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CUMULATIVE CONTENTS AND DIGEST APPEAR AT THE END OF THIS PUBLICATION

INDUSTRIAL APPEAL COURT—Appeals against decision of Commission under s.33S of the Police Act 1892—

[2010] WASCA 153

JURISDICTION	:	WESTERN AUSTRALIAN INDUSTRIAL APPEAL COURT
CITATION	:	LAURENT -v- COMMISSIONER OF POLICE [2010] WASCA 153
CORAM	:	PULLIN J BUSS J LE MIERE J
HEARD	:	14 JUNE 2010
DELIVERED	:	14 JUNE 2010
PUBLISHED	:	4 AUGUST 2010
FILE NO/S	:	IAC 1 of 2010
MATTER	:	An appeal under s 33S of the <i>Police Act 1892</i> and s 90 of the <i>Industrial Relations Act 1979</i>
BETWEEN	:	GERARD JEAN-NOEL LAURENT Appellant AND COMMISSIONER OF POLICE Respondent

ON APPEAL FROM:

Jurisdiction	:	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
Coram	:	BEECH CC SCOTT C HARRISON C
Citation	:	LAURENT v COMMISSIONER OF POLICE [2009] WAIRC 01350

Catchwords:

Industrial Appeal Court - Time for instituting appeal - No power to extend time in which to appeal - Appeal incompetent

Legislation:

Industrial Relations Act 1979 (WA), s 90

Interpretation Act 1984 (WA), s 61

Police Act 1892 (WA), s 33P, s 33S

Result:

Appeal dismissed

Category: B

Representation:**Counsel:**

Appellant : In person
Respondent : Ms D P Scaddan

Solicitors:

Appellant : In person
Respondent : Western Australian Police Service

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

Saldanha v Fujitsu Australia Ltd [2009] WASCA 119

1 **PULLIN J:** I agree with Le Miere J.

2 **BUSS J:** I agree with Le Miere J.

3 **LE MIERE J:** On 14 June 2010 the Court dismissed this appeal and stated that our reasons for decision would be published subsequently. These are my reasons.

Decision appealed

4 The respondent, the Commissioner of Police, removed the appellant from office as a non-commissioned police officer pursuant to s 8(1) of the *Police Act 1892* (WA) (the Police Act). The appellant appealed to the Western Australian Industrial Relations Commission under s 33P of the Police Act on the ground that the decision was harsh, oppressive or unfair. On 18 December 2009 the Commission ordered that the appeal be dismissed. On 12 January 2010 the appellant filed a notice of appeal from the decision of the Commission. On 14 June 2010 the Court heard argument on the preliminary issue of whether the appellant has a right of appeal to the Court. The respondent submitted that the appellant's notice of appeal was filed out of time and the appeal is incompetent.

Removal of police officer - appeal rights

5 Part IIB of the Police Act entitled 'Removal of Members' sets out a process for removing members of the police force and subsequent appeal rights to the Commission and the Court. Section 33P entitles a police officer removed from office under s 8 to appeal to the Commission in relation to alleged unfair removal action. Section 33S sets out in tabular form a range of provisions from the *Industrial Relations Act 1979* (WA) (the IR Act) that apply, with necessary and appropriate modifications, to an appeal and a determination of an appeal instituted under pt IIB. Two items listed are:

Section 86	But not in relation to costs and expenses other than expenses of witnesses
Section 90	A reference in subsection (1) to 'any decision of the President, the Full Bench, or the Commission in Court Session' is to be read as if it were a reference to 'a decision of the Commission under s 33U of the Police Act 1892'.

6 Section 33U of the Police Act provides that if the Commission determines the appeal in favour of the appellant the primary remedy is for

the Commission to order that the appellant's removal from office is to be and to be taken to have always been of no effect. The effect of this is that the police officer will effectively be reinstated from the date of removal with full entitlements. If the Commission 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 that the appellant's removal from office is to be and to be taken to have always been of no effect order the Commissioner to pay the appellant an amount of compensation for loss or injury caused by the removal.

7 The appellant lodged his notice of appeal against the decision of the Commission to dismiss his appeal brought under s 33P of the Police Act. The respondent submitted that on one view an appeal to this Court only lies where the Commission has determined that the Commissioner's decision to take removal action was harsh, oppressive or unfair, and not where the Commission has determined that the Commissioner's decision to take removal action was not harsh, oppressive or unfair. However, the Court did not hear argument on that issue and it is unnecessary to determine it for the purposes of resolving this appeal.

Time for instituting appeal

8 Section 90(2) of the IR Act provides that an appeal under that section shall be instituted within 21 days from the date of the decision against which the appeal is brought. The decision against which the appeal is brought was made on 18 December 2009. The appellant submitted that the appeal was brought within time because in computing the last day for instituting an appeal the day on which the decision was made and public holidays shall not be included in the period of 21 days.

9 The *Interpretation Act 1984* (WA) (the Interpretation Act) s 61 provides that if a thing falls to be done on a Saturday, Sunday or public holiday it may be done on the next following day, that is not a Saturday, Sunday or public holiday. In particular, s 61(1)(e) provides:

where the time limited for the doing of a thing expires or falls upon an excluded day, the thing may be done on the next day that is not an excluded day

Section 61(1)(h) provides:

Where an act or proceeding is directed or allowed to be done or taken on a certain day, or on or before a certain day, then, if that day is an excluded day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day that is not an excluded day.

Section 61(2) provides:

For the purposes of this section, excluded day means Saturday, Sunday, public service holiday, and a bank holiday or public holiday throughout the State or in that part of the State which is relevant to the event, act, thing or proceeding concerned.

10 Section 61(1) of the Interpretation Act does not provide that Saturdays, Sundays or public holidays are to be disregarded in calculating the period within which an appeal is to be instituted or the period within which something is to be done.

11 *Saldanha v Fujitsu Australia Ltd* [2009] WASCA 119 concerned an appeal to this court from a decision of the Full Bench of the Western Australian Industrial Relations Commission. The Full Bench decision was made on 23 December 2008. The appellant filed a notice of appeal on 5 March 2009. The Industrial Appeal Court struck out the appeal as incompetent. Wheeler JA, with whom Pullin JA and I agreed, said:

By s 90(2) of the IR Act, it is provided that an appeal from a decision of the Full Bench to the Industrial Appeal Court 'shall be instituted within 21 days from the date of the decision against which the appeal is brought'. Having regard to s 61(1)(b), (e) and (h) of the Interpretation Act 1984 (WA), it appears to me that the last day on which the notice of appeal could have been filed was 19 January 2009 (that is, 21 days from 23 December excluding that day, the Christmas and New Year public holidays and the weekend preceding the 19th) [2].

12 Upon further reflection, it is not correct that the Christmas and New Year public holidays and the weekends should be excluded from the period of 21 days within which the appeal must be brought. Section 61(1)(e) and (h) do not provide that excluded days are to be excluded when computing 21 days from the date of the decision against which the appeal is brought. Section 61(1)(e) provides that where the time limited for the doing of the thing expires or falls upon an excluded day, the thing may be done on the next day that is not an excluded day. Similarly s 61(1)(h) does not provide for excluded days to be disregarded when computing the relevant period of time. In *Saldanha* it was not necessary to decide that point because the notice of appeal was filed more than two months after the decision sought to be appealed from and the time for instituting an appeal had expired whether public holidays and other excluded days were included or not.

13 In this case the decision sought to be appealed from was made on 18 December 2009. Having regard to s 61(1)(b) of the Interpretation Act 18 December 2009 is not to be included in the period of 21 days when computing 21 days from the date of the decision against which the appeal is brought. Accordingly, the last day on which the notice of appeal could have been filed was 8 January 2010. As I have said the appellant did not file his notice of appeal until 12 January 2010. The notice of appeal filed by the appellant is out of time unless the Court has power to extend the time and exercises that power.

14 In *Saldanha* the court held that the Court does not have power to extend the time within which to appeal. Wheeler JA, with whom Pullin JA and I agreed, said:

It has often been noted that the right of appeal is a creature of statute. The rights that an appellant has are therefore those conferred by the statute. Further, the Industrial Appeal Court is itself a statutory court having a limited jurisdiction. There is in the IR Act no express power to extend the time within which an appellant may appeal to the Industrial Appeal Court. The relatively simple question which arises therefore is whether any power to extend time may be implied from the IR Act. In my view, it cannot [5].

15 The right to appeal from a decision of the Commission in relation to removal action relating to a police officer is conferred by s 90 of the IR Act and s 33S of the Police Act. A power to extend time cannot be implied from the Police Act or the IR Act. This court does not have power to extend the time within which the appellant may institute an appeal from the decision sought to be appealed against. The appeal was not instituted within time and is incompetent.

2010 WAIRC 01066

AGAINST THE DECISION OF THE COMMISSION IN MATTER NO. APPL 135 OF 2008

GIVEN ON 18 DECEMBER 2009

WESTERN AUSTRALIAN INDUSTRIAL APPEAL COURT

PARTIES

GERALD JEAN-NOEL LAURENT

APPELLANT

-v-

COMMISSIONER OF POLICE

RESPONDENT**CORAM**

PULLIN J

BUSS J

LE MIERE J

DATE HEARD

MONDAY, 14 JUNE 2010

DATE DELIVERED

WEDNESDAY, 4 AUGUST 2010

FILE NO/S

IAC 1 OF 2010

CITATION NO.

2010 WAIRC 01066

Result

Appeal Dismissed

Representation**Appellant**

Mr G Laurent (In person)

Respondent

Ms D Scaddan (of Counsel) for the Respondent

Order

HAVING HEARD Mr G Laurent on his own behalf and Ms D Scaddan (of Counsel), on behalf of the Respondent THE COURT HEREBY ORDERS THAT:-

The appeal be dismissed.

[L.S.]

(Sgd.) J SPURLING,
Clerk of Court.

FULL BENCH—Appeals against decision of Commission—

2010 WAIRC 01068

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

FULL BENCH

CITATION : 2010 WAIRC 01068
CORAM : THE HONOURABLE J H SMITH, ACTING PRESIDENT
 ACTING SENIOR COMMISSIONER P E SCOTT
 COMMISSIONER S M MAYMAN
HEARD : THURSDAY, 21 OCTOBER 2010
DELIVERED : WEDNESDAY, 27 OCTOBER 2010
FILE NO. : FBA 16 OF 2010
BETWEEN : PATRICK FELS
 Appellant
 AND
 DEPARTMENT OF AGRICULTURE AND FOOD
 Respondent

ON APPEAL FROM:

Jurisdiction : Public Service Appeal Board
Coram : Commissioner S J Kenner – Chairman
 Mr C Floate – Board Member
 Mr J Serich – Board Member
Citation : [2010] WAIRC 00745; (2010) 90 WAIG 1485
File No. : PSAB 29 of 2009

CatchWords : Industrial law (WA) - Appeal against decision of the Public Service Appeal Board - No jurisdiction of the Full Bench to hear appeals from Public Service Appeal Board under the *Industrial Relations Act 1979* (WA) s 49, s 49(1), s 49(2), Division 2 of Part IIA, s 80H, s 80I; *Public Sector Management Act 1994* (WA) s 86(3)(b), s 86(3)(b)(vi)
Result : Appeal dismissed
Representation:
 Appellant : In person
 Respondent : Mrs L Paxman (of counsel)

Reasons for Decision

THE FULL BENCH:

- 1 This is an appeal against the whole of the decision to dismiss an appeal by the Public Service Appeal Board given on 5 August 2010 in matter number PSAB 29 of 2009. The appeal to the Public Service Appeal Board was brought under s 86(3)(b)(vi) of the *Public Sector Management Act 1994* (the PSMA) against a decision by the respondent to terminate the employment of the appellant.
- 2 Pursuant to s 78(1) of the PSMA, an employee who is aggrieved by a decision made in the exercise of a power under s 86(3)(b) of the PSMA 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* (the IR Act) and that Public Service Appeal Board has jurisdiction to hear and determine the appeal under and subject to Division 2 of Part IIA.
- 3 The appeal against the decision to dismiss the appellant was heard by the Public Service Appeal Board under s 80I of the IR Act. The Public Service Appeal Board is constituted under the IR Act under s 80H of the IR Act whereby the Public Service Appeal Board is established within and is part of the Commission. The Board consists of three members.
- 4 The appeal from the decision of the Public Service Appeal Board to the Full Bench was brought on for hearing by the Full Bench for the determination of a preliminary issue whether the Full Bench constituted under s 49 of the IR Act has jurisdiction to hear an appeal from a decision of the Public Service Appeal Board. Pursuant to s 49(1) and (2) of the IR Act, an appeal lies to the Full Bench from a decision of the Commission constituted by a Commissioner. The issue was raised by the Full Bench in this matter as like other courts and tribunals, the Full Bench has a duty to decide whether or not it has jurisdiction: *R v Blakely; ex parte The Association of Architects, Engineers, Surveyors and Draughtsmen of Australia* (1950) 82 CLR 54, 69;

Khatri v Price (1999) 166 ALR 380 [15]; *R v Judges of the Federal Court; ex parte The Western Australian National Football League (Inc)* (1979) 143 CLR 190, 202 - 204, 225 - 226, 228 and 230; *Springdale Comfort Pty Ltd v BTAUWA* (1986) 67 WAIG 325, 330 and *Crown Scientific Pty Ltd v Clarke* [2007] WAIRC 00334 [96] - [97]; (2007) 87 WAIG 598, 609 - 610.

- 5 Whether the Full Bench has jurisdiction to hear an appeal from a decision of a Public Service Appeal Board has been considered comprehensively in two decisions of the Full Bench. The issue was first raised in *State Government Insurance Commission v Johnson* (1996) 76 WAIG 4142. In that matter the Full Bench held that there was no right of appeal to the Full Bench against the decision of the Public Service Appeal Board. The issue arose again in 2009 in *Hill v Commissioner, Corrective Services, Department of Corrective Services* (2009) 89 WAIG 417. In *Hill* the Full Bench found that the decision in *Johnson* was correctly decided.
- 6 When this matter came on for hearing before this Full Bench on 21 October 2010 the appellant was invited to make a submission to the Full Bench as to why the decisions of the Full Bench in *Johnson* and *Hill* should not be applied by this Full Bench.
- 7 The appellant who was unrepresented, argued *Hill* and *Johnson* should not be followed. He made a very simple submission that he was of the opinion that the Full Bench has the ability to critically analyse whether the Public Service Appeal Board erred in making the decision to dismiss his appeal against his dismissal. The appellant stated that he was of the view that the decision of the Public Service Appeal Board was unequivocally wrong and that he was fully justified in filing an appeal against the decision of the Public Service Appeal Board. He also contended that it was fundamentally unreasonable to claim that the Public Service Appeal Board is a different entity to the Commission constituted by a Commissioner within the meaning of s 49(1) of the IR Act.
- 8 Whether an appeal from a decision of the Public Service Appeal Board to the Full Bench lies, is not a matter which involves any consideration of the merits of an appeal or any review of whether the decision made by the Public Service Appeal Board was wrong. The issue turns solely on a matter of statutory construction as the Public Service Appeal Board and Full Bench are creatures of statute.
- 9 The question of whether the decision of the Public Service Appeal Board may be appealed to the Full Bench was extensively considered in *Johnson* and in *Hill*. In both matters all members of each Full Bench were unanimously of the view that the effect of s 49 of the IR Act, is that no appeal lies to the Full Bench from a decision of the Public Service Appeal Board because the Public Service Appeal Board is not the Commission constituted by a Commissioner within the meaning of s 49(1) and s 49(2) of the IR Act. The Full Court of the Supreme Court of Western Australia has also observed that no appeal lies from the Public Service Appeal Board to the Full Bench under s 49(2) of the IR Act: *Ex parte Minister for Corrective Services* (1993) 9 WAR 534, 540 and *Ex parte Titelius v Public Service Appeal Board* [1999] WASCA 19 [4].
- 10 For these reasons the Full Bench made an order on 21 October 2010 that the appeal should be dismissed.

2010 WAIRC 01061

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

PATRICK FELS

APPELLANT

-and-

DEPARTMENT OF AGRICULTURE AND FOOD

RESPONDENT

CORAM

FULL BENCH

THE HONOURABLE J H SMITH, ACTING PRESIDENT

ACTING SENIOR COMMISSIONER P E SCOTT

COMMISSIONER S M MAYMAN

DATE

THURSDAY, 21 OCTOBER 2010

FILE NO/S

FBA 16 OF 2010

CITATION NO.

2010 WAIRC 01061

Result	Appeal dismissed
Appearances	
Appellant	In person
Respondent	Mrs L Paxman (of counsel)

Order

This appeal having come on for hearing before the Full Bench on 21 October 2010, and having heard Mr P Fels on his own behalf as the appellant, and Mrs L Paxman (of counsel), on behalf of the respondent, and the Full Bench having determined that its reasons for decision will issue at a future date, 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.

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

[L.S.]

FULL BENCH—Unions—Application for Alteration of Rules—

2010 WAIRC 00996

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

FULL BENCH

CITATION	:	2010 WAIRC 00996
CORAM	:	THE HONOURABLE J H SMITH, ACTING PRESIDENT CHIEF COMMISSIONER A R BEECH COMMISSIONER J L HARRISON
HEARD	:	MONDAY, 11 OCTOBER 2010
DELIVERED	:	MONDAY, 18 OCTOBER 2010
FILE NO.	:	FBM 11 OF 2010
BETWEEN	:	THE BREWERIES AND BOTTLEYARDS EMPLOYEES' INDUSTRIAL UNION OF WORKERS OF WESTERN AUSTRALIA
		Applicant
		AND
		(NOT APPLICABLE)
		Respondent

CatchWords	:	Industrial Law (WA) - Application pursuant to s 62(2) of the <i>Industrial Relations Act 1979</i> (WA) for the Full Bench to authorise alteration to registered rules as a matter referred to in s 71(5) - <i>Industrial Relations Act 1979</i> (WA) s 55(4), s 55(4)(b), s 55(4)(c), s 55(4)(d), s 55(4)(e), s 62, s 62(2), s 62(4), s 71, s 71(2), s 71(3) and s 71(5)(a).
Result	:	Application granted
Representation:		
Applicant	:	Mr D H Schapper (of counsel)

Reasons for Decision

THE FULL BENCH:

The Application

- The Full Bench has before it an application 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 issue a declaration pursuant to s 71 of the Act. The first step towards the issue of a s 71 certificate was completed when the Full Bench of the Commission on 8 March 2010 issued a declaration pursuant to s 71(2) and s 71(3) of the Act ([2010] WAIRC 00107; (2010) 90 WAIG 239) declaring 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.
- 3 The second step is prescribed in s 71(5)(a) of the Act which requires the rules of the applicant to be altered pursuant to s 62 of the Act to provide 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.
- 4 In the application that is now before the Full Bench the applicant seeks to add a new r 10(6) which will if authorised by the Full Bench satisfy the requirements of s 71(5)(a) of the Act. Proposed r 10(6) provides as follows:
- (6) Each office within the union may, from such time as the Committee of Management may determine, be held by the person who, in accordance with the rules of The Breweries & Bottleyards Employees' Industrial Union of Workers of Western Australia as registered under the Fair Work (Registered Organisations) Act holds the corresponding office in that body.
- 5 The application before the Full Bench is unopposed.
- 6 At the conclusion of the hearing on 11 October 2010, the Full Bench informed the applicant that the proposed alteration to rule 10 would be granted. On 11 October 2010, an order was made that the Registrar be authorised to register an alteration to the rules of the applicant by adding a new sub-rule (6) to r 10 as set out in the amendment schedule to the application filed on 27 August 2010.
- 7 The following paragraphs set out in these reasons set out the reasons why we concluded that the order should be made.

The Applicant's Rules about Alteration

- 8 Section 62(2) of the Act prohibits the Registrar from registering any alteration to the rules of an organisation that is a matter referred to in s 71(5) of the Act unless so authorised by the Full Bench. 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 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.

Statutory Requirements Met

- 9 The first matter the Full Bench must be satisfied of is the proposed rule alteration must be authorised by the organisation in accordance with its rules. The authority to alter the rules of the applicant is found in r 42 – Alteration of Rules. Rule 42 provides:

- (1) The Union shall have the right to make Rules for its own use and guidance. Such Rules may be amended, added to, varied or repealed.
 - (2) A member may by notice in writing deliver to the Secretary a notice of motion of proposed alterations to the Rules and the reasons therefor. The notice shall be put to the next General or Special Meeting of the Union.
 - (3) No amendment, addition to, variation or repeal of these Rules shall be made unless a notice of the proposed alteration, and the reasons therefor, is sent to each member at the address recorded in the Union's books.
 - (4) In the notice referred to in paragraph (3) members shall be informed that they or any of them may object to the proposed alteration or any of them by attending the general meeting and speaking and voting thereat and/or by forwarding a written objection to the Registrar to reach him no later than 21 days after the date of the Special Meeting of the Union referred to in paragraph (2) above.
 - (5) For the purposes of this Rule the period of notice before the meeting which is to consider the proposed alterations shall be at least 10 clear days. The notice shall contain the notice of motion, each of the proposed amendments, the reasons therefor and the information referred to in paragraph (4) hereof and the place, date and time of the meeting.
- 10 The facts supporting the application to authorise the addition of a new r 10(6) are set out in a notice of meeting which is attached as Schedule A to the application and in a statutory declaration made by the secretary of the applicant, Ronald James Murphy, sworn on 26 August 2010. The evidence of Mr Murphy and the notice of meeting dated 16 July 2010 established the following relevant matters:
- (a) The addition of r 10(6) of the rules of the applicant was considered by a special meeting of the applicant on 5 August 2010.
 - (b) Prior to the special meeting of the applicant being held, the secretary of the applicant sent a copy of the notice of meeting dated 16 July 2010 to the registered mailing address of all members by post on 16 July 2010.
 - (c) The notice stated as follows:

NOTICE OF MEETING

NOTICE IS HERBY GIVEN THAT a Special Meeting of Members of the Union will be held at Unit 11, 64 Bannister Rd, Canning Vale, WA at 12.30 PM on Thursday the 5th of August, 2010 to consider and decide on the following motions:

1. that the rules of the union be altered in accordance with the schedule of proposed alterations set out in the schedule attached to this notice; and
2. an application to the WA Industrial Relations Commission to register the alterations be authorized.

REASONS FOR THE PROPOSED ALTERATIONS

The reasons for the proposed alterations is to ensure that the union can continue to be recognized and operate as a single entity, maintaining a single committee of management while being registered under both the State and Federal Acts i.e. The Industrial Relations Act (1979) (Western Australian) and the Fair Work (Registered Organisations) Act (2009) (Commonwealth).

MEMBERS ARE INVITED TO ATTEND

All members are invited to attend and participate in this meeting.

MEMBERS RIGHT TO OBJECT

Members, or any of them, may object to any or all of the proposed changes to the rules by attending the meeting and speaking and/or voting against the proposed changes. In addition, members, or any of them, may object to the proposed changes or any of them by forwarding a written objection to the Registrar of the WA Industrial Relations Commission 111 St George's Terrace Perth to reach him no later than 21 days after the date of the meeting.

- 11 The schedule to the notice attached a current set of the rules of the applicant and contained the proposed addition of r 10(6) shown in bold and underlined text.
- 12 Pursuant to r 43 – Notice to Members, the office of the applicant is required to keep the name of every member and address for service. Rule 43 provides that the sending of any notice to the member at such address shall be deemed sufficient service on the member whether it reaches him or not, and the notice shall be deemed to have been served on him at the time when it would have reached such address in the ordinary course.
- 13 A special meeting of the applicant was held on 5 August 2010. Pursuant to r 36 – Meetings, six members form a quorum at a special meeting of the applicant. The minutes of the meeting record that the meeting was attended by six members of the applicant. At the special meeting the proposed addition of r 10(6) to the applicant's rules was put to the meeting. It was moved 'That the Rules of the Union be altered in accordance with the schedule of proposed alterations set out in the schedule attached to the notice'. The motion was seconded and put to the meeting and declared carried unanimously. A resolution was also moved that 'An application to the WA Industrial Relations Commission to register the alterations be authorized'. That motion was also seconded, put and carried unanimously.

- 14 Pursuant to r 42(5) the period of which notice is required to be given to each member is at least 10 clear days. This is to be contrasted with r 36(2A) which provides all meetings of the union shall be convened by the secretary by notice posted to each member at the address recorded in the union's books not less than seven clear days before the meeting. Rule 36(2A) appears to apply to annual general meetings and special and extraordinary meetings of the union. However it is apparent that such a provision would be regarded as a general provision and the specific provision in r 42(5) that notice shall be at least 10 clear days would prevail. In any event it is clear that more than 10 days elapsed between the giving of the notice and the holding of the meeting as the notice to the members was sent on 16 July 2010 and the special meeting was held on 5 August 2010.
- 15 It is also clear that the notice to members complied with r 42(4) of the applicant's rules in that each member was informed that they may object to the proposed alteration by attending the general meeting and speaking and voting thereat or by forwarding a written objection to the Registrar to reach him no later than 21 days after the date of the special meeting. It is notable that no objection has been forthcoming. As required by s 55(4)(b) of the Act we are satisfied that reasonable steps were taken to adequately inform the members of the proposed addition to the rules of the organisation and that members or any of them could object to the making of the application by forwarding a written objection to the Registrar. In light of the fact that the rules provide that such an objection should be made within 21 days and that members were provided with 21 days to lodge an objection, we are satisfied that such a reasonable opportunity has been provided.
- 16 Having regard to the matters set out in the documents filed and in the statement made by the secretary of the applicant we are satisfied that s 55(4)(b), s 55(4)(c) and s 55(4)(d) of the Act have been complied with. The requirements of s 55(4)(e) are not relevant to this matter. For these reasons we formed 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 10(6).

2010 WAIRC 00976

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

THE BREWERIES AND 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, 11 OCTOBER 2010

FILE NO/S

FBM 11 OF 2010

CITATION NO.

2010 WAIRC 00976

Result

Application granted

Appearances

Applicant

Mr D H Schapper (of counsel)

Order

This matter having come on for hearing before the Full Bench on 11 October 2010, and having heard Mr D H Schapper, of counsel on behalf of the applicant, the Full Bench, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders that —

The Registrar is hereby authorised to register an alteration to the rules of the applicant by adding a new sub-rule (6) to r 10 as set out in the amendment schedule to the application filed on 27 August 2010.

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

[L.S.]

2010 WAIRC 01077

PARTIES	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION	APPLICANT
	WESTERN AUSTRALIAN POLICE UNION OF WORKERS	
	-and-	
	THE CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA INCORPORATED	OBJECTOR
CORAM	FULL BENCH	
	THE HONOURABLE J H SMITH, ACTING PRESIDENT	
	CHIEF COMMISSIONER A R BEECH	
	COMMISSIONER S M MAYMAN	
DATE	FRIDAY, 29 OCTOBER 2010	
FILE NO.	FBM 10 OF 2010	
CITATION NO.	2010 WAIRC 01077	

Result	Order issued
Appearances	
Applicant	Mr R L Hooker (of counsel)
Objector	Ms S Bhar and with her Mr S Farrell

Order

This matter having come on for a directions hearing before the Full Bench on 28 October 2010, and having heard Mr R L Hooker (of counsel) on behalf of the applicant, and Ms S Bhar and with her Mr S Farrell on behalf of the objector, the Full Bench, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, hereby orders that —

1. The applicant by 4:00 pm on Thursday, 11 November 2010, file and serve particulars of the class of officers and/or employees contemplated to be covered by proposed r 5.1(a), r 5.1(b) and r 5.1(c).
2. The applicant by 4:00 pm on Thursday, 16 December 2010, file and serve:
 - (a) any witness statements upon which the applicant intends to rely; and
 - (b) an Outline of Opening Submissions.
3. The objector by 4:00 pm on Friday, 21 January 2011, file and serve:
 - (a) any witness statements upon which the objector intends to rely; and
 - (b) an Outline of Opening Submissions.
4. The matter be listed for hearing not before Tuesday, 1 February 2011.
5. There be liberty to apply to vary this order.

[L.S.]

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

PRESIDENT—Unions—Matters dealt with under Section 66—

2010 WAIRC 01070

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

PAUL ROBINSON

APPLICANT**-and-**MR PHIL WOODCOCK, ACTING SECRETARY INTERIM COMMITTEE, AUSTRALIAN RAIL,
TRAM AND BUS INDUSTRY UNION OF EMPLOYEES WA BRANCH**RESPONDENT****CORAM**

THE HONOURABLE J H SMITH, ACTING PRESIDENT

DATE

THURSDAY, 28 OCTOBER 2010

FILE NO/S

PRES 6 OF 2010

CITATION NO.

2010 WAIRC 01070

Result	Order issued
Appearances	
Applicant	In person
Respondent	Mr J Nolan (of counsel)

Order

This matter having come on for a directions hearing before me on 27 October 2010, and having heard the applicant in person and Mr J Nolan (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 respondent is to provide discovery to the applicant of items 1, 2, 4, 5 and 7 of the applicant's List of Matters for Discovery by 4:00 pm on 9 November 2010;
2. The applicant is to file and serve on the respondent:
 - (a) statements of evidence; and
 - (b) detailed written submissions setting out:
 - (i) the applicant's contentions; and
 - (ii) the findings the applicant says should be made including any provisions of the rules of The Australian Rail, Tram and Bus Industry Union of Employees, West Australian Branch that the applicant says the respondent has not complied with;
 by 4:00 pm on Wednesday, 22 December 2010.
3. The respondent is to file and serve on the applicant:
 - (a) statements of evidence; and
 - (b) detailed written submissions setting out:
 - (i) the respondent's contentions; and
 - (ii) the findings the respondent says should be made;
 by 4:00 pm on Friday, 11 February 2011.
4. The matter be listed for further directions in the week beginning 14 February 2011.

[L.S.]

(Sgd.) J H SMITH,
Acting President.

PUBLIC SERVICE ARBITRATOR—Awards/Agreements—Variation of—

2010 WAIRC 01053

**COUNTRY HIGH SCHOOL HOSTELS AUTHORITY RESIDENTIAL COLLEGE SUPERVISORY STAFF AWARD
2005**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

THE CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA INCORPORATED

APPLICANT

-v-

COUNTRY HIGH SCHOOLS HOSTEL AUTHORITY

RESPONDENT**CORAM**PUBLIC SERVICE ARBITRATOR
ACTING SENIOR COMMISSIONER P E SCOTT**DATE**

WEDNESDAY, 20 OCTOBER 2010

FILE NO/S

P 36 OF 2010

CITATION NO.

2010 WAIRC 01053

Result	Award varied
Representation	
Applicant	Mr M Sims
Respondent	Mr J Chapman and with him Ms C Holmes

Order

HAVING heard Mr M Sims on behalf of The Civil Service Association of Western Australia Incorporated and Mr J Chapman and with him Ms C Holmes 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 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 24th day of September 2010.

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

[L.S.]

SCHEDULE

1. Clause 22. – Motor Vehicle Allowance: Delete subclause (5) and insert the following in lieu thereof:

- (5) Allowance for towing the Authority's caravan or trailer.

In cases where employees are required to tow the Authority's caravans on official business, the additional rate shall be 7.5 cents per kilometer. When the Authority's trailers are towed on official business the additional rate shall be 4.0 cents per kilometer.

2. Clause 24. – Removal Allowance:**A. Delete subclause (1)(c) of this clause and insert the following in lieu thereof:**

- (1) (c) An allowance of \$556.00 for accelerated depreciation and extra wear and tear on furniture, effects and appliances for each occasion that an employee is required to transport their furniture, effects and appliances provided that the Authority is satisfied that the value of household furniture, effects and appliances moved by the employee is at least \$3,334.00.

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

- (1) (d) Reimbursement of reasonable expenses in kennelling and transporting of domestic pet or pets up to a maximum amount of \$180.00.

Pets are defined as dogs, cats, birds or other domestic animals kept by the employee or the employee's dependants for the purpose of household enjoyment.

Pets do not include domesticated livestock, native animals or equine animals.

C. Delete subclause (6) of this clause and insert the following in lieu thereof:

- (6) Where an employee is transferred to government owned or private rental accommodation, where furniture is provided, and as a consequence the employee is obliged to store furniture, the employee shall be reimbursed the actual cost of such storage up to a maximum allowance of \$1,034.00 per annum. Actual cost is deemed to include the premium for adequate insurance coverage for the value of the furniture stored. An allowance under this subclause shall not be paid for a period in excess of four years without the approval of the Authority.

2010 WAIRC 01044

**COUNTRY HIGH SCHOOL HOSTELS AUTHORITY RESIDENTIAL COLLEGE SUPERVISORY STAFF AWARD
2005**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

THE COUNTRY HIGH SCHOOLS HOSTELS AUTHORITY

APPLICANT

-v-

THE CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA

RESPONDENT**CORAM**

PUBLIC SERVICE ARBITRATOR

ACTING SENIOR COMMISSIONER P E SCOTT

DATE

WEDNESDAY, 20 OCTOBER 2010

FILE NO/S

P 27 OF 2010

CITATION NO.

2010 WAIRC 01044

Result

Award varied

Representation**Applicant**

Mr J Chapman and with him Ms C Holmes

Respondent

Mr M Sims

Order

HAVING heard Mr J Chapman and with him Ms C Holmes as agent for the applicant and Mr M Sims on behalf of The Civil Service Association of Western Australia Incorporated, 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 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

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)(i) 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	21.70		
(3)	Interstate	21.70		
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	456.70	228.35	152.25
	Carnarvon	255.15	127.55	85.05
	Dampier	366.70	183.35	122.25
	Derby	342.20	171.10	114.05
	Exmouth	292.70	146.35	97.55
	Fitzroy Crossing	370.20	185.10	123.40
	Gascoyne Junction	291.70	145.85	97.25
	Halls Creek	247.20	123.60	82.40
	Karratha	445.70	222.85	148.55
	Kununurra	331.70	165.85	110.55
	Marble Bar	271.70	135.85	90.55
	Newman	338.95	169.50	113.00
	Nullagine	256.70	128.35	85.55
	Onslow	273.30	136.65	91.10
	Pannawonica	192.70	96.35	64.25
	Paraburdoo	259.70	129.85	86.55
	Port Hedland	367.15	183.55	122.40
	Roebourne	241.70	120.85	80.55
	Shark Bay	240.20	120.10	80.05
	Tom Price	320.20	160.10	106.75
	Turkey Creek	235.70	117.85	78.55
	Wickham	508.70	254.35	169.55

ITEM	PARTICULARS	COLUMN A DAILY RATE	COLUMN B 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)	COLUMN C DAILY RATE OFFICERS WITHOUT DEPENDENTS RELIEVING ALLOWANCE FOR PERIOD IN EXCESS OF 42 DAYS (CLAUSE 23.1(b)(ii))
(7)	Wyndham Interstate - Capital City	254.70	127.35	84.90
	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	128.25		
(11)	Interstate	128.25		
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	21.20		
	Lunch	33.20		
	Dinner	52.20		
(14)	Interstate			
	Breakfast	21.20		
	Lunch	33.20		
	Dinner	52.20		
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 01039

DEPARTMENT FOR COMMUNITY DEVELOPMENT (FAMILY RESOURCE WORKERS, WELFARE ASSISTANTS AND PARENT HELPERS) AWARD 1990

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

THE DIRECTOR GENERAL OF THE DEPARTMENT FOR COMMUNITY DEVELOPMENT

APPLICANT

-v-

THE CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA

RESPONDENT**CORAM**

PUBLIC SERVICE ARBITRATOR

ACTING SENIOR COMMISSIONER P E SCOTT

DATE

WEDNESDAY, 20 OCTOBER 2010

FILE NO/S

P 22 OF 2010

CITATION NO.

2010 WAIRC 01039

Result

Award varied

Representation**Applicant**

Mr J Chapman and with him Ms C Holmes

Respondent

Mr M Sims

Order

HAVING heard Mr J Chapman and with him Ms C Holmes as agent for the applicant and Mr M Sims on behalf of The Civil Service Association of Western Australia Incorporated 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 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 38(1)(b)(ii)) TRANSFER ALLOWANCE FOR PERIOD IN EXCESS OF PRESCRIBED PERIOD (CLAUSE 39(3))	COLUMN C DAILY RATE OFFICERS WITHOUT DEPENDENTS: RELIEVING ALLOWANCE FOR PERIOD IN EXCESS OF 42 DAYS (CLAUSE 38 (1)(b)(ii))
	ALLOWANCE TO MEET INCIDENTAL EXPENSES	\$	\$	\$
(1)	WA - South of 26° South Latitude	14.55		
(2)	WA - North of 26° South Latitude	21.70		
(3)	Interstate	21.70		

ITEM	PARTICULARS	COLUMN A DAILY RATE	COLUMN B DAILY RATE OFFICERS WITH DEPENDENTS: RELIEVING ALLOWANCE FOR PERIOD IN EXCESS OF 42 DAYS (CLAUSE 38(1)(b)(ii)) TRANSFER ALLOWANCE FOR PERIOD IN EXCESS OF PRESCRIBED PERIOD (CLAUSE 39(3))	COLUMN C DAILY RATE OFFICERS WITHOUT DEPENDENTS: RELIEVING ALLOWANCE FOR PERIOD IN EXCESS OF 42 DAYS (CLAUSE 38 (1)(b)(ii))
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	456.70	228.35	152.25
	Carnarvon	255.15	127.55	85.05
	Dampier	366.70	183.35	122.25
	Derby	342.20	171.10	114.05
	Exmouth	292.70	146.35	97.55
	Fitzroy Crossing	370.20	185.10	123.40
	Gascoyne Junction	291.70	145.85	97.25
	Halls Creek	247.20	123.60	82.40
	Karratha	445.70	222.85	148.55
	Kununurra	331.70	165.85	110.55
	Marble Bar	271.70	135.85	90.55
	Newman	338.95	169.50	113.00
	Nullagine	256.70	128.35	85.55
	Onslow	273.30	136.65	91.10
	Pannawonica	192.70	96.35	64.25
	Paraburdoo	259.70	129.85	86.55
	Port Hedland	367.15	183.55	122.40
	Roebourne	241.70	120.85	80.55
	Shark Bay	240.20	120.10	80.05
	Tom Price	320.20	160.10	106.75
	Turkey Creek	235.70	117.85	78.55
	Wickham	508.70	254.35	169.55
	Wyndham	254.70	127.35	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	COLUMN A DAILY RATE	COLUMN B DAILY RATE OFFICERS WITH DEPENDENTS: RELIEVING ALLOWANCE FOR PERIOD IN EXCESS OF 42 DAYS (CLAUSE 38(1)(b)(ii)) TRANSFER ALLOWANCE FOR PERIOD IN EXCESS OF PRESCRIBED PERIOD (CLAUSE 39(3))	COLUMN C DAILY RATE OFFICERS WITHOUT DEPENDENTS: RELIEVING ALLOWANCE FOR PERIOD IN EXCESS OF 42 DAYS (CLAUSE 38 (1)(b)(ii))
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	128.25		
(11)	Interstate	128.25		
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	21.20		
	Lunch	33.20		
	Dinner	52.20		
(14)	Interstate			
	Breakfast	21.20		
	Lunch	33.20		
	Dinner	52.20		
DEDUCTION FOR NORMAL LIVING EXPENSES (CLAUSE 46(5))				
(15)	Each Adult	26.25		
(16)	Each Child	4.50		
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 01048

**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, 20 OCTOBER 2010

FILE NO/S

P 31 OF 2010

CITATION NO.

2010 WAIRC 01048

Result

Award varied

Representation**Applicant**

Mr M Sims

Respondent

Mr J Chapman and with him Ms C Holmes

Order

HAVING heard Mr M Sims on behalf of The Civil Service Association of Western Australia Incorporated and Mr J Chapman and with him Ms C Holmes 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 Education Department Ministerial Offices 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 24th day of September 2010.

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

[L.S.]

SCHEDULE

1. **Clause 37. – Motor Vehicle Allowance: Delete subclause (5) of this clause and insert the following in lieu thereof:**
 - (5) Allowance for towing Employer's caravan or trailer.
In case where officers are required to tow employer's caravans on official business, the additional rate shall be 7.5 cents per kilometre. When employer's trailers are towed on official business the additional rate shall be 4.0 cents per kilometre.
2. **Clause 40. – Relieving Allowance: Delete subclause (4) of this clause and insert the following in lieu thereof:**
 - (4) If an officer whose normal duties do not involve camp accommodation is required to relieve or perform special duty resulting in a stay at a camp, the officer shall be paid camping allowance for the duration of the period spent in camp, and in addition, shall be paid a lump sum of \$180.00 to cover incidental personal expenses: Provided that an officer shall receive no more than one lump sum of \$180.00 in any one period of three (3) years.
3. **Clause 41. – Removal Allowance:**
 - A. **Delete subclause (1)(c) of this clause and insert the following in lieu thereof:**
 - (c) An allowance of \$556.00 for accelerated depreciation and extra wear and tear on furniture, effects and appliances for each occasion that an employee is required to transport their furniture, effects and appliances provided that the employer is satisfied that the value of household furniture, effects and appliances moved by the employee is at least \$3,334.00.
 - B. **Delete subclause (1)(d) of this clause and insert the following in lieu thereof:**
 - (d) Reimbursement of reasonable expenses in kennelling and transporting of domestic pet or pets up to a maximum amount of \$180.00.
Pets are defined as dogs, cats, birds or other domestic animals kept by the employee or the employee's dependants for the purpose of household enjoyment.
Pets do not include domesticated livestock, native animals or equine animals.

C. Delete subclause (6) of this clause and insert the following in lieu thereof:

- (6) Where an employee is transferred to government owned or private rental accommodation, where furniture is provided, and as a consequence the employee is obliged to store furniture, the employee shall be reimbursed the actual cost of such storage up to a maximum allowance of \$1,034.00 per annum. Actual cost is deemed to include the premium for adequate insurance coverage for the value of the furniture stored. An allowance under this subclause shall not be paid for a period in excess of four years without the approval of the employer.

4. Schedule G – Overtime: Delete Part II of this schedule and insert the following in lieu thereof:**PART II – MEALS**

(Operative from the first pay period commencing on or from 24 September 2010)

Breakfast	\$10.15 per meal
Lunch	\$12.45 per meal
Evening Meal	\$14.95 per meal
Supper	\$10.15 per meal

2010 WAIRC 01041

**EDUCATION DEPARTMENT MINISTERIAL OFFICERS SALARIES ALLOWANCES AND CONDITIONS AWARD
1983 NO 5 OF 1983**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

DIRECTOR GENERAL, DEPARTMENT OF EDUCATION

APPLICANT

-v-

THE CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA

RESPONDENT**CORAM**

PUBLIC SERVICE ARBITRATOR
ACTING SENIOR COMMISSIONER P E SCOTT

DATE

WEDNESDAY, 20 OCTOBER 2010

FILE NO/S

P 24 OF 2010

CITATION NO.

2010 WAIRC 01041

Result Award varied

Representation

Applicant Mr J Chapman and with him Ms C Holmes

Respondent Mr M Sims

Order

HAVING heard Mr J Chapman and with him Ms C Holmes as agent for the applicant and Mr M Sims on behalf of The Civil Service Association of Western Australia Incorporated 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.

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

[L.S.]

SCHEDULE

Schedule H. – Travelling, Transfer and Relieving Allowance: Delete this schedule and inert the following in lieu thereof:

SCHEDULE H - 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 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	21.70		
(3)	Interstate	21.70		
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	456.70	228.35	152.25
	Carnarvon	255.15	127.55	85.05
	Dampier	366.70	183.35	122.25
	Derby	342.20	171.10	114.05
	Exmouth	292.70	146.35	97.55
	Fitzroy Crossing	370.20	185.10	123.40
	Gascoyne Junction	291.70	145.85	97.25
	Halls Creek	247.20	123.60	82.40
	Karratha	445.70	222.85	148.55
	Kununurra	331.70	165.85	110.55
	Marble Bar	271.70	135.85	90.55
	Newman	338.95	169.50	113.00
	Nullagine	256.70	128.35	85.55
	Onslow	273.30	136.65	91.10
	Pannawonica	192.70	96.35	64.25
	Paraburdoo	259.70	129.85	86.55
	Port Hedland	367.15	183.55	122.40
	Roebourne	241.70	120.85	80.55
	Shark Bay	240.20	120.10	80.05
	Tom Price	320.20	160.10	106.75
	Turkey Creek	235.70	117.85	78.55
	Wickham	508.70	254.35	169.55
	Wyndham	254.70	127.35	84.90
(7)	Interstate - Capital City			
	Sydney	304.90	152.45	101.60
	Melbourne	288.55	144.30	96.15

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 40(2)(b) TRANSFER ALLOWANCE FOR PERIOD IN EXCESS OF PRESCRIBED PERIOD (CLAUSE 42 (3))	<u>COLUMN C</u> DAILY RATE OFFICERS WITHOUT DEPENDENTS RELIEVING ALLOWANCE FOR PERIOD IN EXCESS OF 42 DAYS (CLAUSE 40(2)(b))
	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	128.25		
(11)	Interstate	128.25		
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	21.20		
	Lunch	33.20		
	Dinner	52.20		
(14)	Interstate			
	Breakfast	21.20		
	Lunch	33.20		
	Dinner	52.20		
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.

2010 WAIRC 01047

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 ANOTHER

RESPONDENTS**CORAM**

PUBLIC SERVICE ARBITRATOR

ACTING SENIOR COMMISSIONER P E SCOTT

DATE

WEDNESDAY, 20 OCTOBER 2010

FILE NO/S

P 30 OF 2010

CITATION NO.

2010 WAIRC 01047

Result	Award varied
Representation	
Applicant	Mr M Sims
Respondents	Mr J Chapman and with him Ms C Holmes

Order

HAVING heard Mr M Sims on behalf of The Civil Service Association of Western Australia Incorporated and Mr J Chapman and with him Ms C Holmes 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 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 24th day of September 2010.

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

[L.S.]

SCHEDULE

1. Clause 36. – Motor Vehicle Allowance: Delete subclause (5) of this clause and insert the following in lieu thereof:

(5) Allowance for towing Electorate Office caravan or trailer.

In case where employees are required to tow Electorate Office caravans on official business, the additional rate shall be 7.5 cents per kilometre. When Electorate Office trailers are towed on official business the additional rate shall be 4.0 cents per kilometre.

2. Clause 38. – Removal Allowance:**A. Delete subclause (1)(c) of this clause and insert the following in lieu thereof:**

(c) An allowance of \$556.00 for accelerated depreciation and extra wear and tear on furniture, effects and appliances for each occasion that an employee is required to transport their furniture, effects and appliances provided that the employer is satisfied that the value of household furniture, effects and appliances moved by the employee is at least \$3,334.00.

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

(d) Reimbursement of reasonable expenses in kennelling and transporting of domestic pet or pets up to a maximum amount of \$180.00.

Pets are defined as dogs, cats, birds or other domestic animals kept by the employee or the employee's dependants for the purpose of household enjoyment.

Pets do not include domesticated livestock, native animals or equine animals.

C. Delete subclause (6) of this clause and insert the following in lieu thereof:

(6) Where an employee is transferred to government owned or private rental accommodation, where furniture is provided, and as a consequence the employee is obliged to store furniture, the employee shall be reimbursed the actual cost of such storage up to a maximum allowance of \$1,034.00 per annum. Actual cost is deemed to include the premium for adequate insurance coverage for the value of the furniture stored. An allowance under this subclause shall not be paid for a period in excess of four years without the approval of the employer.

2010 WAIRC 01042

ELECTORATE OFFICERS AWARD 1986

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

THE HON. SPEAKER OF THE LEGISLATIVE ASSEMBLY AND ANOTHER

APPLICANTS

-v-

THE CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA

RESPONDENT**CORAM**

PUBLIC SERVICE ARBITRATOR

ACTING SENIOR COMMISSIONER P E SCOTT

DATE

WEDNESDAY, 20 OCTOBER 2010

FILE NO/S

P 25 OF 2010

CITATION NO.

2010 WAIRC 01042

Result

Award varied

Representation**Applicants**

Mr J Chapman and with him Ms C Holmes

Respondent

Mr M Sims

Order

HAVING heard Mr J Chapman and with him Ms C Holmes as agent for the applicants and Mr M Sims on behalf of The Civil Service Association of Western Australia Incorporated 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 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.

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

[L.S.]

SCHEDULE**1. Schedule F – Travelling and 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	21.70	
(3)	Interstate	21.70	
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	456.70	228.35

ITEM	PARTICULARS	COLUMN A DAILY RATE	COLUMN B DAILY RATE OFFICERS WITHOUT DEPENDENTS RELIEVING ALLOWANCE FOR PERIOD IN EXCESS OF 42 DAYS (CLAUSE 39(3))
	Carnarvon	255.15	127.55
	Dampier	366.70	183.35
	Derby	342.20	171.10
	Exmouth	292.70	146.35
	Fitzroy Crossing	370.20	185.10
	Gascoyne Junction	291.70	145.85
	Halls Creek	247.20	123.60
	Karratha	445.70	222.85
	Kununurra	331.70	165.85
	Marble Bar	271.70	135.85
	Newman	338.95	169.50
	Nullagine	256.70	128.35
	Onslow	273.30	136.65
	Pannawonica	192.70	96.35
	Paraburdoo	259.70	129.85
	Port Hedland	367.15	183.55
	Roebourne	241.70	120.85
	Shark Bay	240.20	120.10
	Tom Price	320.20	160.10
	Turkey Creek	235.70	117.85
	Wickham	508.70	254.35
	Wyndham	254.70	127.35
(7)	Interstate - Capital City		
	Sydney	304.90	152.45
	Melbourne	288.55	144.30
	Other Capitals	270.10	135.05
(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	128.25
(11)	Interstate	128.25

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	21.20
	Lunch	33.20
	Dinner	52.20
(14)	Interstate	
	Breakfast	21.20
	Lunch	33.20
	Dinner	52.20

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))
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 01076

GOVERNMENT OFFICERS SALARIES, ALLOWANCES AND CONDITIONS AWARD 1989

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
ANIMAL RESOURCES AUTHORITY AND OTHERS

PARTIES

APPLICANTS

-v-

THE CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA INCORPORATED

RESPONDENT

CORAM

PUBLIC SERVICE ARBITRATOR
ACTING SENIOR COMMISSIONER P E SCOTT

DATE

FRIDAY, 29 OCTOBER 2010

FILE NO/S

P 17 OF 2010

CITATION NO.

2010 WAIRC 01076

Result

Award varied

Order

HAVING heard Mr A Harper as agent for the applicants and Mr M Sims on behalf of The Civil Service Association of Western Australia Incorporated 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 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 20th day of October 2010.

[L.S.]

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

SCHEDULE

1. Clause 21. – Shift Work Allowance: Delete this clause and insert the following in lieu thereof:**21. – SHIFT WORK ALLOWANCE**

(1) In this Clause the following expressions shall have the following meaning:

"Day shift" means a shift commencing after 6.00 am and before 12.00 noon.

"Afternoon shift" means a shift commencing at or after 12.00 noon and before 6.00 pm.

"Night shift" means a shift commencing at or after 6.00 pm and before 6.01 am.

"Public holiday" shall mean a holiday provided in Clause 24. - Public Holidays of this Award.

(2) (a) (i) An officer required to work a weekday afternoon or night shift, will in addition to the ordinary rate of salary, be paid an allowance in accordance with the following formula for each shift so worked.

$$\frac{\text{Annual Salary}}{1} \times \frac{12}{313} \times \frac{1}{10} \times \frac{15}{100}$$

(ii) Notwithstanding the above, the minimum amount payable per shift to an employee required to work afternoon or night shift will be the allowance payable to an employee with an annual salary of Level 1.7 using the formula at clause 21 (2) (a) (i).

(iii) For the purposes of clause 21 (2) (a), "annual salary" is the ordinary rate of salary payable for the position. Clause 65(2) of the award defines annual salary for calculation purposes.

(b) Work performed during ordinary rostered hours on the following days shall be paid for at the following rates, in lieu of the allowance prescribed in clause 21 (2) (a):

(i) Saturdays - time and one-half;

(ii) Sundays - time and three quarters; and

(iii) Public holidays – double time and one half.

Provided that in lieu of the provisions of clause 21 (2) (b) (iii) and subject to agreement between the employer and the officer, work performed during ordinary rostered hours on a public holiday shall be paid for at the rate of time and one-half and the officer may, in addition be allowed a day's leave with pay to be added to annual leave to be taken at some other time within a period on one year.

(c) Weekend Penalty Rates for Casual Employees

(i) Notwithstanding the provisions of clause 10 (2) (a) – Casual Employment, casual employees are entitled to weekend shift penalties. Work performed during ordinary rostered hours on the following days shall be paid for at the following rates:

Saturdays and public holidays - time and one-half (casuals are already paid a loading in lieu of public holidays); and

Sundays - time and three quarters.

(ii) These rates are paid in addition to but not compounded on the casual loading provided for clause 10 (1) (a) – Casual Employment.

(d) An officer rostered off duty on a public holiday shall be paid at ordinary rates for such day or, subject to agreement between the employer and the officer, be allowed a day's leave with pay in lieu of the holiday to be added to the officer's next annual leave entitlement or taken at a mutually convenient time within a period of one year.

(e) An officer engaged on shift work who is rostered to work regularly on Sundays and/or public holidays shall be entitled to one week's leave in addition to the officer's normal entitlement to annual leave of absence for recreation.

(f) Additional leave provided by paragraphs (b) and (d) of this subclause shall not be subject to the annual leave loading prescribed by subclause (14) of Clause 23. - Annual Leave of this Award.

(g) Work performed by an officer in excess of the ordinary hours of the officer's shift or on a rostered day off shall be paid for in accordance with the overtime provisions of Clause 22. - Overtime of this Award.

(h) (i) When an officer begins or ceases a shift between the hours of 11.00 pm and 7.00 am and no public transport is available, reimbursement at the appropriate rate of hire prescribed by subclause (4) of Clause 46. - Motor Vehicle Allowance of this Award shall be made if the officer's private motor vehicle or cycle is used for the journey between the officer's residence and headquarters and the return journey.

Provided however, that any officer who, on or after October 30, 1987, elects to be permanently retained on a fixed or non rotating shift that begins or ceases between or on the hours of 11.00 pm and 7.00 am shall not be eligible to claim this reimbursement.

(ii) The provisions of this subclause shall only be applied to officers living and working within a radius of 50 km of the Perth City Railway Station.

(3) Hours of Duty and Rosters

- (a) An officer engaged on shifts shall work a 75-hour fortnight, exclusive of meal intervals, on the basis of not more than ten (10) shifts per fortnight of not more than seven and one half hours duration. Provided that where agreement is reached between the employer and the Association the length and/or number of shifts worked per fortnight may be altered.

 Provided that when the agreed length of a shift is extended past seven and one half hours, overtime shall be payable only for time worked in excess of the rostered shift.

 Provided also that whenever an agreed alteration to the number of hours per shift has occurred then the allowance per shift shall be varied on a pro rata basis to reflect any variation to other than seven and one half (7½) hours.
- (b) Meal breaks shall be for a period of at least thirty (30) minutes, but not greater than one hour for each meal.
- (c) Officers may be rostered to work on any of the seven days of the week provided that no officer shall be rostered for more than six (6) consecutive days.

 Provided that where agreement is reached between the employer and the Association, shift workers may be exempted from this provision.
- (d) The roster period shall commence at the beginning of a pay period and continue for fourteen (14) consecutive days. Rosters shall be available to officers at least five (5) clear working days prior to the commencement of the roster.
- (e) A roster may only be altered on account of a contingency, which the employer could not have been reasonably expected to foresee. When a roster is altered, the officer concerned shall be notified of the changed shift 24 hours before the changed shift commences. Provided that where such notice is not given, the officer shall be paid overtime in accordance with Clause 22. - Overtime Allowance of this Award for the duration of the changed shift. This provision shall not apply to an officer who was absent from duty on the officer's last rostered shift.
- (f) An officer shall not be rostered for duty until at least ten (10) hours have elapsed from the time the officer's previous rostered shift ended. Provided that where agreement is reached between the Association and the employer the ten (10) hour break may be reduced to accommodate special shift arrangements, except that under no circumstances shall such an agreement provide for a break of less than 8 hours.
- (g) An officer shall not be retained permanently on one shift unless the officer so elects in writing.
- (h) Officers shall be allowed to exchange shifts or days off with other officers provided the approval of the employer has been obtained and provided further that any excess hours worked shall not involve the payment of overtime.

2. Schedule I – Clause 22. – Overtime Allowance: Delete Part I of this schedule and insert the following in lieu thereof:

SCHEDULE I - CLAUSE 22. – OVERTIME ALLOWANCE

PART I - OUT OF HOURS CONTACT

(Operative from first pay period on or after 14 March 2008)

Standby	\$7.41 per hour
On Call	\$3.71 per hour
Availability	\$1.85 per hour

Subclause (2) of Clause 65. – Expired General Agreement Salaries of this Award defines salary for calculation purposes.

3. Schedule K – Shiftwork Allowance: Delete this schedule and insert the following in lieu thereof:

SCHEDULE K - SHIFTWORK ALLOWANCE

An officer required to work a weekday afternoon or night shift of seven and one half (7.5) hours worked, will in addition to the ordinary rate of salary, be paid an allowance in accordance with the following formula for each shift so worked.

$$\text{Shiftwork Allowance} = \frac{\text{Annual Salary}}{1} \times \frac{12}{313} \times \frac{1}{10} \times \frac{15}{100}$$

A minimum shift work allowance of

\$17.04 is payable for each afternoon or night shift of seven and one half (7.5) hours worked.

Subclause (2) of Clause 65. – Expired General Agreement Salaries of this Award defines annual salary for calculation purposes.

(Operative from first pay period on or after 2 September 2008)

4. Schedule P – Expired General Agreement Salaries: Delete this schedule and insert the following in lieu thereof:

SCHEDULE P EXPIRED GENERAL AGREEMENT SALARIES**SALARIES**

Classification Level	Annual Salary at the beginning of the first pay period on or after 26 February 2007) (Not to be subject to arbitrated safety net adjustments)
LEVELS	\$ Per Annum
Level 1	
Under 17 yrs	\$16,694
17 yrs	\$19,510
18 yrs	\$22,757
19 yrs	\$26,342
20 yrs	\$29,582
1.1	\$32,497
1.2	\$33,496
1.3	\$34,496
1.4	\$35,489
1.5	\$36,489
1.6	\$37,489
1.7	\$38,638
1.8	\$39,434
1.9	\$40,609
LEVEL 2.1	\$42,017
2.2	\$43,097
2.3	\$44,231
2.4	\$45,431
2.5	\$46,686
LEVEL 3.1	\$48,409
3.2	\$49,754
3.3	\$51,138
3.4	\$52,560
LEVEL 4.1	\$54,510
4.2	\$56,037
4.3	\$57,609
LEVEL 5.1	\$60,638
5.2	\$62,683
5.3	\$64,809
5.4	\$67,017
LEVEL 6.1	\$70,564
6.2	\$72,977
6.3	\$75,473
6.4	\$78,138

Classification Level	Annual Salary at the beginning of the first pay period on or after 26 February 2007 (Not to be subject to arbitrated safety net adjustments)
	\$
LEVELS	Per Annum
LEVEL 7.1	\$82,227
7.2	\$85,053
7.3	\$88,131
LEVEL 8.1	\$93,131
8.2	\$96,714
8.3	\$101,155
LEVEL 9.1	\$106,702
9.2	\$110,449
9.3	\$114,723
CLASS 1	\$121,188
CLASS 2	\$127,654
CLASS 3	\$134,113
CLASS 4	\$140,578

SALARIES – SPECIFIED CALLINGS

Classification Level	Annual Salary at the beginning of the first pay period on or after 26 February 2007 (Not to be subject to arbitrated safety net adjustments)
	\$
LEVELS	Per Annum
LEVEL 2/4	
1 st year	\$42,017
2nd year	\$44,231
3rd year	\$46,686
4th year	\$49,754
5th year	\$54,510
6th year	\$57,609
LEVEL 5.1	\$60,638
5.2	\$62,683
5.3	\$64,809
5.4	\$67,017
LEVEL 6.1	\$70,564
6.2	\$72,977
6.3	\$75,473
6.4	\$78,138
LEVEL 7.1	\$82,227
7.2	\$85,053
7.3	\$88,131

Classification Level	Annual Salary at the beginning of the first pay period on or after 26 February 2007 (Not to be subject to arbitrated safety net adjustments)
LEVELS	\$ Per Annum
LEVEL 8.1	\$93,131
8.2	\$96,714
8.3	\$101,155
LEVEL 9.1	\$106,702
9.2	\$110,449
9.3	\$114,723
CLASS 1	\$121,188
CLASS 2	\$127,654
CLASS 3	\$134,113
CLASS 4	\$140,578

2010 WAIRC 01046

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, 20 OCTOBER 2010

FILE NO/S

P 29 OF 2010

CITATION NO.

2010 WAIRC 01046

Result	Award Varied
Representation	
Applicant	Mr M Sims
Respondents	Mr J Chapman and with him Ms C Holmes

Order

HAVING heard Mr M Sims on behalf of The Civil Service Association of Western Australia Incorporated and Mr J Chapman and with him Ms C Holmes 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 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 24th day of September 2010.

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

[L.S.]

SCHEDULE

1. **Clause 46. – Motor Vehicle Allowance: Delete subclause (5) of this clause and insert the following in lieu thereof:**
 (5) Allowance for towing employer's caravan or trailer.
 In cases where officers are required to tow the employer's caravans on official business, the additional rate shall be 7.5 cents per kilometre. When the employer's trailers are towed on official business the additional rate shall be 4.0 cents per kilometre.
2. **Clause 49 – Relieving Allowance: Delete subclause (1)(d) of this clause and insert the following in lieu thereof:**
 (d) If an officer whose normal duties do not involve camp accommodation is required to relieve or perform special duty resulting in a stay at a camp, the officer shall be paid camping allowance for the duration of the period spent in camp, and in addition, shall be paid a lump sum of \$180.00 to cover incidental personal expenses: Provided that an officer shall receive no more than one lump sum of \$180.00 in any one period of three (3) years.
3. **Clause 50 – Removal Allowance:**
A. Delete subclause (1)(c) of this clause and insert the following in lieu thereof:
 (c) An allowance of \$556.00 for accelerated depreciation and extra wear and tear on furniture, effects and appliances for each occasion that an employee is required to transport their furniture, effects and appliances provided that the employer is satisfied that the value of household furniture, effects and appliances moved by the employee is at least \$3,334.00.
- B. Delete subclause (1)(d) of this clause and insert the following in lieu thereof:**
 (d) Reimbursement of reasonable expenses in kennelling and transporting of domestic pet or pets up to a maximum amount of \$180.00.
 Pets are defined as dogs, cats, birds or other domestic animals kept by the employee or the employee's dependants for the purpose of household enjoyment.
 Pets do not include domesticated livestock, native animals or equine animals.
- C. Delete subclause (6) of this clause and insert the following in lieu thereof:**
 (6) Where an employee is transferred to government owned or private rental accommodation, where furniture is provided, and as a consequence the employee is obliged to store furniture, the employee shall be reimbursed the actual cost of such storage up to a maximum allowance of \$1,034.00 per annum. Actual cost is deemed to include the premium for adequate insurance coverage for the value of the furniture stored. An allowance under this subclause shall not be paid for a period in excess of four years without the approval of the employer.
4. **Schedule I – Clause 22. – Overtime Allowance: Delete Part II – Meals of this schedule and insert the following in lieu thereof:**

PART II - MEALS

(Operative from the first pay period commencing on or from 24th September 2010)

Breakfast	\$10.15 per meal
Lunch	\$12.45 per meal
Evening Meal	\$14.95 per meal
Supper	\$10.15 per meal

5. **Schedule O - Annual Interstate Allowance Rates: Delete this schedule and insert the following in lieu thereof:**

SCHEDULE O ANNUAL INTERSTATE ALLOWANCE RATES

ANNUAL INTERSTATE ALLOWANCE RATES

(Operative from the first pay period commencing on or from 24 September 2010)

	Single	With Dependents
	\$	\$
Adelaide	\$2,712	\$3,696
Brisbane	\$2,997	\$3,997
Melbourne	\$3,031	\$4,482
Sydney	\$4,670	\$5,579

2010 WAIRC 01038

GOVERNMENT OFFICERS SALARIES, ALLOWANCES AND CONDITIONS AWARD 1989

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

ANIMAL RESOURCES AUTHORITY AND OTHERS

APPLICANTS

-v-

THE CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA

RESPONDENT**CORAM**PUBLIC SERVICE ARBITRATOR
ACTING SENIOR COMMISSIONER P E SCOTT**DATE**

WEDNESDAY, 20 OCTOBER 2010

FILE NO/S

P 21 OF 2010

CITATION NO.

2010 WAIRC 01038

Result Award varied**Representation****Applicants** Mr J Chapman and with him Ms C Holmes**Respondent** Mr M Sims*Order*

HAVING heard Mr J Chapman and with him Ms C Holmes as agent for the applicants and Mr M Sims on behalf of The Civil Service Association of Western Australia Incorporated 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 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

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	COLUMN A DAILY RATE	COLUMN B 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))	COLUMN C 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	21.70		
(3)	Interstate	21.70		

ITEM	PARTICULARS	COLUMN A DAILY RATE	COLUMN B 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))	COLUMN C 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				
		\$	\$	\$
(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	456.70	228.35	152.25
	Carnarvon	255.15	127.55	85.05
	Dampier	366.70	183.35	122.25
	Derby	342.20	171.10	114.05
	Exmouth	292.70	146.35	97.55
	Fitzroy Crossing	370.20	185.10	123.40
	Gascoyne Junction	291.70	145.85	97.25
	Halls Creek	247.20	123.60	82.40
	Karratha	445.70	222.85	148.55
	Kununurra	331.70	165.85	110.55
	Marble Bar	271.70	135.85	90.55
	Newman	338.95	169.50	113.00
	Nullagine	256.70	128.35	85.55
	Onslow	273.30	136.65	91.10
	Pannawonica	192.70	96.35	64.25
	Paraburdoo	259.70	129.85	86.55
	Port Hedland	367.15	183.55	122.40
	Roebourne	241.70	120.85	80.55
	Shark Bay	240.20	120.10	80.05
	Tom Price	320.20	160.10	106.75
	Turkey Creek	235.70	117.85	78.55
	Wickham	508.70	254.35	169.55
	Wyndham	254.70	127.35	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	COLUMN A DAILY RATE	COLUMN B 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))	COLUMN C DAILY RATE OFFICERS WITHOUT DEPENDENTS RELIEVING ALLOWANCE FOR PERIOD IN EXCESS OF 42 DAYS (CLAUSE 49 (1)(b) (ii))
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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	128.25		
(11)	Interstate	128.25		

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	21.20		
	Lunch	33.20		
	Dinner	52.20		
(14)	Interstate			
	Breakfast	21.20		
	Lunch	33.20		
	Dinner	52.20		

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 21 April 2010.

2010 WAIRC 01075

GOVERNMENT OFFICERS (SOCIAL TRAINERS) AWARD 1988
WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
DISABILITY SERVICES COMMISSION

PARTIES**APPLICANT**

-v-

THE CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA

RESPONDENT**CORAM**PUBLIC SERVICE ARBITRATOR
ACTING SENIOR COMMISSIONER P E SCOTT**DATE**

FRIDAY, 29 OCTOBER 2010

FILE NO/S

P 19 OF 2010

CITATION NO.

2010 WAIRC 01075

Result

Award varied

Order

HAVING heard Mr A Harper as agent for the applicant and Mr M Sims on behalf of The Civil Service Association of Western Australia Incorporated 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 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 20th day of October 2010.

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

[L.S.]

SCHEDULE**1. Clause 18. – Shift Work: Delete this clause and insert the following in lieu thereof:****18. – SHIFT WORK**

(1) Definitions

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

"Day shift" means a shift commencing after 6.00 am and before 12.00 noon.

"Afternoon shift" means a shift commencing at or after 12.00 noon and before 6.00 pm.

"Night shift" means a shift of not more than 10 hours continuous duration commencing at or after 6.00 pm and before 6.01 am.

(2) Shift Work Allowance

(a) (i) An employee required to work a weekday afternoon or night shift, will in addition to the ordinary rate of salary, be paid an allowance in accordance with the following formula for each shift so worked.

(ii) Notwithstanding
$$\frac{\text{Annual Salary}}{1} \times \frac{12}{313} \times \frac{1}{10} \times \frac{15}{100}$$
 the above, the

minimum amount payable per shift to an employee required to work afternoon or night shift will be the allowance payable to an employee with an annual salary of Level 1.7 using the formula at subclause 18(2)(a)(i).

(iii) For the purposes of subclause 18(2)(a), "annual salary" is the current ordinary rate of salary payable for the position. Clause 57(2) of the award defines annual salary for calculation purposes.

(b) Work performed during ordinary rostered hours on the following days shall be paid for at the following rates, in lieu of the allowance prescribed in subclause 18(2)(a):

(i) Saturdays – time and one-half;

(ii) Sundays – time and three quarters; and

(iii) Public holidays – double time and one half
Provided that in lieu of the provisions of subclause 18(2)(b)(iii) and subject to agreement between the employer and the employee, work performed during ordinary rostered hours on a public holiday shall be paid for at the rate of time and one-half and the employee may, in addition be allowed a day's leave with pay to be added to annual leave to be taken at some other time within a period of one year.

(c) Weekend Penalty Rates for Casual Employees

(i) Notwithstanding the provisions of subclause 10 (2) – Casual Employment, casual employees are entitled to weekend shift penalties. Work performed during ordinary rostered hours on the following days shall be paid for at the following rates:

(aa) Saturdays and public holidays – time and one-half (casuals are already paid a loading in lieu of public holidays); and

(bb) Sundays – time and three quarters

(ii) These rates are paid in addition to but not compounded on the casual loading provided for in subclause 10 (2) – Casual Employment.

(d) An employee rostered off duty on a Public Holiday shall be paid at ordinary rates for such day or, subject to agreement between the Employer and the employee, be allowed a day's leave with pay in lieu of the holiday to be added to annual leave or to be taken at a mutually convenient time within a period of one year.

(e) An employee engaged on shift work who is rostered to work regularly on Sundays and/or Public Holidays shall be allowed one weeks leave in addition to the employee's normal entitlement to annual leave of absence for recreation.

(f) Additional leave provided by subclauses (2)(b) and (2)(d) of this clause shall not be subject to the annual leave loading prescribed by subclause (11) of Clause 22. - Annual Leave of this Award.

(g) Work performed by an employee in excess of the ordinary hours of a shift or on a rostered day off shall be paid for in accordance with the provisions of Clause 21. - Overtime of this Award.

(h) (i) When an employee begins or ceases a shift between the hours of 11.00 p.m. and 7.00 a.m. and no public transport is available, reimbursement at the appropriate rate of hire prescribed by subclause (4) of Clause 42. - Motor Vehicle Allowance of this Award, shall be made if the employee's private motor vehicle or motor cycle is used for the journey between the employee's residence and headquarters and the return journey. Provided, however, that any employee who elects to be permanently retained on a fixed or non-rotating shift that begins or ceases between or on the hours of 11.00 p.m. and 7.00 a.m. shall not be eligible to claim this reimbursement.

(ii) The provisions of this subclause shall only apply to employees living and working within a radius of 50 km of the Perth City Railway Station.

(3) Hours of Duty and Rosters

(a) An employee engaged on shifts shall work according to the provisions of subclause (1)(a) and (b) of Clause 17.- Hours of this Award exclusive of meal intervals. Provided that where agreement is reached between the Employer and the Association the length and/or number of shifts worked per fortnight may be altered. Provided further that when the agreed length of a shift is extended past eight hours, overtime shall be payable only for time worked in excess of the rostered shift.

(b) Meal breaks shall be for a period of at least thirty (30) minutes, but not greater than one (1) hour for each meal.

(c) Employees may be rostered to work on any of the seven (7) days of the week provided that no employee shall be rostered for more than six (6) consecutive days. Provided that where agreement is reached between the Employer and the Association shift workers may be exempted from this provision.

(d) The roster period shall begin at the beginning of a pay period and continue for fourteen (14) consecutive days. Rosters shall be available to employees at least seven (7) clear working days prior to the commencement of the roster.

(e) A roster may only be altered on account of a contingency which the Employer could not have been reasonably expected to foresee. When a roster is altered, the employee concerned shall be notified of the changed shift twenty-four hours before the changed shift commences, provided that where such notice is not given, the employee shall be paid in accordance with Clause 21. - Overtime of this Award for the complete duration of the changed shift, but this shall not apply to an employee who was absent from duty on the employee's last rostered shift.

(f) An employee shall not be retained permanently on one shift unless the employee so elects in writing.

(g) Employees shall be allowed to exchange shifts including sleep shifts under Clause 19. - Sleep Shift Allowances of this Award or days off with other employees provided the approval of the Employer has been obtained and provided further that any excess hours worked shall not involve the payment of overtime.

2. Schedule C – Shift Work Allowance: Delete this schedule and insert the following in lieu thereof:

SCHEDULE C. - SHIFT WORK ALLOWANCE

An officer required to work a weekday afternoon or night shift of seven and one half (7.5) hours worked, will in addition to the ordinary rate of salary, be paid an allowance in accordance with the following formula for each shift so worked.

Shiftwork Allowance =

$$\frac{\text{Annual Salary}}{1} \times \frac{12}{313} \times \frac{1}{10} \times \frac{15}{100}$$

A minimum shift work allowance of \$17.04 is payable for each afternoon or night shift of seven and one half (7.5) hours worked.

Clause 57(2) of this Award defines annual salary for calculation purposes.

(Operative from first pay period on or after 23 July 2009)

3. Schedule E – Overtime Allowance: Delete Part I of this schedule and insert the following in lieu thereof:

SCHEDULE E. – OVERTIME ALLOWANCE

PART I - OUT OF HOURS CONTACT

(Operative from first pay period on or after 14 March 2008)

Standby \$7.41 per hour

On Call \$3.71 per hour

Availability \$1.85 per hour

Subclause 57(2). – Expired General Agreement Salaries of this Award defines annual salary for calculation purposes.

4. Schedule K – Expired General Agreement Salaries: Delete this schedule and insert the following in lieu thereof:

SCHEDULE K. – EXPIRED GENERAL AGREEMENT SALARIES

Salaries

LEVELS	Annual Salary From the beginning of the first pay period commencing on or after 26 February 2007		
	SCHEDULE 1 BASE RATES FOR 76-HOUR FORTNIGHT WITH 12 ACCRUED DAYS OFF	SCHEDULE 2 BASE RATES FOR 78-HOUR FORTNIGHT WITH 6 ACCRUED DAYS OFF	SCHEDULE 3 BASE RATES FOR 80-HOUR FORTNIGHT WITH NO ACCRUED DAYS OFF
Level 1			
Under 17 yrs	\$16,694	\$17,133	\$17,573
17 yrs	\$19,510	\$20,023	\$20,537
18 yrs	\$22,757	\$23,355	\$23,955
19 yrs	\$26,342	\$27,035	\$27,728
20 yrs	\$29,582	\$30,359	\$31,138
1.1	\$32,497	\$33,350	\$34,206
1.2	\$33,496	\$34,378	\$35,259
1.3	\$34,496	\$35,404	\$36,313
1.4	\$35,489	\$36,424	\$37,358
1.5	\$36,489	\$37,449	\$38,409
1.6	\$37,489	\$38,475	\$39,462
1.7	\$38,638	\$39,655	\$40,671
1.8	\$39,434	\$40,472	\$41,510
1.9	\$40,609	\$41,679	\$42,748
LEVEL 2.1	\$42,017	\$43,124	\$44,229
2.2	\$43,097	\$44,230	\$45,366
2.3	\$44,231	\$45,396	\$46,561
2.4	\$45,431	\$46,627	\$47,822
2.5	\$46,686	\$47,914	\$49,142

LEVELS	Annual Salary From the beginning of the first pay period commencing on or after 26 February 2007		
	SCHEDULE 1 BASE RATES FOR 76-HOUR FORTNIGHT WITH 12 ACCRUED DAYS OFF	SCHEDULE 2 BASE RATES FOR 78-HOUR FORTNIGHT WITH 6 ACCRUED DAYS OFF	SCHEDULE 3 BASE RATES FOR 80-HOUR FORTNIGHT WITH NO ACCRUED DAYS OFF
LEVEL 3.1	\$48,409	\$49,683	\$50,957
3.2	\$49,754	\$51,062	\$52,372
3.3	\$51,138	\$52,483	\$53,829
3.4	\$52,560	\$53,944	\$55,326
LEVEL 4.1	\$54,510	\$55,944	\$57,380
4.2	\$56,037	\$57,512	\$58,986
4.3	\$57,609	\$59,124	\$60,641

2010 WAIRC 01050

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, 20 OCTOBER 2010

FILE NO/S

P 33 OF 2010

CITATION NO.

2010 WAIRC 01050

Result Award varied**Representation****Applicant** Mr M Sims**Respondent** Mr J Chapman and with him Ms C Holmes*Order*

HAVING heard M M Sims on behalf of The Civil Service Association of Western Australia Incorporated and Mr J Chapman and with him Ms C Holmes 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 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 24th day of September 2010.

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

[L.S.]

SCHEDULE

- 1. Clause 42. – Motor Vehicle Allowance: Delete subclause (5) of this clause and insert the following in lieu thereof:**
- (5) Allowance for Towing the Employer's Caravan or Trailer
- In the case where employees are required to tow the Employer's caravans on official business, the additional rate shall be 7.5 cents per kilometre. When the Employer's trailers are towed on official business the additional rate shall be 4.0 cents per kilometre.
- 2. Clause 45. – Relieving Allowance: Delete subclause (4) of this clause and insert the following in lieu thereof:**
- (4) If an employee whose normal duties do not involve camp accommodation is required to relieve or perform special duty resulting in a stay at a camp, the employee shall be paid camping allowance for the duration of the period spent in camp, and in addition, shall be paid a lump sum of \$180.00 to cover incidental personal expenses: Provided that an employee shall receive no more than one lump sum of \$180.00 in any one period of three (3) years.
- 3. Clause 46 – Removal Allowance:**
- A. Delete subclause (1)(c) of this clause and insert the following in lieu thereof:**
- (c) An allowance of \$556.00 for accelerated depreciation and extra wear and tear on furniture, effects and appliances for each occasion that an employee is required to transport their furniture, effects and appliances provided that the employer is satisfied that the value of household furniture, effects and appliances moved by the employee is at least \$3,334.00.
- B. Delete subclause (1)(d) of this clause and insert the following in lieu thereof:**
- (d) Reimbursement of reasonable expenses in kennelling and transporting of domestic pet or pets up to a maximum amount of \$180.00.
- Pets are defined as dogs, cats, birds or other domestic animals kept by the employee or the employee's dependants for the purpose of household enjoyment.
- Pets do not include domesticated livestock, native animals or equine animals.
- C. Delete subclause (6) of this clause and insert the following in lieu thereof:**
- (6) Where an employee is transferred to government owned or private rental accommodation, where furniture is provided, and as a consequence the employee is obliged to store furniture, the employee shall be reimbursed the actual cost of such storage up to a maximum allowance of \$1,034.00 per annum. Actual cost is deemed to include the premium for adequate insurance coverage for the value of the furniture stored. An allowance under this subclause shall not be paid for a period in excess of four years without the approval of the employer.
4. Schedule E – Overtime Allowance: Delete Part II – Meals of this schedule and insert the following in lieu thereof: PART II - Meals

(Operative from first pay period commencing on and from 24th September 2010)

Breakfast	\$10.15 per meal
Lunch	\$12.45 per meal
Evening Meal	\$14.95 per meal
Supper	\$10.15 per meal

2010 WAIRC 01040

GOVERNMENT OFFICERS (SOCIAL TRAINERS) AWARD 1988
 WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
 DISABILITY SERVICES COMMISSION

PARTIES

APPLICANT

-v-

THE CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA

RESPONDENT

CORAM

PUBLIC SERVICE ARBITRATOR
 ACTING SENIOR COMMISSIONER P E SCOTT

DATE

WEDNESDAY, 20 OCTOBER 2010

FILE NO/S

P 23 OF 2010

CITATION NO.

2010 WAIRC 01040

Result	Award varied
Representation	
Applicant	Mr J Chapman and with him Ms C Holmes
Respondent	Mr M Sims

Order

HAVING heard Mr J Chapman and with him Ms C Holmes as agent for the applicants and Mr M Sims on behalf of The Civil Service Association of Western Australia Incorporated 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 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

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	COLUMN A DAILY RATE	COLUMN B 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))	COLUMN C 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	21.70		
(3)	Interstate	21.70		
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	456.70	228.35	152.25
	Carnarvon	255.15	127.55	85.05
	Dampier	366.70	183.35	122.25
	Derby	342.20	171.10	114.05
	Exmouth	292.70	146.35	97.55
	Fitzroy Crossing	370.20	185.10	123.40
	Gascoyne Junction	291.70	145.85	97.25
	Halls Creek	247.20	123.60	82.40
	Karratha	445.70	222.85	148.55

ITEM	PARTICULARS	COLUMN A DAILY RATE	COLUMN B 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))	COLUMN C DAILY RATE OFFICERS WITHOUT DEPENDENTS RELIEVING ALLOWANCE FOR PERIOD IN EXCESS OF 42 DAYS (CLAUSE 45 (2) (b))
	Kununurra	331.70	165.85	110.55
	Marble Bar	271.70	135.85	90.55
	Newman	338.95	169.50	113.00
	Nullagine	256.70	128.35	85.55
	Onslow	273.30	136.65	91.10
	Pannawonica	192.70	96.35	64.25
	Paraburdoo	259.70	129.85	86.55
	Port Hedland	367.15	183.55	122.40
	Roebourne	241.70	120.85	80.55
	Shark Bay	240.20	120.10	80.05
	Tom Price	320.20	160.10	106.75
	Turkey Creek	235.70	117.85	78.55
	Wickham	508.70	254.35	169.55
	Wyndham	254.70	127.35	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	128.25
(11)	Interstate	128.25

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	21.20
	Lunch	33.20
	Dinner	52.20

ITEM	PARTICULARS	COLUMN A DAILY RATE	COLUMN B 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))	COLUMN C DAILY RATE OFFICERS WITHOUT DEPENDENTS RELIEVING ALLOWANCE FOR PERIOD IN EXCESS OF 42 DAYS (CLAUSE 45 (2) (b))
(14)	Interstate			
	Breakfast	21.20		
	Lunch	33.20		
	Dinner	52.20		
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 01049

GOVERNMENT OFFICERS (STATE GOVERNMENT INSURANCE COMMISSION) AWARD, 1987

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

THE CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA INCORPORATED

APPLICANT

-v-

INSURANCE COMMISSION OF WESTERN AUSTRALIA

RESPONDENT

CORAM

PUBLIC SERVICE ARBITRATOR
ACTING SENIOR COMMISSIONER P E SCOTT

DATE

WEDNESDAY, 20 OCTOBER 2010

FILE NO/S

P 32 OF 2010

CITATION NO.

2010 WAIRC 01049

Result Award varied

Representation

Applicant Mr M Sims

Respondent Mr J Chapman and with him Ms C Holmes

Order

HAVING heard Mr M Sims on behalf of The Civil Service Association of Western Australia Incorporated and Mr J Chapman and with him Ms C Holmes 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 (State Government Insurance Commission) Award, 1987 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 24th day of September 2010.

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

[L.S.]

SCHEDULE

Schedule C – Overtime Allowance: Delete Part II – Meals of this schedule and insert the following in lieu thereof:

PART II - MEALS

(Operative from first pay period commencing on and from 24 September 2010)

Breakfast	\$10.15 per meal
Lunch	\$12.45 per meal
Evening Meal	\$14.95 per meal
Supper	\$10.15 per meal

2010 WAIRC 01052

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, 20 OCTOBER 2010

FILE NO/S

P 35 OF 2010

CITATION NO.

2010 WAIRC 01052

Result	Award varied
Representation	
Applicant	Mr M Sims
Respondents	Mr J Chapman and with him Ms C Holmes

Order

HAVING heard Mr M Sims on behalf of The Civil Service Association of Western Australia Incorporated and Mr J Chapman and with him Ms C Holmes 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 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 24th day of September 2010.

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

[L.S.]

SCHEDULE

- 1. Clause 5.4. – Motor Vehicle Allowance: Delete subclause 5.4.5 of this clause and insert the following in lieu thereof:**
- 5.4.5 Allowance for towing the employer’s caravan or trailer.
- In case where employees are required to tow the employer’s caravans on official business, the additional rate shall be 7.5 cents per kilometre. When the employer’s trailers are towed on official business the additional rate shall be 4.0 cents per kilometre.
- 2. Clause 5.7. – Relieving Allowance: Delete subclause 5.7.4 of this clause and insert the following in lieu thereof:**
- 5.7.4 If an employee whose normal duties do not involve camp accommodation is required to relieve or perform special duty resulting in a stay at a camp, the employee shall be paid camping allowance for the duration of the period spent in camp, and in addition, shall be paid a lump sum of \$180.00 to cover incidental personal expenses: Provided that an employee shall receive no more than one lump sum of \$180.00 in any one period of three years.
- 3. Clause 5.8. – Removal Allowance:**
- A. Delete paragraph (3) of subclause 5.8.1 of this clause and insert the following in lieu thereof:**
- (3) An allowance of \$556.00 for accelerated depreciation and extra wear and tear on furniture, effects and appliances for each occasion that an employee is required to transport their furniture, effects and appliances provided that the employer is satisfied that the value of household furniture, effects and appliances moved by the employee is at least \$3,334.00.
- B. Delete paragraph (4) of subclause 5.8.1 of this clause and insert the following in lieu thereof:**
- (4) Reimbursement of reasonable expenses in kennelling and transporting of domestic pet or pets up to a maximum amount of \$180.00.
- Pets are defined as dogs, cats, birds or other domestic animals kept by the employee or the employee's dependants for the purpose of household enjoyment.
- Pets do not include domesticated livestock, native animals or equine animals.
- C. Delete subclause 5.8.6 of this clause and insert the following in lieu thereof:**
- 5.8.6 Where an employee is transferred to government owned or private rental accommodation, where furniture is provided, and as a consequence the employee is obliged to store furniture, the employee shall be reimbursed the actual cost of such storage up to a maximum allowance of \$1,034.00 per annum. Actual cost is deemed to include the premium for adequate insurance coverage for the value of the furniture stored. An allowance under this subclause shall not be paid for a period in excess of four years without the approval of the employer.
- 4. Schedule E Clause 3.2 Overtime: Delete Part II – Meals of this schedule and insert the following in lieu thereof:**
- PART II – MEALS
- (Operative from the first pay period commencing on or from 24th September 2010)
- | | | |
|--------------|----------|----------|
| Breakfast | \$ 10.15 | per meal |
| Lunch | \$ 12.45 | per meal |
| Evening Meal | \$ 14.95 | per meal |
| Supper | \$ 10.15 | per meal |

2010 WAIRC 01043

JUVENILE CUSTODIAL OFFICERS' AWARD

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

THE MINISTER FOR JUSTICE

APPLICANT

-v-

THE CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA

RESPONDENT**CORAM**PUBLIC SERVICE ARBITRATOR
ACTING SENIOR COMMISSIONER P E SCOTT**DATE**

WEDNESDAY, 20 OCTOBER 2010

FILE NO/S

P 26 OF 2010

CITATION NO.

2010 WAIRC 01043

Result	Award varied
Representation	
Applicant	Mr J Chapman and with him Ms C Holmes
Respondent	Mr M Sims

Order

Having heard Mr J Chapman and with him Ms C Holmes as agent for the applicant and Mr M Sims on behalf of The Civil Service Association of Western Australia Incorporated, 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 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	COLUMN A	COLUMN B	COLUMN C
		DAILY RATE	DAILY RATE OFFICERS 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 OFFICERS 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	21.70		
(3)	Interstate	21.70		
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	456.70	228.35	152.25
	Carnarvon	255.15	127.55	85.05
	Dampier	366.70	183.35	122.25
	Derby	342.20	171.10	114.05
	Exmouth	292.70	146.35	97.55
	Fitzroy Crossing	370.20	185.10	123.40
	Gascoyne Junction	291.70	145.85	97.25
	Halls Creek	247.20	123.60	82.40
	Karratha	445.70	222.85	148.55
	Kununurra	331.70	165.85	110.55
	Marble Bar	271.70	135.85	90.55
	Newman	338.95	169.50	113.00

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 5.7(2)(b)) TRANSFER ALLOWANCE FOR PERIOD IN EXCESS OF PRESCRIBED PERIOD (CLAUSE 5.9(3))	DAILY RATE OFFICERS WITHOUT DEPENDENTS RELIEVING ALLOWANCE FOR PERIOD IN EXCESS OF 42 DAYS (CLAUSE 5.7(2)(b))
	Nullagine	256.70	128.35	85.55
	Onslow	273.30	136.65	91.10
	Pannawonica	192.70	96.35	64.25
	Paraburdoo	259.70	129.85	86.55
	Port Hedland	367.15	183.55	122.40
	Roebourne	241.70	120.85	80.55
	Shark Bay	240.20	120.10	80.05
	Tom Price	320.20	160.10	106.75
	Turkey Creek	235.70	117.85	78.55
	Wickham	508.70	254.35	169.55
	Wyndham	254.70	127.35	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	128.25		
(11)	Interstate	128.25		
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	21.20		
	Lunch	33.20		
	Dinner	52.20		
(14)	Interstate			
	Breakfast	21.20		
	Lunch	33.20		
	Dinner	52.20		
DEDUCTION FOR NORMAL LIVING EXPENSES (CLAUSE 5.9.5(1))				
(15)	Each Adult	26.25		
(16)	Each Child	4.50		

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 5.7(2)(b)) TRANSFER ALLOWANCE FOR PERIOD IN EXCESS OF PRESCRIBED PERIOD (CLAUSE 5.9(3))	<u>COLUMN C</u> DAILY RATE OFFICERS WITHOUT DEPENDENTS RELIEVING ALLOWANCE FOR PERIOD IN EXCESS OF 42 DAYS (CLAUSE 5.7(2)(b))
	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 01085

PUBLIC SERVICE ALLOWANCES (FISHERIES AND WILDLIFE OFFICERS) AWARD 1990

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

COMMISSION'S OWN MOTION

APPLICANT

-v-

(NOT APPLICABLE)

RESPONDENT

CORAM

PUBLIC SERVICE ARBITRATOR

ACTING SENIOR COMMISSIONER P E SCOTT

DATE

MONDAY, 1 NOVEMBER 2010

FILE NO/S

P 20 OF 2007

CITATION NO.

2010 WAIRC 01085

Result

Award varied

Order

HAVING heard Mr C Harrison on behalf of the Department of Fisheries and with him Mr B Entrekin of the Department of Commerce, and Mr S Farrell on behalf of The Civil Service Association of Western Australia Incorporated, and by consent, the Public Service Arbitrator, pursuant to the powers conferred under the *Industrial Relations Act 1979*, hereby orders:

THAT the Public Service Allowances (Fisheries and Wildlife Officers) 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 the 22nd day of October 2010.

[L.S.]

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

SCHEDULE

1. Clause 2. – Arrangement: Delete Clause 2 and insert the following in lieu thereof:2. - ARRANGEMENT

1. Title
 2. Arrangement
 3. Scope
 4. Definitions
 5. Commuted Overtime Allowances – Department of Fisheries
 6. Commuted Overtime Allowances – Department of Environment and Conservation
 7. On Call Allowance
 8. Public Holidays
 9. Weekend Duty
 10. Copies of Award
 11. Term of Award
 12. Liberty to Apply
 13. Salary Packaging
- Schedule A – Named Parties

2. Clause 3. – Scope: Delete Clause 3 and insert the following in lieu thereof:3. - SCOPE

This Award shall apply to all Government Officers employed within the following categories by one of the named employer parties to this Award under the provisions of the *Public Sector Management Act 1994*: -

- (1) Fisheries and Marine Officers (including trainees).
- (2) Wildlife Officers (including trainees).
- (3) Technical Officers and Technical Assistants involved in Fisheries Research.
- (4) Technical Officers and Technical Assistants involved in Wildlife Research.
- (5) Any other officer engaged in duties at sea.

3. Clause 4. – Definitions: Delete Clause 4 and insert the following in lieu thereof:4. - DEFINITIONS

"A day" means from midnight to midnight.

"At sea" means the period away from home port.

"Association" means The Civil Service Association of Western Australia Incorporated.

"Chief Executive Officer" has the same meaning as that outlined in the *Public Sector Management Act 1994*, as well as any officer duly authorised by the Chief Executive Officer to act on his/her behalf.

"Gross annual salary" means the officer's gross salary as provided for under Schedule A – Salaries to the Public Service Award 1992.

"Prescribed hours of duty" means the hours of duty prescribed within clause 20 of the Public Service Award 1992.

"Retiring Allowance" shall mean the lump sum paid to an officer for accrued and pro-rata leave entitlements payable at the date of retirement.

"On call" shall mean a written instruction or other authorised direction by the employer or a duly authorised officer to an employee rostered to remain at the employee's residence or to otherwise be immediately contactable by telephone or other means outside the employee's normal hours of duty in case of a call out requiring an immediate return to duty. The nature of the duties to be performed requires an employee to be in a state of readiness for immediate return to duty.

4. Clause 5. – Commuted Overtime Allowances: Delete Clause 5 and insert the following three clauses in lieu thereof:5. - COMMUTED OVERTIME ALLOWANCES – DEPARTMENT OF FISHERIES

- (1) Fisheries and Marine Officers
 - (a) Subject to the provisions of paragraphs (b) and (c) of this subclause, these officers shall be paid an allowance of 15% of gross annual salary in lieu of payment for overtime worked pursuant to clause 22. – Overtime Allowance of the Public Service Award 1992. This allowance shall continue to be paid during annual leave, long service leave, personal leave and as part of any retiring allowance.
 - (b) An additional 15% shall be paid for those days on which an officer is engaged in extensive field work approved by the Chief Executive Officer.
 - (c) Officers who occupy positions which generally do not require work to be performed outside of or in excess of the prescribed hours of duty may, at the discretion of the Chief Executive Officer, be paid overtime pursuant to clause 22. - Overtime Allowance of the Public Service Award 1992, in lieu of the allowances prescribed in paragraphs (a) and (b) of this subclause.

- (2) Technical Officers and Technical Assistants involved in Fisheries Research and any other officers authorised by the Chief Executive Officer excluding officers employed in specified calling positions pursuant to clause 12. – Salaries Specified Callings of the Public Service Award 1992
- (a) All officers shall be paid an allowance at a rate of 20% of gross annual salary for days when working on field duties away from headquarters. This allowance is payable in lieu of payment for overtime worked pursuant to clause 22 – Overtime Allowance of the Public Service Award 1992.
- (b) Officers who occupy positions which generally do not require work to be performed outside of or in excess of the prescribed hours of duty may, at the discretion of the Chief Executive Officer, be paid overtime pursuant to clause 22. - Overtime Allowance of the Public Service Award 1992, in lieu of the allowance prescribed in paragraph (a) of this subclause.
- (3) Officers Engaged in Duties at Sea
- (a) Notwithstanding the provisions of subclauses (1) and (2) of this clause, any officer engaged in duties at sea involving either an overnight stay on a Departmental vessel or being at sea on board a commercial fishing vessel shall be paid an allowance of 30% of gross annual salary for those days spent at sea, including the day of departure and day of return. This allowance is payable in lieu of payment for overtime worked pursuant to clause 22 – Overtime Allowance of the Public Service Award 1992.
- (b) The allowance prescribed by this subclause shall be paid in lieu of the allowances prescribed by subclauses (1) and (2) of this clause.
- (4) Payment of Commuted Overtime Allowances will not be made to officers classified above Level 5 except where the Chief Executive Officer otherwise determines.

6. - COMMUTED OVERTIME ALLOWANCES – DEPARTMENT OF ENVIRONMENT AND CONSERVATION

- (1) Wildlife Officers
- (a) Subject to the provisions of paragraphs (b) and (c) of this subclause, these officers shall be paid an allowance of 15% of gross annual salary in lieu of payment for overtime worked pursuant to clause 22. – Overtime Allowance of the Public Service Award 1992. This allowance shall continue to be paid during annual leave, long service leave, personal leave and as part of any retiring allowance.
- (b) An additional 15% shall be paid for those days on which an officer is engaged in extensive field work approved by the Chief Executive Officer.
- (c) Officers who occupy positions which generally do not require work to be performed outside of or in excess of the prescribed hours of duty may, at the discretion of the Chief Executive Officer, be paid overtime pursuant to clause 22. - Overtime Allowance of the Public Service Award 1992, in lieu of the allowances prescribed in paragraphs (a) and (b) of this subclause.
- (2) Technical Officers and Technical Assistants involved in Wildlife Research and any other officers authorised by the Chief Executive Officer excluding officers employed in specified calling positions pursuant to clause 12. – Salaries Specified Callings of the Public Service Award 1992.
- (a) All Officers shall be paid an allowance at a rate of 15% of gross annual salary for days when working on field duties away from headquarters. This allowance is payable in lieu of payment for overtime worked pursuant to clause 22 – Overtime Allowance of the Public Service Award 1992.
- (b) An additional 15% shall be paid for those days on which an officer is engaged in extensive field work approved by the Chief Executive Officer.
- (c) Officers who occupy positions which generally do not require work to be performed outside of or in excess of the prescribed hours of duty may, at the discretion of the Chief Executive Officer, be paid overtime pursuant to clause 22. - Overtime Allowance of the Public Service Award 1992, in lieu of the allowances prescribed in paragraphs (a) and (b) of this subclause.
- (3) Payment of Commuted Overtime Allowances will not be made to officers classified above Level 5 except where the Chief Executive Officer otherwise determines.

7. - ON CALL ALLOWANCE

Officers placed on-call by the Chief Executive Officer shall be paid on call allowance in accordance with clause 22. - Overtime Allowance of the Public Service Award 1992.

5. **Clause 6. – Delete clause title and clause 6 and insert the following clause title and clause in lieu thereof:**

8. - PUBLIC HOLIDAYS

- (1) The following days shall be allowed as holidays with pay: New Year's Day, Australia Day, Good Friday, Easter Monday, Christmas Day, Boxing Day, Anzac Day, Sovereign's Birthday, Foundation Day, Labour Day, provided that the employer may approve another day to be taken as a holiday in lieu of any of the above mentioned days.
- (2) An officer required to perform work on a public holiday shall be allowed either one and one-half days' leave with pay or payment of an additional one and one-half days' pay at the ordinary rate of pay, the choice of which is at the discretion of the Chief Executive Officer.

- (3) Where a public holiday falls on an officer's rostered day off, the officer shall be allowed one day's leave with pay in lieu of the holiday.
- (4) Leave provided by this clause may be taken at a time agreed between the officer and the Chief Executive Officer provided that in the absence of such agreement the leave shall be taken in conjunction with the officer's annual leave.

6. Clause 7. – Delete clause title and clause 7 and insert the following clause title and clause in lieu thereof:

9. - WEEKEND DUTY

- (1) Work performed on a Saturday shall be paid at the rate of time and one-half up to a maximum of the first 7½ hours worked on that day.
- (2) Work performed on a Sunday shall be paid at the rate of time and three quarters up to a maximum of the first 7½ hours worked on that day.
- (3) Payments made under this clause shall be calculated on the officer's ordinary rate of pay for prescribed hours.
- (4) The payment shall be in addition to any allowance for commuted overtime.
- (5) By agreement between the employee and employer, time off in lieu of payment may be granted by the Chief Executive Officer. Such time off in lieu is to be determined at the rate prescribed in subclauses (1) and (2) of this clause.

7. Clause 8. – Delete clause title and clause 8 and insert the following clause title and clause in lieu thereof:

10. - COPIES OF AWARD

Every officer shall be entitled to have access to a copy of this Award. Sufficient copies shall be made available, either hard copy or by modern electronic means by the employer for this purpose. Where a hard copy is requested it shall be made available.

8. Clause 10. – Delete clause title and clause 12 and insert the following clause title and clause in lieu thereof:

12. - LIBERTY TO APPLY

Leave is reserved by the parties to apply at any time to the Public Service Arbitrator for amendment to clause 5. – Commuted Overtime Allowances – Department of Fisheries and clause 6. – Commuted Overtime Allowances– Department of Environment and Conservation.

9. Clause 11. – Delete clause title and clause 13 and insert the following clause title and clause in lieu thereof:

13. - SALARY PACKAGING

- (1) An officer may, by agreement with the employer, enter into a salary packaging arrangement in accordance with this clause and Australian Taxation Office requirements.
- (2) Salary packaging is an arrangement whereby the entitlements and benefits under this Award, contributing toward the Total Employment Cost (TEC) (as defined in subclause (3) of this clause) of an officer, can be reduced by and substituted with another or other benefits.
- (3) The TEC for salary packaging purposes is calculated by adding the following entitlements and benefits:
- (a) the base salary;
 - (b) other cash allowances;
 - (c) non cash benefits;
 - (d) any Fringe Benefit Tax liabilities currently paid; and
 - (e) any variable components.
- (4) Where an officer enters into a salary packaging arrangement the officer will be required to enter into a separate written agreement with the employer setting out the terms and conditions of the salary packaging arrangement.
- (5) Notwithstanding any salary packaging arrangement, the salary rate as specified in this Award, is the basis for calculating salary related entitlements specified in the Award.
- (6) Compulsory Employer Superannuation Guarantee contributions are to be calculated in accordance with applicable federal and state legislation. Compulsory employer contributions made to superannuation schemes established under the State Superannuation Act 2001 are calculated on the gross (pre packaged) salary amount regardless of whether an officer participates in a salary packaging arrangement with their employer.
- (7) A salary packaging arrangement cannot increase the costs to the employer of employing an individual.
- (8) A salary packaging arrangement is to provide that the amount of any taxes, penalties or other costs for which the employer or officer is or may become liable for and are related to the salary packaging arrangement, shall be borne in full by the officer.
- (9) In the event of any increase in taxes, penalties or costs relating to a salary packaging arrangement, the officer may vary or cancel that salary packaging arrangement.

10. Schedule A. – Delete Schedule A title and insert the following title and text in lieu thereof:

SCHEDULE A - NAMED PARTIES

The Civil Service Association of Western Australia Incorporated
 The Department of Fisheries
 The Department of Environment and Conservation

2010 WAIRC 01073

PUBLIC SERVICE AWARD 1992

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
 THE DEPARTMENT OF AGRICULTURE AND OTHERS

PARTIES**APPLICANTS****-v-**

THE CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA

RESPONDENT**CORAM**

PUBLIC SERVICE ARBITRATOR
 ACTING SENIOR COMMISSIONER P E SCOTT

DATE

FRIDAY, 29 OCTOBER 2010

FILE NO/S

P 18 OF 2010

CITATION NO.

2010 WAIRC 01073

Result

Award varied

Order

HAVING heard Mr A Harper as agent for the applicants and Mr M Sims on behalf of The Civil Service Association of Western Australia Incorporated, 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 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 20th day of October 2010.

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

[L.S.]

SCHEDULE**1. Clause 2. – Arrangement: Delete this clause and insert the following in lieu thereof:**2. - ARRANGEMENT

1. Title
- 1B. Minimum Adult Award Wage
2. Arrangement
3. Area of Operation
4. Scope
5. Term of Award
6. Definitions
7. Certificate of Service
8. Contract of Service
9. Part-Time Employment
10. Casual Employment
11. Salaries
12. Salaries Specified Callings
13. Purchased Leave - 44/52 Salary Arrangement
14. Purchased Leave - Deferred Salary Arrangement
15. Salary Packaging Arrangement
16. Supported Wage
17. Traineeships
18. Annual Increments
19. Higher Duties Allowance
20. Hours
21. Shift Work Allowance

22. Overtime Allowance
 23. Annual Leave
 24. Public Holidays
 25. Long Service Leave
 26. Sick Leave
 27. Carers Leave
 28. Parental Leave
 29. Leave Without Pay
 30. Study Assistance
 31. Short Leave
 32. Bereavement Leave
 33. Cultural/Ceremonial Leave
 34. Blood/Plasma Donors Leave
 35. Emergency Service Leave
 36. Union Facilities for Union Representatives
 37. Leave to Attend Association Business
 38. Trade Union Training Leave
 39. Defence Force Reserves Leave
 40. International Sporting Events Leave
 41. Witness and Jury Service
 42. Camping Allowance
 43. District Allowance
 44. Disturbance Allowance
 45. Diving Allowance
 46. Flying Allowance
 47. Motor Vehicle Allowance
 48. Property Allowance
 49. Protective Clothing Allowance
 50. Relieving Allowance
 51. Removal Allowance
 52. Sea Going Allowance
 53. Transfer Allowance
 54. Travelling Allowance
 55. Weekend Absence From Residence
 56. Preservation of Rights
 57. Keeping of and Access to Employment Records
 58. Notification of Change
 59. Right of Entry and Inspection by Authorised Representatives
 60. Copies of Award
 61. Access to Information and Records
 62. Establishment of Consultative Mechanisms
 63. Special Conditions
 64. Transition
 65. Dispute Settlement Procedure
 66. Expired General Agreement Salaries
- Schedule A Salaries
- Schedule B Salaries - Specified Callings
- Schedule C Camping Allowance
- Schedule D District Allowance
- Schedule E Motor Vehicle Allowance
- Schedule F Motor Vehicle Allowance
- Schedule G Motor Cycle Allowance
- Schedule H Overtime Allowance
- Schedule I Travelling, Transfer and Relieving Allowance
- Schedule J Shift Work Allowance
- Schedule K Diving, Flying and Sea Going Allowance
- Schedule L Named Parties
- Schedule M Expired General Agreement Salaries

2. **Clause 21. – Shift Work Allowance: Delete this clause and insert the following in lieu thereof:**

21. - SHIFT WORK ALLOWANCE

- (1) In this Clause the following expressions shall have the following meaning:
- "Day shift" means a shift commencing after 6.00am and before 12.00 noon.
- "Afternoon shift" means a shift commencing at or after 12.00 noon and before 6.00pm.
- "Night shift" means a shift commencing at or after 6.00pm and before 6.01am.
- "Public holiday" shall mean a holiday provided in Clause 24. - Public Holidays of this Award.
- (2) (a) (i) An officer required to work a weekday afternoon or night shift, will in addition to the ordinary rate of salary, be paid an allowance in accordance with the following formula for each shift so worked.
- (ii)
$$\frac{\text{Annual Salary}}{1} \times \frac{12}{313} \times \frac{1}{10} \times \frac{15}{100}$$
- (iii) For the purposes of clause 21 (2) (a), "annual salary" is the ordinary rate of salary payable for the position. Clause 66(2) of the award defines annual salary for calculation purposes.
- (b) Work performed during ordinary rostered hours on the following days shall be paid for at the following rates, in lieu of the allowance prescribed in clause 21 (2) (a):
- (i) Saturdays - time and one-half;
- (ii) Sundays - time and three quarters; and
- (iii) Public holidays – double time and one half.
- Provided that in lieu of the provisions of clause 21 (2) (b) (iii) and subject to agreement between the employer and the officer, work performed during ordinary rostered hours on a public holiday shall be paid for at the rate of time and one-half and the officer may, in addition be allowed a day's leave with pay to be added to annual leave to be taken at some other time within a period on one year.
- (c) Weekend Penalty Rates for Casual Employees
- (i) Notwithstanding the provisions of clause 10 (2) (a) – Casual Employment, casual employees are entitled to weekend shift penalties. Work performed during ordinary rostered hours on the following days shall be paid for at the following rates:
- Saturdays and public holidays - time and one-half (casuals are already paid a loading in lieu of public holidays); and
- Sundays - time and three quarters.
- (ii) These rates are paid in addition to but not compounded on the casual loading provided for clause 10 (1) (a) – Casual Employment.
- (d) An officer rostered off duty on a public holiday shall be paid at ordinary rates for such day or, subject to agreement between the employer and the officer, be allowed a day's leave with pay in lieu of the holiday to be added to the officer's next annual leave entitlement or taken at a mutually convenient time within a period of one year.
- (e) An officer engaged on shift work who is rostered to work regularly on Sundays and/or public holidays shall be entitled to one week's leave in addition to the officer's normal entitlement to annual leave of absence for recreation.
- (f) Additional leave provided by paragraphs (b) and (d) of this subclause shall not be subject to the annual leave loading prescribed by subclause (11) of Clause 23. - Annual Leave of this Award.
- (g) Work performed by an officer in excess of the ordinary hours of the officer's shift or on a rostered day off shall be paid for in accordance with the overtime provisions of Clause 22. - Overtime Allowance of this Award.
- (h) (i) When an officer begins or ceases a shift between the hours of 11.00 pm and 7.00 am and no public transport is available, reimbursement at the appropriate rate of hire prescribed by subclause (4) of Clause 47. - Motor Vehicle Allowance of this Award shall be made if the officer's private motor vehicle or cycle is used for the journey between the officer's residence and headquarters and the return journey.
- Provided however, that any officer who, on or after October 30, 1987, elects to be permanently retained on a fixed or non rotating shift that begins or ceases between or on the hours of 11.00 pm and 7.00 am shall not be eligible to claim this reimbursement.
- (ii) The provisions of this subclause shall only be applied to officers living and working within a radius of 50km of the Perth City Railway Station.
- (3) Hours of Duty and Rosters
- (a) An officer engaged on shifts shall work a 75-hour fortnight, exclusive of meal intervals, on the basis of not more than ten (10) shifts per fortnight of not more than seven and one half hours duration. Provided that where agreement is reached between the employer and the Association the length and/or number of shifts worked per fortnight may be altered.

Provided that when the agreed length of a shift is extended past seven and one half hours, overtime shall be payable only for time worked in excess of the rostered shift.

Provided also that whenever an agreed alteration to the number of hours per shift has occurred then the allowance per shift shall be varied on a pro rata basis to reflect any variation to other than seven and one half (7½) hours.

- (b) Meal breaks shall be for a period of at least thirty (30) minutes, but not greater than one hour for each meal.
- (c) Officers may be rostered to work on any of the seven days of the week provided that no officer shall be rostered for more than six (6) consecutive days.
Provided that where agreement is reached between the employer and the Association, shift workers may be exempted from this provision.
- (d) The roster period shall commence at the beginning of a pay period and continue for fourteen (14) consecutive days. Rosters shall be available to officers at least five (5) clear working days prior to the commencement of the roster.
- (e) A roster may only be altered on account of a contingency, which the employer could not have been reasonably expected to foresee. When a roster is altered, the officer concerned shall be notified of the changed shift 24 hours before the changed shift commences. Provided that where such notice is not given, the officer shall be paid overtime in accordance with Clause 22. - Overtime Allowance of this Award, for the duration of the changed shift. This provision shall not apply to an officer who was absent from duty on the officer's last rostered shift.
- (f) An officer shall not be rostered for duty until at least ten (10) hours have elapsed from the time the officer's previous rostered shift ended. Provided that where agreement is reached between the Association and the employer the ten (10) hour break may be reduced to accommodate special shift arrangements, except that under no circumstances shall such an agreement provide for a break of less than 8 hours.
- (g) An officer shall not be retained permanently on one shift unless the officer so elects in writing.
- (h) Officers shall be allowed to exchange shifts or days off with other officers provided the approval of the employer has been obtained and provided further that any excess hours worked shall not involve the payment of overtime.
- (i) No officer shall be on out of hours contact after the last working day preceding a period of annual leave or long service leave.

3. Schedule H – Overtime Allowance: Delete Part I of this schedule and insert the following in lieu thereof:

PART I - OUT OF HOURS CONTACT

(Operative from first pay period on or after 14 March 2008)

Standby	\$7.41 per hour
On Call	\$3.71 per hour
Availability	\$1.85 per hour

Clause 66(2) of the award defines salary for calculation purposes.

4. Schedule J – Shiftwork Allowance: Delete this schedule and insert the following in lieu thereof:

SCHEDULE J - SHIFT WORK ALLOWANCE

An officer required to work a weekday afternoon or night shift of seven and one half (7.5) hours worked, will in addition to the ordinary rate of salary, be paid an allowance in accordance with the following formula for each shift so worked.

$$\text{Shiftwork Allowance} = \frac{\text{Annual Salary}}{1} \times \frac{12}{313} \times \frac{1}{10} \times \frac{15}{100}$$

A minimum shift work allowance of

\$17.04 is payable for each afternoon or night shift of seven and one half (7.5) hours worked.

Clause 66(2) of the award defines annual salary for calculation purposes.

(Operative from first pay period on or after 2 September 2008)

5. **Schedule M – Expired General Agreement Salaries: Delete this schedule and insert the following in lieu thereof:****SCHEDULE M - EXPIRED GENERAL AGREEMENT SALARIES**

Salaries

Classification Level	Annual Salary at the beginning of the first pay period on or after 26 February 2007 (Not to be subject to arbitrated safety net adjustments)
	\$
Level 1	
Under 17 yrs	\$16,694
17 yrs	\$19,510
18 yrs	\$22,757
19 yrs	\$26,342
20 yrs	\$29,582
1.1	\$32,497
1.2	\$33,496
1.3	\$34,496
1.4	\$35,489
1.5	\$36,489
1.6	\$37,489
1.7	\$38,638
1.8	\$39,434
1.9	\$40,609
LEVEL 2.1	\$42,017
2.2	\$43,097
2.3	\$44,231
2.4	\$45,431
2.5	\$46,686
LEVEL 3.1	\$48,409
3.2	\$49,754
3.3	\$51,138
3.4	\$52,560
LEVEL 4.1	\$54,510
4.2	\$56,037
4.3	\$57,609
LEVEL 5.1	\$60,638
5.2	\$62,683
5.3	\$64,809
5.4	\$67,017
LEVEL 6.1	\$70,564
6.2	\$72,977
6.3	\$75,473
6.4	\$78,138

Classification Level	Annual Salary at the beginning of the first pay period on or after 26 February 2007 (Not to be subject to arbitrated safety net adjustments)
	\$
LEVEL 7.1	\$82,227
7.2	\$85,053
7.3	\$88,131
LEVEL 8.1	\$93,131
8.2	\$96,714
8.3	\$101,155
LEVEL 9.1	\$106,702
9.2	\$110,449
9.3	\$114,723
CLASS 1	\$121,188
CLASS 2	\$127,654
CLASS 3	\$134,113
CLASS 4	\$140,578

Salaries – Specified Callings

Classification Level	Annual Salary at the beginning of the first pay period on or after 26 February 2007 (Not to be subject to arbitrated safety net adjustments)
	\$
LEVEL 2/4	
1 st year	\$42,017
2 nd year	\$44,231
3 rd year	\$46,686
4 th year	\$49,754
5 th year	\$54,510
6 th year	\$57,609
LEVEL 5.1	\$60,638
5.2	\$62,683
5.3	\$64,809
5.4	\$67,017
LEVEL 6.1	\$70,564
6.2	\$72,977
6.3	\$75,473
6.4	\$78,138
LEVEL 7.1	\$82,227
7.2	\$85,053
7.3	\$88,131

Classification Level	Annual Salary at the beginning of the first pay period on or after 26 February 2007 (Not to be subject to arbitrated safety net adjustments)
LEVEL 8.1	\$93,131
8.2	\$96,714
8.3	\$101,155
LEVEL 9.1	\$106,702
9.2	\$110,449
9.3	\$114,723
CLASS 1	\$121,188
CLASS 2	\$127,654
CLASS 3	\$134,113
CLASS 4	\$140,578

2010 WAIRC 01051

PARLIAMENTARY EMPLOYEES AWARD 1989

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

THE CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA INCORPORATED

APPLICANT

-v-

THE GOVERNOR OF WESTERN AUSTRALIA IN COUNCIL AND OTHERS

RESPONDENTS**CORAM**

PUBLIC SERVICE ARBITRATOR

ACTING SENIOR COMMISSIONER P E SCOTT

DATE

WEDNESDAY, 20 OCTOBER 2010

FILE NO/S

P 34 OF 2010

CITATION NO.

2010 WAIRC 01051

Result	Award varied
Representation	
Applicant	Mr M Sims
Respondents	Mr J Chapman and with him Ms C Holmes

Order

HAVING heard Mr M Sims on behalf of The Civil Service Association of Western Australia Incorporated and Mr J Chapman and with him Ms C Holmes 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 Parliamentary Employees Award 1989 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 24th day of September 2010.

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

[L.S.]

SCHEDULE**1. Clause 9. - Meal Allowance: Delete subclause (1) of this clause and insert the following in lieu thereof:**

- (1) An employee who is required to work overtime under Clause 7 of this Award and where such overtime extends beyond 5.00 p.m., a meal allowance shall be paid in accordance with the provisions of the Public Service Overtime Award No. 10 of 1978 Clause 8 as amended. Provided that where such overtime extends beyond 6.00 a.m. the following day, an allowance of \$14.95 or the amount charged by the House, whichever is the higher, for such a three course meal shall be paid.

AWARDS/AGREEMENTS AND ORDERS—Application for variation of— No variation resulting—

2010 WAIRC 01055

BURSWOOD RESORT CASINO (THEATRICAL EMPLOYEES) AWARD NO. A10 OF 1991

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES ON THE COMMISSION'S OWN MOTION
CORAM CHIEF COMMISSIONER A R BEECH
DATE THURSDAY, 21 OCTOBER 2010
FILE NO/S APPL 1217 OF 2004
CITATION NO. 2010 WAIRC 01055

Result Application discontinued

Order

WHEREAS this is an application made pursuant to s 40B of the *Industrial Relations Act 1979* (“the Act”) on 17 September 2004 to vary the Burswood Resort Casino (Theatrical Employees) Award No. A10 of 1991 (“the Award”);

AND WHEREAS on 18 May 2010 the Commission cancelled the Award in order [2010] WAIRC 00287;

AND WHEREAS there is now no award to which this application relates;

NOW THEREFORE, I the undersigned, pursuant to the powers conferred on me under s 27(1)(a)(iv) of the Act hereby order –

THAT this application be, and is hereby discontinued.

[L.S.]

(Sgd.) A R BEECH,
Chief Commissioner.

AGREEMENTS—Industrial—Retirement from—

2010 WAIRC 01106

NOTICE

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. APPL 151 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 Disability Services Commission will cease to be a party to the LHMU – Disability Services Commission Enrolled Nurses and Assistants in Nursing Industrial Agreement 2008, No AG 28 of 2009 on and from the 10th day of December 2010.

DATED THIS 10th DAY OF NOVEMBER 2010.

[L.S.]

(Sgd.) J. SPURLING,
Registrar.

POLICE ACT 1892—APPEAL—Matters Pertaining To—

2010 WAIRC 01086

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

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

RICHARD JOHN EATON

APPELLANT

-v-

THE COMMISSIONER OF POLICE

RESPONDENT**CORAM**

CHIEF COMMISSIONER A R BEECH

COMMISSIONER S J KENNER

COMMISSIONER S M MAYMAN

DATE

TUESDAY, 2 NOVEMBER 2010

FILE NO/S

APPL 124 OF 2010

CITATION NO.

2010 WAIRC 01086

Result

Order varied - Appeal further adjourned

Representation**Appellant**

Ms C Adams (of counsel), by correspondence

Respondent

Ms D Scaddan (of counsel), by correspondence

Order

WHEREAS by order dated 5 July 2010 ((2010) 90 WAIG 645; [2010] WAIRC 00393) this appeal was adjourned to 5 November 2010 pending the outcome of the appellant's criminal charge in the Albany Magistrates Court;

AND WHEREAS on 1 November 2010 the appellant's representative advised that a decision in the appellant's criminal charge will now be handed down on 10 December 2010;

AND WHEREAS the appellant's representative requested that the WAIRC further adjourn this appeal to be listed for a date after 10 December 2010;

AND WHEREAS on 1 November 2010 the respondent advised that it did not consent to nor oppose the request for a further adjournment;

AND WHEREAS on the information before it, the WAIRC is of the view that it is in the interests of justice to grant a further adjournment;

NOW THEREFORE, the WAIRC, pursuant to the powers conferred upon it under s 33T of the *Police Act, 1892*, hereby orders -

THAT order 1 of the order of 5 July 2010 be varied by deleting the date of Friday, 5 November 2010 and inserting in lieu thereof the date Thursday, 16 December 2010.

C(Sgd.) A R BEECH,
Chief Commissioner,

[L.S.]

On Behalf of the Western Australian Industrial Relations Commission.

UNFAIR DISMISSAL/CONTRACTUAL ENTITLEMENTS—**2010 WAIRC 01091**

PARTIES WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
 DAVID ALLENDER
 APPLICANT

-v-
 SIGMA PRECIOUS METALS PTY LTD
 RESPONDENT

CORAM ACTING SENIOR COMMISSIONER P E SCOTT
DATE FRIDAY, 5 NOVEMBER 2010
FILE NO/S B 153 OF 2010
CITATION NO. 2010 WAIRC 01091

Result Order made

Order

WHEREAS this is an application by which the applicant claims that he was denied benefits arising from his contract of employment with the respondent;

AND WHEREAS on Friday 29 October and Friday 5 November 2010 the Commission convened conferences for the purposes of conciliating between the parties;

AND WHEREAS at the latter conference the parties reached agreement for the resolution of all matters arising between the parties and agreed that the terms of their agreement be reflected in an order of the Commission;

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 \$40,000 before tax in full and final settlement of all matters relating to the applicant's relationship with Sigma Precious Metals Pty Ltd, Sigma (1986) Pty Ltd, Sigma Companies Group Pty Ltd and Sigma Flux Pty Ltd.
2. Such payment shall be made forthwith.
3. Mr J Evans will use his best endeavours with XRF Scientific Limited to have XRF Scientific Limited refer work to Mr Allender.
4. That the application otherwise be and is hereby dismissed.

[L.S.]

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

2010 WAIRC 01060

PARTIES WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
 MARTA BOSNJAK
 APPLICANT

-v-
 DR DARYL STEPHENS
 RESPONDENT

CORAM COMMISSIONER S M MAYMAN
DATE THURSDAY, 21 OCTOBER 2010
FILE NO/S U 124 OF 2010
CITATION NO. 2010 WAIRC 01060

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 6 October 2010 for the applicant to show cause why her application should not be dismissed;

AND WHEREAS the applicant failed to attend the hearing;

AND WHEREAS the Commission relisted the matter for hearing on 19 October 2010 for the applicant to show cause why her application should not be dismissed;

AND WHEREAS the applicant failed 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.) S M MAYMAN,
Commissioner.

2010 WAIRC 01079

PARTIES

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

GIOVANNI (JOHN) BOVA

APPLICANT

-v-

SWAN TAFE (MIDLAND)

RESPONDENT

CORAM COMMISSIONER S J KENNER
DATE MONDAY, 1 NOVEMBER 2010
FILE NO/S U 235 OF 2009
CITATION NO. 2010 WAIRC 01079

Result	Application discontinued by leave
Representation	
Applicant	Mr G Bova
Respondent	Mr M Taylor

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 01072

PARTIES	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION	
	DIANE BEVERLEY CURRAN	APPLICANT
	-v-	
	GOVERNMENT OF WA - DEPARTMENT OF HEALTH - HEALTH CORPORATE NETWORK	RESPONDENT
CORAM	ACTING SENIOR COMMISSIONER P E SCOTT	
DATE	FRIDAY, 29 OCTOBER 2010	
FILE NO/S	U 192 OF 2009	
CITATION NO.	2010 WAIRC 01072	
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 22nd day of October 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 00983

PARTIES	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION	
	KAREN LEE DRURY	APPLICANT
	-v-	
	ARCADIA SUN MOON RESTOR	RESPONDENT
CORAM	COMMISSIONER J L HARRISON	
DATE	THURSDAY, 14 OCTOBER 2010	
FILE NO/S	U 45 OF 2010	
CITATION NO.	2010 WAIRC 00983	
Result	Order issued	
Representation		
Applicant	On her own behalf	
Respondent	No appearances on behalf of the respondent	

Order

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

WHEREAS on 10 June 2010 the Commission convened a conference for the purpose of conciliating between the parties; and

WHEREAS at the conclusion of the conference the applicant was given time to consider her position and was to advise the Commission within seven days if she wished to proceed with her application however, this did not occur; and

WHEREAS the Commission attempted to contact the applicant by telephone on a number of occasions without success; and

WHEREAS on 27 July 2010 the Commission wrote to the applicant requesting that she contact the Commission by no later than 4.00pm on 3 August 2010 to advise her intentions in relation to this matter; and

WHEREAS as the applicant did not contact the Commission by the due date the matter was listed for a show cause hearing on 23 September 2010 and the applicant was advised that non-attendance by her at these proceedings will result in an order being issued dismissing the application for want of prosecution; and

WHEREAS the respondent was advised that there was no compulsion on the respondent to attend the show cause hearing on 23 September 2010; and

WHEREAS the applicant attended the show cause hearing on 23 September 2010 and advised the Commission that she wished to continue with her application and that the reason why she had not responded to the Commission as to whether she wished to continue with this application and to correspondence sent to her was due to her having to care for her daughter who was unwell, her mobile telephone was not working during the relevant period and she did not receive correspondence from the Commission prior to 3 August 2010 which she maintained could have been removed from her mail box; and

WHEREAS subsequent to the hearing the applicant provided a copy of a medical certificate certifying her daughter to be unwell during the period immediately after the conference held on 10 June 2010 and confirmation from Optus of telephone difficulties the applicant experienced after the conference; and

WHEREAS in the circumstances the Commission is satisfied why the applicant did not pursue her application in a timely manner nor respond to attempts by the Commission to contact her such that this application will now proceed.

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

THAT this application will be set down for hearing and determination at a date to be fixed.

(Sgd.) J L HARRISON,
Commissioner.

[L.S.]

2010 WAIRC 01096

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

RODNEY GEORGE GOODALL

APPLICANT

-v-

SOVEREIGN BRIDGE PTY LTD

RESPONDENT

CORAM

COMMISSIONER S M MAYMAN

DATE

MONDAY, 8 NOVEMBER 2010

FILE NO/S

B 144 OF 2010

CITATION NO.

2010 WAIRC 01096

Result

Application discontinued

Representation**Applicant**

Mr R G Goodall

Respondent

Ms J Matheson

Order

WHEREAS this is an application pursuant to section 29(1)(b)(ii) of the *Industrial Relations Act 1979*;
 AND WHEREAS on 4 October 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 12 October 2010 the applicant advised the Commission to file the 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 01095

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
 RODNEY GEORGE GOODALL

PARTIES

APPLICANT

-v-

JULIE MATHESON

RESPONDENT

CORAM COMMISSIONER S M MAYMAN
DATE MONDAY, 8 NOVEMBER 2010
FILE NO/S B 144 OF 2010
CITATION NO. 2010 WAIRC 01095

Result Change of respondent's name
Representation
Applicant Mr R G Goodall
Respondent Ms J Matheson

Order

WHEREAS an application was lodged in the Commission pursuant to Section 29(1)(b)(ii) of the *Industrial Relations Act 1979*;
 AND WHEREAS the matter was listed for conference on 4 October 2010;
 AND WHEREAS at the conference 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 *Industrial Relations Act 1979* to substitute the proper identity of the applicant's employer for the trading or business name. I therefore order –

THAT the name Julie Matheson be deleted and Sovereign Bridge Pty Ltd inserted in lieu thereof.

[L.S.]

(Sgd.) S M MAYMAN,
 Commissioner.

2010 WAIRC 01056

PARTIES	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION	APPLICANT
	RICHARD CHARLES HOPKINS	
	-v-	
	TENANTS ADVICE SERVICE INC	RESPONDENT
CORAM	CHIEF COMMISSIONER A R BEECH	
DATE	THURSDAY, 21 OCTOBER 2010	
FILE NO/S	U 31 OF 2010	
CITATION NO.	2010 WAIRC 01056	
Result	Application dismissed	
Representation	No appearances	

Order

WHEREAS this is an application claiming unfair dismissal;
AND WHEREAS the applicant had also made a corresponding claim in Fair Work Australia which was settled by agreement;
AND WHEREAS on 13 April 2010, the applicant advised the Commission that he would withdraw his application in this jurisdiction;
AND WHEREAS there has been no further contact from the applicant since that time;
AND WHEREAS this matter was set down for hearing in order for the applicant to show cause why his application should not be dismissed;
AND WHEREAS at the hearing on Monday, 18 October 2010, there was no appearance on behalf of or by the applicant;
NOW THEREFORE, I the undersigned, having given reasons for decision extemporaneously and pursuant to the powers conferred on me under section 27(1)(a) of the *Industrial Relations Act 1979*, hereby order -
 THAT this application be, and is hereby dismissed.

[L.S.]

(Sgd.) A R BEECH,
Chief Commissioner.**2010 WAIRC 01080**

PARTIES	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION	APPLICANT
	PETER JOHN MULLER	
	-v-	
	PENRHOS COLLEGE	RESPONDENT
CORAM	COMMISSIONER S J KENNER	
DATE	MONDAY, 1 NOVEMBER 2010	
FILE NO/S	U 268 OF 2009	
CITATION NO.	2010 WAIRC 01080	
Result	Discontinued by Leave	
Representation		
Applicant	Mr P Muller	
Respondent	Mr S Kemp, of Counsel	

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.

COMMISSIONER S J KENNER

2010 WAIRC 01057

PARTIES	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION ANTHONY LAWRENCE NOCK	APPLICANT
	-v-	
	MOUNTS BAY SAILING CLUB INC.	RESPONDENT
CORAM	CHIEF COMMISSIONER A R BEECH	
DATE	THURSDAY, 21 OCTOBER 2010	
FILE NO/S	U 214 OF 2009	
CITATION NO.	2010 WAIRC 01057	

Result	Application dismissed
Representation	No appearances

Order

WHEREAS this is an application claiming unfair dismissal;

AND WHEREAS agreement was reached at the conference on 22 January 2010 for the settlement of the matter and the respondent advises the terms have been implemented;

AND WHEREAS the applicant has not sought to discontinue the matter;

AND WHEREAS this matter was set down for hearing in order for the applicant to show cause why his application should not be discontinued;

AND WHEREAS at the hearing on Monday, 18 October 2010, there was no appearance on behalf of or by the applicant;

NOW THEREFORE, I the undersigned, having given reasons for decision extemporaneously and pursuant to the powers conferred on me under section 27(1)(a) of the *Industrial Relations Act 1979*, hereby order -

THAT this application be, and is hereby dismissed.

[L.S.]

(Sgd.) A R BEECH,
Chief Commissioner.

2010 WAIRC 01069

PARTIES	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION BARBARA ELIZABETH PETERSEN KIM DARRYL PETERSEN	APPLICANTS
	-v-	
	PORT HEDLAND PEACE MEMORIAL SEAFARERS CENTRE INC	RESPONDENT
CORAM	ACTING SENIOR COMMISSIONER P E SCOTT	
DATE	WEDNESDAY, 27 OCTOBER 2010	
FILE NO.	B 55 OF 2010, B 56 OF 2010	
CITATION NO.	2010 WAIRC 01069	

Result Amended Directions issued

Direction

WHEREAS on the 27th day of October 2010 the Commission convened a conference between the parties to deal with interlocutory matters; and

WHEREAS having heard from Mr G McCorry on behalf of the applicants and Ms M Ivanovski on behalf of the respondent, the Commission decided to issue amended Directions:

NOW THEREFORE the Commission, pursuant to the powers conferred under the *Industrial Relations Act 1979*, hereby directs that;

1. The Directions issued on 14 September 2010 be varied in the following terms:
 - (a) Direction 4 be amended to read:
 4. No later than 29 October 2010 the applicants shall file and serve their Outlines of Submissions.
 - (b) Direction 5 be amended to read:
 5. No later than 5 November 2010 the respondent shall file and serve its Outline of Submissions.
 - (c) Direction 6 be amended to read:
 6. No later than 5 November 2010 the parties shall file and serve Schedules of Objection to matters raised in the witness statements filed.
2. The hearing scheduled for 4 and 5 November 2010 be vacated and rescheduled for four consecutive days in December 2010 subject to the availability of the parties and the Commission.

[L.S.]

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

2010 WAIRC 01094

PARTIES	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION BRUCE RICHARDS	APPLICANT
	-v-	
	PINDAN COLLEGE	RESPONDENT
CORAM	COMMISSIONER S M MAYMAN	
DATE	MONDAY, 8 NOVEMBER 2010	
FILE NO/S	U 63 OF 2010	
CITATION NO.	2010 WAIRC 01094	

Result	Application discontinued
Representation	
Applicant	Mr B Richards
Respondent	Ms M Woodford (of counsel)

Order

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

AND WHEREAS on 13 September 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 14 October 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 00991

PARTIES WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
MARGARET ANN SHAW **APPLICANT**

-v-
FRANCES WALLACE CHIEF EXECUTIVE OFFICER
MANDURAH COMMUNITY CARE (INC) **RESPONDENT**

CORAM COMMISSIONER S M MAYMAN
DATE MONDAY, 18 OCTOBER 2010
FILE NO/S U 145 OF 2010
CITATION NO. 2010 WAIRC 00991

Result Application discontinued
Representation
Applicant Mrs M A Shaw
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 14 September 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 6 October 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 00995

PARTIES WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
CATHERINE MARY STASHINSKY **APPLICANT**

-v-
MEL TRUST THREE SPRINGS **RESPONDENT**

CORAM COMMISSIONER S M MAYMAN
DATE MONDAY, 18 OCTOBER 2010
FILE NO/S U 142 OF 2010
CITATION NO. 2010 WAIRC 00995

Result Application discontinued
Representation
Applicant Ms C M Stashinsky
Respondent Mr M Jensen (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 September 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 October 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 01093

	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION	
PARTIES	JODY TRAPPITT	APPLICANT
	-v-	
	ROCKY GULLY PUB	RESPONDENT
CORAM	COMMISSIONER S M MAYMAN	
DATE	MONDAY, 8 NOVEMBER 2010	
FILE NO/S	B 88 OF 2010	
CITATION NO.	2010 WAIRC 01093	
Result	Order issued	
Representation		
Applicant	Ms H Miller-Grinder (of counsel)	
Respondent	Mr G McCorry (as agent)	

Order

WHEREAS this matter was listed for a directions hearing on 27 October 2010 and having heard Ms H Miller-Grinder (of counsel) on behalf of the applicant and Mr G. McCorry (as agent) on behalf of the respondent;

AND WHEREAS having considered it necessary to give directions for the expeditious and just hearing and determination of this matter;

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

1. The applicant on or before 19 November 2010 shall provide to the respondent, with a copy to the Commission, any clarification in the employment relationship between the applicant and the respondent.
2. The respondent on or before 24 November 2010 shall provide to the applicant, with a copy to the Commission, the facts of the jurisdictional objections it seeks to raise in these proceedings and an associated witness statement.
3. The applicant on or before 1 December 2010 shall provide to the respondent, with a copy to the Commission, a response to the jurisdictional argument raised by the respondent and an associated witness statement.
4. Liberty is hereby granted to the parties to apply on short notice.

[L.S.]

(Sgd.) S M MAYMAN,
Commissioner.

2010 WAIRC 01081

PARTIES WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
GARETH WILLIAM TWOMEY **APPLICANT**

-v-
COMPUTER CYBERSHOP PTY LTD **RESPONDENT**

CORAM COMMISSIONER S J KENNER
DATE MONDAY, 1 NOVEMBER 2010
FILE NO/S B 66 OF 2010
CITATION NO. 2010 WAIRC 01081

Result Discontinued by leave
Representation
Applicant Mr G W Twomey
Respondent Mr C Pham

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 01088**

PARTIES WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
STEVE ZUTT **APPLICANT**

-v-
ALBANY PORT AUTHORITY **RESPONDENT**

CORAM ACTING SENIOR COMMISSIONER P E SCOTT
DATE FRIDAY, 5 NOVEMBER 2010
FILE NO/S U 114 OF 2010
CITATION NO. 2010 WAIRC 01088

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 15th day of September 2010 the Commission convened a conference for the purpose of conciliating between the parties; and
WHEREAS the conference was adjourned to enable the parties to have further discussions; and
WHEREAS on the 12th day of October 2010 the applicant advised the Commission that the matter had settled; and
WHEREAS on the 3rd day of November 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.

CONFERENCES—Matters arising out of—

2010 WAIRC 00984

DISPUTE RE RESPONDENTS ALLEGED FAILURE TO COMMENCE REVIEW OF NURSES' WORKLOADS

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

THE AUSTRALIAN NURSING FEDERATION, INDUSTRIAL UNION OF WORKERS PERTH
APPLICANT

-v-

THE DIRECTOR GENERAL OF HEALTH AS THE DELEGATE OF THE MINISTER FOR HEALTH IN HIS INCORPORATED CAPACITY UNDER S.7 OF THE HOSPITAL AND HEALTH SERVICES ACT 1927(WA) AS THE HOSPITALS FORMERLY COMPRISED IN THE METROPOLITAN HEALTH SERVICES BOARD, THE PEEL HEALTH SERVICES BOARD, THE WA COUNTRY HEALTH SERVICE AND WESTERN AUSTRALIAN DRUG AND ALCOHOL AUTHORITY
RESPONDENT

CORAM COMMISSIONER J L HARRISON
DATE THURSDAY, 14 OCTOBER 2010
FILE NO. C 23 OF 2010
CITATION NO. 2010 WAIRC 00984

Result	Recommendation Issued
Representation	
Applicant	Mr M Olson
Respondent	Mr M Warner

Recommendation

WHEREAS this application was lodged pursuant to s 44 of the *Industrial Relations Act, 1979* (“the Act”) on 9 June 2010 whereby the Australian Nursing Federation, Industrial Union of Workers Perth (“the applicant”) sought the Commission’s assistance with respect to holding discussions with the Director General of Health (“the respondent”) about a review of Nursing Hours per Patient Day (“NHppD”) benchmarks pursuant to Clause 9(6) of the *Registered Nurses, Midwives and Enrolled Mental Health Nurses – Australian Nursing Federation – WA Health Industrial Agreement 2007* (“the EBA”); and

WHEREAS the Commission convened a number of conferences for the purpose of conciliating between the parties with respect to this issue and the issue of grievances about nursing workloads; and

WHEREAS the Commission understood that at a conference held in the Commission on 30 September 2010 the parties had reached agreement on the terms of a new Clause 9 which the parties had agreed would form part of the proposed EBA and a document to this effect was drafted by the parties; and

WHEREAS subsequent to this conference the applicant notified the Commission that there was a dispute between the parties with respect to the wording of the proposed Clause 9(9); and

WHEREAS after further conciliation as no agreement was reached between the parties with respect to Clause 9(9) the respondent stated that it rejected the inclusion of Clauses 9(6), (7), (8), (9) and (10) previously agreed with the applicant in the proposed EBA; and

WHEREAS at a conference held on 12 October 2010 the possibility of the parties accepting a recommendation issued by the Commission in the terms of amended proposed changes to Clause 9 in line with what had previously been agreed between the parties was put to the parties; and

WHEREAS the parties were given time to consider their respective positions with respect to a recommendation issuing; and

WHEREAS on the afternoon of 12 October 2010 the applicant proposed that the Commission issue the following recommendation:

That the attached clause be included as Clause 9 of the agreement currently being negotiated to replace the Registered Nurses, Midwives and Enrolled Mental Health Nurses – Australian Nursing Federation – WA Health Industrial Agreement 2007 (“the 2007 Agreement).

- (1) The Employer will continue to manage nursing workloads and consult with employees and the Federation in accordance with the principles established in the Nurses (WA Government Health Services) Exceptional Matters Order 2001 (PR914193) (the EMO) relating to workloads (Nursing Hours per Patient Day) during the life of this Agreement.

- (2) To avoid doubt, the duties imposed on the Employer and the Federation under the EMO, shall have effect as if the operative provisions of the EMO which are capable of contemporary application were express terms of this Agreement. The duties imposed on Employees shall likewise be binding on the employees covered by this Agreement.
- (3) The Employer shall ensure that it exercises its role in managing nursing workloads through the ongoing implementation of the NHpPD model are both transparent and visible to all nurses at the ward or unit level so that the processes are readily able to be understood by all nurses. The precise mechanism for ensuring that this transparency / visibility / understanding is achieved may vary from site to site, health service to health service, but will result in the NHpPD being applied to identify a work roster that is readily able to be understood by nurses at the ward or unit level.
- (4) The following grievance procedure shall apply to a workload grievance and replace the grievance procedure in the EMO.
 - (a) A workload grievance is a grievance stated in writing by an employee or by the employer, as a party aggrieved, about the nursing workload that an employee is required to undertake, on the ground that:
 - (i) an unreasonable or excessive patient care or nursing task work load is being imposed on the employee other than occasionally and infrequently;
 - (ii) to perform nursing duty to a professional standard, an employee is effectively obliged to work unpaid overtime on a regularly recurring basis;
 - (iii) the workload requirement effectively denies any reasonably practicable access to the employee's quota of time for professional development, within 12 months of the entitlement arising;
 - (iv) within a workplace or roster pattern, no effective consultative mechanism and process is available in respect of the determination of bed closures or patient workload for the available nursing resources in the workplace or roster pattern;
 - (v) a reasonable complaint to the appropriate hospital authority about capacity to observe professional mandatory patient care standards has not been responded to or acted upon within a reasonable time; or
 - (vi) a particular member or set of members of a patient care team are being consistently placed under an unreasonable or unfair burden or lack of adequate professional guidance because of the workload or the staffing skill mix of the team.
 - (b) A workload grievance shall be progressed in accordance with Clause 59 - Dispute Resolution Procedure of this Agreement.
- (5) The EMO is reproduced at Schedule A — Exceptional Matters Order of this Agreement. Subject to this clause, the Employer shall comply with Schedule A — Exceptional Matters Order of this Agreement in relation to managing nursing workloads.
- (6) On each occasion the employer determines the NHpPD category of a ward or unit in the first instance or subsequently reviews and determines the NHpPD category of a ward or unit the employer shall publish the determination in a form which is consistent with the requirement that the ongoing implementation of the NHpPD model is both transparent and visible to nurses.
- (7) On each occasion the employer determines the NHpPD category of a ward or unit the employer shall so advise the Federation in writing within 21 days.
- (8) During the life of this Agreement the employer will systematically review and determine the NHpPD category of all wards or units and shall consult fully with the Federation at all stages of the process.
- (9) During the life of this Agreement the employer and the Federation will review the NHpPD benchmarks and the employer shall consult fully with the Federation at all stages of the process with a view to reaching agreement with the Federation on any changes that may be required.
- (10) The Federation may ask the employer to review the NHpPD category of a ward or unit and the Employer shall as soon as reasonably practicable undertake the review and advise the Federation in writing of the outcome within 21 days.”

WHEREAS at a conference held on 13 October 2010 the applicant argued that its proposed recommendation that a new Clause 9 be included in the proposed EBA should issue was in accord with the objects of the Act, in particular 6(b) and (c), as this issue was the remaining issue in dispute between the parties with respect to negotiations for the proposed EBA; and

WHEREAS the applicant maintains that the issuance of its proposed recommendation would assist in finalising the only remaining issue with respect to negotiations between the parties for a replacement EBA; and

WHEREAS the applicant argued that all of the terms of proposed recommendation except Clause 9(9) had been agreed by the respondent in discussions between the parties with a view to settling issues relevant to this application; and

WHEREAS the applicant argued that Clauses 9(6), (7), (8) and (10) assisted in the effective management of nursing workloads, these subclauses added transparency, visibility and efficacy to the monitoring and management of nursing workloads which ultimately delivers better patient outcomes and the clauses are consistent with the overall aims and objectives of the Exceptional Matters Order (“EMO”). Additionally Clause 9(10) was necessary as employees may suffer intimidation, victimisation and other sanctions if they complain about workloads; and

WHEREAS the applicant claims that as the respondent does not have a unilateral right to change benchmarks the inclusion of the proposed Clause 9(9) is appropriate; and

WHEREAS the respondent opposed the issuance of the recommendation being sought by the applicant for the following reasons:

1. The respondent had initiated bargaining for a replacement EBA on 13 October 2010 and the parties should therefore be allowed to bargain to resolve any issues in dispute with respect to a replacement EBA under the good faith bargaining provisions of the Act.
2. If the proposed recommendation issues it will effectively compel the respondent to include the proposed Clause 9 in a replacement EBA.
3. If the recommendation as proposed issues and the respondent rejects it this could lead to a deterioration in the relationship between the applicant and the respondent and the respondent and its employees.
4. It is premature for the Commission to intervene in the bargaining process between the parties.
5. Section 42G and s 42I contemplates the Commission dealing with matters not agreed between negotiating parties.

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 the rights of an organisation; and

WHEREAS the Commission is of the view that it has jurisdiction to issue the recommendation being contemplated pursuant to s 44 of the Act as s 44 enables the Commission to make such suggestions and give such directions as it considers appropriate with respect to industrial matters; and

WHEREAS the Commission is not disposed to issue a recommendation which could impede agreement being reached between the parties with respect to the specific terms of a replacement EBA nor is the Commission minded to issue a recommendation in this instance on a matter which remains in dispute between the parties; and

WHEREAS the Commission recognises that some of the applicant’s members have experienced difficulties dealing with the issue of the management of workloads at some hospitals there is merit in ensuring that the process for handling disputes about the management of nursing workloads ought be streamlined, the Commission is of the view that the applicant be informed about these disputes more frequently than previously in order to assist in the timely resolution of these disputes and it is the Commission’s view that the applicant should be able to raise a dispute about nursing workloads with the respondent on behalf of a member; and

WHEREAS the Commission is aware that the parties are in dispute as to the terms of Clause 9(9) of the proposed recommendation in particular, the issue of determination of benchmarks; 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, the public interest and the interests of the parties directly involved with respect to this application the Commission has formed the view that the following recommendation should issue:

That with respect to dealing with issues and disputes concerning the management of nursing workloads the following processes shall be utilised by the parties in addition to Clauses 9(1) to (6) of the 2007 Agreement:

- (7) On each occasion the employer determines the NHpPD category of a ward or unit in the first instance or subsequently reviews and determines the NHpPD category of a ward or unit the employer shall publish the determination in a form which is consistent with the requirement that the ongoing implementation of the NHpPD model is both transparent and visible to nurses.
- (8) On each occasion the employer determines the NHpPD category of a ward or unit the employer shall so advise the Federation in writing within 21 days.
- (9) During the life of this Agreement the employer will systematically review and determine the NHpPD category of all wards or units and shall consult fully with the Federation at all stages of the process.
- (10) The Federation may ask the employer to review the NHpPD category of a ward or unit and the Employer shall as soon as reasonably practicable undertake the review and advise the Federation in writing of the outcome within 21 days.”

[L.S.]

(Sgd.) J L HARRISON,
Commissioner.

2010 WAIRC 01064

DISPUTE RE NEGOTIATIONS FOR A REPLACEMENT INDUSTRIAL AGREEMENT

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

THE MINISTER FOR HEALTH IN HIS INCORPORATED CAPACITY UNDER S.7 OF THE HOSPITALS AND HEALTH SERVICES ACT 1927 (WA) AS THE HOSPITALS FORMERLY COMPRISED IN THE METROPOLITAN HEALTH SERVICE BOARD, THE PEEL HEALTH SERVICES BOARD AND THE WA COUNTRY HEALTH SERVICE

APPLICANT

-v-

THE LIQUOR, HOSPITALITY AND MISCELLANEOUS UNION, WESTERN AUSTRALIAN BRANCH

RESPONDENT

CORAM COMMISSIONER J L HARRISON
DATE SUNDAY, 24 OCTOBER 2010
FILE NO/S C 41 OF 2010
CITATION NO. 2010 WAIRC 01064

Result Consent order issued
Representation
Applicant Mr M Warner
Respondent Mr T Clark and Mr D Kelly

Consent Order

WHEREAS this application was lodged pursuant to s 44 of the *Industrial Relations Act, 1979* ("the Act") on 23 September 2010 whereby the Minister for Health ("the applicant") sought the Commission's assistance with respect to negotiations with the Liquor, Hospitality and Miscellaneous Union, Western Australian Branch ("the respondent") for a proposed replacement industrial agreement; and

WHEREAS on 23 September 2010 the Commission convened a conference for the purpose of conciliating between the parties; and
 WHEREAS at this conference the applicant and the respondent agreed to have further discussions with a view to finalising the terms of a proposed replacement industrial agreement and a report back on the progress of these discussions was set down in the Commission on 1 October 2010; and

WHEREAS on the morning of 29 September 2010 the applicant sought an urgent conference in the Commission on the basis that the respondent had foreshadowed that its members place bans in Western Australian hospitals with respect to a range of tasks which would have a significant deleterious impact on hospital operations and patient care; and

WHEREAS the Commission convened an urgent compulsory conference on 29 September 2010 at which the applicant sought an order preventing the union and its members from undertaking any industrial action in support of its claims for a proposed replacement industrial agreement; and

WHEREAS the respondent confirmed that its members had the following bans in place commencing 29 September 2010:

- “1. No moving linen
 - a. Do not tie up linen bags and do not move the bags to the collection point
 - b. No collecting extra linen orders from the linen room
2. No moving rubbish
 - a. Do not tie up rubbish bags and do not move the bags to the collection point
3. No picking up meal trays
 - a. Deliver all meals to patients but do not remove the tray when the patient is done with their meal
4. No sterilising equipment for PRIVATE hospitals
 - a. Continue all sterilisation of equipment for public hospitals
5. For Hygiene Orderlies: do not fill rubbish skips to the top, only fill them half way to move them”

WHEREAS with the assistance of the Commission the parties held further discussions on the evening of 29 September 2010 and the morning of 30 September 2010 with a view to reaching agreement on an in-principle agreement for a proposed replacement industrial agreement for the respondent to put to its members; and

WHEREAS after these discussions the parties advised the Commission that the respondent was prepared to put a proposal to its members with a view to finalising discussions with respect to a proposed replacement industrial agreement; and

WHEREAS the respondent advised the Commission that it required one week to consult its members in metropolitan and regional areas to obtain feedback on this proposal; and

WHEREAS the applicant agreed that this timeframe for consultation was appropriate; and

WHEREAS the respondent agreed to lift the bans instituted on 29 September 2010 forthwith whilst it consulted with its members and agreed that its members would comply with the requirements under their respective JDFs; and

WHEREAS the parties were required to attend a report back in the Commission on Monday 11 October 2010 to discuss the progress of the negotiations for proposed replacement industrial agreement; and

WHEREAS in the circumstances the Commission believed that it was appropriate to adjourn this application until a report back meeting was held in the Commission on 11 October 2010; and

WHEREAS on 30 September 2010 the Commission issued a consent order to this effect whereby the application was adjourned until 11 October 2010 when the Commission would hear further from the parties on the status of negotiations between the parties for a proposed replacement industrial agreement; and

WHEREAS prior to the conference commencing on 11 October 2010 the applicant advised the Commission that the respondent had issued a flyer to its members calling for a stoppage to take place on Tuesday, 12 October 2010 between 12 noon and 4.00 pm; and

WHEREAS the applicant also advised the Commission of a media statement put out by the Director General of the Department of Health in which he stated that there would be no privatisation of existing services at any public hospital during the life of the proposed replacement industrial agreement; and

WHEREAS at the report back conference held in the Commission on 11 October 2010 the parties had further negotiations over several hours with a view to reaching agreement on a proposed replacement industrial agreement however these negotiations were unsuccessful and the parties were unable to reach agreement on a number of issues; and

WHEREAS the Commission then asked the parties to make submissions about whether or not conciliation between the parties with respect to a proposed replacement industrial agreement had been exhausted; and

WHEREAS after hearing from the parties with respect to this issue the Commission indicated to the parties that it was her view that conciliation with the assistance of the Commission with respect to finalising the terms of proposed replacement industrial agreement had been exhausted on the basis that the parties could not reach agreement on a range of issues including the quantum of wage increases, privatisation of new hospital operations, the definitions of fixed term, agency and part time employees and the duration of the proposed replacement industrial agreement; and

WHEREAS the applicant then sought an order that the respondent and its members be prevented from taking any industrial action, including the four hour stoppage scheduled to take place on 12 October 2010 until a proposed replacement industrial agreement was arbitrated by the Commission pursuant to s 42H of the Act; and

WHEREAS in support of the issuance of this order the applicant argued that the four hour stoppage not occur the following day or until a proposed replacement industrial agreement was arbitrated on the basis that proposed industrial action to be undertaken by up to 1,000 employees would adversely impact on patient movement in hospitals, catering for patients could be delayed and there could be possible adverse outcomes for patients with respect to their care and health and safety; and

WHEREAS the respondent argued that the Commission does not have jurisdiction to issue the order being sought by the applicant as the four hour stoppage on 12 October 2010 was in relation to a political issue – that of the privatisation of future Western Australian hospitals and was therefore not an industrial matter; and

WHEREAS the respondent argued that the four hour stoppage was to occur at a time when there would be minimal disruption to the operations of Western Australian hospitals and as employees worked over 24 hours a day, seven days a week this was therefore an appropriate time for the respondent and its members to demonstrate its opposition to the privatisation of Western Australian hospitals and to attempt to pressure the applicant for a better wage outcome for its low paid members; and

WHEREAS the respondent argued that patient care would not be significantly compromised by the four hour stoppage taking place as food preparation had already been done for lunches given the timing of the stoppage, food could be brought in for evening meals, duties undertaken by the respondent's members including orderlies could be undertaken by other employees for this short duration and the applicant has had sufficient notice of the four hour stoppage to make alternative arrangements; and

WHEREAS the respondent argued that as the bargaining process pursuant to s 42 was not in place it would be unfair to order that the respondent and its members not take any industrial action for an unlimited time until an enterprise agreement under s 42I was applied for and arbitrated; and

WHEREAS the Commission was of the view that it had jurisdiction to deal with the stoppage to take place on 12 October 2010 as part of the reason for this four hour stoppage relates to the respondent seeking an increased wage offer which is an industrial matter; and

WHEREAS the Commission was unaware if the respondent and its members planned to undertake any further industrial action after 12 October 2010; and

WHEREAS on the information before it the Commission was not convinced that the four hour stoppage scheduled to take place on 12 October 2010 would have a significant adverse impact on patient care and the health and safety of patients in Western Australian hospitals; and

WHEREAS the Commission had particular regard to the public interest which must be balanced with the interests of the parties directly involved, which includes low paid employees who work on a continuous shift basis; and

WHEREAS the Commission, and in accordance with the provisions of the Act, therefore declined to issue the order being sought by the applicant; and

WHEREAS the Commission stated that if the respondent and its members were to take any industrial action subsequent to 12 October 2010 the Commission would list this application at short notice to hear further from the parties as to whether any orders should issue with respect to this industrial action; and

WHEREAS on 11 October 2010 the Commission issued an order whereby this application was adjourned; and

WHEREAS on 13 October 2010 the respondent sought an urgent conference in the Commission as it claimed that the respondent's members had imposed the following work bans across metropolitan and country hospitals:

- No collecting and disposing of soiled linen, waste material and rubbish.
- No collecting of patient meal trays.
- No sterilisation of equipment for other hospitals (King Edward Memorial Hospital).
- Refusal to wash patient dishes (Fremantle Hospital).
- No external patient movement (Royal Perth Hospital).
- Transport officers not phoning in after completing tasks (Royal Perth Hospital).
- No courier duties being undertaken while acting as a patient transport officer (Royal Perth Hospital).
- No transportation of patient belongings (Royal Perth Hospital).
- No transportation of specimens (Royal Perth Hospital).
- No transportation of patients to appointments (Royal Perth Hospital).

WHEREAS at a conference held in the Commission on 14 October 2010 the applicant claimed that the number of employees on each shift implementing the above bans was significant within all but two of 11 metropolitan hospitals as over half of the employees the subject of this application working at these hospitals as at 1.00 pm on 14 October 2010 had bans in place. Furthermore, at Fremantle Hospital there was a 100 percent participation rate and Royal Perth Hospital over an 80 percent participation rate with respect to employees implementing these bans; and

WHEREAS the applicant argued that even though it had made arrangements to deal with the impact of the bans in Western Australian hospitals and it was currently coping with the impact of the bans, by the end of the coming weekend there was the potential for adverse outcomes to occur with respect to patients in the area of infection control; and

WHEREAS in support of this claim the applicant stated that the risk of infection in Western Australian hospitals was compounded the longer the ban on the removal of rubbish and linen remained in place given the nature of matter contained in rubbish and soiled linen and this risk was greater in a hospital environment where the health of patients is already compromised; and

WHEREAS this risk of infection could also impact on staff and visitors; and

WHEREAS the applicant therefore sought an order that the respondent and its members lift the bans on rubbish and linen removal and undertake their roles in accordance with normal operating procedures with respect to these activities; and

WHEREAS the respondent confirmed that its members had the following bans in place, commencing on 12 October 2010:

- “1. No moving linen
Tie up linen bags but do not move the bags to the collection point.
2. No moving rubbish
Tie up rubbish bags but do not move the bags to the collection point.
3. No picking up meal trays
Deliver all meals to patients but do not remove the tray when the patient is done with their meal.
4. No sterilising equipment for PRIVATE hospitals
Continue all sterilisation of equipment for public hospitals.
5. For Hygiene Orderlies: do not fill rubbish skips to the top, only fill them half way to move them.”

WHEREAS the respondent maintained that no other bans were in place and apart from these bans no additional industrial action was taking place at Royal Perth Hospital or any other hospital; and

WHEREAS the respondent argued that having the bans in place was a legitimate form of industrial action given its members were low paid employees who remained in dispute with the applicant about future wage increases; and

WHEREAS the respondent stated that it was currently seeking urgent discussions with the Minister for Health to progress negotiations with the applicant; and

WHEREAS the respondent maintained that the impact of the bans was more of an inconvenience to the applicant than a clinical risk and no patient was at risk as a result of the bans being in place; and

WHEREAS in support of this claim the respondent's members at the conference who worked at a number of Western Australian hospitals stated that there was little likelihood if any of an adverse clinical outcome occurring as a result of the bans as rubbish and linen bags were being collected and removed on a regular basis variously by management, agency and casual staff at King Edward Memorial Hospital, Princess Margaret Hospital, Osborne Park Hospital, Sir Charles Gairdner Hospital, Shenton Park Campus, Fremantle Hospital, Bentley Hospital, Royal Perth Hospital and Bunbury Hospital; and

WHEREAS on the information currently before it the Commission was not convinced that the bans the respondent and its members had in place with respect to the removal of rubbish and linen was having or would have an adverse impact on patients, staff and hospital visitors in the immediate future; and

WHEREAS the Commission, and in accordance with the provisions of the Act, in all of the circumstances and at that point in time therefore declined to issue the order being sought by the applicant; and

WHEREAS as the Commission was concerned that the impact of the bans with respect to the removal of linen and rubbish may have an adverse effect on patients and staff in the longer term the Commission listed this application for a report back conference on 19 October 2010 to obtain feedback from the parties with respect to this issue.

WHEREAS at the report back conference held on 19 October 2010 the parties agreed to confer on a range of matters and report back to the Commission on 25 October 2010; and

WHEREAS on 22 October the applicant requested that an urgent conference be convened as it claimed that there had been a substantial deterioration in industrial relations in Western Australian hospitals and a series of adverse events had arisen as a result of a range of further bans being implemented by hospital support workers; and

WHEREAS the Commission convened an urgent conference on the afternoon and evening of 22 October 2010; and

WHEREAS after the commencement of the conference further discussions took place between the parties and the Commission was informed that the parties had reached agreement on all issues in dispute except the length of the proposed replacement industrial agreement; and

WHEREAS the applicant argued that the proposed replacement industrial agreement should be for three years and this timeframe was part of a package and the timeframe of the proposed replacement industrial agreement would not be reviewed in isolation of the rest of the package; and

WHEREAS the respondent argued that a two year agreement was appropriate as a three year agreement would disadvantage its members as the quantum proposed in the third year of the proposed replacement industrial agreement could be greater if the Western Australian economy improved; and

WHEREAS as the parties remained in dispute with respect to this issue the Commission heard further from the parties with respect to ongoing industrial action; and

WHEREAS at this conference the applicant claimed that bans had escalated in the past 48 hours and now covered a broader range of activities including the non cleaning of operating theatres between elective surgery cases, refusal to collect patients to move them to operating theatres, the supply of sterile equipment to operating theatres was slow, clean linen was not being taken to wards, there was a failure to remove waste, there was a decrease in the delivery of general supplies and two stage infection cleaning was not being done; and

WHEREAS the applicant expressed concerns about the possibility of multiple emergencies arising over the weekend which would be difficult to cope with given the bans in place and this would then adversely impact on hospital operations next week; and

WHEREAS the applicant stated that elective surgery proposed to take place Monday had been cancelled at Royal Perth Hospital and Sir Charles Gardiner Hospital; and

WHEREAS the respondent confirmed that since 20 October 2010 the following additional bans were in place:

- No washing dishes.
- Two staff to a bed.
- No emptying of rubbish bins in administration/office areas.
- Only transporting patient notes/head sheets/records for urgent patients.
- No removing linen from skips (currently linen is being bagged but not moved).
- No use of radio or CARPS except for emergency patients. Only take jobs by hand or via phone.
- No driving of forklifts.
- No restocking of paper products in administration areas, eg toilet paper.
- No collection of dirty cups and saucers delivered at morning and afternoon teas; and

WHEREAS the respondent confirmed that no additional bans as claimed by the applicant were in place; and

WHEREAS the respondent argued that casual and agency staff can be used to undertake duties which were not being completed as a result of the bans being in place; and

WHEREAS at the end of conference the Commission asked the parties to re-consider their respective positions with respect to the proposed replacement industrial agreement's timeframe given that the parties had reached agreement on all other outstanding issues in dispute; and

WHEREAS a further conference was set down for 23 October 2010 to hear from the parties with respect to their positions on the timeframe of the proposed replacement industrial agreement; and

WHEREAS at this conference the Commission was informed that the applicant would not alter its position with respect to having a three year proposed replacement industrial agreement and the respondent stated that it was prepared to reconsider its position with respect to a two year proposed replacement industrial agreement; and

WHEREAS the Commission recognises that the escalation of the bans is having a deleterious impact on hygiene at Western Australian hospitals and is causing elective surgery to be postponed at some of Western Australia's main hospitals; 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 the rights of an organisation; and

WHEREAS the Commission is of the view that it has jurisdiction to issue the following recommendations pursuant to s 44 of the Act as s 44 enables the Commission to make such suggestions and give such directions it considers appropriate with respect to industrial matters; and

WHEREAS having heard from the applicant and the respondent and having considered the submissions made by both parties and when taking into account the deleterious impact the escalated bans are having on Western Australian hospitals; and

WHEREAS when taking into account that the only issue in dispute between the parties is the timeframe of the proposed replacement industrial agreement; and

WHEREAS when taking into account the public interest and the interest of the parties directly involved including the interests of low paid employees the Commission has formed the view that the following recommendations should issue

1. THAT the proposed replacement industrial agreement be for a term of 30 months and the quantum of the wage increase for the last six months of the proposed replacement industrial agreement be 1.75 percent.
2. THAT this timeframe of the proposed replacement industrial agreement shall operate in addition to what has already been agreed between the parties with respect to the terms of the proposed replacement industrial agreement.
3. THAT if these recommendations are accepted by the applicant and the respondent the union, by its employees and members will cease all industrial action being taken with respect to a proposed replacement industrial agreement.

WHEREAS a further conference was set down for 24 October 2010 to hear from the parties with respect to the above recommendations; and

WHEREAS prior to this conference taking place the Commission informed the parties that the quantum in Recommendation 2 was incorrectly calculated and should read 1.88 percent; and

WHEREAS at the conference held on 24 October 2010 the parties informed the Commission that they had reached agreement on all issues in dispute with respect to this application; and

WHEREAS the parties informed the Commission that they had signed a Heads of Agreement which confirmed that the application of the wage rates agreed between the parties would be included in this consent order, both parties undertook not to make any further claims until after 31 July 2012 and the Heads of Agreement confirmed the date for the commencement of negotiations for a further Industrial Agreement; and

WHEREAS as a result of this agreement being concluded between the parties the respondent agreed to immediately lift all bans which were in place in Western Australian hospitals and undertake to inform its members of the lifting of all bans as soon as practicable; and

WHEREAS the Commission is of the view that as the parties have reached an agreement to settle this matter and as the respondent has undertaken to lift all bans forthwith that the order as proposed by parties should issue.

NOW THEREFORE having heard Mr M Warner on behalf of the applicant and Mr T Clark and Mr D Kelly on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979* and by the consent of the parties, hereby orders:

1. THAT the following wage rates apply to employees of the Minister for Health in his incorporated capacity under Section 7 of the Hospitals and Health Services Act 1927 (WA) as the hospitals formerly comprised in the Metropolitan Health Service Board, the Peel Health Services Board and the WA Country Health Service, whose contracts of employment are regulated by the Hospital Workers (Government) Award No. 21 of 1966.

2. THAT the following weekly rates of pay apply in substitution for the corresponding weekly rates of pay prescribed in Hospital Workers (Government) Award No. 21 of 1966 for the periods herein specified.

Classification	Increment	24 October 2010 to 31 July 2011	01 August 2011 to 31 July 2012 and thereafter
Level 1/2	1st Year	\$767.63	\$794.50
Level 1/2	2nd Year	\$776.23	\$803.40
Level 1/2	3rd Year	\$795.04	\$822.86
Level 3/4	1st Year	\$782.89	\$810.30
Level 3/4	2nd Year	\$802.47	\$830.55
Level 3/4	3rd Year	\$819.98	\$848.68
Level 5	1st Year	\$800.59	\$828.61
Level 5	2nd Year	\$806.50	\$834.73
Level 5	3rd Year	\$816.87	\$845.46
Level 6	1st Year	\$804.85	\$833.02
Level 6	2nd Year	\$809.21	\$837.54
Level 6	3rd Year	\$818.50	\$847.15
Level 7	1st Year	\$814.52	\$843.03
Level 7	2nd Year	\$820.54	\$849.26
Level 7	3rd Year	\$830.76	\$859.84
Level 8	1st Year	\$831.71	\$860.81
Level 8	2nd Year	\$839.33	\$868.71
Level 8	3rd Year	\$851.11	\$880.90
Level 9	1st Year	\$850.73	\$880.50
Level 9	2nd Year	\$858.20	\$888.24
Level 9	3rd Year	\$870.45	\$900.91
Level 10	1st Year	\$861.72	\$891.88
Level 10	2nd Year	\$867.26	\$897.61
Level 10	3rd Year	\$877.14	\$907.84
Level 11	1st Year	\$884.93	\$915.90
Level 11	2nd Year	\$892.94	\$924.19
Level 11	3rd Year	\$905.88	\$937.59
Level 12	1st Year	\$904.62	\$936.28
Level 12	2nd Year	\$913.13	\$945.09
Level 12	3rd Year	\$926.33	\$958.75
Level 13	1st Year	\$935.46	\$968.21
Level 13	2nd Year	\$944.74	\$977.80
Level 13	3rd Year	\$958.45	\$992.00

(Sgd.) J L HARRISON,
Commissioner.

[L.S.]

CONFERENCES—Notation of—

Parties	Commissioner	Conference Number	Dates	Matter	Result	
The 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 M	Scott C	PSAC 32/2008	29/01/2009 6/05/2009	Dispute re reclassification of union member	Referred for Hearing
Western Australian Police Union of Workers	Commissioner of Police	Scott A/SC	PSAC 32/2010	N/A	Dispute in relation to carer's leave entitlement of Union member	Discontinued

CORRECTIONS—

2010 WAIRC 01103

PUBLIC SERVICE ALLOWANCES (FISHERIES AND WILDLIFE OFFICERS) AWARD 1990

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

COMMISSION'S OWN MOTION

APPLICANT

-v-

(NOT APPLICABLE)

RESPONDENT**CORAM**

ACTING SENIOR COMMISSIONER P E SCOTT

DATE

TUESDAY, 9 NOVEMBER 2010

FILE NO.

P 20 OF 2007

CITATION NO.

2010 WAIRC 01103

Result

Correction Order Issued

Correction Order

WHEREAS errors occurred in the Order issued on the 1st day of November 2010 in application P 20 of 2007,

NOW THEREFORE, the Public Service Arbitrator, in order to correct these errors and pursuant to the powers conferred under the *Industrial Relations Act 1979*, hereby orders:

THAT the Order be corrected by replacing instructions 8 to 10 in the Schedule with instructions 8 to 11 in the following Schedule.

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

[L.S.]

SCHEDULE

8. **Clause 9. – Term of Award: Delete clause title and insert the following in lieu thereof:**

11. – TERM OF AWARD

9. **Clause 10. – Liberty to Apply: Delete clause title and clause 10 and insert the following clause title and clause in lieu thereof:**

12. - LIBERTY TO APPLY

Leave is reserved by the parties to apply at any time to the Public Service Arbitrator for amendment to clause 5. – Commuted Overtime Allowances – Department of Fisheries and clause 6. – Commuted Overtime Allowances– Department of Environment and Conservation.

10. **Clause 11. – Salary Packaging: Delete clause title and clause 11 and insert the following clause title and clause in lieu thereof:**

13. - SALARY PACKAGING

- (1) An officer may, by agreement with the employer, enter into a salary packaging arrangement in accordance with this clause and Australian Taxation Office requirements.
- (2) Salary packaging is an arrangement whereby the entitlements and benefits under this Award, contributing toward the Total Employment Cost (TEC) (as defined in subclause (3) of this clause) of an officer, can be reduced by and substituted with another or other benefits.
- (3) The TEC for salary packaging purposes is calculated by adding the following entitlements and benefits:
 - (a) the base salary;
 - (b) other cash allowances;
 - (c) non cash benefits;
 - (d) any Fringe Benefit Tax liabilities currently paid; and
 - (e) any variable components.
- (4) Where an officer enters into a salary packaging arrangement the officer will be required to enter into a separate written agreement with the employer setting out the terms and conditions of the salary packaging arrangement.

- (5) Notwithstanding any salary packaging arrangement, the salary rate as specified in this Award, is the basis for calculating salary related entitlements specified in the Award.
- (6) Compulsory Employer Superannuation Guarantee contributions are to be calculated in accordance with applicable federal and state legislation. Compulsory employer contributions made to superannuation schemes established under the State Superannuation Act 2001 are calculated on the gross (pre packaged) salary amount regardless of whether an officer participates in a salary packaging arrangement with their employer.
- (7) A salary packaging arrangement cannot increase the costs to the employer of employing an individual.
- (8) A salary packaging arrangement is to provide that the amount of any taxes, penalties or other costs for which the employer or officer is or may become liable for and are related to the salary packaging arrangement, shall be borne in full by the officer.
- (9) In the event of any increase in taxes, penalties or costs relating to a salary packaging arrangement, the officer may vary or cancel that salary packaging arrangement.

11. Schedule A. – Delete Schedule A title and insert the following title and text in lieu thereof:

SCHEDULE A - NAMED PARTIES

The Civil Service Association of Western Australia Incorporated

The Department of Fisheries

The Department of Environment and Conservation

PROCEDURAL DIRECTIONS AND ORDERS—

2010 WAIRC 00421

PARTIES	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION MR PETER MASCHETTE	APPLICANT
	-v- DIRECTOR-GENERAL DEPARTMENT OF EDUCATION	
		RESPONDENT
CORAM	COMMISSIONER S J KENNER	
DATE	FRIDAY, 9 JULY 2010	
FILE NO.	U 68 OF 2010	
CITATION NO.	2010 WAIRC 00421	
Result	Directions issued.	
Representation		
Applicant	Mr S Millman of counsel	
Respondent	Ms P Cameron	

Direction

HAVING HEARD Mr S Millman of counsel on behalf of the applicant and Ms P Cameron on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979* hereby directs:

- (1) THAT the respondent file and serve further and better particulars of its notice of answer and counter proposal by 15 July 2010.
- (2) THAT the effect of the Working with Children (Criminal Record Checking) Act 2004 on the application be heard and determined as a preliminary issue.
- (3) THAT the respondent file and serve a written outline of submissions in relation to the preliminary issue no later than 14 days prior to the date of hearing.
- (4) THAT the applicant file and serve a written outline of submissions in reply in relation to the preliminary issue by no later than seven days prior to the date of hearing.

- (5) THAT the applicant and respondent file an agreed statement of facts in relation to the preliminary issue no later than three days prior to the date of hearing.
- (6) THAT this application be joined and heard and determined with application U 83 of 2010 in relation to the preliminary issue.
- (7) THAT the parties have liberty to apply.

[L.S.]

(Sgd.) S J KENNER,
Commissioner.**2010 WAIRC 00372**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

GARY TAYLOR

APPLICANT

-v-

SHARRYN O'NEIL, DIRECTOR GENERAL DEPARTMENT OF EDUCATION

RESPONDENT**CORAM** COMMISSIONER S J KENNER**DATE** FRIDAY, 25 JUNE 2010**FILE NO.** U 83 OF 2010**CITATION NO.** 2010 WAIRC 00372**Result** Directions issued**Representation****Applicant** Mr A Dzieciol of counsel**Respondent** Ms H Dooley and with her Ms P Cameron*Direction*

HAVING heard Mr A Dzieciol of counsel on behalf of the applicant and Ms H Dooley on behalf of the respondent the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby directs –

- (1) THAT the respondent file and serve further and better particulars of its notice of answer and counter proposal by 1 July 2010.
- (2) THAT the effect of the Working with Children (Criminal Record Checking) Act 2004 on the application be heard and determined as a preliminary issue.
- (3) THAT the respondent file and serve a written outline of submissions in relation to the preliminary issue no later than 14 days prior to the date of hearing.
- (4) THAT the applicant file and serve a written outline of submissions in reply in relation to the preliminary issue by no later than 7 days prior to the date of hearing.
- (5) THAT the applicant and respondent file an agreed statement of facts in relation to the preliminary issue no later than three days prior to the date of hearing.

[L.S.]

(Sgd.) S J KENNER,
Commissioner.

2010 WAIRC 00462

PARTIES WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
MR TREVOR MAYBANK **APPLICANT**

-v-
DIRECTOR-GENERAL
DEPARTMENT OF EDUCATION **RESPONDENT**

CORAM COMMISSIONER S J KENNER
DATE THURSDAY, 22 JULY 2010
FILE NO. U 87 OF 2010
CITATION NO. 2010 WAIRC 00462

Result Direction issued
Representation
Applicant Mr S Millman of counsel
Respondent Ms P Cameron

Direction

HAVING HEARD Mr S Millman of counsel on behalf of the applicant and Ms P Cameron on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979* hereby directs:

- (1) THAT the respondent file and serve further and better particulars of its notice of answer and counter proposal by 30 July 2010.
- (2) THAT the effect of the Working with Children (Criminal Record Checking) Act 2004 on the application be heard and determined as a preliminary issue.
- (3) THAT the respondent file and serve a written outline of submissions in relation to the preliminary issue no later than 14 days prior to the date of hearing.
- (4) THAT the applicant file and serve a written outline of submissions in reply in relation to the preliminary issue by no later than seven days prior to the date of hearing.
- (5) THAT the applicant and respondent file an agreed statement of facts in relation to the preliminary issue no later than three days prior to the date of hearing.
- (6) THAT this application be joined and heard and determined with applications U68 of 2010 and U83 of 2010 in relation to the preliminary issue.
- (7) THAT the parties have liberty to apply.

[L.S.]

(Sgd.) S J KENNER,
Commissioner.

2010 WAIRC 01065

PARTIES WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
MR PETER MASCHETTE AND ORS **APPLICANTS**

-v-
DIRECTOR-GENERAL
DEPARTMENT OF EDUCATION **RESPONDENT**

CORAM COMMISSIONER S J KENNER
DATE MONDAY 25 OCTOBER 2010
FILE NO/S U 68 OF 2010, U 83 OF 2010, U 87 OF 2010
CITATION NO. 2010 WAIRC 01065

Result	Order issued
Representation	
Applicants	Mr S Millman and Mr J Fiocco of counsel
Respondent	Ms R Young of counsel

Order

HAVING HEARD Mr S Millman and Mr J Fiocco of counsel on behalf of the applicants and Ms R Young of counsel on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979 and by consent hereby orders -

1. THAT the applications be and are hereby adjourned sine die.
2. THAT direction (5) of the Commission's directions of 25 June, 9 July and 22 July 2010 be and is hereby revoked.

(Sgd.) S J KENNER,
Commissioner.

[L.S.]

2010 WAIRC 00139

HEAT CONTAINMENT INDUSTRIES (REFRACTORY SPECIALTIES) AWARD NO. 3 OF 1981

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	ON THE COMMISSION'S OWN MOTION
CORAM	CHIEF COMMISSIONER A R BEECH
DATE	FRIDAY, 26 MARCH 2010
FILE NO/S	APPL 33 OF 2010
CITATION NO.	2010 WAIRC 00139

Result	Order for substituted service issued
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Order

WHEREAS on 28 January 2010 the Commission, pursuant to s 47(3) of the *Industrial Relations Act, 1979*, directed the Registrar to make enquiries as to whether there is an employee to whom the Heat Containment Industries (Refractory Specialties) Award No. 3 of 1981 applies;

AND WHEREAS on 5 March 2010 the Registrar reported to the Commission that the respondent employer, Heat Containment Industries no longer exists;

NOW THEREFORE the Commission, pursuant to r 27(1) of the Industrial Relations Commission Regulations 2005, hereby orders:-

THAT the application to cancel the Heat Containment Industries (Refractory Specialties) Award No. 3 of 1981 be served upon the Chamber of Commerce and Industry, WA (Inc) in substitution for Heat Containment Industries.

(Sgd.) A R BEECH,
Chief Commissioner.

[L.S.]

2009 WAIRC 01354

	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION	
PARTIES	DENISE WHITE AND OTHERS	APPLICANTS
	-v-	
	DR RUTH SHEAN DIRECTOR GENERAL, DEPARTMENT OF TRAINING AND WORKFORCE DEVELOPMENT AND SHARYN O'NEILL, DIRECTOR GENERAL, DEPARTMENT OF EDUCATION	RESPONDENTS
CORAM	CHIEF COMMISSIONER A R BEECH	
DELIVERED	FRIDAY, 18 DECEMBER 2009	
FILE NO.	B 243 OF 2009, B 244 OF 2009, B 245 OF 2009, B 246 OF 2009, B 247 OF 2009, B 248 OF 2009, B 249 OF 2009, B 250 OF 2009, B 251 OF 2009, B 252 OF 2009, B 253 OF 2009, B 254 OF 2009, B 255 OF 2009, B 256 OF 2009, B 257 OF 2009, B 258 OF 2009, B 259 OF 2009, B 260 OF 2009	
CITATION NO.	2009 WAIRC 01354	

Reasons for Decision

- 1 On 15 December 2009 the applicants in these matters lodged in the Commission under s 29(1)(b)(ii) of the *Industrial Relations Act, 1979* ("the Act") common claims against the Director General, Department of Training and Workforce Development and the Director General, Department of Education that they have been denied benefits under their contracts of employment, being access to a private plated motor vehicle with unlimited private use. The applicants also lodged an application for the time for the Directors General to file an answering statement to be shortened from the 21 days required by regulation 61(4) of the *Industrial Relations Commission Regulations 2005* to seven days.
- 2 The application for shortened time for answers is governed by regulation 13(5)-(7) as follows:
 - (5) The applicant may make an application to the Commission for a shortened time for answers in which case the copies of the application required to be lodged by these regulations are not to be returned to the applicant until the application for shortened time for answers has been determined by the Commission.
 - (6) Subject to these regulations or the direction of the Commission otherwise, the time required for filing any answering statement under regulation 14 is 21 days from the date of being served with the notice of application.
 - (7) An application to shorten the time for filing an answer need not be served on the respondent and is to be determined by the Commission after making such inquiries as it considers appropriate in the circumstances of the case.
- 3 Accordingly, the application to shorten the time for filing an answer need not be served on the Directors General. An inquiry at my direction to the Department of Education showed that the Department has not yet seen the substantive applications and accordingly did not agree to the shortening of the time for filing an answering statement.
- 4 The consent of a respondent is not necessary before the Commission can consider whether to grant an application to shorten the time for filing an answering statement, although it is a factor that is obviously relevant. I also have had regard to the following:
 - (a) It appears that most, if not all, of the applicants have known since 17 September 2009 that the removal of the privately plated motor vehicle will cease from 18 December 2009 (letter of that date attached to the affidavit of Mr Dzieciol as AMD2); in the case of B243 of 2009 against the Director General, Department of Training and Workforce Development the letter of 17 September 2009 is not part of the affidavit of Mr Dzieciol.
 - (b) There is no explanation why the notices of application were not lodged until 15 December 2009, some 3 months later and only 3 days before the removal of the vehicles.
 - (c) However, the respondents, via their Departments, apparently have been aware since 27 November 2009 of the applicants' concerns as indicated by the letter to them of that date attached to the affidavit of Mr Dzieciol as AMD1.
 - (d) Further that letter of 27 November 2009 does foreshadow the making of an application to the Commission over the issue. I conclude that the Department has been aware of the applicants' concerns for a period greater than the 21 day period set down for the filing of an answering statement and would have anticipated the making of an application to the Commission.
 - (e) The Directors General are nevertheless entitled to a reasonable time to consider their position in relation to the precise application that is filed and in my view 7 days is not a reasonable time in the circumstances.
- 5 I shall direct the Registrar that the time required for filing any answering statement under regulation 61(4) is 14 days from the date of being served with the notice of application.
- 6 I note for the record that the application also seeks an order that the applications be dealt with together. That, ultimately, will be for the Commissioner to whom the matters are allocated to decide. In order to facilitate this occurring, I shall allocate the applications to the same Commissioner.

INDUSTRIAL AGREEMENTS—Notation of—

Agreement Name/Number	Date of Registration	Parties		Commissioner	Result
identitywa and LHMU Direct Care Workers Agreement 2010 AG 22/2010	(Not applicable)	The Liquor, Hospitality and Miscellaneous Union	Catholic Care trading as identitywa	Commissioner S M Mayman	Agreement registered
Department of Corrective Services Prison Officers' Enterprise Agreement 2010 AG 24/2010	21/10/2010	The Department of Corrective Services	Western Australian Prison Officers' Union of Workers	Commissioner S J Kenner	Agreement registered
Department of the Attorney General Jury Officers Agreement 2010 PSAAG 1/2010	14/10/2010	The Director General Department of the Attorney General , General Secretary Civil Service Association	Not applicable	Commissioner S J Kenner	Agreement registered

NOTICES—Appointments—

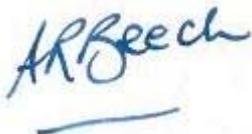
2010 WAIRC 01105

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 SM Mayman to be an additional Public Service Arbitrator for a period of one year from the 10th day of November, 2010.

Dated the 4th day of November, 2010.



CHIEF COMMISSIONER A.R. BEECH

PUBLIC SERVICE APPEAL BOARD—

2010 WAIRC 01036

APPEAL AGAINST THE DECISION MADE ON 11 FEBRUARY 2010 RELATING TO TERMINATION OF EMPLOYMENT

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

PHILIP DANALA

APPELLANT

-v-

THE MINISTER FOR HEALTH IN HIS INCORPORATED CAPACITY UNDER S7 OF THE HOSPITALS AND HEALTH SERVICES ACT 1972 (WA) AS THE HOSPITALS FORMERLY COMPRISED IN THE METROPOLITAN HEALTH SERVICES BOARD (THE METROPOLITAN HEALTH SERVICE)

RESPONDENT

CORAM

PUBLIC SERVICE APPEAL BOARD
ACTING SENIOR COMMISSIONER P E SCOTT - CHAIRMAN
MR S SEEDS - BOARD MEMBER
MR G TOWNSING - BOARD MEMBER

HEARD

THURSDAY, 12 AUGUST 2010, WEDNESDAY, 6 OCTOBER 2010

DELIVERED

WEDNESDAY 20 OCTOBER 2010

FILE NO.

PSAB 13 OF 2010

CITATION NO.

2010 WAIRC 01036

CatchWords

Public Service Appeal Board – Termination of employment – Application for discovery – Application that the appeal be received out of time – Public Sector Standards in Human Resource Management – Termination standard – Public Sector Standards in Recruitment, Selection and Appointment – Serious misconduct – Breach of discipline – Recruitment processes – Discrimination – *Industrial Relations Commission Regulations 2005* 107(9) – *Industrial Relations Act 1979* s 29(1)(b) – *Equal Opportunity Act 1984* s 89(1) – *Public Sector Management Act 1984* – *Public Sector Management (Breaches of Public Sector Standards) Regulations 2005*

Result

Application for discovery dismissed
Application that the appeal be received out of time dismissed

Representation

Applicant

Mr P Danala on his own behalf

Respondent

Mr J Ross and with him Ms S Smith

Reasons for Decision

1 These are the unanimous reasons for decision of the Public Service Appeal Board (the Board).

Background

2 Mr Danala appeals against the respondent's decision to dismiss him for misconduct given on 11 February 2010. The appeal was lodged on 14 June 2010 and was accompanied by a letter in which the applicant sought leave for his appeal to be received outside of the time specified for the filing of such appeals, being 21 days from the date of the decision appealed against (*Industrial Relations Commission Regulations 2005*, Reg 107(2)).

3 The essence of Mr Danala's application that his appeal be received out of time is that he was not aware of the processes for the lodgment of the application. In his letter in support of that application, he says that he had a number of things that were necessary for him to do, including applying for a Newstart allowance from Centrelink and making enquiries of unions and others about the appropriate process of appealing against his dismissal. He applied to the Western Australian Industrial Relations Commission claiming unfair dismissal (U 65 of 2010) which was filed on 23 April 2010. On 4 June 2010, Commissioner Harrison convened a conference at which time the fact of his being in the wrong jurisdiction was raised and it was suggested to him that he ought to make an application to the Board. The respondent's representative escorted him to the Registry where he obtained the appropriate appeal forms. It was not until a further 10 days later that he lodged an appeal. Mr Danala does not reply upon any other reason for the delay other than his unfamiliarity with the process.

- 4 Mr Danala says that he challenged the respondent's decision to dismiss him by way of a complaint of a breach of the Termination Standard, part of the Public Sector Standards in Human Resource Management, to the Office of the Public Sector Standards Commissioner. This claim was lodged on 28 April 2010. This suggests that there was no challenge to the employer's decision to dismiss him prior to the filing of the claim under section 29(1)(b) of the *Industrial Relations Act 1979* on 23 April 2010.
- 5 On 5 July 2010, the respondent filed a Notice of answer and counter-proposal in which he objected to the claim and raised a number of challenges to the Board's jurisdiction and to the merits of the appeal. On 12 August 2010, the Board convened a scheduling hearing. In anticipation of that hearing, the respondent filed a detailed outline of its case and a bundle of documents. In the hearing of 12 August 2010, it was explained to the applicant that the Board would need to convene a hearing to deal with his application that the appeal be received out of time, and a hearing was set down accordingly for that matter to be heard on 6 October 2010.
- 6 However, on 22 September 2010, by email addressed to the Associate, the applicant made an informal application for discovery. It was decided that given the timing of the matters and the difficulties in convening a hearing between 22 September 2010 and the scheduled hearing, that the application for discovery ought to be heard on 6 October 2010.
- 7 Also, given the necessity to consider the relevance of any documents sought in discovery, the applicant was directed to provide the Board and the respondent with a succinct statement of facts on which his appeal relies in accordance with the *Industrial Relations Commission Regulations 2005* Reg 107(9). Such a statement was provided by email dated 1 October 2010.
- 8 In directing the parties in preparation for that hearing, it was noted that the respondent had objected to the hearing for discovery being dealt with prior to the determination of the application that the appeal be received out of time. The respondent also raised a number of other issues. These were to the effect that discovery ought not be provided as there was no merit in the appeal, as well as there being a number of reasons why discovery ought not be granted in respect of the particular documents sought in the application. The respondent foreshadowed that he would seek the dismissal of the application for discovery and of the whole of the appeal in its entirety. Mr Danala was informed that he should be prepared to respond to those issues at the hearing on 6 October 2010.

The Applicant's Statement of Facts

- 9 The applicant set out his statement of the facts upon which his appeal relies in the following terms:
- “The applicant appeals against the decision of respondent who brought a breach of misconduct on the applicant because of his lodgement of a breach of public sector standard recruitment, selection and appointment claim documents and subsequent termination of his employment.
- The decision to terminate the applicant was unfair and victimization of him was to cover up public officers who actually breached disciplines. Basically the appellant lodged a breached [sic] of public sector standard claim 64 paged documents, in which the applicant explained about the breached [sic] of public sector standards, racial and religion direct and indirect discriminations and preferences when applying jobs within the same agency to human resources and the executive director Silvano Palladino whom instead of referring the document to an appropriate agency Office of Public Sector Standard [sic] Commission [sic] OPSSC to process, terminated the applicant as the HR and executive director were also involved in the way applicant described in the document.
- The decision was unfair on the following grounds that the employer did not follow procedural fairness or natural justice set out in Industrial Relation Act 1979 SECT 801(I)(d) and hence Public Sector Management Act 1994 SECT 86 and Equal Opportunity Act 1984 SECT 37 and 67.
- The merit of the applicant will be based on the facts that the respondent did not have jurisdiction to process the applicant's breach claim documents lodged with them and only OPSSC has the jurisdiction under the PSM Regulation 2005, REG 10. In addition to that the merit will be supported by the PSM ACT 1994 SECT (8)1 as the respondent also victimized the applicant under the Equal Opportunity Act 1984 SECT 37 and 67.

The grounds for the appeal rely on

- **The breaches of Public Sector Standards PSM ACT 1994 SEC 8(1)**
- **The breaches of Public Sector Management Regulations 2005, Reg 10**
- **The breaches of Equal Opportunity Act 1984 Sect 37 and 67**

The breaches of Public Sector Standards PSM ACT 1994 SECT 8(1)

The applicant was unfairly and oppressively terminated because of what he had written in his 64 paged breach claim documents about the employees of the respondent who breached public sector standards in recruitment, selection and appointment. Hence it would be appropriate and relevant for granting discovery for the purpose of establishing facts on which the applicant [sic] appeal rely [sic] strongly on. This would also satisfy the respondent that the applicant was not making delusional allegations about the employees who involved [sic] in recruitment processes.

The breaches of Public Sector Management Regulations 2005, Reg 10

It is also appropriate and relevant for granting discovery as it is necessary to establish facts on main points on which the respondent based and victimized to terminate the applicant was unfair and oppressive. These main points would be supporting the applicant's appeal of respondent's decision to terminate him was oppressive and cover up the employees who were involved in recruitment processes. This would in turn establish the reasons behind why the respondent's decision to terminate the applicant was unfair and oppressive.

The breaches of Equal Opportunity Act 1984 Sect 37 and 67

The granting of discovery of [sic] would also support and substantiate strongly about all the claims in the applicant's breach claim document in which the applicant claimed direct and indirect discriminations. When the applicant claimed discriminations within the breach of public sector standards of recruitment, selection and appointment about the employees of the respondent, the applicant was terminated unfairly. The applicant's appeal also rely [sic] on these incidents of discrimination and the termination of the applicant by charging him with a "serious misconduct" is a malicious attempt to suppress some of the "racist medical scientists" supported by HR and at the same time suppress the fatal flaw and unequal recruitment processes at the employer. Hence the granting of discovery is relevant and appropriate for the appeal of applicant to the PSAB of WAIRC."

- 10 On 5 October 2010, the respondent filed a submission outlining its objections to discovery being granted. Those objections include that:
1. What is sought is oppressive;
 2. Some of it is not within the custody, power or possession of the respondent;
 3. The documents are not relevant to the appeal;
 4. The documents sought and the assertions attaching to them are outrageous, offensive and scandalous; and
 5. Much of the application is a fishing expedition.
- 11 The respondent also says that the appeal ought not be received at all, that the Board does not have jurisdiction to deal with the appeal, that the appeal is misconceived and without merit. It seeks that the Board dismiss the appeal in its entirety.

The Issues

- 12 We note that in respect of a number of issues and in respect of a number of the documents Mr Danala seeks to discover, he makes reference to particular people and makes allegations against them. We consider that in the circumstances of this case it is not appropriate that those people be identified in these Reasons. On that basis we have referred to those people by sequential letters of the alphabet.
- 13 On 19 January 2010, Mr Danala made a complaint to the respondent in which he alleged various breaches of the Public Sector Standards in Recruitment, Selection and Appointment, citing what appear to have been allegations of racism, discrimination and similar issues.
- 14 The respondent wrote to him on 29 January 2010 indicating that allegations of misconduct had been raised against him in that the supporting documents in his Breach of Standard Claim Form "...contained many malicious and derogatory statements against fellow PathWest employees involved in the recruitment interviews ... These attacks on your fellow employees contained grossly obscene and totally unacceptable language and statements" (Ex R1).
- 15 Meetings were held with Mr Danala in which those allegations of obscene language and malicious and derogatory statements were discussed. In his defence, Mr Danala had claimed that the obscene language and statements used in the documentation were merely a recitation of the exact words used to him by other employees including A. The respondent examined the situation including interviewing A. The officers who undertook that investigation, Mr Kevin McWaters and Mr David Taylor, then agreed that on the balance of probabilities, A did not use the obscene language and statements claimed by Mr Danala to have been made. The respondent concluded that Mr Danala had misconducted himself and committed a serious breach of discipline. Further, it was seen that his allegations against A were malicious and a vexatious attempt to discredit her, and were a further breach of discipline on his part. Accordingly, it was recommended to the Executive Director that Mr Danala's employment be terminated. However, prior to the respondent making any decision in relation to his employment, Mr Danala was given an opportunity to respond to the proposed termination and provide any information which he thought might be relevant.
- 16 As a consequence, Mr Danala provided to the respondent a 63 page document in which he included information about positions for which he had applied unsuccessfully. He listed those positions and set out complaints about the manner in which his applications for various positions were considered, about the selection processes, about comments made to him in the feedback process and he made allegations of discrimination against various people involved in the selection processes. He alleged that he was being stereotyped and that assumptions were being made about him on the basis of his ethnicity. He alleged that people said things to him about his race, gender, religion and the like.
- 17 On 9 February 2010, the Executive Director wrote to him noting that he had had an opportunity to consider Mr Danala's response to his letter of 29 January 2010 and that a meeting had been scheduled in which he would advise Mr Danala of his decision. That meeting was scheduled for 5.00 pm on Thursday 11 February 2010. Mr Danala was advised who would be in attendance, that he was entitled to bring a support person to the meeting and was encouraged to do so.
- 18 It appears that at that meeting on 11 February 2010, Mr Danala was provided with a letter from the Executive Director of PathWest Laboratory Medicine which included the following terms:

"Whilst you have provided me with a great deal of material, the majority of that material relates to your unsuccessful job applications over the past 18 months and much of it contains more personal attacks by you against the credibility of virtually everyone who was involved in those recruitment processes.

If you had concerns about any of those processes you should have taken appropriate action at the time as provided for in the Public Sector Standards in Human Resource Management. I am aware that you have previously been advised that this course of action is available to you.

In your response to my letter of 29 January 2010 you have not provided any additional information that I consider relevant to the fact that you have been found to have committed serious misconduct by using obscene language and statements in your letter received 19 January 2010.”

The letter noted that Mr Danala was found to have committed serious misconduct; that he had previously been warned about making derogatory statements about fellow employees and that such behaviour may result in disciplinary action being taken; and that his employment was to be terminated that day (Ex R4).

19 In the circumstances, the issues involved in this matter are that:

1. The respondent dismissed Mr Danala because he came to the conclusion that Mr Danala had used obscene and unacceptable language and statements, and had made malicious and derogatory statements in his Breach of Standard claim made on 19 January 2010 and further, in his response and discussions which followed, he had made a malicious and vexatious attempt to discredit A and that this was considered a further breach of discipline.
2. When given an opportunity to respond to the allegations made against him, Mr Danala’s response did not address the issues but reiterated his previous complaints about breaches of Public Sector Standards, the recruitment and selection processes and of discrimination.

The Application for Discovery

20 As noted earlier in these Reasons, on 22 September 2010, Mr Danala wrote to the Associate seeking that the Board consider an application for discovery. The documents he sought were set out in his letter to the respondent’s representatives in this matter, being:

1. “...the letter sent from PathWest HR (Kevin McWaters and David Taylor) to A for her suspected breach of misconduct meeting that would be held on 28 January 2010.”

21 Given that one of the issues considered by the respondent was whether Mr Danala had used malicious and derogatory statements, grossly obscene and totally unacceptable language and statements in his breach of standard claim form attachments, and in doing so had referred to something he attributed to A, any letter sent to A regarding any suspected breach of discipline or misconduct by her at around that time may be relevant to this matter. The respondent has not acknowledged such a letter exists. His comments suggest that there may have been a disciplinary process involving A associated with this matter and given that the respondent says that Mr Taylor and Mr McWaters interviewed A, then it is likely that there was some communication with her regarding that meeting. In those circumstances, this would be a relevant document for discovery.

2. In the breach of standard complaint, Mr Danala complained that B had given him contradictory information and he has accused B of having early onset Alzheimer/dementia, therefore, he seeks “...the brain scan, blood test, genetic test results of B for Alzimer [sic]/dementia disease and for the year 2009 and 2010”.

22 During the course of the hearing, Mr Danala appeared to concede that any such documents, if they exist, would be third-party documents, that he is not sure if such documents exist and that they were not necessarily in the control, possession or power of the respondent. In any event such a request in these circumstances is scandalous and discovery of such documents would be entirely inappropriate and oppressive, even if such test results exist and were within the respondent’s control, possession or power.

3. Mr Danala has said that “another interview panel member (C) was trying to get pregnant again for another set of interviews”. Mr Danala seeks “(C) pregnancy test results or contraception prescribed by medical doctors”.

23 It is unclear what this refers to or why it is relevant, however, the same comments as those relating to B apply in this case.

4. Employment contracts of Silvano Palladino, who is the Executive Director of PathWest, during his initial employment in the Department of Health and later as Executive Director of PathWest. Mr Danala says that Mr Palladino was a close friend of many others who breached public sector standards and thus, there was a need for a cover-up. He says he seeks these contracts and a list of people Mr Palladino worked with in each department.

24 These documents will not demonstrate whether particular individuals are friends of Mr Palladino, that there has been a breach of public sector standards or a cover-up. There is no causal connection between the documents sought and the allegations made, rather, this is a fishing expedition.

5. During the interview processes, an interviewer, D, asked Mr Danala whether he was satisfied with the manner in which the interview was conducted. He sees this as a “trap question, to be used against him.” He seeks the results of that question “(a)re you satisfied that the way [sic] interview was conducted”, whether any interview guideline documents from the Department of Health encourage interviewers to demand a YES or NO and wants the reason behind that question.

25 Once again, this issue relates to the question of any breach of public sector standards, not to whether the dismissal was unfair. Such documents would not prove what Mr Danala needs to demonstrate and have only the most indirect relationship to the circumstances of his dismissal.

26 The interview guidelines are also irrelevant as the issue before the Board is not whether the respondent complied with public sector standards in recruitment, but whether it unfairly dismissed him.

6. Mr Danala says that an “interviewer stereotyped (him) as an Indian and asked questions in such a manner as to “discretely [sic] indicate their prejudice against Muslim people based on questions relating to the need for confidentiality around the use of forensic databases”. He seeks the employment contracts and names of positions of employees who work for the forensic database and identification of their religion and ethnicity.
- 27 Once again, this is irrelevant to the issue of whether the respondent unfairly dismissed Mr Danala. Provision of the information will not demonstrate what he seeks to demonstrate.
7. Mr Danala alleged in his breach of standard complaint that A mocked him saying “we enjoy getting f---ed so many times by white dicks but not Indians the night before the interview”. She is alleged to have said that “he would not understand or be able to fit into their “Australian” cultured team environment which includes dating and sexual relationship between staff in the workplace”. It is said to be in consequence of this allegation that Mr Danala seeks the marriage certificates and identification of racial ethnicities of the partners of four employees. He says “(i)f they are not married, I need their partners’ ethnicity identified. Please do not tell me they are virgins”.
- 28 These documents are third party documents, they are not within the control, possession or power of the respondent. They are irrelevant to the matter before the Board and furthermore, the application in this regard is scandalous.
8. The applicant seeks a “recent photograph of (E) with [sic] as he is wearing a nose ring”. He says that A “said that (E) is a homosexual gay person and that she assumed that I would not be comfortable working with him as she thought I was an Indian Muslim person”.
- 29 This matter is irrelevant to the issues before the Board. The discovery of such a document, if it exists and if it were in the possession, power or control of the respondent would prove nothing of those things that Mr Danala alleges. The fact that a person may or may not wear a nose ring does not demonstrate what someone else may or may not have said about them. Furthermore, this aspect of the discovery application, like many others, seeks to pursue the previous allegations of breaches of standards and discrimination raised by Mr Danala.
9. Mr Danala seeks the employment contracts of “that successful applicant”. In this, we think, he is referring to an applicant F had appointed to a position for which Mr Danala had applied.
- 30 Once again, this goes to an alleged breach of public sector standards and is not relevant to this issue of his dismissal.
10. Mr Danala alleges that G appointed people to positions without advertising those positions or going through an interview process. He seeks position advertisements and employment contracts with G’s name on any advertisements from 2007 to 2010 and a list of the staff he is supervising and their positions and employment contracts.
- 31 Once again, this goes to the issue of the allegations of breach of standards and is irrelevant. Furthermore, it constitutes a fishing expedition and is oppressive.
11. Mr Danala alleges that H “got her job in HR because she has white skin”. He wants her employment contract and qualifications. He understands that she was a secretary in PathWest before she got a job in HR.
- 32 This too relates to an alleged breach of public sector standards and is irrelevant to this matter. Furthermore, it is scandalous.
12. Mr Danala says that the Toxicology Department within PathWest Laboratory Medicine does not “ever advertise the positions within the Toxicology Department”, always doing “internal white recruitment programs and young south east Asian females as an equity target group”. He seeks all employment contracts and job advertisements within the Toxicology Department from 2007 to 2010.
- 33 This relates to a claim of breach of standard and is not relevant to this matter.
13. Mr Danala seeks the total number of employees at PathWest Laboratory Medicine including the “average/medium type of qualification and also an average salary for each ethnic group” and he has set out an example of the way in which he wants this information set out.
- 34 We note that Mr Danala does not suggest that there is a document in existence, and like other material sought within his application for discovery, he seems to be confusing the provision of discovery of documents with a request for the creation of documents and the provision of information beyond the existence of documents. In addition to this not constituting a document which is in existence, it is irrelevant and oppressive to the respondent.
- 35 In those circumstances, there is only one document which may be relevant to Mr Danala’s claim and to the appeal. However, the respondent asks the Board to dismiss the application that the appeal be received out of time.

The Appeal that the Appeal Be Received Out of Time

- 36 The tests for the Board to receive an appeal out of time are set out in the decision of the Industrial Appeal Court in *Prem Singh Malik v Paul Albert, Director-General, Department of Education of Western Australia* [2004] WASCA 51 (*Malik*). Those tests as set out by Hasluck J include that prima facie, time limits should be complied with unless there is an acceptable explanation for the delay which makes it equitable to extend time. In this case, the only explanation given by Mr Danala for the delay is that he was not familiar with the processes for filing his appeal. Mr Danala contested the termination of employment by filing a claim of unfair dismissal in the Commission’s general jurisdiction which application was already out of time by 49 days. Even when he was advised of the correct jurisdiction and was taken to the Commission’s registry to obtain the application form, he did not lodge the appeal for a further 10 days. In total, the appeal was lodged 101 days out of time, and in the context of a 21 day time limit, this is an inordinate delay, and the explanation for it is unsatisfactory.

- 37 Another test set out in *Malik* is whether there is any prejudice to the respondent caused by the delay in the appeal being lodged. There is no evidence of particular prejudice to the respondent caused by the delay.
- 38 The next issue set out in *Malik* is that the merits of the substantive appeal may be taken into account in deciding whether to grant an extension of time. As noted earlier in these Reasons, the respondent dismissed Mr Danala because of obscene and unacceptable language and statements, and malicious and derogatory statements which he had used in his breach of standard claim made on 19 January 2010. He was given an opportunity to respond to those complaints prior to any decision about his future being made. He responded by repeating allegations of breaches of standards, some of those allegations made in the most outrageous, offensive and scandalous terms such as to deprive them of creditability and integrity. However he did not address whether there was a reasonable explanation for his conduct. He appears to have attempted to say that his conduct and language were brought about by the circumstances he faced of being the subject of breaches of standards and of discrimination.
- 39 Mr Danala has subsequently made a complaint to the Equal Opportunity Commission of race, sex and religious conviction discrimination and of victimisation. By letter dated 5 August 2010, the Commissioner for Equal Opportunity advised the respondent that she has not accepted those parts of the complaint which are out of time, but has also, in accordance with section 89(1) of the *Equal Opportunity Act 1984*, dismissed Mr Danala's complaints as lacking in substance (Ex R5).
- 40 Also, in the letter of 5 August 2010, the Commissioner for Equal Opportunity informed the respondent that she had informed Mr Danala that he may notify her within 21 days after receipt of her letter that he requires her to refer his complaint to the State Administrative Tribunal for inquiry.
- 41 The indication from Mr Danala is that he has not sought that the Commissioner for Equal Opportunity refer the matter to the State Administrative Tribunal and the period of 21 days provided has now expired.
- 42 Mr Danala says that some of the obscene language he used in his complaint was simply a recitation of what was said to him by A. This was investigated by two officers of the respondent, and they concluded that on the balance of probabilities, A did not say those things. Given Mr Danala's other comments and allegations, in circumstances where it is one person's word against another's, we find that conclusion is not unreasonable.
- 43 As to the alleged breaches of Public Sector Standards in Recruitment, Selection and Appointment, we note that the role of the Public Sector Standards Commissioner is to deal with such complaints, not the Board. The Board does not have power to enforce either the *Public Sector Management Act 1994* or *Public Sector Management (Breaches of Public Sector Standards) Regulations 2005*, or the Public Sector Standards.
- 44 Mr Danala's complaint is in effect, that the respondent has dismissed him as a means of covering up breaches of public sector standards. There is nothing to suggest that this has occurred. On the contrary, what is plain on the face of what has been put to the Board, is that Mr Danala has made a large number of outrageous allegations using obscene and unacceptable language and statements, and he has made malicious and derogatory statements about his work colleagues. He has been given an opportunity to respond to those allegations and has failed to deny the allegations or in any way explain his conduct. Rather, his conduct in these proceedings has reinforced the findings of his employer against him. His application for discovery merely exemplifies the conduct which caused the respondent to dismiss him.
- 45 Mr Danala's dismissal was because of the way he conducted himself. If he had genuine complaints about the way he was treated, he is entitled to make those complaints. However he must do so in a manner which is reasonable. His conduct in the way he made his complaints was unreasonable in the extreme. It was offensive, malicious and scandalous.
- 46 In this case, at the conclusion of the hearing we had no reservations in concluding that there is no merit in the appeal, and that the grounds of appeal are not sustainable. We remain of the view that it is not in the public interest that this matter remain on foot or take up any more of the Board's time. Although one of the documents sought in the application for discovery may have some relevance to the appeal, in all of the circumstances, we decided to dismiss the application for discovery and dismiss the application that the appeal be received out of time.
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2010 WAIRC 01035

**APPEAL AGAINST THE DECISION MADE ON 11 FEBRUARY 2010 RELATING TO TERMINATION OF
EMPLOYMENT**

	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION	
PARTIES	PHILIP DANALA	APPELLANT
	-v-	
	THE MINISTER FOR HEALTH IN HIS INCORPORATED CAPACITY UNDER S7 OF THE HOSPITALS AND HEALTH SERVICES ACT 1972 (WA) AS THE HOSPITALS FORMERLY COMPRISED IN THE METROPOLITAN HEALTH SERVICES BOARD (THE METROPOLITAN HEALTH SERVICE)	RESPONDENT
CORAM	PUBLIC SERVICE APPEAL BOARD ACTING SENIOR COMMISSIONER P E SCOTT - CHAIRMAN MR S SEEDS - BOARD MEMBER MR G TOWNSING - BOARD MEMBER	
DATE	WEDNESDAY, 20 OCTOBER 2010	
FILE NO	PSAB 13 OF 2010	
CITATION NO.	2010 WAIRC 01035	

Result	Application for discovery dismissed Application that the appeal be received out of time dismissed
Representation	
Applicant	Mr P Danala on his own behalf
Respondent	Mr J Ross and with him Ms S Smith

Order

HAVING heard Mr P Danala on his own behalf and Mr J Ross and with him Ms S Smith 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 discovery be, and is hereby dismissed.
2. THAT the application that the appeal be received out of time be, and is hereby dismissed.

[L.S.]

(Sgd.) P E SCOTT,
Acting Senior Commissioner,
On behalf of the Public Service Appeal Board.

2010 WAIRC 01059

**APPEAL AGAINST THE DECISION MADE ON 1 JUNE 2010 RELATING TO CONSULTATION WITH EMPLOYER
RE SEVERANCE**

	WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION	
PARTIES	NEIL ROBERT WINZER	APPELLANT
	-v-	
	DEPARTMENT OF PLANNING	RESPONDENT
CORAM	PUBLIC SERVICE APPEAL BOARD ACTING SENIOR COMMISSIONER P E SCOTT - CHAIRMAN MR P STEWART - BOARD MEMBER MR J WRIGHTSON - BOARD MEMBER	
HEARD	WEDNESDAY, 4 AUGUST 2010, MONDAY, 16 AUGUST 2010	
DELIVERED	THURSDAY, 21 OCTOBER 2010	
FILE NO.	PSAB 12 OF 2010	
CITATION NO.	2010 WAIRC 01059	

CatchWords	Public Service Appeal Board – Constitution of the Board – Reasonable apprehension of bias – Doctrine of necessity – <i>Industrial Relations Act 1979</i> s 17(1), s 17(1a), s 80C(1), s 80H(4), s 80H(5)
Result	Claim of reasonable apprehension of bias dismissed
Representation	
Appellant	Mr R Winzer on his own behalf
Respondent	Mr R Hooker of counsel

Reasons for Decision

ACTING SENIOR COMMISSIONER P E SCOTT:

- 1 Mr Winzer, the appellant, has appealed to the Public Service Appeal Board (the Board) “against the decision of Mr Eric Lumsden not to grant (his) request for consultation in regard to (his) severance” given on 1 June 2010.
- 2 On 16 August 2010 the Board convened to hear from Mr Winzer in regard to his challenge to the constitution of the Board. Mr Winzer’s challenge is to both The Civil Service Association of Western Australia Incorporated (the CSA) and the respondent each appointing a person to sit as a member of the Board.

Background

- 3 Mr Winzer says that in 1998 he was a member of the CSA and made a formal public interest claim on 18 September 1998. His claim related to whether the Department of Transport had honoured provisions of the 1995 Enterprise Bargaining Agreement between the CSA and the Department. The CSA had declined to provide Mr Winzer with support in making or progressing his public interest claim. He had requested an opportunity to address the Council of the CSA and was blocked by the then Executive, including the then Secretary of the Union, Dave Robinson, and the current Secretary, Toni Walkington. The CSA, he says, then entered into an agreement with the Public Sector Standards Commission not to investigate his public interest claim. Mr Winzer says that subsequently he was denied access to the CSA’s building.
- 4 Mr Winzer also says that the CSA solicitors, Ilbery Barblett, who were representing him in his workers’ compensation claim, later advised him that they would no longer represent him because of a conflict of interest relating to Mr Winzer’s conflict with the CSA.
- 5 In respect of the respondent appointing a member of the Board, Mr Winzer says that the Department’s conduct about which he complained regarding the EBA, its subsequent victimisation of him due to his public interest claim, and its misleading of the Public Sector Standards Commission all demonstrate reasons why it is not appropriate for it to appoint a person to sit as a member of the Board.
- 6 The respondent says that the authority for dealing with an issue of a reasonable apprehension of bias is set out in *Johnson v Johnson* (No. 3) (2000) 201 CLR 488 at [11] referred to by Acting President Ritter in the decision of the Full Bench in *Luxe Day Spa (Ms Jaquiline Gill) v Ms Sarah De Longis* [2008] WAIRC at 01739.
- 7 Mr Hooker for the respondent says that there are a number of propositions derived from the test set out above and related authorities, which are relevant to Mr Winzer’s claim in this case. Firstly, the court or tribunal is to be apprised of whether the claim is one of actual bias or reasonable apprehension of bias. He says that the claim put by Mr Winzer could only be one of reasonable apprehension of bias. In respect of either Mr Wrightson appointed to the Board by the CSA or Mr Stewart appointed by the employer, there could be no conclusion that either of them has any actual preconception or specific knowledge that could ground a conclusion of actual bias and therefore it could only be a claim of a reasonable apprehension of bias.
- 8 Secondly, the respondent says that it is important to identify with precision the facts or matters said to give rise to any possible conclusion as to what a fair minded lay observer may reasonably apprehend. The respondent refers to circumstances that Mr Winzer relates from the late 1990s.
- 9 Thirdly, the respondent refers to the requirement that the claim must be sourced objectively and says that in those circumstances the claim must fail.
- 10 Fourthly, the statutory framework is significant and that the very nature of the Board relies upon the provisions of s 80H of the *Industrial Relations Act 1979* (the *IR Act*) which grounds the basis for the nomination of each of the representatives. The High Court has made it clear “a tribunal is not to be disabled from performing its statutory function unless positive or substantial injustice can be demonstrated by the operation of the statutory framework taking effect” (T 18). Mr Hooker says that unless there is the power to effectively rewrite s 80H there would be a requirement for there to be a representative of the CSA and the respondent sitting as members of the Board. The onus is on Mr Winzer to demonstrate his case in objective terms on verifiable facts and circumstances. The respondent says the onus has not been met in respect of either Mr Wrightson or Mr Stewart.

Issues and Conclusions

- 11 Mr Winzer’s claim is based on the fact of each of Mr Wrightson and Mr Stewart being appointed to the Board by a party with whom he has a grievance due to alleged conduct on the part of the appointing parties around 12 years ago. He does not allege that either Mr Wrightson or Mr Stewart have had any personal involvement in the issues which concern him. He does not claim that either Mr Wrightson or Mr Stewart may or do hold particular views, have preconceived ideas or indeed that they know anything of his case or circumstances. It is merely their appointments by other parties which are the source of his complaint. In those circumstances I conclude that his complaint is based on a claim of a reasonable apprehension of bias, rather than actual bias.

- 12 In *Luxe Day Spa*, His Honour, the Acting President with whom the other members agreed, set out the legal principles associated with a reasonable apprehension of bias as follows:

“(e) **Legal Principles – Reasonable Apprehension of Bias**

191. The overarching test in determining whether there is a reasonable apprehension of bias was stated by five justices of the High Court in joint reasons in *Johnson v Johnson (No 3)* (2000) 201 CLR 488 at [11]:

“... It has been established by a series of decisions of this Court that the test to be applied in Australia in determining whether a judge is disqualified by reason of the appearance of bias (which, in the present case, was said to take the form of prejudgment) is whether a fair-minded lay observer might reasonably apprehend that the judge might not bring an impartial and unprejudiced mind to the resolution of the question the judge is required to decide (eg *Re Lusink; Ex parte Shaw* (1980) 55 ALJR 12; (1980) 32 ALR 47; *Livesey v NSW Bar Association* (1983) 151 CLR 288 *Vakauta v Kelly* (1989) 167 CLR 568; *Webb v The Queen* (1994) 181 CLR 41.”

192. In the following paragraph their Honours said the test gives “due recognition to the fundamental principle that justice must both be done, and be seen to be done. It is based upon the need for public confidence in the administration of justice”. (Footnote omitted). Their Honours also cited the reasons of Barwick CJ, Gibbs, Stephen and Mason JJ in *R v Watson; Ex Parte Armstrong* (1976) 136 CLR 248 at 263 where it was said that: “If fair minded people reasonably apprehend or suspect the tribunal has prejudged a case, they cannot have confidence in the decision”.

193. In *Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337 at [7] Gleeson CJ, McHugh, Gummow and Hayne JJ said:

“[7] 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.”

194. In *Antoun v The Queen* (2006) 80 ALJR 497; (2006) 224 ALR 51, Callinan J (Hayne and Heydon JJ agreeing) at [83] noted that the relevant test emphasises the “possibility, that is relevantly to say, the appearance of a possibility of an absence of an impartial mind on the part of the judge”.

195. In *Johnson* in the joint reasons their Honours said at [12]:

“The hypothetical reasonable observer of the judge’s conduct is postulated in order to emphasise that the test is objective, is founded in the need for public confidence in the judiciary, and is not based purely upon the assessment by some judges of the capacity or performance of their colleagues.”

196. In *Johnson*, Kirby J wrote separate but concurring reasons. His Honour considered the attributes of the “fictitious bystander” ([52]ff). Kirby J commented, supported by authority, that such a person is not a lawyer, but nor are they wholly uninformed and uninstructed about the law in general or the issue to be decided ([53]). His Honour also said the bystander must have some knowledge of the fact that an adjudicator may properly adopt reasonable efforts to confine proceedings within appropriate limits and ensure time is not wasted ([53]). His Honour also said the fictitious bystander would not reach a hasty conclusion based on the appearance evoked by a single episode of temper or remarks to the parties or their representatives, which was taken out of context ([53]). His Honour said “a reasonable member of the public is neither complacent nor unduly sensitive or suspicious” ([53] – footnote omitted). In making these comments, Kirby J cited his reasons in *Galea*.

197. In *Webb v The Queen* (1994) 181 CLR 41, Deane J at 74 described four distinct, though sometimes overlapping categories of “disqualification by reason of the appearance of bias”. The second category was disqualification by conduct whether in the course of or outside the proceedings. In *Ebner* in the joint reasons at [24] their Honours said the categories of Deane J provided “a convenient frame of reference”. In *Galea*, Kirby ACJ said at 278 that this test for test of the apprehension of bias is applied when there is complaint of what happened during a trial, as opposed to the other relevant categories.”

- 13 In *Ebner v Official Trustee in Bankruptcy* [2000] HCA 63; (2000) 205 CLR 337, Gleeson CJ, McHugh, Gummow and Hayne JJ observed:

6. 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.

7. 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.
- 14 As noted by His Honour in *Luxe Day Spa* above at [197], a number of categories of “disqualification by the reason of the appearance of bias” were identified by Deane J in *Webb v The Queen* (1993-1994) 181 CLR 41 at 74. The third of those categories is disqualification by association, “and consists of cases where the apprehension of prejudgment or other bias results from some direct or indirect relationship, experience or contact with a person or persons interested in, or otherwise involved in, the proceedings”.
- 15 In *Hot Holdings Pty Ltd v Creasy* (2002) CLR 438 at 461 McHugh J noted that:

“...no conclusion of apprehended bias by association can be drawn until the court examines the nature of the association, the frequency of contact, and the nature of the interest of the person associated, with the decision-maker. It is erroneous to suppose that a decision is automatically infected with an apprehension of bias because of the pecuniary or other interest of a person associated with the decision-maker. Each case must turn on its own facts and circumstances”.
- 16 The decision regarding apprehended bias is to be made by the decision-maker against whom the challenge is made: *Kartinyeri v The Commonwealth* [No 2] [1998] HCA 52; (1998) 72 ALJR 1334. Therefore it is for Mr Wrightson and Mr Stewart to each make their own decision. However, I note that in this case there is an assertion of a reasonable apprehension of bias based on association. As McHugh J said in *Hot Holdings*, there needs to be an examination of the nature of the association between Mr Wrightson and the CSA and Mr Stewart and the respondent respectively; the frequency of contact and the nature of the interests concerned. That has not occurred in this case. All that Mr Winzer relies upon is the fact of the appointments having been made. Of themselves, those appointments do not sustain a conclusion that a fair-minded lay observer might reasonably apprehend that they might not bring an impartial mind to the resolution of Mr Winzer’s appeal.
- 17 Even if there was justification for such a conclusion, the statutory scheme means that the doctrine of necessity, referred to by their Honours in *Ebner* at [6] requires consideration.
- 18 The constitution of the Board is a matter of statute. Section 80H of the *IR Act* establishes the Board as being constituted by three members. In the case of the type of appeal brought by Mr Winzer, it is made up of the Public Service Arbitrator, an employer’s representative appointed by the employer of the appellant and an employee’s representative appointed by the relevant organisation (s 80H(4)). The relevant organisation means the ‘Association’ unless the appellant is a member of another organisation (s 80H(5)). The ‘Association’ is defined as meaning “the organisation registered as The Civil Service Association of Western Australia Incorporated” (s 80C(1)). Therefore, according to statute, in any appeal brought by any government officer against a decision of his or her employer, the Board must be constituted by amongst others, a person appointed by the employer against whose decision the appeal is made, and by an employee’s representative appointed by the CSA.
- 19 The doctrine of necessity operates to:

“...ensure that the Tribunal is not disabled from performing its statutory function. The rule of necessity permits a member of a court who has some interest in the subject-matter of the litigation to sit in a case where no judge without such an interest is available to sit” (Mason CJ and Brennan J in *Laws v Australian Broadcasting Tribunal* (1990) 170 CLR 70 at 88. (See also Deane J at 96, who agreed with Mason CJ and Brennan J).
- 20 The doctrine of necessity was considered by the Full Bench in *Liquor, Hospitality and Miscellaneous Union, Western Australian Branch v The Director General, Department of Education and Training* (2010 WAIRC 00089) in relation to office of the President of the Commission. In that case it was noted that s 17(1) and s 17(1a) of the *IR Act* allowed the President to disqualify himself or herself when the President accepts that an issue of bias is properly raised and for the Governor to appoint a person to be acting President in those circumstances. Therefore the doctrine of necessity did not apply in that case.
- 21 The situation regarding the creation and constitution of the Board is to be distinguished from that of the President. This is because there is no provision for alternative appointing bodies to themselves be appointed under the *IR Act*, while the provisions in s 17(1) and s 17(1a) allow for acting appointments of President, Chief Commissioner, Senior Commissioner or Commissioner to be made by the Governor.
- 22 In the circumstances of this case, if there was established to be a reasonable apprehension of bias on the grounds of the relationship of Mr Wrightson with the CSA and of Mr Stewart with the respondent, which I do not find has been established to the degree necessary, then the rule of necessity would apply. That is because a Board could not be formed according to statute without the CSA and the respondent appointing members to the Board. The same issue would arise in relation to any person appointed by them, be they Mr Wrightson, Mr Stewart or any other person. The Board would be unable to be formed and it would be “disabled from performing its statutory function” (*Laws v Australian Broadcasting Tribunal*).
- 23 I would dismiss the appellant’s complaint of reasonable apprehension of bias.

MR P STEWART:

- 24 S 80H 3(c) of the *Industrial Relations Act 1979* requires the nomination of an employer's representative appointed by the employer of the appellant. Notwithstanding that I am a representative of the Respondent on the Board, it should be noted that I am not an officer of the Respondent.
- 25 My nomination arose through a request by the Department of Planning that the Public Sector Commission nominate someone to be the employer representative on this Board. I was subsequently approached to take this role.
- 26 I have had the benefit of reading the Reasons for Decision of Acting Senior Commissioner P E Scott and agree with those reasons.

MR J WRIGHTSON:

- 27 Since my appointment to the Board for PSAB 12 of 2010 – Neil Robert Winzer v Department of Planning, the appellant, Mr Winzer, has challenged the constitution of the Board in relation to both the CSA and the respondent appointing each person to sit as a Member.
- 28 Mr Winzer has raised concerns, being that I am a representative for the CSA that the possibility exists of a conflict of interest. This has arisen as Mr Winzer has made several statements in relation to his dealings with the CSA and their representatives.
- 29 However, nominations of representatives to the Public Service Appeal Board is covered in the provision of s 80H of the *Industrial Relations Act 1979* and if this were to change its constitution the Act would require alteration.
- 30 Having had no prior knowledge of Mr Winzer or of his claims, either personally, through my involvement with the CSA or in any other capacity, I can clarify that there is no conflict of interest or of any apprehension of bias on my behalf.
- 31 I will continue to sit as a member of the Board and to conduct myself in a professional and unbiased manner.

2010 WAIRC 01058

**APPEAL AGAINST THE DECISION MADE ON 1 JUNE 2010 RELATING TO CONSULTATION WITH EMPLOYER
RE SEVERANCE**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

NEIL ROBERT WINZER

APPELLANT

-v-

DEPARTMENT OF PLANNING

RESPONDENT**CORAM**

PUBLIC SERVICE APPEAL BOARD
ACTING SENIOR COMMISSIONER P E SCOTT - CHAIRMAN
MR P STEWART - BOARD MEMBER
MR J WRIGHTSON - BOARD MEMBER

DATE

THURSDAY, 21 OCTOBER 2010

FILE NO

PSAB 12 OF 2010

CITATION NO.

2010 WAIRC 01058

Result Claim of reasonable apprehension of bias dismissed

Representation**Appellant** Mr R Winzer on his own behalf**Respondent** Mr R Hooker of counsel

Order

HAVING heard Mr R Winzer on his own behalf and Mr R Hooker 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:

THAT the appellant's challenges to the constitution of the Public Service Appeal Board be, and are hereby dismissed.

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

On behalf of the Public Service Appeal Board.

[L.S.]

RECLASSIFICATION APPEALS—**2010 WAIRC 01071**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

JENNIFER LEE MCCOY

APPLICANT**-v-**MANAGER, EMPLOYEE RELATIONS, DEPARTMENT OF ENVIRONMENT &
CONSERVATION**RESPONDENT****CORAM**PUBLIC SERVICE ARBITRATOR
ACTING SENIOR COMMISSIONER P E SCOTT**DATE**

FRIDAY, 29 OCTOBER 2010

FILE NO

PSA 38 OF 2010

CITATION NO.

2010 WAIRC 01071

Result

Appeal dismissed

*Order*WHEREAS this is a reclassification appeal made pursuant to the *Industrial Relations Act 1979*; andWHEREAS on the 20th day of October 2010 the applicant 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 01082**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES

KRYZIA STAFFORD

APPLICANT**-v-**MANAGER, EMPLOYEE RELATIONS, DEPARTMENT OF ENVIRONMENT AND
CONSERVATION**RESPONDENT****CORAM**PUBLIC SERVICE ARBITRATOR
ACTING SENIOR COMMISSIONER P E SCOTT**DATE**

MONDAY, 1 NOVEMBER 2010

FILE NO

PSA 23 OF 2010

CITATION NO.

2010 WAIRC 01082

Result

Appeal dismissed

Order

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

WHEREAS on the 2nd day of July 2010 the Public Service Arbitrator convened a conference for the purpose of conciliating between the parties; and

WHEREAS at the conclusion of that conference the respondent sought time to consider the applicant's claims; and

WHEREAS on the 18th day of October 2010 the applicant advised the Arbitrator that the matter had settled; and

WHEREAS on the 18th day of October 2010 the applicant 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.

NOTICES—Union Matters—

NOTICE

FBM 14 of 2010

NOTICE is given of an application by "The Australian Workers' Union, West Australian Branch, Industrial Union of Workers" for the right, to the exclusion of any other organisation to represent under the *Industrial Relations Act 1979* the industrial interests of all employees who are engaged in or about a Brickyard, Pottery, Porcelain works, Tillery, Cement Tile Factory, or in Roof Tile fixing, in the State of Western Australia.

The application is made pursuant to Section 72A of the *Industrial Relations Act 1979* and is published hereunder. A copy of the application may be inspected at my office at 16th Floor, 111 St Georges Terrace, Perth.

The matter has been listed before the Full Bench at 10:30 am on the 17th January 2011 in Court 3 (Floor 18).

Any person who wishes to be heard in relation to the application must file a notice of application to be heard in triplicate (Form 1), setting out the grounds on which the person claims sufficient interest to be heard in relation to the application and serve it on the applicant at least 7 days before the above date of hearing in accordance with Regulation 73 of the *Industrial Relations Commission Regulations 2005*.

S. HUTCHINSON
Deputy Registrar

11 November 2010

Form 1 — Notice of application (general)

[r. 13, 27(3), 58, 59(1), 73(1) and (2), 82(8), 102(7), 103(9) and 104(1)]
Industrial Relations Act 1979

In the Western Australian Industrial Relations Commission

No. FBM 14 of 2010

Notice of application

To:n/a.....
.....

(name, address and telephone number of respondent/s — attach schedule if necessary)

TAKE NOTICE THAT The Australian Workers' Union, West Australian Branch Industrial Union of Workers
Level 4, 25 Barrack Street
PERTH WA 6000
Phone (08) 9221 1686
Fax (08) 9221 1706

(name, address and telephone number of applicant/s — attach schedule if necessary)

has this day applied to the Western Australian Industrial Relations Commission

Commission / ~~Public Service Arbitrator / Public Service Appeal Board /~~
~~Railways Classification Board~~

For: An order pursuant to section 72A (2)(b) of the Industrial relations Act 1979 – schedule A attached

(examples: an order / ~~a conference / registration of a new agreement / issuance of a new award~~)

The grounds on which the application is made are:

See attached schedule B.

.....

(give details or attach schedule if necessary)

Signed:(signature of applicant/s)

NOTE: It is important to correctly state the full name of the employer. If the employer in this matter is a trading, financial or foreign corporation the Commission may not have jurisdiction to deal with the matter. If known, please indicate whether the employer is one of the following:

- Company Incorporated Association Trust
- Unincorporated (eg. sole trader, partnership or other)
- State Government Agency Other

This notice must be completed by the applicant, signed and, where necessary, sealed, and a written statement of claim or other adequate description of the subject matter of the application must be attached. For endorsements, see the back of this Form.

Where a fee is payable with an application it must be paid at the time of lodgement of the application, or within 7 days of the lodgement, or the application will not be processed.



(Stamp of Commission)

Schedule A

Orders applied for pursuant to section 72A(2)(b):

1. The Australian Workers' Union, West Australian Branch Industrial Union of Workers has the right, to the exclusion of any other organisation to represent under the Industrial Relations Act 1979 the industrial interests of all employees who are engaged in or about a Brickyard, Pottery, Porcelain works, Tilery, Cement Tile Factory, or in Roof Tile fixing, in the State of Western Australia.
2. To the extent that The Australian Workers' Union, West Australian Branch Industrial Union of Workers does not have the right to represent under the Act the industrial interests of the employees in Schedule A paragraph 1 of this application, the Australian Workers' Union, West Australian Branch Industrial Union of Workers shall have that right.

Schedule B

The grounds of the application are as follows:

1. The Federated Brick, Tile and Pottery Industrial Union of Australia (Union of Workers) Western Australian Branch (FBTPU WA) eligibility rule 3 entitles it to represent the industrial interests of all employees "in or about a Brickyard, Pottery, Porcelain works, Tilery, Cement Tile Factory, or in Roof Tile fixing, in the State of Western Australia".
2. The FBTPU WA has neither officials nor members and may be considered moribund.
3. Employees engaged in or about a Brickyard, Pottery, Porcelain works, Tilery, Cement Tile Factory, or in Roof Tile fixing, in the State of Western Australia are currently unrepresented.
4. The Australian Workers' Union, West Australian Branch Industrial Union of Workers (AWU WA) makes this application pursuant to section 72A (2)(b) of the Industrial Relations Act 1979 seeking the right to represent those employees eligible to join FBTPU WA.
5. AWU WA does not currently have the right to represent employees eligible to be members of FBTPU WA and will require an amendment to the rules of West Australian Branch.
6. AWU WA already represents other employees at some of the respondent employers' workplaces. AWU WA also represents employees involved in manufacture of cement, cement articles, concrete and concrete products, quarries and masonry.
7. Granting of this application would result in a single Union coverage in most workplaces represented by FBTPU WA and prevent potential demarcation disputes.
8. No new overlapping coverage issues result from granting this application as it involves effectively transferring the right to represent the employees specified in paragraph 3 from FBTPU WA to AWU WA.

OCCUPATIONAL SAFETY AND HEALTH ACT—Matters Dealt With—

2010 WAIRC 01006

REFERRAL OF DISPUTE RE ENTITLEMENTS TO PAY AND OTHER BENEFITS

THE OCCUPATIONAL SAFETY AND HEALTH TRIBUNAL

PARTIES	ALLAN HAY	APPLICANT
	-v-	
	SAFE AND SOUND LABOUR HIRE PTY LTD	RESPONDENT
CORAM	COMMISSIONER S M MAYMAN	
DATE	TUESDAY, 19 OCTOBER 2010	
FILE NO/S	OSHT 15 OF 2010	
CITATION NO.	2010 WAIRC 01006	
<hr/>		
Result	Order issued	
Representation		
Applicant	Mr T Kucera (of counsel)	
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 the Tribunal convened conferences on 17 February 2010 and 18 March 2010 for the purpose of conciliation between the parties;

AND WHEREAS there was an agreement that the application was to be dismissed by consent;

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 dismissed.

[L.S.]

(Sgd.) S M MAYMAN,
Commissioner.

2010 WAIRC 01030

REFERRAL OF DISPUTE RE ENTITLEMENTS TO PAY AND OTHER BENEFITS

THE OCCUPATIONAL SAFETY AND HEALTH TRIBUNAL

PARTIES

BARRY WADE

APPLICANT

-v-

HITACHI PLANT TECHNOLOGIES

RESPONDENT

CORAM

COMMISSIONER S M MAYMAN

DATE

TUESDAY, 19 OCTOBER 2010

FILE NO/S

OSHT 106 OF 2010

CITATION NO.

2010 WAIRC 01030

Result

Order issued

Representation

Applicant

Mr T Kucera (of counsel)

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 the Tribunal convened conferences on 17 February 2010 and 18 March 2010 for the purpose of conciliation between the parties;

AND WHEREAS there was an agreement that the application was to be dismissed by consent;

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 dismissed.

[L.S.]

(Sgd.) S M MAYMAN,
Commissioner.

2010 WAIRC 01010

REFERRAL OF DISPUTE RE ENTITLEMENTS TO PAY AND OTHER BENEFITS

THE OCCUPATIONAL SAFETY AND HEALTH TRIBUNAL

PARTIES

BELLA LEEFE

APPLICANT

-v-

HITACHI PLANT TECHNOLOGIES LTD

RESPONDENT

CORAM COMMISSIONER S M MAYMAN
DATE TUESDAY, 19 OCTOBER 2010
FILE NO/S OSH 23 OF 2010
CITATION NO. 2010 WAIRC 01010

Result Order issued
Representation
Applicant Mr T Kucera (of counsel)
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 the Tribunal convened conferences on 17 February 2010 and 18 March 2010 for the purpose of conciliation between the parties;

AND WHEREAS there was an agreement that the application was to be dismissed by consent;

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 dismissed.

(Sgd.) S M MAYMAN,
 Commissioner.

[L.S.]

2010 WAIRC 01017

REFERRAL OF DISPUTE RE ENTITLEMENTS TO PAY AND OTHER BENEFITS

THE OCCUPATIONAL SAFETY AND HEALTH TRIBUNAL

PARTIES

BILL SLOAN

APPLICANT

-v-

HITACHI PLANT TECHNOLOGIES LTD

RESPONDENT

CORAM COMMISSIONER S M MAYMAN
DATE TUESDAY, 19 OCTOBER 2010
FILE NO/S OSH 31 OF 2010
CITATION NO. 2010 WAIRC 01017

Result Order issued
Representation
Applicant Mr T Kucera (of counsel)
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 the Tribunal convened conferences on 17 February 2010 and 18 March 2010 for the purpose of conciliation between the parties;

AND WHEREAS there was an agreement that the application was to be dismissed by consent;

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 dismissed.

(Sgd.) S M MAYMAN,
Commissioner.

[L.S.]

2010 WAIRC 01021

REFERRAL OF DISPUTE RE ENTITLEMENTS TO PAY AND OTHER BENEFITS

THE OCCUPATIONAL SAFETY AND HEALTH TRIBUNAL

PARTIES

BRIAN WATSON

APPLICANT

-v-

HITACHI PLANT TECHNOLOGIES LTD

RESPONDENT

CORAM COMMISSIONER S M MAYMAN

DATE TUESDAY, 19 OCTOBER 2010

FILE NO/S OSHT 42 OF 2010

CITATION NO. 2010 WAIRC 01021

Result Order issued

Representation

Applicant Mr T Kucera (of counsel)

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 the Tribunal convened conferences on 17 February 2010 and 18 March 2010 for the purpose of conciliation between the parties;

AND WHEREAS there was an agreement that the application was to be dismissed by consent;

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 dismissed.

(Sgd.) S M MAYMAN,
Commissioner.

[L.S.]

2010 WAIRC 01003

REFERRAL OF DISPUTE RE ENTITLEMENTS TO PAY AND OTHER BENEFITS

THE OCCUPATIONAL SAFETY AND HEALTH TRIBUNAL

PARTIES

CHRISTOPHER DOWNES

APPLICANT

-v-

SAFE AND SOUND SCAFFOLDING PTY LTD

RESPONDENT

CORAM COMMISSIONER S M MAYMAN

DATE MONDAY, 18 OCTOBER 2010

FILE NO/S OSHT 11 OF 2010

CITATION NO. 2010 WAIRC 01003

Result	Order issued
Representation	
Applicant	Mr T Kucera (of counsel)
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 the Tribunal convened conferences on 17 February 2010 and 18 March 2010 for the purpose of conciliation between the parties;

AND WHEREAS there was an agreement that the application was to be dismissed by consent;

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 dismissed.

[L.S.]

(Sgd.) S M MAYMAN,
Commissioner.

2010 WAIRC 01004

REFERRAL OF DISPUTE RE ENTITLEMENTS TO PAY AND OTHER BENEFITS

THE OCCUPATIONAL SAFETY AND HEALTH TRIBUNAL

PARTIES CRAIG GOODCHILD

APPLICANT

-v-

UNITED INDUSTRIES (WA) PTY LTD

RESPONDENT

CORAM COMMISSIONER S M MAYMAN

DATE MONDAY, 18 OCTOBER 2010

FILE NO/S OSHT 13 OF 2010

CITATION NO. 2010 WAIRC 01004

Result	Order issued
Representation	
Applicant	Mr T Kucera (of counsel)
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 the Tribunal convened conferences on 17 February 2010 and 18 March 2010 for the purpose of conciliation between the parties;

AND WHEREAS there was an agreement that the application was to be dismissed by consent;

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 dismissed.

[L.S.]

(Sgd.) S M MAYMAN,
Commissioner.

2010 WAIRC 01026

REFERRAL OF DISPUTE RE ENTITLEMENTS TO PAY AND OTHER BENEFITS

THE OCCUPATIONAL SAFETY AND HEALTH TRIBUNAL

PARTIES DANIEL FOSTER **APPLICANT**

-v-
SAFE AND SOUND LABOUR HIRE PTY LTD **RESPONDENT**

CORAM COMMISSIONER S M MAYMAN
DATE TUESDAY, 19 OCTOBER 2010
FILE NO/S OSH 92 OF 2010
CITATION NO. 2010 WAIRC 01026

Result Order issued
Representation
Applicant Mr T Kucera (of counsel)
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 the Tribunal convened conferences on 17 February 2010 and 18 March 2010 for the purpose of conciliation between the parties;
 AND WHEREAS there was an agreement that the application was to be dismissed by consent;
 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 dismissed.

[L.S.]

(Sgd.) S M MAYMAN,
Commissioner.

2010 WAIRC 01000

REFERRAL OF DISPUTE RE ENTITLEMENTS TO PAY AND OTHER BENEFITS

THE OCCUPATIONAL SAFETY AND HEALTH TRIBUNAL

PARTIES DAVID BODEN **APPLICANT**

-v-
SAFE AND SOUND LABOUR HIRE PTY LTD **RESPONDENT**

CORAM COMMISSIONER S M MAYMAN
DATE MONDAY, 18 OCTOBER 2010
FILE NO/S OSH 8 OF 2010
CITATION NO. 2010 WAIRC 01000

Result Order issued
Representation
Applicant Mr T Kucera (of counsel)
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 the Tribunal convened conferences on 17 February 2010 and 18 March 2010 for the purpose of conciliation between the parties;

AND WHEREAS there was an agreement that the application was to be dismissed by consent;

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 dismissed.

[L.S.]

(Sgd.) S M MAYMAN,
Commissioner.

2010 WAIRC 01022

REFERRAL OF DISPUTE RE ENTITLEMENTS TO PAY AND OTHER BENEFITS

THE OCCUPATIONAL SAFETY AND HEALTH TRIBUNAL

PARTIES

DAVIN WILSON

APPLICANT

-v-

HITACHI PLANT TECHNOLOGIES LTD

RESPONDENT

CORAM

COMMISSIONER S M MAYMAN

DATE

TUESDAY, 19 OCTOBER 2010

FILE NO/S

OSHT 44 OF 2010

CITATION NO.

2010 WAIRC 01022

Result

Order issued

Representation

Applicant

Mr T Kucera (of counsel)

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 the Tribunal convened conferences on 17 February 2010 and 18 March 2010 for the purpose of conciliation between the parties;

AND WHEREAS there was an agreement that the application was to be dismissed by consent;

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 dismissed.

[L.S.]

(Sgd.) S M MAYMAN,
Commissioner.

2010 WAIRC 01005

REFERRAL OF DISPUTE RE ENTITLEMENTS TO PAY AND OTHER BENEFITS

THE OCCUPATIONAL SAFETY AND HEALTH TRIBUNAL

PARTIES	JAMES HAWEA	APPLICANT
	-v-	
	SAFE AND SOUND LABOUR HIRE PTY LTD	RESPONDENT
CORAM	COMMISSIONER S M MAYMAN	
DATE	MONDAY, 18 OCTOBER 2010	
FILE NO/S	OSHT 14 OF 2010	
CITATION NO.	2010 WAIRC 01005	

Result	Order issued
Representation	
Applicant	Mr T Kucera (of counsel)
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 the Tribunal convened conferences on 17 February 2010 and 18 March 2010 for the purpose of conciliation between the parties;

AND WHEREAS there was an agreement that the application was to be dismissed by consent;

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 dismissed.

(Sgd.) S M MAYMAN,
Commissioner.

[L.S.]

2010 WAIRC 01023

REFERRAL OF DISPUTE RE ENTITLEMENTS TO PAY AND OTHER BENEFITS

THE OCCUPATIONAL SAFETY AND HEALTH TRIBUNAL

PARTIES	JASON CORRADETTI	APPLICANT
	-v-	
	HITACHI PLANT TECHNOLOGIES LTD	RESPONDENT
CORAM	COMMISSIONER S M MAYMAN	
DATE	TUESDAY, 19 OCTOBER 2010	
FILE NO/S	OSHT 88 OF 2010	
CITATION NO.	2010 WAIRC 01023	

Result	Order issued
Representation	
Applicant	Mr T Kucera (of counsel)
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 the Tribunal convened conferences on 17 February 2010 and 18 March 2010 for the purpose of conciliation between the parties;

AND WHEREAS there was an agreement that the application was to be dismissed by consent;

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 dismissed.

[L.S.]

(Sgd.) S M MAYMAN,
Commissioner.

2010 WAIRC 01027

REFERRAL OF DISPUTE RE ENTITLEMENTS TO PAY AND OTHER BENEFITS

THE OCCUPATIONAL SAFETY AND HEALTH TRIBUNAL

PARTIES

JASON GARRIGON

APPLICANT

-v-

HITACHI PLANT TECHNOLOGIES

RESPONDENT

CORAM

COMMISSIONER S M MAYMAN

DATE

TUESDAY, 19 OCTOBER 2010

FILE NO/S

OSHT 94 OF 2010

CITATION NO.

2010 WAIRC 01027

Result

Order issued

Representation

Applicant

Mr T Kucera (of counsel)

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 the Tribunal convened conferences on 17 February 2010 and 18 March 2010 for the purpose of conciliation between the parties;

AND WHEREAS there was an agreement that the application was to be dismissed by consent;

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 dismissed.

[L.S.]

(Sgd.) S M MAYMAN,
Commissioner.

2010 WAIRC 01019

REFERRAL OF DISPUTE RE ENTITLEMENTS TO PAY AND OTHER BENEFITS
 THE OCCUPATIONAL SAFETY AND HEALTH TRIBUNAL

PARTIES	JASON TATE	APPLICANT
	-v-	
	HITACHI PLANT TECHNOLOGIES LTD	RESPONDENT
CORAM	COMMISSIONER S M MAYMAN	
DATE	TUESDAY, 19 OCTOBER 2010	
FILE NO/S	OSHT 35 OF 2010	
CITATION NO.	2010 WAIRC 01019	

Result	Order issued
Representation	
Applicant	Mr T Kucera (of counsel)
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 the Tribunal convened conferences on 17 February 2010 and 18 March 2010 for the purpose of conciliation between the parties;
 AND WHEREAS there was an agreement that the application was to be dismissed by consent;
 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 dismissed.

[L.S.]

(Sgd.) S M MAYMAN,
 Commissioner.

2010 WAIRC 01007

REFERRAL OF DISPUTE RE ENTITLEMENTS TO PAY AND OTHER BENEFITS
 THE OCCUPATIONAL SAFETY AND HEALTH TRIBUNAL

PARTIES	JOE HODGE	APPLICANT
	-v-	
	SAFE AND SOUND SCAFFOLDING PTY LTD	RESPONDENT
CORAM	COMMISSIONER S M MAYMAN	
DATE	TUESDAY, 19 OCTOBER 2010	
FILE NO/S	OSHT 18 OF 2010	
CITATION NO.	2010 WAIRC 01007	

Result	Order issued
Representation	
Applicant	Mr T Kucera (of counsel)
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 the Tribunal convened conferences on 17 February 2010 and 18 March 2010 for the purpose of conciliation between the parties;

AND WHEREAS there was an agreement that the application was to be dismissed by consent;

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 dismissed.

[L.S.]

(Sgd.) S M MAYMAN,
Commissioner.

2010 WAIRC 01009

REFERRAL OF DISPUTE RE ENTITLEMENTS TO PAY AND OTHER BENEFITS

THE OCCUPATIONAL SAFETY AND HEALTH TRIBUNAL

PARTIES

JOE JENKINS

APPLICANT

-v-

SAFE AND SOUND LABOUR HIRE PTY LTD

RESPONDENT

CORAM

COMMISSIONER S M MAYMAN

DATE

TUESDAY, 19 OCTOBER 2010

FILE NO/S

OSHT 20 OF 2010

CITATION NO.

2010 WAIRC 01009

Result

Order issued

Representation

Applicant

Mr T Kucera (of counsel)

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 the Tribunal convened conferences on 17 February 2010 and 18 March 2010 for the purpose of conciliation between the parties;

AND WHEREAS there was an agreement that the application was to be dismissed by consent;

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 dismissed.

[L.S.]

(Sgd.) S M MAYMAN,
Commissioner.

2010 WAIRC 01029

REFERRAL OF DISPUTE RE ENTITLEMENTS TO PAY AND OTHER BENEFITS

THE OCCUPATIONAL SAFETY AND HEALTH TRIBUNAL

PARTIES	JOHN REWAI	APPLICANT
	-v-	
	HITACHI PLANT TECHNOLOGY	RESPONDENT
CORAM	COMMISSIONER S M MAYMAN	
DATE	TUESDAY, 19 OCTOBER 2010	
FILE NO/S	OSHT 102 OF 2010	
CITATION NO.	2010 WAIRC 01029	

Result	Order issued
Representation	
Applicant	Mr T Kucera (of counsel)
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 the Tribunal convened conferences on 17 February 2010 and 18 March 2010 for the purpose of conciliation between the parties;
AND WHEREAS there was an agreement that the application was to be dismissed by consent;
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 dismissed.

[L.S.]

(Sgd.) S M MAYMAN,
Commissioner.

2010 WAIRC 01011

REFERRAL OF DISPUTE RE ENTITLEMENTS TO PAY AND OTHER BENEFITS

THE OCCUPATIONAL SAFETY AND HEALTH TRIBUNAL

PARTIES	MALO LUDLAM	APPLICANT
	-v-	
	SAFE AND SOUND SCAFFOLDING PTY LTD	RESPONDENT
CORAM	COMMISSIONER S M MAYMAN	
DATE	TUESDAY, 19 OCTOBER 2010	
FILE NO/S	OSHT 24 OF 2010	
CITATION NO.	2010 WAIRC 01011	

Result	Order issued
Representation	
Applicant	Mr T Kucera (of counsel)
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 the Tribunal convened conferences on 17 February 2010 and 18 March 2010 for the purpose of conciliation between the parties;

AND WHEREAS there was an agreement that the application was to be dismissed by consent;

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 dismissed.

[L.S.]

(Sgd.) S M MAYMAN,
Commissioner.

2010 WAIRC 01016

REFERRAL OF DISPUTE RE ENTITLEMENTS TO PAY AND OTHER BENEFITS

THE OCCUPATIONAL SAFETY AND HEALTH TRIBUNAL

PARTIES

MARK ROBERTSON

APPLICANT

-v-

SAFE AND SOUND SCAFFOLDING PTY LTD

RESPONDENT

CORAM

COMMISSIONER S M MAYMAN

DATE

TUESDAY, 19 OCTOBER 2010

FILE NO/S

OSHT 30 OF 2010

CITATION NO.

2010 WAIRC 01016

Result

Order issued

Representation

Applicant

Mr T Kucera (of counsel)

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 the Tribunal convened conferences on 17 February 2010 and 18 March 2010 for the purpose of conciliation between the parties;

AND WHEREAS there was an agreement that the application was to be dismissed by consent;

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 dismissed.

[L.S.]

(Sgd.) S M MAYMAN,
Commissioner.

2010 WAIRC 01015

REFERRAL OF DISPUTE RE ENTITLEMENTS TO PAY AND OTHER BENEFITS

THE OCCUPATIONAL SAFETY AND HEALTH TRIBUNAL

PARTIES MATTHEW PELL **APPLICANT**

-v-

SAFE AND SOUND LABOUR HIRE PTY LTD **RESPONDENT**

CORAM COMMISSIONER S M MAYMAN

DATE TUESDAY, 19 OCTOBER 2010

FILE NO/S OSH 29 OF 2010

CITATION NO. 2010 WAIRC 01015

Result Order issued

Representation

Applicant Mr T Kucera (of counsel)

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 the Tribunal convened conferences on 17 February 2010 and 18 March 2010 for the purpose of conciliation between the parties;

AND WHEREAS there was an agreement that the application was to be dismissed by consent;

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 dismissed.

[L.S.]

(Sgd.) S M MAYMAN,
Commissioner.

2010 WAIRC 01018

REFERRAL OF DISPUTE RE ENTITLEMENTS TO PAY AND OTHER BENEFITS

THE OCCUPATIONAL SAFETY AND HEALTH TRIBUNAL

PARTIES NEIL SWARBRICK **APPLICANT**

-v-

HITACHI PLANT TECHNOLOGIES LTD **RESPONDENT**

CORAM COMMISSIONER S M MAYMAN

DATE TUESDAY, 19 OCTOBER 2010

FILE NO/S OSH 33 OF 2010

CITATION NO. 2010 WAIRC 01018

Result Order issued

Representation

Applicant Mr T Kucera (of counsel)

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 the Tribunal convened conferences on 17 February 2010 and 18 March 2010 for the purpose of conciliation between the parties;

AND WHEREAS there was an agreement that the application was to be dismissed by consent;

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 dismissed.

[L.S.]

(Sgd.) S M MAYMAN,
Commissioner.

2010 WAIRC 01024

REFERRAL OF DISPUTE RE ENTITLEMENTS TO PAY AND OTHER BENEFITS

THE OCCUPATIONAL SAFETY AND HEALTH TRIBUNAL

PARTIES

PETER CORRADETTI

APPLICANT

-v-

HITACHI PLANT TECHNOLOGIES LTD

RESPONDENT

CORAM

COMMISSIONER S M MAYMAN

DATE

TUESDAY, 19 OCTOBER 2010

FILE NO/S

OSHT 89 OF 2010

CITATION NO.

2010 WAIRC 01024

Result

Order issued

Representation

Applicant

Mr T Kucera (of counsel)

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 the Tribunal convened conferences on 17 February 2010 and 18 March 2010 for the purpose of conciliation between the parties;

AND WHEREAS there was an agreement that the application was to be dismissed by consent;

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 dismissed.

[L.S.]

(Sgd.) S M MAYMAN,
Commissioner.

2010 WAIRC 01008

REFERRAL OF DISPUTE RE ENTITLEMENTS TO PAY AND OTHER BENEFITS

THE OCCUPATIONAL SAFETY AND HEALTH TRIBUNAL

PARTIES SAMMY-JOE HODGE **APPLICANT**

-v-

SAFE AND SOUND SCAFFOLDING PTY LTD **RESPONDENT**

CORAM COMMISSIONER S M MAYMAN

DATE TUESDAY, 19 OCTOBER 2010

FILE NO/S OSH 19 OF 2010

CITATION NO. 2010 WAIRC 01008

Result Order issued

Representation

Applicant Mr T Kucera (of counsel)

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 the Tribunal convened conferences on 17 February 2010 and 18 March 2010 for the purpose of conciliation between the parties;

AND WHEREAS there was an agreement that the application was to be dismissed by consent;

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 dismissed.

[L.S.]

(Sgd.) S M MAYMAN,
Commissioner.

2010 WAIRC 01001

REFERRAL OF DISPUTE RE ENTITLEMENTS TO PAY AND OTHER BENEFITS

THE OCCUPATIONAL SAFETY AND HEALTH TRIBUNAL

PARTIES SCOTT BRYEN **APPLICANT**

-v-

SAFE AND SOUND SCAFFOLDING PTY LTD **RESPONDENT**

CORAM COMMISSIONER S M MAYMAN

DATE MONDAY, 18 OCTOBER 2010

FILE NO/S OSH 9 OF 2010

CITATION NO. 2010 WAIRC 01001

Result Order issued

Representation

Applicant Mr T Kucera (of counsel)

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 the Tribunal convened conferences on 17 February 2010 and 18 March 2010 for the purpose of conciliation between the parties;

AND WHEREAS there was an agreement that the application was to be dismissed by consent;

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 dismissed.

[L.S.]

(Sgd.) S M MAYMAN,
Commissioner.

2010 WAIRC 01002

REFERRAL OF DISPUTE RE ENTITLEMENTS TO PAY AND OTHER BENEFITS

THE OCCUPATIONAL SAFETY AND HEALTH TRIBUNAL

PARTIES

SCOTT CATON

APPLICANT

-v-

HITACHI PLANT TECHNOLOGIES LTD

RESPONDENT

CORAM

COMMISSIONER S M MAYMAN

DATE

MONDAY, 18 OCTOBER 2010

FILE NO/S

OSHT 10 OF 2010

CITATION NO.

2010 WAIRC 01002

Result

Order issued

Representation

Applicant

Mr T Kucera (of counsel)

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 the Tribunal convened conferences on 17 February 2010 and 18 March 2010 for the purpose of conciliation between the parties;

AND WHEREAS there was an agreement that the application was to be dismissed by consent;

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 dismissed.

[L.S.]

(Sgd.) S M MAYMAN,
Commissioner.

2010 WAIRC 01020

REFERRAL OF DISPUTE RE ENTITLEMENTS TO PAY AND OTHER BENEFITS

THE OCCUPATIONAL SAFETY AND HEALTH TRIBUNAL

PARTIES SHAWN THOMPSON **APPLICANT**

-v-

SAFE AND SOUND LABOUR HIRE PTY LTD **RESPONDENT**

CORAM COMMISSIONER S M MAYMAN

DATE TUESDAY, 19 OCTOBER 2010

FILE NO/S OSH 38 OF 2010

CITATION NO. 2010 WAIRC 01020

Result Order issued

Representation

Applicant Mr T Kucera (of counsel)

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 the Tribunal convened conferences on 17 February 2010 and 18 March 2010 for the purpose of conciliation between the parties;

AND WHEREAS there was an agreement that the application was to be dismissed by consent;

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 dismissed.

[L.S.]

(Sgd.) S M MAYMAN,
Commissioner.

2010 WAIRC 01014

REFERRAL OF DISPUTE RE ENTITLEMENTS TO PAY AND OTHER BENEFITS

THE OCCUPATIONAL SAFETY AND HEALTH TRIBUNAL

PARTIES STEPHEN NICHOLAS **APPLICANT**

-v-

HITACHI PLANT TECHNOLOGIES LTD **RESPONDENT**

CORAM COMMISSIONER S M MAYMAN

DATE TUESDAY, 19 OCTOBER 2010

FILE NO/S OSH 28 OF 2010

CITATION NO. 2010 WAIRC 01014

Result Order issued

Representation

Applicant Mr T Kucera (of counsel)

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 the Tribunal convened conferences on 17 February 2010 and 18 March 2010 for the purpose of conciliation between the parties;

AND WHEREAS there was an agreement that the application was to be dismissed by consent;

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 dismissed.

[L.S.]

(Sgd.) S M MAYMAN,
Commissioner.

2010 WAIRC 01013

REFERRAL OF DISPUTE RE ENTITLEMENTS TO PAY AND OTHER BENEFITS

THE OCCUPATIONAL SAFETY AND HEALTH TRIBUNAL

PARTIES

STEVEN MCCURLEY

APPLICANT

-v-

HITACHI PLANT TECHNOLOGIES LTD

RESPONDENT

CORAM

COMMISSIONER S M MAYMAN

DATE

TUESDAY, 19 OCTOBER 2010

FILE NO/S

OSHT 27 OF 2010

CITATION NO.

2010 WAIRC 01013

Result

Order issued

Representation

Applicant

Mr T Kucera (of counsel)

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 the Tribunal convened conferences on 17 February 2010 and 18 March 2010 for the purpose of conciliation between the parties;

AND WHEREAS there was an agreement that the application was to be dismissed by consent;

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 dismissed.

[L.S.]

(Sgd.) S M MAYMAN,
Commissioner.

2010 WAIRC 01025

REFERRAL OF DISPUTE RE ENTITLEMENTS TO PAY AND OTHER BENEFITS

THE OCCUPATIONAL SAFETY AND HEALTH TRIBUNAL

PARTIES	THOMAS FORREST	APPLICANT
	-v-	
	SAFE AND SOUND SCAFFOLDING PTY LTD	RESPONDENT
CORAM	COMMISSIONER S M MAYMAN	
DATE	TUESDAY, 19 OCTOBER 2010	
FILE NO/S	OSHT 91 OF 2010	
CITATION NO.	2010 WAIRC 01025	

Result	Order issued
Representation	
Applicant	Mr T Kucera (of counsel)
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 the Tribunal convened conferences on 17 February 2010 and 18 March 2010 for the purpose of conciliation between the parties;

AND WHEREAS there was an agreement that the application was to be dismissed by consent;

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 dismissed.

(Sgd.) S M MAYMAN,
Commissioner.

[L.S.]

2010 WAIRC 00998

REFERRAL OF DISPUTE RE ENTITLEMENTS TO PAY AND OTHER BENEFITS

THE OCCUPATIONAL SAFETY AND HEALTH TRIBUNAL

PARTIES	TONY BAINBRIDGE	APPLICANT
	-v-	
	SAFE AND SOUND LABOUR HIRE PTY LTD	RESPONDENT
CORAM	COMMISSIONER S M MAYMAN	
DATE	MONDAY, 18 OCTOBER 2010	
FILE NO/S	OSHT 3 OF 2010	
CITATION NO.	2010 WAIRC 00998	

Result	Order issued
Representation	
Applicant	Mr T Kucera (of counsel)
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 the Tribunal convened conferences on 17 February 2010 and 18 March 2010 for the purpose of conciliation between the parties;

AND WHEREAS there was an agreement that the application was to be dismissed by consent;

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 dismissed.

[L.S.]

(Sgd.) S M MAYMAN,
Commissioner.

2010 WAIRC 01012

REFERRAL OF DISPUTE RE ENTITLEMENTS TO PAY AND OTHER BENEFITS

THE OCCUPATIONAL SAFETY AND HEALTH TRIBUNAL

PARTIES

WAYNE MAXWELL

APPLICANT

-v-

SAFE AND SOUND SCAFFOLDING PTY LTD

RESPONDENT

CORAM

COMMISSIONER S M MAYMAN

DATE

TUESDAY, 19 OCTOBER 2010

FILE NO/S

OSHT 26 OF 2010

CITATION NO.

2010 WAIRC 01012

Result

Order issued

Representation

Applicant

Mr T Kucera (of counsel)

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 the Tribunal convened conferences on 17 February 2010 and 18 March 2010 for the purpose of conciliation between the parties;

AND WHEREAS there was an agreement that the application was to be dismissed by consent;

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 dismissed.

[L.S.]

(Sgd.) S M MAYMAN,
Commissioner.

2010 WAIRC 00999

REFERRAL OF DISPUTE RE ENTITLEMENTS TO PAY AND OTHER BENEFITS

THE OCCUPATIONAL SAFETY AND HEALTH TRIBUNAL

PARTIES WILLIAM BAINBRIDGE **APPLICANT**

-v-
SAFE AND SOUND SCAFFOLDING PTY LTD **RESPONDENT**

CORAM COMMISSIONER S M MAYMAN
DATE MONDAY, 18 OCTOBER 2010
FILE NO/S OSHT 4 OF 2010
CITATION NO. 2010 WAIRC 00999

Result Order issued
Representation
Applicant Mr T Kucera (of counsel)
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 the Tribunal convened conferences on 17 February 2010 and 18 March 2010 for the purpose of conciliation between the parties;
AND WHEREAS there was an agreement that the application was to be dismissed by consent;
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 dismissed.

[L.S.]

(Sgd.) S M MAYMAN,
Commissioner.

2010 WAIRC 01028

REFERRAL OF DISPUTE RE ENTITLEMENTS TO PAY AND OTHER BENEFITS

THE OCCUPATIONAL SAFETY AND HEALTH TRIBUNAL

PARTIES WILLY HODGE **APPLICANT**

-v-
SAFE AND SOUND SCAFFOLDING AND LABOUR HIRE **RESPONDENT**

CORAM COMMISSIONER S M MAYMAN
DATE TUESDAY, 19 OCTOBER 2010
FILE NO/S OSHT 96 OF 2010
CITATION NO. 2010 WAIRC 01028

Result Order issued
Representation
Applicant Mr T Kucera (of counsel)
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 the Tribunal convened conferences on 17 February 2010 and 18 March 2010 for the purpose of conciliation between the parties;

AND WHEREAS there was an agreement that the application was to be dismissed by consent;

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 dismissed.

[L.S.]

(Sgd.) S M MAYMAN,
Commissioner.

ROAD FREIGHT TRANSPORT INDUSTRY TRIBUNAL—Matters Dealt With—

2010 WAIRC 00804

IN THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

SITTING AS

THE ROAD FREIGHT TRANSPORT INDUSTRY TRIBUNAL

PARTIES

JEFFREY DANIEL MATTHEWS

APPLICANT

-v-

WEBB FREIGHT SERVICES PTY LTD

ACN 009 122 187

RESPONDENT

CORAM COMMISSIONER S J KENNER
DATE TUESDAY, 17 AUGUST 2010
FILE NO/S RFT 15 OF 2010
CITATION NO. 2010 WAIRC 00804

Result	Direction issued
Representation	
Applicant	Ms D Marr, as agent
Respondent	Mr I Carija, of counsel

Direction

HAVING heard Ms D Marr as agent on behalf of the applicant and Mr I Carija of counsel on behalf of the respondent the Tribunal, pursuant to the powers conferred on it under the Owner-Drivers (Contract and Disputes) Act, 2007 hereby directs –

THAT the respondent produce for inspection by the applicant by 24 August 2010 any and all documents in its custody, possession or power relating to the threshold issue as to whether the applicant is or is not an owner-driver for the purposes of the Owner-Drivers (Contracts and Disputes) Act 2007.

[L.S.]

(Sgd.) S J KENNER,
Commissioner.

2010 WAIRC 01107

DISPUTE RE PAYMENT OF A CLAIM
 IN THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
 SITTING AS
 THE ROAD FREIGHT TRANSPORT INDUSTRY TRIBUNAL

PARTIES

JEFFREY DANIEL MATTHEWS

APPLICANT

-v-

WEBB FREIGHT SERVICES PTY LTD
 ACN 009 122 187

RESPONDENT**CORAM**

COMMISSIONER S J KENNER

DATE

THURSDAY 11 NOVEMBER, 2010

FILE NO/S

RFT 15 OF 2010

CITATION NO

2010 WAIRC 01107

Catchwords

Referral to Road Freight Transport Industry Tribunal – Whether claim within jurisdiction of Tribunal – Whether applicant an owner-driver pursuant to s 4 of the Owner-Drivers (Contracts and Disputes) Act 2007 – Whether applicant an employee – Concurrent action in District Court – Requirement under the Owner-Drivers (Contracts and Disputes) Act 2007 that there be a “payment claim” – Retrospective operation of the Owner-Drivers (Contracts and Disputes) Act 2007 – Application dismissed for want of jurisdiction - Owner-Drivers (Contracts and Disputes) Act 2007 ss 4, 5, 7, 38, 40, 49.

Result

Application dismissed

Representation**Applicant**

Ms D Marr as agent

Respondent

Mr J Carija of counsel

*Reasons for Decision***Background**

- 1 By a notice of referral to the Tribunal under the Owner-Drivers (Contracts and Disputes) Act 2007 (“the OD Act”) the applicant claims that the respondent breached a contract between the parties to purchase a freight business. The applicant’s claim is brought pursuant to ss 40(a)(i), 40(b)(i) and 40(c)(i) of the OD Act. The terms of the referral to the Tribunal are as follows:

“Webb Freight Services Pty Ltd ACN 009122187 (sic) for breach of the contract to purchase the freight business. The contract to purchase the business and concurrent contract of employment for 38 hrs per week had been in place for about 2 ½ years and consideration was received and retained by Webb Freight who were trustees for that deposit paid by way of “productivity bonuses” earned by Jeff Matthews during his otherwise unpaid “overtime” productivity when working as an owner driver for 2 ½ years.”

- 2 Various grounds are set out in the notice of referral and the relief claimed by the applicant is “I seek to be awarded the business because I have paid for it and I also want my lost profits caused by the contracts unilaterally breached by Mrs Webb”.
- 3 The respondent objects to and opposes the applicant’s claim. The respondent asserted that the applicant was not an owner-driver for the purposes of the OD Act and furthermore, opposed the applicant’s claim on a range of other grounds.
- 4 As the issue of jurisdiction was raised by the respondent, the Tribunal listed the application for a preliminary hearing to determine this issue.

Essential Facts

- 5 The applicant, Mr Matthews, had been a friend of the proprietor of the respondent, the late Mrs Webb, for some years. Mr Matthews said that he entered into an arrangement with the respondent in or about late February 2006, whereby he would take over the driving responsibilities of the respondent’s business in relation to a substantial cartage contract the respondent had had for some years.

- 6 As a part of the discussions between Mrs Webb and Mr Matthews, a proposal was put by Mrs Webb and Mr Matthews said it was agreed, that the respondent would be prepared to sell its business to Mr Matthews for the sum of \$200,000, representing the annual gross turnover of the business. Mr Matthews testified that he was then working for a mining company in the south west of the State and was then presently earning approximately \$1,300 per week plus additional entitlements.
- 7 Mr Matthews testified that Mrs Webb agreed that Mr Matthews, if he went to work for her, would not be financially disadvantaged. It was put to Mr Matthews that the terms of their arrangement would involve him receiving a gross income of at least \$1,000 per week and that 30 per cent of all revenue earned by the truck in excess of \$3,000 gross per week would be held "on trust" by the respondent, and would accrue and be applied against the purchase price for the business.
- 8 Mr Matthews testified that these negotiations occurred over the course of a long weekend and he was required to quickly decide whether he would take up the respondent's offer. Mr Matthews said he agreed to this arrangement, on the basis that it would be reduced to writing at a future date. It never was.
- 9 Accordingly, he resigned from his then employment and took up the driving responsibilities for the respondent. The first task required of him was to represent the respondent in securing a renewal of a contract with the respondent's major customer, which he did.
- 10 At the time of commencing with the respondent in early March 2006, Mr Matthews said he was not able to raise funds to purchase the business outright. Therefore, he was attracted to Mrs Webb's proposal as it would eventually mean he could acquire the business.
- 11 Mr Matthews worked under this arrangement, averaging approximately 60 hours per week on his evidence, for some two and a half years. In or about late September 2008, Mr Matthews testified that he attended a meeting with Mrs Webb. He said that he had for some time, tried to obtain the "books" for the business, in order that he might attempt to procure finance to complete the business purchase. Mr Matthews said that the books were never made available to him and when he did finally inspect some business records, he said they were in a state of disarray and he could make no sense of them.
- 12 At the meeting in September 2008, Mr Matthews testified that Mrs Webb changed the financial arrangements that they had been operating on to date. From that time, Mr Matthews said Mrs Webb advised him that the "bonus" scheme, that being the amounts earned in excess of \$3,000 per week, would change, and it would now include GST and be averaged over the period of his engagement. Mr Matthews testified that this sudden change in the agreement was not acceptable and he would be financially penalised.
- 13 The evidence of Mr Matthews was that this proposal was put to him on a "take it or leave it basis". After considering it, he concluded that it would not be financially viable for him to continue and he ceased working for the respondent in early October 2008.
- 14 Additionally, Mr Matthews said in his evidence that it was at this point, for the first time, that the respondent asserted he was an employee. Up until then, Mr Matthews had not received payslips, group certificates, public holidays or superannuation contributions.
- 15 As a consequence of these events, and because he considered he was owed monies by the respondent, Mr Matthews made a complaint to the Commonwealth Workplace Ombudsman in relation to non-payment of time worked, penalty rates and annual leave entitlements. Plainly, in making such a complaint, and from the content of exhibit A1, being reports of the complaint of the Workplace Ombudsman, Mr Matthews maintained for those purposes that he was an employee of the respondent between March 2006 and early October 2008. Also, for the purposes of filing income tax returns with the Australian Taxation Office, Mr Matthews described himself as an employee.
- 16 The outcome of the complaint to the Workplace Ombudsman was that a payment was made by the respondent to Mr Matthews in the nett amount of \$4,112.65 in relation to annual leave payments accrued but not paid. There was insufficient evidence to enable the Workplace Ombudsman to resolve the complaints made by Mr Matthews in relation to payments for overtime worked or payment in lieu of notice on termination of employment. The complaint to the Workplace Ombudsman was finalised on 10 June 2009, by letter of that date from the Workplace Ombudsman's office to Mr Matthews.
- 17 During the course of cross-examination, Mr Matthews contested that he was an employee of the respondent. Additionally, and importantly, Mr Matthews accepted that he did not own the Volvo truck that he was driving for the respondent, but asserted he was in the process of "buying it". He furthermore accepted that all of the ownership and running costs for the truck were met by the respondent, which approximated \$11,700 per annum. Mr Matthews also testified in cross-examination that he was not aware that the truck was under a hire purchase arrangement with the respondent at the material times.
- 18 According to Mrs Webb's daughter, who is also a director of the respondent, at all material times it was the intention of the respondent that the Mr Matthews be employed by the business. Whilst Ms Webb accepted that when he commenced with the respondent, Mr Matthews was effectively the "face" of the respondent with its major customer, at no time had Mr Matthews purchased the respondent's business.
- 19 Ms Webb said she was aware that Mr Matthews and her mother had discussions about Mr Matthews purchasing the business for \$200,000. Her evidence was however, that Mr Matthews could ultimately never obtain the required finance to complete the purchase. By the time of the discussions between Mr Matthews and her mother in late 2008, at a time when her mother was terminally ill, Mr Matthews was showing no signs of being able to complete any purchase of the business.
- 20 Ms Webb also confirmed that at all material times, the respondent supplied the Volvo truck and F16 prime mover and semi-trailer, which was the subject of a hire purchase agreement. All costs for the running of the truck were paid by the respondent and Mr Matthews made no contribution towards these costs. She accepted however, that from time to time Mr Matthews would perform some minor maintenance on the vehicle.

- 21 Ms Webb did confirm that as she understood it, Mr Matthews and her mother had an arrangement for him to work towards the purchase of the business whilst he remained an employee, through the “bonus” arrangement. However, the agreement was never finally concluded.
- 22 Mr Matthews’ desire to purchase the respondent’s business was also confirmed in the testimony of Mr Colabro, the respondent’s accountant. Mr Colabro said that he was aware that Mr Matthews and Mrs Webb had discussed the purchase of the respondent’s business, because Mrs Webb had mentioned it to him.
- 23 Mr Colabro also testified that at some point, not defined on the evidence, Mr Matthews discussed with him the possibility of obtaining finance through a mortgage broker. However an application by Mr Matthews was declined because he did not then have available security.
- 24 Mr Colabro did give evidence that whilst PAYG statements were prepared for the 2006 tax year this was not done until 2008. Mr Colabro also said that the PAYG statements were sent to the applicant at the address provided by him.

Contentions of the Parties

- 25 Whilst aspects of his submissions were somewhat confusing, the thrust of the contentions of Mr Matthews was that he entered into an arrangement with Mrs Webb on behalf of the respondent in March 2006 to drive the respondent’s truck. As part of the arrangement his “employment” remuneration would in part, go towards at least a deposit on the purchase of the respondent’s business. According to Mr Matthews, there was in effect an offer accepted by him to purchase the respondent’s business, which was concurrent with his driving duties for the respondent.
- 26 The arrangement continued for some two and a half years, until the respondent, through Mrs Webb, repudiated the agreement which led to Mr Matthews no longer providing his services to the respondent.
- 27 However, the agent for the applicant also variously described the arrangement between the applicant and the respondent, as one where the applicant was a “contractor” who was in the course of purchasing the respondent’s business. It was to this effect, that the applicant contended that he was an owner-driver for the purposes of the OD Act.
- 28 It was submitted by counsel for the respondent that there was insufficient evidence for the Tribunal to conclude that the applicant was an owner-driver as defined in s 4 of the OD Act. Furthermore, the respondent’s submission was that at all material times the applicant was an employee. The applicant had made various admissions, in the notice of referral and in exhibit A1, the complaint to the Workplace Ombudsman, to this effect. The contention put by counsel for the respondent was that the applicant could not be both an employee and an owner-driver, by reason of s 5(3) of the OD Act.
- 29 Furthermore, the respondent submitted that there was no evidence before the Tribunal that the applicant was the legal or beneficial owner of a heavy vehicle at the material times as prescribed by the OD Act. Nor had the applicant furnished a payment claim as required by Division 3 of Schedule 1 of the OD Act, which was a necessary prerequisite.
- 30 Furthermore, given that at the time of commencing proceedings in the Tribunal, an action was pending in the District Court brought by the applicant that was discontinued on 22 June 2010, the Tribunal could not proceed to hear and determine the claim.
- 31 There was a further submission put by counsel for the respondent, to the effect that the applicant’s claimed agreement with the respondent, came into effect prior to the commencement of the OD Act on 6 June 2007, and accordingly, the legislation could not retrospectively apply in the present circumstances.
- 32 Finally, the respondent submitted that even if it could be established that an agreement to purchase the respondent’s business had been entered into, then such an agreement was not one enforceable by an action in the Tribunal.

Consideration

Statutory Scheme

- 33 By its long title, the OD Act is an act “to promote a safe and sustainable road freight transport industry by regulating the relationship between persons who enter into contracts to transport goods in heavy vehicles and persons who hire them to do so; and to establish the Road Freight Transport Industry Tribunal and the Road Freight Transport Industry Council and for related purposes.”
- 34 Part 1 contains in s 3 various definitions for the purposes of the OD Act. A “heavy vehicle” is defined to mean a vehicle with a gross mass of more than 4.5 tonnes. A “hirer” is a person who engages an owner-driver under an owner-driver contract. By s 4, the meaning of “owner-driver” is set out. Relevantly, s 4(2) provides as follows:

- “(2) For the purposes of this Act an *owner-driver* is —
- (a) a natural person —
 - (i) who carries on the business of transporting goods in one or more heavy vehicles supplied by that person; and
 - (ii) whose principal occupation is the operation of those vehicles (whether solely or with the use of other operators); or
 - (b) a body corporate (other than a listed public company) that carries on the business of transporting goods in one or more heavy vehicles that are —
 - (i) supplied by the body corporate or an officer of the body corporate; and
 - (ii) operated by an officer of the body corporate (whether solely or with the use of other operators) whose principal occupation is the operation of those vehicles; or

(c) a partnership of persons, at least one of whom is a person referred to in paragraph (a).”

35 Also, the meaning of an “owner-driver contract” is set out in s 5 and it provides as follows:

“5. Meaning of “owner-driver contract”

- (1) For the purposes of this Act, an *owner-driver contract* is a contract (whether written or oral or partly written and partly oral) entered into in the course of business by an owner-driver with another person for the transport of goods in a heavy vehicle by the owner-driver.
- (2) It does not matter that an owner-driver contract provides for an owner-driver to perform services other than transporting goods, as long as the services to be performed under the contract predominantly relate to the transport of goods.
- (3) To avoid doubt, an owner-driver contract does not include a contract that is a contract of employment.”

36 Section 6 of the OD Act sets out the application of the legislation and the requirement for a linkage with Western Australia. The legislation does not apply to an owner-driver contract if a party to the contract is otherwise covered by New South Wales or Victorian legislation of the same kind.

37 Section 7 provides in short that the OD Act will prevail over an owner-driver contract to the extent that it purports to exclude any provision of the legislation or an order of the Tribunal.

38 Part 2 sets out provisions which are prohibited in an owner-driver contract and also implied provisions in relation to time for payment, interest on overdue payments and making payment claims.

39 Part 3 provides for the establishment of the Road Freight Transport Industry Council and its functions and powers.

40 Part 4 deals with regulations for a code of conduct as to various matters in connection with the negotiation of owner-driver contracts and other relevant matters. A code of conduct, effective 1 July 2010, was made under the Owner-Drivers (Contracts and Disputes) (Code of Conduct) Regulations 2010.

41 Part 5 sets out relevant provisions for the negotiation of owner-driver contracts dealing with matters such as recognition of bargaining agents and other matters.

42 In Part 6 a proscription of unconscionable conduct by hirers and owner-drivers for the purposes of owner-driver contract negotiations is set out, with such matters being referable to the Tribunal.

43 Parts 7 and 8 deal with the functions and powers of Industrial Inspectors appointed under the Industrial Relations Act 1979 and rights of entry, inspection and access to records in relation to owner-driver contracts.

44 The establishment of the Tribunal is dealt with in Part 9. The Tribunal is constituted by a member of the Commission, sitting, pursuant to s 38 of the OD Act, as the Road Freight Transport Industry Tribunal. By s 37, a “dispute”, that can be referred to the Tribunal under s 38(1)(a) of the OD Act, is defined as follows:

“*dispute* means a dispute between one or more owner-drivers and one or more hirers arising under or in relation to this Act, the code of conduct or an owner-driver contract (including a payment dispute) and includes an allegation that a person has contravened this Act, the code of conduct or an owner-driver contract;”

45 The Tribunal also has jurisdiction, by s 38(1)(b) to enquire into and deal with any other matter in relation to the negotiation of owner-driver contracts.

46 By s 40, provision is made for persons who may refer a dispute or matter to the Tribunal, in particular persons who are a party to an owner-driver contract. By s 44, provision is made for the Tribunal to convene conciliation conferences and by s 47 the Tribunal may hear and determine disputes not resolved by conciliation. Sections 47(4) and (5) provide a range of powers open to the Tribunal for the purposes of determining a matter before it. Furthermore, by s 49, the Tribunal’s jurisdiction is exclusive in respect of disputes referred to it. Sections 50 and 51 deal variously with enforcement matters.

47 Part 10 deals with miscellaneous matters and Schedules 1 and 2 prescribe implied provisions and provisions for the constitution and proceedings of the Council respectively.

Owner-Driver

48 For the applicant’s claim to be within the Tribunal’s jurisdiction, it is necessary for him to establish that he was an owner-driver for the purposes of s 4 of the OD Act. In this case, it is necessary for the applicant to establish, as a natural person, the required elements of s 4(2)(a) as being a person who:

- (a) Carries on a business;
- (b) Transporting goods;
- (c) In one or more heavy vehicles;
- (d) “Supplied” by the applicant; and
- (e) Whose principal occupation is the operation of such a vehicle.

49 In this case there is no dispute that Mr Matthews was engaged solely to drive a vehicle to transport goods. Whether he did so in a vehicle supplied by him was contested.

- 50 The terms of s 5 dealing with the meaning of an owner-driver contract have been set out above. Notably, by s 5(1), an owner-driver contract is entered into "in the course of business" with another person, and for the purposes of the transport of goods in a heavy vehicle. Furthermore, and importantly, by s 5(3), an owner-driver contract excludes a contract of employment, thus emphasising that owner-driver contracts are intended by the legislation to be contracts for services between persons conducting business in the road freight transport industry in this State.
- 51 In the instant case, the evidence establishes, and I find, that the applicant commenced work for the respondent in or about March 2006 to drive a vehicle to service a contract the respondent had with a major client. The evidence was, and I find, that the applicant and Mrs Webb of the respondent, had been acquainted for some years and prior to 2006 the applicant provided driving services to the respondent on a casual basis from time to time to help the respondent when the occasion arose.
- 52 Whilst the evidence was somewhat sketchy, I am satisfied on the evidence that there were discussions between the applicant and the respondent on his engagement to the effect that the applicant had an expectation that at some point in the future, he would ultimately acquire the respondent's business for consideration of some \$200,000. The applicant would work towards that goal whilst undertaking driving services for the respondent.
- 53 It is contentious in this case whether as at the time of the applicant's commencement with the respondent there was a concluded agreement for the applicant to purchase the respondent's business, and the terms of any such agreement. For the following reasons, it is not necessary for the Tribunal to finally determine that issue.
- 54 Regardless, it remains necessary for the applicant to establish on the balance of probabilities, that he was at all material times, relevant to the period of his claim, a person to whom the OD Act applied and that his claim falls within the Tribunal's jurisdiction.
- 55 As a matter of statutory construction, in my opinion, when s 4(2)(a)(i) of the OD Act is construed as a whole, it contemplates a person conducting a business in his or her own right as an owner-driver, providing transport services in a vehicle supplied by him or her, to a hirer as defined in s 3 of the OD Act.
- 56 For the following reasons, I am not persuaded on the balance of probabilities, that the applicant was at all material times, an owner-driver for the purposes of s 4 of the OD Act.
- 57 An essential element of s 4(2)(a)(i) is the "supply" of a heavy vehicle, as defined by s 3, by which an owner-driver conducts their business in the transportation of goods for a hirer. There is no definition of "supply" or "supplied" in the OD Act and therefore I have regard to the ordinary and natural meaning for present purposes.
- 58 The Shorter Oxford Dictionary defines "supply" to include "8. to furnish or provide, a person with something ...".
- 59 In my opinion, there is no necessity for an inference to be drawn in the construction of s 4(2)(a)(i) for a person who supplies a heavy vehicle to own the vehicle outright to satisfy the requirements of this section. An owner-driver may "supply" a heavy vehicle whilst that vehicle may be subject to a lease, hire purchase arrangement or other arrangement. The essential ingredient is that it is provided by the owner-driver and it is used by the owner-driver in the business of the transport of goods for the hirer.
- 60 In the instant case I am not persuaded on the evidence, that the applicant "supplied" a heavy vehicle in the sense required by s 4(2)(a)(i) of the OD Act.
- 61 On the evidence I am satisfied and I find that the Volvo vehicle was provided by the respondent. This was the applicant's evidence and the uncontradicted evidence of Ms Webb. Furthermore, her uncontradicted evidence was that all costs associated with the running and maintenance of the truck were paid by the respondent. Importantly also, was the uncontradicted evidence of Ms Webb, that the respondent was in the process of purchasing the vehicle as it was on hire purchase. On the applicant's testimony, he was not aware of this.
- 62 Whilst the applicant endeavoured to suggest that he was in the process of buying the respondent's business (in essence the truck) I am not able to conclude on the evidence, that this was the case. Specifically, on the evidence of Ms Webb, that the truck was subject to a hire purchase agreement with the respondent, which evidence as I have noted was uncontradicted, the respondent could not have had ownership of the vehicle in order to sell it to the applicant.
- 63 All of these matters in my opinion, point to the applicant being unable to establish on the evidence, that he "supplied" the relevant vehicle for the purposes of the definition of owner-driver under s 4 of the OD Act.
- 64 Moreover, there was also no evidence before the Tribunal, that the relevant vehicle driven by the applicant was a "heavy vehicle" as defined by s 3 of the OD Act, as one with a gross vehicle mass of more than 4.5 tonnes.
- 65 Notwithstanding these conclusions, there are further difficulties for the applicant in establishing his claim as within the jurisdiction of the Tribunal.
- 66 The respondent alleged that at all material times the applicant was an employee of the respondent. This was contested by the applicant.
- 67 The importance of this is that, as noted above, by s 5(3) of the OD Act, an owner-driver contract does not include a contract that is a contract of employment. Thus the clear Parliamentary intention is that an owner-driver contract and a contract of employment are mutually exclusive for the purposes of the Tribunal's jurisdiction under the legislation. This is also consistent with the overall scheme of the OD Act, as set out above, to regulate the relationship between owner-drivers as independent contractors, conducting transport businesses in their own right, and hirers, who engage their services under an owner-driver contract.

- 68 In the applicant's particulars of claim, the applicant variously refers to his relationship with the respondent as involving "the contract to purchase the business and concurrent contract of employment ..."; "I was buying the business by way of a "productivity bonus" scheme, over and above my 38 hours per week". Furthermore, in the statement of claim in the District Court proceedings, a copy of which was tendered as exhibit R4, the applicant pleaded the entry, on or about 1 or 2 March 2006, of "concurrent contracts to purchase the freight business and a contract of employment".
- 69 In referring to an investigation by the Workplace Ombudsman instigated by the applicant, and as contained in exhibit A1, the applicant's claim further provides that "They were unable to recover any of the bonuses because they were only able to get pay for the employment contract (up to the 38 hr/week) but not for the owner-driver business purchase contract between us..."
- 70 At various times in the course of the proceedings, the applicant somewhat confusingly described the relationship between himself and the respondent as one of "employment"; and as "owner-driver purchase contract"; and as "owner-driver contract"; and even a partnership with the respondent. It was difficult to discern, with any degree of certainty, what it was that the applicant asserted was the particular relationship between himself and the respondent.
- 71 Reference has been made above to the relevant evidence concerning the investigation instigated by the applicant and undertaken by the Workplace Ombudsman. In particular, exhibit A1 is a series of letters evidencing the investigation and its conclusion. I also refer to the evidence of the respondent through Ms Webb, and that of the respondent's accountant Mr Colabro, who asserted that at all material times, the applicant was an employee.
- 72 Combined with the allegations in the notice of referral to the Tribunal, the complaint to the Workplace Ombudsman is inconsistent with the applicant's claim that he was engaged by the respondent as an owner-driver, whether in the process of purchasing the respondent's business, or otherwise. In my opinion, this material and evidence as whole constitute admissions by the applicant against interest.
- 73 As the Tribunal is not a court of pleadings, the allegations in the applicant's notice of referral could not reasonably be regarded as formal admissions supporting a judgement against the applicant: *Greig & Murray & Co Ltd v Hutchinson* (1889) 15 VLR 706.
- 74 Admissions may however, take a more informal character, aside from pleadings, such as in a letter or other correspondence: *Ellis v Allen* [1914] 1 Ch 904; *The Matter of Trademarks Act 1955-1958 and In The Matter of Registered Trademarks "Certina" and "Certina DS"* (1970) 44 ALJR 191.
- 75 In this case, the assertions in the notice of referral, and particularly the evidence of the applicant's conduct in the course of the complaint to the Workplace Ombudsman, evidenced by exhibit A1, are entirely inconsistent with an assertion of the existence an owner-driver contract, when read with s 5(3) of the OD Act. Whilst in evidence the applicant said he pursued the Workplace Ombudsman complaint as the only way of recovering what he considered were monies owed to him, he is not able to approbate and reprobate in relation to the same course of conduct.
- 76 Furthermore, on the evidence, much of the relationship between the applicant and the respondent, in practical terms, had all the hallmarks of employment. It is the substance of the relationship and not its form that needs to be considered: *R v Foster; Ex parte Commonwealth Life (Amalgamated) Assurances Ltd* (1952) 85 CLR 138.
- 77 There was no suggestion on the evidence that the applicant was not subject to the overall control of the respondent in going about his daily driving tasks. The applicant was paid a regular wage or salary each week. He worked reasonably regular hours each week Monday to Friday and sometimes it seems on Saturdays. The applicant did not perform work for anyone else and to that extent, was integrated into the respondent's operation: *Personnel Contracting Pty Ltd t/as Tricord Personnel v The Construction, Forestry, Mining and Energy Union of Workers* (2004) 85 WAIG 5. As I have already mentioned, the applicant could not be regarded as having been in business supplying his services to the respondent. This is despite him clearly wishing to acquire the respondent's business so he could conduct it himself.
- 78 Whilst the lack of paid overtime and holidays and other matters was said to point away from employment, it is to be noted that there was no agreement to this effect, and the fact that one party to a contract of employment may be in breach of their obligations under relevant industrial instruments and legislation, cannot of itself alter the character of that relationship.
- 79 For the foregoing reasons, I am not able to conclude that the applicant was, at the material times an owner-driver for the purposes of s 4(2) of the OD Act to attract the Tribunal's jurisdiction. If the applicant was able to establish that he was an owner-driver and party to an owner-driver contract, I expressly leave open the issue as to whether any term of such a contract in relation to the acquisition of a business would be within the Tribunal's jurisdiction.
- 80 As set out earlier, the jurisdiction of the Tribunal extends to hearing and determining "disputes" that may be referred to it. The meaning of "dispute", as set out above, in s 37(1) is broad. On one view, it extends to any dispute between an owner-driver and a hirer "arising under or in relation to" an owner-contract, including an allegation that a person has contravened such a contract.
- 81 The Tribunal may, in determining such a dispute, do a number of things as provided in s 47(4) of the OD Act including making orders for damages (including exemplary damages); orders for restitution; an order for specific performance amongst other orders that may be made.
- 82 Whilst the Tribunal's jurisdiction is broad, in the absence of detailed argument, resolution of this issue will have to await another day.
- 83 For completeness, whilst in light of my conclusions in relation to the primary threshold point it is not strictly necessary to do so, I also deal with the other submissions made by the respondent in opposition to the applicant's claim.

District Court Action

84 The applicant's notice of referral to the Tribunal was filed on 19 April 2010. It is common ground that at that time District Court proceedings were on foot in action 844 of 2010 between the same parties seeking substantially the same relief as the present proceedings. The District Court action was discontinued on 22 June 2010.

85 Section 49 of the OD Act provides as follows:

“49. Other jurisdictions

(1) Where —

- (a) a dispute has been referred to the Tribunal; and
- (b) at the time the dispute was referred no issue arising under the referral was the subject of civil proceedings before a court,

a court has no jurisdiction to hear or determine such an issue in civil proceedings unless subsection (2) applies.

(2) This subsection applies if the dispute, or the part of the dispute to which the issue referred to in subsection (1) relates, is withdrawn or is dismissed for want of jurisdiction.

(3) Where —

- (a) a dispute has been referred to the Tribunal; and
- (b) at the time the dispute was referred an issue arising under the referral was the subject of civil proceedings before a court,

the Tribunal, on becoming aware of those proceedings, ceases to have jurisdiction to hear or determine the issue unless subsection (4) applies.

(4) This subsection applies if —

- (a) the proceedings referred to in subsection (3) are, or the part of the proceedings relating to the issue referred to in that subsection is, transferred to the Tribunal by the court concerned; or
- (b) those proceedings are, or that part of those proceedings is, withdrawn or dismissed by the court or by another court on appeal in those proceedings, for want of jurisdiction or without deciding the issue on its merits; or
- (c) as a result of judicial review, a court quashes or declares invalid those proceedings or that part of those proceedings or any order, judgment or decision made in those proceedings in relation to the issue, on the ground that the court concerned had no jurisdiction to hear and determine the issue.”

86 By s 49(3) and (4) read together, it seems plain that it was the intention of the Parliament that two sets of proceedings concerning the same subject matter and parties should not proceed concurrently in the Tribunal and in another jurisdiction.

87 A plain reading of s 49(4) however, reveals that there is a temporal connection between the cessation of jurisdiction of the Tribunal in s 49(3) and the events as prescribed by s 49(4)(a), (b) and (c).

88 At the time of the institution of the proceedings in the Tribunal on 19 April 2010, by s 49(3) the Tribunal did not have jurisdiction. However, when the District Court action was discontinued on 22 June 2010, by s 49(4)(b) of the OD Act, the Tribunal was once again seized of the matter and thereafter there was no barrier created by s 49 to the Tribunal hearing and determining the applicant's claim.

Payment Claim

89 It was a further submission of the respondent that as the applicant had not complied with the requirements of Division 3 of Schedule 1 of the OD Act in relation to making claims for payment, the applicant's claim could not succeed.

90 By s 3 of the OD Act a “payment claim” for present purposes is one by an owner-driver against a hirer for payment of “an amount in relation to the performance by the owner-driver of the owner-driver's obligations under the contract”.

91 By s 37(1) of the OD Act a “dispute” includes a “payment dispute” which is in turn defined to mean non-payment of an amount claimed by an owner-driver under a contract by the due date.

92 The terms of Schedule 1 are implied into any owner-driver contract that does not contain the prescribed provisions. By Division 3, a payment claim must satisfy the requirements of cl 3(a)-(e).

93 Whilst it is arguably the case the combined effect of these provisions is that before the Tribunal is able to hear such a matter a payment claim must be made, such a provision has no application in the present case.

94 This is because in the present case, the subject matter of the claim, even if the applicant were to be held by the Tribunal to be an owner-driver, is not one for an amount in relation to the performance of the owner-driver's obligations under the contract. In my view, the combined effect of these provisions is such that claims contemplated are those based upon amounts of money for transport services performed by the owner-driver that will most commonly be expressed as discrete sums for payment for transporting goods on nominated dates or for nominated jobs, at the agreed and specified rates.

Retrospective Operation of the OD Act

95 The OD Act was proclaimed to come into effect substantively on 1 August 2008. By s 7 of the OD Act, it is provided as follows:

“7. Act prevails over owner-driver contracts

- (1) A provision in an agreement or arrangement in force on, or entered into after, the coming into operation of this section, whether an owner-driver contract or not and whether in writing or not, that —
- (a) purports to exclude, modify or restrict the operation of this Act or the code of conduct; or
- (b) is contrary to or inconsistent with anything in this Act, the code of conduct or an order of the Tribunal,
- has no effect.
- (2) A provision in an agreement or arrangement that has no effect because of subsection (1) does not prejudice or affect the operation of other provisions of the agreement or arrangement.
- (3) Any purported waiver, whether in an owner-driver contract and whether in writing or not, of an entitlement under this Act has no effect.
- (4) Despite subsection (1), during the 6 months beginning on and including the day on which this section comes into operation, a provision of an owner-driver contract that is contrary to or inconsistent with a provision of this Act or the code of conduct prevails to the extent of the inconsistency.”

96 By s 7(1), it is plain that a contract or arrangement that was reached prior to 1 August 2008, and was in force on that date, was and is, subject to the terms of the OD Act. This is qualified by the transitional period of 6 months provided by s 7(4).

97 Also from 1 August 2008, the Tribunal was able to exercise jurisdiction and powers in relation to any such agreement or arrangement that was affected by s 7 of the OD Act, including one in force on 1 August 2008. This would have included the applicant and the respondent, if their relationship was that of owner-driver and hirer for the purposes of ss 4 and 5 of the OD Act, which I have held it was not.

Conclusion

- 98 I have considerable sympathy for the applicant Mr Matthews. I do not doubt that he entered the arrangement with the respondent on the understanding and with the genuine intent that he would at some point in the future, acquire the respondent’s business. However that did not materialize.
- 99 For all of the foregoing reasons, the applicant’s claim must be dismissed.

2010 WAIRC 01108**DISPUTE RE PAYMENT OF A CLAIM**

IN THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
SITTING AS

THE ROAD FREIGHT TRANSPORT INDUSTRY TRIBUNAL

PARTIES

JEFFREY DANIEL MATTHEWS

APPLICANT

-v-

WEBB FREIGHT SERVICES PTY LTD
ACN 009 122 187

RESPONDENT**CORAM**

COMMISSIONER S J KENNER

DATE

THURSDAY, 11 NOVEMBER 2010

FILE NO/S

RFT 15 OF 2010

CITATION NO.

2010 WAIRC 01108

Result

Application dismissed for want of jurisdiction

Representation**Applicant**

Ms D Marr as agent

Respondent

Mr I Carija of counsel

Order

Having heard Ms D Marr as agent on behalf of the applicant and Mr I Carija of counsel on behalf of the respondent the Tribunal, pursuant to the powers conferred on it under the Owner-Drivers (Contracts and Disputes) Act 2007 here by orders –

THAT the application be and is hereby dismissed for want of jurisdiction

[L.S.]

(Sgd.) S J KENNER,
Commissioner.

2010 WAIRC 00950

REFERRAL OF DISPUTE RE PAYMENT OF A CLAIM

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-

PAVLINOVICH BULK TRANSPORT PTY LTD

RESPONDENT

CORAM COMMISSIONER S J KENNER

DATE TUESDAY, 5 OCTOBER 2010

FILE NO/S RFT 23 OF 2010

CITATION NO. 2010 WAIRC 00950

Result Application discontinued

Representation

Applicant Ms M Papa

Respondent Mr N Pavlinovich

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 00952

REFERRAL OF DISPUTE RE PAYMENT OF A CLAIM

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-

JUST DIG IT EXCAVATIONS (WA) PTY LTD

RESPONDENT

CORAM COMMISSIONER S J KENNER

DATE TUESDAY, 5 OCTOBER 2010

FILE NO/S RFT 1 OF 2010

CITATION NO. 2010 WAIRC 00952

Result	Application discontinued
Representation	
Applicant	Mr D Cain
Respondent	Mr R Galpin of counsel

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 00951

DISPUTE RE PAYMENT OF A CLAIM

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-

LIGHTVIEW HOLDINGS PTY LTD T/A ST GEORGE LIMOUSINES

RESPONDENT

CORAM	COMMISSIONER S J KENNER
DATE	TUESDAY, 5 OCTOBER 2010
FILE NO/S	RFT 20 OF 2010
CITATION NO.	2010 WAIRC 00951

Result	Application discontinued
Representation	
Applicant	Mr D Cain
Respondent	Mr M Day

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 01092

REFERRAL OF DISPUTE RE PAYMENT OF CLAIM
 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-

CONTRACT HEAVY HAULAGE PTY LTD

RESPONDENT**CORAM** COMMISSIONER S J KENNER**DATE** FRIDAY, 5 NOVEMBER 2010**FILE NO/S** RFT 23 OF 2009**CITATION NO.** 2010 WAIRC 01092**Result** Discontinued by leave**Representation****Applicant** Ms M Papa**Respondent** Mr S Brown of counsel*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.
