman Fielder ... Agreement 2002 No. AG24/03.) For prior details, see Vol. 84, Part 1)	Goodman Fielder Consumer Foods Ltd, State of Western Australia	22 Sept., 2004 – 31 May, 2006	AG122/04	22/09/04	Unpublished	
Goodman Fielder Consumer Foods (Canningvale) Enterprise Agreement 2004/2005 (Replaces Goodman Fielder Consumer ... Agreement No. AG86/02 in so far as it applies to the Canningvale site. For prior details, see Vol. 83, Part 2)	Whole of State	1 Jan., 2004 – 31 Dec., 2005	AG85/04	8/6/04	Unpublished	
Good Samaritan Industries Supported Employees Industrial Agreement of 2004 (Replaces previous Good Samaritan ... Agreement 2003, No. AG105/03. For prior details, see Vol. 84, Part 1)	Whole of State	29 Sept., 2004 - 26 Sept., 2007	AG154/04	29/09/04	Unpublished	
Good Samaritan Industries Industrial Agreement 2001. (Replaces previous Good Samaritan ... Agreement No. AG172/99. For prior details, see Vol. 81, Part 2)	Whole of State	19 Dec., 2001 - 1 Oct., 2002	AG245/01	19/12/01	Unpublished	
Gonzo's Glass and Aluminium/BLPPU and the CMETU Collective Agreement 2001	Whole of State	3 Aug., 2001 - 1 Nov., 2002	AG162/01	29/8/01	Unpublished	
Gordon & Gotch Limited Enterprise Bargaining Agreement 1996	Gordon & Gotch Limited	31 Jan., 1996 - 31 Jan., 1997	AG35/96	4/4/96	76	958
Gordon & Gotch Limited Enterprise Bargaining Agreement, 1997	Whole of State	1 Feb., 1997 - 31 Jan., 1999	AG43/97	7/3/97	77	660
Government Services (Miscellaneous) General Agreement 2007 (Cancels and Replaces Government Services ... Agreement 2005 No. AG7/05; Children's Services (Government) General Agreement 2004 No. AG282/04 and Department of Justice ... Agreement 2005 No. AG14/05. For prior details, see Vol. 86, Part 2)	Whole of State	18 May, 2007	AG39/07	18/5/07	87	1010
		Correcting Order No. AG39/2007 Term of Agreement, Wages, Supported Wage, Child Care Givers and Canteen Workers - Variations).....	...	11/9/07	87	2668
Government School Administrators' Enterprise Agreement 1996	Education Department of Western Australia	6 Mar., 1996 - 6 Mar., 1998	AG81/96	16/5/96	76	1834
Government School Teachers' Enterprise Agreement 1996	Education Department of Western Australia	6 Mar., 1996 - 6 Mar., 1998	AG82/96	16/5/96	76	1842
Governor's Establishment Gardening Staff Enterprise Agreement 1995	Official Secretary to His Excellency the Governor of Western Australia	13 Mar., 1995 - 12 Oct., 1996	AG47/95	13/4/95	75	1594
Graceville Women's Centre - Salvation Army Industrial Agreement 2002 (Replaces previous Graceville Women's ... Agreement No. AG17/00. For prior details, see Vol. 81, Part 2)	Graceville Women's Centre	29 May, 2002 - 28 May, 2003	AG66/02	29/5/02	Unpublished	
Graffiti Systems Australia/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	25 Oct., 2004 – 31 Oct., 2005	AG185/04	29/11/04	Unpublished	

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Title	Area Governed	Date of Operation	No. of Agreement	Date Delivered	Reference Vol..	Page
Grain Handling (Maintenance Workers) Enterprise Agreement 1994	Whole of State	3 Feb., 1994 - 18 June, 1996	AG8/94	9/2/94	74	594
Grant Electrical Industries Pty Ltd Enterprise Bargaining Agreement	Grant Electrical Industries Pty Ltd	15 Dec., 1993 - 1 Jan., 1995	AG60/93	24/12/94	74	83
Grant Electrical Redundancy Agreement 1994	Grant Electrical Industries Pty Ltd	4 Aug., 1994 - 1 Jan., 1995	AG67/94	5/8/94	74	1899
GRANWOOD FLOORING/CFMEUW Collective Agreement 2002	Whole of State	12 Mar., 2002 - 1 Nov., 2002	AG45/02	11/4/02	Unpublished	
Graylands Hospital Security Officers Agreement 1995	Graylands Hospital	7 Apr., 1995 - 14 Dec., 1995	AG113/95	12/10/95	75	2979
Grays Carpentry & Construction/CFMEUW Industrial Agreement 2002 – 2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	4 May, 2004 - 31 Oct., 2005	AG81/04	23/6/04	Unpublished	
GRD Kirfield Limited Industrial Agreement for the St Georges Terrace and Victoria Street Apartment Project	Whole of State	16 Mar., 2001 - 31 Oct., 2002	AG49/01	12/4/01	Unpublished	
Greenbushes Mine Maintenance (Enterprise Bargaining) Industrial Agreement 1993	Maintenance Employees at Greenbushes Mine at Gwalia Consolidated Ltd	23 Dec., 1993 - 22 Dec., 1994	AG51/93	23/12/93	74	83
Greenmount Formwork/BLPPU and the CMETU Collective Agreement 2001	Whole of State	21 Aug., 2001 - 1 Nov., 2002	AG175/01	17/9/01	Unpublished	
Gregory Aylin Contracting/CFMEUW Industrial Agreement 2005-2008 (Replaces previous Gregory Aylin Contracting ... Agreement 2002 – 2005 No. AG90/04. For prior details, see Vol. 85, Part 2)	Western Australia	1 Nov., 2005 – 31 Oct., 2008	AG248/05	17/2/06	Unpublished	
Gregory's (Earthmoving Contractors) Subiaco Grandstand Construction Project Agreement 1994	Gregory's (Earthmoving Contractors)	Commencement - Completion	AG51/95	16/5/95	75	1875
Gregory's Plumbing & Pipeline Services Industrial Agreement	Odin Central Services Pty Ltd t/a Gregory's Plumbing & Pipeline Services	24 July, 1996 - 31 July, 1997	AG194/96	11/9/96	76	3903
Gregory's Plumbing & Pipeline Services Industrial Agreement	Whole of State	11 Dec., 1998 - 31 Oct., 1999	AG269/98	2/2/99	79	435
Greif Australia Pty Limited – Perth Enterprise Bargaining Agreement 2003	Whole of State	1 Apr., 2003 – 31 Mar., 2006	AG258/03	11/12/03	Unpublished	
Griffiths Taylor Retaining Wall & Bricklaying Industrial Agreement	Whole of State	16 Sept., 1998 - 31 Oct., 1999	AG182/98	17/12/98	79	165
Gromark Packaging Pty Ltd Kewdale Plant Enterprise Agreement 1995	Gromark Packaging Pty Ltd (Kewdale Plant)	1 June, 1995 - 30 June, 1996	AG128/95	3/10/95	75	2742
Groundwater Control Pty Ltd/BLPPU and the CMETU Collective Agreement	Whole of State	11 Sept., 2001 - 1 Nov., 2002	AG188/01	25/9/01	Unpublished	
Ground Water Control (1974) Industrial Agreement	Jason Nominees Pty Ltd as trustees for the Jason Unit Trust t/a Ground Water Control (1974)	6 Dec., 1995 - 31 July, 1997	AG317/95	10/1/96	76	356
Ground and Foundation Supports Industrial Agreement	Ground and Foundation Supports Pty Ltd	1 Nov., 1996 - 31 July, 1997	AG95/95	1/11/96	76	4540
Group Training - Perth (Inc) Agreement 1998	Whole of State	1 Jan., 1998 - 31 Dec., 1999	AG34/98	21/5/98	78	2052
Grove Construction Service Pty Ltd Industrial Agreement	John Holland Construction Council House Perth Site	16 July, 1998 - 31 Oct., 1999	AG130/98	13/11/98	78	4587
Grove Construction Service Pty Ltd New Metro Rail Southern Suburbs Rail Project, Agreement 2005	New Metro Rail Project Southern Suburbs Rail Project	27 July, 2005 – 1 July, 2006	AG235/05	9/6/06	Unpublished	
Guildford Grammar School Enterprise Agreement 1996. (Replaces AG11/1995)	Guildford Grammar School	1 Jan., 1996 - 31 Dec., 1997	AG60/96	12/3/96	76	684
Gumptive Roofing and Maintenance/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	8 Nov., 2004 – 30 June, 2007	AG256/04	13/12/04	Unpublished	
Gunns Limited Enterprise Agreement 2004 (Replaces and Cancels the Sotico Pty Ltd Enterprise Agreement 2003 No. AG288/2003)	South-West Land Division Western Australia	11 Oct., 2004 – 30 June, 2006	AG151/04	7/10/04	Unpublished	
H&S Roof Tiling Service Pty Ltd/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	9 Nov., 2004 – 30 June, 2007	AG269/04	17/01/05	Unpublished	
Hairdressing SDA - Carl Ridolfo Pty Ltd T/A Ridolfo Hair Design Enterprise Agreement 2000	State of WA	15 Dec., 2000 - 31 May, 2001	AG282/00	15/12/00	81	121

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Hairdressing SDA - Carl Ridolfo Pty Cheveux By Anthony Pty Ltd T/A Cheveux by Anthony Enterprise Agreement 2000	State of WA	15 Dec., 2000 - 31 May, 2001	AG279/00	15/12/00	81	122
Hairdressing SDA – Coffiano Holdings Pty Ltd T/A Studio Picasso Enterprise Agreement 2000	State of WA	15 Dec., 2000 - 31 May, 2001	AG278/00	15/12/00	81	123
Hairdressing SDA - Grand Court Corp Pty Ltd Enterprise Agreement 2000	State of WA	15 Dec., 2000 - 31 May, 2001	AG277/00	15/12/00	81	124
Hairdressing SDA - Joanne Steel T/A Jo's for Hair Enterprise Agreement 2000	State of WA	15 Dec., 2000 - 31 May, 2001	AG283/00	15/12/00	81	125
Hairdressing SDA - Judith Clarke T/A Distinctions Hair Design Enterprise Agreement 2000	State of WA	15 Dec., 2000 - 31 May, 2001	AG281/00	15/12/00	81	126
Hairdressing SDA - Luciano's Hair Fashion for Men Enterprise Agreement 2000	State of WA	15 Dec., 2000 - 31 May, 2001	AG276/00	15/12/00	81	128
Hairdressing SDA - Starra Pty Ltd T/A Diva Hair Studio & Sinatra's for Hair Enterprise Agreement 2000	State of WA	15 Dec., 2000 - 31 May, 2001	AG280/00	15/12/00	81	129
Hale School (Enterprise Bargaining) Agreement 2006 (Replaces and Cancels previous Hale School ... Agreement 2006 No.. AG17/06. For prior details, see Vol. 87, Part 2)	Whole of State	15Apr., 2008 - 31 Dec., 2010	AG4/08	15/4/08	Unpublished	
Hale School Non-Teaching Staff (Enterprise Bargaining) Agreement 2009 (Replaces and Cancels previous Hale School ... Agreement 2007 No. AG64/07. For prior details, see Vol. 89, Part 1)	Whole of State	7 July, 2009 - 31 Dec., 2011	AG30/09	7/7/09	Unpublished	
Hall's Creek Caravan Park and SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Whole of State	6 Nov., 2002 – 30 June, 2005	AG172/02	18/11/02	Unpublished	
Hammer Outdoor Design Industrial Agreement	Christopher Hammer t/a Hammer Outdoor Design	8 Sept., 1995 - 31 July, 1997	AG165/95	10/10/95	75	2981
Hannan's Foodmart and SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Whole of State	6 Nov., 2002 – 30 June, 2005	AG187/02	18/11/02	Unpublished	
Hardaz Concrete/BLPPU and the CMETU Collective Agreement 1999 (Replaces previous Hardaz Concrete Agreement No. AG155/97. For prior details, see Vol. 79, Part 2)	Whole of State	1 Nov., 1999 - 1 Nov., 2002	AG209/99	24/3/00	80	1132
Hardaz Concrete/CFMEUW Industrial Agreement 2005-2008 (Replaces previous Hardaz Concrete ... Agreement 2002-2005 No. AG263/02 For prior details, see Vol. 85, Part 2)	Whole of State	1 Nov., 2005 - 31 Oct., 2008	AG190/02	20/01/06	Unpublished	
Hardie Iplex Pipeline Systems – Osborne Park (Enterprise Bargaining) Agreement 1993	Hardie Iplex Pipeline Systems - Osborne Park	17 Jan., 1994 - 16 Jan., 1995	AG84/93	17/1/94	74	230
Hargreaves Roofing/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	25 Oct., 2004 – 30 June, 2007	AG247/04	10/12/04	Unpublished	
Harnischfeger of Australia Pty Ltd Western Region Workshop, Repair, Manufacture and Field, Assembly, Repair and Maintenance Agreement 2003 (Replaces previous Harnischfeger of Australia ... Agreement No. AG257/00. For prior details , see Vol. 83, Part 2)	Harnischfeger of Australia Pty Ltd (Western Region)	1 Nov., 2003 - 31 Oct., 2006	AG38/04	26/03/04	Unpublished	
Hart Roofing/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	25 Oct., 2004 – 30 June, 2007	AG219/04	9/12/04	Unpublished	
Hatch Industrial Services Pty Ltd Industrial Agreement	Hatch Industrial Services Pty Ltd	19 Jan., 1996 - 31 July, 1997	AG14/96	18/4/96	76	1315
Hatch Industrial Services Industrial Agreement	Whole of State	20 Nov., 1997 - 31 Oct., 1999	AG334/97	20/3/98	78	1224
HB Brady Co Pty Ltd Wall and Ceiling Industrial Agreement	Whole of State	17 Oct., 1996 - 31 July, 1997	AG315/96	12/3/97	77	907
Healthcare Linen Pty Ltd Engineering Enterprise Agreement 1996	Whole of State	15 Apr., 1997 - 14 Apr., 1999	AG47/97	4/6/97	77	1412
Healthcare Linen Pty Ltd Transport Enterprise Agreement 1996	Whole of State	15 Apr., 1997 - 14 Apr., 1999	AG46/97	4/6/97	77	1419
Heat Containment Industries Enterprise Agreement 1993	Heat Containment Industries, Beard Street,	21 Oct., 1993 - 20 Oct., 1995	AG59/93	1/12/93	73	3400
Hedland Bus Lines Enterprise Agreement 1994	Hedland Bus Lines, Port Hedland	28 June, 1994 - 28 Dec., 1996	AG35/94	8/8/94	74	1900

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Henvest Pty Ltd/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	25 Oct., 2004 – 30 June, 2007.....	AG205/04	9/12/04	Unpublished	
HHH Transport/CFMEUW Hazelmere Industrial Agreement 2002-2005	Hazelmere Depot	2 May, 2005 – 20 Dec., 2005	AG78/05	1/7/05	Unpublished	
Higginsons Painting Services Industrial Agreement	Ard O'Donnell Pty Ltd t/a Higginsons Painting Service	21 Mar., 1996 - 31 July, 1997	AG89/96	21/6/96	76	2208
High Rise Painting Contractors/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	23 Mar., 2004 – 31 Oct., 2005	AG52/04	6/9/04	Unpublished	
Hi Tec Demolition Industrial Agreement	Hi Tec Demolition Company Pty Ltd	26 Apr., 1995 - 25 Apr., 1997	AG81/95	21/7/95	75	2365
Hire Access Scaffold Scaffolding Yard/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	27 July, 2004 – 31 Dec., 2005.....	AG138/04	27/8/04	Unpublished	
HJ & JW Mast/BLPPU and the CMETU Collective Agreement 1999 (Replaces previous HJ & JW Mast ... Agreements No. AG217/1995, No. AG38/96 & No. AG302/97. For prior details, see Vol. 79, Part 2)	Whole of State	1 Nov., 1999 - 1 Nov., 2002.....	AG217/99	24/3/00	80	1138
H Migas & Sons Earthworks/CFMEUW Collective Agreement 2002	Whole of State	7 Feb., 2002 - 1 Nov., 2002.....	AG19/02	13/03/02	Unpublished	
Hoist Hire Pty Ltd/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	24 June, 2003 – 31 Oct., 2005.....	AG161/03	6/9/04	Unpublished	
Holyoake Bricklaying/BLPPU and the CMETU Collective Agreement 2000 (Replaces previous Holyoake Bricklaying ... Agreement No. AG172/97.	Whole of State	1 Nov., 1999 - 1 Nov., 2002.....	AG89/00	27/4/00	80	1836
Homes of Peace (Salaried Officers) Agreement 1976	Workers employed by Homes of Peace (Inc.)	19 Jan., 1976 to 18 Jan., 1979	AG6/77	9/2/77	57	317
Horse Industry Traineeship Agreement	Whole of State	8 Jan., 1989 to 7 Jan., 1990	AG5/89	5/9/89	69	2701
Horticultural Career Start Traineeship Industrial Agreement	Whole of State	27 Nov., 1995 - 26 Nov., 1996.....	AG262/95	21/12/95	76	112
Hospital Assistant Traineeship Industrial Agreement	Whole of State	Commencement by trainees of their traineeship to completion of Traineeships.....	AG10/86	19/2/87	67	347
Hospital Salaried Officers (Mayne WA Hospitals) Enterprise Bargaining Agreement 2003 (Replaces HSO, Mayne Health (Mount, Glengarry ... Agreement 2000 No. AG11/01 and HSO (Joondalup Health Campus) ... Agreement 2000 No. AG4/01). For prior details, see Vol. 83, Part 1)	Attadale Hospital, Glengarry Hospital, Mount Hospital and Joondalup Health Campus	11 Sept., 2003 - 31 Aug, 2005	AG210/03	12/09/03	Unpublished	
Hospital Salaried Officers (Private Hospitals Award No. 28/1977 Clerical Traineeships) Industrial Agreement	Whole of State	2 Sept., 1988 to 22 Sept., 1989	AG3/89	31/5/89	69	1958
Hospital Salaried Officers (Private Hospitals Award No. 28/1977 Clerical Traineeships) Industrial Agreement	Whole of State	31 Dec., 1988 to 30 Dec., 1989.....	AG4/89	31/5/89	69	1959
Hospitality Industry – Australian Hotels Association (WA Branch - Accommodation – Division) Industrial Agreement 2000 (Replaces & Cancels previous Hospitality Industry ... Agreement No. AG257/98. For prior details, see Vol. 80, Part 2)	Whole of State	5 Feb., 2001 - 4 Feb., 2002.....	AG231/00	5/2/01	81	491
Hot Briquetted Iron Project Agreement	Construction Work on Hot Briquetted Iron Project	5 Feb., 1997 - 31 July, 1998.....	AG62/97	11/3/97	77	910
Howard Porter Pty Ltd Enterprise Bargaining Agreement 2001. (Replaces previous Howard Porter ... Agreements No. AG236/95; No. AG48/97 and No. AG176/99. For prior details, see Vol. 81, Part 2)	O'Connor Operations	2 Nov., 2001 - 1 May, 2002	AG203/01	2/11/01	Unpublished	
HSOA Peel Health Campus Administrative, Clerical and Allied Health Staff Agreement 2003 (Replaces previous HSOA Peel Health ... Agreement No. AG88/01. For prior details, see Vol. 82, Part 2)	Whole of State	22 May, 2003 - 31 Oct., 2004	AG127/03	28/5/03	Unpublished	
Hugh Smith Bricklaying Industrial Agreement	Whole of State	27 Nov., 1997 - 31 Oct., 1999.....	AG351/97	10/2/98	78	902
Hugh & Co Contracting Industrial Agreement	Whole of State	17 Nov., 1998 - 31 Oct., 1999.....	AG251/98	17/12/98	79	184

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Huhtamaki Australia Limited - Western Australian Site Enterprise Agreement 2005 (Replaces Huhtamaki Australia ... Agreement 2003 No. AG 55/04.)	24 Jackson Street, Bayswater, WA	1 July, 2005 - 30 June, 2007	AG147/05	21/10/05	Unpublished	
HSU Peel Health Campus Administrative, Clerical and Allied Health Staff Agreement 2004	Whole of State	18 Feb., 2005 - 31 Oct., 2006	AG6/05	18/02/05	Unpublished	
Hyrize Constructions/CFMEUW Industrial Agreement 2002 – 2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	27 July, 2004 - 31 Oct., 2005	AG139/04	27/8/04	Unpublished	
Hytech Fluid Connectors/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	25 Oct., 2004 – 30 June, 2007	AG233/04	10/12/04	Unpublished	
I & C Fixing & Maintenance/BLPPU and the CMETU Collective Agreement 2000	Whole of State	1 Nov., 1999 - 1 Nov., 2002	AG146/00	19/6/00	80	2975
i.d. entity.wa and LHMU Direct Care Workers Agreement 2008 (Replaces and Cancels previous i.d. entity.wa ... Agreement 2005 No. AG68/05. For prior details, see Vol. 88, Part 1)	Every Workplace of the Employer's Business within the State of Western Australia	1 July, 2007 - 30 June, 2010	AG13/08	20/8/08	Unpublished	
Iluka Resources Limited Industrial Agreement 2004	Whole of State	2 Sept., 2004 – 2 Sept., 2007	AG150/04	2/9/04	Unpublished	
Imaging The South Enterprise Agreement 2005	Whole of State	23 Sept., 2005 – 23 Sept., 2008	AG181/05	23/9/05	Unpublished	
<i>Improved Concrete Pumping Services (WA) Pty Ltd</i> New Metro Rail Southern Suburbs Rail Project, Structural Project Agreement 2005	New Metro Rail Project Southern Suburbs Rail Project	16 June, 2005 – 1 July, 2006	AG97/05	23/09/05	Unpublished	
Improved Concrete Pumping Services/CFMEUW Industrial Agreement 2005-2008 (Replaces Improved Concrete ... Agreement 2002-2005, No. AG237/02. For prior details, see Vol. 85, Part 1)	Whole of State	1 Nov., 2005 – 31 Oct., 2008	AG194/05	8/11/05	Unpublished	
Independent Living Centre of WA Incorporated Salaried Officers' Industrial Agreement 2005 (Cancels and Replaces previous Independent Living ... Agreement 2002 No. AG116/02.)	Independent Living Centre of W.A. Inc	7 Dec., 2005 - 9 Sept., 2007	AG264/05	7/12/05	86	157
		Order No. AG264/2006 (Correction)	...	12/12/05		
Independent Pump Hire Industrial Agreement	Springboard Holdings Pty Ltd t/a Independent Pump Hire	25 Oct., 1995 - 31 July, 1997	AG278/95	7/12/95	76	115
Independent Wool Dumpers Pty Ltd Agreement 1999 (Replaces & Cancels previous Independent Wool Agreement No. AG58/96)	Whole of State	1 July, 1999 - 30 June, 2000	AG83/00	8/6/00	80	2620
Indo Expo Building Products/CFMEUW Collective Agreement 2002	Whole of State	7 Feb., 2002 - 1 Nov., 2002	AG18/02	13/3/02	Unpublished	
Industrial Blaster/Coater Second Year Training Programme Agreement	Whole of State	21 Jan., 1988 to 21 Jan., 1989	AG2/88	26/5/88	68	1746.
				26/5/88	68	3111
Industrial Blaster/Coater Second Year Training Programme Agreement	Whole of State	21 Jan., 1988 to 21 Jan., 1990	AG3/88	26/5/88	68	1748
Industrial Personnel - TWU Enterprise Bargaining Agreement 2001	Whole of State	6 Feb., 2002 - 31 Dec., 2003	AG242/01	22/2/02	Unpublished	
Inform Construction Industrial Agreement	Inform Construction Pty Ltd	24 Nov., 1995 - 31 July, 1997	AG309/95	10/1/96	76	357
Inghams Enterprise Pty Ltd Distribution Enterprise Bargaining Agreement 2000 (Replaces & Cancels Inghams Enterprises ... Agreement No. AG29/2000. For prior details, see Vol. 80, Part 2)	Whole of State	20 Oct., 2000 - 20 Jan., 2003	AG268/00	15/1/01	81	494
Inghams Enterprises Pty Limited (Maintenance Department) Enterprise Bargaining Agreement 1997. (Replaces previous Ingham Pty Ltd ... Agreement 1995 No. AG 77/96. For prior details, see Vol. 77, part 2)	Baden Street Osborne Park	15 Dec., 1997 - 15 Dec., 1999	AG17/98	20/2/98	78	906
Inghams Enterprises (Telesales) Enterprise Bargaining Agreement 2003 (Replaces and Cancels previous Inghams Enterprises ... Agreement 2001 No. AG89/01. For prior details, see Vol. 82, Part 2)	Whole of State	31 Mar., 2003 - 31 Dec., 2004	AG90/03	31/3/03	Unpublished	
Inghams Enterprise Storemen's Agreement 1994	Inghams Enterprise Ltd, Osborne Park	7 Mar., 1994 - 28 Feb., 1996	AG22/94	12/5/94	74	1515
Inghams (Osborne Park) Shift Work Enterprise Agreement 2003	Inghams Enterprises Pty Ltd Baden Street, Osborne Park Western Australia, 6017	1 Feb., 2003 - 22 July, 2003	AG133/03	7/7/04	Unpublished	

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Title	Area Governed	Date of Operation	No. of Agreement	Date Delivered	Reference Vol..	Page
Inghams Poultry Processing (Osborne Park) Enterprise Agreement 2003 (Replaces previous Inghams Poultry ... Agreements Nos. AG1/99 and AG182/01). For prior details, see Vol. 84, Part 1)	Osborne Park, WA, 6017	23 July, 2003 - 22 July, 2004	AG101/04	20/7/04	Unpublished	
Inghams Poultry Processing (Osborne Park) Enterprise Agreement 2004	Osborne Park, WA, 6017	23 July, 2004 - 22 July, 2006	AG169/04	12/11/04	Unpublished	
Inghams Thornlie (WA) Agreement 1999 (Replaces & Cancels previous Inghams Thornlie Agreement No. AG163/98. For prior details, see Vol. 79, Part 2)	157 Yale Road, Thornlie	12 Aug., 1999 - 11 Aug., 2000.....	AG30/00	29/5/00	80	2623
Innaloo Plasterers/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	3 Oct., 2003 - 31 Oct., 2005	AG259/03	6/9/04	Unpublished	
Inner City Building Co Pty/CFMEUW Industrial Agreement 2002-2005 (Cancels Inner City Builders Industrial Agreement No. AG93/01, 84WAIG58. For prior details, see Vol. 83, Part 1)	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	22 Jan., 2003 - 31 Oct., 2005.....	AG55/03	7/5/03	Unpublished	
Inner City Building Company/CFMEUW Industrial Agreement 2005-2008	Inner City Building Co, "Ellement" site, 996 Hay Street, Perth	15 Feb., 2005 - 31 Dec., 2007	AG60/05	7/6/03	Unpublished	
Innes Transport Pty Ltd and The Transport Workers Union Enterprise Bargaining Agreement 1998	Whole of State	11 Dec., 1998 - 10 Dec., 2000.....	AG24/99	3/3/99	79	780
In-situ Constructions Industrial Agreement	Whole of State	15 Sept., 1998 - 31 Oct., 1998.....	AG184/98	24/11/98	78	4590
Institute of the Blessed Virgin Mary / LHMU Non-Teaching Staff Enterprise Bargaining Agreement, 2009 - The	Western Australia	6 April, 2009 - 31 Dec., 2009.....	AG20/09	11/8/09	Unpublished	
Institute of the Blessed Virgin Mary Teachers Enterprise Bargaining Agreement 2009 - The (This agreement substitutes and replaces the Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 3 of 2006 No. AG3/07)	Whole of State	17 Dec., 2009 - 7 July, 2011.....	AG65/09	17/12/09	Unpublished	
Institute of the Blessed Virgin Mary Non-Teaching Staff Enterprise Bargaining Agreement, 2009 - The. (Cancels and Replaces previous Institute of the Blessed Virgin Mary ... Agreement, 2006 - The, No. AG17/07. For prior details, see Vol. 89, Part 2)	Western Australia	Date of agreement of all parties - 31 Dec., 2009	AG59/09	4/2/10	Unpublished	
Intergrated Power Services Industrial Agreement 2003 AG88 of 2003 (Replaces and Cancels previous Intergrated Power Services Agreement 2000 No. AG266/00. For prior details, see Vol.80, Part 2)	Whole of State	26 Mar., 2003 - 23 Mar., 2006	AG88/03	26/3/03	Unpublished	
Intensive Crop Farming Traineeship Agreement 1986	All Intensive Crop Farming Trainees	24 June, 1987 to 23 June, 1988	AG2/87	26/6/87	67	1157
Intensive Horticultural (Vegetable Production) Traineeship Agreement	Whole of State	3 Feb., 1989	AG36/88	3/2/89	69	2703
Intensive Horticultural (Vegetable Production) Traineeship Agreement 1989	Whole of State	22 May, 1988 to 22 May, 1989	AG9/89	22/5/89	69	1961
Interceramics /BLPPU Collective Agreement 2001. (Replaces previous Interceramics ... Agreement No. AG167/99. For prior details, see Vol. 81, Part 2)	Whole of State	23 Mar., 2001 - 1 Nov., 2002.....	AG52/01	11/5/01	Unpublished	
Interim Press Room Roster Agreement	West Australian Newspapers Limited Herdsman Printing Establishments	13 Oct., 1991 - as specified in..... Clause 3. - Term	AG11/91	5/5/92	72	1070
Interstate Crane and Transport Hire/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	22 Oct., 2003 - 31 Oct., 2005	AG277/03	6/9/04	Unpublished	
Interceramics Industrial Agreement	La Cava Nominees Pty Ltd t/a Interceramics	15 Sept., 1995 - 31 July, 1997.....	AG185/95	10/10/95	75	2938
Integrated Workforce - TWU Enterprise Bargaining Agreement 2005 (Replaces Intergrated Workforce - TWU ... Agreement 2001 No. AG240/01. For prior details, see Vol. 85, Part 2)	Whole of State	13 Dec., 2005 - 31 Dec., 2007.....	AG277/05	15/3/06	Unpublished	
Interlec (WA) Pty Ltd Enterprise Bargaining Agreement 2004-2005	Whole of State	1 Oct., 2004 - 31 Oct., 2005.....	AG182/04	29/11/04	Unpublished	
Interstate Crane and Transport Hire Industrial Agreement	Whole of State	14 Jan., 2002 - 1 Nov., 2002	AG7/02	13/3/02	Unpublished	

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Interpave Industrial Agreement	George Evans t/a Interpave WA	7 Mar., 1996 - 31 July, 1997.....	AG67/96	17/4/96	76	1316
Interpave (WA) Industrial Agreement	Whole of State	1 Aug., 1997 - 31 Oct., 1999	AG156/97	17/9/97	77	2621
Interstate Crane and Transport Hire Industrial Agreement	Whole of State	12 Nov., 1997 - 31 July, 1999.....	AG267/97	12/11/97	77	3335
Intework Supported Employees Wages Agreement 2004	Whole of State	6 Dec., 2004 – 5 Dec., 2007.....	AG195/04	7/12/04	Unpublished	
Intonhouse Pty Ltd/CFMEUW Industrial Agreement 2005-2008. (Replaces previous Intonhouse ... Agreement 2002-2005 No. AG276/02. For prior details, see Vol. 85, Part 1)	Western Australia	1 Nov., 2005 – 31 Oct., 2008.....	AG174/05	28/11/05	Unpublished	
Intonhouse/CFMEUW Industrial Agreement 2002-2005. (Cancels Inton House/BLPPU and the CMETU Collective Agreement 2001 No. AG127/01. For prior details, see Vol. 83, Part 1)	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	11 Dec., 2002 – 31 Oct., 2005	AG276/02	7/5/03	Unpublished	
IPC Industrial Maintenance Pty Ltd Kwinana Shutdown Agreement	IPC Industrial Maintenance Pty Ltd	1 Jan., 2005 – 31 Dec., 2005.....	AG54/05	5/04/05	Unpublished	
IWD Independent Wool Dumpers Pty Ltd Agreement 1995/96	IWD Independent Wool Dumpers Pty Ltd, Fremantle Depot	1 July, 1995 to 30 June, 1996	AG58/96	28/3/96	76	1318
Izzy's PSCP Supplies/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	25 Oct., 2004 – 30 June, 2007	AG238/04	10/12/04	Unpublished	
J & C Rigging/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	13 Dec., 2002 – 31 Oct., 2005	AG297/02	7/5/03	Unpublished	
J & K Hopkins Enterprise Agreement 2005 (Replaces previous J & K Hopkins ... Agreement 2004 No. AG3/04. For prior details, see Vol. 85, Part 2)	Rubylake Holdings Pty Ltd T/as J&K Hopkins	13 Dec., 2005 – 31 Oct., 2007	AG280/05	10/3/06	Unpublished	
J & K Reinforcing/BLPPU and the CMETU Collective Agreement 1999. (Cancels previous J & K Reinforcing Agreements No. AG142/1995 & No. AG172/98. For prior details, see Vol. 79, Part 2)	Whole of State	1 Nov., 1999 - 1 Nov., 2002	AG239/99	29/2/00	80	541
J & L Blakeney/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	19 Mar., 2004 – 31 Oct., 2005	AG47/04	6/9/04	Unpublished	
J & M Duffy Plasterers/BLPPU Collective Agreement 1999. (Cancels previous J&M Duffy ... Agreement No. AG353/97. For prior details, see Vol. 79, Part 2)	Whole of State	1 Nov., 1999 - 1 Nov., 2002	AG234/99	8/3/00	80	1212
J & P Metals Demolition Industrial Agreement	Whole of State	21 July, 1999 - 31 Oct., 1999.....	AG128/99	6/10/99	79	3316
J&P Brick Work Industrial Agreement	J & P Brickwork	1 Aug., 1995 - 31 July, 1997.....	AG73/95	24/5/95	75	1879
J & R Chatfield/BLPPU and the CMETU Collective Agreement 1999. (Replaces and Cancels previous J&R Chatfield ... Agreements No. AG164/95 & No. AG149/97. For prior details, see Vol. 79, Part 2)	Whole of State	1 Nov., 1999 - 1 Nov., 2002	AG190/99	25/2/00	80	546
J & SG Barnett Domestic and Minor Industrial Agreement	Whole of State	13 Feb., 1996 - 31 July, 1997	AG41/96	6/12/96	76	4918
J & SG Barnett Domestic and Minor Industrial Agreement	Whole of State	13 Feb., 1996 - 31 July, 1997	AG42/96	6/12/96	76	4920
J & SG Barnett Industrial Agreement	Whole of State	15 Dec., 1997 - 31 Oct., 1999.....	AG361/97	26/2/98	78	955
Jadco Pty Ltd Maintenance Contracts Enterprise Bargaining Agreement. (Replaces Jadco Pty Ltd Maintenance ... Agreement 1995 AG268/95. For prior details, see Vol. 78, Part 2)	Jadco Pty Ltd	8 July, 1996 - 1 Mar., 1998.....	AG145/96	8/7/96	76	2621
Jako Industries Pty Ltd/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	1 July, 2003 – 31 Oct., 2005	AG163/03	6/9/04	Unpublished	
James Hardie Building Boards - Welshpool Enterprise Agreement 1992	James Hardie and Co Pty Limited Establishment, Rutland Avenue, Welshpool	18 Feb., 1993 to 17 Feb., 1994	AG13/92	3/3/93	73	734
James Hardie Building Services Ltd t/a Quell Fire & Safety Products, Perth, Portable Service Certified Agreement 1996	Whole of State	17 Sept., 1996 to 16 Sept., 1998.....	AG260/96	10/10/96	76	4548

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James Hardie Pipelines - Osborne Park (Enterprise Bargaining) Agreement 1995	James Hardie Pipelines Osborne Park site	1 Aug., 1995 - 31 Jan., 1997	AG100/95	1/8/95	75	2367
James Hardie Pipelines Osborne Park Site Redundancy Agreement	James Hardie Pipelines Osborne Park site	4 Dec., 1996 - Completion	AG278/96	6/12/96	77	64
James Hardie Australia Pty Ltd, Rutland Avenue, Welshpool Agreement 1999 (Replaces and Cancels James Hardie ... Agreement No. AG336/96. For prior details, see Vol. 79, Part 2)	James Hardie and Company Pty Ltd, Rudland Ave, Welshpool	25 Feb., 2000 - 24 Feb., 2003	AG2/00	25/2/00	80	535
James Turner Roofing Industrial Agreement	Whole of State	19 May, 1999 - 31 Oct., 1999	AG87/99	22/7/99	79	2165
Jandakot Wool Washing Pty Ltd Agreement 2003. (This substitutes the Jandakot Wool ... Agreement 2001, AG204/01 and cancels the Jandakot Wool Scouring ... Agreement 1999, No. AG110/99 and Jandakot Wool Washing Pty Ltd Agreement 1999, AG109/99. For prior details, see Vol. 83, Part 1)	Radius of 30 miles from G.P.O., Perth	1 July, 2003 - 30 June, 2005	AG226/03	10/12/03	Unpublished	
Jasmat Steel Fabrications Industrial Agreement 1996	Mangione Nominees Pty Ltd t/a Jasmat Steel Fabrications	6 June, 1996 - 31 July, 1997	AG165/96	26/7/96	76	2626
Jasmat Engineering Industrial Agreement	Whole of State	8 Dec., 1997 - 31 Oct., 1999	AG9/98	27/7/98	78	3208
Jayem Pty Ltd t/a HJ & JW Mast/ CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	6 Dec., 2002 - 31 Oct., 2005	AG262/02	7/5/03	Unpublished	
Jazzranch/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	25 Oct., 2004 - 30 June, 2007	AG203/04	9/12/04	Unpublished	
JB Crane Hire / CFMEUW Industrial Agreement 2002 - 2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	21 Sept., 2004 - 31 Oct., 2005	AG167/04	19/10/04	Unpublished	
JBJ Plasterers Industrial Agreement	JBJ Plasterers Pty Ltd	21 Mar., 1996 - 31 July, 1997	AG90/96	21/6/96	76	2323
JFK Engineering Pty Ltd Enterprise Agreement 1996-1997. (Replaces No. AG116/94)	JFK Engineering Pty Ltd	1 July, 1996 - 1 July, 1998	AG198/96	28/8/96	76	4014
JFK Engineering Pty Ltd Enterprise Agreement 1998-1999	32 Davison St Maddington	1 July, 1998 - 30 June, 1999	AG164/98	15/10/98	78	4017
JFM Electrical Pty Ltd Enterprise Bargaining Agreement 2004	Whole of State	1 Apr., 2004 - 31 Oct., 2005	AG71/04	20/8/04	Unpublished	
JGB Cranes/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	14 Apr., 2003 - 31 Oct., 2005	AG120/03	7/5/03	Unpublished	
JGB Cranes/CMETU and the BLPPU Collective Agreement 2001	Whole of State	26 July, 2001 - 28 Feb., 2003	AG159/01	9/8/01	Unpublished	
JH Mac Engineering Industrial Agreement	Whole of State	11 Mar., 1997 - 31 July, 1997	AG76/97	4/6/97	77	1427
Jim Kemp Carpentry Industrial Agreement	Whole of State	1 Aug., 1997 - 31 Oct., 1999	AG219/97	12/11/97	77	3338
Jobskills Administration and Technical Staff Trainee Agreement 1993	Whole of State	15 July, 1993 - 4 Jan., 1994	AG31/93	15/7/93	73	2042
Jobskills Trainee (Child Care) Agreement	Whole of State	20 Oct., 1994 - Completion	AG63/94	20/10/94	74	2961
Jobskills Trainee (Childrens' Services Private) Agreement, 1996	Childrens' Services Employees engaged under Jobskills program	12 Aug., 1996 - 11 Aug., 1998	AG116/96	12/8/96	76	4019
Jobskills Trainee (Hospitality Group Training (WA) Inc) Agreement 1994	Hospitality Group Training (WA) Inc engaged under Jobskills	27 Apr., 1994 - 26 Apr., 1995	AG36/94	15/6/94	74	1902
Jobskills Trainee Hospitality Industry Agreement 1995	Hospitality Group Training (WA) Inc engaged under the Jobskills Programme	19 June, 1995 - 18 June, 1996	AG105/95	19/6/95	75	2136
Jobskills Trainee Katanning Kids Child Care Centre Agreement, 1996	Jobskills Trainees at Katanning Kids Child Care Centre	15 Apr., 1996 - 14 Apr., 1997	AG133/96	11/9/96	76	4023
Jobskills Trainee Little Whalers Child Care Centre Agreement, 1996	Whole of State	15 Apr., 1996 - 14 Apr., 1997	AG135/96	11/9/96	76	4188
Jobskills Trainee Monopak Pty Ltd Agreement, 1996	Whole of State	5 Aug., 1996 - 4 Aug., 1997	AG235/96	10/10/96	76	4559
Jobskills Trainee Nally (WA) Pty Ltd Agreement, 1996	Whole of State	20 May, 1996 - 19 May, 1997	AG234/96	10/10/96	76	4561
Jobskills Trainee Plas-Pak (WA) Pty Ltd (Employer Name) Agreement, 1996	Whole of State	31 May, 1996 - 30 May, 1997	AG236/96	24/10/96	76	4562
Jobskills Trainee Plas-Pak (WA) Pty Ltd (Employer Name) Agreement, 1996	Whole of State	5 Aug, 1996 - 4 Aug, 1997	AG237/96	24/10/96	76	4563

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Jobskills Trainee Plastic Injection Co. Agreement, 1996	Whole of State	20 May, 1996 - 19 May, 1997	AG233/96	10/10/96	76	4565
Jobskills Trainee Ragamuffins Child Care Centre Agreement, 1996	Jobskills Trainees at Ragamuffins Child Care Centre	15 Apr., 1996 - 14 Apr., 1997.....	AG134/96	11/9/96	76	4025
JOBSKILLS Trainee School Employees (Canteen Assistant) Agreement 1995	Whole of State	29 Jan., 1996 - 29 Jan., 1997	AG294/95	18/4/96	76	1320
Jobskills Trainee (School Employees – Grounds-person's) Agreement, 1994 for the Association of Independent Schools of Western Australia, Union of Employers (Inc.) and its employer members	Whole of State	30 Apr., 1994 - 29 Apr., 1995.....	AG27A/94	10/6/94	74	1736
Jobskills Trainee (School Employees – Grounds-person's) Agreement, 1994 for the Association of Independent Schools of Western Australia, Union of Employers (Inc.) and its employer members	Whole of State	30 Apr., 1994 - 29 Apr., 1995.....	AG27B/94	10/6/94	74	1736
Jobskills Trainee (School Employees – Grounds-person's) Agreement, 1994 for the Independent Schools of Western Australia, Union of Employers (Inc.) and its employer members	Whole of State	30 Apr., 1994 - 29 Apr., 1995.....	AG27C/94	10/6/94	74	1736
Jobskills Trainee (School Employees - Teachers Aide) Anglican Commission Agreement, 1994	Whole of State	9 Jan., 1995 - 8 Jan., 1996.....	AG190/94	9/1/94	75	385
Jobskills Trainee (School Employees - Teachers Aide) Association of Independent Schools Agreement, 1994	Whole of State	9 Jan., 1995 - 8 Jan., 1996.....	AG192/94	9/1/95	75	386
Jobskills Trainee (School Employees - Teachers Aide) Catholic Education Commission Agreement, 1994	Whole of State	9 Jan., 1995 - 8 Jan., 1996.....	AG191/94	9/1/95	75	387
John's Bricklaying Industrial Agreement	John's Bricklaying	1 Aug., 1995 - 31 July, 1997.....	AG66/95	18/5/95	75	1880
John's Food and Liquor Store and SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Whole of State	6 Nov., 2002 – 30 June, 2005	AG169/02	18/11/02		Unpublished
John Holland Construction and Engineering Pty Ltd (Nelson Point Development Project) Enterprise Bargaining Agreement	Nelson Point Development Project Port Hedland	4 June, 1993 - Completion	AG49/93	4/11/93	73	2956
John Holland Construction and Engineering Pty Ltd (Wanea-Cossack On-site Assembly Work) Agreement 1994	John Holland Construction and Engineering Pty Ltd, Wanea-Cossack Project, Jervoise Bay	17 June, 1994 - Completion	AG81/94	28/8/94	74	2113
John Holland Precast Agreement 2000 (Cancels previous John Holland Precast Agreement No. AG74/1998. For prior details, see Vol. 80, Part 1)	John Holland Precast Yard, Kwinana	31 Oct., 1999 - 31 Oct., 2002.....	AG141/00	30/06/00	80	2952
John Jeffries/CFMEU Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	30 Jan., 2004 – 31 Oct.,	AG16/04	6/9/04		Unpublished
John Shelton Contract Carpentry Industrial Agreement	Whole of State	8 Sept., 1998 - 31 Oct., 1999	AG180/98	24/11/98	78	4599
The John XXIII College Teachers Enterprise Bargaining Agreement 2009. (This agreement substitutes and replaces the Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 10 of 2006 No. AG10/07)	Whole of State	17 Dec., 2009 – 7 July., 2010	AG57/09	17/12/09		Unpublished
John XXIII College Council Non-Teaching Staff Enterprise Bargaining Agreement, 2009 - The (Cancels and Replaces previous John XXIII College ... Agreement, 2006 No. AG22/07. For prior details, see Vol. 89, Part 2)	Western Australia	Date of agreement of all parties -..... 31 Dec., 2008	AG22/07	4/4/07		Unpublished
John XXIII College Non-Teaching Staff Enterprise Bargaining Agreement, 2009 – The (Replaces John XXIII College Council Non-Teaching Staff Enterprise Bargaining Agreement, 2009 – The, No. AG19/09. For previous details, see Vol. 89, Part 2)	Western Australia	Date of agreement of all parties..... 31 Dec., 2009	AG43/09	4/2/10		Unpublished
Jones & Rickard Service (WA) Enterprise Bargaining Agreement 1995	Jones & Rickard Service (W.A.)	23 Oct., 1995 - 22 Oct., 1996.....	AG248/95	9/11/95	75	3207
Jones & Rickard Service (W.A.) Enterprise Bargaining Agreement 1997	Whole of State	1 Sept., 1997 - 30 April, 1999.....	AG286/97	28/1/98	78	687
Josh Coffey Installers/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	25 Oct., 2004 – 31 Oct., 2005.....	AG186/04	29/11/04		Unpublished

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Junipar Park/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	25 Oct., 2004 – 30 June, 2007	AG228/04	9/12/04	Unpublished	
Justzo Enterprises/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	22 Sept., 2003 – 31 Oct., 2005	AG253/03	6/9/04	Unpublished	
K & L Scaffolding Industrial Agreement	Whole of State	25 Aug., 1999 - 31 Oct., 1999	AG146/99	4/11/99	79	3319
Kalamunda District Community Hospital (Hospital Assistants) Agreement	Kalamunda District Community Hospital Board	10 Oct., 1994 - 9 Oct., 1995	AG109/95	2/8/95	75	2535
Kam Food & News Centre and SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Whole of State	12 Feb., 2003 – 30 June, 2005	AG212/02	21/2/03	Unpublished	
Karrinyup Plastering Co Pty Ltd Industrial Agreement	Whole of State	1 Aug., 1997 ., 31 Oct., 1999	AG159/97	17/9/97	77	2628
KBE Contracting Asbestos Eradication Industrial Agreement	KBE Contracting Pty Ltd	18 Nov., 1994 - 17 Nov., 1996	AG145/94	18/11/94	75	100
KBE Contracting (Asbestos Eradication- & Fire Protection)/BLPPU and the CMETU Collective Agreement 2000	Whole of State	19 Apr., 2000 - 1 Nov., 2002	AG120/00	2/6/00	80	2625
KBE Contracting/BLPPU and the CMETU Collective Agreement 2000 (Cancels previous KBE Contracting Industrial Agreements No. AG104/96 & No. AG343/97. For prior details, see Vol. 79, Part 2)	Whole of State	19 Apr., 2000 - 1 Nov., 2002	AG121/00	2/6/00	80	2630
KBR Water Services Pty Ltd Mechanical and Electrical Maintenance Enterprise Bargaining Agreement 2006 (Replaces and Cancels the Halliburton KBR Water Services ... Agreement 2002 No. AG102/02 and KBR Water Services ... Agreement 2002 Amendment Agreement 2004 No. AG133/04. For prior details, see Vol. 85, Part 2)	Whole of State	24 Mar., 2006 – 23 Mar., 2009	AG51/06	24/3/06	Unpublished	
Kebab Company – Joondalup Perth and SDA Agreement 2003 (For previous amendments, see Vol. 89, Part 2)	Whole of State	20 Feb., 2004 – 30 June, 2005	AG232/03	20/02/04	Unpublished	
Keller Ground Engineering/CFMEUW Industrial Agreement 2005-2005	Western Australia	1 Nov., 2005 – 31 Oct., 2008	AG200/05	1/12/05	Unpublished	
Kemerton Silica Sand Pty Ltd Enterprise Bargaining Agreement 2006-2009	Kemerton Silica Sand Pty Ltd, Kemerton WA	1 Apr., 2006 - 1 Apr., 2009	AG9/06	7/3/06	Unpublished	
Ken Sparks/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	10 Oct., 2003 – 31 Oct., 2005	AG261/03	6/9/04	Unpublished	
Kendenup Stores and SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Whole of State	6 Nov., 2002 – 30 June, 2005	AG158/02	18/11/02	Unpublished	
Kewdale Engineering & Construction Enterprise Bargaining Agreement No. 4 - 1998	Whole of State	1 April, 1998 - 31 March, 1999	AG174/98	12/10/98	78	4027
Keywest Construction Industrial Agreement	Keywest Constructions Pty Ltd	23 Nov., 1995 - 31 July, 1997	AG301/95	10/1/96	76	359
Keywest Construction Co. Pty Ltd Industrial Agreement	Whole of State	1 Aug., 1997 - 31 Oct., 1999	AG370/97	26/2/98	78	955
Kiam KNR Plant Enhancement Kwinana Works Agreement 2001	Kiam Plant Enhancement Works at Kwinana Nickel Refinery site	4 Feb., 2001 - 30 July, 2001	AG48/01	19/4/01	Unpublished	
Kilbride Industrial Agreement	Kilbride Pty Ltd	2 Aug., 1996 - 31 July, 1997	AG175/96	6/9/96	76	4027
Kilcullen and Clark Industrial Agreement	Acklington Nominees Pty Ltd t/a Kil and Clark	8 Dec., 1995 - 31 July, 1997	AG328/95	20/3/96	76	970
Kilpatrick Green Pty Ltd Nelson Point Development Project (Enterprise Bargaining Agreement) AG22/1993	Nelson Point Development Project Port Hedland	21 April, 1993 - Completion	AG22/93	1/6/93	Unpublished	
Kilpatrick Green Pty Ltd (WA) Agreement	Kilpatrick Green Pty Ltd	1 Jan., 1996 - 31 Dec., 1997	AG105/97	30/5/97	77	1429
Kimberley Super Value Store and SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Whole of State	6 Nov., 2002 – 30 June, 2005	AG159/02	18/11/02	Unpublished	

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Kingmont Holdings/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	8 Nov., 2004 – 30 June, 2007	AG257/04	13/12/04	Unpublished	
Kirkwood Food Store & Delicatessen and SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Whole of State	6 Nov., 2002 – 30 June, 2005	AG182/02	18/11/02	Unpublished	
Kirin Australia (Fitters') Enterprise Agreement 2002. (Replaces and Cancels previous Kirin Australia ... Agreement 2001 No. AG252/01. For prior details, see Vol. 82, Part 2)	Whole of State	6 Mar., 2003 – 11 Aug., 2003	AG3/03	6/3/03	Unpublished	
Kirin Australia (MPO) Enterprise Agreement 2006-2008. (Cancels previous Kirin Australia ... Agreements 2003-5 No. AG225/03. For prior details, see Vol. 85, Part 2)	Kirin's Malting Operations Western Australia	14 Feb., 2006 – 31 Dec., 2008	AG8/06	14/2/06	Unpublished	
Kiwi Rigging & Scaffolding/BLPPU Collective Agreement 2001	Whole of State	15 Feb., 2001 - 1 Nov., 2002	AG25/01	8/3/01	Unpublished	
Kleenit/BLPPU and the CMETU Collective Agreement 2001	Whole of State	7 Nov., 2001 - 1 Nov., 2002	AG221/01	27/11/01	Unpublished	
Kleenit Metro/CFMEUW Industrial Agreement 2005-2008. (Replaces previous Kleenit Metro ... Agreement 2002-2005 No. AG67/03. For prior details, see Vol. 85, Part 1)	Whole of State	1 Nov., 2005 – 31 Oct., 2008	AG207/05	11/11/05	Unpublished	
<i>Kleenit</i> New Metro Rail Southern Suburbs Rail Project, Structural Project Agreement 2005	New Metro Rail Project Southern Suburbs Rail Project	9 Aug., 2005 - 1 July, 2006	AG237/05	17/2/06	Unpublished	
KLM Electrical Contracting (WA) Pty Ltd Enterprise Agreement 1996	Whole of State	1 July, 1996 - 31 Dec., 1997	AG275/96	16/10/96	76	4588
KMD Interior (WA) Pty Ltd Industrial Agreement	Whole of State	27 Feb., 1996 - 31 July, 1997	AG51/96	11/12/96	77	65
KMD Interiors Industrial Agreement	Whole of State	1 Aug., 1997 - 31 Oct., 1999	AG160/97	17/9/97	77	2631
K Mart Armadale Rostering Agreement 1994	K Mart Australia Ltd Armadale Store	8 Apr., 1994 - 7 Apr., 1995	AG31/94	13/5/94	74	1517
K Mart Food Services (Wages) Agreement 1994	Whole of State	1 Aug., 1994 - 31 July, 1995	AG65/94	29/7/94	74	1903
K-Mart Western Australia Distribution Centres Enterprise Agreement (For previous amendments, see Vol. 89, Part 2)	K-Mart Australia Limited, Distribution Centres, Western Australia	27 Feb., 1995 - 1 Aug., 1995	AG16/95	27/2/95	75	900
K-Mart Western Australia Distribution Centres Agreement (For previous amendments, see Vol. 89, Part 2)	K-Mart Australia Limited	5 June, 1996 - 31 July, 1997	AG100/96	5/6/96	76	2325
Komatsu Australia Perth (Service Department) Enterprise Agreement 2001	Komatsu Australia Pty Ltd	1 July, 2001 - 29 June, 2003	AG180/01	19/9/01	Unpublished	
Komatsu Australia Perth (Service Department) Enterprise Agreement 2005 (Replaces previous Komatsu Australia ... Agreement 2003 No. AG246/03. For prior details, see Vol. 85, Part 2)	Komatsu Australia Western Region, Perth Service Department operations	1 July, 2005 - 30 June, 2007	AG257/05	20/1/06	Unpublished	
KSE Steel Team Enterprise Bargaining Agreement	KSE Engineering and Construction (KSE), Welshpool	31 Dec., 1993 - 31 Mar., 1995	AG83/93	18/1/94	74	234
KRM Pty Ltd t/a KITEC ELECTRICAL SERVICES Enterprise Bargain Agreement 2004	Whole of State	1 Sept., 2004 - 31 Dec., 2005	AG193/04	29/11/04	Unpublished	
Kurda Employment and Training Jobskills Agreement 1994	Kurda Employment and Training Project (Inc)	6 Dec., 1994 - 5 July, 1995	AG140/94	6/12/94	74	2964
Kwinana Industries Council Engineering Traineeship Agreement 1997	Trainees at Kwinana Industries Council Engineering	1 Feb., 1997 - 31 Jan., 1999	AG139/97	24/7/97	77	1940
Kwik Cut Chasing Services/BLPPU Collective Agreement 2001	State of WA	3 July, 2001 - 1 Nov., 2002	AG128/01	3/8/01	Unpublished	
Kwinana Oil Refinery Site Maintenance and Modification Contractors Agreement 1997	United Construction BP Oil Kwinana Operations	1 Jan., 1997 - 30 June 1999	AG317/97	28/11/97	77	3341
Kwinana Towage Services Small Craft Crews Agreement 1986	Within the Port of Fremantle and Shore Stations	4 Nov., 1985 to 4 Nov., 1987	AG9/86	24/2/87	67	824
Kwinana Water Reclamation Project, Electrical Agreement 2004	Kwinana Water Reclamation Project	1 July, 2004 or until practical completion of the project works	AG45/04	18/8/04	Unpublished	
L & M Painting/BLPPU and the CMETU Collective Agreement 2000	Whole of State	18 Apr., 2001 - 1 Nov., 2002	AG70/01	14/5/01	Unpublished	
L & M Painting Service Domestic Industrial Agreement 1996	L & M Painting Service	15 Dec., 1995 - 31 July, 1997	AG335/95	3/7/96	76	2642

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L & M Painting Service Commercial Industrial Agreement	Leslie Beer, Eileen Beer, Tracy Beer & Michael Beer t/a L & M Painting Service	25 June, 1996 - 31 July, 1997	AG334/96	6/9/96	76	4029
La Bianca Marketing Services/BLPPU Collective Agreement 2001	Whole of State	9 Oct., 2001 - 1 Nov., 2002.....	AG198/01	26/10/01	Unpublished	
La Bianca Marketing and Supervision/ CFMEUW Industrial Agreement 2005 – 2008 (Replaces previous La Bianca Marketing ... Agreement 2002-2005 No. AG82/04. For prior details, see Vol. 85, Part 1)	Western Australia	1 Nov., 2005 – 31 Oct., 2008	AG213/05	28/11/05	Unpublished	
Laboratory Assistants Traineeship Agreement	Whole of State	19 Sept., 1991 - 18 Sept., 1992	AG9/91	16/10/91	71	3177
Laboratory Assistants Traineeship (Core Laboratories) Agreement	State of WA	27 Feb., 1991 to 26 Feb., 1992.....	AG7/91	22/7/91	71	2067
Laboratory Assistants Traineeship (Metana Minerals) Agreement	State of WA	4 Feb., 1991 to 3 Feb., 1992.....	AG6/91	22/7/91	71	2069
Laboratory Assistants Traineeships (Min-culture Laboratories Pty Ltd) Agreement	State of WA	27 Feb., 1991 to 26 Feb., 1992.....	AG5/91	22/7/91	71	2070
Lake Joondalup Baptist College Inc (Enterprise Bargaining) Agreement 2006, The (Cancels previous Lake Joondalup ... Agreement 2002 No. AG245/03. For prior details, see Vol. 87, Part 2)	Whole of State	1 Jan., 2006 - 31 Dec., 2008.....	AG 2/08	8/4/08	Unpublished	
Lake Joondalup Baptist College Inc Schools' Non-teaching Employee (Enterprise Bargaining) Agreement 2008. (Replaces previous Lake Joondalup Baptist College ... Agreement 2005, The, No. AG10/06. For prior details, see Vol. 88, Part 1)	Whole of State	1 Jan., 2008 – 31 Dec., 2010	AG8/08	16/6/08	Unpublished	
Lance Holt School (Enterprise Bargaining) Agreement 2007. (Replaces previous Lance Holt ...Agreement 1996 No. AG80/97. For prior details, see Vol. 88, Part 1)	Whole of State	1 Feb., 2007 – 31 Jan., 2009	AG7/08	16/6/08	Unpublished	
Lanskey Constructions/CFMEUW Industrial Agreement 2002 – 2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	8 Mar., 2004 - 31 Oct., 2005	AG39/04	2/7/04	Unpublished	
Largo Construction Demolition Industrial Agreement	M. Harper t/a Largo Construction	26 Apr., 1995 - 25 Apr., 1997	AG83/95	21/7/95	75	2367
Laverton Stores and SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Whole of State	6 Nov., 2002 – 30 June, 2005.....	AG186/02	18/11/02	Unpublished	
LCM Pty Ltd/BLPPU and the CMETU Collective Agreement 2000	Whole of State	17 Aug., 2000 - 1 Nov., 2002.....	AG199/00	20/10/00	80	5041
Leader Construction Cabling Commercial Enterprise Bargaining Agreement 2003	Whole of State	15 Sept., 2003 – 31 Aug., 2004.....	AG263/03	14/11/03	Unpublished	
Ledger Engineering Pty Ltd Enterprise Bargaining Agreement	Ledger Engineering Pty Ltd	4 Aug., 1994 - 30 June, 1995	AG41/94	8/8/94	74	1905
Ledger Engineering Pty Ltd (Receiver and Manager Appointed) Enterprise Bargaining Agreement 1995	Whole of State	1 July, 1995 - 30 June, 1996	AG9/96	2/2/96	78	2255
Leeds Painting Services Industrial Agreement	Whole of State	24 July, 1998 - 31 Oct., 1999	AG132/98	14/9/98	78	3667
Leeds Painting Services/CFMEUW Collective Agreement 2001	Whole of State	11 Dec., 2001 - 1 Nov., 2002	AG259/01	9/1/02	Unpublished	
Leeds Painting Services/CFMEUW Industrial Agreement 2002 - 2005	Whole of State	27 May, 2004 - 31 Oct., 2005	AG98/04	30/6/04	Unpublished	
Leighton Contractors Pty Limited Agreement 1994 for Construction of the Wandoo Concrete Gravity Structure	Leighton Contractors Pty Ltd Wandoo Concrete Gravity Structure, Bunbury	19 Sept., 1995 - Completion	AG64/96	30/5/96	76	1877
Leighton Contractors Maintenance Personnel Agreement 2000 (Cancels previous Leighton Contractors ... Agreement No. AG235/98. For prior details, see Vol. 80, Part 1)	State of WA (For previous amendments, see Vol. 89, Part 2)	29 June, 2000 - 28 June, 2002.....	AG116/00	29/6/00	80	2955
Leighton Contractors Mining and Processing Enterprise Agreement 1997 (For previous amendments, see Vol. 89, Part 2)	Employees of Leighton Contractors Pty Limited	10 Dec., 1997 - 9 Dec., 1999.....	AG354/97	28/1/98	78	691
Leisk, Jenkins Eltech Pty Ltd (LJE) Enterprise Bargaining Agreement 2002	Leisk, Jenkins Eltech Pty Ltd	1 Dec., 2002 – 30 June, 2003	AG5/03	22/1/03	Unpublished	
Leisure Day Agreement	West Australian Newspapers and Nationwide News Pty Ltd	22 Nov., 1979 to 31 Dec., 1979	AG22/79	3/12/79	59	1717
Leslie Concrete/BLPPU and the CMETU Collective Agreement 2001	Whole of State	19 Feb., 2001 - 1 Nov., 2002.....	AG31/01	27/3/01	Unpublished	

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Leslie Concrete Industrial Agreement	Leslie Concrete	15 Sept., 1995 - 31 July, 1997	AG180/95	10/10/95	75	2989
Leslie Concrete Industrial Agreement	Whole of State	27 Oct 1997 - 31 Oct., 1999.....	AG272/97	12/11/97	77	3345
Levent Painting SR P/L / CFMEUW Industrial Agreement 2005 – 2008 (Replaces previous Levents Painting ... Agreement 2002-2005 No. AG73/03. For prior details, see Vol. 85, Part 1)	Whole of State	1 Nov., 2005 – 31 Oct., 2008.....	AG204/05	11/11/05	Unpublished	
LG International Security Services Enterprise Bargaining Agreement 2005	State of WA	1 Jan., 2005 – 31 Oct., 2005	AG56/05	21/04/05	Unpublished	
LHMU – Buttercup Bakeries Malaga (WA) Bakehouse Enterprise Agreement 2005 (Replaces Buttercup Bakeries ... Agreements 2001 No. AG2/02. For prior details, see Vol. 85, Part 1)	38 Crocker Drive, Malaga 6090, WA	22 Feb., 2005 – 21 Feb., 2008	AG100/05	4/8/05	Unpublished	
LHMU – Challenge Australian Dairy Pty Ltd – Job Security & Union Recognition Agreement 2005	Challenge Australian Dairy Pty Ltd, Western Australia	27 Feb., 2006 - 28 Feb., 2007	AG66/05	27/2/06	Unpublished	
LHMU – Disability Services Commission – Disability Support Workers Agreement Industrial Agreement 2008 (No. AG42 of 2009). (Replaces previous LHMU – Disability Services Commission ... Agreement 2008 No. AG2/09. For prior details, see Vol. 89, Part 1)	employees employed in the classifications prescribed in Clause 19 – Classification and Wage Rates who are eligible for membership of the union	12 Nov., 2009 – 31 July, 2010.....	AG42/09	12/11/09	Unpublished	
LHMU – Disability Services Commission Enrolled Nurses and Nursing Assistants Agreement 2008 (Cancels and Replaces Disability Services Commission ... Agreement 2005 No. AG44/05. For prior details, see Vol. 89, Part 1)	Whole of State	12 June, 2009 – 6 Oct., 2010	AG28/09	12/6/09	Unpublished	
LHMU – Iplex Pipelines (Manufacturing) Union Recognition Agreement 2005	Iplex Pipelines Pty Ltd 25 King Edward Road, Osborne Park, WA 6017	8 Dec., 2005 – 30 June, 2008.....	AG267/05	14/12/05	Unpublished	
LHMU – iPlex Pipelines (Warehouse) Union Recognition Agreement 2005	iPlex Pipelines Australia Pty Ltd, 25 King Edward Road, Osborne Park, WA 6017	17 June, 2005 – 28 Dec., 2006.....	AG65/05	17/6/05	Unpublished	
LHMU – PB Foods Limited Beverage Production (Balcatta) Enterprise Agreement 2005 - 2008 (Cancels the LHMU -PB Foods Limited Beverage ... Agreement 2005 No. AG71/05.)	PB Foods Ltd	1 June, 2005 – 31 May, 2008.....	AG72/05	19/05/05	Unpublished	
LHMU – PB Foods Limited Beverage Production (Balcatta) Enterprise Agreement 2005 (Cancels the PB Foods Ltd Beverage ... Agreement 2002 No. AG88/02)	PB Foods Ltd	1 Jan., 2005 – 31 May, 2005.....	AG71/05	19/05/05	Unpublished	
LHMU - Union Recognition and Job Security Agreement – Department of Health – Aboriginal and Ethnic Health Workers 2005	Whole of State	17 Mar., 2005 – 31 July, 2007	AG13/05	18/03/05	Unpublished	
LHMU - Union Recognition and Job Security Agreement – Disability Services Commission Support Workers 2004 No. AG15/05. (Replaced and Cancelled by LHMU – Disability Services Commission – Disability Support Workers Industrial Agreement 2008. For prior details, see Vol. 88, Part 2)	Whole of State	17 Mar., 2005 – 14 Mar., 2008	AG12/05	18/03/05	Unpublished	
Lidco Aluminium Windows Pty Ltd Agreement 1995	Lidco Aluminium Windows Pty Ltd (Maddington)	1 Sept., 1995 - 31 Aug., 1996.....	AG286/95	30/11/95	75	3213
Lidco Aluminium Windows Pty Ltd Industrial Agreement	Lidco Aluminium Windows Pty Ltd	13 Nov., 1995 - 31 July, 1997.....	AG291/95	21/12/95	76	117
Linear Ceilings/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	8 May, 2003 – 31 Oct., 2005	AG130/03	6/9/04	Unpublished	
Lionel St Markets and SDA Agreement 2002. (For previous amendments, see Vol. 89, Part 2)	Whole of State	12 Feb., 2003 – 30 June, 2005.....	AG215/02	21/2/03	Unpublished	
Little Bucks Supermarket and SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Whole of State	12 Feb., 2003 – 30 June, 2005	AG210/02	21/2/03	Unpublished	
Lomondside Enterprises/CFMEUW Industrial Agreement 2005 – 2008. (Replaces previous Lomondside Enterprise/CFMEUW Industrial Agreement 2002 – 2005. For prior details, see Vol. 85, Part 1)	Whole of State	1 Nov., 2005 – 31 Oct., 2008.....	AG192/05	8/11/05	Unpublished	

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Longpre Pty Ltd/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	25 Oct., 2004 – 30 June, 2007.....	AG212/04	9/12/04	Unpublished	
Lorndell Holdings Industrial Agreement	Whole of State	2 Feb., 1996 - 31 July, 1997.....	AG36/96	6/12/96	76	4924
Lotus Installations (WA) Pty Ltd/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	10 June, 2003 – 31 Oct., 2005.....	AG150/03	6/9/04	Unpublished	
Lutheran Schools WA (Enterprise Bargaining) Agreement 2005. (Replaces Living Waters Lutheran College ... Agreement 2002 No. AG201/02)	Whole of State	1 Jan., 2005 - 31 Dec., 2006.....	AG261/05	13/12/05	Unpublished	
Lysaght Building Industries Myaree Performance Related Payments Scheme (Enterprise Bargaining) Agreement (Supersedes previous Lysaght Building Industries ... Agreement 1992. For prior details, see Vol.73, Part 1)	John Lysaght (Australia) Limited Establishment, Myaree (WA)	23 July, 1993 - 31 May, 1995	AG29/93	19/8/93	73	2387
M & D Vujacic Industrial Agreement	Whole of State	1 Aug., 1997 - 31 Oct., 1999.....	AG196/97	7/10/97	77	2943
M & G Crane Hire/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	4 Aug., 2004 – 31 Oct., 2005	AG142/04	15/04/05	Unpublished	
M & J Mitchell Enterprise Agreement 1997	Whole of State	18 Sept., 1997 - 17 Sept., 1999	AG185/97	2/10/97	77	2635
M & M Robinson Bricklaying Industrial Agreement	M & M Robinson Bricklaying	1 Aug., 1995 - 31 July, 1997	AG71/95	18/5/95	75	1881
M & M Strickland Contractors Industrial Agreement	M & M Strickland Contractors Pty Ltd	6 Dec., 1995 - 31 July, 1997	AG314/95	10/1/96	76	361
M & T Roofing (Vines Resort Broad Construction) Industrial Agreement	Whole of State	22 Jan., 1997 - Completion	AG18/97	25/3/97	77	916
M&W Installations/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	18 Aug., 2003 – 31 Oct., 2005	AG212/03	6/9/04	Unpublished	
MacDonald Johnston Engineering Company Pty Ltd (MJE) West Australia Agreement 2003	239 Collier Road, Bayswater, WA 6053	2 Mar., 2004 – 2 Mar., 2006	AG13/04	2/03/04	Unpublished	
Macorna Pty Ltd/ BLPPU and the CMETU Collective Agreement 1999 (Cancels previous Macorna Industrial Agreement No. AG36/99. For prior details, see Vol. 79, Part 2)	Whole of State	1 Nov., 1999 - 1 Nov. 2002.....	AG189/99	8/3/00	80	1217
Macorna Pty Ltd/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	6 Dec., 2002 – 31 Oct., 2005.....	AG261/02	7/5/03	Unpublished	
Maico Electrical Enterprise Bargain Agreement 2004-2005	State of WA	1 Oct., 2004 – 31 Oct., 2005	AG8/05	18/02/05	Unpublished	
Maico Enterprise Bargaining Agreement 2005-2008	State of WA	19 May, 2005 – 19 May, 2008	AG85/05	27/7/05	Unpublished	
Main Roads AWU Enterprise Bargaining Agreement 2007	Employees of Main Roads who are members or eligible to be members of the Union	19 Sept., 2007 – 31 Dec., 2009	AG43/07	19/9/07	Unpublished	
Main Roofing/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	25 Oct., 2004 – 30 June, 2007.....	AG213/04	9/12/04	Unpublished	
MAINE STREAM ROOFING/ CFMEUW Collective Agreement 2002	Whole of State	25 May, 2002 - 1 Nov., 2002	AG82/02	27/6/02	Unpublished	
Mainline Demolition/BLPPU Collective Agreement 1999. (Cancels previous Mainline Demolition Industrial Agreement No. AG82/1995. For prior details, see Vol. 79, Part 2)	Whole of State	1 Nov., 1999 - 1 Nov., 2002.....	AG255/99	8/3/00	80	1223
Malaga Scaffold Hire Scaffolding Industrial Agreement 1996	Malaga Scaffold Hire	20 May, 1996 - 20 May, 1998.....	AG150/96	5/7/96	76	2647
Malco Maintenance/CFMEUW Industrial Agreement 2004-2007	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	25 Oct., 2004 – 30 June, 2007..... Correcting Order No. AG61/2005 (Title).....	AG61/05 ...	19/5/05 3/6/05	Unpublished 85	1842
Maldonado Tiling/CFMEUW Industrial Agreement 2002 – 2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	25 Mar., 2004 – 31 Oct., 2005	AG53/04	6/9/04	Unpublished	
Mana Scaffolding Industrial Agreement	Whole of State	16 Jan., 1999 - 31 Oct., 1999	AG13/99	15/3/99	79	1075
Mandurah Forum Takeaway and SDA Agreement 2003 (For previous amendments, see Vol. 89, Part 2)	Whole of State	28 July, 2003 – 30 June, 2005.....	AG148/03	28/07/03	Unpublished	

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Mapstone Carter/CFMEUW Industrial Agreement 2002-2005. (Cancels Mapstone Carter /BLPPU and the CMETU Collective Agreement 2001 No AG100/01. For prior details, see Vol. 81, Part 2)	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	11 Dec., 2002 – 31 Oct., 2005	AG277/02	7/5/03	Unpublished	
Marble & Granite Expo/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	26 May, 2003 – 31 Oct., 2005	AG141/03	6/9/04	Unpublished	
Mariella's Continental Deli and SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Whole of State	6 Nov., 2002 – 30 June, 2005	AG178/02	18/11/02	Unpublished	
Marble and Cement Work (On-Site)/BLPPU and the CMETU Collective Agreement 2000	Whole of State	6 Feb., 2001 - 1 Nov., 2002	AG39/01	26/3/01	Unpublished	
Marble Man / CFMEUW Industrial Agreement 2002 – 2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	26 Aug., 2004 – 31 Oct., 2005	AG158/04	22/09/04	Unpublished	
Mark Duffy Plasterers/CFMEUW Industrial Agreement 2002-2005. (Cancels the previous Mark Duffy Plasterers ... Agreements No. AG118/96 and No. AG30/01. For prior details, see Vol. 83, Part 1)	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	29 Nov., 2002 – 31 Oct., 2005	AG228/02	7/5/03	Unpublished	
Marine and Power Engineers (Shift Engineers) Royal Perth Hospital Agreement	Whole of State	31 Oct., 1967 to 30 Oct., 1970	AG24/67	13/11/67	47	1054
Marinigate Pty Ltd Industrial Agreement	Whole of State	18 Oct., 1999 - 31 Oct., 1999	AG177/99	26/11/99	79	3633
Martin Craft Pty Ltd/CFMEUW Industrial Agreement 2002 – 2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	5 Mar., 2004 - 31 Oct., 2005	AG34/04	2/7/04	Unpublished	
Mason Roofing/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	25 Oct., 2004 – 30 June, 2007	AG201/04	9/12/04	Unpublished	
Masterfloors/CFMEUW Industrial Agreement 2005-2008. (Replaces previous Masterfloors/CFMEUW ... Agreement 2002-2005 No. AG283/02. For prior details, see Vol. 85, Part 1)	Whole of State	1 Nov., 2005 – 31 Oct., 2008	AG132/05	8/11/05	Unpublished	
Masterplanners Interiors Pty Ltd Industrial Agreement	Whole of State	1 Feb., 1996 - 31 July, 1997	AG49/96	11/12/96	77	68
Masterplanners Interiors Pty Ltd Industrial Agreement	Whole of State	31 Aug., 1998 - 31 Oct., 1999	AG171/98	13/11/98	78	4606
Masterplanners Interiors Pty Ltd/CFMEUW Collective Agreement 2000	Whole of State	24 June, 2002 - 1 Nov., 2002	AG81/2002	27/06/02	Unpublished	
Masters Dairy Limited Enterprise Bargaining Agreement 1995, No. AG125/1995	Masters Dairy Limited	8 Sept., 1995 - 31 Dec., 1996	AG125/95	8/9/95	75	2762
MB Foster Industrial Agreement	Michael Foster and Brian Foster t/a MB Foster	15 Mar., 1996 - 31 July, 1997	AG83/96	21/6/96	76	2339
McCarthy and McCord Bricklayers Industrial Agreement	McCarthy and McCord Bricklayers	1 Aug., 1995 - 31 July, 1997	AG130/95	5/10/95	75	2764
McCraken Rigging Industrial Agreement	L. McCracken t/a McCracken Rigging	21 Sept., 1995 - 31 July, 1997	AG239/95	22/11/95	76	118
McDonald & Mavric Bricklaying Services Agreement	McDonald & Mavric Bricklaying Services	1 Aug., 1995 - 31 July, 1997	AG94/95	6/7/95	75	2137
McDonald Wholesalers and SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Whole of State	6 Nov., 2002 – 30 June, 2005	AG170/02	18/11/02	Unpublished	
McKrills Tiling/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	25 Oct., 2004 – 30 June, 2007	AG217/04	9/12/04	Unpublished	
MCW (On Site)/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	18 Aug., 2003 – 31 Oct., 2005	AG213/03	6/9/04	Unpublished	
MDR Construction Hire Industrial Agreement	Whole of State	8 June, 1999 - 31 Oct., 1999	AG118/99	31/8/99	79	2378
Meadow Lea Foods Ltd (Canningvale Enterprise Agreement 2000/2001 (Replaced by Goodman Fielder Consumer Foods ... Agreement No. AG86/02 in so far as it applies to the Canningvale site. For prior details, see Vol. 82, Part 2)	20 Coulson Way, Canningvale, WA	21 June, 2001 - 1 Dec., 2001	AG104/01	21/6/01	Unpublished	

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MEI Pty Ltd/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	16 Jan., 2003 – 31 Oct., 2005.....	AG45/03	7/5/03	Unpublished	
Menchetti Group/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	14 Nov., 2003 – 31 Oct., 2005.....	AG291/03	6/9/04	Unpublished	
MENCHETTI NOMINEES / CFMEUW Collective Agreement 2002	Whole of State	3 Apr., 2002 - 1 Nov., 2002.....	AG58/02	24/4/01	Unpublished	
Menchetti Nominees Pty Ltd/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	14 Apr., 2003 – 31 Oct., 2005.....	AG119/03	7/5/03	Unpublished	
Menchetti Nominees Industrial Agreement	Menchetti Nominees Pty Ltd	8 Sept., 1995 - 31 July 1997.....	AG157/95	10/10/95	75	2992
Menchetti Nominees Industrial Agreement	Whole of State	12 Feb., 1999 - 31 Oct., 1999.....	AG23/99	31/3/99	79	1079
Mercy Hospital Mount Lawley, Maintenance Staff Enterprise Bargaining Agreement 2003	Whole of State	4 June, 2004 – 31 Aug., 2004.....	AG162/03	4/6/04	Unpublished	
Mercy Hospital Mount Lawley Health Services Union Enterprise Bargaining Agreement 2004 (Replaces previous Mercy Hospital ... Agreement No. AG309/02. For prior details, see Vol. 84, Part 1)	Mercy Hospital, Mount Lawley	14 Sept., 2004 - 19 Aug., 2006.....	AG153/04	14/09/04	Unpublished	
Mercy Hospital Mount Lawley Maintenance Staff Enterprise Bargaining Agreement 2004	Whole of State	18 July, 2005 - 22 Dec., 2007.....	AG98/05	18/7/05	Unpublished	
Merlino Construction Industrial Agreement	Whole of State	6 Mar., 1998 - 31 Oct., 1999.....	AG41/98	21/5/98	78	2260
Mervon Industrial Agreement	Whole of State	7 Nov., 1996 - 30 June, 1999.....	AG297/96	4/6/97	77	1451
Merym Constructions Industrial Agreement	Merym Pty Ltd t/a Merym Constructions	19 Sept., 1995 - 31 July, 1997.....	AG230/95	22/11/95	76	120
Merym Pty Ltd Industrial Agreement - The	Merym Pty Ltd	26 Sept., 1994 - 31 July, 1995.....	AG114/94	26/10/94	74	2669
Metal Trades (Wundowie Iron and Steel) Apprenticeship Agreement	Area controlled by Wundowie Iron and Steel	18 Aug., 1975 to 17 Aug., 1976.....	AG30/75	17/10/75	55	1622
Methodist Ladies' College (Enterprise Bargaining) Agreement 1994	Methodist Ladies' College	10 Feb., 1995 - 31 Dec., 1995.....	AG13/95	15/2/95	75	625
Methodist Ladies' College (Enterprise Bargaining) Agreement 2005. (Replaces previous Methodist Ladies' College ... Agreement 2002 No. AG291/02 For prior details, see Vol. 85, Part 1)	Whole of State	1 Jan., 2005 – 31 Dec., 2007.....	AG86/05	18/7/05	Unpublished	
Methodist Ladies' College (Facilities Assistants/ Trades-persons) Enterprise Agreement 1995	Methodist Ladies' College	1 Jan., 1995 - 31 Dec., 1996.....	AG25/96	12/4/96	76	1321
Methodist Ladies' College Non-Teaching Staff (Enterprise Bargaining) Agreement 2005. Replaces previous Methodist Ladies' College ... Agreement 2002 No. AG287/03. For prior details, see Vol. 85, Part 1)	Whole of State	11 Nov., 2005 – 1 March, 2008.....	AG258/05	11/11/05	Unpublished	
Methodist Ladies' College (Non-Teaching Staff - Building Trades) Enterprise Bargaining Agreement 1998	Whole of State	1 Nov., 1997 - 31 Dec., 1998.....	AG118/98	30/9/98	78	3671
Metro Brick Armadale (Enterprise Bargaining) Agreement 1994	Metro Brick employees at Armadale Brick Manufacturing	8 Feb., 1995 - 31 Dec., 1996.....	AG96/95	7/9/95	75	2765
Metro Brick (Cardup) (Enterprise Bargaining) Agreement 1994	Metro Brick Employees at Cardup Brick Manufacturing	5 Apr., 1995 - 31 Dec., 1996.....	AG37/95	4/5/95	75	1599
Metro Meat International Limited, Katanning Division Maintenance Employees Enterprise Agreement	Metro Meat International Ltd Katanning operations	8 Dec., 1997 - 8 Dec., 2000.....	AG372/97	25/6/98	78	2824
Metrobus Engineering and Maintenance Enterprise Agreement 1995	Employees of Metrobus Asset Management Services & Engineering Employees of Metrobus Depots	11 July, 1995 - 10 July, 1996.....	AG111/95	26/7/95	75	2371
Metrobus Engineering Employees Closedown Enterprise Bargaining Agreement 1997	Engineering Employees at Metropolitan (Perth) Passenger Transport Trust	30 Nov., 1997 - 18 July, 1998.....	AG329/97	9/12/97	77	149
Metro Meat International (Katanning) AMIEU Processing Agreement (1999)	Katanning, Western Australia	13 July, 1999 - 30 June, 2001.....	AG123/99	13/7/99	79	2173

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Metropolitan Cemeteries Board (Western Australia) Cemetery Employees Enterprise Agreement 2007 (Replaces Metropolitan Cemeteries Board Industrial Agreement 2004 No. AG5/05. For prior details, see Vol. 87, Part 1)	Metropolitan Cemeteries Board Western Australia	24 July, 2007 – 31 Dec., 2009	AG44/07	24/7/07	Unpublished	
Metropolitan Health Service Board Engineering and Building Services Enterprise Agreement 2000	Metropolitan Health Service Board	23 Nov., 2000 - 22 Nov., 2002	AG248/00	23/11/00	80	5414
Metropolitan Health Service Board - King Edward Memorial and Princess Margaret Hospitals (Plant Operators) Enterprise Bargaining Agreement 1999	Metropolitan Health Service Board - King Edward Memorial and Princess Margaret Hospitals	8 Sept., 1999 - 7 Sept., 2001	AG147/99	8/9/99	79	2922
Metro Products & Co Pty Ltd/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	11 Mar., 2003 – 31 Oct., 2005	AG99/03	7/5/03	Unpublished	
Metso Minerals (Wear Protection) Maintenance Agreement 2005. (Replaces previous Metso Minerals ... Agreement 2003)	Metso Minerals (Wear Protection) Site 22-28 Vinnicombe Drive Canning Vale, 6155	13 Feb., 2006 – 31 May, 2008	AG26/06	24/03/06	Unpublished	
Midland Brick Enterprise Agreement (WA) 2004	Midland Brick Company Pty Ltd	22 July, 2004 – 20 July, 2006	AG41/04	22/7/04	Unpublished	
Midland Junction Fresh Markets and SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Whole of State	12 Feb., 2003 – 30 June, 2005	AG6/03	21/02/03	Unpublished	
Midland Sale Yards Agreement 2007 (Cancels and Replaces previous Midland Sale Yards Agreement 2004 No. AG145/04. For prior details, see Vol. 86, Part 2)	West Australian Meat Industry Authority	1 June, 2007 – 31 Dec., 2009.....	AG34/07	1/6/07	Unpublished	
Might Construction/CFMEUW Industrial Agreement 2005-2008. (Replaces previous Might Construction ... Agreement 2002-2005 No. AG197/03. For prior details, see Vol. 85, Part 1)	Whole of State	1 Nov., 2005 – 31 Oct., 2008.....	AG153/05	11/11/05	Unpublished	
<i>Might Construction Pty Ltd</i> New Metro Rail Southern Suburbs Rail Project, Structural Project Agreement 2005	New Metro Rail Project Southern Suburbs Rail Project	17 June, 2005 - 1 July 2006	AG242/05	17/2/06	Unpublished	
Mike Harper Industrial Agreement	Whole of State	26 Aug., 1996 - 31 July, 1997.....	AG227/96	21/10/96	76	4603
<i>Mills Signs & Painting Service / CFMEUW</i> Collective Agreement 2005 (Replaces Mills Signs Painting ... Agreement 2001 No. AG257/01. For prior details, see Vol. 85, Part 2)	Whole of State	21 Feb., 2006 – 1 Oct., 2006.....	AG29/06	20/3/06	Unpublished	
Minesite Personnel Pty Ltd Industrial Agreement	Whole of State	2 Mar., 1999 - 31 Oct., 1999.....	AG28/99	31/3/99	79	1083
Minesite Personnel Pty Ltd Certified Agreement 1999	Whole of State	25 May 1999 - 31 Mar., 2000	AG71/99	25/5/99	79	1659
Ministerial Chauffeurs Agreement 2008 (This agreement substitutes the previous Ministerial Chauffeurs Agreement 2005 No. AG74/05. For prior details, see Vol. 88, Part 1)	Employees who are members of or eligible to be members of the union	21 July, 2008 – 19 Mar., 2010	AG11/08	21/07/08	Unpublished	
Ministry of Education Groundsperson/Pool Attendant Traineeship Industrial Agreement	Within the Ministry of Education	25 July, 1988 to 24 July, 1989.....	AG16/88	22/5/89	69	1451
Mirage Industries Pty Ltd/CFMEUW Industrial Agreement 2005-2008 (Replaces previous Mirage Industries ... Agreement 2002-2005 No. AG7/04 For prior details, see Vol. 85, Part 2)	Whole of State	1 Nov., 2005 – 31 Oct., 2008.....	AG255/05	17/2/06	Unpublished	
Mirante Brickpaving/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	4 Sept., 2003 – 31 Oct., 2005.....	AG239/03	6/9/04	Unpublished	
Mirvac Constructions (WA) Pty Ltd/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	10 Sept., 2003 – 31 Oct., 2005.....	AG241/03	6/9/04	Unpublished	
Mitchell Erectors Industrial Agreement	Mitchell Erectors Pty Ltd	15 Sept., 1995 - 31 July, 1997	AG169/95	10/10/95	75	2993
Mitchell Erectors Industrial Agreement	Whole of State	1 Aug., 1997 - 31 Oct., 1999	AG158/97	17/9/97	77	2636
Mitre 10 Warehouse Employees Agreement 2002. (Replaces previous Mitre 10 Warehouse ... Agreement No. AG239/98. For prior details, see Vol. 82, Part 1)	Whole of State	15 Nov., 2002 - 30 June, 2004.....	AG193/02	21/11/02	Unpublished	
Mizo Construction Electrical Certified Agreement 2003	Whole of State	18 Nov. 2003 – 31 Oct., 2005.....	AG264/03	18/11/03	Unpublished	

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MJ and VD Quinlan and SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Whole of State	21 Feb., 2003 – 30 June, 2005	AG209/02	21/2/03	Unpublished	
MOBILE DEWATERING/CFMEUW Collective Agreement 2001	Whole of State	19 Dec., 2001 - 1 Nov., 2004	AG266/01	14/2/02	Unpublished	
Modern Industries (WA) Pty Ltd Workshop Employees' Agreement 2005. (Replaces Cape Modern/CFMEUW ... Agreement 2002-2005 No. AG170/04.)	Modern Industries (WA) Pty Ltd Workshop Malaga, WA	1 Dec., 2005 – 1 Dec., 2008	AG12/06	21/2/06	Unpublished	
Modern Industries (WA)/CFMEUW Industrial Agreement 2005-2008	Whole of State	1 Nov., 2005 – 31 Oct., 2008	AG46/06	5/5/06	Unpublished	
Moerlina School Amended (Enterprise Bargaining) Agreement 2003 (Replaces previous Moerlina School ... Agreement No. AG206/01. For prior details, see Vol. 83, Part 2)	Whole of State	1 Aug., 2003 - 31 July, 2005	AG40/04	7/5/04	Unpublished	
Mofflyn – LHMU, (State) Industrial Agreement 2004	State of Western Australia	6 May, 2005 - 4 May, 2008	AG46/05	6/5/05	Unpublished	
Mone Interiors/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	22 Aug., 2003 – 31 Oct., 2005	AG222/03	6/9/04	Unpublished	
Mooring Staff, Albany (Casuals) Agreement	Port of Albany	In accordance with Waterside Workers Federation Contract	AG9/75	18/2/75	55	284
Morley Bricklayers Industrial Agreement	Morley Bricklaying	1 Aug., 1995 - 31 July, 1997	AG129/95	5/10/95	75	2768
Morley Bricklayers Industrial Agreement	Morley Bricklaying	1 Aug., 1995 - 31 July, 1997	AG129/95	5/10/95	75	2768
Morley Bricklaying Contractors Industrial Agreement	Christopher Smith and Dennis Smith t/a Morley Bricklaying Contractors	5 Dec., 1995 - 31 July, 1997	AG315/95	10/1/96	76	362
Morley Glass & Aluminium/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	26 Mar., 2004 – 31 Oct., 2005	AG117/04	13/07/04	Unpublished	
MRC Contracting/CFMEUW Industrial Agreement 2005-2008. (Replaces previous MRC Contracting ... Agreement 2002-2005 No. AG298/02)	Whole of State	1 Nov., 2005 – 31 Oct., 2008	AG191/05	12/12/05	Unpublished	
MR Formwork (WA) Pty Ltd/CFMEUW Industrial Agreement 2002-2005 (Cancels MR Formwork ... Agreements No. AG50/96 & No. AG288/00. For prior details, see Vol. 83, Part 1)	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	3 Dec., 2002 – 31 Oct., 2005	AG238/02	7/5/03	Unpublished	
MTJW Reofixer/BLPPU and the CMETU Collective Agreement 1999	Whole of State	1 Nov., 1999 - 1 Nov., 2002	AG241/99	8/3/00	80	1232
MT Lothian Plasterers Industrial Agreement	Fairfyeld Pty Ltd t/a Mt Lothian Plasterers	8 Sept., 1995 - 31 July 1997	AG156/95	10/10/95	75	2995
Muir's Fresh Food Supermarket and SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Whole of State	6 Nov., 2002 – 30 June, 2005	AG183/02	18/11/02	Unpublished	
Muldoon Tiles Industrial Agreement	Muldoon Tiles Supply and Fix Pty Ltd	7 Dec., 1995 - 31 July, 1997	AG319/95	10/01/96	76	364
Multi Glass & Aluminium Fabricators/BLPPU and the CMETU Collective Agreement 1999 (Cancels previous Multi Glass & Aluminium ... Agreements No. AG217/97 & No. AG261/98. For prior details, see Vol. 79, Part 2)	Whole of State	1 Nov., 1999 - 1 Nov., 2002	AG197/99	8/3/00	80	1238
Multi Glass Industrial Agreement	Whole of State	17 Mar., 1997 - 31 July, 1997	AG77/97	4/6/97	77	1453
Multiplex Constructions Industrial Agreement	Whole of State	1 Nov., 1999 - 31 Oct., 2002	AG86/00	2/4/01	Unpublished	
Multiplex Constructions Pty Ltd/CFMEUW Industrial Agreement 2002-2005 (Cancels the Men at Work Carpentry/BLPPU and the CMETU Agreement 2001, AG 86/01)	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	22 Nov., 2003 – 31 Oct., 2005	AG229/02	7/5/03	Unpublished	
Murdoch College Enterprise Agreement 2007 (Replaces previous Murdoch College ... Agreement No. AG73/05. For prior details, see Vol. 87, Part 1)	Whole of State	7 Dec., 2007 – 6 Dec., 2010	AG66/07	7/12/07	Unpublished	
Murdoch Drive Continental Super Deli and SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Whole of State	12 Feb., 2003 – 30 June, 2005	AG217/02	21/2/03	Unpublished	

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Murphy Plant Hire/CFMEUW Industrial Agreement 2005 – 2008. (Replaces Murphy Plant Hire & Demolition/CFMEUW Industrial Agreement 2002-2005 No. AG142/03. For prior details, see Vol. 85, Part 2)	Whole of State	1 Nov., 2005 – 31 Oct., 2008.....	AG164/05	17/2/06	Unpublished	
Myer Stores Limited Distribution Centre Carousel Road Cannington Site Agreement 1984	Myer Stores Limited Distribution Centre, Cannington	1 May, 1994 - 30 Nov., 1996.....	AG88/94	14/9/94	74	2352
Myer Stores Limited Distribution Centre Carousel Road Cannington Site Clerical Agreement 1994	Myer Stores Limited Distribution Centre, Cannington	1 May, 1994 - 30 Nov., 1996.....	AG120/94	22/12/94	75	102
Mywest Australia Industrial Agreement	Whole of State	23 Nov. 1995 - 31 July, 1997.....	AG307/95	10/01/96	76	365
Nally Canning Vale Agreement 1996 (Replaces Nally Canning Vale Agreement 1995 No. AG90/95. (For prior details, see Vol. 78, Part 2)	Nally (WA) Pty Limited, 173 Bannister Road Canning Vale	3 Oct., 1996 - 2 Apr., 1998	AG221/96	3/10/96	76	4208
Nally North Perth Agreement 1995	Nally (WA) Pty Ltd	2 Aug., 1995 - 1 Aug., 1996	AG91/95	2/8/95	75	2537
Nally North Perth Agreement 1996	Nally (WA) Pty Limited Kadina Street North Perth	3 Oct., 1996 - 2 Apr., 1998	AG222/96	3/10/96	76	4213
Nannup Timber Processing Pty Ltd Enterprise Agreement 2001	South-West Land Division of W.A. excluding area comprised within a radius of 45km from G.P.O., Perth	28 Apr., 2001 - 30 June, 2003.....	AG113/01	3/8/01	Unpublished	
Nannup Timber Processing Pty Ltd Enterprise Agreement 2003	South-West Land Division of W.A. excluding area comprised within a radius of 45km from G.P.O., Perth	1 July, 2003 – 30 June, 2007..... Amended Order No. 773/2004 (Terms of Agreement).....	AG76/04	7/5/04 1/7/04	Unpublished 84	2218
National Ceramics/BLPPU Collective Agreement 2000	State of WA	1 June, 2000 - 1 Nov., 2002.....	AG187/00	28/8/00	80	4119
National Ceramics/BLPPU Collective Agreement 2000 (Replaces previous National Ceramics ... Agreement No. AG187/2000)	State of WA	13 Sept., 2000 - 1 Nov., 2002	AG223/00	17/10/00	80	5052
National Foods Milk Limited and Liquor, Hospitality and Miscellaneous Union, Western Australian State Industrial Agreement 2004	National Foods Milk Limited	15 June, 2004 – 14 June, 2007.....	AG181/04	15/12/04	Unpublished	
National Tiling Pty Ltd/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	7 Aug., 2003 – 31 Oct., 2005.....	AG198/03	6/9/04	Unpublished	
National Training Wage (Hospitality Industry) Agreement 1995, No AG211 of 1995	Trainees employed by Hospitality Group Training (WA) Inc	13 Dec., 1995 - 12 Dec., 1996	AG211/95	13/12/95	76	121
Natural Habitats Landscapes Industrial Agreement	Whole of State	17 Mar. 1998 - 31 Oct., 1999.....	AG51/98	2/6/98	78	2267
Natural Stone/BLPPU and the CMETU Collective Agreement 2001	Whole of State	22 June, 2001 - 1 Nov., 2002.....	AG120/01	13/7/01	Unpublished	
Natural Stone Company Pty Ltd/CFMEUW Industrial Agreement 2002-2005, The	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	31 Mar., 2003 – 31 Oct., 2005.....	AG110/03	7/5/03	Unpublished	
Naus Building Products/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	1 July, 2003 – 31 Oct., 2005.....	AG172/03	6/9/04	Unpublished	
Naus Building Products/CFMEUW Industrial Agreement 2005-2008. (Replaces Naus Fire Protection ... Agreement No. AG198/99.)	Whole of State	1 Nov., 2005 - 31 Oct., 2008	AG7/06	17/2/06	Unpublished	
Nazareth House Salaried Officers Enterprise Agreement 2005	Nazareth House Inc.	1 June, 2005 - 1 Mar., 2006	AG69/05	1/6/05	Unpublished	
Nelson Point and Finucane Island Capacity Expansion Project – Port Hedland Agreement 1997-1998	Nelson Port and Finucane Island in Port Hedland	1 May, 1997 - Dec., 1998	AG113/97	15/5/97	77	1455
Nelson Point and Finucane Island Capacity Expansion Project – Port Hedland Agreement 1997-1998	Construction Workers at Nelson Point and Finucane Island Port Hedland	1 May, 1997 - Dec., 1998	AG1661/97	19/8/97	77	2306
Nelson Point and Finucane Island Capacity Expansion Project – Port Hedland Agreement 1997-1998	Construction Workers at Nelson Point and Finucane Island	Oct., 1997 - Dec., 1998.....	AG321/97	8/12/97	78	153

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Nestle Australia Ltd Kewdale Warehouses - SDA Agreement 2001. (Replaces & Cancels previous Nestle Australia Ltd Kewdale ... Agreement 1999 No. AG21/00. For prior details, see Vol. 81, Part 2)	Whole of State	1 Nov., 2001 - 30 Oct., 2003.....	AG262/01	30/1/02	Unpublished	
Netview Nominees Pty Ltd/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	6 Dec., 2002 – 31 Oct., 2005.....	AG259/02	7/5/03	Unpublished	
Netview Nominees Pty Ltd/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	6 Dec., 2002 – 31 Oct., 2005.....	AG260/02	7/5/03	Unpublished	
New Cement Co. Industrial Agreement	New Cement Co. Pty Ltd	22 Sept., 1995 - 31 July, 1997.....	AG238/95	22/11/95	76	123
New Cement Industrial Agreement	New Cement Co. Pty Ltd	23 Nov., 1994 - 31 July, 1995.....	AG174/94	6/12/94	75	105
New Concrete Co/CFMEUW Industrial Agreement 2002-2005. (Cancels New Concrete/BLPPU and the CMETU Collective Agreement 1999 AG229/99, 84WAG59. For prior details, see Vol. 83, Part 1)	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	9 Jan., 2003 – 31 Oct., 2005.....	AG34/03	7/5/03	Unpublished	
New Era Flooring/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	16 Jan., 2004 – 31 Oct., 2005.....	AG8/04	6/9/04	Unpublished	
Newco Industrial Agreement	Whole of State	6 Mar., 1998 - 31 Oct., 1999.....	AG42/98	2/6/98	78	2269
New Force Construction Industrial Agreement	Whole of State	23 Apr. 1999 - 31 Oct., 1999.....	AG44/99	23/4/99	79	1374
Newmast Commercial Painters/CFMEUW Industrial Agreement 2005– 2008 (Replaces previous Newmast Commercial ... Agreement 2002-2005 No. AG118/04. For prior details, see Vol. 85, Part 1)	Whole of State	1 Nov., 2005 – 31 Oct., 2008.....	AG206/05	11/11/05	Unpublished	
Newave Concrete/CFMEUW Collective Agreement 2002	Whole of State	31 July, 2002 – 1 Nov., 2002.....	AG111/02	13/08/02	Unpublished	
Newave Contracting Pty Ltd/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	3 Dec., 2002 – 31 Oct., 2005.....	AG247/02	7/5/03	Unpublished	
Newway Transport Western Australia Certified Agreement 2006	Whole of State	31 May, 2006 – 31 May 2009.....	AG49/06	31/5/06	Unpublished	
N'Gala Mothercraft Home and Training Centre (Salaried Officers) Agreement, 1975	Salaried Officers employed by N'Gala	27 Nov., 1975 to 26 Nov., 1978.....	AG42/75	24/12/75	55	1935
Nilsen Electric (WA) Pty Ltd Enterprise Agreement 1996	Nilsen Electric (WA) Pty Ltd	1 Dec., 1996 - 31 Dec., 1997.....	AG183/96	1/8/96	76	2697
N.K. Ceilings Industrial Agreement	NK Ceilings 1992 Pty Ltd	21 Dec., 1994 - 31 July, 1995.....	AG181/94	29/12/94	75	107
NK Ceilings 1992 Industrial Agreement	NK Ceilings 1992 Pty Ltd	1 Aug., 1995 - 31 July 1997.....	AG189/95	10/10/95	75	2996
NK Ceilings (1992) Pty Ltd/CFMEUW Industrial Agreement 2002 - 2005 (Replaces N & K Ceilings/BLPPU Collective Agreement 2000 No. AG221/00).	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	12 Feb., 2004 – 31 Oct., 2005.....	AG22/04	14/7/04	Unpublished	
Noakes Store Denmark and SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Whole of State	6 Nov., 2002 – 30 June, 2005.....	AG160/02	18/11/02	Unpublished	
Norbertine Canons / LHMU Non-Teaching Staff Enterprise Bargaining Agreement, 2009 - The	Western Australia	6 April, 2009 – 31 Dec., 2009.....	AG23/09	11/8/09	Unpublished	
Norbertine Canons Teachers Enterprise Bargaining Agreement, 2009 - The. (This agreement substitutes and replaces the Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 9 of 2006 No. AG9/07)	Whole of State	17 Dec., 2009 – 7 July, 2011.....	AG66/09	17/12/09	Unpublished	
Norbertine Canons Non-Teaching Staff Enterprise Bargaining Agreement, 2009 - The. (Cancels and Replaces previous Norbertine Canons ... Agreement, 2006 - The, No. AG19/07. For prior details, see Vol. 89, Part 2)	Western Australia	Date of agreement by all parties..... - 31 Dec., 2009	AG60/09	4/2/10	Unpublished	
Norcon Industrial Agreement	Norcon Pty Ltd	2 Nov., 1994 - 31 July, 1995.....	AG143/94	2/11/94	75	109
Norcon Industrial Agreement	Norcon Pty Ltd	8 Sept., 1995 - 31 July, 1997.....	AG151/95	10/10/95	75	2998
North Coast Concrete/CFMEUW Industrial Agreement 2002-2005. (Replaces previous North Coast Concrete ... Agreement 2002-2005 No. AG33/03. For prior details, see Vol. 85, Part 1)	Western Australia	1 Nov., 2005 – 31 Oct., 2008.....	AG187/05	28/11/05	Unpublished	

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North Shoreline/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	25 Oct., 2004 – 30 June, 2007	AG211/04	9/12/04	Unpublished	
Novacoat Pty Ltd Enterprise Bargaining Agreement NC01 of 1995	Novacoat Pty Ltd	10 June, 1996 - 31 Dec., 1997	AG119/96	10/6/96	76	1901
NS Komatsu Perth (Service Department) Enterprise Agreement 1999 (Cancels previous NS Komatsu ... Agreements No. AG3/1994 & No. AG207/95. For prior details, see Vol. 79, Part 2)	Whole of State	1 July, 1999 - 30 June, 2001	AG223/99	28/2/00	80	566
Nuceil 2004 Pty Ltd/CFMEUW Industrial Agreement 2005-2008	Whole of State	1 Nov., 2005 - 31 Oct., 2008	AG150/05	20/01/06	Unpublished	
Nuceil Services/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	6 Dec., 2004 – 31 Oct., 2005	AG277/04	23/08/05	Unpublished	
Nuform Constructions Pty Ltd Industrial Agreement	Whole of State	23 Aug., 1996 - 31 July, 1997.....	AG205/96	18/11/96	76	4928
Nulsen Haven (Salaried Officers) Agreement, 1976	Salaried Officers employed by Mentally Incurable Childrens Association	25 June, 1976 to 24 June, 1979.....	AG32/76	25/6/76	56	994
Nurses (City of Nedlands) Industrial Agreement	Nurses employed by Marita Road Day Care Centre	24 July, 1974 to 23 July, 1975.....	AG51/76	9/11/76	56	1848
Nu-Tex Construction Services/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	17 July, 2003 – 31 Oct., 2005	AG179/03	6/9/04	Unpublished	
Nyindamurra Family School (Enterprise Bargaining) Agreement 1997	Whole of State	29 May, 1998 - 31 Dec., 1998	AG48/98	29/5/98	78	2273
Nyindamurra Family School (Enterprise Bargaining) Agreement 1999	Whole of State	19 July, 1999 - 31 Dec., 2000.....	AG136/99	21/9/99	79	2939
O.C.C. Services/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	24 June, 2003 – 31 Oct., 2005	AG160/03	6/9/04	Unpublished	
Ocean Legend Agreement 2003	Ocean Legend Facility	8 May, 2003 - 6 May, 2006.....	AG107/03	8/5/03	Unpublished	
Ocean Legend Agreement 2003 Amendment Agreement 2005	Ocean Legend Facility	30 Aug., 2005 - 27 Aug., 2008	AG186/05	30/8/05	Unpublished	
O'Donnell Griffin (Maintenance Operations) Port Hedland Enterprise Bargaining Agreement 1997	O'Donnell Griffin (Maintenance Operations)	1 Nov., 1996 - 31 Oct., 1998	AG87/97	17/4/97	77	1212
O'Donnell Griffin Nelson Point Development Project (Enterprise Bargaining) Agreement	Nelson Point Development Project Port Hedland	4 Jan., 1993 - Completion.....	AG20/93	19/4/93	73	1263
O'Donnell Griffin Nelson Project Development Project (Enterprise Bargaining) Agreement Phase II	Employees at Nelson Point Development Project Port Hedland employees employed by O'Donnell Griffin	16 June, 1993 - Completion.....	AG28/93	20/7/93	75	3221
O'Donnell Griffin/Wormald Fire Systems Western Australia Enterprise Bargaining Agreement	State of Western Australia	1 July, 1994 - 31 Dec., 1995.....	AG112/94	26/10/94	74	2676
Oil Bunkering (Fremantle) Limited, Enterprise Bargaining Agreement 2003 (Cancels previous Oil Bunkering BP ... Agreement No. AG80/01. For prior details, see Vol. 82, Part 2)	BP (Fremantle) Ltd	1 Jan., 2003 - 31 Dec., 2004	AG86/03	8/04/03	Unpublished	
Oil Bunkering (Fremantle) Limited, Enterprise Bargaining Agreement 2005 (Cancels previous Oil Bunkering ... Agreement No. AG68/03. For prior details, see Vol. 84, Part 2)	BP (Fremantle) Ltd	1 Jan., 2005 - 31 Dec., 2006.....	AG81/05	23/5/05	Unpublished	
Olympic Fine Foods Enterprise Agreement 1995	Olympic Fine Foods Pty Ltd	30 Nov., 1995 - 31 July, 1996.....	AG272/95	30/11/95	76	124
Omega Constructions Industrial Agreement	Omega Constructions Pty Ltd	8 Sept., 1995 - 31 July, 1997	AG141/95	10/10/95	75	2999
On-Site Engineering/BLPPU Collective Agreement 2000. (Cancels previous On-Site Engineering ... Agreements No. AG132/1994, No. AG195/1995 & No. AG11/98. For prior details, see Vol. 79, Part 2)	Whole of State	1 Nov., 1999 - 1 Nov., 2002	AG81/00	18/4/00	80	1885

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Onsite Engineering Pty Ltd/CFMEUW Industrial Agreement 2005-2008 (Replaces previous Onsite Engineering ... Agreement 2002-2005 No. AG249/02. For prior details, see Vol. 85, Part 1)	Whole of State	1 Nov., 2005 – 31 Oct., 2008	AG127/05	8/11/05	Unpublished	
Optim Projects/BLPPU and the CMETU Collective Agreement 1999 (Replaces previous Optim Project Industrial Agreement No. AG75/99. For prior details, see Vol. 79, Part 2)	Whole of State	1 Nov., 1999 - 1 Nov., 2002.....	AG202/99	21/3/00	80	1261
Ortem Pty Ltd/BLPPU and the CMETU Collective Agreement 2001	Whole of State	15 June, 2001 - 1 Nov., 2002	AG110/01	13/7/01	Unpublished	
Orvad Scaffolding Industrial Agreement	Whole of State	5 Nov., 1997 - 31 Oct., 1999.....	AG335/97	30/4/98	78	1833
Orville Holdings Pty Ltd Industrial Agreement	Orville Holdings Pty Ltd	1 Aug., 1995 - 31 July, 1997	AG70/95	18/5/95	75	1882
Orville Holdings Pty Bricklaying Industrial Agreement	Orville Holdings Pty Ltd (WA)	1 Aug., 1995 - 31 July, 1997	AG124/95	7/9/95	75	2769
Osborne Ceilings/BLPPU Collective Agreement 2000	Whole of State	25 Nov., 1999 - 1 Nov., 2002.....	AG124/00	2/6/00	80	2641
Osborne Ceilings & Partitions/CFMEUW Industrial Agreement 2005-2008 (Replaces previous Osborne Ceilings ... Agreement 2002-2005 No. AG257/02.)	Whole of State	1 Nov., 2005 – 31 Oct., 2008	AG157/05	11/11/05	Unpublished	
Osborne Ceramic Centre Industrial Agreement	Whole of State	26 Aug., 1996 - 31 July, 1997	AG226/96	21/10/96	76	4623
Osborne Scaffolders Industrial Agreement	Osborne Scaffolders Pty Ltd	1 Aug., 1995 - 31 July, 1997	AG190/95	10/10/95	75	3002
Osborne Cold Stores Enterprise Bargaining Agreement 1996	Osborne Cold Stores (WA) Pty Ltd	21 June, 1996 - 30 Sept., 1997	AG125/96	21/6/96	76	2348
Otis Building Technologies – Western Australia - Elevator Division Certified Agreement 1996	Whole of State	12 Aug., 1996 - 2 June, 1997	AG202/96	16/8/96	76	4218
Otis Australia - Western Australian Construction & Service Employees Certified Agreement 1997	Whole of State	3 Aug., 1998 - 31 Dec., 2000	AG91/98	3/8/98	78	3226
OTRACO Earthmover Tyre Fitter's Enterprise Agreement 1998. (Cancels and Replaces Otraco Earthmover ... Agreement 1996 No. AG171/96. See Vol.78, Part 1)	Newman	10 Sept., 1998 - 30 July, 2003.....	AG175/98	12/10/98	78	4034
Ovair/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	26 May, 2003 – 31 Oct., 2005.....	AG138/03	6/9/04	Unpublished	
Ozcrete (WA)/CFMEUW Industrial Agreement 2005-2008	Ozcrete (WA) "Ellement" site, 996 Hay St, Perth	24 June, 2005 – 31 Dec., 2007	AG234/05	17/2/06	Unpublished	
Pacific Industrial Company Enterprise Bargaining Agreement 1995	Naval Base Workshop operations of Pacific Industrial Company	7 Jan., 1995 - 5 Jan., 1996.....	AG27/95	9/3/95	75	913
Pacific Industrial Company Enterprise Bargaining Agreement 2000 (Replaces previous Pacific Industrial ... Agreement No. AG158/1998. For prior details, see Vol. 80, Part 1)	Naval Base Workshop	1 April, 2000 - 30 June, 2002.....	AG264/00	5/12/00	80	5424
Pacific Industrial Company (WA) Pty Ltd Transport Drivers' Certified Agreement	Pacific Industrial Company	22 Apr., 2005 – 19 Apr., 2008	AG281/04	22/4/05	Unpublished	
Pacific World Packaging Enterprise Agreement 1994	Pacific World Packaging, 24 Jackson Street, Bayswater	24 June, 1994 - 23 June, 1995.....	AG55/94	24/6/94	74	1739
Pacific World Packaging (WA) Enterprise Agreement 1995	Pacific World Packaging	7 Aug., 1995 - 6 Aug., 1996.....	AG115/95	14/8/95	75	2539
Pacific World Packaging (WA) Enterprise Agreement 1996	Pacific World Packaging	1 July, 1996 - 1 July, 1998	AG259/96	14/12/96	77	82
Paint Solutions/BLPPU Collective Agreement	Whole of State	18 Apr., 2001 - 15 Dec., 2001	AG72/01	14/5/01	Unpublished	
Paint Solutions Domestic and Minor Industrial Agreement	Whole of State	7 Feb., 1996 - 31 July 1997.....	AG55/96	11/12/96	77	83
Paint Solutions Industrial Agreement	Paint Solutions	29 Aug., 1995 - 31 July, 1997.....	AG187/95	22/11/95	76	126
P & C Industrial Installations and Maintenance Agreement	Whole of State	15 Dec., 1997 - 31 Oct., 1999	AG360/97	26/2/98	78	955
P&O Cold Storage Ltd Enterprise Agreement 1995	P&O Cold Storage Ltd	29 Mar., 1995 - 31 Dec., 1995	AG26/95	29/3/95	75	913

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P&O Cold Storage Enterprise Agreement 1996	P & O Cold Storage Ltd	1 Mar., 1996 - 31 Dec., 1996	AG66/96	10/4/96	76	1333
P & O Cold Storage Ltd Enterprise Agreement 1997	Whole of State	1 Jan., 1997 - 31 Dec., 1997	AG61/97	18/3/97	77	921
"P & O" Towage Services Small Craft Crews Agreement 1987 (For previous amendments, see Vol. 89, Part 2)	Whole of State	16 Jan., 1989 to 15 Jan., 1991	AG2/89	14/2/89	69	2356
P & O Towage Services Small Craft Crews Enterprise Agreement 1996. (Replaces No. AG88/93)	Whole of State	8 Feb., 1998.....	AG220/96	3/9/96	77	3371
Para-Quad Industries/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	29 Aug, 2003 – 31 Oct., 2005	AG235/03	6/9/04		Unpublished
Panorama Painting Services/BLPPU and the CMETU Collective Agreement 2001	Whole of State	31 Oct., 2001 - 1 Nov., 2002	AG214/01	20/11/01		Unpublished
Paragon Precast Industries/CFMEUW Industrial Agreement 2002-2005	Western Australia,	16 July, 2003 – 31 Oct., 2006	AG180/03	6/9/04		Unpublished
Paraplegic-Quadriplegic Association of Western Australia (Inc.) Supported Employees' Wages Agreement 2005 (Replaces previous Paraplegic-Quadriplegic ... Agreement 2002 No. AG197/02. For prior details, see Vol. 85, Part 1)	Paraplegic-Quadriplegic Association of Western Australia	7 Sept., 2005 – 6 Sept., 2008	AG178/05	7/09/05		Unpublished
Parent Controlled Christian Education Association Northern Suburbs Inc. Teaching Employees (Enterprise Bargaining) Agreement 2004. (Replaces previous Parent Controlled ... Agreement 2001 No. AG20/02. For prior details, see Vol. 85, Part 1)	Whole of State	18 July, 2005 - 31 Dec., 2006	AG103/05	18/7/05		Unpublished
Parent Controlled Christian Education Association Northern Suburbs Inc. Schools' Non - Teaching Employees (Enterprise Bargaining) Agreement 2004.	Whole of State	22 Sept., 2005 - 31 Dec., 2006.....	AG222/05	22/9/05		Unpublished
Parker and Knight Industrial Agreement	Whole of State	1 Aug., 1997 - 31 Oct., 1999	AG229/97	21/1/98	78	700
Parise Steel Fabrications/CFMEUW Industrial Agreement 2002-2005. (Cancels Parise Steel/BLPPU and the CMETU Collective Agreement 2001 No. AG101/01, 84WAIG60. For prior details, see Vol. 83, Part 1)	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	31 Mar., 2003 – 31 Oct., 2005	AG111/03	7/5/03		Unpublished
Passline Holdings Pty Ltd/CFMEUW Industrial Agreement 2002 – 2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	4 May, 2004 – 31 Oct., 2005	AG79/04	23/6/04		Unpublished
Passline Personnel Australia/CFMEUW Industrial Agreement 2002 – 2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	1 Apr, 2005 – 31 Oct., 2005	AG62/05	7/6/05		Unpublished
Paul Finn Industries Industrial Agreement	Paul Finn Industries Pty Ltd	3 Nov., 1994 - 31 July, 1995.....	AG146/94	3/11/94	75	110
Paul Finn Industries Domestic and Minor Industrial Agreement	Whole of State	20 Dec., 1995 - 31 July, 1997	AG17/96	6/12/96	76	4938
Paul Finn Industries Flooring and Concrete Industrial Agreement	Whole of State	20 Dec., 1995 - 31 July, 1997	AG19/96	6/12/96	76	4939
Paul Finn Industries Pty Ltd Industrial Agreement	Whole of State	20 Dec., 1995 - 31 July, 1997	AG18/96	6/12/96	76	4940
PAVEMASTER/CFMEUW Collective Agreement 2001	Whole of State	16 Jan., 2002 - 1 Nov., 2002	AG8/02	1/2/02		Unpublished
Paving Solutions/BLPPU and the CMETU Collective Agreement 2001	Whole of State	18 Apr., 2001 - 1 Nov., 2002	AG67/01	14/5/01		Unpublished
PB Foods Ltd Balcatta Security Officers Enterprise Agreement 2005 (Cancels previous PB Foods Ltd ... Agreement 2001 No. AG194/01 For prior details, see Vol. 85, Part 1)	Whole of State	1 Jan., 2005 – 30 Dec., 2007.....	AG184/05	19/09/05		Unpublished
PB Foods Limited Operations Enterprise Agreement 2005. (Cancels previous PB Foods Limited (Balcatta Operations) Enterprise Agreement 2000 No. AG223/01 For prior details, see Vol. 85, Part 1)	PB Foods Limited Operations at Balcatta, O'Connor and Country Distribution Depots at Broome, Bunbury, Albany, Kalgoorlie, Esperance, Northam and Geraldton	1 June, 2005 - 1 June, 2008.....	AG125/05	19/09/05		Unpublished

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PB Foods Ltd Brunswick (Enterprise Bargaining) Agreement 2005. (Cancels previous PB Foods Ltd Brunswick ... Agreement 2001 No. AG273/03. For prior details, see Vol. 85, Part 1)	PB Foods and all its employees at Brunswick who are eligible to be members of the union	1 Jan., 2005 – 31 Dec., 2006	AG185/05	19/09/05	Unpublished	
PB Foods Ltd Country Distribution Depots (Enterprise Bargaining) Agreement 2000 (Cancels previous PB Foods ... Agreement 1997 No. AG247/98. For prior details, see Vol. 81, Part 2)	Whole of State	1 Dec., 2000 - 1 Dec., 2003.....	AG4/2002	17/06/02	Unpublished	
PCB Holdings/CFMEUW Industrial Agreement 2005-2008. (Replaces previous PCB Holdings ... Agreement 2002-2005 No. AG56/03. For prior details, see Vol. 85, Part 2)	Whole of State	1 Nov., 2005 – 31 Oct., 2008	AG162/05	12/12/05	Unpublished	
PCH Access Pty Ltd/BLPPU Collective Agreement 2000. (Supersedes previous PCH Access Pty Ltd Industrial Agreement No. AG95/1999. For prior details, see Vol. 80, Part 1)	State of WA	4 July, 2000 - 3 July, 2002	AG179/00	25/7/00	80	3251
P.C.H. Commercial Scaffolding Industrial Agreement	Whole of State	21 Oct., 1997 - 31 Oct., 1999.....	AG246/97	3/12/97	77	3376
P.D.W Home Improvements (Supported Wage) Enterprise Agreement 1996	P.D.W. Home Improvement, Midvale	3 Feb., 1997 - 2 Feb., 1997.....	AG44/97	26/3/97	77	929
Peel Community Living (Inc) ALHMUW State Industrial Agreement 2002	Peel Community Living (Inc) employees who are eligible to be members of the Union	18 months, subject to the identified funding period for the Organisation	AG107/02	09/12/02	Unpublished	
Peel Laundry, (Transport Workers) Enterprise Agreement 1996	Peel Laundry Waroona	8 Aug., 1996 - 7 Feb., 1997.....	AG192/96	8/8/96	76	4034
Pemberton General Store and SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Whole of State	12 Feb., 2003 – 30 June, 2005	AG7/03	21/2/03	Unpublished	
Penrhos College (Enterprise Bargaining) Agreement 2008. (Replaces previous Penrhos College ... Agreement 2005 No. AG177/05. For prior details, see Vol. 88, Part 2)	Whole of State	1 Jan., 2008 - 31 Dec., 2010.....	AG4/09	18/02/09	Unpublished	
Penrhos College Non Teaching Staff (Enterprise Bargaining) Agreement 2008. (Replaces previous Penrhos College Non-Teaching ... Agreement 2003 No. AG111/04. For prior details, see Vol. 88, Part 1)	Whole of State	1 Jan., 2008 – 31 Dec., 2010	AG20/08	11/11/08	Unpublished	
Pepsi Cola Bottlers Western Australian Enterprise Agreement 1995	Pepsi Cola Bottlers Australia at Canning Vale Bottling Plant, W.A.	26 July, 1994 - 24 July, 1995	AG3/95	12/5/95	75	1883
Pepsi Cola Bottlers Western Australian Enterprise Agreement 1996	Pepsi Cola Bottlers Australia at Canning Vale Bottling Plant, W.A.	24 May, 1995 - 24 May, 1997.....	AG293/96	23/1/97	77	378
Perenjori Supermarket and SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Whole of State	6 Nov., 2002 – 30 June, 2005.....	AG181/02	18/11/02	Unpublished	
Perth Asbestos Removal Co Pty Ltd/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	18 Aug., 2003 – 31 Oct., 2005	AG214/03	6/9/04	Unpublished	
Perth College (Enterprise Bargaining) Agreement 1994	Perth College Inc.	1 July, 1994 - 31 Dec., 1995	AG187/94	19/1/95	75	626
Perth College (Enterprise Bargaining) Agreement 2006 (Replaces previous Perth College ... Agreement 2004 No. AG162/04. For prior details, see Vol. 87, Part 1)	Whole of State	1 Jan., 2006 - 31 Dec., 2008.....	AG63/07	13/11/07	Unpublished	
Perth Concrete Cutting Services/CFMEUW Industrial Agreement 2005-2008 (Replaces previous Perth Concrete ... Agreement 2002-2005 No. AG201/03. For prior details, see Vol. 85, Part 1)	Western Australia	1 Nov., 2005 – 31 Oct., 2008	AG133/05	1/12/05	Unpublished	
Perth Montessori School (Enterprise Bargaining) Agreement 2004	Whole of State	1 Aug., 2004 – 31 July, 2007	AG182/05	6/9/05	Unpublished	
Perth Precast/CFMEUW Industrial Agreement 2002-2005	Western Australia	7 Aug., 2003 – 31 March, 2006	AG203/03	6/9/04	Unpublished	
Perth Tiling Contractors/CFMEUW Industrial Agreement 2002 – 2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	27 July, 2004 - 31 Oct., 2005	AG141/04	27/8/04	Unpublished	

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Peter Licari Brickpaving/BLPPU and the CMETU Collective Agreement 2001	Whole of State	1 June, 2001 - 1 Nov., 2002	AG102/01	28/6/01	Unpublished	
Perth Rigging/BLPPU Collective Agreement 1999. (Cancels previous Perth Rigging ... Agreements No. AG178/1995, No. AG157/97 & No. AG298/97 For prior details, see Vol. 79, Part 2)	Whole of State	1 Nov., 1999 - 1 Nov., 2002	AG199/99	21/3/00	80	1286
Perth Rigging Co Pty Ltd/CFMEUW Industrial Agreement 2005-2008. (Replaces previous Perth Rigging ... Agreement 2002-2005 No. AG231/02. For prior details, see Vol. 85, Part 1)	Whole of State	1 Nov., 2005 - 31 Oct., 2008	AG154/05	11/11/05	Unpublished	
Peters Creameries (WA) Pty Ltd Brunswick (Enterprise Bargaining) Agreement 1994	Peters Creameries (WA) Pty Ltd, Brunswick	14 Dec., 1994 - 14 Dec., 1996	AG112/95	4/9/95	75	2770
Peters Poultry Suppliers Agreement 1994	Peters Poultry Suppliers - Processing Plant, Thornlie	8 Aug., 1994 - 1 Aug., 1996	AG95/94	13/10/94	74	2680
Peters Poultry Suppliers Enterprise Agreement 1996	Peters Poultry Suppliers, a division of Inghams Enterprise Pty Limited Processing Plant Thornlie	12 Aug., 1996 - 11 Aug., 1998	AG254/96	22/10/96	76	4626
Peters (W.A.) Limited (Balcatta Operations) Enterprise Bargaining Agreement 1994	Peters (W.A.) Balcatta Operations	11 Nov., 1994 - 10 Nov., 1997	AG123/94	28/11/94	74	2982
Peters (WA) Limited (Balcatta Security Officers) Enterprise Bargaining Agreement 1995	Peters (WA) Limited, Balcatta	1 Jan., 1995 - 31 Dec., 1997	AG50/95	16/6/95	75	2138
Peters (WA) Ltd Country Distribution Depots (Enterprise Bargaining) Agreements 1996	Peters (WA) Ltd Country Distribution Depots	1 Dec., 1995 - 1 Dec., 1997	AG170/96	13/9/96	76	4036
Pharmacy Guild/SDA Australian Vocational Certificate Training System Pilot Project Agreement 1993	Perth Metropolitan Area	30 Aug., 1993 - 29 Aug., 1995	AG57/93	30/11/93	73	3402
Phoenix Design and Construct P/L / CFMEUW Industrial Agreement 2005-2008	Whole of State	1 Nov., 2005 - 31 Oct., 2008	AG22/06	24/03/06	Unpublished	
Pictoria Nominees Industrial Agreement	Pictoria Nominees Pty Ltd	29 Apr., 1996 - 31 July, 1997	AG97/96	29/4/96	76	1341
Picture Pave/BLPPU and the CMETU Collective Agreement 2001	Whole of State	30 Mar., 2001 - 1 Nov., 2002	AG59/01	3/5/01	Unpublished	
Pierre & Stones/BLPPU and the CMETU Collective Agreement 2001	Whole of State	14 Feb., 2001 - 1 Nov., 2002	AG26/01	26/3/01	Unpublished	
Pilbara 4-Wheel Drive and Mine Services Agreement 1997	Respondents Operations Newman WA	17 June, 1997 - 16 June, 1999	AG119/97	19/6/97	77	1702
Piletech Western Australia Pty Ltd/CFMEUW Industrial Agreement 2002 - 2005 (Replaces Piletech/CFMEUW ... Agreement 2001 No. AG33/02. For prior details, see Vol. 84, Part 1)	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	24 Feb., 2004 - 31 Oct., 2005	AG29/04	2/7/04	Unpublished	
Piling Contractors (WA) / CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	30 Sept., 2004 - 31 Oct., 2005	AG173/04	3/11/04	Unpublished	
Pilkington (Australia) Operations Ltd, Myaree Enterprise Agreement 1993	Pilkington (Australia) Operations Ltd, Myaree	18 Jan., 1994 - 17 Jan., 1995	AG90/93	3/2/94	74	240
Pilkington (Australia) Operations Limited Myaree Wholesale (Stage II 1995) Enterprise Agreement	Pilkington (Australia) Operations Limited Myaree Wholesale Operations	21 Dec., 1995 - 20 Dec., 1997	AG326/95	10/1/96	76	366
Pilkington (Australia) Operations Limited Western Australian Glazing Enterprise Agreement Stage II. (Replaces AG283/96)	Myaree, WA	26 Nov., 1999 - 18 Nov., 2000	AG155/99	26/11/99	79	3660
Pilkington (Australia) Operations Limited, WA State Operations, Glazing Division/BLPPU and the CMETU Collective Agreement 2001	Whole of State	31 Oct., 2001 - 1 Nov., 2002	AG246/01	9/1/02	Unpublished	
Pilkington (Australia) Operations Limited, Western Australia State Operations Glazing (Stage III, 2001) Enterprise Agreement	Pilkington (Australia) Operations Limited - Western Australian State, Myaree	9 Jan., 2001 - 18 Nov., 2003	AG247/01	9/1/02	Unpublished	
Pilkington (Australia) Operations Limited, Glazing (Enterprise Bargaining) Stage IV Agreement 2004	Pilkington (Australia) Operations Limited - Western Australian State, Myaree - Glazing Business	19 Oct., 2004 - 30 Apr., 2007	AG164/04	19/10/04	Unpublished	

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Pilkington (Australia) Operations Limited, Western Australian Retailing Enterprise Agreement Stage I	Pilkington (Australia) Operations Limited Western Australian Retailing Operations	21 Dec., 1995 - 20 Dec., 1997.....	AG325/95	10/1/96	76	369
Pilkington (Australia) Operations Limited, Western Australian Retailing (Stage II, 1998) Enterprise Agreement	Albany, South Fremantle, Greenwood, Midland, Nth Perth, Victoria Park	18 Aug., 1998 - 17 Nov., 2000.....	AG153/98	15/10/98	78	4045
Pilkington (Australia) Operations Limited, Western Australian State Retail (Stage III, 2000) Enterprise Agreement	Albany, South Fremantle, Greenwood, Midland, Nth Perth, Victoria Park	18 Nov., 2000 - 15 Nov., 2004.....	AG9/01	28/2/01	Unpublished	
Pilkington (Australia) Operations Limited, Myaree Wholesale (Stage III 1998) Enterprise Agreement	Whole of State	18 Aug., 1998 - 17 Nov., 2000.....	AG154/98	12/10/98	78	4048
Pilkington (Australia) Operations Limited, Myaree Wholesale (Stage IV, 2000) Enterprise Agreement	Pilkington (Australia) Operations Limited - Myaree Wholesale Operations	18 Nov., 2000 - 15 Nov., 2004.....	AG9/01	28/2/01	Unpublished	
Pink Prop Formwork/CFMEUW Industrial Agreement 2002 – 2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	5 Mar., 2004 - 31 Oct., 2005.....	AG35/04	2/7/04	Unpublished	
Pioneer Concrete (WA) Pty Ltd Bunbury Quarry (Enterprise Agreement) 1996 (Replaces Pioneer Concrete Pty Ltd (WA) ... Agreement 1995 No. AG106/1995. (For prior details, see Vol. 76, Part 2)	Whole of State	1 Oct., 1996 - 30 Sep., 1998.....	AG16/97	18/3/97	77	934
Pioneer Concrete (WA) Pty Ltd Herne Hill Quarry (Enterprise Bargaining) Agreement 1996 (Replaces No. AG63/93 and No. AG54/95. See Vol. 78, Part 1). (Replaced by AG6/99 insofar as that agreement binds the AMWU and Pioneer (Concrete (WA) Pty Ltd)	Pioneer Concrete (WA) Pty Ltd, Herne Hill Quarry Operations	1 Aug., 1996 - 31 July, 1998.....	AG303/96	7/1/97	77	391
Pioneer Construction Materials Agitator Truck Drivers' Agreement 2004 (Replaces previous Pioneer Construction ... Agreement No. AG244/00. For prior details, see Vol. 84, Part 1)	Whole of State	17 Aug., 2004 - 20 Dec., 2006.....	AG83/04	17/8/04	Unpublished	
Pioneer Construction Materials Pty Ltd Byford Quarry (Enterprise Bargaining) Agreement 2004. (Replaces previous Pioneer Construction ... Agreement No. 260/2000. For prior details, see Vol. 84, Part 1)	Byford Quarry operations	Agreement to remain in force..... until 5 October 2006	AG84/04	16/8/04	Unpublished	
Pioneer Construction Materials Pty Ltd Red Hill Quarry (Enterprise Bargaining) Agreement 2004. (Replaces previous Pioneer Construction Materials ... Agreement No. AG261/2000. For prior details, see Vol. 84, Part 1)	Pioneer Construction Materials and all employees engaged in the Company's Red Hill Quarry Operation	Expired 5 Oct., 2006	AG96/04	23/8/04	Unpublished	
Pioneer Construction Materials Tip Truck and Tanker Drivers Agreement 2004 (Replaces previous Pioneer Construction Material ... Agreement No. AG246/00. For prior details, see Vol. 83, Part 2)	Whole of State	5 Apr., 2004 – 5 Apr., 2007	AG19/04	5/04/04	Unpublished	
Pioneer Store and SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Whole of State	6 Nov., 2002 – 30 June, 2005.....	AG145/02	18/11/02	Unpublished	
P Jones Constructions/CFMEUW Collective Agreement 2002	Whole of State	6 June, 2002 - 1 Nov., 2002	AG85/02	27/06/02	Unpublished	
Plasterwise Plastering Contractors/CFMEUW Industrial Agreement 2002-2005 (Cancels Plasterwise Plastering/BLPPU Collective Agreements No. AG99/00, 84WAIG61. For prior details, see Vol. 83, Part 1)	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	16 Jan., 2003 – 31 Oct., 2005.....	AG46/03	7/5/03	Unpublished	
Plaster Workers Colonial Sugar Refining Co. Ltd. Plaster Workers Agreement	Works occupied by Colonial Sugar Refining Co. Ltd	28 Dec., 1961 to 27 Dec., 1962.....	AG2/62	8/2/62	42	271
Platform Modification and Hook-up Agreement	State of WA	30 Aug., 1990 to 29 Aug., 1992.....	AG6/90	21/9/90	70	4009
PNM Painting Contractors Industrial Agreement	Petnee Holdings Pty Ltd t/a PNM Painting Contractors	21 Sept., 1995 - 31 July, 1997.....	AG237/95	22/11/95	76	131
PNM Painting Contractors Industrial Agreement	Whole of State	14 Feb., 1996 - 31 July, 1997.....	AG43/96	11/12/96	77	86
PNM Painting Contractors Industrial Agreement	Whole of State	30 Mar., 1998 - 31 Oct., 1999.....	AG50/98	2/6/98	78	2307
Polarcup Australia - Perth Enterprise Agreement 1999	Polarcup Australia Bayswater	1 July, 1999 - 30 June, 2001	AG125/99	4/10/99	79	2948

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Police (Commissioned Officers) Industrial Agreement	Whole of State	1 July, 1976 to 30 June, 1977	AG49/76	22/10/76	56	1761
Poniris Painting Industrial Agreement	Poniris Painting Pty Ltd	1 Aug., 1995 - 31 July 1997.....	AG159/95	10/10/95	75	3004
Positive Paving Personnel Trust/CFMEUW Industrial Agreement 2002 – 2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	27 May, 2004 – 31 Oct., 2005	AG99/04	30/6/04	Unpublished	
Port Hedland Port Authority Port Marine Officers Industrial Agreement 1993	All Port Control Officers employed by Port Hedland Port Authority	21 Jan., 1994 - 20 Jan., 1995	AG92/93	27/1/93	74	248
Port Hedland Truck Stop and SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Whole of State	12 Feb., 2003 – 30 June, 2005	AG21/03	21/2/03	Unpublished	
Port Hedland Visitors Centre (Inc.) Enterprise Agreement 2002	Port Hedland Visitors Centres (Inc), its employees encompassed within Clause 19 and the ASU	5 Sept., 2002 – 3 Sept., 2004	AG91/02	05/09/02	Unpublished	
Port-Villa Demolition Industrial Agreement	Whole of State	21 Oct., 1998 - 31 Oct., 1999.....	AG231/98	17/12/98	79	191
Portvilla Pty Ltd Industrial Agreement 1996	Portvilla Pty Ltd	29 May, 1996 - 31 July, 1997	AG151/96	5/7/96	76	2729
Portvilla Industrial Agreement	Whole of State	6 Oct., 1997 - 31 Oct., 1999.....	AG342/97	10/2/98	78	916
Powermont Roof Tiling/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	25 Oct., 2004 – 30 June, 2007	AG232/04	10/12/04	Unpublished	
P.R. & B.M. Harrington and SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Whole of State	12 Feb., 2003 – 30 June, 2005	AG208/02	21/2/03	Unpublished	
Precast Company Perth/CFMEUW Industrial Agreement 2002-2005	Western Australia	22 July, 2003 – 31 March, 2006	AG186/03	6/9/04	Unpublished	
Precast Prestressed Buildings Perth/CFMEUW Industrial Agreement 2003-2006	Western Australia	4 Aug., 2004 – 31 March, 2006	AG143/04	15/04/05	Unpublished	
Precise Drilling & Sawing/CFMEUW Industrial Agreement 2005-2008. (Replaces previous Precise Drilling ... Agreement 2002-2005 No AG32/03. For prior details, see Vol. 85, Part 2)	Whole of State	1 Nov., 2005 – 31 Oct., 2008.....	AG244/05	17/2/05	Unpublished	
Pre-Formed Profiles/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	10 June, 2003 – 31 Oct., 2005	AG149/03	6/9/03	Unpublished	
Premier Coal Development Project Agreement	United Construction, Collie	1/7/97 - Completion of Project	AG226/97	30/9/97	77	2642
Presbyterian Ladies College Teaching Staff (Enterprise Bargaining) Agreement 2008-2010. (Replaces previous Presbyterian Ladies' ... Agreement 2005-2007 No. AG52/05. For prior details, see Vol. 88, Part 1)	Teaching Staff employed by the College who are members or eligible to be members of the IEU in the State of Western Australia	1 Jan., 2008 - 31 Dec., 2010	AG68/07	17/01/08	Unpublished	
Prestige Cranes/CFMEUW Industrial Agreement 2002-2005. (Cancels Prestige Cranes/BLPPU and CMETU Collective Agreement 2001 No. AG94/01, 84WAIG62. For prior details, see Vol. 83, Part 1)	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	10 Feb., 2003 – 31 Oct., 2005.....	AG68/03	7/5/03	Unpublished	
Prestige Logistics/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	6 Apr., 2004 – 31 Oct., 2005	AG75/04	9/8/04	Unpublished	
Presto Construction Industrial Agreement	Presto Construction Pty Ltd	19 Dec., 1995 - 31 July, 1997	AG333/95	24/6/96	76	2350
Presto Scaffolding/CFMEUW Industrial Agreement 2002 – 2005. (Replaces previous Presto Scaffolding Industrial Agreement No. AG149/94. For prior details, see Vol. 84, Part 1)	Whole of State	8 Mar., 2004 -30 Sep., 2005	AG36/04	2/7/04	Unpublished	
Princess Margaret Hospital for Children Patrol Officers Agreement	Patrol Officers employed by Board of Management Princess Margaret Hospital for Children	25 Aug., 1993.....	AG54/93	10/11/93	73	2964
Printing (Community Newspaper Group) Production Employees (Enterprise Bargaining) Agreement 2006 (Replaces previous Printing ... Agreement 2003 No. AG135/03. For prior details, see Vol. 85, Part 2)	Establishment of Community Newspaper Group	1 Mar., 2006 – 29 Feb., 2009.....	AG20/06	22/3/06	Unpublished	
Printing (Government) Agreement 2007 (Cancels and Replaces previous Printing Government Agreement 2004 No. AG259/04. For prior details, see Vol. 86, Part 2)	Department of Agriculture and Food and Department of Culture and the Arts	21 May, 2007 - 31 Dec., 2009	AG37/07	21/5/07	87	1054

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Title	Area Governed	Date of Operation	No. of Agreement	Date Delivered	Reference Vol..	Page
Printing (Institute of Technology - (Apprentices) Industrial Agreement	Metropolitan Area	15 April, 1969 to 14 April, 1972.....	AG1/69	15/4/69	49	324
Pro Team Clean/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	1 July, 2003 – 31 Oct., 2005	AG188/03	6/9/04	Unpublished	
Professional Ceilings Services/BLPPU Collective Agreement 2000	Whole of State	14 Dec., 2000 - 1 Nov., 2002	AG215/00	14/12/00	81	173
Professional Ceilings Services Wall and Ceiling Industrial Agreement	Whole of State	13 March, 1998 - 31 Oct., 1999	AG45/98	30/9/98	78	3701
Professional Concrete Pumping Services/CFMEUW Industrial Agreement 2005 – 2008 (Replaces previous Professional Concrete ... Agreement 2002 - 2005 No. AG30/03. For prior details, see Vol. 85, Part 2)	Whole of State	1 Nov., 2005 – 31 Oct., 2008	AG189/05	17/2/06	Unpublished	
Project Tile Fixing Industrial Agreement	Project Tile Fixing Pty Ltd	15 Sept., 1995 - 31 July, 1997.....	AG194/95	10/10/95	75	3005
Projek Demolition Industrial Agreement	Gemgrove Holdings t/a Projek Demolition	19 June, 1995 - 18 June, 1997.....	AG103/95	21/7/95	75	2375
Pro Pumps/BLPPU Collective Agreement 1999	Whole of State	1 Nov., 1999 - 1 Nov., 2002.....	AG242/99	8/3/00	80	1272
“Prospector and Avon Link on Train Customer Service Officers Enterprise Agreement 2006	Prospector Rail Service and Avon Link Service	24 Mar., 2006 – 22 Mar., 2008 or until Delron contract with Transwa terminates, whichever is the sooner	AG44/06	24/3/06	Unpublished	
Protech International Group Enterprise Bargaining Agreement 2004	Whole of State	1 July, 2004 – 31 Oct., 2005	AG149/04	12/04/05	Unpublished	
Public Transport Authority Railcar Drivers Transperth Train Operations) Enterprise Agreement 2006. (This substitutes the Public Transport Authority Railcar Drivers (Transperth Train Operations) Enterprise Order 2004 No. 699/2004. See Appendix IX for details of Enterprise Order)	Transperth Train Operations	24 Feb., 2006 – 31 Dec., 2007	AG31/06	24/2/06	Unpublished	
Public Transport Authority Railway Employees Enterprise Agreement 2009 (Replaces previous Public Transport Authority ... Agreement 2006 No. AG37/06. For prior details, see Vol. 89, Part 1)	Public Transport Authority of Western Australia	26 June, 2009 – 31 March, 2011	AG31/09	26/6/09	Unpublished	
Public Transport Authority Railway Employees (Trades) Industrial Agreement 2009 (This substitutes the Public Transport Authority ... Agreement 2006 No. AG38/06. For prior details, see Vol. 89, Part 1)	Public Transport Authority	28 July, 2009 – 23 March, 2011	AG34/09	28/7/09	Unpublished	
Public Transport Authority Salaried Officers (APEA) Agreement 2008	employees who are members or eligible to be members of the union	7 Aug., 2009 - 31 Mar., 2011	AG35/09	7/7/09	Unpublished	
Public Transport Authority Salaried Officers Agreement 2008	employees who are members or eligible to be members of the union	20 Apr., 2009 - 31 Mar., 2011.....	AG6/09	20/4/09	Unpublished	
Public Transport Authority (Transit Officers) Industrial Agreement 2009	All PTA employees in classifications listed in Schedule 2 who are members of or are eligible to become members of the ARTBIU	6 April, 2009 - 30 June, 2010.....	AG9/09	6/4/09	Unpublished	
Public Transport Authority (Transwa) Enterprise Agreement 2009 (Substitutes and replaces the Public Transport Authority ... Agreement 2006 No. AG36/06. For prior details, see Vol. 89, Part 1)	Public Transport Authority of Western Australia	26 June, 2009 – 31 Jan., 2011	AG32/09	26/6/09	Unpublished	
Pullella Earthmoving/CFMEUW Industrial Agreement 2002 – 2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	19 May, 2004 – 31 Oct., 2005.....	AG91/04	30/6/04	Unpublished	
Puma Paving/BLPPU and the CMETU Collective Agreement 2001	Whole of State	10 Aug., 2001 - 1 Nov., 2002.....	AG167/01	29/8/01	Unpublished	
PVS/Aquarius Cards and Gifts Jobskills Retail Agreement	Jobskills Trainees employed by Aquarius Cards and Gifts	1 Dec., 1994 - 30 Nov., 1995	AG200/95	13/11/95	75	3224

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PVS/Auto Services/Jobskills Agreement	Professional Vocational Services BP Sorrento, Checkpoint Undercar Parts, Regent Motors P/L, Solo Bayswater, Prestige Automotive Pty Ltd, Exhaust Torque, Caltex Malaga, Ultratune Morley, Marmion Marine, Tuff Tyre Supplies, TM Mechanical Repairs, Gargling Street Automotive, Byford Tyre power	1 Jan., 1996 - 1 June, 1997.....	AG111/96	18/6/96	76	2352
PVS/Auto Services/Jobskills Agreement	Professional Vocational Services Jobskill Trainees at Head Torque	1 Jan., 1996 - 30 June, 1997.....	AG159/96	23/7/96	76	3691
PVS/Auto Services/Jobskills Agreement	Professional Vocational Services, Jobskill employees at Southern Cross Petroleum WA	1 Jan., 1996 - 30 June, 1997.....	AG158/96	23/7/96	76	3693
PVS/AUTO SERVICES/JOBSKILLS Agreement	PVS Jobskills Trainees employed by Auto Services industry	14 Nov., 1995 - 13 May, 1995.....	AG283/95	21/11/95	75	3225
PVS/AUTO/SERVICES/JOBSKILLS Agreement	Whole of State	1 Jan., 1996 - 30 June, 1997	AG336/95	17/1/96	78	2311
PVS/Auto Services Jobskills Agreement 1996	Whole of State	1 Jan., 1996 - 31 June, 1998	AG4/96	1/2/96	77	3382
PVS/Boutique Consolidated Pty Ltd Jobskills Retail Agreement	Whole of State	11 July, 1994 - 10 July, 1995.....	AG69/94	29/7/94	74	1912
PVS/Desert Designs Jobskills Retail Agreement	Jobskills Trainees employed by Desert Designs	1 Dec., 1994 - 30 Nov., 1995.....	AG203/95	13/11/95	75	3226
PVS/Fabric Warehouse Jobskills Retail Agreement	Jobskills Trainees employed by Fabric Warehouse	1 Dec., 1994 - 30 Nov., 1995.....	AG197/95	14/11/95	75	3227
PVS/Gardner Electronics Jobskills Retail Agreement	Jobskills Trainees employed by Gardner Electronics	1 Dec., 1994 - 30 Nov., 1995.....	AG205/95	14/11/95	75	3229
PVS/Jacksons Drawing Supplies Pty Limited Jobskills Retail Agreement	Jobskills Trainees employed by Jacksons Drawing Supplies Pty Limited	1 Dec., 1994 - 30 Nov., 1995.....	AG202/95	13/11/95	75	3230
PVS/Peppermint Tree Jobskills Retail Agreement	Jobskills Trainees employed by Peppermint Tree	1 Dec., 1994 - 30 Nov., 1995.....	AG204/95	14/11/95	75	3231
PVS/Poolmart Jobskills Retail Agreement	Jobskills Trainees employed by Poolmart	1 Dec., 1994 - 30 Nov., 1995.....	AG206/95	13/11/95	75	3232
PVS/Prints and Presence Jobskills Retail Agreement	Jobskills Trainees employed by Prints and Presence	1 Dec., 1994 - 30 Nov., 1995.....	AG198/95	14/11/95	75	3233
PVS/Repcos Auto Parts Jobskills Retail Agreement	Jobskills Trainees employed by Repco Auto Parts	1 Dec., 1994 - 30 Nov., 1995.....	AG201/95	13/11/95	75	3235
PVS/Silkside Pty Ltd Jobskills Retail Agreement	Whole of State	15 Aug., 1994 - 14 Aug., 1995	AG98/94	23/9/94	74	2355
PVS/Skyjack Jobskills Retail Agreement	Jobskills Trainees employed by Skyjack	1 Dec., 1994 - 30 Nov., 1995.....	AG196/95	14/11/95	75	3236
PVS/Sportsgirl Sportscraft Group Jobskills Retail Agreement	Jobskills Trainees employed by Sportsgirl/Sportscraft Group	1 Dec., 1994 - 30 Nov., 1995.....	AG199/95	14/11/95	75	3237
PVS/Suzanne Grae Corporation Pty Ltd Jobskills Retail Agreement	Whole of State	15 Aug., 1994 - 14 Aug., 1995	AG99/94	23/9/94	74	2356
PVS/Universal Retailers Pty Ltd Jobskills Retail Agreement	Whole of State	10 Oct., 1994 - 9 Oct., 1995.....	AG150/94	30/11/94	74	2995
PVS/Worths Pty Ltd Jobskills Retail Agreement	Whole of State	11 July, 1994 - 10 July, 1995.....	AG68/94	29/7/94	74	1914
PWD Construction Pty Ltd/CFMEUW Industrial Agreement 2002-2005. (Cancels PWD Construction Pty Ltd Bricklaying ... Agreement AG126/95 & PWD Construction/BLPPU and the CMETU ... Agreement 1999 AG194/99, 84WAIG62. For prior details, see Vol. 83, Part 1)	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	16 Jan., 2003 - 31 Oct., 2005	AG47/03	7/5/03		Unpublished
Pyrotronics Fire Protection Pty Ltd ABN 7310233899 Enterprise Bargaining Agreement 2003	State of WA	1 Mar., 2003 - 31 Oct., 2005	AG282/03	8/12/03		Unpublished
Q Contracting/CFMEUW Collective Agreement 2001	Whole of State	9 Jan., 2002 - 1 Nov., 2002.....	AG258/01	9/1/02		Unpublished

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Q Contracting/CFMEUW Industrial Agreement 2005-2008. (Replaces Q Contracting ... Agreement 2002-2005 No. AG233/02. For prior details, see Vol. 85, Part 1)	Western Australia	1 Nov., 2005 – 31 Dec., 2008	AG143/05	1/12/05	Unpublished	
QED Fabrication Pty Ltd/CFMEUW Industrial Agreement 2005-2008	Whole of State	1 Nov., 2005 – 31 Oct., 2008	AG171/05	8/11/05	Unpublished	
Quake Holdings/CFMEUW Industrial Agreement 2005-2008. (Replaces previous Quake Holdings ... Agreement 2002-2005 No. AG187/03. For prior details, see Vol. 85, Part 1)	Western Australia	1 Nov., 2005 – 31 Oct., 2008	AG215/05	28/11/05	Unpublished	
Quality Assured Projects/ BLPPU and the CMETU Collective Agreement 2000 (Replaces previous Quality Assured ... Agreement No. AG 264/19997. For prior details, see Vol. 80, Part 2)	Whole of State	1 Nov., 1999 - 1 Nov., 2002.....	AG152/00	11/07/00	81	550
Quality Waterproofing Services (WA) Industrial Agreement	Maraglen Pty Ltd t/a Quality Waterproofing Services (WA)	19 Sept., 1995 - 31 July, 1997.....	AG231/95	22/11/95	76	132
Quartell Pty Ltd/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	25 Oct., 2004 – 30 June, 2007.....	AG225/04	9/12/04	Unpublished	
Quickfix/CFMEUW Industrial Agreement 2002-2005. (Cancels Quickfix Reinforcing/ BLPPU and the CMETU ... Agreement 1999, AG235/99. For prior details, see Vol. 83, Part 1)	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	29 Nov., 2002 – 31 Oct., 2005	AG232/02	7/5/03	Unpublished	
Quintilian School (Enterprise Bargaining) Agreement 2003, The. (Replaces previous Quintilian School ... Agreement 2000, No. AG250/00. For prior details, see Vol. 83, Part 2)	Whole of State	1 Sept., 2002 - 31 Aug., 2004	AG302/03	20/02/04	Unpublished	
R & C Rossi Industrial Agreement	P. Rossi t/a R & C Rossi	15 Sept., 1995 - 31 July, 1995.....	AG186/95	10/10/95	75	3008
R & E General Store and SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Whole of State	6 Nov., 2002 – 30 June, 2005.....	AG180/02	18/11/02	Unpublished	
R & M Pirone Grano Contractors/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	14 Apr., 2003 – 31 Oct., 2005.....	AG118/03	7/5/03	Unpublished	
RAC - Assistance Centre, Enterprise Agreement 2002. (Replaces and Cancels previous RAC - Assistance ... Agreement No. AG259/00. For prior details, see Vol. 82, Part 2)	Whole of State	17 Feb., 2003 – 1 Aug., 2005	AG308/02	17/2/03	Unpublished	
R.A.C. Glass and Security Services Pty Ltd Enterprise Bargaining Agreement 2001	Whole of State	1 Jan., 2001 - 31 Dec., 2001.....	AG285/00	8/3/01	Unpublished	
RAC Motoring Services Enterprise Bargaining Agreement 2004, No. AG11 of 2004 Replaces RAC Motoring ... Agreement (2002 No. AG3/02. For prior details, see Vol. 83, Part 2)	Perth Metropolitan Area	1 Jan., 2004 - 31 Dec., 2005..... Order No. 1097/2004 (Interpretation)	AG11/04 ...	13/02/04 1/10/04, 19/11/04	84	3827
R.A.C. of WA (Inc.) Fleet Maintenance Work-Shop Enterprise Bargaining Agreement 1997 - The	Whole of State	1 Aug., 1997 - 31 July, 1998.....	AG323/97	28/11/97	77	3387
RAC (WA) Redundancy Agreement (Cancels previous RAC (WA) ... Agreements No. AG263/97. For prior details, see Vol. 79, Part 2)	Whole of State	20 Mar., 2000 - 31 Dec., 2000	AG164/99	20/3/00	80	1568
Racing and Wagering Western Australia ("RWVA") (Commuted Allowance – Computer Operators) Specific Agreement 2005 (Replaces the Totalisator Agency Board Agency (Commuted Allowance – Computer Operators) Specific Agreement 2003 No. PSAAG1/04)	Whole of State	1 Jan., 2005 – 31 Dec., 2006.....	AG291/04	24/01/05	Unpublished	
Radiator Repair Industry Youth Traineeship Agreement	Whole of State	7 June, 1990 to 6 June, 1991	AG16/89	7/6/90	70	2185
Railway Wages Grades Long Service Agreement, 1976	Workers employed by W.A. Government Railways Commission	1 Aug., 1976 to 31 July, 1977	AG57/76	10/1/77	57	205
Ralph M. Lee (WA) Pty Ltd Enterprise Bargaining Agreement 1994	Whole of State	1 Aug., 1994 - 31 Dec., 1995	AG117/94	26/10/95	74	2682
Ralph M. Lee (WA) Pty Ltd Enterprise Bargaining Agreement 1996	Ralph M Lee (WA) Pty Ltd	1 Jan., 1996 - 31 Dec., 1997.....	AG128/96	29/5/96	76	1903
Ralph M Lee Pty Ltd (Maintenance Operations) Port Hedland Enterprise Bargaining Agreement 1997	BHP Iron Ore Facility	1 Nov., 1996 - 31 Oct., 1998.....	AG58/97	4/3/97	77	673

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Rama Concrete/CFMEUW Industrial Agreement 2002-2005. (Cancels Rama Concrete/BLPPU and the CMETU Collective Agreement 2000 No. AG109/00. For prior details, see Vol. 83, Part 1)	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	13 Dec., 2002 – 31 Oct., 2005	AG299/02	7/5/03		Unpublished
Ram Jet Concrete Pumping/BLPPU Collective Agreement 2000	State of WA	7 July, 2000 - 1 Nov., 2002.....	AG184/00	7/8/00	80	3255
Ramsay Healthcare WA Hospitals Health Services Union Enterprise Agreement 2005 (Replaces Hollywood Private Hospital ... Agreement No. AG9/2003 and HSOA Rockingham Family ... Agreement 2003 No. AG 102/03)	State of WA	10 Mar., 2005 – 31 Jan., 2008	AG24/05	16/03/05		Unpublished
Ramsar Industrial Agreement	Ramsar Pty Ltd	4 Nov., 1994 - 31 July, 1995.....	AG147/94	4/11/94	75	114
Rand National Transport Enterprise Bargaining Agreement 2002 (Replaces previous Rand Cold ... Agreement No. AG171/99 and Rand National ... Agreement No. AG229/96. For prior details, see Vol. 82, Part 1)	16 Miles Road, Kewdale W.A.	10 Dec., 2002 – 1 Aug., 2005	AG203/02	12/12/02		Unpublished
Rand National Transport Enterprise Bargaining Agreement	Whole of State	18 Sept., 1997 - 1 Aug., 1998	AG182/97	2/10/97	77	2646
Rangers (National Parks) General Agreement 2009. (Replaces previous Rangers ... Agreement 2007 No. AG53/07. For prior details, see Vol. 89, Part 1)	Employees employed by National Parks Authority throughout the State of W.A.	27 Aug., 2009 - 31 Dec., 2009.....	AG29/09	3/9/09		Unpublished
RANWELL PTY LTD/CFMEUW Collective Agreement 2002	Whole of State	7 Mar., 2002 - 1 Nov., 2002.....	AG35/02	5/4/02		Unpublished
Rapid Metal Developments Enterprise Bargaining Agreement 1999. (Replaces AG165/97)	Whole of State	1 July, 1999 - 30 June, 2001	AG127/99	6/10/99	79	3322
Raptor Commercial Demolition Pty Ltd/CFMEUW Industrial Agreement 2002-2005 (Cancels Raptor Demolition/BLPPU Collective Agreement 1999 No. AG254/99. For prior details, see Vol. 83, Part 1)	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	13 Dec., 2002 – 31 Oct., 2005	AG300/02	7/5/03		Unpublished
Ravensthorpe Nickel Project and MCD Contracting Agreement 2006	Ravensthorpe Nickel Project	5 May, 2006 – 2 May, 2009.....	AG45/06	5/5/06		Unpublished
R Bayley Electrical Industrial Agreement	Whole of State	1 Aug., 1997 - 31 Oct., 1999	AG234/97	21/5/98	78	2312
RCR Engineering Enterprise Agreement	Key Investments T/A RCR Engineering	5 Aug., 1994 - 4 Aug., 1995	AG74/94	11/8/94	74	2123
RCR Engineering Ltd (Bunbury Operations) Enterprise Agreement 1996	Whole of State	20 Dec., 1996 - February 1998	AG319/96	31/12/96	77	88
RCR Tomlinson Ltd (Bayswater and Welshpool) Enterprise Agreement 2002	RCR Tomlinson Ltd Bayswater and Welshpool	1 Oct., 2002 – 31 Dec., 2003	AG156/03	5/8/03		Unpublished
RCR Tomlinson Ltd (Bayswater and Welshpool) Enterprise Agreement 2004	RCR Tomlinson Ltd Bayswater and Welshpool	1 Jan., 2004 – 31 Dec., 2006.....	AG18/04	23/02/04		Unpublished
RCR Tomlinson Ltd (Bunbury Operations) Enterprise Agreement 2001 - 2003 (Replaces previous RCR Tomlinson ... Agreement No. AG20/99. For prior details, see Vol. 81, Part 2)	RCR Tomlinson's engineering operations, Bunbury	22 June, 2001 - 30 Mar., 2003	AG122/01	13/7/01		Unpublished
RCR Tomlinson Ltd (Perth Engineering) Enterprise Agreement 1998 (Cancels AG231/1996. For prior details, see Vol.78, Part 1)	Whole of State	2 June, 1998 - 1 June, 2000.....	AG95/98	13/8/98	78	3451
RCR Tomlinson Ltd (Perth Foundry) Enterprise Agreement 1998 (Amending Order) (Cancels previous RCR Tomlinson ... Agreement No. AG253/98. Published at Vol. 79WAIG526 dated 18/1/99)	Perth	13 Nov., 1998 - 12 Nov., 2000	AG253/98	10/2/99	79	798
Read Bros Pty Ltd/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	24 June, 2003 – 31 Oct., 2005	AG159/03	6/9/04		Unpublished
Readymix Albany Quarry (Enterprise Bargaining) Consent Agreement 1994	Employees of CSR Limited t/a The Readymix Group connected with hard rock quarry operations, Albany	1 Apr., 1994 - 31 Mar., 1995	AG37/94	22/12/94	75	115

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Readymix Gosnells Quarry and Central Workshops (Enterprise Bargaining) Consent Agreement 1995, The (Replaces The Readymix Gosnells Quarry ... Agreement 1994. See Vol 75, Part 1)	CSR Limited t/a The Readymix Group	1 Nov., 1995 - 31 Oct., 1997.....	AG26/96	23/2/1996	76	691
Readymix (Mandurah and Gosnells Transport, (Enterprise Bargaining) Agreement 1995, The (Replaces The Readymix Gosnells Transport, ... Agreement 1994. For prior details, see Vol 75, Part 1)	CSR Limited t/a The Readymix Group	7 Apr., 1995 - 6 Apr., 1996.....	AG143/95	5/10/95	75	2787
Readymix Jandakot International Agreement. (Replaces AG18/1994)	Whole of State	11 Dec., 1997 - 10 Dec., 1999.....	AG67/98	30/7/98	78	3711
Readymix Metropolitan Concrete (Enterprise Bargaining) Consent Agreement 1993 - The	The Readymix Group	22 Dec., 1993 - 21 Dec., 1994.....	AG87/93	24/12/93	74	95
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Readymix Quarries Gosnells Operations 1995 Redundancy Agreement	CSR Limited t/a The Readymix Group ACN 00 0001 276	24 Nov., 1995 - 23 Nov., 1998.....	AG273/95	24/11/95	76	134
Real Estate WA (REWA) Agreement 2004	Real Estate WA	15 Mar., 2005 – 13 Mar., 2007	AG283/04	15/03/05	Unpublished	
RED AUSTRALIA EQUIPMENT PTY LTD Perth Branch Industrial Agreement 1998	Whole of State	18 July, 1998 - 17 July, 1999	AG40/98	20/7/98	78	3242
Reda Pty Ltd/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	25 Oct., 2004 – 30 June, 2007.....	AG208/04	9/12/04	Unpublished	
Redundancy Due to ANI Bradken South Fremantle Plant Closure Agreement	ANI Bradken, South Fremantle Plant and directly affected area	29 May, 1997- Closure.....	AG103/97	29/5/97	77	1461
Reeves Steel Fabrication Pty Ltd/CFMEUW Industrial Agreement 2005-2008 (Replaces Reeves Engineering/CFMEUW Industrial Agreement 2002-2005 No. AG169/03)	Whole of State	1 Nov., 2005 – 31 Oct., 2008	AG166/05	12/12/05	Unpublished	
Regent College Inc (Enterprise Bargaining) Agreement 2003. (Replaces previous Regent College ... Agreement 2000, No. AG195/01. For prior details, see Vol. 83, Part 2)	Whole of State	1 Jan., 2003 - 31 Dec., 2004.....	AG299/03	20/02/04	Unpublished	
Regent Masonary Industrial Agreement	Whole of State	11 Oct., 1996 - 31 July, 1997	AG284/96	26/3/97	77	937
Reguero Contracting/BLPPU and the CMETU Collective Agreement 2000	Whole of State	1 Nov., 1999 - 1 Nov., 2002.....	AG94/00	19/5/00	80	2668
Registered Nurses – Australian Nursing Federation – Disability Services Commission Industrial Agreement 2008	Whole of State	18 Dec., 2008 – 30 June, 2010.....	AG22/08	18/12/08	Unpublished	
Registered Nurses, Midwives and Enrolled Mental Health Nurses – Australian Nursing Federation – WA Health Industrial Agreement 2007	State of Western Australia	13 Feb., 2008 – 30 June, 2010	AG 69/07	13/2/08	Unpublished	
Reo Craft Industrial Agreement	M. Hoppa t/a Reo Craft	11 Sept., 1995 - 31 July, 1997.....	AG 218/95	22/11/95	76	134
Reo Craft/BLPPU and the CMETU Collective Agreement 2000. (Replaces Agreement No. AG 29/98)	Whole of State	1 Nov., 1999 - 1 Nov., 2002.....	AG 150/00	11/07/00	81	556
Reo Craft/CFMEUW Industrial Agreement 2005-2008. (Replaces previous Reo Craft ... Agreement 2002-2005 No. AG258/02. For prior details, see Vol. 85, Part 1)	Western Australia	1 Nov., 2005 – 31 Oct., 2008	AG151/05	28/11/05	Unpublished	
Reoright Pty Ltd/CFMEUW Industrial Agreement 2005-2008	Whole of State	1 Nov., 2005 – 31 Oct., 2008	AG168/05	8/11/05	Unpublished	
Reoright Pty Ltd New Metro Rail Southern Suburbs Rail Project, Structural Project Agreement 2005	New Metro Rail Project Southern Suburbs Rail Project	16 June, 2005 – 1 July, 2006.....	AG94/05	23/9/05	Unpublished	
Residential Office & Commercial Painters/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	10 Feb., 2003 – 31 Oct., 2005	AG69/03	7/5/03	Unpublished	
Retail Food Establishment Employees Agreement 1992 (For previous amendments, see Vol. 89, Part 2)	Whole of State	11 Dec., 1992 - 10 Feb., 1993 (Includes	AG15/92	11/12/92	73	86

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Retail Food Services Employees Agreement (For previous amendments, see Vol. 89, Part 2)	Whole of State	1 Nov., 1991.....	AG10/91	1/11/91	71	2801
Ric's Painting Service/BLPPU and the CMETU Collective Agreement 2000 (Cancels previous Ric Painting ... Agreement No. AG270/98. For prior details, see Vol. 79, Part 2)	Whole of State	1 Nov., 1999 - 1 Nov., 2002	AG115/00	19/5/00	80	2674
Righton Roofing & Water Management Industrial Agreement	Ray Righton t/a Righton Roofing & Water Management	12 Sept., 1995 - 31 July, 1997	AG221/95	20/3/96	76	1005
Righton's Waterproofing/BLPPU Collective Agreement 2001	Whole of State	1 July, 2001 - 1 Nov., 2002.....	AG157/01	9/8/01	Unpublished	
RIVER ROOSTER AUSTRALIA, SDA ENTERPRISE AGREEMENT 2001	Whole of State (For previous amendments, see Vol. 89, Part 2)	3 Dec., 2001 - 1 Mar., 2004.....	AG228/01	3/12/01	Unpublished	
RIVER ROOSTER BOULDER, SDA ENTERPRISE AGREEMENT 2001	Whole of State (For previous amendments, see Vol. 89, Part 2)	3 Dec., 2001 - 1 Mar., 2004.....	AG230/01	3/12/01	Unpublished	
RIVER ROOSTER BRIDGETOWN, SDA ENTERPRISE AGREEMENT 2001	Whole of State (For previous amendments, see Vol. 89, Part 2)	3 Dec., 2001 - 1 Mar., 2004.....	AG244/01	3/12/01	Unpublished	
River Rooster Bridgetown, SDA Enterprise Agreement 1998	Whole of State	8 Oct., 1998 - 1 July, 2000.....	AG108/98	8/10/98	78	4055
River Rooster Broome Agreement No. AG271/96 (For previous amendments, see Vol. 89, Part 2)	River Rooster Broome	23 Dec., 1996 - 23 Mar., 1997	AG271/96	23/12/96	77	109
River Rooster Bunbury Agreement No. AG264/96 (For previous amendments, see Vol. 89, Part 2)	River Rooster Bunbury	23 Dec., 1996 - 23 Mar., 1997	AG264/96	23/12/96	77	125
River Rooster Busselton/Dunsborough Agreement No. AG285/1996 (For previous amendments, see Vol. 89, Part 2)	River Rooster Busselton & River Rooster Dunsborough	23 Dec., 1996 - 23 Mar., 1997	AG285/96	23/12/96	77	117
River Rooster Carnarvon Agreement No. AG270/96 (For previous amendments, see Vol. 89, Part 2)	River Rooster Carnarvon	23 Dec., 1996 - 23 Mar., 1997	AG270/96	23/12/96	77	133
RIVER ROOSTER COOLBELLUP, SDA ENTERPRISE AGREEMENT 2001	Whole of State (For previous amendments, see Vol. 89, Part 2)	3 Dec., 2001 - 1 Mar., 2004.....	AG225/01	3/12/01	Unpublished	
RIVER ROOSTER HARVEY, SDA ENTERPRISE AGREEMENT 2001	Whole of State (For previous amendments, see Vol. 89, Part 2)	3 Dec., 2001 - 1 Mar., 2004.....	AG229/01	3/12/01	Unpublished	
RIVER ROOSTER MADDINGTON, SDA ENTERPRISE AGREEMENT 2001	Whole of State (For previous amendments, see Vol. 89, Part 2)	3 Dec., 2001 - 1 Mar., 2004.....	AG226/01	3/12/01	Unpublished	
RIVER ROOSTER MANDURAH, SDA ENTERPRISE AGREEMENT 2001	Whole of State (For previous amendments, see Vol. 89, Part 2)	3 Dec., 2001 - 1 Mar., 2004.....	AG227/01	3/12/01	Unpublished	
River Rooster Margaret River, SDA Enterprise Agreement 2001. (For previous amendments, see Vol. 89, Part 2)	Whole of State	3 Dec., 2001 - 11 March, 2004	AG232/01	03/12/01	Unpublished	
River Rooster Merriwa Agreement No. AG268/96 (For previous amendments, see Vol. 89, Part 2)	River Rooster Merriwa	23 Dec., 1996 - 23 Mar., 1997	AG268/96	23/12/96	77	149
River Rooster Narrogin Agreement No. AG265/96 (For previous amendments, see Vol. 89, Part 2)	River Rooster Narrogin	23 Dec., 1996 - 23 Mar., 1997	AG265/96	23/12/96	77	157
RIVER ROOSTER PINJARRA, SDA ENTERPRISE AGREEMENT 2001 (For previous amendments, see Vol. 89, Part 2)	Whole of State	3 Dec., 2001 - 1 Mar., 2004.....	AG233/01	3/12/01	Unpublished	
RIVER ROOSTER STRATTON, SDA ENTERPRISE AGREEMENT 2001 (For previous amendments, see Vol. 89, Part 2)	Whole of State	3 Dec., 2001 - 1 Mar., 2004.....	AG224/01	3/12/01	Unpublished	
RIVER ROOSTER WARNBRO, SDA ENTERPRISE AGREEMENT 2001 (For previous amendments, see Vol. 89, Part 2)	Whole of State	3 Dec., 2001 - 1 Mar., 2004.....	AG231/01	3/12/01	Unpublished	
Riverton Engineering Company Enterprise Bargaining Agreement 2000	Riverton Engineering, WA	1 Oct., 2001 - 30 Sept., 2003	AG107/01	27/6/01	Unpublished	

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Riverton Engineering Enterprise Bargaining Agreement 1998. (Replaces No. AG242/96)	Riverton Engineering Operations & Kenwick Operations	1 Sept., 1998 - 31 Aug., 2000	AG224/98	20/11/98	78	4652
R.M. Harman Industrial Agreement	Whole of State	1 Nov., 1996 - 31 July, 1997	AG94/96	1/11/96	76	4628
Rocket Couriers and the Transport Workers Union Enterprise Agreement 1998	Whole of State	14 Aug., 1998 - 13 Aug., 2000	AG84/98	9/10/98	78	4110
Rocla Quarry Products – Quarries Kewdale (Enterprise Bargaining) Agreement 1994	Amatek Ltd t/a Rocla Quarry Products W.A.	19 Jan., 1995 - 18 Jan., 1997	AG201/94	20/1/95	75	388
Rokla Pty Ltd Industrial Agreement	Rokla Pty Ltd	8 Dec., 1995 - 31 July, 1997	AG323/95	24/6/96	76	2356
Rock Solid Concrete Cutting/CFMEUW Industrial Agreement 2005-2008	Whole of State	1 Nov., 2005 - 31 Oct., 2008	AG238/05	17/2/06		Unpublished
Rockwood Masonry Industrial Agreement	Whole of State	21 Oct., 1998 - 31 Oct., 1999	AG237/98	17/12/98	79	194
Rocky Bay Incorporated Salaried Officers Enterprise Agreement 2002. (Replaces & Cancels previous Rocky Bay Incorporated ... Agreement No AG 292/00. For prior details, see Vol. 82, Part 1)	Whole of State	22 Nov., 2002 - 30 June 2004	AG204/02	22/11/02		Unpublished
Roman Catholic Bishop of Broome / LHMU Non-Teaching Staff Enterprise Bargaining Agreement, 2009 - The	Western Australia	6 April, 2009 – 31 Dec., 2009	AG17/09	11/8/09		Unpublished
Roman Catholic Bishop of Broome Teachers Enterprise Bargaining Agreement 2009 - The (This agreement substitutes and replaces the Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 14 of 2006 No. AG14/07)	Whole of State	17 Dec., 2009 – 7 July, 2011	AG67/09	17/12/09		Unpublished
Roman Catholic Bishop of Broome Non-Teaching Staff Enterprise Bargaining Agreement, 2009 – The. (Cancels and Replaces previous Roman Catholic Bishop of Broome ... Agreement, 2006 – The, No. AG24/07. For prior details, see Vol. 89, Part 2)	Western Australia	Date of agreement by all parties..... - 31 Dec., 2009	AG51/09	4/2/10		Unpublished
Roman Catholic Bishop of Bunbury / LHMU Non-Teaching Staff Enterprise Bargaining Agreement, 2009 - The	Western Australia	6 April, 2009 – 31 Dec., 2009	AG24/09	11/8/09		Unpublished
Roman Catholic Bishop of Bunbury Teachers Enterprise Bargaining Agreement 2009 - The (This agreement substitutes and replaces the Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 16 of 2006 No. AG16/07)	Whole of State	17 Dec., 2009 – 7 July, 2011	AG52/09	17/12/09		Unpublished
Roman Catholic Bishop of Bunbury Non-Teaching Staff Enterprise Bargaining Agreement, 2009 – The (Cancels and Replaces previous Roman Catholic Bishop of Bunbury ... Agreement, 2006 - The, AG29/07. For prior details, see Vol. 89, Part 2)	Western Australia	Date of agreement by all parties..... - 31 Dec., 2009	AG61/09	4/2/10		Unpublished
Roman Catholic Bishop of Geraldton / LHMU Non-Teaching Staff Enterprise Bargaining Agreement 2009 - The	Western Australia	6 April, 2009 – 31 Dec., 2009	AG22/09	11/8/09		Unpublished
Roman Catholic Bishop of Geraldton Teachers Enterprise Bargaining Agreement 2009 (This agreement substitutes and replaces The Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 13 of 2006, No. AG13/07.)	Whole of State	17 Dec., 2009 – 7 July, 2011	AG54/09	17/12/09		Unpublished
Roman Catholic Bishop of Geraldton Non-Teaching Staff Enterprise Bargaining Agreement, 2009 - The. (Cancels and Replaces previous Roman Catholic Bishop ... Agreement, 2006 - The, No. AG23/07. For prior details, see Vol. 89, Part 2)	Western Australia	Date of agreement by all parties..... - 31 Dec., 2009	AG47/09	4/2/10		Unpublished
Roman Catholic Archbishop of Perth Non-Teaching Staff Enterprise Bargaining Agreement, 2009 – The. (Replaces previous The Roman Catholic ... Agreement 2006 No. AG32/07. For prior details, see Vol. 89, Part 1)	Western Australia	Date of agreement by all parties..... - 31 Dec., 2009	AG38/09	16/9/09		Unpublished
Roman Catholic Archbishop of Perth / LHMU Non-Teaching Enterprise Bargaining Agreement 2009 - The	Western Australia	6 April, 2009 – 31 Dec., 2009	AG21/09	11/8/09		Unpublished
Roman Catholic Archbishop of Perth Teachers Enterprise Bargaining Agreement 2009. (Cancels Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 6 of 2006, No. AG6/07)	Whole of State	14 Aug., 2009 - 7 July, 2011	AG37/09	14/8/09		Unpublished

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Ronaldo Holdings Pty Ltd/CFMEUW Industrial Agreement 2002 – 2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	6 Dec., 2002 – 31 Oct., 2003	AG256/02	7/5/03	Unpublished	
Ron Brown Roofing/CFMEUW Industrial Agreement 2004 – 2007	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	22 Dec., 2004 – 30 June, 2007.....	AG287/04	1/04/05	Unpublished	
Ron Hull Enterprises Industrial Agreement	Whole of State	17 Mar., 1999 - 31 Oct., 1999.....	AG52/99	18/5/99	79	1680
Roof & Wall Doctor / BLPPU and the CMETU Collective Agreement 2001 - The	Western Australia	15 June, 2002 - 1 Nov., 2002.....	AG112/01	13/07/01	unpublished	
Roofmart Certified Agreement 2005	Roofmart	17 Nov., 2005 – 15 Nov., 2008.....	AG221/05	17/11/05	Unpublished	
Roof Safe Yard/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	15 Mar., 2004 – 1 Nov., 2006.....	AG42/04	6/9/04	Unpublished	
Roof Safe Yard Pty Ltd/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	15 Mar., 2004 – 30 Nov., 2006.....	AG43/04	6/9/04	Unpublished	
Roving Crew Partnership Agreement 1997	Spearwood workshop	2 Aug., 1997 - 2 Aug., 1999	AG90/98	13/11/98	78	4656
Royal Automobile Club of W.A. (Incorporated) Enterprise Bargaining Agreement 1993 - The	Whole of State	26 Feb., 1993 - 31 Dec., 1993.....	AG21/93	17/3/93	73	1024
Royal Flying Doctor Service of Australia RFDS Western Operations, Medical Practitioners Industrial Agreement 2008 (Cancels and Replaces previous Royal Flying Doctors ... Agreement 2003 No. AG23/04. For prior details, see Vol. 88, Part 2)	Whole of State	31 Mar., 2009 - 30 Sept., 2010	AG 8/09	31/3/09	Unpublished	
Royal WA Institute for the Blind Employees Wage Agreement	Persons with disabilities at the Royal WA Institute for the Blind (Inc)	8 Apr., 1997 - 7 Apr., 2000.....	AG13/97	8/4/97	77	1217
RPS Bricklaying Industrial Agreement	Whole of State	1 Aug., 1997 - 31 Oct., 1999	AG197/97	7/10/97	77	2951
RTD Bricklaying/BLPPU and the CMETU Collective Agreement 2001	Whole of State	3 July, 2001 - 1 Nov., 2002.....	AG129/01	3/8/01	Unpublished	
RWWA Racing Radio Employees General Agreement 2005. (Supersedes and Replaces TAB Racing Radio Employees General Agreement 2003 No. AG192/03. For prior details, see Vol. 85, Part 2)	Racing & Wagering Western Australia (RWWA) or its successor	28 Nov., 2005 – 28 Nov., 2008.....	AG231/05	28/11/05	Unpublished	
S & G Carpentry Pty Ltd/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	11 Mar., 2003 – 31 Oct., 2005.....	AG96/03	7/5/03	Unpublished	
S & L Boon Contracting/CFMEUW Industrial Agreement 2005-2008. (Replaces previous S & L Boon Contracting ... Agreement 2002-2005 No. AG27/04. For prior details, see Vol. 85, Part 1)	Whole of State	1 Nov., 2005 – 31 Oct., 2008.....	AG2201/05	8/11/05	Unpublished	
S & L Demolition/CFMEUW Industrial Agreement 2005-2008. (Replaces previous S & L Demolition ... Agreement 2002-2005 No. AG223/03. For prior details, see Vol. 85, Part 1)	Whole of State	1 Nov., 2005 – 31 Oct., 2008.....	AG158/05	11/11/05	Unpublished	
S&M Engineering/ BLPPU and the CMETU Collective Agreement 2001	Whole of State	10 Apr., 2001 - 1 Nov., 2002.....	AG64/01	11/5/01	Unpublished	
Safe Scaffold Pty Ltd/CFMEUW Industrial Agreement 2002-2005. (Cancels Safe Scaffolding Industrial Agreements No. AG181/96 & No. AG129/94 and Safe Scaffold/BLPPU Collective Agreement 2000 AG148/00. For prior details, see Vol. 83, Part 1)	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	11 Dec., 2002 – 31 Oct., 2005	AG284/02	7/5/03	Unpublished	
St Andrew's Greek Orthodox Grammer (Enterprise Bargaining) Agreement 2008 (Replaces previous St Andrew's Greek ... Agreement 2003 No. AG9/05. For prior details, see Vol. 88, Part 1)	Whole of State	1 Jan., 2008 - 31 Dec., 2008	AG9/08	16/6/08	Unpublished	
St Hilda's Anglican School for Girls Inc (Enterprise Bargaining) Agreement 2008 (Replaces previous St. Hilda's Anglican School ... Agreement 2006 No. AG58/06. For prior details, see Vol. 88, Part 1)	Whole of State	1 Jan., 2008 - 31 Dec., 2010	AG10/08	27/6/08	Unpublished	
St. John Ambulance Australia Enterprise Agreement 1995	St. John Ambulance Australia WA Ambulance Service Inc.	5 Mar., 1996 - 30 June, 1997	AG2/96	14/3/96	76	1043

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St John Ambulance Communication Centre Enterprise Agreement 1994	Whole of State	22 Aug., 1994 - 7 Oct., 1995.....	AG48/94	29/8/94	74	2146
St John Ambulance Deputy Superintendents' Enterprise Agreement 1994	Whole of State	6 May, 1994 - 5 May, 1996.....	AG50/94	29/8/94	74	2148
St John Ambulance Association in W.A. (Inc) Worker's Compensation - Make Up Pay Agreement	All members of Miscellaneous Workers Union employed by St John Ambulance Association in W.A. (Inc.)	29 Jan., 1987 to 29 Jan., 1988.....	AG7/86	29/1/87	67	349
St John of God Health Care Bunbury - HSUA Agreement 2004. (Replaces previous St John of God ... Agreement No. AG154/02. For prior details, see Vol. 84, Part 1)	Whole of State	8 Oct., 2004 - 7 Sept., 2006.....	AG168/04	8/10/04	Unpublished	
St John of God Hospital Geraldton (HSU) Caregiver Agreement 2006 (Replaces St John of God Health ... Agreement 2003 No. AG267/03. For prior details, see Vol. 85, Part 2)	Whole of State	27 Mar., 2006 - 31 Mar., 2009.....	AG41/06	27/3/06	Unpublished	
St John of God Health Care Murdoch AMA Medical Practitioners Industrial Agreement 2005. (Replaces previous St John of God Health ... Agreement 2002 No. AG275/02. For prior details, see Vol. 84, Part 2)	St John of God Health Care Murdoch	28 Apr., 2005 - 31 Oct., 2007.....	AG57/05	28/04/05	Unpublished	
St John of God Hospital Murdoch (HSU) Caregiver Agreement 2006. (Cancels and Replaces St John of God Health ... Agreement 2003 No. AG243/03. For prior details, see Vol. 85, Part 2)	Whole of State	1 Apr., 2006 - 31 Mar., 2009.....	AG34/06	9/3/06	Unpublished	
St John of God Hospital Subiaco (HSU) Caregiver Agreement 2006. (Cancels and Replaces St John of God Health ... Agreement 2003 No. AG244/03. For prior details, see Vol. 85, Part 2)	Whole of State	1 Apr., 2006 - 31 Mar., 2009.....	AG35/06	9/3/06	Unpublished	
St John of God Health Care Subiaco (HSUA-Pharmacy) Agreement 2004 (Replaces previous St John of God ... Agreement No. AG146/02. For prior details, see Vol. 84, Part 1)	Registered Pharmacists employed by the Hospital, but shall exclude Chief Pharmacist and Deputy Chief Pharmacist	2 Dec., 2004 - 30 Sept., 2006.....	AG197/04	2/12/04	Unpublished	
St John of God Health Care Subiaco Maintenance Agreement 2004 (Replaces previous St John of God ... Agreement 2002 No. AG27/03. For prior details, see Vol. 84, Part 2)	Whole of State	25 Feb., 2004 - 31 Aug., 2007.....	AG288/04	15/02/05	Unpublished	
St John of God Hospital Subiaco (Maintenance) Agreement 1995	St John of God Hospital Subiaco Inc.	15 May, 1995 - 16 Sept., 1996.....	AG34/95	30/5/95	75	1894
St John of God Murdoch Caregiver Agreement 1994. (Replaced by St John of God (Hospital Murdoch (HSOA) Caregiver Agreement 1995 insofar as employees eligible to be members of HSOA)	Whole of State	1 Jan., 1994 - 31 May, 1995.....	AG86/93	10/2/94	74	885
St John of God Pathology Enterprise Agreement 2004. (Replaces previous St John of God Pathology Enterprise Agreement 2002)	Whole of State	1 July, 2004 - 30 June, 2007.....	AG126/04	2/8/04	Unpublished	
St. Mary's Anglican Girls' School (Inc) (Enterprise Bargaining) Agreement 2008 (Replaces previous St. Mary's Anglican ... Agreement 2006 No. AG270/05. For prior details, see Vol. 88, Part 1)	Whole of State	1 Jan., 2008 - 31 Dec., 2010.....	AG67/07	6/2/08	Unpublished	
Salaried Officers Mayne Diagnostic Imaging (Joondalup) Western Australia Enterprise Agreement 2003	Mayne Diagnostic Imaging Joondalup Health Campus	10 Oct., 2003 - 1 July, 2004.....	AG242/03	10/10/03	Unpublished	
Salvation Army Property Trust (Western Australia) Hospital and Salaried Officers Association Enterprise Agreement 2003 - The (Cancels previous Salvation Army (Western Australia) Property Trust ... Agreement 2001 No. AG5/01. For prior details, see Vol. 83, Part 1)	Whole of State	7 Nov., 2003 - 6 Nov., 2005.....	AG281/03	7/11/03	Unpublished	
Sam Ceramics and Stone Pty Ltd/BLPPU Collective Agreement 2001	Whole of State	23 May, 2001 - 1 Nov., 2002.....	AG95/01	14/6/01	Unpublished	
Samcon WA Industrial Agreement	Samcon WA Pty Ltd	22 Nov., 1995 - 31 July, 1997.....	AG296/95	10/1/96	76	371
Sandvik Materials Handling Enterprise Bargaining Agreement 2003 (Replaces previous Sandvik Materials ... Agreement 2002 No. AG85/03. For prior details, see Vol. 83, Part 2)	285 Collier Road Bayswater WA 6053	1 Oct., 2003 - 30 Sept., 2004.....	AG2/04	12/03/04	Unpublished	

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Sandvik Materials Handling Pty Ltd Enterprise Bargaining Agreement 2004 to 2007	285 Collier Road Bayswater WA 6053	1 Oct., 2004 – 30 Sept., 2007.....	AG50/05	11/04/05	Unpublished	
Sanwell Industrial Agreement	Whole of State	15 Aug., 1996 - 31 July, 1997.....	AG218/96	25/9/96	76	4238
Sanwell Pty Ltd/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	10 Feb., 2003 – 31 Oct., 2005.....	AG70/03	7/5/03	Unpublished	
Sarich Group/BLPPU and the CMETU Collective Agreement 2001	Whole of State	21 Aug., 2001 - 1 Nov., 2002	AG173/01	17/9/01	Unpublished	
Sasstone Pty Ltd/CFMEUW Collective Agreement 2002	Whole of State	25 Mar., 2002 - 1 Nov., 2002.....	AG57/02	16/4/02	Unpublished	
SAVCOR FINN Pty. Ltd/CFMEUW East Perth Power Station Site Industrial Agreement 2005	John Holland East Perth Power Station Restoration Project	13 June, 2005 – 31 Oct., 2005	AG90/05	23/8/05	Unpublished	
Scaffidi Developments Pty Ltd Industrial Agreement	Whole of State	4 Aug., 1999 - 31 Oct., 1999	AG135/99	8/10/99	79	3323
Scanwood Industries Industrial Agreement	Whole of State	4 Sept., 1996 - 31 July, 1997	AG240/96	30/2/97	77	674
Scarboro Painting Service Domestic and Minor Industrial Agreement	Scarboro Painting Services 1992 Pty Ltd WA	1 Mar., 1996 - 31 July, 1997.....	AG63/96	17/4/96	76	1345
Scarboro Painting Services Industrial Agreement	Scarboro Painting Services 1992 Pty Ltd t/a Scarboro Painting Services	15 Sept., 1995 - 31 July, 1997	AG179/95	10/10/95	75	3010
Scarborough Tiling/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	7 Aug, 2003 – 31 Oct., 2005.....	AG196/03	6/9/04	Unpublished	
Schindler Lifts Australia Pty Ltd (Western Australia) Enterprise Agreement 2003 (Replaces previous Schindler Lifts ... Agreement 2000 No. AG256/00. For prior details, see Vol. 83, Part 2)	State of WA	1 July, 2003 - 30 June, 2006	AG1/04	20/2/04	Unpublished	
School Education Act Employees' (Teachers and Administrators) General Agreement 2008, The (This Agreement substitutes previous School Education Act ... Agreement 2006 No. AG63/06. For prior details, see Vol. 88, Part 2)	Employees employed pursuant to Section 235 of the School Education Act 1999 (WA)	16 Dec., 2008 – 7 July, 2011	AG24/08	16/12/08	Unpublished	
Schweppes Cottee's (Osborne Park) Enterprise Bargaining Agreement	Schweppes Cottee's Osborne Park manufacturing site	1 Jan., 1994 - 1 Jan., 1996.....	AG198/94	17/2/95	75	630
Scorpion Scaffolding/CFMEUW Industrial Agreement 2005-2008	Whole of State	1 Nov., 2005 – 31 Oct., 2008.....	AG278/05	7/3/06	Unpublished	
Scotch College Administrative and Technical Officers (Enterprise Bargaining) Agreement 1996	Whole of State	10 Feb., 1997 - 30 Sept., 1997	AG335/96	10/2/97	77	676
Scotch College Administrative and Technical Officers (Enterprise Bargaining) Agreement 2007 (Replaces previous Scotch College ... Agreement 2005 No. AG62/06. For prior details, see Vol. 87, Part 2)	Scotch College in Western Australia	1 Jan., 2007 - 31 Dec., 2009	AG3/08	8/4/08	Unpublished	
Scotch College (Enterprise Bargaining) Agreement 2004. (Replaces previous Scotch College ... Agreement 2002 No. AG108/02. For prior details, see Vol. 85, Part 2)	Whole of State	1 Jan., 2004 - 31 Dec., 2006	AG59/06	4/5/06	Unpublished	
		Correction Order No. AG59/2006 (Appendix 2) .....	...	1/8/06	86	2662
Scott's Rooftiling Pty Ltd/CFMEUW Industrial Agreement 2004-21007	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	13 June, 2005 – 30 June, 2007.....	AG91/05	16/8/05	Unpublished	
SDA and DWA Jobskills Number 1 Warehouse Employees' Agreement, 1996	Whole of State	1 Mar., 1996 - 28 Feb., 1997	AG213/96	23/12/96	77	401
SEA BREEZE CONCRETE/CFMEUW Collective Agreement 2001	Whole of State	19 Mar., 2002 - 1 Nov., 2002.....	AG50/02	11/4/02	Unpublished	
Security Monitoring Centres (Control Room Operators) Agreement 1998	Whole of State	1 Feb., 1998 - 31 Jan., 2000.....	AG32/98	7/4/98	78	1856
Selected Commercial WA Pty Ltd/CFMEUW Collective Agreement 2002	Whole of State	17 Oct., 2002 – 1 Nov., 2002.....	AG199/02	4/11/02	Unpublished	
Serco Australia Pty Limited Enterprise Bargaining Agreement 1997, No. 104/97	Serco Australia Pty Ltd Operations Belmont	27 Jan., 1997 - 26 Jan., 1998	AG104/97	9/6/97	77	1708
Serco Australia Pty Belmont Enterprise Bargaining Agreement 1998	Belmont, WA	8 Oct., 1998 - 31 April, 1999	AG121/98	8/10/98	78	4112

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Servite College Council Teachers Enterprise Bargaining Agreement 2009 - The (This agreement substitutes and replaces the Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 2 of 2006 No. AG2/07)	Whole of State	17 Dec., 2009 – 7 July, 2011	AG70/09	17/12/09	Unpublished	
Servite College Council Non-Teaching Staff Enterprise Bargaining Agreement, 2009 - The (Cancels and Replaces previous Servite College ... Agreement, 2006 - The, No. AG26/07. For prior details, see Vol. 89, Part 2)	Western Australia	Date of agreement by all parties..... - 31 Dec., 2009	AG58/09	4/2/10	Unpublished	
Shamrock Enterprises Industrial Agreement	Shamrock Enterprises Pty Ltd	8 Sept., 1995 - 31 July, 1997	AG148/95	10/10/95	75	3011
Shamrock Enterprises Industrial Agreement	Whole of State	3 Dec., 1997 - 31 Oct., 1999	AG347/97	10/2/98	78	947
Shane Roof Tiling/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	8 Nov., 2004 – 30 June, 2007	AG255/04	13/12/04	Unpublished	
Shelter (WA) Enterprise Bargaining 2008	Shelter (WA) Incorporated	18 Dec., 2008 – 30 June, 2011	AG21/08	18/12/08	Unpublished	
Shire of Albany Certified Enterprise Bargaining Agreement Depot Staff 1997	Whole of State	1 Nov., 1997 - 31 Oct., 1998	AG380/97	25/3/98	78	1324
Shire of Bridgetown – Greenbushes Enterprise Agreement 1996	The Shire of Bridgetown - Greenbushes (Council)	1 July, 1996 - 30 June, 1998	AG302/96	13/12/96	77	173
Shire of Busselton Certified Enterprise Bargaining Agreement 1997	Employees employed by Shire of Busselton (Council)	12 Dec., 1997 - 11 Dec., 2000	AG324/97	5/1/98	78	367
Shire of Collie Enterprise Bargaining Agreement 1997 (Metal Trades General Employees)	Shire of Collie	1 July, 1997 - 30 June, 1999	AG248/97	5/11/97	77	2954
Shire of Greenough Maintenance Agreement 1996	Whole of State	1 May, 1996 - 30 Apr., 1998	AG224/96	27/11/96	76	4947
Shire of Pingelly (Outside Workers) Registered Enterprise Bargaining Agreement 2007	All employees of the Shire of Pingelly	1 July, 2007 – 30 June, 2020	AG70/07	5/2/08	Unpublished	
Shire of Swan (Building Operations) Enterprise Bargaining Agreement	Middle Swan	2 Sept., 1998 - 1 Sept., 2000	AG102/98	22/9/98	78	3715
Shop, Distributive and Allied Employees' Association of Western Australia and Perth ITeC Pty Ltd Jobskills No. 1 Warehousing Employees Agreement - The	Whole of State	28 June, 1996 - 28 June, 1997	AG214/96	30/12/96	77	176
Shop, Distributive and Allied Employees' Association of Western Australia and PVS Jobskills No. 1 Retail Employees' Agreement	Jobskills employees at Cancer Foundation of Western Australia Inc, AJ Nominees Pty Ltd and Litchford Nominees t/a Porters Liquor Applecross, Cassidy Holdings Pty Ltd t/a Poolmart Cottesloe and Thomsons Pty Ltd t/a Thomsons Perth and Joondalup	1 Aug., 1995 - 31 July, 1996	AG208/95	13/11/95	75	3238
Shop, Distributive and Allied Employees' Association of Western Australia and PVS Jobskills No. 2 Retail Agreement No. AG258/1995 - The	Whole of State	16 Oct., 1995 - 16 Nov., 1996	AG258/95	30/10/96	76	4631
Shop, Distributive and Allied Employees' Association of Western Australia and PVS Jobskills No. 3 Retail Employees' Agreement No. AG11/96 - The	Whole of State	16 Oct., 1995 - 16 Nov., 1996	AG11/96	30/10/96	76	4632
Shop Distributive and Allied Employees' Association of Western Australia and PVS Jobskills No. 4 Retail Employees' Agreement - The	Whole of State	16 Oct., 1995 - 16 Oct., 1997	AG212/96	30/12/96	77	177
Shop Distributive and Allied Employees' Association of Western Australia Pizza Hut Agreement 1998	Whole of State (For previous amendments, see Vol. 89, Part 2)	8 Oct., 1998 - 7 Oct., 2001	AG162/98	8/10/98	78	4113
Shopfitters Australia Pty Ltd/CFMEUW Industrial Agreement 2002 – 2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	19 May, 2004 - 31 Oct., 2005	AG87/04	30/6/04	Unpublished	
Shot Crete Concrete Pumping Industrial Agreement	Whole of State	8 Sept., 1998 - 31 Oct., 1999	AG183/98	24/11/98	78	4670
Showbits Perth and SDA Agreement 2003 (For previous amendments, see Vol. 89, Part 2)	Whole of State	20 Feb., 2004 – 30 June, 2005	AG228/03	20/02/04	Unpublished	

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Silicone Applications WA/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	11 Mar., 2003 – 31 Oct., 2005	AG97/03	7/5/03	Unpublished	
Simon - Carves Electrical Services Enterprise Agreement 1996	Whole of State	1 July, 1996 - 31 Dec., 1997	AG252/96	4/10/96	76	4240
Simon Carves Electrical Services (Maintenance Operations) Enterprise Bargaining Agreement 1997	Simon Carves Electrical Services	1 Nov., 1996 - 1 Nov., 1998	AG108/97	23/5/97	77	1464
Simpson Projects Industrial Agreement	Greg Simpson t/a Simpson Projects	8 Nov., 1994 - 31 July, 1995	AG153/94	6/12/94	75	118
Simon Foster Metal Fabrication/CFMEUW Industrial Agreement 2002 – 2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	6 Apr., 2004 - 31 Oct., 2005	AG74/04	23/6/04	Unpublished	
Simsmetal Limited (Production and Maintenance) Enterprise Bargaining Agreement (Replaces Simsmetal Limited ... Agreement No. AG4/1995. For prior details, see Vol.78, Part 1)	Operation Spearwood	25 Dec., 1996 - 21 Dec., 1998	AG101/97	7/5/97	77	1218
Simsmetal Limited (Production and Maintenance) Enterprise Bargaining Agreement	Operation Spearwood	23 Dec., 2000 - 22 Dec., 2002	AG51/01	12/4/01	Unpublished	
Simsmetal Limited (Production and Maintenance) Enterprise Bargaining Agreement	Operation Spearwood	23 Dec., 2004 - 22 Dec., 2006	AG45/05	11/04/05	Unpublished	
Sisters of Mercy Perth (Amalgamated) / LHMU Non-Teaching Staff Enterprise Bargaining Agreement, 2009 - The	Western Australia	6 April, 2009 – 31 Dec., 2009	AG14/09	11/8/09	Unpublished	
The Sisters of Mercy Perth (Amalgamated) Teachers Enterprise Bargaining Agreement 2009 (This agreement substitutes and replaces the Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 5 of 2006, No. AG5/07)	Whole of State	17 Dec., 2009 – 7 July, 2011	AG56/09	17/12/09	Unpublished	
Sisters of Mercy Perth (Amalgamated) Non-Teaching Staff Enterprise Bargaining Agreement, 2009 - The. (Cancels and Replaces previous Sisters of Mercy Perth ... Agreement, 2006 - The, No. AG30/07. For prior details, see Vol. 89, Part 2)	Western Australia	Date of agreement by all parties - 31 Dec., 2009	AG49/09	4/2/10	Unpublished	
Sisters of Mercy West Perth Congregation / LHMU Non-Teaching Staff Enterprise Bargaining Agreement, 2009 - The	Western Australia	6 April, 2009 – 31 Dec., 2009	AG12/09	11/8/09	Unpublished	
Sisters of Mercy West Perth Congregation Teaching Enterprise Bargaining Agreement, 2009 – The. (This agreement substitutes and replaces the Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 7 of 2006, No. AG7/07).	Whole of State	17 Dec., 2009 – 7 July, 2011	AG44/09	17/12/09	Unpublished	
Sisters of Mercy West Perth Congregation Non-Teaching Staff Enterprise Bargaining Agreement, 2009. (Cancels and Replaces previous Sisters of Mercy ... Agreement, 2006 – The, No. AG20/07. For prior details, see Vol. 89, Part 2)	Western Australia	Date of agreement by all parties - 31 Dec., 2009	AG53/09	4/2/10	Unpublished	
Sisters of The Good Shepherd Non-Teaching Staff Enterprise Bargaining Agreement, 2006 (Cancels and Replaces previous Sisters of the Good Shepherd ... Agreement 2004 No. AG107/05. For prior details, see Vol. 86, Part 2)	Western Australia	Date of agreement by all parties - 31 Dec., 2008	AG28/07	4/4/07	Unpublished	
Sisters of The Holy Family of Nazareth / LHMU Non-Teaching Staff Enterprise Bargaining Agreement, 2009 - The	Western Australia	6 April, 2009 – 31 Dec., 2009	AG18/09	11/8/09	Unpublished	
Sisters of The Holy Family of Nazareth Teachers Enterprise Bargaining Agreement 2009 – The (This agreement substitutes and replaces the Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 8 of 2006 No. AG8/07.	Whole of State	17 Dec., 2009 – 7 July, 2011	AG50/09	17/12/09	Unpublished	
Sisters of The Holy Family of Nazareth Non-Teaching Staff Enterprise Bargaining Agreement, 2009 – The. (Cancels and Replaces previous Sisters of The Holy Family of Nazareth ... Agreement, 2006 – The, No. AG31/07. For prior details, see Vol. 89, Part 2)	Western Australia	Date of agreement by all parties - 31 Dec., 2009	AG46/09	4/2/10	Unpublished	
SJ Higgins Pty Ltd/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos(Keeling) Islands Groups only	22 Sept., 2003 – 31 Oct., 2005	AG254/03	6/9/04	Unpublished	

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SJM Electrical Enterprise Bargaining Agreement 1996	Whole of State	1 Jan., 1996 - 31 Dec., 1997.....	AG55/97	11/4/97	77	1221
SJM Electrical Enterprise Bargaining Agreement 1998	Whole of State	1 Jan., 1998 - 31 Dec., 2000.....	AG119/98	19/10/98	78	4126
SJM Electrical Enterprise Bargaining Agreement 2000	Whole of State	1 Jan., 2001 - 28 Feb., 2003	AG211/01	7/12/01	Unpublished	
Skilled Engineering Ltd (CBH Kwinana) Maintenance Agreement 2000	Co-Operative Bulk Handling Kwinana	1 July, 1999 - 1 July, 2001	AG13/01	28/2/01	Unpublished	
Skilled Group Ltd (CBH) Maintenance Agreement 2005	Co-Operative Bulk Handling Kwinana	1 Sept., 2005 - 1 July, 2008.....	AG225/05	16/2/06	Unpublished	
Slick Fix Pty Ltd/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	4 Sept., 2003 - 31 Oct., 2005	AG238/03	6/9/04	Unpublished	
SMART STONE/CFMEUW Collective Agreement 2002	Whole of State	20 Sept., 2002 - 1 Nov., 2002.....	AG152/02	22/10/02	Unpublished	
Smartt Bros Roofing/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	25 Oct., 2004 - 30 June, 2007.....	AG200/04	8/12/04	Unpublished	
Smartt Roof Repairs/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	25 Oct., 2004 - 30 June, 2007.....	AG199/04	8/12/04	Unpublished	
Smith's Snackfood Company Limited (Western Australia) Enterprise Agreement 2004 - The (Replaces previous Smith's Snackfood ... Agreements No. AG144/02. For prior details, see Vol. 84, Part 1)	Bannister Road, Canningvale	10 May, 2004 - 8 May, 2006	AG128/04	21/9/04	Unpublished	
Smorgan ARC Welshpool Enterprise Bargaining Agreement 1993	Smorgan ARC Establishment, 100 Welshpool Road, Welshpool and Dellamarta Road, Wanneroo	22 Jan., 1993 - 27 Jan., 1994.....	AG26/92	24/2/93	73	2044
SM Page Commercial Flooring Pty Ltd/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	6 Dec., 2002 - 31 Oct., 2005.....	AG255/02	7/5/03	Unpublished	
SMK Roofing/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	25 Oct., 2004 - 30 June, 2007.....	AG227/04	9/12/04	Unpublished	
SMS Roof Maintenance/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	25 Oct., 2004 - 30 June, 2007.....	AG236/04	10/12/04	Unpublished	
Snappy Clean/BLPPU and the CMETU Collective Agreement 1999. (Cancels previous Snappy Clean Industrial Agreements No. AG160/95 & No. AG162/97. For prior details, see Vol. 79, Part 2)	Whole of State	1 Nov., 1999 - 1 Nov., 2002.....	AG218/99	29/3/00	80	1292
Solahart, Welshpool, Manufacturing Enterprise Bargaining Agreement 2004 (Replaces previous Solahart, Welshpool, ... Agreement 2003 No. AG128/2003)	Solarhart, Welshpool	31 May, 2004 - 30 June, 2007.....	AG119/04	5/7/04	Unpublished	
Sotico Pty Ltd, Bunbury Port (Enterprise Bargaining) Agreement 2000. (Replaces and Cancels Bunnings Forest Products Pty Ltd Bunbury Port EBA No. AG119/1999)	Bunbury Port Operations	13 June, 2000 - 31 Dec., 2000.....	AG153/00	18/10/00	80	5086
Southcorp Packaging Gadsden Carton Systems In-Plant Team Bentley - WA Enterprise Agreement 2000	Bentley	5 Jan., 2001 - 30 June 2001	AG290/00	5/1/01	81	200
Southcorp Packaging I.P.D. Fremantle Enterprise Agreement 2000. (Replaces previous Southcorp ... Agreement No. AG135/98. For prior details, see Vol. 80, Part 1)	Whole of State	1 July, 2000 - 30 June, 2003	AG243/00	1/11/00	80	5101
South-East Metropolitan College Miscellaneous Workers' Agreement 1997	South-East Metropolitan College	17 Oct., 1997 - 16 Oct., 1999	AG275/97	17/10/97	77	3390
South Metropolitan College Miscellaneous Workers' Agreement 1997	South Metropolitan College	17 Oct., 1997 - 16 Oct., 1999	AG282/97	17/10/97	77	3396
South Metropolitan Youth Link (Inc.) Agreement 1997 (For previous amendments, see Vol. 89, Part 2)	Whole of State	1 Jan., 1998 - 31 Dec., 1998.....	AG371/97	3/3/98	78	951
Southern Cross Electrical Engineering Pty Ltd Enterprise Bargaining Agreement (Replaces Southern Cross Electrical ... Agreement 1994 No. AG119/94. For prior details, see Vol. 78, Part 1)	Southern Cross Electrical Engineering Pty Ltd (SCEE)	1 Jan., 1996 - 31 Dec., 1997.....	AG182/96	1/8/96	76	2732

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Southern Cross Electrical Engineering Pty Ltd Western Australian Industrial Operations Certified Agreement 2003	State of WA	1 Dec., 2003 - 31 Oct., 2005.....	AG54/04	18/8/04	Unpublished	
Southern Processors Ltd (Albany) Enterprise Agreement 1992	Whole of State	11 Dec., 1992 - 29 July, 1994.....	AG20/92	23/12/92	73	95
Southmore Holdings/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	25 Oct., 2004 – 30 June, 2007	AG202/04	13/12/04	Unpublished	
South Perth Food Mart and SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Whole of State	6 Nov., 2002 – 30 June, 2005	AG165/02	18/11/02	Unpublished	
South-West Regional College Miscellaneous Workers' Agreement 1997	South-West Regional College	17 Oct., 1997 - 16 Oct., 1999.....	AG279/97	17/10/97	77	3402
Spearwood Workshop and Commercial Services Employees Enterprise Partnership Agreement 1996	Spearwood Workshop	7 Dec., 1996 - 7 Dec., 1999	AG253/97	28/10/97	77	2960
Specialty Installations/CFMEUW Industrial Agreement 2005-2008. (Replaces previous Specialty Installations ... Agreement No. AG181/03. For prior details, see Vol. 85, Part 2)	Whole of State	1 Nov., 2005 - 31 Oct., 2008	AG3/06	17/2/06	Unpublished	
Sprayforce/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	22 Aug, 2003 – 31 Oct., 2005.....	AG217/03	6/9/04	Unpublished	
SR2 Construction Project Agreement 1996	Kerman Contracting Pty Ltd, Lurgi Australia Pty Ltd, Rico Group of Companies	29 Aug., 1996 - Completion	AG207/96	29/8/96	76	4051
SS Scaffolding/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	23 Jan., 2004 – 31 Oct., 2005	AG15/04	6/9/04	Unpublished	
Stamford Ceramics/BLPPU Collective Agreement 1999. (Cancels previous Stamford Ceramics Industrial Agreement No. AG42/99. For prior details, see Vol. 79, Part 2)	Whole of State	1 Nov., 1999 - 1 Nov. 2002	AG236/99	8/3/00	80	1297
Standre Industrial Agreement	S. Maciqszek t/a Standre	15 Sept., 1995 - 31 July, 1997	AG168/95	10/10/95	75	3014
Starglazing/CFMEUW Industrial Agreement 2002-2008. (Replaces previous Starglazing/CFMEUW ... Agreement 2002-2005 No. AG81/03. For prior details, see Vol. 85, Part 1)	Whole of State	1 Nov., 2005 – 31 Oct., 2008.....	AG170/05	8/11/05	Unpublished	
State Batteries Agreement - The	Yilgarn, Coolgardie, Broad Arrow, Dundas, Phillips River, East Coolgardie, North Coolgardie, North-East Coolgardie, Mount Margaret, East Murchison, Murchison, Yalgoo, Peak Hill and Gascoyne Goldfields and the area comprised within the 14th and 26th parallels of latitude	14 Nov., 1977 to 13 Nov., 1980.....	AG42/77	21/9/77	57	1782
State Energy Commission of Western Australia - Dispute Settlement Procedure Agreement	State of WA	1 Aug., 1991 to 31 July, 1994.....	AG4/91	26/6/91	71	1835
State Energy Commission of Western Australia - Corporate Services, Enterprise Bargaining Agreement 1994	SECWA - Corporate Services	24 June, 1994 - 30 June, 1995	AG60/94	24/6/94	74	2124
State Energy Commission of Western Australia Enterprise Bargaining - Generation Division Agreement 1994	Whole of State	2 Oct., 1994 - 30 June, 1995.....	AG110/94	2/10/94	74	2692
State Energy Commission Of Western Australia - Electricity Supply Division, Enterprise Bargaining Agreement 1994	State Energy Commission of Western Australia Supply Division (SECWA-ESD)	24 June, 1994 - 30 June, 1995	AG61/94	24/6/94	74	2129
State Energy Commission of Western Australia - Gas Division, Enterprise Bargaining Agreement 1994	State Energy Commission of Western Australia, Gas Division (SECWA - GAS)	24 June, 1994 - 30 May, 1995	AG62/94	24/6/94	74	2134
State Law Publisher Industrial Agreement 2007	All employees who are members of or eligible to be members of the Union	19 June, 2007 - 31 Dec., 2009	AG36/07	19/6/07	Unpublished	
State Research Stations, Agricultural Schools and College Workers General Agreement 2007 (This agreement substitutes and replaces previous State Research Stations, Agricultural Schools ... Agreement 2004 No. AG155/04. For prior details, see Vol. 87, Part 1)	Whole of State	21 Aug., 2007 – 31 Dec., 2009	AG42/07	21/8/07	Unpublished	

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State School Teachers' Union of WA Clerical Staff Agreement of 2001. (Replaces & Cancels previous State School Teachers' ... Agreement No. AG69/98. For prior details, see Vol. 81, Part 2)	Whole of State	20 Aug., 2001 - 17 Aug., 2004.....	AG179/01	2/11/01	Unpublished	
State School Teachers' Union of W.A. Clerical Staff Agreement of 2006	State School Teachers' Union of Western Australia (Inc)	20 Sept., 2006 - 17 Aug., 2009	AG64/06	20/9/06	Unpublished	
Statewide Demolition Industrial Agreement	Keyport Pty Ltd t/a Statewide Demolition	21 June, 1995 - 20 June, 1997.....	AG105/95	21/7/95	75	2383
Statewide Roof Tiling/CFMEUW Industrial Agreement 2002-2005. (Cancels AG109/97)	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	25 Oct., 2004 - 30 June, 2007.....	AG234/04	10/12/04	Unpublished	
Stegbar Pty Ltd (Wangara WA) Enterprise Agreement 1999	Stegbar Pty Limited Wangara	1 Feb., 1997 - 31 Jan., 2001	AG149/99	4/11/99	79	3348
Stegbar Pty Ltd (Wangara WA) Enterprise Agreement 2006. (Replaces previous Stegbar Pty Ltd ... Agreement 2004 No. AG77/04. For prior details, see Vol. 85, Part 2)	Stegbar Pty Limited 66 Prindville Drive, Wangara	20 Mar., 2006 - 3 Mar., 2008	AG43/06	24/03/06	Unpublished	
Steggles Enterprise Bargaining Agreement 1995	Steggles Limited, Production Centre Osborne Park	1 Oct., 1995 - 31 Mar., 1997.....	AG59/96	10/4/96	76	1347
Steggles Engineering Site Agreement 1996	Steggles Limited	1 July, 1996 - 30 June, 1998	AG162/96	2/8/96	76	3710
Steggles Limited (Maintenance Division) Enterprise Agreement 1998	Osborne Park	1 July 1998 - 30 June 2000.....	AG255/98	13/4/99	79	1404
Stiffall Shopfitters Industrial Agreement 1996	Rely Holdings Pty Ltd t/a Stiffall Shopfitters	20 May, 1996 - 31 July, 1997	AG167/96	26/7/96	76	2740
Stirling Community Hospital HSOA Enterprise Agreement 1998	Stirling Community Hospital	20 May, 1998 - 30 June, 1999.....	AG39/98	20/5/98	78	2885
Stirling Stainless Steel Enterprise Agreement 2004 "Moving Forward"	Whole of State	2 Aug., 2004 - 2 Aug., 2006.....	AG120/04	2/8/04	Unpublished	
Storemen (Government) – Department of Culture and The Arts – Agreement 2007	Employees who are members of or eligible to	31 Aug., 2007 – 31 Dec., 2009	AG46/07	31/8/07	Unpublished	
Stork Electrical (WA) Enterprise Agreement	Stork Electrical Pty Ltd	1 July, 1994 - 31 Dec., 1995	AG25/95	16/3/95	75	923
Stork Electrical Pty Ltd Enterprise Agreement 1996	Whole of State	1 Jan., 1996 - 31 Dec., 1997.....	AG251/96	4/10/96	76	4245
Stork ICM Australia Pty Ltd (Rockingham Workshop and Operations) Agreement (Replaces World Services & Construction Pty Ltd (Rockingham) Enterprise Bargaining Agreement No. AG80/95)	Rockingham	1 Jan., 1998 - 1 July, 1999.....	AG5/99	1/2/99	79	536
Stork ICM Australia Pty Ltd (Rockingham Workshop and Operations) Agreement	Rockingham Workshop and Operation of Stork ICM Australia Pty Ltd	1 July, 1999 - 1 July, 2001	AG157/99	4/11/99	79	3365
Straight Edge Formwork/BLPPU and the CMETU Collective Agreement 1999. (Replaces previous Straight Edge Form ... Agreements No. AG174/1996 & No. AG300/97. For prior details, see Vol. 79, Part 2)	Whole of State	1 Nov., 1999 - 1 Nov., 2002.....	AG208/99	24/3/00	80	1303
Stramit Building Products Western Australia Enterprise Bargaining Agreement 2003 (Replaces previous Stramit Building ... Agreement 2001 No. AG238/01. For prior details, see Vol. 83, Part 2)	Stramit Building Products, 10 Malcolm Road, Maddington, WA	8 Apr., 2004 - 5 Apr., 2007	AG32/04	8/04/04	Unpublished	
Stramit Building Products (Maddington) Western Australia Enterprise Bargaining Agreement 2005/2008. (This substitutes previous Stramit Industries ... Agreement 2003 No. AG193/03. For prior details, see Vol. 85, Part 2)	Stramit Industries and Stramit Building Products, Maddington	1 July, 2005 - 30 June, 2008.....	AG271/05	24/01/06	Unpublished	
Stramit Industries Maddington, Western Australia Enterprise Bargaining Agreement 1996	Stramit Industries Maddington	21 May, 1996 - 20 May, 1998.....	AG70/97	8/4/97	77	1233
Stramit Industries Maddington, Western Australia Enterprise Bargaining Agreement 1998	Stramit Industries, Malcolm Road and Alloa Street, Maddington	21 May, 1998 - 20 May, 2000.....	AG181/98	20/11/98	78	4673
Streamline Industries/BLPPU and the CMETU Collective Agreement 2001. (Replaces previous Streamline ... Agreement No. AG255/97. For prior details, see Vol. 81, Part 2)	Whole of State	18 Sept., 1997 - 31 Oct., 1999.....	AG57/01	3/5/01	Unpublished	
Stream Tiling Industrial Agreement	Estmount Holdings Pty Ltd t/a Stream Tiling	15 Sept., 1995 - 31 July, 1997.....	AG193/95	10/10/95	75	3016

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Structural Marine Enterprise Bargaining Industrial Agreement 2002 (Replaces previous Structural Marine ... Agreement No. AG153/99. For prior details, See Vol. 82, Part 1)	Structural Marine Pty Ltd, 11 Cockburn Road, Henderson	24 Jan., 2002 – 23 Jan., 2004.....	AG205/02	25/11/02	Unpublished	
Structural Systems/ BLPPU and the CMETU Collective Agreement 1999. (Cancels previous Structural Systems ... Agreements No. AG210/1995 & No. AG293/97. For prior details, see Vol. 79, Part 2)	Whole of State	1 Nov., 1999 - 1 Nov., 2002.....	AG12/00	29/3/00	80	1308
Structural Systems (Western)/CFMEUW Industrial Agreement 2005-2008 (Replaces previous Structural Systems (Western) ... Agreement 2002-2005 No. AG254/02. For prior details, see Vol. 85, Part 1)	Western Australia	1 Nov., 2005 – 31 Oct., 2008.....	AG173/05	28/11/05	Unpublished	
<i>Structural Systems (Western) Pty Ltd</i> New Metro Rail Southern Suburbs Rail Project, Structural Project Agreement 2005	New Metro Rail Project Southern Suburbs Rail Project	16 June, 2005 – 1 July, 2006.....	AG95/05	23/9/05	Unpublished	
Stylewoods/BLPPU and the CMETU Collective Agreement 1999	Whole of State	1 Nov., 1999 - 1 Nov., 2002.....	AG219/99	24/3/00	80	1313
Subiaco Grandstand Construction Project Agreement 1994	Multiplex Constructions Pty Ltd undertaking work at Subiaco Grandstand Construction Project Roberts Road, Subiaco	Commencement - Completion.....	AG184/94	22/12/94	75	120
Subiaco Grandstand Construction Project (Allcon Steel Construction) Agreement 1994	Allcon Steel Construction at Subiaco Grandstand Construction Project, Subiaco	Commencement - Completion.....	AG39/95	19/4/95	75	1603
Subiaco Grandstand Construction Project (Bobrik Constructions) Agreement 1994	Bobrik Construction at Subiaco Grandstand Construction Project, Subiaco	Commencement - Completion.....	AG40/95	19/4/95	75	1606
Subiaco Grandstand Construction Project (CASC Formwork Pty Ltd) Agreement 1994	CASC Formwork Pty Ltd at Subiaco Grandstand Project, Subiaco	Commencement - Completion.....	AG41/95	19/4/95	75	1609
Subiaco Grandstand Construction Project (C & O Constructions) Agreement 1994	(C & O Constructions) at Subiaco Grandstand Construction Project, Subiaco	Commencement - Completion.....	AG42/95	19/4/95	75	1612
Subiaco Grandstand Construction Project (Quick Fix) Agreement 1994	Quick Fix at Subiaco Grandstand Construction Project, Subiaco	Commencement - Completion.....	AG43/95	19/4/95	75	1616
Subiaco Grandstand Construction Project (Vandertang Concrete) Agreement 1994	Vandertang Concrete at Subiaco Grandstand Construction Project, Subiaco	Commencement - Completion.....	AG44/95	19/4/95	75	1619
Subiaco Marble & Granite/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	1 July, 2003 – 31 Oct., 2005.....	AG167/03	6/9/04	Unpublished	
Summit Ceiling Industries/CFMEUW Industrial Agreement 2002-2005. (Cancels Summit Ceilings ... Agreements No. AG154/95 & No. AG9/02. For prior details, see Vol. 83, Part 1)	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	3 Dec., 2002 – 31 Oct., 2005.....	AG239/02	7/5/03	Unpublished	
Sunason Industrial Agreement	Sunason Pty Ltd	8 Sept., 1995 - 31 July, 1997.....	AG150/95	10/10/95	75	3019
Sunason Industrial Agreement	Whole of State	14 Jan., 1998 - 31 Oct., 1999.....	AG375/97	7/4/98	78	1858
Sunason P/L/BLPPU and the CMETU Collective Agreement 2000. (Replaces previous Sunason ... Agreement No. AG8/1998)	Whole of State	1 Nov., 1999 - 1 Nov., 2002.....	AG207/00	11/9/00	80	4793
Sunhall Holdings/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	25 Oct., 2004 – 30 June, 2007.....	AG252/04	13/12/04	Unpublished	
Sunlite Australia/CFMEUW Industrial Agreement 2005 – 2008. (Replaces previous Sunlite Australia/CFMEUW ... Agreement 2002-2005 No. AG37/04. For prior details, see Vol. 85, Part 1)	Whole of State	1 Nov., 2005 – 31 Oct., 2008.....	AG197/05	8/11/05	Unpublished	
Sunlite Australia Industrial Agreement	Whole of State	17 Dec., 1997 - 31 Oct., 1999.....	AG363/97	26/2/98	78	955
Supa Valu Capel and SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Whole of State	6 Nov., 2002 – 30 June, 2005.....	AG173/02	18/11/02	Unpublished	
Supa Valu Dongara and SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Whole of State	12 Sept., 2002 – 30 June, 2005.....	AG131/02	20/02/02	Unpublished	

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Supa Valu Hamilton Hill and SDA Agreement 2002. (For previous amendments, see Vol. 89, Part 2)	Whole of State	12 Sept., 2002 – 30 June, 2005	AG139/02	20/02/02	Unpublished	
Supa Valu High Wycombe and SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Whole of State	12 Sept., 2002 – 30 June, 2005	AG137/02	20/02/02	Unpublished	
Supa Valu Huntingdale and SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Whole of State	12 Feb., 2003 – 30 June, 2005	AG8/03	21/2/03	Unpublished	
Supa Valu Innaloo and SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Whole of State	12 Feb., 2003 – 30 June, 2005	AG133/02	21/2/03	Unpublished	
Supa Valu Kelmscott and SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Whole of State	12 Feb., 2003 – 30 June, 2005	AG125/02	21/2/03	Unpublished	
Supa Valu Ocean Reef and SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Whole of State	12 Feb., 2003 – 30 June, 2005	AG135/02	21/2/03	Unpublished	
Supa Valu Stirling and SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Whole of State	12 Feb., 2003 – 30 June, 2005	AG124/02	21/2/03	Unpublished	
Supa Valu Willetton and SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Whole of State	12 Feb., 2003 – 30 June, 2005	AG121/02	21/2/03	Unpublished	
Supercut (WA) P/L/CFMEUW Industrial Agreement 2005-2008. (Replaces previous Supercut (WA) ... Agreement 2002-2005 No. AG301/02. For prior details, see Vol. 85, Part 1)	Whole of State	1 Nov., 2005 – 31 Oct., 2008	AG199/05	8/11/05	Unpublished	
Superior Roof Restoration/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	25 Oct., 2004 – 30 June, 2007.....	AG237/04	10/12/04	Unpublished	
Support Services & Enrolled Nurses (Mercy Hospital & LHMU) Union Recognition & Job Security Agreement 2005	Western Australia	27 Sept., 2005 – 27 Sept., 2008.....	AG126/05	27/9/05	Unpublished	
SWALSC Collective Agreement 2009	South West Aboriginal Land and Sea Council	7 Oct., 2009 – 30 Sept., 2011	AG36/09	21/09/09	Unpublished	
Swan Brewery and Combined Unions (Enterprise Agreement) 1992	The Swan Brewery Company Limited	1 July, 1992 - 31 Aug., 1994.....	AG16/92	16/9/92	72	2764
Swan Brewery Enterprise Agreement 2003 (Replaces previous Swan Brewery ... Agreement No. AG178/00. For prior details, see Vol. 83, Part 1)	State of WA	1 May, 2003 - 30 Apr., 2006.....	AG175/03	08/09/03	Unpublished	
Swan Brewery (Utilities Operators) Enterprise Agreement 1999	Whole of State	1 March, 1999 - 1 Sept., 2002.....	AG106/99	14/9/99	79	2963
Swan Christian Education Association Inc. (Enterprise Bargaining) Agreement 2002 (Cancels previous Swan Christian ... Agreement No. AG254/2000. For prior details, see Vol. 83, Part 1)	Whole of State	1 Jan., 2002 - 31 Dec., 2003.....	AG264/01	14/02/02	Unpublished	
Swan Christian Education Association Inc. (Schools' Non-Teaching Employee Enterprise Bargaining) Agreement 2001 (Replaces & Cancels previous Swan Christian ... Agreement No. AG230/99. For prior details, see Vol. 81, Part 2)	Whole of State	1 Jan., 2001 - 31 Dec., 2002.....	AG114/01	31/7/01	Unpublished	
Swan Lagging Industrial Agreement	Whole of State	26 Aug., 1998 - 31 Oct., 1999.....	AG173/98	13/11/98	78	4683
Swan Portland Cement Ltd, Burswood Site, Enterprise Bargaining Agreement 1994	Swan Portland Cement Limited site, Burswood	23 Mar., 1994 - 30 June, 1995	AG40/94	8/6/94	74	1743
Swan Portland Cement Ltd, Burswood Site, Enterprise Bargaining Agreement 1995	Swan Portland Cement (Burswood Site)	1 July, 1995 - 30 June, 1997	AG284/95	28/11/95	75	3252
Swan Portland Cement Ltd, Burswood Site, (Enterprise Bargaining Agreement) Overhead/Mobile Crane Operators, 1995	Swan Portland Cement Ltd	8 Mar., 1995 - 30 June, 1995	AG69/95	16/6/95	75	2142
Swan Portland Cement Ltd Clinker Grinding Plant Kwinana Project Agreement 1996	Swan Portland Cement Ltd Clinker Grinding Plant, Kwinana	Commencement - Completion	AG208/96	25/11/96	76	4969
Swan Portland Cement Ltd Redundancy Agreement 1995	Swan Portland Cement Ltd, Burswood Operations	1 Jan., 1994 - 1 Jan., 1996.....	AG33/95	2/5/95	75	1622
Swan Racking Pty Ltd/CFMEUW Industrial Agreement 2002 – 2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	28 May, 2004 - 31 Oct., 2005	AG100/04	30/6/04	Unpublished	

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SwanCare Group (Inc) Health Services Union Enterprise Agreement 2005. (Relaces Swan Village of Care ... Agreement 2003 No. AG248/03. For prior details, see Vol. 85, Part 2)	SwanCare Group (Inc),	7 Nov., 2005 - 7 Nov., 2007	AG275/05	24/01/06	Unpublished	
Swift Plan Industrial Agreement	Delta Bay Investments Pty Ltd t/a Swift Plan	18 Nov., 1994 - 31 July, 1995.....	AG175/94	6/12/94	75	123
Swiftplan Industrial Agreement	Delta Bay Investments Pty Ltd t/a Swift Plan	8 Sept., 1995 - 31 July 1997	AG155/95	10/10/95	75	3020
Swiftplan Industrial Agreement	Whole of State	25 July 1998 - 31 Oct., 1999.....	AG155/98	9/4/99	79	1124
Swire Cold Storage Pty Ltd Employer, Employee Agreement 2004. (Replaces Clelands Cold Stores ... Agreement No. AG150/02. For prior details, see Vol. 84, Part 1)	Whole of State	13 Oct., 2004 - 1 July, 2007.....	AG160/04	13/10/04	Unpublished	
Swire Cold Storage Pty Ltd Transport Workers Enterprise Agreement 2004	Whole of State	Expire 30 June, 2007.....	AG147/04	26/4/05	Unpublished	
Swispec Pty Ltd Enterprise Bargaining Agreement 1996	Swispec Pty Ltd	1 May, 1997 - 31 Dec., 1997	AG72/97	13/5/97	77	1480
Syteck/BLPPU Collective Agreement 2000	Whole of State	4 Sept., 2000 - 1 Nov., 2002	AG214/00	31/10/00	80	5119
TAB Racing Radio Employees General Agreement 2003. (Replaces Totalisator Agency Board of Western Australia Enterprise Bargaining Agreement 1999 No. PSAAG27/99. For prior details, see Appendix VIII, Vol. 83, Part 1)	Totalisator Agency Board of WA (Racing Radio Station)	7 Aug., 2003 – 31 Aug., 2005.....	C50/03	7/8/03	Unpublished	
Talloman Australasian Meat Industry Employees Union Enterprise Agreement, 2003 (Replaces previous Talloman Australasian Meat ... Agreement 2000 No. AG107/00. For prior details, see Vol. 83, Part 2)	Derby Industries Talloman Division, Lakes Road Hazelmere WA	16 Feb., 2004 - 30 June, 2006.....	AG298/03	16/2/04	Unpublished	
T & L Reo Construction/CFMEUW Industrial Agreement 2005-2008	Whole of State	1 Nov., 2005 - 31 Oct., 2008	AG 196/05	20/01/06	Unpublished	
Tasman Bricklaying/BLPPU and the CMETU Collective Agreement 2001	Whole of State	1 Mar., 2001 - 1 Nov., 2002.....	AG42/01	26/3/01	Unpublished	
Taxon Holdings/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	25 Oct., 2004 – 30 June, 2007	AG230/04	10/12/04	Unpublished	
T.D.Z. Contracting Industrial Agreement	Whole of State	16 Sept., 1997 - 31 Oct., 1999	AG244/97	21/5/98	78	2413
TDR Roofing/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	25 Oct., 2004 – 30 June, 2007	AG223/04	9/12/04	Unpublished	
Tech Fab/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	22 Sept., 2003 – 31 Oct., 2005.....	AG251/03	6/9/04	Unpublished	
Technical Assistant Survey Traineeship Agreement 1987	All technical assistants employed by employers in Schedule A	9 June, 1987 to 28 June, 1988.....	AG6/87	18/8/87	67	1547
Telfer Gold Mine Enterprise Agreement 1993	Area Occupied and operated upon by Newcrest Mining Limited at Telfer	21 Feb., 1994 - 20 Feb., 1996.....	AG2/94	21/2/94	74	601
Terrazzo & Cement Industrial Agreement	Whole of State	1 Aug., 1997 - 31 Oct., 1999	AG291/97	3/12/97	77	3426
Terrazzo & Cement Industrial Agreement	Whole of State	22 Jan., 1998 - 31 Oct., 1999	AG15/98	20/3/98	78	1350
Terrazzo Stone Marble Polishing Supplies/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	31 Mar., 2005 – 31 Oct., 2005.....	AG147/03	6/9/04	Unpublished	
Theatrical Employees (BOCS) Ticketing and Marketing Services) – Department of Culture and the Arts – Agreement 2008 (Replaces previous Theatrical Employees ... Agreement 2005 No. AG265/05. For prior details, see Vol. 88, Part 1)	Employees employed in the classifications defined in Clause 3 - Definitions	5 Sept., 2008 – 31 Dec., 2010.....	AG14/08	5/09/08	Unpublished	
Therapy Focus Enterprise Bargaining Agreement 2004. (Replaces previous Therapy Focus ... Agreement 2002 No. AG190/02. For prior details, see Vol. 84, Part 2)	Whole of State	21 Jan., 2005 – 30 June, 2006.....	AG4/05	25/01/05	Unpublished	
Thermal Insulation Pty Ltd/CFMEUW Industrial Agreement 2002 – 2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	3 June, 2004 - 31 Oct., 2005	AG106/04	2/7/04	Unpublished	

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Thermofabrication Traineeship Agreement (1977)	Whole of State	14 Apr., 1997 - 1 July, 1998.....	AG222/97	20/11/97	77	3429
The Telethon Speech & Hearing Centre (Enterprise Bargaining) Agreement 2009. (Replaces previous The Telethon Speech ... Agreement 2006, No. AG33/07. For prior details, see Vol. 89, Part 1)	Whole of State	1 Feb., 2009 – 31 Jan., 2012	AG40/09	31/8/09	Unpublished	
Thomson Cleaning Company Industrial Agreement	A. Thomson t/a Thomson Cleaning Company	26 Sept., 1995 - 31 July, 1997.....	AG242/95	22/11/95	76	138
Thorn Mechanical Pty Ltd Enterprise Bargaining Agreement 2004	State of Western Australia	22 Nov., 2004 – 31 Oct., 2005	AG275/04	17/01/05	Unpublished	
Three Springs General Store and SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Whole of State	6 Nov., 2002 – 30 June, 2005.....	AG179/02	18/11/02	Unpublished	
Tip Top Bakeries (Canning Vale) Industrial Agreement	Tip Top Bakeries (Canning Vale)	24 Mar., 1997 - Cancellation.....	AG82/97	9/4/97	77	3432
Tip Top Bakeries (Canning Vale) and Transport Workers' Union Industrial Agreement 2005	Whole of State	1 Oct., 2005 – 30 Sept., 2008.....	AG272/05	15/3/06	Unpublished	
TJF Scaffolding Maintenance & Hire/CFMEUW Industrial Agreement 2002-2005 (Cancels TJF-EBC/BLPPU Collective Agreement 2000 No. AG96/01, 84WAIG64. For prior details, see Vol. 83, Part 2)	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	22 Jan., 2003 – 31 Oct., 2005.....	AG58/03	7/5/03	Unpublished	
TJP Constructions/CFMEUW Collective Agreement 2002	Whole of State	13 Feb., 2002 - 1 Nov., 2002.....	AG22/02	13/3/02	Unpublished	
TK Scaffolding/CFMEUW Industrial Agreement 2002-2005. (Cancels TK Scaffold/BLPPU Collective Agreement 1999 AG90/00. For prior details, see Vol. 83, Part 1)	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	11 Dec., 2002 – 31 Oct., 2005.....	AG286/02	7/5/03	Unpublished	
T.L.C. Emergency Welfare Foundation of Western Australia (Inc.) Enterprise Bargaining Agreement 2007	State of WA	6 July, 2007 – 4 July, 2009.....	AG35/07	6/7/07	Unpublished	
T M S Electrical Pty Ltd Enterprise Bargaining Agreement 2004-2006	Whole of State	1 Oct., 2004 – 31 March, 2006.....	AG51/05	11/04/05	Unpublished	
Tom's Cranes Industrial Agreement	Whole of State	14 Jan., 1998 - 31 Oct., 1999	AG4/98	30/4/98	78	1849
Tonlar Contracting/CFMEUW Industrial Agreement 2005-2008. (Replaces previous Tonlar Contracting ... Agreement 2002-2005 No. AG63/05. For prior details, see Vol. 85, Part 2)	Whole of State	1 Nov., 2005 – 31 Oct., 2008	AG212/05	7/3/06	Unpublished	
Top Valu Supermarket and SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Whole of State	12 Feb., 2002 – 30 June, 2005	AG22/03	21/2/03	Unpublished	
Total Corrosion Control / CFMEUW Collective Agreement 2004. (Replaces previous Total Corrosion ... Agreement 2002 No. AG32/02. For prior details, see Vol. 85, Part 2)	Whole of State	24 Mar., 2006 - 1 Jan., 2007	AG48/06	24/03/06	Unpublished	
Total Corrosion Control (Metal Workers) Enterprise Bargaining Agreement (Replaces No. AG38/93)	Whole of State	1 Mar., 1997 - 28 Feb., 1998.....	AG259/97	13/1/98	78	710
Total Corrosion Control Industrial Agreement (Cancels AG124/98 delivered 14/9/98)	Whole of State	1 Aug., 1997 - 31 Oct., 1999.....	AG124/98	25/11/98	78	4687
Total Glass/CFMEUW Collective Agreement 2002. (Replaces previous Total Glass ... Agreement No. AG362/97. For prior details, see Vol. 82, Part 1)	Whole of State	29 Oct., 2002 – 1 Nov., 2002	AG221/02	29/11/02	Unpublished	
Total Reo /CFMEUW Industrial Agreement 2005-2008	Western Australia	1 Nov., 2005 – 31 Oct., 2008	AG138/05	1/12/05	Unpublished	
Total Tilt-Up Industrial Agreement	Whole of State	30 Sept., 1998 - 31 Oct., 1999.....	AG227/98	24/11/98	78	4691
Total Marine Service Geraldton Dredging Workshop Agreement 2002	Total Marine Service Pty Ltd, Geraldton Harbour	1 Nov., 2002 – 1 Nov., 2003 or the.. life of the project, which ever is the latter	AG290/02	25/07/03	Unpublished	
Total Trade Services/CFMEUW Industrial Agreement 2005-2008	Western Australia	1 No., 2005 – 31 Oct., 2008.....	AG175/05	28/11/05	Unpublished	
Town & Country Tiling Pty Ltd/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	22 Nov., 2004 – 30 June, 2007.....	AG268/04	17/01/05	Unpublished	

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Town of Albany Outside Workers (Carpenters and Metal Trades) Certified Agreement 1996	Town of Albany Depot	28 Jan., 1997 - 27 Jan., 1999	AG309/96	28/1/97	77	413
Town of Albany (State) Enterprise Agreement 1997	Town of Albany	15 Nov., 1996 - 16 Nov., 1998	AG146/97	27/8/97	77	2962
Town of Kwinana (WA) Enterprise Agreement 1996 (From Dream time to Excellence) ("The Agreement")	The Council of Kwinana	10 Oct., 1996 - 9 Oct., 1998.....	AG88/97	28/4/97	77	1236
Town of Port Hedland Enterprise Agreement (Trades Employees) 2002	Town of Port Hedland	11 Dec., 2002 – 30 June, 2005.....	AG240/03	1/10/03	Unpublished	
Trade Winds Supermarket and SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Whole of State	6 Nov., 2002 – 30 June, 2005	AG168/02	18/11/02	Unpublished	
Tranby College (Enterprise Bargaining) Agreement 2009. (Replaces previous Tranby College ... Agreement 2007 No. AG1/08. For prior details, see Vol. 89, Part 2)	Whole of State	1 Jan., 2009 - 31 Dec., 2010	AG4/10	30/4/10	Unpublished	
Transfield - A.S.I. (Enterprise Bargaining) Consent Agreement 1993	Transfield - A.S.I., Jervoise Bay Operations	2 April, 1993 - 24 Oct., 1993.....	AG9/93	19/4/93	73	1268
Transfield Construction Pty Ltd WA Division Workshops (Kwinana) Enterprise Bargaining Agreement	Establishment of Transfield Construction Pty Ltd WA Division (Kwinana)	2 April, 1993 - 1 Nov., 1993.....	AG11/93	19/4/93	73	1271
Transfield Construction Pty Ltd WA Division Workshops Alcoa (Kwinana) B-30 Project Enterprise Bargaining Agreement	Establishment of Transfield Construction Pty Ltd WA Division (Kwinana) B-30 Project Construction Site	22 Sept., 1994 - Completion	AG151/94	2/12/94	74	2996
Transfield Maintenance HBI Agreement 2000 (Cancels previous Transfield Maintenance ... Agreement No.AG136/97. For prior details, see Vol. 80, Part 1) (For previous amendments, see Vol. 89, Part 2)	Transfield Pty Ltd, Transfield Operations and Maintenance	12 Oct., 2000 - 30 June, 2003	AG205/00	12/10/00	80	5132
Transfield Pty Ltd, Transfield Coatings (WA) Industrial Agreement 1998	Whole of State	17 Sept., 1998 - 16 Sept., 2001	AG133/98	20/11/98	78	4695
Transport Workers' (Eastern Goldfields Transport Board) Agreement 2005 (Replaces previous Transport Workers' ... Agreement 2002 No. AG1/03. For prior details, see Vol. 85, Part 1)	Whole of State	11 Oct., 2005 – 31 Dec., 2006	AG230/05	11/10/05	Unpublished	
Transport Workers (Government) - Department of Culture and the Arts - Agreement 2007 (Replaces previous Transport Workers (Government) ... Agreement 2004 No. AG159/04. For prior details, see Vol. 87, Part 1)	Department of Culture and the Arts	8 Aug., 2007 – 31 Dec., 2009	AG48/07	8/8/07	Unpublished	
Trendwest Painting Industrial Agreement	Korima Pty Ltd t/a Trendwest Painting	8 Sept., 1995 - 31 July, 1997	AG149/95	10/10/95	75	3022
Trevor Roller Shutters/CFMEUW Collective Agreement 2002	Whole of State	19 Mar., 2002 - 1 Nov., 2002.....	AG51/02	11/4/02	Unpublished	
Trinity Demolition/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	11 Dec., 2002 – 31 Oct., 2005	AG289/02	7/5/03	Unpublished	
Trinity Demolition Industrial Agreement	Trinity Demolition	5 Dec., 1995 - 31 July, 1997	AG313/95	10/1/96	76	373
Trinity Building Group/BLPPU Collective Agreement 1999 (Cancels previous Trinity Demolition Industrial Agreement No. AG208/97)	Whole of State	1 Nov., 1999 - 1 Nov., 2002	AG220/99	24/3/00	80	1325
Triple T Commercial/CFMEUW Industrial Agreement 2005-2008. (Replaces previous Triple T Commercial ... Agreement 2002-2005 No. AG82/03. For prior details, see Vol. 85, Part 2)	Whole of State	1 Nov., 2005 – 31 Oct., 2008.....	AG6/06	17/2/06	Unpublished	
Triple T Commercial P/L/CFMEUW Industrial Agreement 2005-2008. (Replaces Triple T Commercial/CFMEUW ... Agreement 2005-2008 No. AG6/06)	Whole of State	1 Nov., 2005 – 31 Oct., 2008.....	AG47/06	24/3/06	Unpublished	
Triple T Contracting/CFMEUW Collective Agreement 2001	Whole of State	13 Dec., 2002 - 1 Nov., 2002.....	AG15/02	15/2/02	Unpublished	

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Trustees of the Christian Brothers in WA Non-Teaching Staff Enterprise Bargaining Agreement, 2006 – The, No. AG27/07. (Cancelled and Replaced by The Edmund Rice Education Australia Non-Teaching Staff Enterprise Bargaining Agreement, 2009 No. AG62/09. For prior details, see Vol. 89, Part 2)						
Trustees of the Marist Brothers Southern Province / LHMU Non-Teaching Staff Enterprise Bargaining Agreement, 2009 - The	Western Australia	6 April, 2009 – 31 Dec., 2009	AG16/09	11/8/09		Unpublished
Trustees of the Marist Brothers Southern Province Teachers Enterprise Bargaining Agreement 2009 - The. (This agreement substitutes and replaces the Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 1 of 2006 No. AG1/07)	Whole of State	17 Dec., 2009 – 7 July, 2011	AG69/09	17/12/09		Unpublished
Trustees of the Marist Brothers Southern Province Non-Teaching Staff Enterprise Bargaining Agreement, 2009 - The. (Cancels and Replaces previous Trustees of the Marist Brothers ... Agreement, 2006 - The, No. AG18/07. For prior details, see Vol. 89, Part 2)	Western Australia	Date of agreement by all parties..... - 31 Dec., 2009	AG55/09	4/2/10		Unpublished
Truwood Fabrications/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	19 Aug, 2003 – 31 Oct., 2005	AG218/03	6/9/04		Unpublished
Tubelok Constructions/CFMEUW Industrial Agreement 2005-2008. (Replaces previous Tubelok Constructions... Agreement 2002-2005 No. AG187/04. For prior details, see Vol. 85, Part 1)	Whole of State	1 Nov., 2005 – 31 Oct., 2008	AG210/05	11/11/05		Unpublished
Tubemakers of Australia Limited, Steel Pipelines, Kwinana (Enterprise Bargaining) Agreement 1992	Tubemakers of Australia Limited, Water, Oil and Gas Industries Division Steel Pipelines Establishment, Kwinana	5 June, 1992 - 31 Dec., 1992.....	AG2/92	6/8/92	72	1784
Tubemakers Kwinana Pipe Plant Joint Enterprise Development Agreement	Tubemakers, Kwinana Pipe Plant	13 April, 1994 - 30 June, 1995.....	AG21/94	13/4/94	74	1259
Tubemakers Kwinana Pipe Plant Joint Enterprise Development Agreement, No AG 139 of 1995	Tubemakers, Kwinana Pipe Plant	18 Sept., 1995 - 30 June, 1997	AG139/95	18/9/95	75	2789
Tudorgold Holdings/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	25 Oct., 2004 – 30 June, 2007.....	AG229/04	9/12/04		Unpublished
Turbine Components Australia Pty Ltd Redundancy Agreement	Turbine Components Australia Pty Ltd - Canning Vale	7 Feb., 1994	AG29/94	16/5/94	74	1551
2MR Installations Pty Ltd/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	16 Sept., 2004 – 31 Oct., 2005.....	AG163/04	19/9/04		Unpublished
Two Dogs Roofing/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	25 Oct., 2004 – 30 June, 2007.....	AG198/04	8/12/04		Unpublished
Two Rock Holdings/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	25 Oct., 2004 – 30 June, 2007.....	AG206/04	9/12/04		Unpublished
Tyco Services Industrial Agreement	Whole of State	20 Jan., 1998 - 31 Oct., 1999	AG66/99	18/5/99	79	1684
Tyco Water Pty Ltd ACN 087 415 745 Steel Pipeline Systems, Kwinana Manufacturing Joint Enterprise Development Agreement-July 1999 to June 2001. (Cancels Tubemakers Waters, Steel ... Agreement No. AG145/97)	Tyco Water Pty Ltd (Kwinana Manufacturing)	July 1999 - 30 June 2001.....	AG224/99	29/3/00	80	1576
Tyco Water Pty. Ltd., Kwinana Pipe Plant, Enterprise Bargaining Agreement 2006 (Replaces previous Tyco Water ... Agreement 2002 No. AG189/02. For prior details, see Vol. 85, Part 2)	Tyco Water Pty Ltd Kwinana Operations	13 Feb., 2006 – 12 Feb., 2009.....	AG27/06	20/3/06		Unpublished
Ultra Speed Rigging & Construction Industrial Agreement	A. Foreman and M. Fisher t/a Ultra Speed Rigging & Construction	14 Sept., 1995 - 31 July, 1997.....	AG213/95	22/11/95	76	140
Ultra Speed Rigging & Construction Industrial Agreement	Whole of State	21 Oct., 1997 - 31 Oct., 1999	AG292/97	3/12/97	77	3433
Ultra Speed Rigging & Construction/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	16 July, 2003 – 31 Oct., 2005	AG182/03	6/9/04		Unpublished
Under Cut/BLPPU Collective Agreement 2000	Whole of State	11 Jan., 2001 - 1 Nov., 2002	AG14/01	28/2/01		Unpublished

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UnionsWA Enterprise Agreement 2009 This agreement substitutes previous UnionsWA Enterprise Agreement 2007 No. AG62/07. For prior details, see Vol. 89, Part 1)	Employees of UnionsWA who are members of or are eligible to be members of the Australian Municipal, Administrative, Clerical and Services Union of Employees, W.A. Clerical and Administrative Branch	17 Nov., 2009 – 15 Nov., 2011.....	AG71/09	9/12/09	Unpublished	
Unistrut Australia Pty Ltd/BLPPU and the CMETU Collective Agreement 2001	Whole of State	14 Feb., 2001 - 1 Nov., 2002	AG23/01	8/3/01	Unpublished	
United Construction Alcoa Kwinana Core Crew Enterprise Agreement 1993	United Construction Pty Ltd - Alcoa Kwinana Complex	25 Jan., 1994 - 24 Jan., 1995	AG75/93	25/1/94	74	249
United Construction Alcoa (Kwinana and Pinjarra Refineries) Local Service Contracts Enterprise Bargaining Agreement 1995	United Construction Pty Ltd at Alcoa Refineries, Kwinana and Pinjarra	13 Apr., 1995 - 25 Jan., 1996.....	AG56/95	13/4/95	75	1624
United Construction Alcoa Operations Local Services Contracts and Associated Projects Enterprise Bargaining Agreement 1996	United Construction Pty Ltd at Alcoa Operations	23 Mar., 1996 - 23 Mar., 1998.....	AG117/96	13/5/96	76	1920
United Construction Alcoa Pinjarra Core Crew Enterprise Agreement 1993	United Construction Pty Ltd - Alcoa Pinjarra Complex	25 Jan., 1994 - 24 Jan., 1995	AG74/93	25/1/94	74	251
United Construction Argyle Area Maintenance Agreement 1995	United Construction's Argyle Area Maintenance Operations	15 Dec., 1995 - 14 Dec., 1997	AG320/95	15/12/95	76	141
United Construction Argyle Maintenance Core Crew Enterprise Agreement 1993	United Construction Pty Ltd - Argyle Diamond Mine Maintenance	25 Jan., 1994 - 24 Jan., 1995	AG76/93	25/1/94	74	254
United Construction BHP Petroleum Griffin Venture Remediation Project Agreement 1997	Griffin Venture	Commencement - Completion.....	AG106/97	22/5/97	77	1484
United Construction BHP Titanium Minerals Project Enterprise Based Agreement 1996	United Construction Pty Ltd at BHP Titanium Minerals Project, Beenup	20 May, 1996 - 20 Nov., 1996.....	AG84/96	20/5/96	76	1924
United Construction CBH Project (Geraldton) Enterprise Agreement 1993	CBH Project (Geraldton)	23 Dec., 1993 - Completion.....	AG81/93	23/12/93	74	98
United Construction CBH Project (Geraldton) Enterprise Agreement 1994	United Construction Pty Ltd operations CBH Geraldton Project	10 Feb., 1994 - Completion	C545/93	22/2/94	74	667
United Construction Coogee Chemicals Sulphuric Acid Handling Facility Enterprise Based Agreement 1996	United Construction Pty Ltd at Coogee Chemicals Sulphuric Acid Handling Facility at Kwinana	31 Feb., 1996 - Completion	AG76/96	20/5/96	76	1926
United Construction Hismelt Maintenance Core Crew Enterprise Agreement 1994	Hismelt Research and Development Facility, Kwinana	8 April, 1994 - 7 April, 1995	AG23/94	8/4/94	74	899
United Construction Hismelt Maintenance Core Crew Enterprise Agreement 1994	United Construction Pty Ltd	14 Nov., 1995 - 13 Nov., 1996	AG282/95	22/11/95	75	3264
United Construction Kwinana Fabrication Facilities Ltd Enterprise Bargaining Agreement 1996-1997. (Replaces No. AG111/94)	United Construction Pty Ltd at Kwinana Fabrication Facilities Operations	22 Mar., 1996 - 22 Mar., 1998.....	AG103/96	8/5/96	76	1928
United Construction Kwinana Nickel Refinery Maintenance Enterprise Based Agreement 1996	United Construction Pty Ltd	9 Feb., 1996 - 8 Feb., 1998	AG44/96	20/3/96	76	1047
United Construction Kwinana Supply Services Enterprise Bargaining Agreement 1996	Kwinana Supply Services Department	22 Sept., 1996 - 22 Mar., 1998	AG69/97	19/5/97	77	1487
United Construction Ord Sugar Mill Maintenance Agreement 1996	United Construction Pty Ltd at CSR Sugar Mill, Ord River	12 Aug., 1996 - 30 Sept., 1998	AG176/96	12/8/96	76	4062
United Construction Pty Ltd (Alcoa Kwinana B-30 Project) Enterprise Bargaining Agreement	United Construction Pty Ltd Alcoa Kwinana B-30 Project Construction Site	17 Oct., 1994 - Completion.....	C458/94	18/11/94	74	3043
United Construction Pty Ltd Enterprise Agreement for Hismelt Services 1996	Hismelt Research and Development Facility at Kwinana	13 Jan., 1997 - 13 Jan., 1999	AG334/96	13/1/97	77	417
United Construction Pty Ltd Nelson Point Development Project (Enterprise Bargaining) Agreement	Nelson Point Development Project Port Hedland	4 Jan., 1993 - Completion.....	AG19/93	19/4/93	73	1275
United Construction Pty Ltd Nelson Point Development Project (Enterprise Bargaining) Agreement Phase II	Whole of State	3 Aug., 1993 - Completion	AG37/93	18/8/93	73	2429
United Construction Supplementary Workforce BP Oil Kwinana Refinery Enterprise Bargaining Agreement 1996	United Construction Pty Ltd in its operation at BP Oil Kwinana Refinery	1 Apr., 1996 - 1 Apr., 1997.....	AG153/96	3/7/96	76	2741
United Crane Hire Enterprise Agreement, 2003	United Crane Hire Pty Ltd	16 Jan., 2004 – 15 Jan., 2006.....	AG9/04	6/9/04	Unpublished	

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United Group Rail Services Limited Bassendean Enterprise Agreement 2006	United Group Rail Services Limited	24 Mar., 2006 – 23 Mar., 2009	AG50/06	24/3/06	Unpublished	
United Insulation Co – Industrial Agreement	Corso Industries Pty Ltd t/a United Insulation Co.	17 Apr., 1996 - 31 July, 1997.....	AG112/96	10/6/96	76	1931
United Insulation/BLPPU and the CMETU Collective Agreement 2000	Whole of State	1 Nov., 1999 - 1 Nov., 2002.....	AG198/00	6/9/00	80	4130
United Maintenance Pty Ltd HBI Agreement 2000	United Maintenance Pty Ltd employees engaged in or in connection with work at the BHP Direct Reduced Iron Pty Ltd Port Hedland assets and facilities	16 Mar., 2001 - 30 June, 2003	AG22/01	16/3/01	Unpublished	
Unitex Textured Coating Industrial Agreement	Iaralia Pty Ltd t/a Unitex Textural Coating	24 Apr., 1996 - 31 July, 1996.....	AG120/96	10/6/96	76	1933
Uniting Church Homes, Health Services Union Enterprise Agreement 2004	Whole of State	1 Oct., 2004 - 30 Sep., 2007.....	AG189/04	10/12/04	Unpublished	
Universal Commercial Cleaners/CFMEUW Industrial Agreement 2005-2008 (Replaces previous Universal Commercial ... Agreement 2002-2005 No. AG93/03. For prior details, see Vol. 85, Part 1)	Whole of State	1 Nov., 2005 – 31 Oct., 2008	AG195/05	8/11/05	Unpublished	
Universal Commercial Cleaners Industrial Agreement	Universal Commercial Cleaners Pty Ltd (WA)	11 Mar., 1996 - 31 July, 1997	AG71/96	17/4/96	76	1348
Universal Commercial Cleaners Industrial Agreement	Whole of State	1 Apr., - 1998 - 31 Oct., 1999	AG55/98	6/2/98	78	2420
Universal Fasteners Enterprise Bargaining Agreement 1996	Universal Fasteners Canning Vale	1 Apr., 1996 - 31 Mar., 1998.....	AG178/96	12/8/96	76	4065
Untex Textured Coating Industrial Agreement	R. Cole t/a Untex Textured Coating	12 Sept., 1995 - 31 July, 1997.....	AG233/95	22/11/95	76	141
Utopia Industries Pty Ltd/BLPPU and the CMETU Collective Agreement 2000	Whole of State	1 Nov., 1999 - 1 Nov., 2002.....	AG194/00	6/9/00	80	4135
V&L Carlino Industrial Agreement	Carlino Concreting Pty Ltd t/a V&L Carlino	13 Sept., 1995 - 31 July, 1997.....	AG222/95	22/11/95	76	143
Valey Bricklaying Industrial Agreement	Whole of State	10 Feb., 1997 - 31 July, 1997.....	AG51/97	11/4/97	77	1241
Van Den Berg Painting Co/BLPPU and the CMETU Collective Agreement 1999 (Cancels previous Van Den Berg ... Agreement No. AG230/97. For prior details, see Vol. 79, Part 2)	Whole of State	1 Nov., 1999 - 1 Nov., 2002.....	AG256/99	8/3/00	80	1329
Van Den Berg Painting Co Pty Ltd/ CFMEUW Industrial Agreement 2002 – 2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	9 Jan., 2003 – 31 Oct., 2005.....	AG29/03	7/5/03	Unpublished	
Vandertang Concrete Industrial Agreement	Greeneagles Pty Ltd t/a Vandertang Concrete Vehicle Builders	2 Nov., 1994 - 31 July, 1995	AG144/94	2/11/94	75	124
Vandertang Concrete Industrial Agreement	Greeneagles Pty Ltd t/a Vandertang Concrete	10 Aug., 1995 - 31 July, 1997	AG140/95	10/10/95	75	3023
Van Diddens Painting Service Domestic and Minor Industrial Agreement	Whole of State	23 Feb., 1997 - 31 July, 1997.....	AG56/96	11/12/96	77	179
Van Leer Australia Pty Ltd (W.A.) (Enterprise Bargaining) Consent Agreement 1992	Whole of State except area occupied by US Navy of N.W. Cape	15 June, 1992 - 30 June, 1993.....	AG8/92	24/6/92	72	1542
Van Leer Australia Pty Limited - Perth Enterprise Bargaining Agreement 1997	Whole of State	14 May, 1997 - 14 Nov., 1998	AG163/97	19/8/97	77	2348
Van Leer Australia Pty Limited - Perth Enterprise Bargaining Agreement 2000	Van Leer Australia Pty Limited	14 May, 2000 - 14 Aug., 2001	AG186/00	7/8/00	80	3270
Van Leer Australia Pty Ltd – Perth Enterprise Bargaining Agreement 2001. (Replaces previous Van Leer ... Agreement No. AG278/98. For prior details, see Vol. 81, Part 2)	Van Leer Australia Pty Ltd 8 Rawlinson Street, O'Connor	15 Aug., 2001 - 14 Mar., 2003.....	AG205/01	20/11/01	Unpublished	
Variety Floors/CFMEUW Collective Agreement 2002	Whole of State	4 Sept., 2002 – 1 Nov., 2002.....	AG147/02	25/9/02	Unpublished	
Vaughan Castings Enterprise Bargaining Agreement 1996	Vaughan Castings 19 Russell Road Henderson WA	1 Jan., 1997 - 31 Dec., 1998.....	AG374/97	29/6/98	78	2891

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Vaughan Castings Enterprise Bargaining Agreement 2000	Vaughan Castings 19 Russell Road Henderson WA 6166	1 Jan., 2000 - 31 Dec., 2001	AG189/00	14/8/00	80	4141
Vax Appliances Enterprise Bargaining Agreement 1999 (Replaces Nos. AG136/95 and AG320/96)	Vax Appliances (Australia) Pty Ltd, Malaga	1 Jan., 1999 - 1 July, 1999	AG82/99	16/6/99	79	2001
Vchenzo Tilers/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	19 Mar., 2004 – 31 Oct., 2005	AG49/04	6/9/04		Unpublished
Ventara Holdings/CFMEUW Industrial Agreement 2005-2008. (Replaces previous Ventara Holdings ... Agreement 2002-2005 No. AG72/03. For prior details, see Vol. 85, Part 2)	Whole of State	1 Nov., 2005 – 31 Oct., 2008	AG149/05	12/12/05		Unpublished
Vibropile/BLPPU and the CMRTU Collective Agreement 2001	Whole of State	5 Apr., 2001 - 1 Nov., 2002	AG60/01	3/5/01		Unpublished
Vinidex Pty Ltd (Maintenance Section - Perth Site) Enterprise Bargaining Agreement 2005	Vinidex Pty Ltd	8 Dec., 2005 – 13 May, 2008	AG232/05	14/12/05		Unpublished
Vinidex Pty Ltd (Maintenance Section - Perth Site) Enterprise Bargaining Agreement 2003 (Replaces previous Vinidex Pty Ltd ... Agreement 2000 No. AG237/00)	Vinidex Pty Ltd	12 Dec., 2003 – 13 May, 2005	AG278/03	12/12/03		Unpublished
Vinidex Tubemakers Pty Ltd (Maintenance Section) Enterprise Bargaining Agreement 1996. (Replaces No. AG84/94)	Whole of State	5 Aug., 1996 - 31 July, 1998	AG280/96	29/10/96	76	4634
Vinidex Tubemakers Pty Ltd (Maintenance Section-Perth Site) Enterprise Bargaining Agreement 1998	Vinidex Tubemakers Pty Ltd	31 Aug., 1998 - 31 July 2000	AG30/99	4/5/99	79	1408
Viscont Plastics (WA) Pty Limited Enterprise Bargaining Agreement 2001. (Replace previous Viscount Plastics ... Agreement No. AG81/99)	Viscont Plastics (WA) Pty Limited	1 Jan., 2001 - 30 Dec., 2003	AG168/01	10/9/01		Unpublished
Viscont Plastics (WA) Pty Limited Enterprise Bargaining Agreement 2003	Viscont Plastics (WA) Pty Limited	1 Jan., 2003 - 30 Dec., 2005	AG21/04	29/04/04		Unpublished
Vis Formwork/BLPPU and the CMETU Collective Agreement 2001 (Replaces previous Vis Formwork ... Agreement No. AG228/96. For prior details, see Vol. 81, Part 2)	Whole of State	7 May, 2001 - 1 Nov., 2002	AG82/01	31/5/01		Unpublished
VIS Formwork Pty Ltd/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	10 Feb., 2003 – 31 Oct., 2005	AG73/03	7/5/03		Unpublished
Vista Ceilings/CFMEUW Collective Agreement 2002	Whole of State	3 July, 2002 – 1 Nov., 2002	AG94/02	29/07/02		Unpublished
Vista Ceilings/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	17 Feb., 2003 – 31 Oct., 2005	AG83/03	7/5/03		Unpublished
Visy Industrial Fremantle Enterprise Agreement 2003	Whole of State	8 Sept., 2003 – 30 June, 2006	AG184/03	8/09/03		Unpublished
		Correction Order No. AG184/2003 (Preamble) .....	...	30/09/03	83	3450
Visy Industrial Plastics Welshpool Enterprise Agreement 2005	Visy Industrial Plastics Welshpool, 5 Fargo Way, Welshpool	8 Dec., 2005 – 8 Dec., 2008	AG256/05	14/12/05		Unpublished
VisyPak Carton Systems In-Plant Team Bentley-WA Enterprise Agreement 2004 (Replaces previous Visypak Carton ... Agreement No. AG 251/01. For prior details, see Vol. 84, Part 1)	National Foods' operations in Bentley, WA	1 July, 2004 - 30 June, 2007	AG174/04	29/11/04		Unpublished
Vogue Interiors/BLPPU Collective Agreement 1999. (Cancels previous Vogue Interiors ... Agreement No. AG91/99. For prior details, see Vol. 79, Part 2)	Whole of State	25 Nov., 1999 - 1 Nov., 2002	AG210/99	24/3/00	80	1334
Voice Holdings Pty Ltd/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	15 Nov., 2004 – 30 June, 2007	AG267/04	17/01/05		Unpublished
Volgren Australia Pty Ltd Enterprise Agreement 2004	47 Beringarra Avenue, Malaga, WA, 6090	21 Feb., 2005 – 10 Dec., 2006	AG3/05	21/02/05		Unpublished
Vortech Installations Industrial Agreement	Whole of State	14 Jan., 1998 - 31 Oct., 1999	AG6/98	20/3/98	78	1354

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WA Baptist Hospital and Homes Trust Incorporated, Health Services Union (Union of Workers) Enterprise Agreement 2004	Whole of State	27 Apr., 2004 – 25 Apr., 2006	AG72/04	29/4/04	Unpublished	
WA Building Services/CFMEUW Industrial Agreement 2002-2005. (Cancels previous WA Building Services/CFMEUW Collective Agreement 2002 AG28/02 by Order No. AG74/2003, (84WAIG67). For prior details, see Vol. 83, Part 2)	Western Australia	10 Feb., 2003 – 31 Oct., 2005	AG74/03	7/5/03	Unpublished	
WA Ceiling Industries Subiaco Grandstand Construction Project Agreement 1994	WA Ceiling Industries at Subiaco Grandstand Construction Project, Subiaco	Commencement - Completion	AG72/95	14/6/95	75	2146
WA Ceiling Industries Wall and Ceiling Industrial Agreement	Boral Australian Gypsum Limited t/a WA Ceiling Industries	24 Apr., 1996 - 31 July, 1997.....	AG121/96	10/6/96	76	1935
WA Flooring Installations/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	19 Aug., 2003 – 31 Oct., 2005	AG219/03	6/9/04	Unpublished	
WA Health Engineering and Building Services Industrial Agreement 2007. (Cancels and Replaces the WA Government Health Services Engineering and Building Services Enterprise Agreement 2004 No. AG20/04. For prior details. See Vol. 87, Part 1)	Whole of State	21 June, 2007 – 31 Dec., 2009	AG40/07	21/6/07	Unpublished	
WA Health – LHMU – Aboriginal and Ethnic Health Workers Industrial Agreement 2009	State of Western Australia	Refer to Agreement	AG7/09	7/4/09	Unpublished	
WA Health – LHMU – Enrolled Nurses and Assistants in Nursing Industrial Agreement 2007 No. AG 15/2008. (Replaces the LHMU Enrolled Nurses and Nursing Assistants Department of Health Industrial Agreement 2004 AG290/04)	State of Western Australia	5 Sept., 2008 – 6 Oct., 2010.....	AG15/08	5/9/08	Unpublished	
WA Health - LHMU - Support Workers Industrial Agreement 2007. (Replaces and Cancels the LHMU – Union Recognition and Job Security Agreement – Department of Health Support Workers 2004 No. AG 180 of 2004)	State of Western Australia	12 Oct., 2007 - 31 July 2010.....	AG59/07	12/10/87	Unpublished	
WA Partitioning Pty Ltd/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	7 Aug., 2003 – 31 Oct., 2005	AG195/03	6/9/04	Unpublished	
WA Project Carpenters/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	8 May, 2003 – 31 Oct., 2005.....	AG132/03	6/9/04	Unpublished	
W.A. Rewind Company (Western Australia) Training and Skills Program (TASK) Agreement 1994	W.A. Rewind Company Collingwood Road, Osborne Park, W.A.	1 Mar., 1994 - 28 Feb., 1995.....	AG13/94	29/3/94	74	899
WA Roofing/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	25 Oct., 2004 – 30 June, 2007.....	AG215/04	10/12/04	Unpublished	
WA Shell Sands Pty Ltd (Enterprise Bargaining) Agreement, November 2004	WA Shell Sands Pty Ltd	1 Dec., 2004 – 30 Nov., 2007	AG191/04	20/12/04	Unpublished	
WA Sports Centre Trust Enterprise General Agreement 2007. (This agreement substitutes and replaces the WA Sports Centre Trust Enterprise Agreement 2005 No. AG27/05. For prior details, see Vol. 87, Part 1)	Employees of the Trust eligible for membership of MEAA and LHMUWA	12 Sept., 2007 – 31 Dec., 2009	AG41/07	12/9/07	Unpublished	
WA Terrazzo/BLPPU Collective Agreement 2001	Whole of State	19 July, 2001 - 1 Nov., 2002.....	AG158/01	9/8/01	Unpublished	
WA Universal Rigging Co/CFMEUW Industrial Agreement 2002-2005 (Cancels the WA Universal Rigging ... Agreement 2000 No. AG25/00. For prior details, see Vol. 83, Part 1)	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	9 Jan., 2003 – 31 Oct., 2005.....	AG28/03	7/5/03	Unpublished	
WA Waterproofing/BLPPU Collective Agreement 1999. (Cancels previous Waterproofing Products ... Agreement No. AG189/97. For prior details, see Vol. 79, Part 2)	Whole of State	1 Nov., 1999 - 1 Nov., 2002.....	AG237/99	8/3/00	80	1340
WACO Kwiform/CFMEUW Industrial Agreement 2002 – 2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	3 June, 2004 - 31 Oct., 2005	AG104/04	2/7/04	Unpublished	
Waikiki Private Hospital and LHMU Industrial Agreement 2009	Waikiki Private Hospital	13 Aug., 2009 – 17 Dec., 2017	AG27/09	13/8/09	Unpublished	

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Waikiki Private Hospital Health Services Union Enterprise Agreement 2008	State of Western Australia	18 Apr., 2008 – 31 Dec., 2011	AG5/08	18/4/08	Unpublished	
Waikiki Private Hospital Nurses Agreement 2008	Employees employed as nurses in the classifications contained in Clause 21 – Salaries, Classifications and Career Structure by the Employer	19 Nov., 2008 – 3 May, 2010	AG19/08	19/11/08	Unpublished	
Wallis Drainage/CFMEUW Industrial Agreement 2002 – 2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	19 May, 2004 - 31 Oct., 2005	AG88/04	30/6/04	Unpublished	
WACI Wall & Ceiling Contractors/CFMEUW Industrial Agreement 2005-2008 (Replaces previous WACI Wall & Ceiling ... Agreement 2002-2005 No. AG 131/03. For prior details, see Vol. 85, Part 2)	Whole of State	1 Nov., 2005 – 31 Oct., 2008	AG148/05	12/12/05	Unpublished	
WACI Wall & Ceiling Contractors/CFMEUW Industrial Agreement 2005-2008 (Replaces Newave Contracting Pty Ltd/CFMEUW Industrial Agreement 2005-2008 No. AG131/05)	Whole of State	1 Nov., 2005 – 31 Oct., 2008	AG28/06	7/3/06	Unpublished	
Waco Kwikform Limited Industrial Agreement	Whole of State	1 Aug., 1997 - 31 Oct., 1999	AG254/97	14/11/97	77	3440
WACO KWIKFORM Limited Industrial Agreement	Whole of State	19 Sept., 2001 - 30 Sept., 2003	AG39/02	5/4/02	Unpublished	
Wainwright and Transport Workers Union Enterprise Agreement 2004	Whole of State	1 Sept., 2004 – 31 Aug., 2005	AG192/04	22/4/05	Unpublished	
Wall to Wall Carpets/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	22 July, 2003 – 31 Oct., 2005	AG185/03	6/9/04	Unpublished	
Walsh's Glass Industrial Agreement	Factory Premises	1 July, 1998 - 31 Oct., 2000	AG156/98	15/10/98	78	4133
Walsh's Glass Western Australian Retailing Enterprise Agreement Stage 1	Whole of State	31 Oct., 1996 - 31 Dec., 1997	AG314/96	3/1/97	77	425
WAMMCO International (Katanning) AMIEU Processing Agreement (2005). (Replaces previous WAMMCO ... Agreement (2001) No. AG263/01. For prior details, see Vol. 85, Part 1)	Katanning Plant	16 May, 2005 - 16 May, 2008	AG123/05	16/9/05	Unpublished	
WAMMCO International (Linley Valley) AMIEU Processing Agreement (1999)	Linley Valley	27 Nov., 1999 - 30 June, 2002	AG179/99	20/3/00	80	1579
WAMMCO International (Spearwood) AMIEU Processing Agreement 1999. (Replaces WA Meat Marketing and the Australasian Meat Industry ... Spearwood Employees Agreement No. AG310/96)	Whole of State	16 Dec., 1999 - 31 Dec., 2001	AG5/00	20/3/00	80	1592
Waratah Wire Products – Kwinana Wiremill Performance Improvement Recognition Payment System Agreement. (Replaces Waratah Wire Products - Kwinana Wiremill Performance Improvement System Agreement 1992. For prior details, see Vol.78, Part 1)	Waratah Wire Products Wiremill, Kwinana	8 Sept., 1993 - 30 May, 1995	AG46/93	23/9/93	73	2688
Water Corporation Agricultural Region Local Agreement 1998	Whole of State	1 July 1998 - 30 June 1999	AG191/98	4/12/98	78	4710
Water Corporation Bulk Water & Wastewater Division Local Agreement 1998.	Whole of State	1 July 1998 - 30 June 1999	AG187/98	4/12/98	78	4716
Water Corporation Carnarvon Business Unit Local Agreement 1998	Whole of State	1 July 1998 - 30 June 1999	AG193/98	4/12/98	78	4721
Water Corporation Commercial Division Local Agreement 1998	Whole of State	1 July 1998 - 30 June 1999	AG216/98	4/12/98	78	4725
Water Corporation Construction Branch Local Agreement 1998	Whole of State	1 July 1998 - 30 June 1999	AG189/98	4/12/98	78	4728
Water Corporation Contracts and Land Management Services Branch Local Agreement 1998.	Whole of State	1 July 1998 - 30 June 1999	AG213/98	4/12/98	78	4732
Water Corporation Corporate Affairs Branch Local Agreement 1998	Whole of State	1 July 1998 - 30 June 1999	AG197/98	4/12/98	78	4734
Water Corporation Corporate Information Support Branch Local Agreement 1998	Whole of State	1 July 1998 - 30 June 1999	AG198/98	4/12/98	78	4737
Water Corporation Engineering and Contracts Division Executive Support Branch Local Agreement 1998	Whole of State	1 July 1998 - 30 June 1999	AG214/98	4/12/98	78	4747

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Water Corporation Engineering and Technical Services Branch Local Agreement 1998	Whole of State	1 July 1998 - 30 June 1999.....	AG194/98	4/12/98	78	4750
Water Corporation Environment Branch Local Agreement 1998	Whole of State	1 July 1998 - 30 June 1999.....	AG202/98	4/12/98	78	4754
Water Corporation Executive Services Branch Local Agreement 1998	Whole of State	1 July 1998 - 30 June 1999.....	AG209/98	4/12/98	78	4756
Water Corporation Executive Support/Human Resources Planning and Development Division Local Agreement 1998	Whole of State	1 July 1998 - 30 June 1999.....	AG205/98	4/12/98	78	4760
Water Corporation Finance and Administration Division Executive Support Team Local Agreement 1998	Whole of State	1 July 1998 - 30 June 1999.....	AG215/98	4/12/98	78	4764
Water Corporation Finance and Administration Division Facilities Management Branch Local Agreement 1998	Whole of State	1 July 1998 - 30 June 1999.....	AG218/98	4/12/98	78	4767
Water Corporation Finance & Administration Division, Management Accounting Branch Local Agreement 1998	Whole of State	1 July 1998 - 30 June 1999.....	AG217/98	4/12/98	78	4769
Water Corporation Financial Services Branch Local Agreement 1998	Whole of State	1 July 1998 - 30 June 1999.....	AG219/98	4/12/98	78	4773
Water Corporation Goldfields Region Local Agreement 1998	Whole of State	1 July 1998 - 30 June 1999.....	AG192/98	4/12/98	78	4777
Water Corporation Great Southern Region Local Agreement 1998	Whole of State	1 July 1998 - 30 June 1999.....	AG196/98	4/12/98	78	4782
Water Corporation Human Resources Branch Local Agreement 1998	Whole of State	1 July 1998 - 30 June 1999.....	AG201/98	4/12/98	78	4786
Water Corporation Infill Sewerage Program and the Project Management Program Infill Sewerage Branch Local Agreement 1998	Whole of State	1 July 1998 - 30 June 1999.....	AG212/98	4/12/98	78	4789
Water Corporation Infrastructure Development Branch Local Agreement 1998	Whole of State	1 July 1998 - 30 June 1999.....	AG199/98	4/12/98	78	4791
Water Corporation Infrastructure Planning Branch Local Agreement 1998	Whole of State	1 July 1998 - 30 June 1999.....	AG203/98	4/12/98	78	4794
Water Corporation Land Development Branch Local Agreement 1998	Whole of State	1 July 1998 - 30 June 1999.....	AG204/98	4/12/98	78	4798
Water Corporation Management Review & Audit Branch Local Agreement 1998	Whole of State	1 July 1998 - 30 June 1999.....	AG207/98	4/12/98	78	4801
Water Corporation Midwest Region Local Agreement 1998	Whole of State	1 July 1998 - 30 June 1999.....	AG190/98	4/12/98	78	4804
Water Corporation North West Region Local Agreement 1998	Whole of State	1 July 1998 - 30 June 1999.....	AG195/98	4/12/98	78	4808
Water Corporation Operations Development Services Branch Local Agreement 1998	Whole of State	1 July 1998 - 30 June 1999.....	AG208/98	4/12/98	78	4812
Water Corporation Perth Region Local Agreement 1998	Whole of State	1 July 1998 - 30 June 1999.....	AG188/98	4/12/98	78	4816
Water Corporation Planning & Development Division Corporate & Regulatory Planning Branch Local Agreement 1998	Whole of State	1 July 1998 - 30 June 1999.....	AG200/98	4/12/98	78	4819
Water Corporation Project Management Branch Local Agreement 1998	Whole of State	1 July 1998 - 30 June 1999.....	AG211/98	4/12/98	78	4822
Water Corporation Revenue Policy Branch Local Agreement 1998	Whole of State	1 July 1998 - 30 June 1999.....	AG206/98	4/12/98	78	4825
Water Corporation South West Region Local Agreement 1998	Whole of State	1 July 1998 - 30 June 1999.....	AG186/98	4/12/98	78	4828
Water Corporation Supply Policy Branch Local Agreement 1998	Whole of State	1 July 1998 - 30 June 1999.....	AG220/98	4/12/98	78	4831
Water Corporation (Customer Centre, Customer Services Division) Local Agreement 1998	Whole of State	1 July 1998 - 30 June 1999.....	AG210/98	4/12/98	78	4741
Waterproof Products/CFMEUW Industrial Agreement 2005-2008. (Replaces previous Waterproof products ... Agreement 2002-2005. For prior details, see Vol. 85, Part 2)	Whole of State	1 Nov., 2005 – 31 Oct., 2008	AG202/05	12/12/05		Unpublished

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Waterproofing WA/CFMEUW Industrial Agreement 2005 – 2008. (Replaces previous Waterproofing WA ... Agreement 2002-2005 No. AG157/04. For prior details, see Vol. 85, Part 1)	Whole of State	1 Nov., 2005 – 31 Oct., 2008	AG128/05	8/11/05	Unpublished	
Watsons Foods, Metal Trades Enterprise Agreement 1996	George Weston Foods Limited (t/a Watsons Foods – Spearwood WA)	1 Nov., 1995 - 31 Oct., 1997	AG147/96	17/9/96	76	4085
Wayne Roofing/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	25 Oct., 2004 – 30 June, 2007	AG224/04	9/12/04	Unpublished	
Wearside Construction/CFMEUW Industrial Agreement 2002-2005	John Holland – Row Highway Stage 6 Project	16 Jan., 2004 – 31 Oct., 2005	AG10/04	6/9/04	Unpublished	
Webforge (WA) Enterprise Bargaining Agreement 1996	Webforge (WA) premises 24 Tennant Street Welshpool	3 July, 1996 - 30 June, 1998	AG253/96	3/10/96	76	4640
Webforge (WA) Enterprise Bargaining Agreement 2001. (Replaces previous Webforge (WA) ... Agreement No. AG275/00. For prior details, see Vol. 81, Part 2)	Whole of State	1 Oct., 2001 - 30 Sept., 2003	AG1/02	15/2/02	Unpublished	
Weir Engineering Pty Ltd Enterprise Bargaining Agreement	Whole of State	1 Apr., 1997 - 30 Mar., 1999	AG249/97	14/11/97	77	3442
Wembley Cement Industries (Enterprise Bargaining) Consent Agreement	Whole of State	8 Oct., 1993 - 10 Aug., 1994	AG56/93	25/10/93	73	2965
The Wembley Cement Industries, Gnangara, Agreement 1995	Wembley Cement Industries, Gnangara	4 July, 1995 - 3 July, 1997	AG97/95	14/7/95	75	2386
Wes-Ceil/CFMEUW Collective Agreement 2002	Whole of State	13 Feb., 2002 - 1 Nov., 2002	AG21/02	13/3/02	Unpublished	
Wesco Electrics Pty Ltd Construction Division Enterprise Bargaining Agreement 2004 - 2005	Whole of State	1 Jan., 2004 - 31 Oct., 2005	AG86/04	18/8/04	Unpublished	
Wesfarmers Kleenheat Gas (Metal Trades) Enterprise Agreement 1995	Wesfarmers Kleenheat Gas Pty Ltd	16 Feb., 1996 - 15 Feb., 1997	AG47/96	28/3/96	76	1105
Wesfarmers Transport Limited 1999 Workshop Enterprise Agreement	Whole of State	1 July, 1999 - 30 June, 2001	AG145/99	4/11/99	79	3372
Wesfarmers Wool Store Operation Employees Enterprise Agreement 1994	Wesfarmers Wool Store Operation - Fremantle	1 Feb., 1994 - 30 June, 1996	AG6/94	2/2/94	74	257
Wesfarmers Wool Store Operation Employees Enterprise Agreement 1996. (Replaces No. AG136/96)	Fremantle	1 July, 1996 - 30 June, 1998	AG245/96	7/10/96	76	4249
WESFI Manufacturing Pty Ltd (Cullity Timbers Country Stores) Enterprise Bargaining Agreement 2001-2003 (Replaces Cullity Timbers Pty Ltd (Country Stores) Enterprise Bargaining Agreement 1999 No. AG84/99)	Cullity Timbers Mandurah and Country Stores	15 Mar., 2001 - 14 Mar., 2003	AG250/01	19/12/01	Unpublished	
Wesfi Manufacturing Pty Ltd Dardanup (Wesboard Particleboard and LPM Division) Enterprise Bargaining Agreement 1998	Dardanup	3 Sept., 1998 - 2 Sept 2000	AG260/98	26/2/99	79	804
WESFI Manufacturing Pty Ltd Dardanup (WESBOARD Particleboard and LPM Division) Enterprise Bargaining Agreement 2000	Dardanup	3 Sept., 2000 - 2 Sept., 2002	AG20/01	8/3/01	Unpublished	
WESFI Manufacturing Pty Ltd, MDF Division Enterprise Bargaining Agreement (CEPU Version) 2000-2002 (Replaces previous Wesfi ... Agreement 1998 - 2000 No. AG275/98. For prior details, see Vol. 81, Part 2)	Whole of State	27 Oct., 2000 - 26 Oct., 2002	AG149/01	8/8/01	Unpublished	
Wesfi Pty Ltd Particleboard and Low Pressure Melamine Manufacturing Divisions - Dardanup (Enterprise Bargaining) Agreement 1993	Wesfi Pty Ltd, Particleboard and Low Pressure Melamine Manufacturing Divisions, Dardanup	3 Dec., 1993 - 2 Mar., 1995	AG71/93	3/12/93	73	3412
WESFI PTY LTD Particleboard and Low Pressure Melamine Manufacturing Divisions - Dardanup (Enterprise Bargaining) Agreement 1995	Wesfi Pty Ltd, Particleboard and Low Pressure Melamine Manufacturing Divisions, Dardanup	3 Mar., 1995 - 2 Sept., 1996	AG171/95	24/10/95	75	3267
WESFI Manufacturing Pty Ltd, Dardanup (Wesboard Particleboard and LPM Division – Enterprise Bargaining Agreement 1996	Wesfi Manufacturing Pty Ltd, Dardanup, Wesboard Particleboard and LPM Division	3 Sept., 1996 - 2 Sept., 1998	AG20/97	12/3/97	77	957

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WESFI Manufacturing Pty Ltd Welshpool (Weswood MDF Division - Enterprise Bargaining) Agreement 1996	Wesfi Pty Ltd, (Weswood MDF Division) Welshpool WA	27 Oct 1996 - 26 Oct., 1998.....	AG21/97	12/3/97	77	961
Wesley College (Enterprise Bargaining) Agreement 2001. (Replaces previous Wesley College ... Agreement 1998 No. AG81/98 For prior details, see Vol. 81, Part 2)	Whole of State	24 Sept., 2001 - 31 Dec., 2002.....	AG171/01	24/9/01	Unpublished	
Wesley College (Enterprise Bargaining) Agreement 2004. (Replaces previous Wesley College ... Agreement 2001 No. AG171/01 For prior details, see Vol. 85, Part 1)	Whole of State	22 Nov., 2005 - 31 Dec., 2006	AG259/05	22/11/05	Unpublished	
Wespine Industries Pty Ltd (Enterprise Bargaining) Agreement 1993	Wespine Industries Pty Ltd, Dardanup Sawmill Site	8 Nov., 1993 - 7 Nov., 1994.....	AG66/93	8/11/93	73	3414
WESPINE Industries Pty Ltd (Enterprise Bargaining) Agreement 1994	WESPINE Industries Pty Ltd, Dardanup	23 Sept., 1995 - 30 Sept., 1995	AG172/95	24/10/95	75	3270
The Wespine Industries Pty Ltd (Dardanup Site) Enterprise Bargaining Agreement 1997	Dardanup	9 Sept., 1997 - 8 Sept., 1999	AG181/97	23/9/97	77	2654
Wespine Industries Pty Ltd Classification Agreement 1998	Dardanup Site	25 Mar., 1998 - 24 Mar., 2003	AG89/98	3/8/98	78	3272
Wespine Industries Pty Ltd (Dardanup Site) Enterprise Bargaining Agreement 1999	Dardanup Site	23 Nov., 1999 - 23 May, 2001	AG206/99	9/2/00	80	585
West Australian Newspapers Christmas Agreement 1993	West Australian Newspapers Limited	1 Nov., 1993 - 1 Jan., 1994	AG82/93	11/1/93	74	98
West Australian Newspapers (Christmas Agreement) 1999	Whole of State	1 Dec., 1999 - 1 Jan., 2000.....	AG183/99	23/12/99	80	155
West Australian Newspapers (Christmas Agreement) 2004	Whole of State	1 Dec., 2004 - 1 Jan., 2005.....	AG289/04	03/02/05	Unpublished	
West Australian Newspapers Clerks (Enterprise Bargaining) Agreement 2001	Whole of State	1 June, 2001 - 31 May, 2004.....	AG170/01	18/9/01	Unpublished	
West Australian Newspaper Clerks (Enterprise Bargaining) Agreement 1994	West Australian Newspapers Limited	1 June, 1994 - 1 June, 1996.....	AG66/94	10/4/95	75	1625
West Australian Newspapers Clerks (Enterprise Bargaining) Agreement 1998 (Replaces No.AG286/96)	Whole of State	1 June, 1998 - 31 May, 2001.....	AG107/98	4/9/98	78	3728
West Australian Newspapers Clerks (Enterprise Bargaining) Agreement 2004	West Australian Newspapers Limited	1 June, 2004 - 31 May, 2007.....	AG175/04	11/11/04	Unpublished	
West Australian Newspapers (Enterprise Bargaining) Agreement 1992	The Establishments of West Australian Newspapers	21 Sept., 1992 - 6 July, 1993.....	AG10/92	30/10/92	72	2559
West Australian Newspapers (Enterprise Bargaining) Security Officers and Cleaners Agreement 1992	Whole of State	22 Dec., 1992 - 21 Dec., 1993.....	AG22/92	14/1/93	73	294
West Australian Newspapers (Equipment Upgrade and Redundancy Agreement) 2005	Herdsmen site, Western Australian Newspapers Limited	1 Dec., 2005 - 1 Dec., 2008.....	AG228/05	1/12/05	Unpublished	
West Australian Newspapers Limited (Enterprise Bargaining) Security Officers and Cleaners Agreement 1994	West Australian Newspapers Limited employees employed as Cleaners and Security Officers	1 Jan., 1994 - 31 Dec., 1995.....	AG106/94	1/2/95	75	394
West Australian Newspapers Limited (Enterprise Bargaining) Security Officers and Cleaners Agreement 1995	West Australian Newspapers Limited	1 July, 1995 - 1 July, 1997	AG6/96	3/5/96	76	1366
West Australian Newspapers Ltd (Composing Room - Redundancy and Training) Industrial Agreement 1996	West Australian Newspapers Limited	19 Feb., 1996 - 18 Feb., 1997	AG40/96	19/2/96	76	1119
West Australian Newspapers Production Employees (Enterprise Bargaining) Agreement 1993 - The	West Australian Newspapers Limited Establishments	5 July, 1993 - 5 July, 1995	AG44/93	29/10/93	73	2966
West Australian Newspapers Production Employees (Enterprise Bargaining) Agreement 1997	Whole of State	1 Apr., 1997 - 31 Mar., 2000.....	AG122/97	1/9/97	77	2350
West Australian Newspapers Production Employees (Enterprise Bargaining) Agreement 2003	West Australian Newspapers Limited	1 Apr., 2003 - 31 Mar., 2006.....	AG216/03	25/09/03	Unpublished	
West Australian Newspapers Production Employees (Enterprise Bargaining) Agreement 2000	West Australian Newspapers Limited	1 Apr., 2000 - 31 Apr., 2003	AG157/00	26/7/97	80	3277

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West Australian Newspapers Production Employees (Enterprise Bargaining) Rollover Agreement 2005	Whole of State	1 Dec., 2005 – 1 Dec., 2008.....	AG229/05	01/12/05	Unpublished	
West Australian Newspapers Production Bargaining) Agreement 1995	West Australian Newspapers Limited	1 July, 1995 - 31 Mar., 1997.....	AG259/95	18/3/96	76	376
West Australian Newspapers Security Officers and Cleaners (Enterprise Bargaining) Agreement 1997	Whole of State	1 July, 1997 - 30 June, 2000.....	AG199/97	31/10/97	78	2429
West Australian Newspapers Security Officers and Cleaners (Enterprise Bargaining) Agreement 2000	Whole of State	1 July, 2000 - 30 June, 2003.....	AG27/01	1/3/01	Unpublished	
West Australian Newspapers Security Officers (Enterprise Bargaining) (Interim) Agreement 1999	Whole of State	30 May, 1999 - 30 June, 2000.....	AG120/99	22/7/99	79	2218
West Australian Water Proofing Industrial Agreement	C. Graham t/a West Australian Water Proofing	8 Sept., 1995 - 31 July, 1997.....	AG161/95	10/10/95	75	3025
West Australian Waterproofing/CFMEUW Industrial Agreement 2002-2005 (Cancels West Australian Waterproofing ... Agreement 2001 No. AG215/01. For prior details, see Vol. 83, Part 1)	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	10 Feb., 2003 – 31 Oct., 2005.....	AG75/03	7/5/03	Unpublished	
West Coast Building Services Pty Ltd/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	7 Aug., 2003 – 31 Oct., 2005.....	AG206/03	6/9/04	Unpublished	
Westcan (Enterprise Bargaining) Agreement 1993	153 - 159 Bannister Road, Canning Vale W.A. 6155	1 July, 1993 - 30 June, 1995.....	AG43/94	4/7/94	74	1748
Westcan Enterprise Bargaining Agreement 1997/98	Westcan (A division of Amcor Ltd), 153-159 Bannister Road, Canning Vale	1 Mar., 1997 - 1 Mar., 1999.....	AG121/97	17/6/97	77	1712
Westcare Disabled Employees Wages Agreement	Westcare Incorporated, Carrington Street, Nedlands	12 Jan., 1995 - 11 Jan., 1998.....	AG128/94	24/1/95	75	640
Westcare Disabled Employees Wages Agreement No. 2	Persons with Disabilities at Westcare Incorporated Premises	Commencement - 6 Oct., 1997.....	AG14/97	8/4/97	77	1247
Westcoast Aluminium/BLPPU and the CMETU Collective Agreement 2001	Whole of State	11 Sept., 2001 - 1 Nov., 2002.....	AG186/01	25/9/01	Unpublished	
West Coast Concrete & Formwork/BLPPU and the CMETU Collective Agreement 2000	State of WA	22 Sept., 2000 - 1 Nov., 2002.....	AG238/00	27/10/00	80	5143
West Coast Coreing & Sawing/BLPPU Collective Agreement 1999 (Cancels previous West Coast Coreing ...Agreements No. AG19/97 & No. AG188/97. For prior details, see Vol. 79, Part 2)	Whole of State	1 Nov., 1999 - 1 Nov., 2002.....	AG251/99	8/3/00	80	1346
West Coast Coring & Sawing/CFMEUW Industrial Agreement 2005-2008 (Replaces previous West Coast Coring ... Agreement 2002-2005 No. AG288/02 For prior details, see Vol. 85, Part 1)	Western Australia	1 Nov., 2005 – 31 Oct., 2008.....	AG211/05	28/11/05	Unpublished	
Westcare Supported Employees Wages Agreement 2004. (Replaces previous Westcare Disabled ... Agreement 2001 No. AG190/01. For prior details, see Vol. 84, Part 1)	Whole of State	6 Dec., 2004 – 5 Dec., 2007.....	AG176/04	7/12/04	Unpublished	
Westerfield Engineering Nelson Point (Development Project) Enterprise Bargaining Agreement	Nelson Point Development Project, Port Hedland	22 Feb., 1993 - Completion.....	AG35/93	18/8/93	73	2429
Western Australia Armaguard Clerical Enterprise Agreement 111. Stuart Street Perth (Replaces previous Western Australian Armaguard ... Agreement No. AG230/00. For prior details, see Vol. 82, Part 1)	Employees who are required to perform work covered by this Agreement and the Award detailed in Clause 5	2 Dec., 2002 – 1 Dec., 2003.....	AG191/02	4/12/02	Unpublished	
Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 6 of 1996. (Replaces previous W.A. Catholic Schools ... Agreement No. 6 of 1994. For prior details, see Vol. 77, Part 1)	Whole of State	10 Feb., 1997 - 31 Dec., 1997.....	AG27/97	11/2/97	77	696
Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 1 of 2006 No. AG1/07 (This agreement has been substituted and replaced by The Trustees of the Marist Brothers Southern Province Teachers Enterprise Bargaining Agreement, 2009 No. AG69/09. For prior details, see Vol. 89, Part 2)						

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Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 3 of 2006 No. AG3/07 (This agreement has been substituted and replaced by The Institute of the Blessed Virgin Mary Teachers Enterprise Bargaining Agreement 2009 No. AG65/2009. For prior details, see Vol. 89, Part 2)					
Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 4 of 2006 No. AG4/07 (This agreement has been substituted and replaced by The Congregation of the Missionary Oblates of the Most Holy and Immaculate Virgin Mary Teachers Enterprise Bargaining Agreement 2009 No. AG68/09. For prior details, see Vol. 89, Part 2)					
Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 5 of 2006, No. AG5/07. (This agreement has been substituted and replaced by The Sisters of Mercy Perth (Amalgamated) Teachers Enterprise Bargaining Agreement 2009 No. AG56/09. For prior details, see Vol. 89, Part 2)					
Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 7 of 2006, No. AG7/07 (This agreement has been substituted and replaced by The Sisters of Mercy West Perth Congregation Teachers Enterprise Bargaining Agreement 2009 No. AG44/09. For prior details, see Vol. 89, Part 2)					
Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 8 of 2006 No. AG8/07 (This agreement has been substituted and replaced by The Sisters of the Holy Family of Nazareth Teachers Enterprise Bargaining Agreement 2009 No. AG50/09. For prior details, see Vol. 89, Part 2)					
Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 9 of 2006 No. AG9/07 (This agreement has been substituted and replaced by The Norbertine Canons Teachers Enterprise Bargaining Agreement 2009 No. AG66/09. For prior details, see Vol. 89, Part 2)					
Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 10 of 2006 No. AG10/07. (This agreement has been substituted and replaced by The John XXIII College Teachers Enterprise Bargaining Agreement 2009 No. AG57/09. For prior details, see Vol. 89, Part 2)					
Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 11 of 2006 No. AG11/07 (This agreement has been substituted and replaced by The Congregation of The Presentation Sisters WA Teachers Enterprise Bargaining Agreement 2009 No. AG64/09. For prior details, see Vol. 89, Part 2)					
Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 12 of 2006 (Cancels and Replaces previous W.A. Catholic Schools ... Agreement No. 16/2004 No. AG43/05. For prior details, see Vol. 86, Part 2)	Whole of State	28 Mar., 2007 - 31 Dec., 2008	AG12/07	28/3/07	Unpublished
Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 13 of 2006, No. AG13/07 (This agreement has been substituted and replaced by The Roman Catholic Bishop of Geraldton Teachers Enterprise Bargaining Agreement 2009 No. AG54/09. For prior details, see Vol. 89, Part 2)					
Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 14 of 2006 No. AG14/07 (This agreement has been substituted and replaced by The Roman Catholic Bishop of Broome Teachers Enterprise Bargaining Agreement 2009 No. AG67/09. For prior details, see Vol. 89, Part 2)					
Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 15 of 2006 No. AG15/07. (This agreement has been substituted and replaced by The Edmund Rice Education Australia Teachers Enterprise Bargaining Agreement 2009 No. AG48/2009. For prior details, see Vol. 89, Part 2)					

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Western Australian Department of Training Miscellaneous Workers Agreement 1997	Whole of State	17 Oct., 1997 - 16 Oct., 1999.....	AG257/97	17/10/97	77	3445
Western Australian Department of Training TAFE International Publications (Western Australia) Enterprise Agreement 1996	TAFE International Australia's Publication Division, TAFE Publications	14 Nov., 1996 - 4 May, 1998.....	AG276/96	4/11/96	76	4642
Western Australian Fire Service Enterprise Bargaining Agreement 2008 (Replaces previous Western Australian Fire ... Agreement 2006 No. AG68/06. For prior details, see Vol. 88, Part 2)	Fire and Emergency Services Authority of Western Australia	27 Mar., 2009 - 24 May, 2011.....	AG5/09	27/3/09		Unpublished
Western Australian Government Railways Commission Driver Passenger Services State Agreement 2000. (Replaces & Cancels previous Westrail Driver Passenger Services State Agreement 1998 No. AG98/1998.)	Whole of State	30 Nov., 2000 - 29 Nov., 2002.....	AG293/00	10/1/01	81	244
Western Australian Government Railways Commission Freight Railway System Agreement 1995	Western Australian Government Railways Commission Freight Railway System Agreement 1995	18 Feb., 1996 - 17 Mar., 1996.....	AG21/96	22/3/96	76	1107
Western Australian Grain Handling Salaried Officers' Enterprise Agreement 1993	Whole of State	7 Aug., 1993 - 7 Feb., 1996.....	AG41/93	5/8/93	73	2044
Western Australian Grain Handling Salaried Officers' Association (Union of Workers) Enterprise Agreement 1996	Co-operative Bulk Handling Limited	1 June, 1996 - 31 May, 1998.....	AG132/96	5/8/96	76	3717
Western Australian Greyhound Racing Association (Outside Workers) General Agreement 2007. (This agreement substitutes the previous Western Australian Greyhound ... Agreement 2004 No. AG1/05. For prior details, see Vol. 87, Part 1)	Employees who are members of or eligible to be members of the Union	4 Oct., 2007 - 31 Oct., 2009.....	AG57/07	4/10/07		Unpublished
Western Australian Meat Marketing Co-operative Limited Kanning Division, Maintenance Employees Enterprise Agreement (Replaces previous Western Australian Meat ... Agreement No. AG123/01. For prior details, see Vol. 84, Part 2)	Katanning Operations	4 Oct., 2004 - 4 Oct., 2006.....	AG262/04	21/4/05		Unpublished
Western Australian Mint Production Agreement 2002	Western Australian Mint	1 Nov., 2002 - 31 Dec., 2003.....	AG207/02	25/11/02		Unpublished
Western Australian Mint Security Agreement 1996	Security Employees at Western Australian Mint	29 July, 1996 - 29 July, 1998.....	AG184/96	5/8/96	76	3722
Western Australian Mint Security Agreement 2002	Whole of State	15 Nov., 2002 - 31 Dec., 2003.....	AG192/02	21/11/02		Unpublished
Western Australian Police Service Industrial Agreement for Police Act Employees	Members of the Western Australia Police force, Aboriginal Police Aides and Police Cadets appointed under the provisions of the Police Act	1 May, 1996 - 1 May, 1998.....	AG131/95	2/5/96	76	1368
Western Australia Police Traffic Escort Wardens Industrial Agreement 2007	Employees who are members of or eligible to be members of the Union	23 May, 2008 - 31 Dec., 2009.....	AG6/08	23/5/08		Unpublished
Western Australian Specialty Alloys Pty Ltd Foundry Enterprise Bargaining Agreement 1999 (Replaces No. AG42/93)	NFP	PRIVATE & CONFIDENTIAL.....	AG87/1994	15/9/94	74	358
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Western Australian TAFE Lecturers' General Agreement 2008. (Replaces TAFE Lecturer's Supplementary Conditions Agreement 2005 No. AG21/05)	Western Australia	Refer to Agreement.....	AG10/09	28/4/09		Unpublished
Western Construction (Alcoa Minor Projects) Enterprise Bargaining Agreement	Western Construction Western Australian Operations of Alcoa of Australia	1 Mar., 1996 - 1 Mar., 1998.....	AG138/96	21/6/96	76	2381

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Western Construction Co Workshop Enterprise Bargaining Agreement 2002	WCCO Kwinana Workshop	1 Apr., 2002 – 30 June, 2002	AG71/02	30/7/02	Unpublished	
Western Construction Enterprise Bargaining Agreement	Western Construction Co.	6 Sept., 1994 - 31 Mar., 1996.....	AG57/95	18/4/95	75	1626
Western Construction Enterprise Bargaining Agreement 1998	Whole of State	23 Mar., 1998 - 23 Sept., 1999.....	AG256/98	18/1/99	79	545
Western Quarries Pty Ltd (Enterprise Bargaining) Consent Agreement, 1992	Western Quarries Pty Ltd, Quarry Operations Toodyay	21 June, 1993 - 20 Dec., 1994.....	AG26/93	5/7/93	73	1796
Western Mechanical & Electrical Pty Ltd Enterprise Bargaining Agreement 2005	Whole of State	1 Jan, 2005 - 31 Oct., 2005	AG76/05	27/6/05	Unpublished	
Western Quarries (Enterprise Bargaining Consent Agreement 1995	Western Quarries	24 Apr., 1995 - 23 Oct., 1996	AG55/95	16/5/95	75	1906
Western Reo/CFMEUW Industrial Agreement 2002-2005. (Cancels Western Reo/BLPPU ... Agreement 1999 No. AG193/99. For prior details, see Vol. 83, Part 1)	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	11 Dec., 2002 – 31 Oct., 2005.....	AG287/02	7/5/03	Unpublished	
Westland Bricklaying Contractors Pty Ltd/ CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	16 Jan., 2003 – 31 Oct., 2005.....	AG48/03	7/5/03	Unpublished	
Westmix Pty Ltd Enterprise Bargaining Agreement 1994	Westmix Pty Ltd	1 Jan., 1995 - 31 Dec., 1996.....	AG5/95	3/2/95	75	396
Westpoint Constructions/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	22 Sept., 2003 31 Oct., 2005.....	AG252/03	6/9/04	Unpublished	
Westpoint Constructions Industrial Agreement	Whole of State	24 May, 2002 - 31 Oct., 2002	AG80/02	27/06/02	Unpublished	
Weston Milling (WA) Transport Workers Productivity Bargaining Agreement	Whole of State	3 May, 1994 - 2 May, 1996.....	AG1/94	24/5/94	74	1554
Weston Milling (WA) Transport Workers Productivity Improvement Agreement 1996	Weston Milling (WA)	29 Mar., 1996 - 29 Mar., 1998	AG72/96	17/4/96	76	1406
WesTrac Equipment (Service Department) Enterprise Bargaining Agreement 1994	WesTrac Equipment Pty Ltd Service Department Perth Metropolitan & Regional Branches	1 Feb., 1994 - 31 July, 1995.....	AG4/94	8/2/94	74	262
Westrac Equipment (Service Operations) Enterprise Agreement 1999 (Amending Order) (Cancels previous Order AG33/99 dated 9/4/99 published at Vol. 79WAIG1154 & the previous Westrac ... Agreement No. AG7/97)	Perth Metropolitan Area and Regional Locations	1 Jan., 1999 - 31 Dec., 2000.....	AG33/99	3/5/99	79	1410
WesTrac Equipment (Service Operations) Enterprise Agreement 2001	Perth Metropolitan Area and Regional Locations	28 Mar., 2001 - 26 Mar., 2003	AG50/01	12/4/01	Unpublished	
WesTrac (Service Operations) Enterprise Agreement 2005. (Replaces previous WesTrac Equipment ... Agreement 2003 No. AG237/03. For prior details, see Vol. 85, Part 2)	Perth Metropolitan Area or Regional Locations	1 Jan., 2005 – 30 Dec., 2008	AG121/05 ...	16/08/05 11/10/05	Unpublished 85	3603
Westrail Customer and Security Services Officer Agreement 1995	Western Australian Government Railways Commission	29 Oct., 1995 - 28 Oct., 1996.....	AG275/95	8/12/95	76	147
Westrail Enterprise Bargaining Agreement 1992	Whole of State	NFP	AG25/92	17/2/93	73	737
Westrail Enterprise Bargaining Agreement 1992	Whole of State	18 Feb., 1993 - 17 Mar., 1994.....	RCBAG1/92	18/2/93	74	3164
Westrail Freight Services Depot and Yard Agreement 1998	Whole of State	6 Sept., 1998 - 5 Sept., 2000	AG159/98	9/9/98	78	3742
Westrail Freight Terminal Services Agreement 2000	WA Government Railways Commission	11 Oct., 2000 - 28 Feb., 2002.....	AG235/00	11/10/00	80	4811
Westrail Locomotive Engineman Grades Cyclical Rostering Agreement 1994	Western Australian Government Railways Commission	31 July, 1994 - 30 Aug., 1994.....	AG71/94	28/7/94	74	1916
Westralian Tiling Contractors Industrial Agreement	Whole of State	1 Aug., 1997 - 31 Oct., 1999.....	AG236/97	3/12/97	77	3451
Westswan Formwork (WA) Pty Ltd t/a Westswan Formwork/CFMEUW Industrial Agreement 2002-2005. Cancels the WESTSWAN FORM-WORK/CFMEUW Collective Agreement 2002 AG95/02 For prior details, see Vol. 83, Part 1)	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	29 Nov., 2002– 31 Oct., 2005	AG234/02	7/5/03	Unpublished	

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Westward Scaffolding Pty Ltd/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	7 Aug., 2003 - 31 Oct., 2005	AG207/03	6/9/04	Unpublished	
West World Nominees/BLPPU and the CMETU Collective Agreement 1999	Whole of State	1 Nov., 1999 - 1 Nov., 2002	AG9/00	29/3/00	80	1351
Whittakers Painting/CFMEUW Collective Agreement 2002	Whole of State	22 Feb., 2002 - 1 Nov., 2002	AG27/02	5/4/02	Unpublished	
Whittakers Timber Products Enterprise Bargaining Agreement 2005	South-West Land Division of W.A. excluding area comprised within a radius of 45km from G.P.O., Perth	10 Aug., 2005 - 10 Aug., 2008	AG220/05	14/12/05	Unpublished	
Whittakers Timber Products Enterprise Bargaining Agreement 2003 (Replaces previous Whittakers Timber ... Agreement 2001 No. AG210/01. For prior details, see Vol. 83, Part 2)	Whittakers Timber Products	10 Aug., 2003 - 8 Aug., 2005	AG233/03	4/3/04	Unpublished	
Wildflora Landscapes/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	10 Oct., 2003 - 31 Oct., 2005	AG262/03	6/9/04	Unpublished	
Wildflower Production Traineeship Agreement	Whole of State	14 Sept., 1989 to 13 Sept., 1990	AG13(1)/89	14/9/89	70	1373
Wildflower Production Traineeship Agreement	Whole of State	14 Sept., 1989 to 13 Sept., 1990	AG13(2)/89	14/9/89	70	1374
Williams Electrical Service Pty Ltd Enterprise Bargaining Agreement 1995	Williams Electrical Service Pty Ltd	1 July 1994 - 31 Dec., 1995	AG22/95	21/2/95	75	697
Williams Tiling Co/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	25 Oct., 2004 - 30 June, 2007	AG248/04	10/12/04	Unpublished	
Willisford Interiors Pty Ltd/CFMEUW Industrial Agreement 2002-2005. (Cancels Willisford ... Agreement No. AG182/00. For prior details, see Vol. 83, Part 1)	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	10 Feb., 2003 - 31 Oct., 2005	AG76/02	7/5/03	Unpublished	
Wilroof Australia/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	25 Oct., 2004 - 30 June, 2007	AG239/04	10/12/04	Unpublished	
Windos Nominees/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	25 Oct., 2004 - 30 June, 2007	AG214/04	9/12/04	Unpublished	
Woodroffe Industries Limited (Osborne Park) Enterprise Bargaining Agreement 1996	Woodroffe Industries Limited (ACN 008 080 466)	1 Sept., 1996 - 28 Feb., 1998	AG68/97	8/4/97	77	1248
Woods Roof Tiling Services/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	25 Oct., 2004 - 30 June, 2007	AG250/04	10/12/04	Unpublished	
Wooldumpers Australia (Fremantle) Pty Limited Enterprise Agreement 1995	Wooldumpers Australia Pty Ltd, North Fremantle	3 Jan., 1996 - 2 Jan., 1997	AG297/95	3/1/96	76	153
Wooldumpers Australia (Fremantle) Pty Ltd Enterprise Agreement 1997	Wooldumpers Australia Pty Ltd, North Fremantle	18 Feb., 1997 - 17 Feb., 1999	AG57/97	12/3/97	77	970
Woolworths Distribution Centre Agreement 1993	Whole of State	1 Nov., 1994 - 1 Nov., 1995	AG39/94	29/6/94	74	1748
Woolworths (WA) Pty Ltd Clerical Enterprise Agreement 1996	Whole of State	2 Oct., 1996 - 1 Oct., 1998	AG155/96	2/10/96	76	4264
Workplus/Career Plan Employment Services Industrial Agreement 2000. (Replaces previous Workplus/Career ... Agreement No. AG229/98. For prior details, see Vol. 81, Part 2)	Workplus and Career Plan	23 Feb., 2001 - 21 Feb., 2003	AG19/01	13/3/01	Unpublished	
Workpower Incorporated Salaried Officers' Industrial Agreement 2002	Whole of State	13 Sept., 2002 - 11 Sept., 2004	AG118/02	27/9/02	Unpublished	
Workpower Inc. Supported Employees Wages Agreement 2004	Whole of State	1 Jan., 2005 - 31 Dec., 2007	AG194/04	7/12/04	Unpublished	
Wormald Service Enterprise Agreement, Perth 2003	Wormald, 1 Eyre Street, Rivervale, WA	7 Dec., 2004 - 30 June, 2006	AG31/04	7/12/04	Unpublished	
Wormald Systems Contracting Commercial Building Sector Enterprise Agreement 2003 (Replaces O'Donnell Griffin/Wormald ... Agreement 1996 No. AG163/96.)	Whole of State	1 July, 2003 - 30 June, 2006	AG30/04	7/12/04	Unpublished	
Worsley Expansion Project Partnership Agreement	Construction Industry at Worsley Alumina Refinery Industry Bauxite Mine of Boddington and Portside Facilities of Bunbury	1 Oct., 1997 - 1 Oct., 2000	AG16/98	17/3/98	78	1368

*Note:- As of 1st August, 2002, the I.R. Act, 1979 (as amended) does not require publication of the contents of agreements. All current registered Agreements are available for viewing in Registry.

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INDUSTRIAL RELATIONS ACT—AGREEMENTS IN FORCE—*continued*

Title	Area Governed	Date of Operation	No. of Agreement	Date Delivered	Reference Vol..	Page
Worsley Expansion Project Partnership Agreement	Worsley	1 Oct., 1997 - 1 Oct., 2000.....	AG264/98	18/2/99	79	810
Wreckair Hire (WA) Enterprise Agreement	Wreckair Hire	28 Mar., 1995 - 27 Mar., 1996.....	AG30/95	24/3/95	75	1626
Wreckair Hire (WA) Enterprise Agreement - Branches Employees	Wreckair Hire	6 Nov., 1995 - 5 Nov., 1997.....	AG260/95	6/11/95	75	3026
Wroxton/BLPPU and the CMETU Collective Agreement 1999. (Cancels previous Wroxton Industrial Agreements No. AG332/1995 & No. AG215/97. For prior details, see Vol. 79, Part 2)	Whole of State	1 Nov., 1999 - 1 Nov., 2002.....	AG196/99	25/2/99	80	591
Wroxton/CFMEUW Industrial Agreement 2005-2008. (Replaces previous Wroxton Pty Ltd/CFMEUW Industrial Agreement 2002-2005. For prior details, see Vol. 85, Part 1)	Whole of State	1 Nov., 2005 - 31 Oct., 2008.....	AG159/05	11/11/05	Unpublished	
Wunda Projects/CFMEUW Collective Agreement 2002	Whole of State	27 May, 2002 - 1 Nov., 2002.....	AG79/02	27/06/02	Unpublished	
Wundowie Foundry Pty Ltd Enterprise Agreement 2001	1 Hawke Avenue, Wundowie	29 July, 2001 - 26 July, 2004.....	AG78/02	9/7/02	Unpublished	
Wundowie Foundry Pty Ltd Enterprise Agreement 1998. (Replaces AG256/96)	Wundowie Foundry 1 Hawke Avenue, Wundowie	29 July, 1998 - 28 July, 2001.....	AG178/98	19/10/98	78	4302
Wundowie One Stop and SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Whole of State	6 Nov., 2002 - 30 June, 2005.....	AG163/02	18/11/02	Unpublished	
Wyndham Supermarket and SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Whole of State	6 Nov., 2002 - 30 June, 2005.....	AG176/02	18/11/02	Unpublished	
Yieldwise/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	25 Oct., 2004 - 30 June, 2007.....	AG221/04	9/12/04	Unpublished	
Yiyili Community School (Enterprise Bargaining) Agreement 1997	Yiyili Aboriginal Corporation	17 Oct., 1997 - 31 Dec., 1998.....	AG256/97	17/10/97	77	2970
York Mini Mart and SDA Agreement 2002 (For previous amendments, see Vol. 89, Part 2)	Whole of State	6 Nov., 2002 - 30 June, 2005.....	AG188/02	18/11/02	Unpublished	
Zanatec Tiling/CFMEUW Industrial Agreement 2002-2005	Western Australia, Christmas and Cocos (Keeling) Islands Groups only	30 Jan., 2004 - 31 Oct., 2005.....	AG14/04	6/9/04	Unpublished	
Zenith Workforce/CFMEUW Industrial Agreement 2005-2008	Whole of State	1 Nov., 2005 - 31 Oct., 2008.....	AG239/05	16/2/06	Unpublished	
Zinco / CFMEUW Collective Agreement 2005 (Replaces Zinco Coating Applicators/BLPPU And the CMETU Collective Agreement No. AG151/01. For prior details, see Vol. 85, Part 2)	Whole of State	21 Feb., 2006 - 30 Nov., 2008.....	AG30/06	20/3/06	Unpublished	
Zoological Gardens Board - Gardeners Weekend Work Industrial Agreement 1995	Zoological Gardens Board	13 Oct., 1995 - 12 Oct., 1996.....	AG299/95	21/02/96	76	701
Zoological Gardens Board - Keepers Career Structure Industrial Agreement 1996	Zoological Gardens Board	1 July, 1996 - 1 July, 1998.....	AG157/96	25/6/96	76	2751
Zoological Parks Authority (Operations) Agreement 2007 (This agreement substitutes and replaces Zoological Parks Authority ... Agreement 2004 No. AG161/04. For prior details, see Vol. 87, Part 1)	Whole of State	12 Sept., 2007 - 31 Dec., 2009.....	AG54/07	10/9/07	Unpublished	

*Note:- As of 1st August, 2002, the I.R. Act, 1979 (as amended) does not require publication of the contents of agreements. All current registered Agreements are available for viewing in Registry.

APPENDIX VII

PUBLIC SERVICE ARBITRATOR—AWARDS IN FORCE

The following table contains a list of Awards currently in force, showing the area governed by each Award, the date during which it operates, registered number of Award, date of delivery and a reference to "Industrial Gazette" where reported therein.

- Editor's Note: (1) For Awards affected by orders under Section 44 of the I.R. Act 1979, see Appendix IX.
 (2) For Agreements affected by orders under Section 44 of the I.R. Act 1979, see Appendix X.
 (3) For amendments, references to cancelled or replaced awards prior to Vol. 90, see Appendix VII, Vol. 89, Part 2.
 (4) All current registered Awards are published on the W.A.I.R.C. Internet site (www.wairc.wa.gov.au).

Title	Area Governed	Date of Operation	No. of Award	Date Delivered	Reference Vol.	Page
Aboriginal Police Aides Award. (For previous amendments, see Vol. 89, Part 2)	Whole of State	24 Apr., 1980 to 23 Apr., 1983.....	R31/79	24/4/80	60	967
Child Care Workers (Education Department) Award. (For previous amendments, see Vol. 89, Part 2)	Whole of State	5 Nov, 1984 to 5 Nov, 1985	A20/84	5/11/84	65	138
Children's Services (Government) Award 1989. (For previous amendments, see Vol. 89, Part 2)	State of Western Australia	23 Feb., 1989 to 22 Feb., 1990	A29 & PSA	23/2/89	69	1079
Country High School Hostels Authority Residential College Supervisory Staff Award 2005	Whole of State (For previous amendments, see Vol. 89, Part 2)	23 Aug., 2005 to 22 Aug., 2006	PSA A1/05	24/10/05	85	3668
		Amended - Order No. P 7/2010 (Schedule D – Travelling, Transfer and Relieving Allowance).....	...	28/4/10	90	385
Dampier Port Authority Port Officers Award (For previous amendments, see Vol. 89, Part 2)	All port officers employed by the Dampier Port Authority at the Port of Dampier	1 Mar., 1989 to 28 Feb., 1990.....	PSA A2/88	24/2/89	69	788
Department for Community Development (Family Resource Workers, Welfare Assistants and Parent Helpers) Award 1990 (Replaces Award No A 19/1986 See Vol 71, Part 1 for details)	State of Western Australia employed by the Director General in the capacity of Family Resource Worker, Welfare Assistant or Parent Helper (For previous amendments, see Vol. 89, Part 2)	15 August, 1991	PSA A1/89	17/9/91	71	2512
		Amended - Order No. P 6/2010 (Schedule D – Travelling Allowance) .....	...	28/4/10	90	388
Education Department Ministerial Officers Salaries Allowances and Conditions Award (Partly replaced by Government Officers Salaries, Allowances and Conditions Award PSA A3/1989, 70 WAIG 709 – Part A Officers other than School Assistants)	Administrative, Clerical and General Government Officers employed by the Minister for Education (For previous amendments, see Vol. 89, Part 2)	18 Dec., 1981	PSA A5/83	22/7/83	63	1800
		Amended - Order No. P 8/2010 (Schedule H – Travelling, Transfer and Relieving Allowance, Schedule B – Camping Allowance) .....	...	28/4/10	90	391
Electorate Officers Award 1986 (For previous amendments, see Vol. 89, Part 2)	Whole of State	24 July, 1986 to 23 July, 1987.....	A18/86	1/5/87	67	1153
		Amended - Order No. P 9/2010 (Schedule F – Travelling and Transfer Allowance).....	...	28/4/10	90	394
Government Officers Salaries, Allowances and Conditions Award 1989	State of Western Australia (For previous amendments, see Vol. 89, Part 2)	24 Nov., 1989 to 23 Nov., 1990	PSA A3/89	21/11/89	70	709
		Amended - Order No. P 1/2010 (Schedule J – Travelling, Transfer and Relieving Allowance, Schedule F – Clause 41. – Camping Allowance).....	...	28/4/10	90	397
Government Officers (Social Trainers) Award 1988	State of Western Australia (For previous amendments, see Vol. 89, Part 2)	9 Dec., 1988 to 8 Dec., 1989	PSA A20/85	29/11/88	69	2979,
		Amended - .....	...	29/11/88	70	4316
		Order No. P 5/2010 (Schedule J – Travelling, Transfer and Relieving Allowance).....	...	28/4/10	90	400
Government Officer (State Government Insurance Commission Award, 1987	Government Officers employed by S.G.I.C (For previous amendments, see Vol. 89, Part 2)	24 Dec., 1986 to 24 Dec., 1987	PSA A21/86	24/12/86	67	113

Note:- For details of the 2009 indexed wage rates, see Vol. 89 Part 2 Sub-parts 4 - 6 at pages 1207 - 2062.

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PUBLIC SERVICE ARBITRATOR—AWARDS IN FORCE—*continued*

Title	Area Governed	Date of Operation	No. of Award	Date Delivered	Reference Vol.	Page
Graylands Selby-Lemnos and Special Care Health Services Award 1999	State of W.A. (For previous amendments, see Vol. 89, Part 2)	1 Sept., 1999 – 31 Aug., 2002.....	PSA A1/99	29/10/99	79	3271
Juvenile Custodial Officers' Award (Previously known as Institution Officer's Allowances and Conditions Award 1977 No. 3/1977)	Whole of State (For previous amendments, see Vol. 89, Part 2)	Award to remain in force until such time as it is cancelled or replaced..... Amended - Order No. P 3/2010 (Schedule D – Travelling, Transfer and Relieving Allowance)	3/1977 ...	21/08/09 28/4/10	89 90	2112 402
Metropolitan Teaching Hospitals - Salaries and Conditions of Service Award (Medical Officers). (For previous amendments, see Vol. 89, Part 2)	All medical officers employed as Interns, Resident Medical Officers, Registrars and Senior Registrars by the Boards of Management of the teaching hospitals specified	6 Jan., 1986 to 6 Jan., 1989	PSA A18/86	1/7/86	67	118
Miscellaneous Government Conditions and Allowances Award No. 4 of 1992	Whole of State (For previous amendments, see Vol. 89, Part 2)	27 May, 1993 - 26 May, 1997	A4/1992	1/6/93	73	1489
Police Award 1965, The (For previous amendments, see Vol. 89, Part 2)	Whole of State	12 Jan., 1966 to 11 Jan., 1969	2/1966	12/1/66	45	1095
Port Hedland Port Authority Port Control Officers Award 1982 (For previous amendments, see Vol. 89, Part 2)	All Port Control Officers employed by Port Hedland Port Authority	1 Feb., 1982 to 31 Jan., 1983	A1/1982	26/7/82	62	1860
Public Service Allowances (Fisheries and Wildlife Officers) Award 1990 (Overridden by Department of Conservation and Land Management, Fire Duties Allowances and Conditions Agreement No. 1/1992 in respect to Wildlife Officers who undertake fire duties as provide for by the Agreement for duration that such duties are under taken.	Whole of State Specified Public Servants employed - at CALM or Fisheries Department (For previous amendments, see Vol. 89, Part 2)	1 Oct., 1990 - 30 Sept., 1993	PSA A5/86	6/9/90	70	3612
Public Service Award 1992. (For previous amendments, see Vol. 89, Part 2)	Whole of State	24 May, 1990	PSA A4/89	24/5/90	70	1727
Salaried Staff Curtin University of Technology Award 1985No. PSA A25/85 (Award cancelled by Order dated 18/05/2010, [Citation No. 2010 WAIRC 00287] published at 90WAIG.....) (For previous details, see Vol. 89, Part 2)		Amended - Order No. P 2/2010 (Schedule I – Travelling, Transfer and Relieving Allowance, Schedule C – Camping Allowance) .....	...	28/4/10	90	406
WA Health – HSU Award 2006 (Cancels and replaces Hospital Salaried Officers Award 1968 No. 39/1968)	Whole of State (For previous amendments, see Vol. 89, Part 2)	24 May, 2006 – until cancelled or replaced	PSA A2/05	24/5/06	86	1282
Water Corporation (Staff) Award 2003 No. PSA A1/03 (Award cancelled by Order dated 18/05/2010, [Citation No. 2010 WAIRC 00287] published at 90WAIG.....) (For previous details, see Vol. 89, Part 2)						

Note:- For details of the 2009 indexed wage rates, see Vol. 89 Part 2 Sub-parts 4 - 6 at pages 1207 - 2062.

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PUBLIC SERVICE ARBITRATOR—AWARDS IN FORCE—*continued*

Title	Area Governed	Date of Operation	No. of Award	Date Delivered	Reference Vol.	Page
Western Australian State Public Hospitals Medical Practitioners' Award. (For previous amendments, see Vol. 89, Part 2)	All medical practitioners employed in any public Hospital, Hospitals that is conducted or managed by a Board constituted under the Hospitals Act 1927, excepting those as specified	1 Jan., 1987 to 1 Jan., 1992.....	PSA A19/86	24/12/86	67	126



Note:- For details of the 2009 indexed wage rates, see Vol. 89 Part 2 Sub-parts 4 - 6 at pages 1207 - 2062.

APPENDIX VIII

PUBLIC SERVICE ARBITRATOR—AGREEMENTS IN FORCE

The following table contains a list of Agreements in force, showing the area governed by each agreement, the date during which it operates, registered number of agreement, date of delivery and a reference at "Industrial Gazette" where reported therein.

- Editor's Note: (1) Schedule 1 of the Industrial Relations Act, 1979 (as amended) does not require the publishing of the agreement contents or the schedule of the agreement.
 (2) All current registered Agreements are published on the W.A.I.R.C. Internet site (www.wairc.wa.gov.au).
 (3) For all amendments, references to cancelled or replaced agreements prior to Vol. 90, see Appendix VIII, Vol. 89, Part 2.
 (4) NFP = Not for publication in the W.A.I.G.

Title	Area Governed	Date of Operation	No. of Agreement	Date Delivered	Reference Vol.	Page
<i>ADA/CSA Enterprise Agreement 1998.</i> (Replaces PSAAG3/96)	Whole of State	23 Feb., 1999 – 22 Feb., 2001	PSAAG7/99	23/2/99	79	694
Administrative and Clerical Salaries Agreement 1983 (Commissioner of Transport)	Government Officers employed by Commissioner in Administrative or Clerical capacity	18 Dec., 1981 - 17 Dec., 1984	19/1983	4/10/83	63	2334
Administrative and Clerical Salaries Agreement 1971 (Western Australian Institute of Technology)	Government Officers employed in an Administrative or Clerical capacity by the Council of WAIT	5 Mar., 1971 - 4 Mar., 1974	85/1971	3/5/71	51	623
Agriculture Western Australia – CSA Salary Packaging Agreement 1999	Whole of State	28 May, 1999 – 27 Nov., 2000	PSAAG16/99	28/05/99	79	1549
Albany Harbour Master Marine Pilots Salary Agreement 1995 - The	Albany Port Authority	23 Feb., 1996 - 22 Feb., 1997	AG24/96	28/2/96	76	646
Art Gallery of Western Australia Enterprise Bargaining Agreement 1996	Art Gallery of Western Australia	6 Aug., 1996 - 6 Dec., 1997	PSAAG149/96	30/8/96	76	3402
Artificial Breeding Board Administrative, Clerical and General Officers Salaries, Allowances and Conditions Agreement 1984. (Replaced by Public Authorities Salaries Award 1986 insofar as it relates to Clause 4 – Salaries and Salary Ranges; Clause 5 – Annual Increments; Clause 9 - Contract of Service)	Government Officers employed by the Artificial Breeding Board in Administrative Clerical or general capacity	18 Dec., 1981 - 17 Dec., 1984	13/1984	16/4/84	64	801
Bunbury Harbour Master Marine Pilots Salary Agreement 1995 – The	Bunbury Port Authority	23 Feb., 1996 - 22 Feb., 1997	AG22/96	28/2/96	76	654
Builders' Registration Board of Western Australia Enterprise Agreement 1998. (Replaces PSAAG122/96)	Whole of State	4 Aug., 1998 – 3 Aug., 2000	PSAAG91/98	4/9/98	78	3652
Bush Fires Board of WA Enterprise Agreement 1996	Bush Fires Board of WA	23 Aug., 1996 - 30 Sept., 1997	PSAAG145/96	23/8/96	76	3411
Career Start Traineeship Agreement 1992	Civil Service Association Respondents to CSA Awards and Agreement	21 Jan., 1993 - 22 Jan., 1995	PSAAG1/93	29/3/93	73	1010
Central TAFE Public Service and Government Officers' Agency Specific Agreement 2003. (Replaces previous Central TAFE Public Service ... Agreement 2000 No. PSAAG79/00 For prior details, see Vol. 82, Part 2)	Whole of State	1 Jan., 2003 – 31 Dec., 2004	PSAAG53/02	14/1/03	Unpublished	
Central West College of TAFE Public Service and Government Officers' Agency Specific Agreement 2003. (Replaces previous Central West College ... Agreement 2000 No. PSAAG69/00. For prior details, see Vol. 82, Part 2)	Whole of State	1 Jan., 2003 - 31 Dec, 2004	PSAAG56/02	14/01/03	Unpublished	
Challenger TAFE Public Service and Government Officers' Agency Specific Agreement 2003. (Replaces previous Challenger TAFE Public Service ... Agreement 2000 No. PSAAG78/00. For prior details, see Vol. 82, Part 2)	Whole of State	1 Jan., 2003 - 31 Dec, 2004	PSAAG61/02	14/1/03	Unpublished	
Charcoal Iron and Steel Industry Board of Management - Administrative and Clerical Salaries, Allowances and Conditions Agreement 1972	Government Officers employed by the Board in an Administrative or Clerical capacity	2 July, 1971 - 4 March, 1974	23/72	29/12/72	52	1295
Charcoal Iron and Steel Industry Board of Management – General Officers Salaries, Allowance and Conditions Agreement 1972	Government Officers employed by the Board in a general capacity	2 July, 1972 - 1 April, 1974	24/72	29/12/72	52	1294
Clerks (Public Authorities) – Western Australian Egg Marketing Board General Agreement 2004. (Replaces the Clerks (Public Authorities General Agreement 2002)	Whole of State	23 Dec., 2004 – 25 Feb., 2006	PSAAG21/04	23/12/04	Unpublished	

*Note:- As of 1st August, 2002, the I.R. Act, 1979 (as amended) does not require publication of the contents of agreements. All current registered Agreements are available for viewing in Registry.

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PUBLIC SERVICE ARBITRATOR—AGREEMENTS IN FORCE—*continued*

Title	Area Governed	Date of Operation	No. of Agreement	Date Delivered	Reference Vol.	Page
Clinical Academics AMA Industrial Agreement 2003	Metropolitan Health Services, Board of the Western Australian Centre for Pathology and Medical Research and the Australian Medical Association (Western Australia) Incorporated	11 Dec., 2003 – 31 Mar., 2004	PSAAG44/03	15/12/03		Unpublished
Conservation and Land Management Office/Clerical Trainees Agreement	Any person undertaking office/clerical traineeships as part of the Australian Traineeship System at the Department of Conservation and Land Management	13 Jan., 1986 - 13 Jan., 1987	PSAAG3/86	24/12/86	67	233
Construction Industry Long Service Leave Payments Board Enterprise Agreement of 1999. (Replaces PSAAG140/96)	Construction Industry Long Service Leave Payments Board	30 Apr., 1999 – 29 Apr., 2001	PSAAG15/99	30/4/99	79	1585
Corruption and Crime Commission Agreement 2005	Whole of State	19 Jan., 2006 – 18 Jan., 2008	PSAAG28/05	19/01/05		Unpublished
Country High School Hostels Authority Administrative Officers Agency Specific Agreement 2007. (Cancels the Country High School Hostels Authority Residential College Administrative Officers Agreement 2003 No. PSAAG68/02. For prior details, see Vol. 87, Part 1)	Whole of State	19 June, 2007 - 31 Dec., 2008 Correction Order No. PSAAG8/2007 (Reference to Title of Agreement in the Order deleted and replaced)	PSAAG8/07 ...	19/6/07 26/6/07	87	1454 Unpublished
Country High School Hostels Authority Residential College Supervisory Staff General Agreement 2008. (This agreement substitutes previous Country High School ... Agreements 2006 No. PSAAG9/06. For prior details, see Vol. 88, Part 2)	Whole of State	29 Jan., 2009 – 1 Apr., 2011	PSAAG23/08	29/1/09		Unpublished
Curriculum Council Enterprise Agreement 1998	Whole of State	20 May, 1998 - 19 May, 1999	PSAAG61/98	20/5/98	78	2034
Curriculum Council Enterprise Agreement 1999	Whole of State	13 Mar., 2000 – 13 Mar., 2002	PSAAG4/00	13/3/00	80	1390
CY O'Connor College of TAFE Public Service and Government Officers' Agency Specific Agreement 2003	Whole of State	1 Jan., 2003 – 31 Dec., 2004	PSAAG58/02	22/1/03		Unpublished
CY O'Connor College of TAFE Public Service and Government Officers' Enterprise Agreement 2000. (Replaces Western Australian Department of Training Public Service and Government Officers' Enterprise Agreement 1998 No. PSAAG12/98.	Whole of State	9 Jan., 2001 – 8 Jan., 2003	PSAAG70/00	9/1/01	81	53
Dairy Industry Authority of Western Australia Enterprise Agreement 1997	Whole of State	16 Sept., 1997 - 15 Sept., 1999	PSAAG10/97	13/10/97	77	2891
Dental Technicians Industrial Agreement 2009	State of Western Australia	12 Nov., 2009 – 30 June, 2011	PSAAG11/09	12/11/09		Unpublished
Department for the Arts (Enterprise Bargaining) Agreement 1996	Department for the Arts	29 Mar., 1996 - 31 Dec., 1997	PSAAG6/96	15/5/96	76	1747
Department for Child Protection Agency Specific Agreement 2008. (Replaces the Department for Community Development Agency Specific Agreement 2006 No. PSAAG4/06)	Whole of State	19 Sept., 2008 – 31 Dec., 2008	PSAAG12/08	19/09/08		Unpublished
Department for Child Protection Country Residential Services General Agreement 2009. (Replaces the Department for Child Protection Interim General Agreement 2008 No. PSAAG8/08. For prior details, see Vol. 89, Part 2)	State of Western Australia	23 July, 2009 – 1 April, 2011	PSAAG5/09	29/7/09		Unpublished
Department for Planning and Infrastructure Agency Specific Agreement 2007. (Cancels and replaces previous Department for Planning ... Agreement 2005 No. PSAAG23/05. For prior details, see Vol. 87, Part 2)	Whole of State	23 Jan., 2008 – 31 Dec., 2008	PSAAG18/07	23/01/08		Unpublished
Department of Agriculture Agency Specific Agreement 2007. (This agreement substitutes previous Department of Agriculture ... Agreement 2005 No. PSAAG21/05. For prior details, see Vol. 86, Part 2)	Whole of State	16 May, 2007 – 31 Dec., 2008	PSAAG3/07	16/5/07		Unpublished
Department of Conservation and Land Management Fire Duties Allowances and Conditions Agreement No. 1 of 1992	Whole of State	1 Oct., 1992 - 30 Sept., 1996	PSAAG1/92	1/6/93	73	1591
Dept. of Corrections Superintendents Commuted Overtime and Availability Allowance Agreement 1981	Government Officers employed by the Dept. as Superintendents Deputy Superintendents or Chief Officers	28 Mar., 1981 - 27 Mar., 1984	6/1981	16/6/81	61	1170
Department of Corrective Services – Community Work Officers – Agency Specific Agreement 2008	Whole of State	6 Mar., 2008 – 31 Dec., 2008	PSAAG3/08	06/03/08		Unpublished

*Note:- As of 1st August, 2002, the I.R. Act, 1979 (as amended) does not require publication of the contents of agreements. All current registered Agreements are available for viewing in Registry.

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PUBLIC SERVICE ARBITRATOR—AGREEMENTS IN FORCE—*continued*

Title	Area Governed	Date of Operation	No. of Agreement	Date Delivered	Reference Vol.	Page
Department of Corrective Services Juvenile Custodial Officers' General Agreement 2008. (Cancels and Replaces the Department of Corrective Services Juvenile ... Agreement 2006 No. PSAAG16/06. For prior details, see Vol. 88, Part 1)	Employees employed by Commissioner of Corrective Services	25 Nov., 2008 – 1 April, 2011	PSAAG18/08	25/11/08	Unpublished	
Department of Corrective Services Killara Youth Support Service (Juvenile Justice Officers) Agency Specific Agreement 2006	Whole of State	20 Mar., 2006 – 31 Dec., 2006	PSAAG2/06	28/3/06	Unpublished	
Department of Education and Training Ministerial Officers General Agreement 2008. (Replaces previous Department of Education ... Agreement 2006 No. PSAAG12/06. For prior details, see Vol. 88, Part 2)	Whole of State	8 Dec., 2008 – 1 Apr., 2011	PSAAG20/08	8/12/08	Unpublished	
Department of Education Services of Western Australia Enterprise Agreement 1997	Whole of State	24 Dec., 1997 - 23 Dec., 1999	PSAAG21/97	24/12/97	78	340
Department of Environment and Conservation Agency Specific Agreement 2007. (This agreement substitutes and replaces the Department of Conservation and Land Management Agency Specific Agreement 2003 No. PSAAG17/03. For prior details, see Vol. 87, Part 1)	Whole of State	28 Sept., 2007 - 31 Dec., 2008	PSAAG15/07	28/09/07	Unpublished	
Department of Environment and Conservation Common Fire Service Provisions Agreement 2009. (Replaces and cancels the Department of Conservation and Land Management Fire ... Agreement 2003 PSAAG9/04)	Employees employed within the Department engaged in fire control duties and who are covered industrially by the Unions party to this agreement	Commencement of the 2008/20094 fire season – 30 Sept., 2011	PSAAG2/09	3/9/09	Unpublished	
Department of Environment, Water Catchment Protection Agency Specific Agreement 2003. (Replaces and cancels the Water and Rivers Commission Industrial Agreement 2001, No. PSAAG 1/01)	Whole of State	1 Jan., 2003 – 31 Dec., 2004	PSAAG13/03	7/03/03	Unpublished	
Department of Fisheries Agency Specific Agreement 2006. (Replaces previous Department of Fisheries ... Agreement 2003 No. PSAAG40/03. For prior details, see Vol. 86, Part 1)	Whole of State	2 Nov., 2006 – 30 June, 2008	PSAAG 17/06	9/11/06	Unpublished	
Department of Health (Clinical Academics) AMA Industrial Agreement 2008. (Replaces previous Department of Health ... Agreement 2004 No. PSAAG12/04. For prior details, see Vol. 88, Part 1)	Clinical Academics employed by the Employer in the Public Hospitals	24 Sept., 2008 – 30 Sept., 2010	PSAAG14/08	24/09/08	Unpublished	
Department of Health Medical Practitioners (Director General) AMA Industrial Agreement 2007. (Cancels and Replaces previous Department of Health Medical Practitioners ... Agreement 2004 No. PSAAG7/04)	Director General of Health	2 May, 2008 – 30 Sept., 2010	PSAAG7/08	2/5/08	Unpublished	
Department of Health Medical Practitioners (Drug and Alcohol Office) AMA Industrial Agreement 2007. (Cancels and Replaces the Department of Health Medical Practitioners ... Agreement 2004 No. PSAAG5/04)	Western Australia Alcohol and Drug Authority	25 Mar., 2008 – 30 Sept., 2010	PSAAG4/08	3/4/08	Unpublished	
Department of Health Medical Practitioners (Metropolitan Health Services) AMA Industrial Agreement 2007. (Replaces previous Medical Practitioners ... Agreement 2004 No. PSAAG3/04)	Minister for Health	7 Feb., 2008 – 30Sept., 2010	PSAAG2/08	7/2/08	Unpublished	
Department of Health Medical Practitioners (PathCentre) AMA Industrial Agreement 2004. (Replaces the Medical Practitioners (PathCentre) AMA Industrial Agreement 2002 PSAAG36/03)	Board of The Western Australian Centre for Pathology and Medical Research	1 April, 2004 – 31 March, 2007	PSAAG6/04	30/04/04	Unpublished	
Department of Health Medical Practitioners (WA Country Service) AMA Industrial Agreement 2008. (Cancels and Replaces the Department of Health Medical Practitioners (Country Health Services) AMA Industrial Agreement 2004, No. PSAAG8/04)	Refer to Clause 3 of the Agreement	24 Sept., 2008 – 30 Sept., 2010	PSAAG13/08	24/9/08	Unpublished	
Department of Industry and Resources Agency Specific Agreement 2005. (Replaces previous Department of Industry ... Agreement 2003 No. PSAAG12/03. For prior details, see Vol. 85, Part 1)	Whole of State	14 July, 2005 – 31 Dec., 2006	PSAAG16/05	14/7/05	Unpublished	
Department of Justice Jury Officers Agreement 2005	Department of Justice	13 May, 2005 – 31 Dec., 2006	PSAAG9/05	13/05/05	Unpublished	
Department of Land Information Agency Specific Agreement 2006. (Replaces Department. of Land Administration ... Agreement 2003 No. PSAAG2/03. For prior details, see Vol. 85, Part 2)	Whole of State	16 May, 2006 - 31 Dec., 2006	PSAAG5/06	16/05/06	Unpublished	
Dept. of Marine and Harbours Commuted Overtime and Sea Going Allowance Agreement 1983	Government Officers employed by Marine and Harbours Dept. as Marine Inspectors and headquartered in Metropolitan Area	1 May, 1983 - 30 April, 1987	28/1983	14/12/83	64	127

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PUBLIC SERVICE ARBITRATOR—AGREEMENTS IN FORCE—*continued*

Title	Area Governed	Date of Operation	No. of Agreement	Date Delivered	Reference Vol.	Page
Department of Minerals and Energy Enterprise and Chemistry Centre of W.A. Agreement 1996	Department of Minerals and Energy	1 Jan., 1996 - 30 Sept., 1996	PSG AG11/96	2/7/96	76	2135
Department of Racing, Gaming and Liquor Agency Specific Agreement 2008. (Replaces previous Department of Racing ... Agreement 2005 No. PSAAG17/05. For prior details, see Vol. 88, Part 1)	Whole of State	7 Nov., 2008 – 6 Nov., 2009	PSAAG16/08	14/11/08	Unpublished	
Department of State Services, Bureau Services Enterprise Agreement	Department of State Services	28 May, 1996 - 27 May, 1997	PSAAG130/96	13/9/96	76	3864
Department of State Services, Supply West Enterprise Agreement	Department of State Services, Supply West	28 May, 1996 - 27 May, 1997	PSAAG129/96	19/6/96	76	2189
Department of Treasury and Finance Agency Specific Agreement 2005. (Replaces previous Department of Treasury ... Agreement 2003 No. PSAAG7/03. For prior details, see Vol. 84, Part 2)	Whole of State	1 June, 2005 – 31 Dec., 2006	PSAAG12/05	1/6/05	Unpublished	
Dept. of Youth, Sport and Recreation, Weekend Duty Agreement 1983	Government Officers who are Recreation Advisers, Consultants or any other Professional Officer engaged in weekend duties employed by the Dept	6 Oct., 1982 - 5 Oct., 1985	1/1983	29/3/83	63	1124
<i>Disability Services Commission (Public Servants) Agency Specific Agreement 2006.</i> (Replaces Previous Disability Services Commission ... Agreement 2003 No. PSAAG31/03. For prior details, see Vol. 86, Part 1)	Whole of State	29 Nov., 2006 – 31 Dec., 2008	PSAAG18/06	01/12/06	Unpublished	
District Allowance (Government Officers) General Agreement 2005	Employees of the Agencies list in Schedule A who are members of or eligible to be members of the unions	6 Jan., 2006 – 30 June 2007	PSAAG27/05	6/01/06	Unpublished	
Eastern Pilbara College of TAFE Public Service and Government Officers' Agency Specific Agreement 2003. (Replaces previous Eastern Pilbara College ... Agreement 2000 No. PSAAG68/00. For prior details, see Vol. 82, Part 2)	Whole of State	1 Jan., 2003 - 31 Dec., 2004	PSAAG57/02	14/1/03	Unpublished	
East Perth Redevelopment Authority Enterprise Agreement 1996	Ease Perth Redevelopment Authority	18 July, 1996 - 1 July, 1998	PSAAG135/96	6/9/96	76	3868
Electorate and Research Employees General Agreement 2008. (Replaces previous Electorate and Research Employees General Agreement 2006. PSAAG14/06. For prior details, see Vol. 86, Part 1)	Whole of State	2 Sept., 2008 – 1 Apr., 2011	PSAAG11/08	2/9/08	Unpublished	
Esperance Harbour Master – Marine Pilots Salary Agreement 1995 – The	Esperance Port Authority	23 Feb., 1996 - 22 Feb., 1997	AG23/96	28/2/96	76	664
Facilities Agreement 1992	Employees elected to position of Workplace Delegate by Civil Service Association	28 Jan., 1993	PSAAG2/92	2/4/93	73	1013
Family and Children's Services Enterprise Agreement 1995	Family and Children's Services	27 Feb., 1996 - 26 Aug., 1997	PSAAG15/95	27/3/96	76	673
Family Resource Employees and Parent Helpers General Agreement 2009 No. PSAAG 6/2009. (Replaces the Department for Community Development (Family Resource Workers, Welfare Assistants and Parental Helpers) General Agreement 2006 No. PSAAG8/06)	Whole of State	23 July, 2009 – 1 April, 2011	PSAAG6/09	29/7/09	Unpublished	
Fire and Emergency Services Authority of Western Australia Agency Specific Agreement 2008. (This agreement substitutes and replaces previous Fire and Emergency Services ... Agreement 2005 No. PSAAG14/05. For prior details, see Vol. 87, Part 2)	Whole of State	11 Mar., 2008 - 31 Dec., 2009	PSAAG5/08	11/3/08	Unpublished	
Fire and Rescue Service of Western Australia Enterprise Agreement (CSA) 1997	Whole of State	19 Nov., 1997 - 31 Dec., 1998	PSAAG13/97	19/11/97	77	3285
Forest Products Commission Agency Specific Agreement 2007. (Cancels and Replaces previous Forest Products Commission ... Agreement 2003 No. PSAAG18/03. For prior details, see Vol. 87, Part 1)	Whole of State	28 Aug., 2007 – 31 Dec., 2009	PSAAG16/07	28/8/07	Unpublished	
Fremantle Cemetery Board Enterprise Bargaining Agreement 2000. (Replaces previous Fremantle Cemetery ... Agreement No. PSAAG148/96. For prior details, see Vol. 79, Part 2)	Whole of State	17 Mar., 2000 – 17 Mar., 2002	PSAAG3/00	17/3/00	80	1397
General Division Officers' Salaries Agreement 1983 (Commissioner of Transport). (Replaces previous General Officers Salaries Agreement 1975 (Commissioner of Transport) No. 35/1975)	Government Officers in a general capacity employed by the Commissioner	18 Dec., 1981 - 17 Dec., 1984	18/1983	4/10/83	63	2337

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Title	Area Governed	Date of Operation	No. of Agreement	Date Delivered	Reference Vol.	Page
Geraldton Harbour Master – Marine Pilots Salary Agreement 1996 No. AG99/96 – The (Supersedes Department of Marine and Harbours, Harbour Masters, Relieving Harbour Masters and Assistant Harbour Masters Award 1984)	Geraldton Port Authority	23 Feb., 1996 - 23 Feb., 1997	AG99/96	24/5/96	76	1826
Goldfields-Esperance Development Commission Agency Specific Agreement 2007. (This agreement substitutes and replaces previous Goldfields/Esperance ... Agreement 2005 No. PSAAG8/05. For prior details, see Vol. 87, Part 1)	Whole of State	29 Aug., 2007 – 31 Dec., 2009	PSAAG14/07	29/8/07	Unpublished	
Government Employees Superannuation Board Agency Specific Agreement 2005. (Replaces previous Government Employees ... Agreement No. PSAAG1/03. For prior details, see Vol. 84, Part 2)	Whole of State	24 Mar., 2005 - 31 Dec., 2006	PSAAG6/05	24/03/05	Unpublished	
Government Officers (Insurance Commission of Western Australia) General Agreement 2008. (This agreement substitutes and replaces previous Government Officers (Insurance ... Agreement 2006 No. PSAAG10/06. For prior details, see Vol 88, Part 1)	Employees, other than those listed in subclause 5.3 of Clause 5, employed under the Insurance Commission of Western Australia Act 1986	28 Oct., 2008 – 1 April, 2011	PSAAG15/08	28/10/08	Unpublished	
Government Officers Salaries, Allowances and Conditions General Agreement 2008. (Replaces previous Government Officers ... Agreement 2006 No. PSAAG6/06. For prior details, see Vol. 88, Part 1)	Employees of the Agencies listed in Schedule 5	2 Sept., 2008 – 1 Apr., 2011	PSAAG9/08	2/9/08	Unpublished	
Government Property Office Enterprise Bargaining Agreement 1997	Government Property Office	29 Oct., 1997 - 28 Oct., 1999	PSAAG17/97	21/11/97	77	3300
Government Schools (Agricultural Colleges and Schools) Residential Supervisors' Agreement 2009. (Cancels and Replaces previous Government Schools ... Agreement 2005 No. PSAAG22/05. For prior details, see Vol. 89, Part 1)	Whole of State	6 July, 2009 – 31 Dec., 2011	PASAG3/09	6/7/09	Unpublished	
Governor's Establishment Garden Staff General Agreement 2006. (This agreement substitutes the Governor's Establishment Gardening Staff Enterprise Agreement 2002-2003 No. AG237/01. For details of substituted agreement No. AG237/01, see Appendix VI, Vol. 86, Part 1)	Occupation of gardener at the Governor's Establishment	6 Sept., 2006 - 31 Dec., 2007	PSAAG11/06	6/09/06	Unpublished	
Graylands Selby – Lemnos and Special Care Health Services General Agreement 2006. (Replaces previous Graylands Selby – Lemnos ... Agreement 2005 No. PSAAG3/05. For prior details, see Vol. 86, Part 1)	Graylands Selby – Lemnos	21 Sept., 2006 – 25 Feb., 2008	PSAAG13/06	26/9/06	Unpublished	
Great Southern TAFE Public Service and Government Officers' Agency Specific Agreement 2003. (Replaces previous Great Southern ... Agreement 2000 No. PSAAG75/00. For prior details, see Vol. 82, Part 2)	Whole of State	1 Jan., 2003 - 31 Dec., 2004	PSAAG55/02	14/1/03	Unpublished	
Health Services Union Metropolitan Health Service Multisystemic Therapy Program Agreement 2005. (Replaces previous Health Services Union ... Agreement 2004 No. PSAAG4/04. For prior details, see Vol. 84, Part 2)	Whole of State	1 June, 2005 - 30 June, 2006	PSAAG11/05	1/6/05	Unpublished	
		Correction Order No. PSAAG 11/05 (Paragraph 2)	...	5/2/07	87	276
Health Services Union – WA Health State Industrial Agreement 2008. (Replaces previous Health Services Union ... Agreement 2006 No. PSAAG19/06. For prior details, see Vol. 88, Part 2).	Whole of State	9 Dec., 2008 – 30 June, 2011	PSAAG21/08	11/12/08	Unpublished	
Hospital Salaried Officers (Classification Review) Agreement	Whole of State	10 Jan., 1978 to 9 Jan., 1979	AG2/1978	12/1/78	58	188
Hospital Salaried Officers Boddington District Hospital Board Enterprise Agreement 1999. (Replaces and Cancels previous HSO Boddington ... Agreement No. PSAAG38/98. For prior details, see Vol. 80, Part 1)	Boddington District Hospital Board	9 Oct., 2000 – 1 Dec., 2001	PSAAG57/00	9/10/00	80	4720
Hospital Salaried Officers Brookton Health Service Enterprise Agreement 1999. (Replaces and Cancels previous HSO Brookton ... Agreement No. PSAAG39/98. For prior details, see Vol. 80, Part 1)	Brookton Health Service	9 Oct., 2000 – 1 Dec., 2001	PSAAG56/00	9/10/00	80	4736
Hospital Salaried Officers Coolgardie Health Centre Enterprise Bargaining Agreement 1996	HSA employees of Coolgardie Health Centre	23 May, 1996 - 31 Dec., 1997	PSAAG26/96	23/5/96	76	2610
Hospital Salaried Officers East Pilbara Health Service Enterprise Agreement 2001. (Replaces and Cancels previous HSO East ... Agreement No. PSAAG30/00. For prior details, see Vol. 81, Part 2)	Whole of State	20 June, 2002 – 18 Jan., 2004	PSAAG42/02	26/06/02	Unpublished	

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Hospital Salaried Officers Gnowangerup District Hospital Enterprise Agreement 1999. (Replaces and Cancels previous HSO Gnowangerup ... Agreements No. PSAAG42/96 & No. PSAAG49/98. For prior details, see Vol. 79, Part 2)	Whole of State	19 May, 2000 – 1 Dec., 2001	PSAAG33/00	19/5/00	80	2230
Hospital Salaried Officers Hawthorn Hospital Enterprise Bargaining Agreement 1996	HSOA employees of Hawthorn Hospital	23 May, 1996 - 31 Dec., 1997	PSAAG45/96	23/5/96	76	3057
Hospital Salaried Officers Health Care Linen Enterprise Bargaining Agreement 1996	HSOA employees of Health Care Linen	23 May, 1996 - 31 Dec., 1997	PSAAG47/96	23/5/96	76	3064
Hospital Salaried Officers Joondalup Health Campus Enterprise Bargaining Agreement 1996	Joondalup Health Campus	4 Apr., 1997 - 31 Dec., 1997	AG299/96	4/4/97	77	1173
Hospital Salaried Officers Joondalup Health Campus Enterprise Bargaining Agreement 1997	Whole of State	1 Dec., 1997 - 30 June., 1998	AG36/98	9/4/98	78	1736
Hospital Salaried Officers Kalgoorlie Regional Enterprise Bargaining Agreement 1996	HSOA employees of Kalgoorlie Regional Hospital	23 May, 1996 - 31 Dec., 1997	PSAAG50/96	23/5/96	76	3084
Hospital Salaried Officers Kojonup District Hospital Enterprise Agreement 1999. (Replaces & Cancels previous HSO Kojonup ... Agreements No. PSAAG54/96 & No. PSAAG51/98. For prior details, see Vol. 79, Part 2)	Whole of State	19 May, 2000 – 1 Dec., 2001	PSAAG36/00	19/5/00	80	2275
Hospital Salaried Officers Menzies Nursing Post Enterprise Bargaining Agreement 1996	HSOA employees of Menzies Nursing Post	23 May, 1996 - 31 Dec., 1997	PSAAG65/96	23/5/96	76	3185
Hospital Salaried Officers (Mercy Hospital) Enterprise Agreement 1998	Whole of State	17 July, 1998 – 16 July, 2000	AG122/98	19/8/98	78	3443
Hospital Salaried Officers Mt Henry Hospital Enterprise Bargaining Agreement 1997. (Replaces PSAAG69/96)	Mt Henry Hospital	11 June., 1997 - 31 Dec., 1997	PSAAG3/97	11/6/97	77	1677
Hospital Salaried Officers Perth Dental Hospital Enterprise Bargaining Enterprise Bargaining Agreement	HSOA employees at Perth Dental Hospital	23 May., 1996 – 31 Dec., 1997	PSAAG86/96	23/5/96	76	3327
Hospital Salaried Officers Perth Dental Hospital Enterprise Bargaining Agreement 1997 Amending Agreement	Whole of State	7 May, 1998 - 31 May, 1998	PSAAG33/98	7/5/98	78	2178
Hospital Salaried Officers Royal Perth Hospital Enterprise Bargaining Agreement 1996	HSOA employees of Royal Perth Hospital	23 May, 1996 - 31 Dec., 1997	PSAAG94/96	23/5/96	76	3490
Hospital Salaried Officers Tambellup District Hospital Enterprise Bargaining Agreement 1996	HSOA employees of Telfer District Hospital	23 May, 1996 - 31 Dec., 1997	PSAAG99/96	23/5/96	76	3542
Hospital Salaried Officers Telfer Nursing Post Enterprise Bargaining Agreement 1996	HSOA employees of Telfer Nursing Post	23 May, 1996 - 31 Dec., 1997	PSAAG100/96	23/5/96	76	3552
Hospital Salaried Officers Wanneroo Hospital Enterprise Bargaining Agreement 1996	HSOA employees of Wanneroo Hospital	23 May, 1996 - 31 Dec., 1997	PSAAG103/96	23/5/96	76	3584
Hospital Salaried Officers Warburton Range Hospital Enterprise Bargaining Agreement 1996	HSOA employees of Warburton Range Hospital	23 May, 1996 - 31 Dec., 1997	PSAAG104/96	23/5/96	76	3594
Hospital Salaried Officers – Western Australian Government Health Industry Enterprise Bargaining Framework Agreement 1996	HSOA employees of Health Services	11 Apr., 1996 - 31 Dec., 1997	PSAAG116/96	22/5/96	76	3615
Hospital Salaried Officers West Kambalda Nursing Post Enterprise Bargaining Agreement 1996	HSOA employees of West Kambalda Nursing Post	23 May, 1996 - 31 Dec., 1997	PSAAG106/96	23/5/96	76	3904
Hospital Salaried Officers Wooroloo District Hospital Enterprise Bargaining Agreement 1996	HSOA employees of Wooroloo District Hospital	23 May, 1996 - 31 Dec., 1997	PSAAG111/96	23/5/96	76	3957
Hospital Salaried Officers Yalgoo Health Services Enterprise Agreement 1999. (Replaces and Cancels previous HSO Yalgoo ... Agreement No. PSAAG86/98. For prior details, see Vol. 79, Part 2)	Whole of State	19 May, 2000 – 1 Dec., 2001	PSAAG47/00	19/5/00	80	2603
Hostel Supervisory Staff Agreement 1980	Government Officers employed by the Country High School Hostels Authority	1 Feb., 1980 - 31 Jan., 1983	AG15/1980	28/11/80	61	138
Introduction of Social Trainer Level 2 Industrial Agreement 2006	Whole of State	10 Mar., 2006 – 31 Dec., 2007	PSAAG1/06	10/3/06		Unpublished
Job Skills Trainee Agreement	Whole of State	9 Sept., 1993 - 8 Sept., 1994 No. 3/2006 (Department of Family and Children's Services and Others ceased to be party to the Agreement)	PSAAG2/93 ...	20/9/93 17/1/06	73 86	2684 79
Kimberley College of TAFE Public Service and Government Officers' Agency Specific Agreement 2003. (Replaces previous Kimberley College ... Agreement 2000 No. PSAAG74/00. For prior details, see Vol. 82, Part 2)	Whole of State	1 Jan., 2003 - 31 Dec., 2004	PSAAG60/02	22/1/03		Unpublished

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Landcorp Enterprise Agreement 2000. (Cancels and Replaces previous Landcorp ... Agreement 1998 No. PSAAG89/99. For prior details, see Vol. 80, Part 2)	Whole of State	7 Dec., 2000 – 6 Dec., 2002	PSAAG65/00	7/12/00	81	135
Legal Aid Commission of Western Australia Agency Specific Agreement 2005. (Replaces previous Legal Aid ... Agreement 2002 No. PSAAG67/02. For prior details, see Vol. 84, Part 2)	Whole of State	7 Apr., 2005 - 31 Dec., 2006	PSAAG7/05	7/4/05	Unpublished	
Legal Aid Commission of Western Australia In-House Practice Solicitors' Enterprise Agreement 1999. (Replaces previous Legal Aid ... Agreement No. PSAAG4/96. For prior details, see Vol. 79, Part 2)	Whole of State	7 Dec., 1999 – 6 Dec., 2001	PSG AG42/99	10/12/99	80	123
Library and Information of Western Australia (LISWA) Enterprise Bargaining Agreement 1996	Library Board of Western Australia	28 May, 1996 - 28 Sept., 1997	PSAAG2/96	28/5/96	76	1881
Lotterywest Agency Specific Agreement 2005. (Replaces Lotteries Commission ... Agreement No. PSAAG14/03. For prior details, see Vol. 84, Part 2)	Whole of State	13 May, 2005 – 31 Dec., 2006	PSAAG10/05	13/05/05	Unpublished	
Main Roads APEA Enterprise Bargaining Agreement 2007	Employees of Main Roads who are eligible to be members of the Union	11 Oct., 2007 - 31 Dec., 2009	PSAAG10/07	15/10/07	Unpublished	
Main Roads CSA Enterprise Bargaining Agreement 2007. (Replaces previous Main Roads CSA ... Enterprise Agreement 2005 No. PSGAG15/05. For prior details see Vol. 87, Part 1)	Main Roads	13 July, 2007 – 1 Jan., 2010	PSAAG12/07	13/7/07	Unpublished	
Main Roads Western Australia – CSA Salary Packaging Agreement 1999	Whole of State	28 May, 1999 – 27 May, 2000	PSAAG23/99	28/5/99	79	1970
Mental Health Services - Australia – CSA Medical Officers and Trainee Psychiatrists – Conditions relating to Hours of Duty, Recall and Payment for Excess Hours of Rostered Duty	Medical Officers, Level 1 and Trainee Psychiatrists employed by Mental Health Services participating in rostered hours system in hospitals	6 Feb., 1978 - 5 Feb., 1981	12/1978	21/6/78	58	1045
Metrobus Salaried Officers Enterprise Bargaining Agreement 1995	Metropolitan (Perth) Passenger Transport Trust, Metrobus	17 Dec., 1995 - 17 Dec., 1996	PSAAG 9/1995	17/1/96	76	686
Metrobus Salaried Officers Closedown Enterprise Bargaining Agreement	Salaried Officers at Metropolitan (Perth) Passenger Transport Trust	30 Nov., 1997 - 18 July, 1998	PSAAG20/97	9/12/97	77	151
Metropolitan Cemeteries Board Agency Specific Agreement 2007. (Replaces previous Metropolitan Cemeteries ... Agreement 2005 No. PSAAG18/05. For prior details, see Vol. 87, Part 2)	Whole of State	11 Jan., 2008 – 31 Dec., 2009	PSAAG17/07	11/01/08	Unpublished	
Midland College of TAFE Public Service and Government Officers' Agency Specific Agreement 2003. (Replaces previous Midland College ... Agreement 2000 No. PSAAG77/00)	Whole of State	1 Jan., 2003 - 31 Dec., 2004	PSAAG52/02	14/1/03	Unpublished	
Ministry for Culture and the Arts - Art Gallery of Western Australia Enterprise Bargaining Agreement 1996	Whole of State	1 July., 1997 - 6 Dec., 1997 No. P13/2010 (The Director General, Department of Culture and the Arts ceased to be a party to the Agreement)	PSAAG5/97 ...	22/8/97 29/03/10	77	2250 90 270
Ministry for Culture and the Arts, LISWA Service Division Enterprise Bargaining Agreement 1997	Whole of State	1 July., 1997 - 16 Nov., 1997 No. P15/2010 (The Director General, Department of Culture and the Arts ceased to be a party to the Agreement)	PSGAG6/97 ...	22/8/97 29/03/10	77	2270 90 271
Ministry for Culture and the Arts (Perth Theatre Trust) Enterprise Bargaining Agreement 1997	Whole of State	1 July., 1997 - 31 July., 1998 No. P11/2010 (The Director General, Department of Culture and the Arts ceased to be a party to the Agreement)	PSGAG4/97 ...	22/8/97 29/03/10	77	2284 90 271
Ministry for Culture and the Arts, Arts WA Division (Enterprise Bargaining) Agreement	Whole of State	22 Aug., 1997 - 31 Dec., 1997 No. P12/2010 (The Director General, Department of Culture and the Arts ceased to be a party to the Agreement)	PSAAG6/97 ...	22/8/97 29/03/10	77	2258 90 270
Ministry for Culture and the Arts (Western Australian Museum Division) Enterprise Bargaining Agreement	Whole of State	1 July., 1997 - 30 Sept., 1997 No. P14/2010 (The Director General, Department of Culture and the Arts ceased to be a party to the Agreement)	PSGAG5/97 ...	22/8/97 29/03/10	77	2294 90 271
Ministry of Justice Enterprise Agreement 2000. (Replaced in part by the Department of Justice Groupworkers General Agreement 2002 No. PSAAG45/2002).	Whole of State	1 Feb., 2001 - 28 Feb., 2003	PSAAG 2/01	01/02/01	81	520

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Ministry of the Premier & Cabinet, Enterprise Bargaining Agreement 1998. (Replaces Office of State Administration 1996 EBA, the Public Sector Management office and the Ministry of the Premier and Cabinet Government Media Office EBA 1996. (See Vol.78, Part 1)	Whole of State	4 Aug, 1998 – 3 Aug., 2000	PSAAG90/98	4/8/98	78	3234
Ministry of the Premier and Cabinet, Public Sector Management Office Enterprise Bargaining Agreement 1996	Whole of State	31 Oct., 1996 - 1 Apr., 1997	PSAAG160/96	5/11/96	76	4615
Ministry of the Premier and Cabinet, Office of State Administration Enterprise Bargaining Agreement 1996	Ministry of the Premier and Cabinet, Office of State Administration	28 June, 1996 - 28 June, 1997	PSAAG142/96	12/8/96	76	3660
Ministry of the Premier and Cabinet, Government Property Office Enterprise Bargaining Agreement 1996	Whole of State	11 Sept., 1996 - 10 Sept., 1997	PSAAG141/96	11/9/96	76	4200
National Trust of Australia (WA) Enterprise Agreement 1996 – The	National Trust of Australia (WA)	14 May, 1996 - 14 May, 1997	PSAAG118/96	30/5/96	76	1897
Nurses Board of Western Australia Enterprise Agreement 1998. (Replaces PSAAG151/96)	Whole of State	4 March, 1999 – 3 May, 2001	PSAAG8/99	4/3/99	79	781
Office of the Auditor General Agency Specific Agreement 2009. (Replaces previous Office of the Auditor General ... Agreement 2007 No. PSAAG13/07. For prior details, see Vol. 89, Part 1)	Whole of State	20 Aug., 2009 - 31 Dec., 2011	PSAAG8/09	20/7/09		Unpublished
Office of Multicultural Interests' Enterprise Agreement 1998	Whole of State	21 May, 1998 - 20 May, 2000	PSAAG57/98	21/5/98	78	2274
Painters' Registration Board Enterprise Agreement 1998. (Replaces PSAAG146/96)	Whole of State.	4 Aug., 1998 – 4 Aug., 2000	PSAAG92/98	4/9/98	78	3695
Parliamentary Employees General Agreement 2008. (Replaces previous Parliamentary Employees ... Agreement 2006 No. PSAAG1/07. For prior details, see Vol. 88, Part 2)	Whole of State	9 Dec., 2008 – 1 Apr., 2011	PSAAG19/08	9/12/08		Unpublished
Path Centre Enterprise Agreement	Board of Management of Path Centre	15 Nov., 1995 - 1 June, 1996	PSAAG2(A)/95	15/11/95	75	3308
Perth Dental Hospital and Community Dental Services Enterprise Bargaining Agreement 1999. (Replaces & Cancels Health Department ... Agreement 1996 No. PSAAG131/96 and HSO, Perth Dental Hospital ... Agreement No. PSAAG23/97)	Metropolitan Health Service Board	8 Sept., 1999 – 7 Sept., 2001	PSAAG28/99	8/9/99	79	2941
Perth Theatre Trust (Enterprise Bargaining) Agreement 1996	Perth Theatre Trust	1 Aug., 1996 - 1 Aug., 1998	PSG AG13/96	23/8/96	76	3681
Perth Zoo Enterprise Bargaining Agreement 1999. (Replaces Zoological Gardens Enterprise Bargaining Agreement 1996 PSAAG154/96)	Whole of State	9 Apr., 1999 – 8 Apr., 2000	PSAAG12/99	9/4/99	79	1112
Public Service General Agreement 2008. (Replaces previous Public Service General Agreement 2006 No. PSAAG7/06. For prior details, see Vol. 86, Part 1)	Public Service Officers and executive employees employed in the Public Service under Part 3 or Part 8, Section 100 of the Public Sector Management Act 1994	2 Sept., 2008 – 1 Apr., 2011	PSAAG10/08	2/9/08		Unpublished
Public Service Professional Division (Mining Engineers and Inspectors of Mines) Salaries Agreement, 1968	Government Officers employed as Mining Engineers and Inspectors of Mines, Mines Department and Professional Division under and within the meaning of the PSA Act, 1904-1967	8 April, 1968 - 7 April, 1971	38/1968	22/10/68	48	718
Regional Duty Officers Agreement – Western Australian Bush Fire Board	WA Bush Fires Board	25 Nov., 1994 - 24 Nov., 1995	PSAAG3/1994	7/12/94	75	117
Rottnest Island Authority Agency Specific Agreement 2007. (This agreement substitutes and replaces the Rottnest Island Authority ... Agreement 2005 No. PSAAG24/05. For prior details, see Vol. 87, Part 1)	Whole of State	22 June, 2007 - 31 Dec., 2008	PSAAG6/07	22/6/07		Unpublished
SGIC Enterprise Bargaining Agreement 1995	State Government Insurance Commission	31 Jan., 1996 - 31 Dec., 1996	PSAAG11/1995	25/3/96	76	1009
Small Business Development Corporation Enterprise Bargaining Agreement 2000-2002. (Replaces and Cancels previous Small Business Development ... Agreements No. PSAAG134/96 & No. PSAAG34/98. For prior details, see Vol. 80, Part 1)	Whole of State	30 June, 2000 – 31 May, 2002	PSAAG51/00	30/6/00	80	3015
Social Trainers General Agreement 2008. (Replaces Social Trainers ... Agreement 2006 No. PSAAG15/06. For prior details, see Vol. 89, Part 1)	Employees who are members of or eligible to be members of the union engaged by the employer to perform work covered by the award	23 July, 2009 – 1 April, 2011	PSAAG4/09	29/7/09		Unpublished

*Note:- As of 1st August, 2002, the I.R. Act, 1979 (as amended) does not require publication of the contents of agreements. All current registered Agreements are available for viewing in Registry.

WESTERN AUSTRALIAN INDUSTRIAL GAZETTE

PUBLIC SERVICE ARBITRATOR—AGREEMENTS IN FORCE—*continued*

Title	Area Governed	Date of Operation	No. of Agreement	Date Delivered	Reference Vol.	Page
South East Metropolitan College of TAFE Public Service and Government Officers' Agency Specific Agreement 2003. (Replaces previous South East Metropolitan ... Agreement No. PSAAG71/00. For prior details, see Vol.82, Part 2)	Whole of State	1 Jan., 2003 - 31 Dec., 2004	PSAAG54/02	14/1/03	Unpublished	
South Metropolitan College of TAFE Public Service and Government Officers' Enterprise Agreement 1998. (Replaces WA Department of Training Public Service ... Agreement 1996 No. PSAAG 150/96. See Vol.78, Part 1)	South Metropolitan College of TAFE	20 Jan., 1998 - 30 June, 2000	PSAAG7/98	21/1/98	78	1334
South West Regional College of TAFE Public Service and Government Officers' Agency Specific Agreement 2003. (Replaces previous South West Regional College ... Agreement No. PSAAG76/00. For prior details, see Vol. 82, Part 2)	Whole of State	1 Jan., 2003 - 31 Dec., 2004	PSAAG51/02	14/1/03	Unpublished	
Technical Officer - Agricultural Instruction Staff Agreement 1997	Whole of State	3 Sept., 1997 - 2 Sept., 1999 Amended - Order No. P2/99 (S. 46 – Interpretation of Agreement)	PSAAG8/97 ...	4/9/97 2/12/99	77 80	2346 189
Transport Commission (Administrative, Clerical and General) Conditions of Service Agreement	Government Officers employed by the Commission in administrative, clerical and general capacity	1 Jan., 1974 - 31 Dec., 1976	6/1974	21/3/74	54	275
Water Corporation Redeployment Retraining and Redundancy Agreement 1996 No. PSAAG13/1995	Whole of State	1 Jan., 1996 - 1 July, 1998	PSAAG13/1995	29/8/96	76	3697
West Coast College of TAFE Public Service and Government Officers' Agency Specific Agreement 2003. (Replaces North Metropolitan College of TAFE ... Agreement 2000 No. PSAAG72/00. For prior details, see Vol. 82, Part 2)	Whole of State	1 Jan., 2003 - 31 Dec., 2004	PSAAG59/02	14/1/03	Unpublished	
Western Australian Centre for Pathology and Medical Research (PathCentre) Enterprise Agreement 1996	Western Australian Centre for Pathology and Medical Research (PathCentre)	5 Dec., 1996 - 4 Dec., 1998	PSAAG165/96	17/12/96	77	184
Western Australian Centre For Pathology and Medical Research (PathCentre) Enterprise Agreement - 1999	Western Australian Centre for Pathology and Medical Research (PathCentre)	19 Oct., 1999 – 30 June, 2001	PSAAG37/99	19/10/99	79	3377
Western Australian Coastal Shipping Commission Retirement Age Agreement 1985	Government Officers employed by the Coastal Shipping Commission in an administrative, Clerical or general capacity	1 July, 1984 - 30 June, 1985	AG1/1985	15/2/85	65	363
Western Australian Fire Brigades Board Communications Systems Officers Salaries Allowances and Conditions of Service Agreement, 1985	All Government Officers employed by the Western Australian Fire Brigades Board as Communications Systems Officers	20 Dec., 1985 - 20 Dec., 1988	PSAAG6/1985	20/12/85	66	152
Western Australian Industrial Relations Commission (Associates to Members of the Commission) Enterprise Bargaining Agreement 1998. (Replaces PSAAG161/96. See Vol. 78, Part 1)	Whole of State	18 Nov., 1998 – 17 Nov., 2000	PSAAG101/98	18/11/98	78	4834
Western Australian Institute of Technology Overtime Agreement 1973	Government Officers employed in a permanent and temporary capacity by Council of WAIT	3 May, 1973 - 2 May, 1976	15/1973	19/9/73	53	1354
Western Australian Meat Marketing Corporation Enterprise Agreement 1996	Western Australian Meat Marketing Corporation	31 July, 1996 - 30 Dec., 1997	PSAAG147/96	8/8/96	76	3719
Western Australian Mint (GOSAC) Agreement 2004. (Replaces previous Western Australian Mint ... Agreement No. PSGAG38/03. For prior details, see Vol. 84, Part 1)	Western Australian Mint	6 Oct, 2004 – 31 Dec., 2005	PSAAG14/04	7/10/04	Unpublished	
Western Australian Museum Enterprise Agreement 1996	Chief Executive Officer of the Western Australian Museum	30 Aug., 1996 - 30 Sept., 1997	PSG AG14/96	16/9/96	76	4091
Western Australia Police Agency Specific Agreement 2005.	Whole of State	1 Jan., 2005 – 31 Dec., 2006	PSA AG25/05	21/11/05	Unpublished	
Western Australia Police Agency Specific Agreement 2007.	Whole of State	1 Jan., 2007 – 31 Dec., 2008	PSA AG1/08	6/2/08	Unpublished	
Western Australia Police Industrial Agreement 2009. (Replaces Western Australia Police Industrial Agreement 2006 No. PSAAG20/06; Western Australia Police Detective OIC Agreement 2008 No. PSAAG6/08 and the Western Australia Police Internal Affairs Covert Services Agreement 2007 No. PSAAG2/07. For prior details, see Vol. 89, Part 1)	Whole of State	11 Aug., 2009 – 30 June, 2011	PSAAG7/09	13/8/09	Unpublished	

*Note:- As of 1st August, 2002, the I.R. Act, 1979 (as amended) does not require publication of the contents of agreements. All current registered Agreements are available for viewing in Registry.

WESTERN AUSTRALIAN INDUSTRIAL GAZETTE

PUBLIC SERVICE ARBITRATOR—AGREEMENTS IN FORCE—*continued*

Title	Area Governed	Date of Operation	No. of Agreement	Date Delivered	Reference Vol.	Page
Western Australia Police Service Agency Specific Agreement 2003. (Replaces previous WA Police ... Agreement No. PSAAG61/00. For prior details, see Vol. 82, Part 2)	Whole of State	1 Jan., 2003 – 31 Mar., 2004	PSAAG21/03	2/04/03		Unpublished
Western Australia Police Service Operation Tamar Allowance Agreement 2004	Members of the WA Police Force appointed under s7 of the Police Act 1892 assigned to the Operation Tamar	Duration of the Operation Tamar - 30 January 2005	PSAAG23/04	15/12/04		Unpublished
Western Australian Public Service Traineeship Agreement	All Public Service trainees undertaking traineeships as part of the Australian Traineeship System, excluding Traineeships offered by the Public Service Board of Western Australia under the Public Services Act 1979-1982	18 May, 1987 - 18 May, 1988	PSAAG1/88	29/3/88	68	1044
Western Australian State Emergency Service Enterprise Agreement 1996	Western Australian State Emergency Service	6 June, 1996 - 6 Oct., 1997	PSAAG124/96	6/6/96	76	1964
Western Australian Tourism Commission Enterprise Bargaining Agreement 1999. (Replaces PSAAG10/96)	Western Australian Tourism Commission	30 Apr., 1999 – 29 Apr., 2002	PSG AG17/99	30/4/99	79	1686
Western Potatoes Enterprise Agreement of 2000. (Replaces and Cancels previous Western Potatoes ... Agreement No. PSAAG 156/96. For prior details, see Vol. 80, Part 1)	Western Potatoes	22 Sept., 2000 - 21 Sept., 2002	PSAAG59/00	22/9/00	80	4813
West Pilbara College of TAFE Public Service and Government Officers' Agency Specific Agreement 2003. (Replaces Karratha College ... Agreement 2000 No. PSAAG73/00. For prior details, see Vol. 82, Part 2)	Whole of State	1 Jan., 2003 - 31 Dec., 2004	PSAAG50/02	14/1/03		Unpublished
Work Camps Industrial Agreements	Public Service Employees at Work Camps within the Ministry of Justice	2 Jan., 1995 - 1 July, 1995	PSAAG4/1994	6/2/95	75	397
Zoological Gardens Board Administrative, Clerical and Professional Officers Salaries, Allowances and Conditions Agreement, 1984. (Replaced by Public Authorities Salaries Award 1986, insofar as Clause 4 – Salaries and Salary Ranges; Clause 5 - Annual Increments; and Clause 9 - Contract of Service are concerned)	Government Officers employed by the Board in administrative, clerical or professional capacity	18 Dec., 1981 - 17 Dec., 1984	5/1984	6/3/84	64	622

*Note:- As of 1st August, 2002, the I.R. Act, 1979 (as amended) does not require publication of the contents of agreements. All current registered Agreements are available for viewing in Registry.

APPENDIX IX

**INDUSTRIAL RELATIONS ACT 1979 - AWARDS
AFFECTED BY ORDERS MADE UNDER SECTIONS 23, 42I & 44 (I.R. Act 1979)**

- Editor's Notes: (1) Also see Appendix V. and VII.
 (2) This appendix has been amended to reflect Orders that affect/impinge on awards.
 (3) For amendments prior to Vol. 70 see Appendix IX, Vol. 69, Part 2.
 (4) For details prior to the amendments in Vol. 80 see Appendix IX, Vol. 79, Part 2.

Award Title	Order Number	Date of Operation and Provisions	Reference		
			Vol	Page	
Building Trades (Construction) Award, 1987 No. R14/1978	CR259/1999 & 299/1999	13/9/99 – Completion – Site Allowance for Building site at Wellington Street, Perth.	80	426	
	913A/2000	21/9/00 – Metals, Electrical and Building Trades (Wagerup Alumina Refinery and Willodale Mine-Site) - Replaces Order No. 1241/1995 and cancels Order Nos. 300 and 728/1996.	80	5413	
	909B/2000	15/11/00 – Metal, Electrical and Building Trades (Pinjarra and Kwinana Alumina Refineries and the Huntley, Del Park and Jarradale Mine-Sites) Construction Order – Cancelled Order No. 909A/2000.	81	139	
	913B/2000	15/11/00 – Metal, Electrical and Building Trades (Wagerup Alumina Refinery and the Willowdale Mine-Site) Construction Order – Cancelled Order No. 913A/2000.	81	140	
	606/2003	16/8/03 – 15/8/04 – Hanssen Pty Ltd/CFMEUW Industrial Agreement 2002-2005 – Enterprise Order	83	3220	
	944/2003	5/09/03 – Metal, Electrical and Building Trades (Pinjarra and Kwinana Alumina Refineries and the Huntley, Del Park and Jarradale Mine-Sites) Construction Order – Replaces Order No. 909B/2000.	83	3367	
	944/2003	Correcting Order Issued—Date of Operation	83	3445	
	945/2003	5/9/03 - Metal, Electrical and Building Trades (Wagerup Alumina Refinery and the Willowdale Mine-Site) Construction Order – Replaces Order No. 913B/2000.	83	3366	
	945/2003	Correcting Order Issued— Travelling Allowance, Date of Operation	83	3444	
	1318/2004	5/11/04 - Metal, Electrical and Building Trades (Pinjarra and Kwinana Alumina Refineries and the Huntley, Del Park and Jarradale Mine-Sites) Construction Order – Replaces Order No. 944/2003.	84	3542	
	1319/2004	5/11/04 - Metal, Electrical and Building Trades (Wagerup Alumina Refinery and Willowdale Mine-Site) Construction Order – Replaces Order No. 945/2003.	84	3544	
	1319/2004	Correcting Order Issued—Title	85	761	
Club Workers' Award 1976 No. 12/1976	C263/2003	1/01/04 – 1/01/07 - Bassendean Bowling Club (Inc) Enterprise Bargaining Agreement 2004	84	3705	
Dampier Salt Award 1990 No. A23/1990 (Award cancelled by Order No. 1568/2001 (84WAIG2780-2804). For details prior to cancellation, see Vol. 84, Part 2)					
Electrical Contracting Industry Award, No. R22/1978	913A/2000	21/9/00 – Metals, Electrical and Building Trades (Wagerup Alumina Refinery and Willodale Mine-Site) - Replaces Order No. 1241/1995 and cancels Order Nos. 300 and 728/1996.	80	5413	
	909B/2000	15/11/00 – Metal, Electrical and Building Trades (Pinjarra and Kwinana Alumina Refineries and the Huntley, Del Park and Jarradale Mine-Sites) Construction Order – Cancelled Order 909A/2000.	81	139	
	913B/2000	15/11/00 – Metal, Electrical and Building Trades (Wagerup Alumina Refinery and the Willowdale Mine-Site) Construction Order – Cancelled Order 913A/2000.	81	140	
	944/2003	5/09/03 – Metal, Electrical and Building Trades (Pinjarra and Kwinana Alumina Refineries and the Huntley, Del Park and Jarradale Mine-Sites) Construction Order – Replaces Order No. 909B/2000	83	3367	
	944/2003	Correcting Order Issued—Date of Operation	83	3445	
	945/2003	5/9/03 - Metal, Electrical and Building Trades (Wagerup Alumina Refinery and the Willowdale Mine-Site) Construction Order – Replaces Order No. 913B/2000.	83	3366	
	945/2003	Correcting Order Issued—Travelling Allowance, Date of Operation	83	3444	
	1318/2004	5/11/04 - Metal, Electrical and Building Trades (Pinjarra and Kwinana Alumina Refineries and the Huntley, Del Park and Jarradale Mine-Sites) Construction Order – Replaces Order No. 944/2003.	84	3542	
	1319/2004	5/11/04 - Metal, Electrical and Building Trades (Wagerup Alumina Refinery and Willowdale Mine-Site) Construction Order – Replaces Order No. 945/2003.	84	3544	
		1319/2004	Correcting Order Issued—Title	85	761
	Engine Drivers' (Building and Steel Construction) Award No. 20/1973	913A/2000	21/9/00 – Metals, Electrical and Building Trades (Wagerup Alumina Refinery and Willodale Mine-Site) - Replaces Order No. 1241/1995 and cancels Order Nos. 300 and 728/1996.	80	5413
909B/2000		15/11/00 – Metal, Electrical and Building Trades (Pinjarra and Kwinana Alumina Refineries and the Huntley, Del Park and Jarradale Mine-Sites) Construction Order – Cancelled Order No. 909A/2000.	81	139	

WESTERN AUSTRALIAN INDUSTRIAL GAZETTE

INDUSTRIAL RELATIONS ACT 1979—AWARDS AFFECTED BY ORDERS—*continued*

Award Title	Order Number	Date of Operation and Provisions	Reference	
			Vol	Page
Engine Drivers' (Building and Steel Construction) Award No. 20/1973 <i>—continued</i>	913B/2000	15/11/00 – Metal, Electrical and Building Trades (Wagerup Alumina Refinery and the Willowdale Mine-Site) Construction Order – Cancelled Order No. 913A/2000.	81	140
	944/2003	5/09/03 – Metal, Electrical and Building Trades (Pinjarra and Kwinana Alumina Refineries and the Huntley, Del Park and Jarradale Mine-Sites) Construction Order – Replaces Order No. 909B/2000.	83	3367
	944/2003	Correcting Order Issued—Date of Operation	83	3445
	945/2003	5/9/03 - Metal, Electrical and Building Trades (Wagerup Alumina Refinery and the Willowdale Mine-Site) Construction Order – Replaces Order No. 913B/2000.	83	3366
	945/2003	Correcting Order Issued—Travelling Allowance, Date of Operation	83	3444
	1318/2004	5/11/04 - Metal, Electrical and Building Trades (Pinjarra and Kwinana Alumina Refineries and the Huntley, Del Park and Jarradale Mine-Sites) Construction Order – Replaces Order No. 944/2003.	84	3542
	1319/2004	5/11/04 - Metal, Electrical and Building Trades (Wagerup Alumina Refinery and Willowdale Mine-Site) Construction Order – Replaces Order No. 945/2003.	84	3544
	1319/2004	Correcting Order Issued—Title	85	761
Government Railways Locomotive Enginemens' Award 1973-1990 No. 13 of 1973	699/2004	08/7/2004 – 31/12/2005 – Public Transport Authority Railcar Drivers (Transperth Train Operations) Enterprise Order 2004. (This Order has been substituted by the Public Transport Authority Railcar Drivers (Transperth Train Operations) Enterprise Agreement 2006 No. AG31/2006. For details of Agreement, see Appendix XI)	84	2406
	744/2004	08/7/2004 – 31/12/2005 – Public Transport Authority Railcar Drivers (Transwa) Enterprise Order 2004	84	2406
Malting Industry Award	C64/2000	Consent Order – Period of Operation—Kirin Australia (Fitters') Enterprise Agreement 2000	82	3068
	C64/2000	20/4/01 – 11/8/01 - Kirin Australia (Fitters') Enterprise Agreement 2000	84	1466
Metal Trades (General) Award 1966, No. 13/1965	CR37/2000	16/2/00 – 31/12/00 – Vaughan Castings (Bayswater) 1999-2000 Transfer/Redundancy Order.	80	1979
	913A/2000	21/9/00 – Metals, Electrical and Building Trades (Wagerup Alumina Refinery and Willodale Mine-Site) - Replaces Order No. 1241/1995 and cancels Order Nos. 300 and 728/1996.	80	5413
	909B/2000	15/11/00 – Metal, Electrical and Building Trades (Pinjarra and Kwinana Alumina Refineries and the Huntley, Del Park and Jarradale Mine-Sites) Construction Order – Cancels Order No. 909A/2000.	81	139
	913B/2000	15/11/00 – Metal, Electrical and Building Trades (Wagerup Alumina Refinery and the Willowdale Mine-Site) Construction Order – Cancels Order No. 913A/2000.	81	140
	944/2003	5/09/03 – Metal, Electrical and Building Trades (Pinjarra and Kwinana Alumina Refineries and the Huntley, Del Park and Jarradale Mine-Sites) Construction Order – Replaces Order No. 909B/2000.	83	3367
	944/2003	Correcting Order Issued—Date of Operation	83	3445
	945/2003	5/9/03 - Metal, Electrical and Building Trades (Wagerup Alumina Refinery and the Willowdale Mine-Site) Construction Order – Replaces Order No. 913B/2000	83	3366
	945/2003	Correcting Order Issued—Travelling Allowance, Date of Operation	83	3444
	1365/2003	8/6/2004 – 7/6/2004 – Metal Trades Melville Motors (Dealership) Order 2004	84	2395, 2402
	1318/2004	5/11/04 - Metal, Electrical and Building Trades (Pinjarra and Kwinana Alumina Refineries and the Huntley, Del Park and Jarradale Mine-Sites) Construction Order – Replaces Order No. 944/2003.	84	3542
	1319/2004	5/11/04 - Metal, Electrical and Building Trades (Wagerup Alumina Refinery and Willowdale Mine-Site) Construction Order – Replaces Order No. 945/2003.	84	3544
	A9/2004	1/03/05 - Kemerton Silica Sand Redundancy Award 2004	85	995
	1319/2004	Correcting Order Issued—Title	85	761
	895/2005	21/10/05 - 20/10/06 – Millennium Inorganic Chemicals Limited Instrument Electrical Technicians Enterprise Order 2005	85	3877
Metropolitan Health Service Engineering and Building Services Enterprise Award 1999	C203/2003	Employment Conditions to apply to Plant Operators engaged prior to 1 August 2002 employed by Minister for Health	83	3415
Public Transport Authority Railcar Drivers (Transperth Train Operations) Enterprise Order No. 699 of 2004	989/2005 & 1/2006	Interpretation of Order	86	74
Security Officers No. A25/1981	1050/2000	1/8/2000 - Section 50 – Location Allowances – Replaces and rescinds General Order No. 690/1999.	80	3153
	722/2000	5/12/00 – Security Officers (North West Shelf Project) Order No. 722/2000 – Replaces Security Officers (North West Shelf Project) No. 860/1999.	80	5427
	718/2001	01/07/01 - General Order (Section 50 – Location Allowances - Replaces and rescinds General Order No. 1050/2000	81	1559
	686/2002	01/07/02 - Section 50 – Location Allowances – Replaces and rescinds General Order No. 718/2001	82	1185

WESTERN AUSTRALIAN INDUSTRIAL GAZETTE

INDUSTRIAL RELATIONS ACT 1979—AWARDS AFFECTED BY ORDERS—*continued*

Award Title	Order Number	Date of Operation and Provisions	Reference	
			Vol	Page
Security Officers No. A25/1981— <i>continued</i>	570/2003	01/07/03 – General Order (Section 50 – Location Allowances – Replaces and rescinds General Order No. 686/2002)	83	1657
	696/2004	01/07/04 - General Order (Section 50 – Location Allowances - Replaces and rescinds General Order No. 570/2003)	84	2145
	458/2005	01/07/05 - General Order (Section 50 – Location Allowances - Replaces and rescinds General Order No. 696/2004)	85	1893
	59/2006	01/07/06 - General Order (Section 50 – Location Allowances - Replaces and rescinds General Order No. 458/2005)	86	1471
Security Officers (North West Shelf) Order No. 722/2000	722/2000	5/12/00 – Security Officers (North West Shelf Project) Order No. 722/2000 – Replaces Security Officers (North West Shelf Project) No. 860/1999.	80	5427
	718/2001	01/07/01 - Section 50 – Location Allowances - Replaces and rescinds General Order No. 1050/2000	81	1559
	686/2002	01/07/02 - Section 50 – Location Allowances – Replaces and rescinds General Order No. 718/2001	82	1185
	570/2003	01/07/2003 - Section 50 – Location Allowances – Replaces and rescinds General Order No. 686/2002	83	1657
	696/2004	01/07/04 - General Order (Section 50 – Location Allowances - Replaces and rescinds General Order No. 570/2003)	84	2145
Vehicle Builder Award 1971 No. 9 of 1971	958/2004	28/5/2004 – 27/5/2006 – Metal Trades Melville Motors (Smash Repairs) Order 2004	84	2395

APPENDIX X

INDUSTRIAL RELATIONS ACT - AGREEMENTS AFFECTED BY ORDERS MADE UNDER SECTION 1081

(I.A. Act 1912), Section 44, 45 (I.A Act 1979) and Section 44 (I.R.Act 1979)

- Editor's Note: (1) As of 1st March, 1980, Agreements were deemed to be Consent Awards under Section 117(f) of the Industrial Arbitration Act, 1979.
 (2) \$ = Public Service Arbitrator Agreement.
 (3) This appendix has been amended to reflect Orders that affect/impinge on agreements.
 (4) For details prior to the amendments in Vol. 80, see Appendix X, Vol. 79, Part 2.
 (5) For references to registered agreements in force, refer to Appendix VI and VIII.

Industry or Calling	Order Number	Date of Operation and Provisions	Reference	
			Vol	Page
Brewery Craftsmen Agreement No. C368A/1979	C612/1991	12/3/91 - Pending determination of No. 1724/1988 - Rates of Pay to apply to Instrument Maker - Special Class	72	1650
	C612/1991	21/10/92 - Order No. C 612/1991 discontinued	72	2623
Brewery Craftsmen No.37/1972 - (Replaced by Agreement No. C368A/1979)	(S1081) CR385/1977	(Disability allowance for Workers at Canning Vale)	56	62
Clerks (Building Societies - Administrative and Clerical Officers) No. 13/1974	(S1081) C345/1974	1/2/75 - Rates of Pay, Annual Leave	55	240
	CR541/1980	11/6/81 - Order varied by Appeal to Full Bench No. 150/1981	61	1055
C.R.R.I.A. Iron Ore Production and Processing Industrial Agreement No. 10/1979	604/1995	28/7/95 - Completion - Pilbara Maintenance Work Order No. 604/1995 replaces Order No. 1676/1993	75	2626
Deckhands (Port Hedland) Agreement No. 27/1978	C680/1988	2/6/1988 - Second Tier Wage increase for Employees of Elder Prince Marine Services Pty. Ltd	68	1508
Direct Engineering Services (North West Air Conditioning) Enterprise Bargaining Agreement No. AG146/1995	C48A/1996	21/8/95 - 20/8/97 - Direct Engineering Services (North West Air Conditioning Housing Assistance Interpretation Agreement No. C48A/1996	76	1199
Dredging - Cockburn Cement (AWU) No. 22/1971	(S44) C450/1982	1/10/82 - Cockburn Cement Ltd. (Hours of Work) Order	62	2603
	Appl. No. 880/1982	23/12/82 - Order No. C450/1982 quashed by Full Bench	63	6
Dredging - Merchant Service Guild - Cockburn Cement No. 29/1972	(S44) C450/1982	1/10/82 - Cockburn Cement Ltd. (Hours of Work) Order	62	2603
	Appl. No.880/1982	23/12/82 - Order No. C450/1982 quashed by Full Bench	63	6
FAL and SDA Enterprise Agreement 1993 No. AG40/1993	C529/1993	15/12/93 - Order re cessation of industrial action and formalisation of disciplinary matters	74	130
Gas Workers (S.E.C.) No. 6/1978	(S1081) CR12/1979	Special Payment for gas fitter Class I and rate of pay for gas fitter's assistant	59	687
	(S44) CR129/1983	4/7/83 - Implementation of 38 hour week	63	1506
	(S44) No.382/1983	22/8/83 - Definitions	63	1837
Hot Briquetted Iron Project Agreement 1997-98 No. CR387/1997	CR387/1997	17/9/97 - Special Payments for construction employees at the BHP DRI-HEB Project near Port Hedland	78	1068
Iron Ore Production and Processing (Cliffs Robe River) No. 10/1979	(S1081) CR479/1977	Allowance for E.T.U. members	58	93
	(S1081) CR175/1978	20/4/78 - Responsibility allowance for building tradesman at Cape Lambert and Pannawonica	58	907
	(S1081) CR175/1978	20/4/78 - Additional allowance for tradesmen	59	853
	(S44) C105/1981	15/5/81 - Order re Fire Rescue Unit Vehicle	61	979
	Memorandum of Agreement			
	(S44) CR141/1981	30/9/81 - Rates payable to shunter/observer whilst under tuition.	61	1815
	(S44) CR90/1981	5/11/81 - Wage for Apron Feeder Train Loader	61	1794
	(S44) CR325/1981	10/11/80, 18/1/80, 11/5/81 - Wages payable to qualified cooks and horticultural tradesman	61	1299
	(S44) CR2/1982	21/8/81 - Rate of wage and provision of basic tools for Linesman "A" class	62	1025
	(S44) CR89/1981	13/11/81 - Wage rates for Townsite Serviceman	62	165
(S44) 43/1982	3/3/82 - Order re watering and spraying to be conducted on a night shift	62	453	
(S44) 43/1982	6/4/82 - Order No. C43/1982 dated March 26, 1982 cancelled	62	1023	

WESTERN AUSTRALIAN INDUSTRIAL GAZETTE

INDUSTRIAL RELATIONS ACT 1979—AGREEMENTS AFFECTED BY ORDERS—*continued*

Industry or Calling	Order Number	Date of Operation and Provisions	Reference	
			Vol	Page
Iron Ore Production and Processing (Cliffs Robe River) No. 10/1979— <i>continued</i>	(S44) CR417/1981	19/3/82 - Special rates and provisions for employees at Cape Lambert	62	757
	Order No.CR417/1981	17/5/82 - Order quashed by appeal to Full Bench No.279/1982	62	1125
	(S44) CR9/1982	29/3/82 - Additional payments	62	1035
	Order No.CR9/1982	10/6/82 - Order quashed by Appeal to Full Bench No.341/1982	62	1479
	Appeal No.341/1982	29/3/82 - Allowances for extraneous responsibilities	62	1479
	(S44) CR43B/1982	17/9/82 - Wages	62	2599
	(S44) CR517/1982	9/12/82 - Disability grouping for employees employed in the fabrication workshop at Pannawonica	63	227
	634/1988	28/10/1988 - Quashing of Order No. 1613/1987	68	2667
Iron Ore Production and Processing (Hamersley Iron Pty Ltd) Industrial Agreement No. 28/1977	604/1995	28/7/95 - Completion - Pilbara Maintenance Work Order No. 604/1995 replaces Order No. 1676/1993	75	2626
Kirin Australia (MPO) Enterprise Agreement 2003-5 Variation AG225/03	1378/2004	24/12/04 - Kirin Australia (MPO) Enterprise Agreement 2003-5 Variation Order No. 1378/04	85	241
	Printing (Suburban and Free Newspapers) Agreement	1645/1988	23/12/88 - 23/12/89 - Community Newspapers (Printing) Superannuation Order for the employees of Community Newspapers 1985) Ltd	69	681
Salaried Staff (Non-Academic) W.A.I.T. No. 17/1979	(S44) CR230/1979	31/3/80 - Rates of pay for librarians	60	810
RCR Tomlinson Ltd (Perth Foundry) Enterprise Agreement 1998 No. AG253/1998	CR37/2000	16/2/00 - 31/12/00 - Vaughan Castings (Bayswater) 1999-2000 Transfer/Redundancy Order	80	1979
St John Ambulance Australia Enterprise Agreement 1995	C404/1996	Commencement - Completion - St John Ambulance Australia Memorandum of Agreement 1997 No. C404/96	77	2049
Western Australian Police Service Enterprise Agreement for Public Service Officers 1996 No. PSA AG119/1996	P35/1996	24/10/96 - 23/10/97 - Conditions for Shift Workers in the Police Computing and Information Management Branch - Operations Section	76	4661
Work Camps Industrial Agreement No. PSA AG4/1994	P53/1997	15/6/97 - 31/12/97 - Variation to the Ministry of Justice Enterprise Agreement 1995 No. PSA AG6/1995	78	441
Zoological Gardens (Operations Employees) Enterprise Bargaining Agreement 1996 No. AG340/1996	C159/1997	23/3/1997 - Performance Criteria/Competency Standards for the Perth Zoo Horticultural Career Structure 1997	77	1755

APPENDIX X

INDUSTRIAL RELATIONS ACT - AGREEMENTS AFFECTED BY ORDERS MADE UNDER SECTION 1081

(I.A. Act 1912), Section 44, 45 (I.A Act 1979) and Section 44 (I.R.Act 1979)

- Editor's Note: (1) As of 1st March, 1980, Agreements were deemed to be Consent Awards under Section 117(f) of the Industrial Arbitration Act, 1979.
 (2) \$ = Public Service Arbitrator Agreement.
 (3) This appendix has been amended to reflect Orders that affect/impinge on agreements.
 (4) For details prior to the amendments in Vol. 80, see Appendix X, Vol. 79, Part 2.
 (5) For references to registered agreements in force, refer to Appendix VI and VIII.

Industry or Calling	Order Number	Date of Operation and Provisions	Reference	
			Vol	Page
Brewery Craftsmen Agreement No. C368A/1979	C612/1991	12/3/91 - Pending determination of No. 1724/1988 - Rates of Pay to apply to Instrument Maker - Special Class	72	1650
	C612/1991	21/10/92 - Order No. C 612/1991 discontinued	72	2623
Brewery Craftsmen No.37/1972 - (Replaced by Agreement No. C368A/1979)	(S1081) CR385/1977	(Disability allowance for Workers at Canning Vale)	56	62
Clerks (Building Societies - Administrative and Clerical Officers) No. 13/1974	(S1081) C345/1974	1/2/75 - Rates of Pay, Annual Leave	55	240
	CR541/1980	11/6/81 - Order varied by Appeal to Full Bench No. 150/1981	61	1055
C.R.R.I.A. Iron Ore Production and Processing Industrial Agreement No. 10/1979	604/1995	28/7/95 - Completion - Pilbara Maintenance Work Order No. 604/1995 replaces Order No. 1676/1993	75	2626
Deckhands (Port Hedland) Agreement No. 27/1978	C680/1988	2/6/1988 - Second Tier Wage increase for Employees of Elder Prince Marine Services Pty. Ltd	68	1508
Direct Engineering Services (North West Air Conditioning) Enterprise Bargaining Agreement No. AG146/1995	C48A/1996	21/8/95 - 20/8/97 - Direct Engineering Services (North West Air Conditioning Housing Assistance Interpretation Agreement No. C48A/1996	76	1199
Dredging - Cockburn Cement (AWU) No. 22/1971	(S44) C450/1982	1/10/82 - Cockburn Cement Ltd. (Hours of Work) Order	62	2603
	Appl. No. 880/1982	23/12/82 - Order No. C450/1982 quashed by Full Bench	63	6
Dredging - Merchant Service Guild - Cockburn Cement No. 29/1972	(S44) C450/1982	1/10/82 - Cockburn Cement Ltd. (Hours of Work) Order	62	2603
	Appl. No.880/1982	23/12/82 - Order No. C450/1982 quashed by Full Bench	63	6
FAL and SDA Enterprise Agreement 1993 No. AG40/1993	C529/1993	15/12/93 - Order re cessation of industrial action and formalisation of disciplinary matters	74	130
Gas Workers (S.E.C.) No. 6/1978	(S1081) CR12/1979	Special Payment for gas fitter Class I and rate of pay for gas fitter's assistant	59	687
	(S44) CR129/1983	4/7/83 - Implementation of 38 hour week	63	1506
	(S44) No.382/1983	22/8/83 - Definitions	63	1837
Hot Briquetted Iron Project Agreement 1997-98 No. CR387/1997	CR387/1997	17/9/97 - Special Payments for construction employees at the BHP DRI-HEB Project near Port Hedland	78	1068
Iron Ore Production and Processing (Cliffs Robe River) No. 10/1979	(S1081) CR479/1977	Allowance for E.T.U. members	58	93
	(S1081) CR175/1978	20/4/78 - Responsibility allowance for building tradesman at Cape Lambert and Pannawonica	58	907
	(S1081) CR175/1978	20/4/78 - Additional allowance for tradesmen	59	853
	(S44) C105/1981	15/5/81 - Order re Fire Rescue Unit Vehicle	61	979
	Memorandum of Agreement			
	(S44) CR141/1981	30/9/81 - Rates payable to shunter/observer whilst under tuition.	61	1815
	(S44) CR90/1981	5/11/81 - Wage for Apron Feeder Train Loader	61	1794
	(S44) CR325/1981	10/11/80, 18/1/80, 11/5/81 - Wages payable to qualified cooks and horticultural tradesman	61	1299
	(S44) CR2/1982	21/8/81 - Rate of wage and provision of basic tools for Linesman "A" class	62	1025
	(S44) CR89/1981	13/11/81 - Wage rates for Townsite Serviceman	62	165
(S44) 43/1982	3/3/82 - Order re watering and spraying to be conducted on a night shift	62	453	
(S44) 43/1982	6/4/82 - Order No. C43/1982 dated March 26, 1982 cancelled	62	1023	

WESTERN AUSTRALIAN INDUSTRIAL GAZETTE

INDUSTRIAL RELATIONS ACT 1979—AGREEMENTS AFFECTED BY ORDERS—*continued*

Industry or Calling	Order Number	Date of Operation and Provisions	Reference	
			Vol	Page
Iron Ore Production and Processing (Cliffs Robe River) No. 10/1979— <i>continued</i>	(S44) CR417/1981	19/3/82 - Special rates and provisions for employees at Cape Lambert	62	757
	Order No.CR417/1981	17/5/82 - Order quashed by appeal to Full Bench No.279/1982	62	1125
	(S44) CR9/1982	29/3/82 - Additional payments	62	1035
	Order No.CR9/1982	10/6/82 - Order quashed by Appeal to Full Bench No.341/1982	62	1479
	Appeal No.341/1982	29/3/82 - Allowances for extraneous responsibilities	62	1479
	(S44) CR43B/1982	17/9/82 - Wages	62	2599
	(S44) CR517/1982	9/12/82 - Disability grouping for employees employed in the fabrication workshop at Pannawonica	63	227
	634/1988	28/10/1988 - Quashing of Order No. 1613/1987	68	2667
Iron Ore Production and Processing (Hamersley Iron Pty Ltd) Industrial Agreement No. 28/1977	604/1995	28/7/95 - Completion - Pilbara Maintenance Work Order No. 604/1995 replaces Order No. 1676/1993	75	2626
Kirin Australia (MPO) Enterprise Agreement 2003-5 Variation AG225/03	1378/2004	24/12/04 - Kirin Australia (MPO) Enterprise Agreement 2003-5 Variation Order No. 1378/04	85	241
	Printing (Suburban and Free Newspapers) Agreement	1645/1988	23/12/88 - 23/12/89 - Community Newspapers (Printing) Superannuation Order for the employees of Community Newspapers 1985) Ltd	69	681
Salaried Staff (Non-Academic) W.A.I.T. No. 17/1979	(S44) CR230/1979	31/3/80 - Rates of pay for librarians	60	810
RCR Tomlinson Ltd (Perth Foundry) Enterprise Agreement 1998 No. AG253/1998	CR37/2000	16/2/00 - 31/12/00 - Vaughan Castings (Bayswater) 1999-2000 Transfer/Redundancy Order	80	1979
St John Ambulance Australia Enterprise Agreement 1995	C404/1996	Commencement - Completion - St John Ambulance Australia Memorandum of Agreement 1997 No. C404/96	77	2049
Western Australian Police Service Enterprise Agreement for Public Service Officers 1996 No. PSA AG119/1996	P35/1996	24/10/96 - 23/10/97 - Conditions for Shift Workers in the Police Computing and Information Management Branch - Operations Section	76	4661
Work Camps Industrial Agreement No. PSA AG4/1994	P53/1997	15/6/97 - 31/12/97 - Variation to the Ministry of Justice Enterprise Agreement 1995 No. PSA AG6/1995	78	441
Zoological Gardens (Operations Employees) Enterprise Bargaining Agreement 1996 No. AG340/1996	C159/1997	23/3/1997 - Performance Criteria/Competency Standards for the Perth Zoo Horticultural Career Structure 1997	77	1755

APPENDIX XII

COAL INDUSTRY TRIBUNAL—AGREEMENTS IN FORCE

Editor's Note For all amendments, references to cancelled or replaced agreements prior to Vol. 82, see Appendix XII, Vol. 81, Part 2.

Title, Industry or Calling	Area Governed	Date of Operation	No. of Agreement	Date Delivered	Reference	
					Vol.	Page
Collie District Deputies (Smelter Coal Supply) Industrial Relations	South-West Land Division	3 Oct., 1984		3/10/84	64	2069
Colliery Staffs (Smelter Coal Supply) Industrial Relations	South-West Land Division	3 Oct., 1984		3/10/84	64	2069
Ewington Agreement	Civilworks at Ewington Mine	24 Nov., 1995	20 of 1995	24/11/95	76	608
Griffin Coal (Maintenance) Enterprise Bargaining Agreement 2005 – 2008, The (Replaces previous Griffin Coal ... Agreement 2001 – 2004, The)	Griffin Coal Mining Co. Collie Coal Basin	1 Oct., 2005 – 30 Sept., 2008	9 of 2005	18/11/05	86	165
Griffin Coal Mining Limited Night Shift (Muja) Operations – Deputies Agreement 1987	South-West Land Division	19 Oct., 1987	36 of 1987	18/12/87	68	350
Griffin Coal Mining Company Ltd Night Shift (Muja) Operations – Engineers Agreement 1987	South-West Land Division	19 Oct., 1987	27 of 1987	18/12/87	68	358
Griffin Coal Mining Limited Shift (Muja) Operations - Staff Agreement 1987	South-West Land Division	18 Dec., 1987	35 of 1987	18/12/87	68	351
Griffin Coal (Production) Enterprise Agreement 2005 – 2008, The (Replaces previous Griffin Coal ... Agreement 2001 – 2004, The, No. 1/2002)	Griffin Coal Mining Company Pty Ltd in the Collie Coal Basin	10 July, 2005 – 30 June, 2008	10 of 2005	18/11/05	86	179
Griffin Coal (Production) Enterprise Agreement 2001 – 2004, The (Replaced by Griffin Coal ... Agreement 2005 - 2008, The, No. 10/2005).	Griffin Coal Mining Co. Collie Basin Coal	1 June, 2001 – 13 June, 2004 Amended - No. 3/2005 (Interpretation of CI 12 of the Agreement)	1 of 2002 ...	12/03/02 26/07/05	Not For Publication 86 196	
Metal Trades (Smelter Coal Supply) Industrial Relations	South-West Land Division	3 Oct., 1984		3/10/84	64	2069
Miners (Smelter Coal Supply) Industrial Relations	South-West Land Division	3 Oct., 1984		3/10/84	64	2069
Wesfarmers Coal/AMWU Employment Agreement	Wesfarmers Coal Limited	13 Dec., 1999 – 30 June, 2000	15 of 1999	20/12/99	80	294
Wesfarmers Coal/CMIU Reduction of Short Term Absences Agreement	Wesfarmers Coal Limited	1 Nov., 1999 – 31 Dec., 2000	1 of 2000	31/3/2000	80	2760
Wesfarmers Coal/Coal Miners' Union – Short Fixed Term Employees Agreement No. 2	Wesfarmers Coal Limited	1 Jan., 2000 – 31 Dec., 2001	14 of 1999	25/11/99	80	295
Wesfarmers Coal/Coal Miners' Union -Short Fixed Term Employees Agreement	Wesfarmers Coal Limited	20 July 1999	4 of 1999	20/7/99	79	2274
Wesfarmers Coal/Coal Miners' Union -Short Fixed Term Employees Agreement No. 3	Wesfarmers Coal Limited	1 Nov., 2000 – 3 Mar., 2001	6 of 2000	1/11/00	80	5699
Wesfarmers Coal Limited (Collieries Staff Association) Agreement 1999-2001 (Replaces & Cancels Western Collieries Ltd (Staff) Agreement 1995 No. 6/1995 and Western Collieries (Staff) Agreement 1997 No. 10/1996)	Wesfarmers Coal Limited	10 Aug., 1999 - 20 Aug., 2001 Amended - No. 1593/2001 (Wesfarmers Premier Coal Limited ceased to be party to the Agreement)	6 of 1999 ...	10/8/99 26/9/01 26/9/01	79 81 81	2677 2562 2562
Wesfarmers Coal Limited Enterprise Agreement – Operations 1998 (Replaces Wesfarmers Coal Limited Enterprise Agreement – Operations 1996)	Wesfarmers Coal Limited	21 December 1998	2 of 1998 & 5 of 1998	21/12/98	79	345
Wesfarmers Coal Limited (Maintenance) Enterprise Agreement 2001 (Replaces Wesfarmers Coal Limited Enterprise Agreement – Maintenance – 1998-2001 No. 4/1998)	Wesfarmers Coal Limited	14 Jan., 2001 – 10 Jan., 2004	3 of 2001	23/02/01	81	1069

WESTERN AUSTRALIAN INDUSTRIAL GAZETTE

COAL INDUSTRY TRIBUNAL—AGREEMENTS IN FORCE—*continued*

Title, Industry or Calling	Area Governed	Date of Operation	No. of Agreement	Date Delivered	Reference	
					Vol.	Page
Wesfarmers Coal Limited (Maintenance) Progress 2000 Agreement	Wesfarmers Coal Limited	27 Aug., 2000 - until altered, superseded or cancelled by the agreement of the two parties	4 of 2001	23/02/01	81	1079
Wesfarmers Premier Coal Limited Enterprise Agreement (Operations) 2004 – 2007 (Replaces the following: Wesfarmers Premier Coal Limited Enterprise Agreement 2004-2007; Wesfarmers Premier Coal Limited (Operations) Enterprise Agreement 2001-2004; Wesfarmers Coal Limited Coal Miners' Industrial Union of WA Competencies Agreement 2001; and Coal Mining Industry (Miners) Award 1990 as amended.	Collie Coal Basin	10 Dec., 2004 – 8 Dec., 2007	10 of 2004	10/12/04	Not For Publication	
Western Collieries Enterprise Agreement 1992	Whole of State	14 July 1992	11 of 1992	14/7/92	72	2934
Western Collieries Enterprise Agreement —Maintenance	Whole of State	28 Apr., 1996	12 of 1996	16/12/96	78	552
		Amended - Order No. 8/1998 (Interpretation of Agreement	...	13/7/98	78	3597
		No. 1346/1998 (S.41(7) – Notice of Retirement – Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers – Western Australian Branch)	...	20/8/98	78	3342
Western Collieries Ltd Enterprise Agreement —Operations	Whole of State	6 May 1996	11 of 1996	16/12/96	78	555

APPENDIX XIII

RAILWAY CLASSIFICATION BOARD—AWARDS IN FORCE

Editor's Note: For all amendments, references to cancelled or replaced awards prior to Vol. 81, see Appendix XIII, Vol. 80, Part 2.

Title	Area Governed	Date of Operation	No. of Award	Date Delivered	Reference	
					Vol.	Page
Railway Officers Award 1985 No. RCB A1/1985. (Cancelled by Order No. 964/2005 dated 2/12/05 (85WAIG4016). For prior details, see Vol. 85, Part 2)						



APPENDIX XIV

**Awards, Orders, or Industrial Agreements varied by Orders made under
S.18(1)(a) of The Employment Dispute Resolution Act 2008**

As at the date of publication, no orders varying an existing award, order or industrial agreement have been made.

APPENDIX XV

Organisation of Employees and Organisation of Employers registered under the Industrial Relations Act, 1979.

As at 30 June, 2010

Organisation of Employees and Employers with names of the Primary Contact and Addresses.

Reg. No. I.R. Act	No. of Members		Name of Union, Association or Organisation	Primary Contact	Registered Office	Section 71 Declarations Reference	
	Emp-loyers	Emp-loyees				Vol.	Page
255	151	0	Association of Independent Schools of Western Australia (Inc)	V Gould	Suite 3, 41 Walters Drive Herdsman Business Park OSBORNE PARK 6017		
209	0	475	Australian Institute of Marine and Power Engineers, Western Australian Union of Workers	C Blackmore	1/169 Stock Road PALMYRA 6157		
263	0	3559	Australian Medical Association (WA) Incorporated	P Jennings	14 Stirling Highway NEDLANDS 6009		
107	37	0	Baking Industry Employers' Association of Western Australia	R B Adams	36 Brisbane Street PERTH 6000		
194	0	2	Building Trades Association of Unions of Western Australia (Association of Workers)	K N Reynolds	82 Royal Street EAST PERTH 6004		
249	0	7011	Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch	L McLaughlan	U 24 / 257 Balcatta Road BALCATT A 6021	75	2693
270	91	0	Community Employers WA	J Lawton	456 Hay Street PERTH WA 6000		
248	10	0	Construction Contractors Association of Western Australia	M Stewart	104 Grant Street COTTESLOE 6011		
137	0	102	Electrical Trades Union of Workers of Australia (Western Australian Goldfields' Sub-Branch), Kalgoorlie	L McLaughlan	C/- CEEIPU 24/257 Balcatta Road BALCATT A 6021		
189	0	4865	Health Services Union of Western Australia (Union of Workers)	D Hill	8 Coolgardie Terrace PERTH 6000		
230	0	126	Licensed Car Salesmen's Association, Union of Workers, of Western Australia	No Current Official	9-11 Brewer Street EAST PERTH 6004		
266	0	23563	Liquor, Hospitality and Miscellaneous Union, Western Australian Branch	D Kelly	61 Thomas Street SUBIACO 6008	81	398
22	1372	0	Master Builders' Association of Western Australia (Union of Employers) Perth	M G McLean	Level 4, 35-37 Havelock Street WEST PERTH 6005		
17	18	0	Master Plasterers' Association of Western Australia Union of Employers	K J Spalding	8 Albert Street SOUTH PERTH 6151		
173	119	0	Meat and Allied Trades Federation of Australia (Western Australian Division) Union of Employers, Perth	P Hopkins	61 Mugul Road MALAGA 6944		
264	0	1373	Media, Entertainment and Arts Alliance of Western Australia (Union of Employees)	M R Sinclair-Jones	123 Claisebrook Road PERTH 6000	90	133
59	47	0	Metal Industries Association (Industrial Union of Employers) of W.A.	No Current official	190 Hay Street EAST PERTH 6004		
237	0	9	Mining Unions Association of Employees of Western Australia (Iron Ore Industry)	D Bartlam	PO Box 6289 EAST PERTH 6004		
254	0	137	Real Estate Salespersons Association of Western Australia (Inc.)	Vacant	None Specified		
269	328	0	Restaurant and Catering Industry Association of Employers of Western Australia Inc.	G A Bower	301 Fitzgerald Street WEST PERTH 6005		
207	0	0	Salaried Pharmacists' Association Western Australian Union of Workers	D.P Hill	8 Coolgardie Terrace PERTH 6000		
176	0	24	Sales Representatives' and Commercial Travellers' Guild of W.A. Industrial Union of Workers	J W Bullock	5th Floor, 25 Barrack Street PERTH 6000		
215	0	2870	Seamen's Union of Australia, West Australian Branch	C Cain	2nd Floor, 2-4 Kwong Alley NORTH FREMANTLE 6159	67	482

WESTERN AUSTRALIAN INDUSTRIAL GAZETTE

Organisation of Employees and Organisation of Employers registered
under the Industrial Relations Act, 1979—*continued*

Reg. No. I.R. Act	No. of Members		Name of Union, Association or Organisation	Primary Contact	Registered Office	Section 71 Declarations Reference	
	Emp-loyers	Emp-loyees				Vol.	Page
260	0	579	The Association of Professional Engineers, Australia (Western Australian Branch) Organisation of Employees	R Sinton	Suite 1/12-14 Thelma Street WEST PERTH 6005	73	2665
252	0	27	The Australian Collieries' Staff Association, Western Australian Branch	G B Herold	Level 1, 491 Kent Street SYDNEY 2000		
268	0	489	The Australian Maritime Officers Union - Western Area Union of Employees	D Pearson	1 High Street FREMANTLE 6160	83	3074
133	0	16590	The Australian Nursing Federation, Industrial Union of Workers Perth	M A Olson	260 Pier Street PERTH 6000	60	1057
265	0	1264	The Australian Rail, Tram and Bus Industry Union of Employees, West Australian Branch	P Woodcock	2/10 Nash Street PERTH 6000		
158	0	5149	The Australian Workers' Union, West Australian Branch, Industrial Union of Workers	S Price	Level 4, 25 Barrack Street PERTH 6000	61	631
259	0	10995	The Automotive, Food, Metals, Engineering, Printing & Kindred Industries Union of Workers - Western Australian Branch	S J McCartney	121 Royal Street EAST PERTH 6004	79	3569
9	0	109	The Boot Trade of Western Australia Union of Workers, Perth	No Current Official	110 Charles Street PERTH 6000		
167	0	94	The Breweries and Bottleyards Employees' Industrial Union of Workers of Western Australia	R J Murphy	11/64 Bannister Road CANNING VALE 6155	90	238
246	0	15182	The Civil Service Association of Western Australia Incorporated	T B Walkington	Level 5, 445 Hay Street PERTH 6000	73	2931
2	0	407	The Coal Miners' Industrial Union of Workers of Western Australia, Collie	G N Wood	c/- Mineworkers Institute, 75 Throssell Street COLLIE 6225	73	231, 1918
267	0	9041	The Construction, Forestry, Mining and Energy Union of Workers	K Reynolds	82 Royal Street EAST PERTH 6004		
244	0	3503	The Disabled Workers Union of Western Australia	K J Trainer	78 A Collingwood Street OSBORNE PARK 6017		
226	590	0	The Electrical and Communications Association of Western Australia (Union of Employers)	K Kutasi	22 Prowse Street WEST PERTH 6005		
53	0	65	The Federated Brick, Tile and Pottery Industrial Union of Australia (Union of Workers) Western Australian Branch	J R Bainbridge	14 Prospect Road ARMADALE 6112		
39	0	198	The Federated Millers and Mill Employees' Union of Workers of Western Australia	No Current Official	5th Floor, 25 Barrack Street PERTH 6000		
219	0	321	The Food Preservers' Union of Western Australia Union of Workers	J W Bullock	5th Floor, 25 Barrack Street PERTH 6000		
164	18	0	The Footwear Repairers' Association of W.A. (Union of Employers)	R.K Cann	C/- Rodney K Cann & Co Suite 18/2nd Floor, 25 Walters Drive OSBORNE PARK 6017		
262	0	507	The Forest Products, Furnishing and Allied Industries Industrial Union of Workers, WA	S Baker	Level 4, 25 Barrack Street PERTH 6000		
198	0	3843	The Independent Education Union of Western Australia, Union of Employees	T I Howe	143 Edward Street PERTH 6000		
131	276	0	The Master Ladies' Hairdressers' Industrial Union of Employers of W.A.	J S Buckley	9th Floor, 321 Adelaide Terrace PERTH 6000		
89	185	0	The Master Painters, Decorators and Signwriters Association of Western Australia (Union of Employers)	L Hawkins	108 Caledonian Avenue MAYLANDS 6051		
200	477	0	The Master Plumbers and Gasfitters Association of Western Australia (Union of Employers)	M Thomas	108 Caledonian Avenue MAYLANDS 6051		
10	0	712	The Plumbers and Gasfitters Employees' Union of Australia, West Australian Branch, Industrial Union of Workers	L McLaughlan	U24/257 Balcatta Road BALCATT A 6021	76	4149
100	143	0	The Printing and Allied Trades Employers' Association of Western Australia (Union of Employers)	P Nieuwhof	C/- 113 Burswood Road BURSWOOD 6100		
60	0	21241	The Shop, Distributive and Allied Employees' Association of Western Australia	J W Bullock	5th Floor, 25 Barrack Street PERTH 6000		

WESTERN AUSTRALIAN INDUSTRIAL GAZETTE

Organisation of Employees and Organisation of Employers registered
under the Industrial Relations Act, 1979—*continued*

Reg. No. I.R. Act	No. of Members		Name of Union, Association or Organisation	Primary Contact	Registered Office	Section 71 Declarations Reference	
	Emp-loyers	Emp-loyees				Vol.	Page
240	0	13946	The State School Teachers' Union of W.A.(Incorporated)	D A Kelly	150-152 Adelaide Terrace EAST PERTH 6004		
35	4	0	The Western Australian Branch of the Commonwealth Steamship Owners' Association, Industrial Union of Employers (Fremantle)	A J Chapple	1a Pakenham Street FREMANTLE 6160		
20	0	20	The Western Australian Clothing and Allied Trades' Industrial Union of Workers, Perth	J W Bullock	Level 5 25 Barrack Street PERTH 6000		
183	0	26	The Western Australian Gold and Nickel Mines Supervisors Association Industrial Union of Workers	No Current Official	18 Sturt Pea Crescent KAMBALDA WEST 6444		
114	0	9914	Transport Workers' Union of Australia, Industrial Union of Workers, Western Australian Branch	J L McGiveron	Suite 302, 3rd Floor 82 Beaufort Street PERTH 6000	61	1501
242	0	708	Union of Australian College Academics, Western Australian Branch, Industrial Union of Workers	A D Needham	Building 8, Room 435, Edith Cowan University, 100 Joondalup Drive JOONDALUP 6027		
233	0	1056	United Firefighters Union of Australia West Australian Branch	None Specified	21 View Street NORTH PERTH 6006	73	2341
243	0	258	University of Western Australia Academic Staff Association	W J Ford	W2 Winthrop Tower M005, University of Western Australia 35 Stirling Highway CRAWLEY 6009		
16	0	0	W.A. Dental Technicians' and Employees' Union of Workers, Perth	D Hill	8 Coolgardie Terrace EAST PERTH 6004		
23	0	1504	West Australian Branch, Australasian Meat Industry Employees Union, Industrial Union of Workers, Perth	G J Haynes	Unit 1A, 228 Great Eastern Highway ASCOT 6104	61	631
63	0	332	West Australian Psychiatric Nurses' Association (Union of Workers)	L.K MacLeod	Suite 3, Labor Centre 82 Beaufort Street PERTH 6000		
195	0	68	Western Australian Grain Handling Salaried Officers Association (Union of Workers)	K Gray	30 Delhi Street WEST PERTH 6005		
238	500	0	Western Australian Hotels and Hospitality Association Incorporated (Union of Employers)	B Woods	38 Parliament Place WEST PERTH 6005		
271	0	1274	Western Australian Municipal, Administrative, Clerical and Services Union of Employees	A G Johnson	112 Charles Street WEST PERTH 6005		
79	0	1274	Western Australian Municipal, Road Boards, Parks and Racecourse Employees' Union of Workers, Perth	A G Johnson	112 Charles Street WEST PERTH 6005		
110	0	5632	Western Australian Police Union of Workers	K J See	639 Murray Street WEST PERTH 6005	86	402
129	0	1583	Western Australian Prison Officers' Union of Workers	J Welch	63 Railway Parade MT LAWLEY 6050		